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LOW-COST AIR TRANSPORTATION ACT

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 421

TO REGULATE COMMERCE AND ASSURE THE AVAILABILITY OF
AIR TRANSPORTATION AT THE LOWEST REASONABLE COST TO
CONSUMERS BY DEFINING INCLUSIVE TOUR CHARTER TRIP
AND ADVANCE-BOOKING CHARTER TRIP; BY AUTHORIZING
REDUCED RATE TRANSPORTATION FOR THE HANDICAPPED,
THE ELDERLY, AND THE YOUNG; AND FOR OTHER PURPOSES

FEBRUARY 13 AND 14, 1975

Serial No. 94-23

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LOW-COST AIR TRANSPORTATION ACT

THURSDAY, FEBRUARY 13, 1975

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

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

OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. The committee will come to order.

Today's hearings are on S. 421, my bill, entitled the "Low-Cost Air Transportation Act" which by law will broaden the opportunity for low-cost travel.

I sincerely regret the necessity of either introducing S. 421 or of holding hearings on it because the policies enunciated in the bill, in my view, are timely, sensible, economically realistic, but most important, are within the authority of the Civil Aeronautics Board to adopt on its own initiative.

For the past several years I have been dissatisfied with the way in which air transport policies have been adopted, followed and, in some cases, forced on the air carriers and the public by the CAB.

Time and again the Board has ruled against efforts toward lowering air fares, against innovative discount proposals designed to get more people to fly, against lower cost economy fares for persons who desire fewer inflight amenities, and against carriers who wish to offer wider seats or against carriers who wish to provide lounges in their aircraft.

At the same time, the Board has followed a policy of unduly restricting the charter air transport business without regard to the fact that charter operations provide the only true low-cost air travel alternative to the great majority of Americans.

Late last year the Board even went so far as to put out a notice of rulemaking indicating that it was going to abolish the affinity charter, the only type charter operation of any significance in the United States today.

In short, the Board, in my opinion, has lost sight of its basic responsibility: That of promoting the public interest in air transportation.

In a time of serious and unrelenting inflation and economic recession, the Board's attitude against promoting lower cost air travel is

Staff member assigned to these hearings: Robert E. Ginther.

difficult to understand. It is little wonder to me why the Board has been the subject of increasingly bitter criticism about the way it regulates our air transportation system.

Indeed, even the President has concluded that the Civil Aeronautics Board has failed its responsibility to protect the public interest and has suggested outright deregulation of the airline industry.

In the last several years it has appeared that the Board has considered itself completely above any policy inputs from the Congress or the public. This arrogance, which has typified some regulatory agencies in the past, is intolerable because it suggests that the Board, and only the Board, knows what is best for the airline industry and the public. This is nonsense.

I should not be compelled to point out that the CAB is an arm of Congress, exercising legislative powers reserved by the Constitution to the Congress and, absent a CAB, the regulatory function would be performed by this committee and the corresponding committee in the House.

That is why I have been so perplexed by the failure of the Board to pursue more public interest oriented policies. Its notice that it was about to abolish affinity charters was a direct affront to the Congress, to this committee, and to the American traveling public.

This is not the time to continue to restrict charter air transportation operations—it is the time to expand them. It is time because our economy and the Nation's energy problems demand new and more efficient programs.

It is imperative that vacation and pleasure travelers have the available alternative of using air transportation rather than their personal autos, not only because air transportation by charter is cheaper than using the automobile, but because it is also a more efficient user of fuel when operated at high density configurations.

And, at a time when the airline industry itself, to say nothing of the public, is imperiled by the President's energy proposals, it makes sense to encourage the development of a charter system to conserve fuel while offering the public an inherently less costly system of air transport.

While I was relieved by the Board's withdrawal of its proposal to abolish affinity charters, I am not any the less concerned over its general adherence to a continuation of outmoded and unreasonable restrictions on charter travel. I am convinced that the only apparent relief to this problem lies in congressional action.

While I cannot speak for the other body, I am committed to enacting legislation which gives the Board specific rather than general guidelines for the regulation of charter air transportation and intend to work to see that the Senate takes favorable action on charter air transport policies in the near future.

I am tired of waiting for the CAB to act. I have waited patiently too long. If the Congress must enact legislation telling the Civil Aeronautics Board exactly how to regulate, then so be it. The time for action is now past due.

[The bill follows:]

94TH CONGRESS
1ST SESSION

S. 421

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1975

Mr. CANNON (for himself and Mr. KENNEDY) introduced the following bill;
which was read twice and referred to the Committee on Commerce

A BILL

To regulate commerce and assure the availability of air transportation at the lowest reasonable cost to consumers by defining inclusive tour charter trip and advance-booking charter trip; by authorizing reduced rate transportation for the handicapped, the elderly, and the young; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Low-Cost Air Transpor-
4 tation Act".

5 SEC. 2. The Congress finds and declares:

6 (1) Scheduled air carrier services are becoming
7 increasingly costly and financially prohibitive for mil-
8 lions of Americans who want to travel by air.

II

1 (2) Scheduled air carrier services are timely, re-
2 liable, and convenient, but as a consequence of such
3 increasing cost they do not satisfy the air travel needs
4 of a large segment of the American public.

5 (3) Economies of scale and significant cost savings
6 in air transportation can be achieved if aircraft are oper-
7 ated at full capacity, and such full capacity can be real-
8 ized through charter or nonscheduled air carrier services.

9 (4) Such economies and cost savings should be
10 available to those consumers who wish to use such serv-
11 ices.

12 (5) The promotion, development, and removal of
13 impediments to charter or nonscheduled air carrier serv-
14 ices is in the public interest. Scarce energy resources will
15 be conserved if more aircraft are operated at full capac-
16 ity; the public will be offered a more economical method
17 of air travel; and commerce and the economy will there-
18 by be benefited in a period of inflation, recession, and
19 economic dislocation.

20 (6) The Civil Aeronautics Board has failed consist-
21 ently to provide for responsible regulation of such serv-
22 ices consistent with the need to encourage and develop
23 such services.

24 (7) Senior citizens who have retired, young people
25 who have not yet entered the job market, and the handi-

1 capped should not be denied access to air transportation,
2 but such a denial occurs unless a reduction in fare is au-
3 thorized for such persons consistent with their lower-
4 than-average incomes.

5 SEC. 3. (a) Section 101 of the Federal Aviation Act of
6 1958, as amended (49 U.S.C. 1301) is amended by renum-
7 bering paragraphs (2) through (19) thereof as para-
8 graphs (3) through (20) and by inserting therein the fol-
9 lowing new paragraph:

10 “(2) ‘Advance-booking charter trip’ means a charter
11 trip arranged pursuant to a contract between an air carrier
12 or foreign air carrier and a person authorized by the Board
13 to act as a charter organizer, and sold by such charter orga-
14 nizer to members of the general public on an advance-
15 purchase basis in accordance with regulations prescribed by
16 the Board: *Provided*, That such regulations shall not (A)
17 require the participants on any advance-booking charter trip
18 to purchase their transportation or pay any deposit more
19 than thirty days prior to the departure date, (B) prohibit
20 the charter organizer from selling up to 25 per centum of
21 the seats on any advance-booking charter trip at any time
22 prior to the departure date, (C) prohibit the charter orga-
23 nizer from assuming the commercial risk on any advance-
24 booking charter trip or require him to sell seats at a
25 prorated price per passenger, or (D) require any advance-

1 booking charter trip within the Western Hemisphere to
2 exceed three days' duration, or any other advance-booking
3 charter trip to exceed seven days' duration.".

4 (b) Section 101 of the Federal Aviation Act of 1958,
5 as amended (49 U.S.C. 1301) is amended by renumbering
6 paragraphs "(20)" through "(40)" thereof as paragraphs
7 (22) through (40) and by inserting therein the following
8 new paragraph:

9 "(21) 'Inclusive tour charter trip' means a charter trip
10 which combines air transportation, pursuant to a contract
11 between an air carrier or foreign air carrier and a person
12 authorized by the Board to sell inclusive tours, and land
13 arrangements at one or more points of destination, sold to
14 members of the public at a price which is no less than the
15 just and reasonable fare for charter air transportation plus a
16 compensatory charge for land arrangements, and subject to
17 such other requirements not inconsistent herewith as the
18 Board shall by regulation prescribe in order to assure that
19 such charter trips do not impair essential scheduled services:
20 *Provided, That* (A) in addition to any other requirements
21 imposed under this paragraph the Board may limit by regu-
22 lation the geographical areas or markets in which such trips
23 may be operated; and (B) the Board shall not permit any
24 foreign air carrier to operate such charter trips to or from
25 the United States unless United States air carriers are

1 granted reciprocal rights to operate such charters to or from
2 such foreign air carrier's own nation.”.

3 (c) Paragraph 37, as renumbered by this section, of
4 section 101 of the Federal Aviation Act of 1958, as amended
5 (49 U.S.C. 1301) is amended to read as follows:

6 “(37) ‘Supplemental air transportation’ means charter
7 trips, including advance-booking charter trips and inclusive
8 tour charter trips, in air transportation, other than the trans-
9 portation of mail by aircraft, rendered pursuant to a certifi-
10 cate of public convenience and necessity issued pursuant to
11 section 401 (d) (3) of this Act to supplement the scheduled
12 service authorized by certificates of public convenience and
13 necessity issued pursuant to sections 401 (d) (1) and (2)
14 of this Act. Nothing in this paragraph shall permit a supple-
15 mental air carrier to sell or offer for sale an inclusive tour in
16 air transportation by selling or offering for sale individual
17 tickets directly to members of the general public, but a sup-
18 plemental air carrier may control or be under common control
19 with a person authorized by the Board to make such sales:
20 *Provided*, That such control has been approved by the Board
21 pursuant to sections 408 and 409 of this Act.”.

22 SEC. 4. The Civil Aeronautics Board shall, notwithstand-
23 ing any provision of the Federal Aviation Act of 1958, main-
24 tain and continue in full force and effect the rules and regula-
25 tions issued by it which authorize charter trips in air trans-

1 portation pursuant to contracts with "affinity" organizations,
2 clubs, or groups on behalf of the members of such organiza-
3 tions, clubs, or groups, until otherwise authorized or directed
4 by law or by a concurrent resolution of the Congress: *Pro-*
5 *vided*, That such Board may amend, modify, or add to such
6 rules and regulations to the extent that such amendment,
7 modification, or addition does not, and will not, result in any
8 material diminution of the availability of such charter trips
9 to such organizations, clubs, or groups.

10 SEC. 5. Within ninety days after the effective date of
11 this Act, the Civil Aeronautics Board shall issue regulations,
12 in accordance with section 553 of title 5, United States Code,
13 defining in specific terms the full scope of the activities in
14 air commerce which are permitted to be engaged in by
15 persons who have not been authorized to engage in air
16 transportation within the meaning of the Federal Aviation
17 Act of 1958 but who are—

18 (1) air travel clubs which operate aircraft and
19 which are engaged in the carriage of persons who pay
20 an assessment, dues, membership fees, or any similar
21 type of remittance; or

22 (2) commercial operators of aircraft who are en-
23 gaged in the carriage of persons or property for com-
24 pensation or hire.

25 SEC. 6. (a) The last sentence of subsection (b) of

1 section 403 of the Federal Aviation Act of 1958, as
2 amended (49 U.S.C. 1373 (b)) is amended to read as
3 follows: "Any air carrier or foreign air carrier, under such
4 terms and conditions as the Board may prescribe, may
5 grant reduced rate transportation to families and to handi-
6 capped persons and may grant reduced rate transportation
7 on a space-available basis to ministers of religion and to
8 persons who are sixty-five years of age or older or twenty-one
9 years of age or younger. As used in this subsection the term
10 'handicapped persons' means the blind and other persons
11 who are physically or mentally handicapped, as further
12 defined by regulations of the Board."

13 (b) Section 22 (1) of the Interstate Commerce Act
14 (49 U.S.C. 22 (1)) is amended by inserting immediately
15 after "managers of said homes" and before "; nothing" the
16 following new clause: "or to persons who are blind or other-
17 wise physically or mentally handicapped, as further defined
18 by regulations of the Commission, or to persons who are
19 sixty-five years of age or older or twenty-one years of age
20 or younger".

Senator CANNON. Our first witness this morning will be the President of the National Air Carrier Association, Mr. Edward J. Driscoll.

Mr. Driscoll, you may proceed in your own manner.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION, INC.; ACCOMPANIED BY GLENN A. CRAMER; T. G. HUGHES; WILLIAM A. HARDENSTINE; PAUL T. SELIGSON; G. F. STEEDMAN HINCKLEY; AND FRANCIS J. ROACH

Mr. DRISCOLL. Thank you, Mr. Chairman. First, I would like for purposes of the record to introduce the people that are here. I am sure they are known to you.

First, on my left, is Mr. Glenn Cramer, chairman of the board and chief executive officer of Trans International Airlines.

On my right is Mr. William Hardenstine, senior vice president of World Airways; next to him is Mr. T. G. Hughes, vice president of Europe, World Airways; and next to him is Mr. Paul Seligson, counsel for Saturn Airways.

We have two other people that will be here shortly, Senator. They are Mr. Steedman Hinckley, chairman of the board and chief executive officer of Overseas National Airways; and Mr. Francis Roach, vice president of Capitol International Airways.

Mr. Chairman, I have a statement. I would like to read it into the record with some additional inserts. Following that, there will be a statement offered by Mr. Hardenstine for the record and which he will summarize; and Mr. Hughes will make a short statement for the record concerning European originated ABC's and the activity in Europe.

The others, I think, will probably either answer questions or may want to make a comment when I have finished.

Mr. Chairman, it is, as always, a pleasure to appear before this committee. It has been almost 2 years since I testified here on behalf of the member airlines of our association in support of S. 1739, a bill which—in a slightly amended form—was reported favorably by this committee. We regret, as I am sure you do, that the press of other congressional business prevented that bill from ever reaching a vote in the full Senate. If S. 1739 had been enacted, the state of the air transportation industry would be far better than it is today. On the other hand, the bill which is now before you—S. 421—is an even more comprehensive and valuable piece of legislation than S. 1739. The prompt enactment of that bill would truly revitalize our troubled industry, and would open up broad new opportunities for low-cost air travel to the American public.

At the present time, Mr. Chairman, the air transportation industry, as well as related tourist industries, are in a perilous condition. Because of inflation and the fuel crisis, air fares over the past 2 years have skyrocketed. As a result, and with the economy in recession, air traffic has stopped growing—and, in a large number of markets, even declined.

In the North Atlantic we had a 13.9 percent decline in traffic. The scheduled carriers had a similar decline in their charter activity. The foreign scheduled carriers had a 37-percent decline. The foreign charter carriers were the only ones that showed growth, and that was attributable to Laker's operation of ABC's to the New York area.

Many airlines—particularly those which depend primarily on international services—have been suffering enormous losses, and few if any airlines are earning a fair return on their investment.

In the international scene, the losses have been horrendous. And the supplementals in the 12-month period ended September 30, 1974, had an operating loss in excess of \$11 million. A substantial number of expensive and modern aircraft have been taken out of service completely and simply parked.

Something must be done now to expand the market for air travel, and to lower the cost to the discretionary traveler. There is only one

sure way that this can be accomplished—by promoting and expanding charter air service. There is no way to reduce significantly the cost per seat-mile of air transportation, but it is possible to reduce the cost per passenger-mile, by making more planeload charter service available. As section 2b(3) of S. 421 declares:

Economies of scale and significant cost savings in air transportation can be achieved if aircraft are operated at full capacity, and such full capacity can be realized through charter or non-scheduled air carrier services.

Regrettably, the CAB has done virtually nothing to expand the availability of charter services. Indeed, its most recent actions have been in precisely the opposite direction. As you are well aware, Mr. Chairman, the Board on October 30, 1974, proposed to eliminate—totally eliminate—the most popular and most successful form of charter travel which exists in the United States today, the so-called “affinity” charter. In the transatlantic market, which is by far the largest charter market, approximately 73 percent of all charter flights are of the affinity type. The elimination of this form of charter, which is used by millions of Americans each year, would drastically curtail the availability of low-cost, fuel-efficient charter services, and virtually assure the demise of the supplemental carrier industry.

I might add, Mr. Chairman, that of the 73 percent that took affinity charters, 53 percent of the passengers on those flights did not elect to take tour packages. They were moving for transportation purposes in groups, a large number being of the ethnic type going back to visit relatives and friends. Therefore, no package is required.

To be sure, the Board proposed a new type of one-stop inclusive tour charter, or OTC as the Board called it. It expressed the view that “this proposal, combined with our other existing and proposed charter regulations, will provide a viable alternative for ‘prior affinity’ charters * * *.” But the Board’s proposed OTC regulations are so encumbered with restrictive conditions that OTC’s could never generate any significant volume of charter traffic. That is not our view alone. Virtually everyone who filed comments in response to the Board’s proposal—including the Departments of Justice, Commerce, and Transportation, the CAB’s own consumer advocate, innumerable tour operators, consumer groups, and others—all expressed the same view.

I might add here that OTC could never replace affinity since it is coupled with a package and, as I mentioned previously, 53 percent of those traveling affinity did not opt for the package.

The Board also suggested in its proposal to abolish affinity charters that some of the demand for low-cost air travel might be met by travel group charters [TGC]. As this committee is aware, however, the TGC rules, which were originally adopted in September 1972, have been a nearly total failure. In the first 21 months after adoption of these rules, only 698 TGC flights—less than 7 percent of those originally filed with the Board—were actually performed. The others were all canceled. Although the Board did recently adopt some amendments to its TGC regulations, the rules are still far too restric-

tive. They still require pro rata pricing—so that the passenger does not know the precise fare in advance—the purchase of tickets more than 60 days in advance of departure, the posting of large nonrefundable deposits, adherence to unrealistic minimum-stay restrictions, and automatic cancellation if the load falls below approximately 80 percent prior to the date of departure. The combination of these restrictions makes TGC's virtually unmarketable.

While charter travel in the United States has been hampered by the CAB's restrictive rules and regulations, exactly the opposite has been happening in Europe, Canada, and elsewhere. I need not repeat here the story of one-stop ITC's in Europe. That subject was fully covered in your 1973 hearings on S. 1739, and in the committee report on that bill. Canada has also experienced success with its one-stop ITC regulations.

We have an analysis, Mr. Chairman, that we prepared on the Canadian ITC operations. This was prepared approximately a year ago by Colker and Associates, and it shows how one-stop ITC's have expanded travel. I would like to offer this into the record; and I would also like to make one comment. Although Canada was operating one-stop ITC's into the United States, when in negotiations for an agreement between Canada and the United States, one of the parts was to negotiate one-stop ITC. Part way through those negotiations, and in view of the fact that S. 1739 was pending before the Senate, the scheduled air carriers requested a change in the negotiations standards to eliminate the one-stop ITC. That was acceded to by the Civil Aeronautics Board, and an agreement was negotiated with Canada precluding one-stop ITC's until some other action would be taken—would have been taken. They were then permitted to operate two-stops into this country.

As a result, we have suffered a loss of passengers coming from Canada to the United States; but this was all as a result of the fact that there was pending legislation and they felt if the United States in one agreement recognized one-stop ITC's into the United States, it might aid in the passage of S. 1739.

In recent years the European countries and Canada have also introduced liberal advance-booking charter or ABC rules, which are a sort of counterpart of the CAB's TGC regulations. Unlike the TGC's, however, ABC's have been successful—primarily because they permit the charter organizer to market charter seats at a fixed price per passenger, and do not require cancellation if less than a specified number of seats are sold. In other words, the charterer is able to guarantee that the flight will operate, and to guarantee the price. Yet despite the success of liberal ITC and ABC rules abroad, the CAB has steadfastly refused to adopt similar regulations for U.S. travelers.

There is a publication known as "Jax Fax," which contains lists of all the charter flights that are operated from Europe to Canada to the United States. I would like to call attention—and this copy is

available and we will make it available to you and your staff, which shows the large number of operations between United Kingdom, Europe, and Canada; and in one particular instance, Windsor, Ontario, which is next door to Detroit, Mich., and which has a large number of ABC flights, both to and from the United Kingdom and Canada. We operate out of Detroit. We cannot compete with the operations out of Windsor, which are legal under ABC rules but cannot be performed out of the United States.

Mr. Hardenstine will address himself more specifically to that and will show you some of the pricing and other aspects of that service.

Mr. Chairman, we have tried, time and time again, to convince the CAB to reverse its unduly restrictive charter policies, and to make this type of low-cost air transportation more broadly available. Attached to my statement is a list of formal petitions and other pleadings which we have filed with the Board over the past 5 years seeking more liberal regulations governing ITC's, TGC's, and other types of charters. Almost all of our suggestions have been rejected. Even when, on rare occasions, the Board has liberalized some aspect of its charter regulations, the change has been so limited as to have only the most negligible effect. You correctly characterized the Board's attitude in your statement on the floor the other day, Mr. Chairman, when you said that "they have been preoccupied with the well-being of air carriers and have not paid much attention to the promotion of air transport and the availability of services that the public needs and wants." I should add that this preoccupation has not been primarily directed to the well-being of the supplemental air carrier class.

The irony of the situation is that in the air transportation industry, as in most others, what is good for the consumer is also good for the industry. As the committee pointed out in its report on S. 1739, there is no evidence to support the myth that expanded charter service will cause serious damage to scheduled service. On the contrary, all of the available evidence indicates that charter service actually stimulates the demand for all forms of air transportation, including scheduled transportation.

There is just no justification for denying the consumer the kind of transportation he wants and needs. If people are willing to put up with the lesser convenience and flexibility of charter service in order to benefit from the low fares that planeload economics make possible, they are entitled to do so. The plight of the American traveler of modest means, in the face of sharply increased fares on scheduled service, is a very real one—and low-cost charter services by both scheduled and supplemental airlines offer a practical solution. In our view, government should be responsive to these needs and desires of the public, rather than adhering rigidly to the patterns of the past. Unfortunately, the actions of the CAB make clear that it is unwilling to face up to today's realities, and to take the kind of action which is required.

In short, we need a whole new policy toward charter air transportation—a policy directed toward satisfying public demand, not toward maintaining the status quo. If the public wants and needs more charter service and fewer scheduled flights on which most of the seats are empty, then it is the duty of both government and industry to respond accordingly.

S. 421 [Sec. 2(5)] would provide the new charter policy which this country so urgently needs. It would make it clear, once and for all, that “the promotion, development, and removal of impediments to charter or nonscheduled air carrier services is in the public interest.” It would require the Board to adopt realistic regulations authorizing one-stop ITC’s and European-type ABC’s. And it would assure the continuance of affinity charters until the Congress is satisfied that adequate substitute forms of charter service have been established and tested in the marketplace.

The ITC provisions of the bill are substantially identical to those in S. 1739, and therefore need not be discussed in detail here. The justification for those provisions is fully explained in the committee’s report on S. 1739.

The ABC provisions are new, but they are generally designed to establish the type of ABC service which has been so successful in Europe. In addition to authorizing the sale of ABC’s at a fixed [rather than a strict pro rata] price and permitting the charter organizer to assume the commercial risk of unsold seats, the bill would also reduce the minimum advance-purchase period from 60 to 30 days, and would permit the sale of up to 25 percent of the seats up to the date of departure.

It should be noted, Mr. Chairman, that the 30-day advance-booking period provided in the bill differs from the European and Canadian regulations, which currently call for 60-day advance booking. But this legislation is for the American market and not for the European or Canadian; and our experience shows that there is a difference between markets. Europeans and Canadians generally make firm vacation plans much longer in advance than Americans. Our experience indicates that Americans vacillate, change their minds, and do not firm up their final vacation plans until 30 days in advance—and often even within the last 30 days. This is the reason for the provision in the bill which would allow 25 percent substitutions within the last 30 days. The affinity regulations presently permit substitutions up to the time of flight by bona fide members of the organization. Even the travel group charter regulations, as amended recently by the Board, permit substitutions for 15 percent up to time of flight. If we are to have a really viable replacement for the affinity mode, we firmly believe the advance-booking period must not be greater than the 30-day period you have proposed. I should also point out, Mr. Chairman, that some European countries are also currently considering a reduction in the advance-purchase period.

Mr. Chairman, we have provided for the record and to you a copy of two charts marked as NACA exhibit 1 and NACA exhibit 2. NACA exhibit 1 shows a comparison of S. 421 and CAB-TGC mode, vis-a-vis the United Kingdom and Canadian. It shows the difference

under advance filing periods, mandatory deposits, fixed prices, mandatory cancellation, substitution of top off, tour operator assumes risk, minimum length of stay. The purpose of this was to show that S. 421 is not out of line with what is going on in the United Kingdom, Canada; but that it is substantially improved over the present TGC; and to show the minimum changes that would be necessary to produce a marketable product.

NACA exhibit 2 is a comparison of S. 421 and the CAB's proposed OTC mode, showing the comments filed by United Airlines, American Express, the Department of Justice, the Department of Transportation, and NACA. I think a review of that chart indicates again that the S-421-ITC proposal is not too far off from the OTC, except that it does provide for just and reasonable pricing, not arbitrary pricing, not inflationary pricing. It also takes and provides as the present ITC regulations do for marketing up to time of flight. It does prescribe the minimum length of stay of 3 days, in domestic markets, 7 days overseas, as we interpret from the committee report on S. 1739.

[The charts follow:]

NACA EXHIBIT NO. 1.—COMPARISON OF S. 421 AND CAB'S TGC MODE

CAB-approved TGC		S. 421—advance booking		United Kingdom-ABC	Canada-ABC
1. Advance filing period.....	60 d	30 d	60 d. ¹	60 d. ¹	
2. Mandatory nonrefundable deposit.....	25 percent of pro rata price	None	None	10 percent	
3. Fixed price.....	No	Yes	Yes	Yes	
4. Mandatory cancellation if certain load factor is not achieved.....	Yes	No	No	No	
5. Substitution of topoff.....	15 percent substitution	25 percent topoff	No; but separate flights can be consolidated.	Yes	Yes. All substitutions within 30 d.
6. Tour operator assumes risk.....	No	Yes	Yes	Yes	
7. Minimum length of stay.....	North America: 7 d. All other markets: 10 d.	Western Hemisphere: 3 d. All other markets: 7 d.	14 d., Apr. 1 to Oct. 31; 10 d., Nov. 1 to Mar. 31.	Caribbean, Central America, Bermuda, Mexico: 7 d. All other markets: 14 d., Apr. 1 to Oct. 31; 10 d., Nov. 1 to Mar. 31.	

¹ 45 d. under consideration.

NACA EXHIBIT NO. 2—COMPARISON OF S. 421 AND CAB'S PROPOSED OTC MODE

S. 421—ITC		Comments on Board's OTC proposal			
		Proposed OTC	United Airlines	American Express	DOJ/DOT
Advance purchase requirement.....	None	30 d	30 d	None	30 d
Minimum tour price.....	Just and reasonable fare for charter transportation, plus compensatory charge for land arrangements.	North America: per seat price of air transportation plus \$25 per day. Foreign: 110 percent of lowest scheduled fare between same points.	Same as proposed OTC.	Should be lesser of 110 percent of lowest available air fare; pro rata seat price plus \$25 per day per person for first 4 d., and thereafter \$15 per day.	Similar to S. 421
Domestic quota.....	None	0.25 percent of total passengers in scheduled service between same points in past 12 m.	None	No comment	None
Minimum length of stay.....	Domestic: 1 3 d. Overseas: 7 d.	North America: 7 d; 3 d when return leg is on Sunday/Monday. Foreign: Nov 1 to Mar 1, 7 d; Apr. 1 to Oct. 31, 10 d.	North America: 3 d	North America: 5 d. Foreign: 7 d.	Domestic: 3 d. Foreign: 7 d.
Minimum number of stops.....	1	1	1	1	1
Purchase of ground accommodations.....	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory
North America: 3 d. Other: 7 d					

¹ Per committee report on S. 1739, 93d Cong.

On that one item, minimum length of stay, you will find in looking at all of these, the greater number have recommended 3 days for North America, 7 days for international flights.

Minimum number of stops of each have been one, Mr. Chairman, ground accommodations, mandatory; but all except a few have taken issue with the CAB's proposed pricing, especially the 110 percent on international operations which would invest in IATA, if you will, the pricing schedule of charter transportation. You would have to have 110 percent of the lowest scheduled fare. Therefore, they could determine by establishing the applicable fare what the price would be. Likewise, in the United States, \$25 a day at a minimum package would kill ITC's. They couldn't get off the ground. That's what the Board proposed in its OTC. You will find Department of Justice and DOT agree substantially with the provisions of S. 421 as far as the minimum tour price is concerned. We would only hope that in anything that is enacted there would be the flexibility to price the product on a reasonable basis in accordance with the cost of performing or providing that product.

Some places you get hotel rooms for \$7 a day; others \$10; others \$15. If you come up with an arbitrary \$25, there is unjust enrichment, if you will, for a hotel where you can get it for \$7.

The bill would also make it possible for supplemental carriers, subject to CAB approval, to control—or be under common control with—ITC tour operators.

As you are aware, vertical integration of tour operators and air carriers is permitted both in Europe and in Canada. The Board may well find it in the public interest to authorize the same type integration in the United States.

We would hope that the legislative history of this bill would clearly mandate the Board to authorize U.S. carriers to enter into control relationships with tour operators in countries where such control relationships are enjoyed by foreign carriers, such as in the United Kingdom and Canada.

This would at least permit U.S. carriers to compete on an even basis with their foreign competitors.

Mr. Hughes later will comment on that, how it has benefited the public, the carriers, and how it is necessary to compete with foreign air carriers.

S. 421, as introduced, is comprehensive and detailed legislation that would, if enacted, produce a viable low-cost air transportation system. I am sure that there will be substantial support for this legislation, but I am equally sure that there will be criticism of it as being too broad, far reaching and also too specific.

But let's face it, Mr. Chairman, unless you are specific, unless you do enact comprehensive legislation, I feel certain the American public will never experience the benefits of a system of low-cost transportation. While you and I agree the Board does have all the power to do the things in your bill, if the Board did it there would be court challenges and the action would be tied up in needless litigation. That's why legislation is required.

General policy guidance in this area will not suffice, as we have seen over the past several years in the failure of the Civil Aeronau-

tics Board to be responsive to the public need. On the contrary, we have seen the Board seek to eliminate the only low-cost system, the prior-affinity-type charter, that the public has been able to use.

Fortunately, the public response in opposition to the Board's proposal has caused the Board to state it will not eliminate affinity charters during 1975.

In the light of these circumstances, we feel certain that the kind of specific legislative direction that you have proposed—covering one-stop inclusive tour charters, advance booking charters and retention of affinity charters until a viable alternative has been tested in the marketplace—is absolutely essential.

I think we have one example in 1970 where the United States came out with an approved air transport policy statement. In that it said that bulk transportation should be enjoyed on an equal basis by scheduled and supplemental carriers. They did say that the group moves on individual ticketed services were bulk transport. To date, that hasn't been followed. It's 4 years later. It's a general policy pronouncement of that type that is sometimes very ineffective.

Enactment of this bill would once again make the United States a leader in the air transportation field. It would, for the first time, make available to Americans a truly balanced system of air transportation capable of meeting the needs of budget-conscious travelers as well as the affluent, the vacationer, as well as the businessman. It would also bring U.S. regulations into closer harmony with those of other countries.

In that regard there is a need in the United States for the administration, the Board, and our State Department to assert that country-of-origin rules must be recognized by other countries and seek to negotiate agreements along those lines.

Today we are recognizing the rules enacted by other countries, but they are not recognizing our rules. Notwithstanding the fact that under U.S. rules we can substitute up to time of flight a valid affinity passenger, the United Kingdom, Germany, France, say you have to file your manifest 30 days in advance and you cut off sales.

Italy recently came up and said a 30-day cutoff on affinity, 60-day on ITC would be required. That means you cut off sales 75 days in advance. It won't work. We will be either operating inefficiently or we won't be operating at all.

Now, we have asked the governments here this past week, both CAB, Department of State, and we have asked the DOT to set immediate negotiations to protect the U.S. rules and to insist if we are to recognize theirs, those countries must recognize ours. We think it's fair. And we think a new initiative along this line must be instigated immediately.

We know it is under review at the present time by both the Board and the Department of State.

I would also like to discuss briefly sections 5 and 6 of the bill, which are not directly concerned with charter services, but which, nevertheless, are of importance to the supplemental carriers.

One of the recurring problems under the Aviation Act is the problem of drawing the boundary between private carriage and common carriage. The CAB has traditionally dealt with this problem on a case-by-case basis, rather than setting out clear and precise guidelines in regulation form.

Section 5 of the bill would require the Board to promulgate such guidelines in two problem areas, namely, air travel clubs and commercial operators of aircraft for hire—so-called part 121 operators—neither of which, of course, are authorized by law to engage in common carriage by air.

Such guidelines are sorely needed, and would serve to dispel much of the confusion which now exists in this area. This would define in concrete terms what is private carriage, and, thus, the proper area of operation of air travel clubs and part 121 operators, and what is common carriage, a field which is reserved by law for certificated air carriers.

The lack of clear regulation governing part 121 operators has and continues to curtail the growth of cargo charters by the supplemental air carriers. Part 121 operators can commingle cargo of different charterers on the same aircraft, raise or lower prices of their service without notice, ignore tariff regulations, enter or withdraw from markets without seeking permission of any regulatory agency.

We have a case here in point, Mr. Chairman, that arose just recently which illustrates the point of requiring regulations to govern the 121 operators. Alaska International Airline, a part 121 operator, applied to the Board verbally for authorization to perform trips between Canada and Alaska. They are not a certificated carrier. That exemption was granted with no service on any U.S. certificated carrier.

We had no knowledge of it, although the type of equipment, the Lockheed Hercules 100, which was required for the move, is owned and operated by Saturn, a supplemental carrier. It was a \$500,000 exemption.

Now, this in our judgment was clearly a violation of policy in the grant of that by the staff. We have asked the Board to reverse the staff—to date they haven't acted.

Mr. Paul Seligson, who represents Saturn, is here and is willing to provide any detail that you may want in this area, but it is an area that needs immediate attention. It is operating to the detriment of the scheduled carriers as well as the supplementals. All of these things give them greater flexibility and authority than that of the United States supplementals which are common carriers certificated by the CAB.

There has never been a definitive statement by the CAB as to what these operators may lawfully do. We think it essential that a set of rules and regulations be promulgated so that their role, like the role of all certificated air carriers, is clearly defined.

We would expect, however, that the Board in defining the role of these operators would not permit them to operate with greater flexibility or freedom than certificated carriers; in other words, whatever the Board determines to be the proper authority of commercial operators, all certificated carriers should have at least as broad authority.

I would like also to note, in regard to air travel clubs, that their current popularity is largely the result of the fact that these clubs are able to satisfy a demand for low-cost air transportation which the certificated carriers are now unable to meet because of the Board's restrictive charter regulations. If S. 421 is enacted, it would enable the certificated air carriers to satisfy much of the demand which is now being met only by air travel clubs.

In fact, Mr. Chairman, as you suggested in your statement accompanying the bill, there is no reason why such clubs should not themselves be deemed charter worthy, which would obviate their need to own and operate aircraft and, therefore, air travel could be performed by the scheduled and supplemental carriers through charter services.

Section 6 of the bill would authorize the Board to issue regulations permitting the scheduled carriers to provide reduced-rate transportation on a reservation basis to families and to handicapped persons, and on a standby basis to clergymen, senior citizens over 65, and persons 21 years of age and younger.

In general, we have opposed below-cost discount fares on scheduled service, because such fares must necessarily be subsidized by normal-fare paying passengers and, thus, compete unfairly with charter services. We can understand the special policy considerations behind this section of the bill, however, and, therefore, do not oppose the granting of discounts to these particular classes of passengers.

We do suggest, however, that the youth discount be limited to domestic transportation only. While there may be a legitimate reason to permit students to travel at a discount between their homes and their school or college, there is no reason why they should receive such a discount if they have the means to take a vacation trip abroad. It seems to us unfair to require normal-fare passengers to underwrite the transportation costs of a young person who wants to vacation abroad, especially when there is adequate low-cost charter transportation available to him, which young people have been using for many years.

We also urge that there be no modification in the requirement that the discounts for youth, senior citizens, and clergy be available only on a standby basis.

Mr. Chairman, I would like to affirm our position with respect to the below-cost discount. The below-cost discount fares have been pretty much cleared up in the United States by the Board. We do have new discounts coming in which are 25 percent below the normal fare.

In the north Atlantic, we continue to be plagued by below-cost predatory-type fares. We have a package now that has been filed with the Civil Aeronautics Board by IATA and by the United States IATA carriers.

This package violates every guideline the Board has given the IATA carriers over the past several months to the degree that the so-called APEX fares, 22 to 45 days, in our judgment are predatory. They are so below cost in the relationship to the other normal fares, they are about 50 percent below the normal fare that the economy passenger has to pay, that we have this date, without waiting for the justifications by the carriers to be filed—although we will file comments on those—have petitioned the CAB to immediately either indicate that they will not approve them or to place these into an evidentiary proceeding, not wait until 10 days before the fares become effective and then find that they don't have ample time to go into an evidentiary hearing, but to start it now; because we feel these fares must be tested on the record because with these fares, they will drive charter transportation further out of the market.

They will force us to cut price, operate below cost in order to compete.

The restrictions governing this APEX fare, while they say there is a 10 percent deposit, nonreturnable, or \$50, whichever is greater, is not really a nonrefundable deposit. They have an insurance policy that goes along with it. For \$5, if you don't take the trip you get your \$50 back.

There is really no deposit requirement other than \$5. The restrictions governing it are really nil. We have to file detailed manifests. We have to justify everything we do in a definitive sort of way. Nothing do they have to do.

So the only way we can liken it, Mr. Chairman, is that we are being asked now to get into the ring with a heavyweight champion with our hands tied behind our back and fight. Even with the ABC-type of rule that you are proposing in your legislation, we could not compete against this APEX fare. They can fly part charter—let's call it what it is—on each and every scheduled flight up to 80 seats or 50 percent of the capacity of the airplane; and this in our estimation will drive the charter companies into below-cost operations and will eliminate that service.

This is why we believe that type of service is authorized, the carriers should be required to prove that they can operate that at those rates. If they can, then let it be approved. We doubt they can, but an evidentiary hearing is required for them to establish that.

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

NATIONAL AIR CARRIER ASSOCIATION, INC.,
Washington, D.C., February 13, 1975.

CIVIL AERONAUTICS BOARD,
Docket Section,
1825 Connecticut Ave. NW.,
Washington, D.C. 20428

GENTLEMEN: By order 75-2-29, February 6, 1975, the Board allowed the U.S.-flag IATA carriers until February 26, 1975 to submit their economic justifications for the newly-filed North Atlantic fare package. Comments and/or objections by other interested persons are to be submitted by March 10, 1975. Since the pending IATA agreements are scheduled to become effective April 1, it is evident that neither the Board nor interested parties will have adequate time to conduct a careful investigation of the fares in the time allowed. Although the NACA carriers intend to file written comments pursuant to the Board's order, we believe for the reasons set forth below that the Board should consider initiation of a full evidentiary investigation in advance of the receipt of carrier justifications and the comments of interested persons, particularly whereas here, antitrust immunity would be granted for these predatory fares filed as a result of the recent IATA agreement.

There are a number of basic facts concerning the IATA fare package which are abundantly clear at this time. Most importantly, it is clear that IATA has once again disregarded the Board's direction—repeated on countless occasions—that the North Atlantic fare structure must be revised and simplified, and that transatlantic fares must be cost-oriented. Only last month the Board advised the IATA carriers that "a continued effort to introduce below-cost charter-competitive fares unrelated to the costs of providing scheduled service is not the answer if ever the carriers are to become economically viable." (Order 75-1-24, January 7, 1975, p. 2.) The nature of IATA's response to this and similar warnings is made evident by some of the discount fares now proposed:

1. *APEX*. In its January 7 order, the Board warned IATA that the fare package for April 1 effectiveness should not contain any fare "lower than the APEX fare proposed and approved by Board Order 74-10-106." IATA has responded with a 6-9% reduction in New York-London APEX fares, including an 8.3% reduction in the peak season. Moreover, it has sharply reduced the size of the non-refundable deposit and materially watered down the compliance provisions of the fare resolution, which were designed to bring about some

adherence to the advance-purchase and capacity limitations applicable to the fare (and upon which the Board relied in Order 74-10-106). Not surprisingly, the minutes of the recent IATA conference show that a number of IATA carriers regard the proposed APEX fare as uneconomic and its limitations unenforceable. (Minutes, pp. 2, 5, 9, 54-57, 64.)

2. *Affinity group fares to Spain/Portugal.* In Order 74-10-151, October 30, 1974, the Board advised IATA that it "finds no basis for the disparity between these and affinity fares to other points in Europe and is not prepared to approve a continuation of this circumstance beyond January 31, 1975." An added warning to the same effect was included in the Board's January 7 order. IATA now proposes, however, not only to continue this disparity but to *increase* it—e.g., the peak-season NY-LON fare would now be \$89 higher than the NY-MAD fare, notwithstanding that the round-trip length of haul is 264 miles less. In addition, IATA has proposed to reduce the levels of these fares, which are already far below cost.

3. *22/45-day excursion fares.* The 22/45-day fares, which have been the dominant below-cost discount fare, were increased substantially under the Montreux agreement. Now, with carrier costs of operation still rising sharply, it is proposed to *reduce* the level of these fares.

The foregoing facts can be ascertained without carrier justifications and comments by interested parties. In view of these facts, we believe that unless the Board is prepared to disapprove on the pleadings the APEX, affinity-group and 22/45-day excursion fares, it is essential that an evidentiary investigation of these fares be commenced without delay. To do otherwise would be to accede once again to IATA's long-standing tactics of delay and last-minute brinksmanship.

Respectfully submitted,

EDWARD J. DRISCOLL,
President.

Mr. Chairman, I have tried to keep my formal statement as short as possible, but I will, of course, be glad to answer any questions the committee may wish to ask.

In closing, I only want to emphasize that the need for this legislation is urgent. In the 2 years since S. 1739 was first proposed, the economic status of the air-transportation industry—and its ability to meet the needs of the public—have seriously deteriorated. Air fares are continuing to rise, and fewer and fewer people are able to afford air travel. We cannot wait another 2 years for this legislation. It should be enacted now.

Thank you.

[The attachment referred to follows:]

RECENT TRENDS IN CANADIAN CHARTER TRAFFIC DEVELOPMENT

AN ANALYSIS OF CANADIAN CHARTER TRAFFIC

For over a decade, observers of European travel have watched Inclusive Tour Charters win a vital role in that continent's air transport system—without disrupting the healthy development of scheduled services. A similar phenomenon has been in the making in this hemisphere, in Canada, where that government has maintained a considerably more liberal policy regarding ITC's than has the U.S.A. Presently, the Canadian policy on ITC's has been further liberalized—which leaves U.S. adherence to restrictive three-stop requirements for ITC's even less acceptable and unjustified to travelers.

On July 31, 1973, Canadian carriers were authorized to operate single-stop ITC's within Canada and into the U.S. Previously, ITC's within Canada, and to the U.S. adhered to a two-stop restriction imposed by the Canadian government. One-stop ITC's, however, were permitted to Hawaii and the Caribbean. The Canadian government has had its own experience to draw upon, as well as the favorable European experience with ITC's. The fact is that the Canadian public obviously is demanding and using more charter services, particularly ITC's, and in the face of this, Canadian scheduled aviation is thriving.

Here are some of the facts that the Canadian government must have taken into account in deciding in favor of across-the-board one-stop ITC's:

1. ITC operations between Canada and the Caribbean/Latin American area are carried out under one-stop authority and this traffic is more than six times the volume of ITC traffic between Canada and the Continental U.S., where a two-stop restriction has been in effect. This traffic imbalance persists despite the far greater number of potential destinations in Continental U.S.A. (Chart 1)

2. Canada-U.S. ITC traffic has been heavily concentrated in distant Hawaii, where a single-stop is allowable, rather than in numerous closer markets on the U.S. mainland that have been under the two-stop restriction. In 1972, Canadian airlines carried about 26,000 ITC passengers to and from Hawaii, compared with about 38,000 ITC passengers to and from all other U.S. states. (Chart 2) Thus, over 40% of the Canada-U.S. ITC volume is destined for Hawaii. (Chart 3)

3. Canadian ITC's attract a large volume of "sun-spot" traffic, and the leading destinations are overwhelmingly the single-stop Caribbean/Latin American points. Canadian ITC traffic to Florida points, subject to the two-stop requirement, lags considerably. For example, in the first quarter of 1973, Canadian carrier ITC traffic between Toronto and Acapulco was more than four times the Toronto-Miami volume. (Chart 4)

4. There is a growing demand for charter services among Canadians, and ITC's dominate charter traffic, particularly where one-stop authority exists. Canadian originated charter traffic to the U.S. (including Hawaii), increased 39% in 1972 over the year earlier. At the same time, charter traffic to Latin America/Caribbean points more than doubled. Single-destination ITC's have sparked charter growth. During the 1973 winter peak season (first quarter), ITC's were 88% of Canada-Caribbean/Latin American charter traffic, 87% of Canada-Hawaii charter traffic, but only 57% of charter traffic in Canada-Continental U.S. markets where the rules called for two-stop ITC's. (Chart 5)

It is noteworthy, however, that despite the two-stop requirement a flourishing charter market to U.S. mainland vacation destinations has begun. In 1972, there were 13,592 passengers, representing a 41% growth over 1971, in 3 major vacation markets—Montreal/Toronto-Miami and Toronto-Tampa. And, the first quarter of 1973 saw 13,347 passengers in these 3 markets—almost as many as in the entire year 1972.

5. *The spurt in charter traffic led by ITC's has not been adverse to scheduled aviation between Canada and the United States. Example (a):* Scheduled traffic in major Canadian-U.S. vacation markets has maintained healthy growth—while charters also have grown—and scheduled traffic dominates these markets. In 1972, there was a 30% increase in Montreal/Toronto-Miami and Toronto-Miami and Toronto-Tampa scheduled traffic, while charter traffic grew 41%, but on a much smaller numerical base. (Chart 6) One year's growth of passengers (72,000) was more than five times the entire charter market growth. (Chart 7) *Example (b):* Charter growth has not been visible in the year-around high volume Canadian-U.S. markets. Montreal/Toronto-New York and Toronto-Chicago scheduled traffic totals slightly under 1 million passengers annually. This traffic in 1972 was down slightly from a year earlier, but charter traffic did not figure in this drop. Charter traffic in these markets in 1972 totaled about 2600 passengers (considerably fewer than a year earlier) and amounted to only 3/10ths of one percent of scheduled traffic.

It is highly pertinent, too, that charter traffic in these markets could mount a 10-fold increase and still account for less than 3% of total traffic.

In short, where charter traffic is gaining and is likely to be accelerated by one-stop ITC's, scheduled traffic is booming. In the major markets where charters are infinitesimal and dwindling, scheduled traffic is listless.

Conclusion: Where ITC's require a single destination, traffic has outpaced ITC traffic based on multiple destinations. This is demonstrated by travel to the Caribbean and Hawaii relative to Continental U.S. In the case of Canada-Continental U.S. traffic, charters are growing in the Florida markets, but the numbers of such two-stop ITC's is still relatively small—4% of total. Scheduled traffic growth continues strong. Florida charter traffic comes primarily in the winter, as it does to the Caribbean and Hawaii. One-stop ITC's should allow vigorous year-round growth to all parts of the U.S.

In heavy Canada-U.S. markets—to New York and Chicago—charters are insignificant and have had no effect on the stagnant level of traffic. A significant charter development there, probable under one-stop ITC's, will still be dwarfed by the overall size of these markets.

THE CANADIAN EXPERIENCE DEMONSTRATES CLEARLY
THAT DEVELOPMENT OF ITC POTENTIAL IS
ASSOCIATED WITH ONE-STOP AUTHORITY

Canada ITC Passengers, 1972, to/from:

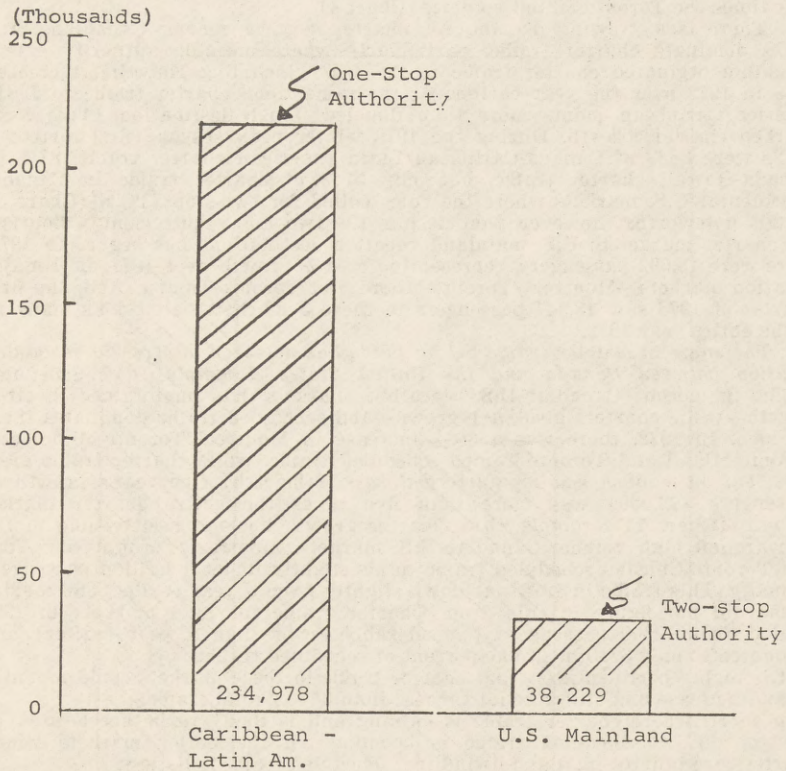


CHART 1

CANADIAN ITC TRAFFIC TO HAWAII,
UNDER ONE-STOP AUTHORITY, IS NEARLY AS HEAVY AS
CANADIAN ITC TRAFFIC TO ALL OTHER
49 U.S. STATES, UNDER TWO-STOP AUTHORITY

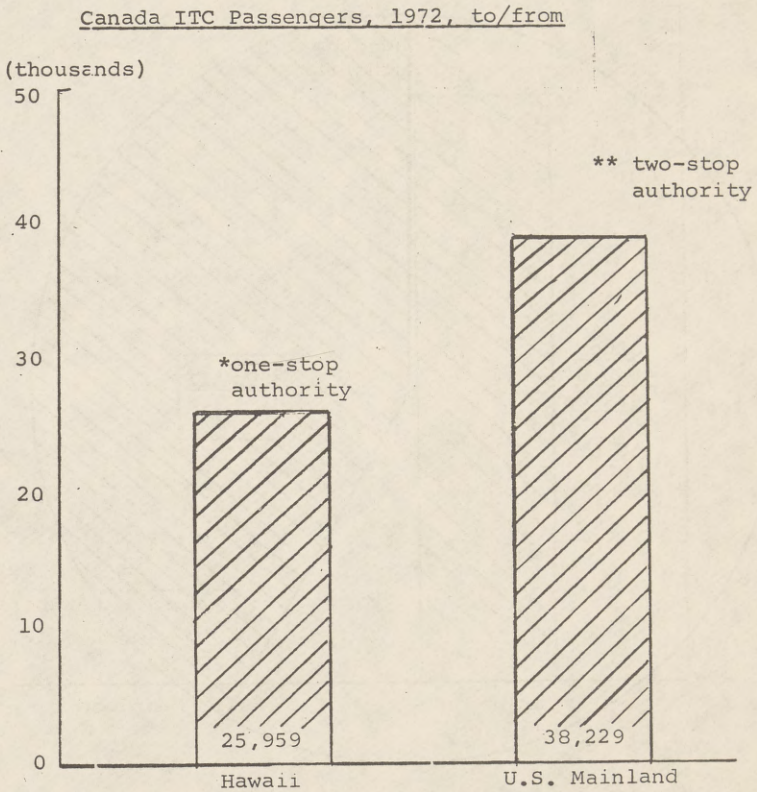


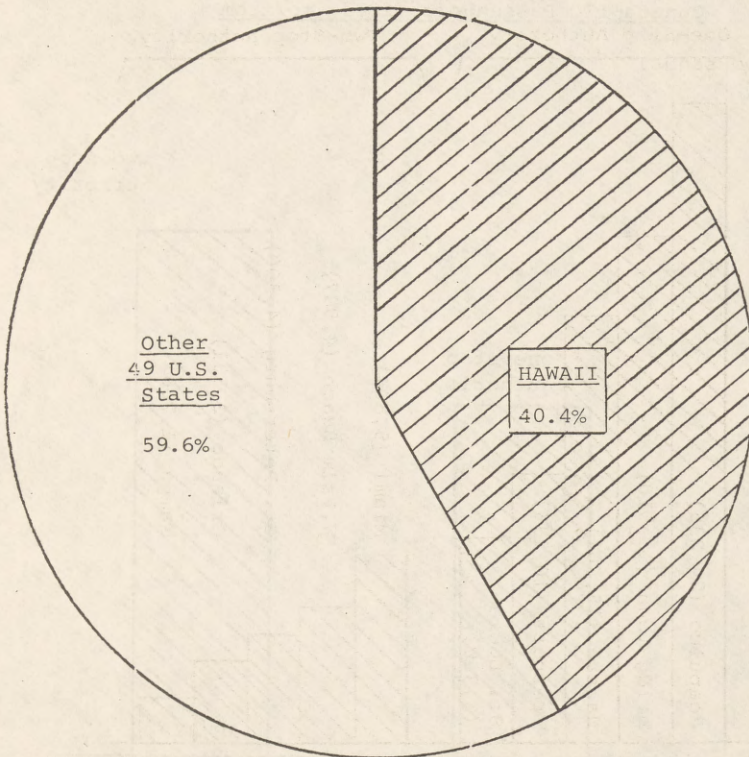
CHART 2

OVER 40% OF CANADA - U.S. ITC TRAFFIC IS

DESTINED FOR HAWAII, WHERE SINGLE

DESTINATION TOURS ARE ALLOWED

CANADA - U.S. ITC TRAFFIC, 1972



TOTAL 64,188 Passengers

CHART 3

ONE-STOP DESTINATIONS CAPTURE A PREPONDERANCE
OF CANADIAN ITC TRAFFIC

Toronto ITC Passengers, 1st Qtr. 1973, to/from:

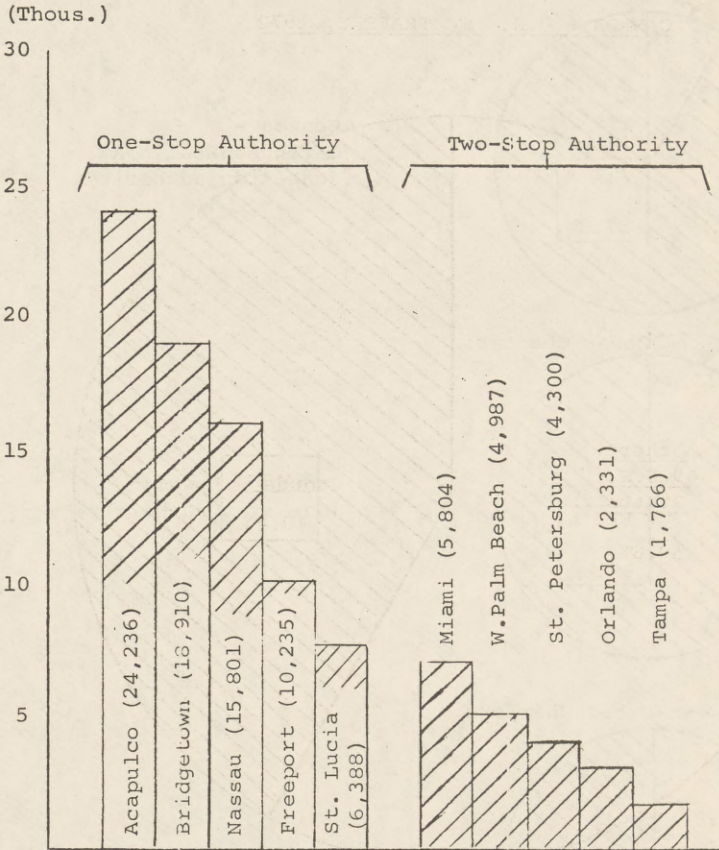
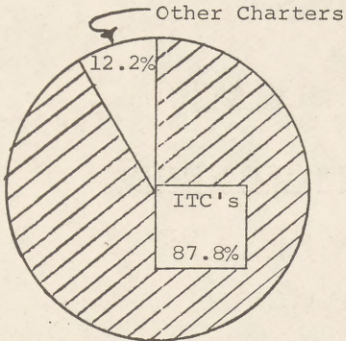
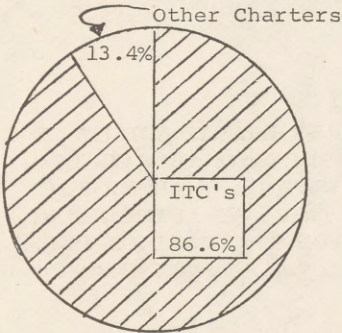


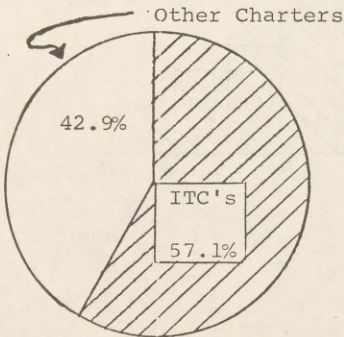
CHART 4

ITC'S DOMINATE CHARTER DEMANDWHERE ONE-STOP AUTHORITY EXISTSFirst Quarter 1973

Canada -
Caribbean/Latin Am.
(one-stop authority)

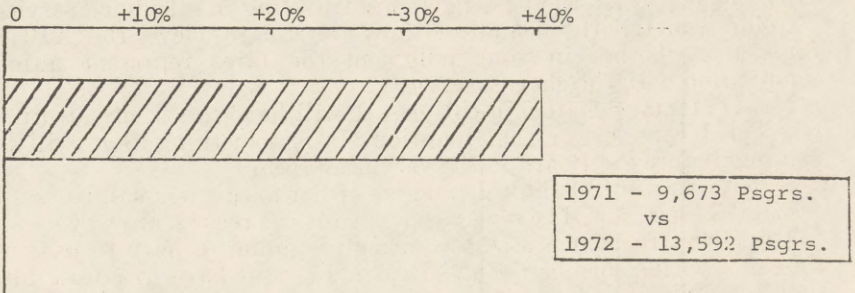


Canada - Hawaii
(one-stop authority)

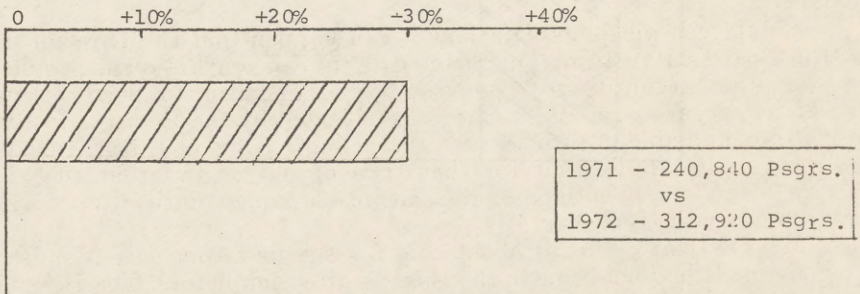


Canada - Continental U.S.
(two-stop authority)

CHARTERS HAVE NOT IMPINGED UPON THE GROWTH
OF SCHEDULED TRAFFIC IN MAJOR CANADIAN
VACATION MARKETS* IN THE U.S.



---SCHEDULED TRAFFIC GREW 30%, ON A MUCH
LARGER NUMERICAL BASE



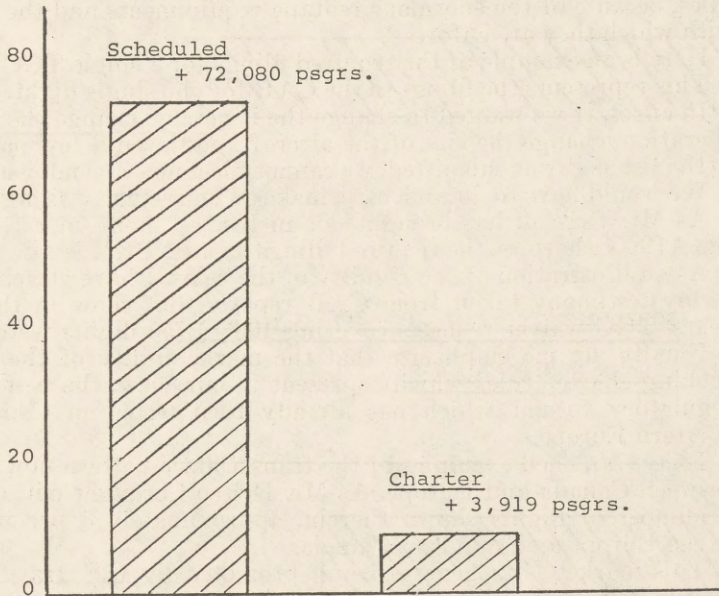
* Montreal/Toronto-Miami & Toronto-Miami

CHART 6

TRAFFIC GROWTH IN CANADA'S MAJOR U.S.VACATION MARKETS IS IN SCHEDULED SERVICE

Growth in Passengers,
Montreal/Toronto-Miami and Toronto-Miami, 1972 vs. 1971

Passengers: (000)



and have him summarize his statement, if it is agreeable with you, sir.

Mr. HARDENSTINE. Good morning, Mr. Chairman.

I greatly appreciate the opportunity to present the views of World Airways in support of your efforts in making the lowest cost air transportation available to the American consumer. I have prepared

a statement to submit for the record and would like to summarize it briefly.

Our chairman and chief executive officer, Mr. Edward J. Daly, would have preferred to have presented the company's viewpoint himself, but other commitments have made that impossible and he has therefore asked Mr. Tom Hughes, our vice president-Europe, and myself, to represent the company in support of S. 421.

In my statement, we show in the table a breakdown of our business by types of charters. It clearly shows the following: That affinity charters are the most important part of our business; and secondly, that we have had some success in developing both ITC's and TGC charters, and considerable experience with their marketing difficulties.

ITC's and TGC's can never become alternatives to the affinity rules, because of the enormous redtape requirements and the rigidity with which they are enforced.

Here is an example of the required filings for a single TGC.

This represents the filings to the CAB for one single flight.

In effect, if we wanted to change the itinerary, change the dates of operation, change the size of the aircraft, add even a few passengers to the list as it was submitted, we cannot file a new amendment.

We would have to, in each case, make an entirely new filing.

As Mr. Driscoll has brought out in his testimony in reference to the APEX charters, the required filings on an APEX is nil.

As an illustration of the rigidity of the rules, I have attached a list to my testimony taken from CAB reports that show in the last 2 years, TGC waiver requests covering 100—1,750 flights were denied.

Finally, let me emphasize that the marketability of the advance booking charter rules which represent in our view, the best possible regulatory format which has already been tested in Canada and Western Europe.

I have attached examples of the transatlantic pattern now planned between Canada and Europe. As Mr. Driscoll brought out, there are a number of flights shown therein, approximately 3 per week, between Europe and Windsor, Canada.

This market is in general being promoted by U.S. travel agents. We do believe that the ABC can put forth for us the most exciting opportunities for low-cost transportation and also for all the U.S. consumers and the U.S. air carriers.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF WILLIAM A. HARDENSTINE, SENIOR VICE PRESIDENT—SALES,
WORLD AIRWAYS, INC.

Mr. Chairman, I greatly appreciate the opportunity to present to you the views of World Airways in support of your efforts in making the lowest cost air transportation available to the American consumer. Our Chairman and Chief Executive Officer, Mr. Edward J. Daly, would have preferred to have presented the Company's viewpoint himself but other commitments have made that impossible and he has therefore asked Mr. Tom Hughes, our Vice President—Europe, and myself to represent the Company in support of S. 421.

I should like to begin by giving you an overview of the types of charters operated by World Airways during the first 11 months of 1974. These are summarized in the following table.

CHARTER REVENUES BY TYPE OF CHARTER, WORLD AIRWAYS, INC.

Charter type	Year to date Nov. 30, 1974	
	In thousands	Percent of total
Pro rata.....	\$22,404	37.9
ITC.....	16,328	27.6
Single entity.....	11,820	20.0
TGC.....	5,105	8.6
Cargo.....	1,517	2.6
Wet lease.....	1,392	2.4
Study group.....	499	.9
Total.....	59,065	100.0

The above statistics underscore two very important considerations: first, pro rata, or affinity, charters still represent almost 38% of our total business. It is my understanding that other supplemental carriers have placed even greater reliance on this particular charter mode: but for World it still represents an absolutely essential part of our total business, without which we would cease to be a viable charter airline. Second, our 1974 statistics indicate that we conducted substantial operations utilizing the Board's regulations governing inclusive tour and travel group charters. I mention this to emphasize the fact that we have made a very serious effort to utilize all of the regulatory tools made available by the Civil Aeronautics Board. This experience puts us in a better position to explain to you the strengths and weaknesses of these charter rules as we have seen them in the intense competitive atmosphere of the marketplace.

When we break down our revenue by charter mode into the geographic areas where we operate, additional problems can be seen. I have attached these detailed statistics as Appendix A to my written statement. For example, we have operated on inclusive tour or travel group charters in the Pacific region, and the reason for that is quite simple: in the major foreign destinations around the Pacific rim we simply cannot get landing rights for other than affinity and single entity charter flights. Had the CAB's proposal to terminate affinity charter flights become effective, we would have been forced to discontinue a very major portion of our operating authority. It is for these reasons that we particularly support Section 4 of S. 421 which will continue the affinity charter regulations at least until such time as useful alternative rules have not only been adopted, cleared court challenges which we now expect as routine, and finally, have been demonstrated as workable through the experience of at least two seasons of operation.

We have strongly supported all administrative efforts to liberalize charter rules and to experiment with new charter concepts, the most significant examples of the latter being the inclusive tour charters which are authorized by Part 378 of the Board's Special Regulations, and travel group charters which are authorized by Part 372a of such regulations. Both represented important new marketing tools which we have endeavored to utilize to the fullest extent possible. The greatest single marketing advantage of the ITC was that it could be sold at a fixed price. The most significant disadvantages were the requirements (a) for three stops 50 miles apart, (b) for a 7-day itinerary, and (c) for a price equal to 110% of the applicable scheduled fare.

The rigidity with which these rules have been interpreted has placed severe restrictions on their marketability. For example, last year we submitted to the CAB a proposal to operate a 12-flight ITC program transporting more than 5,000 passengers to Rome, Amman and Jerusalem. The proposal was rejected because Amman and Jerusalem are less than 50 air miles from each other—despite the admitted fact that there is no air service between the two cities, that the highway mileage between them is almost 53 miles, and the fact that no U.S. carrier serves either city and could therefore have not possibly been threatened by the proposed program. In this case a waiver from the regulations was granted on reconsideration—involving some considerable delay and expense—and even then the staff affirmed its position that in the absence of special and unusual circumstances, cities 46 air miles do not qualify as

separate stops for an ITC program. This example could be multiplied to underscore that there are frequently occasions where a rigid enforcement of any regulation produces results which seem to frustrate the broad Congressional purpose that the Federal Aviation Act and its implementing regulations are designed to "promote" air transportation. Let me state that I do not believe the evil in the system to be in its administration by the Board's staff, but rather in the fact of the restriction itself. The answer is in the adoption of charter regulations that do not force the agency staff to choose between technically correct and realistically absurd distinctions.

We have had similar difficulties with the travel group charter regulations and our experience, I am sure, has been shared by every other carrier which has attempted to follow them. I have attached to my statement as Appendix B a summary of requests for waivers to permit relatively minor deviations from the Board's regulations. The examples selected were in each case denied and such denials over the past two years have involved over 1,750 flights. As this Committee is aware, the TGC regulations in Part 372a require extensive documentation of proposed operations to be filed with the CAB staff long in advance of the proposed operation. Such data must include, *inter alia*, passenger lists, itineraries, and type of equipment. Even to change a few names on a passenger list, to modify ever so slightly the itinerary to be flown or to change from a 400-seat 747 aircraft to a 250-seat DC-8 aircraft (to accommodate a lesser than anticipated demand) cannot legally be done without either a waiver of the regulations or an entire new filing which invariably involves substantial delays and expense. Again, I want to make it clear that my criticism is not directed to the staff that administers these programs, but rather to the restrictive nature of the regulation itself. The great marketing advantage of the TGC has been the freedom from the affinity requirement and the absence of a mandatory ground package. Its principal disadvantages relate to the inability to quote the customer a fixed price—since this will vary with the number of participants—and the host of technical regulations with which even the most assiduous operator finds compliance difficult, time-consuming and expensive. It is the need for these restrictions that should have been reexamined.

For the foregoing reasons we enthusiastically support the proposal contained in Section 3 of S. 421 which would authorize all air carriers to operate "advanced-booking charter trips", as defined in that section. Our industry has been struggling almost since World War II—not only in the United States but throughout the world—to reach a satisfactory definition of charter air transportation. It obviously requires a balance in order to respect the proper interests of the consumer, the scheduled airlines, the charter airlines, and most importantly, the national interests of the United States. It is our firm opinion that the definition in Section 3 of the bill does that. It is similar in its essential respects to the ABC charter rules that have been accepted in Canada and in many of the countries in Western Europe. Their experience to date has been spectacularly successful. At a time when all of us who are involved in charter sales are finding business very tough, those carriers operating ABC flights between Canada and Europe have tremendously expanded their operations. In the February 1975 issue of a directory of air charter availability there is included a special supplement dealing with ABC flights between Canada and Europe. I have attached this for the Committee's information as Appendix C. I would like to call the Chairman's attention particularly to the charter flights that are available for transportation between Windsor, Ontario and London. Beginning in April 1975 there is an average of three departures per week for the balance of the year. The operators for these flights expect to divert U.S.-originating traffic to fill up these schedules. The Windsor airport is, of course, just a few miles away from the major metropolitan center of Detroit and it is the pronounced customer preference for the advanced-booking charter mode over any U.S. alternative, that has presented foreign carriers operating out of Canada with a significant marketing advantage over the U.S. charter operators—scheduled and supplemental alike. This marketplace experience only underscores the need for prompt Congressional action to enable us to meet this new competition by providing U.S. nationals with low-cost air transportation under charter rules as defined in S. 421.

I thank you very much for the opportunity to appear and I would be happy to attempt to answer any questions which the Committee may have with respect to my written testimony.

APPENDIX A.—WORLD AIRWAYS REVENUE BY AREA AND TYPE OF CHARTER

[Dollars in thousands]

	YTD Nov. 30, 1974	YTD Nov. 30, 1973	Year-to-date	
			Increase/(Decrease)	
Pacific:				
Pax:			Amount	Percent
Pro rata.....	\$781	\$4,584	(\$3,803)	(83.0)
Pro rata split.....	4,166	—	4,166	100.0
Sales incentive.....	1,997	86	1,911	2,222.1
Single entity.....	850	1,034	(184)	(17.8)
Mixed.....	—	130	(130)	(100.0)
Cargo.....	329	116	213	183.6
Wet lease.....	—	416	(416)	(100.0)
Atlantic:				
Pax:				
Pro rata.....	9,821	22,108	(12,287)	(55.6)
Pro rata split.....	4,159	—	4,159	100.0
Sales incentive.....	4,415	2,895	1,520	52.5
Single entity.....	3,503	3,671	(168)	(4.6)
ITC.....	7,551	5,394	2,157	40.0
ITC split.....	3,177	—	3,177	100.0
TGC.....	4,928	1,750	3,178	181.6
TGC-split.....	80	—	80	100.0
Split charter.....	(¹)	6,112	(6,112)	(100.0)
Study group.....	420	—	420	100.0
Study group split.....	79	—	79	100.0
Mixed.....	—	98	(98)	(100.0)
Cargo.....	844	49	795	1,622.4
Wet lease.....	1,293	1,716	(423)	(24.7)
Caribbean:				
Pax:				
Pro rata.....	122	836	(714)	(85.4)
Pro rata split.....	93	—	93	100.0
Sales incentive.....	—	295	(295)	(100.0)
Single entity.....	—	45	(45)	(100.0)
ITC.....	—	71	(71)	(100.0)
Split charter.....	(¹)	317	(317)	(100.0)
Domestic:				
Pax:				
Pro rata.....	172	557	(385)	(69.1)
Sales incentive.....	—	194	(194)	(100.0)
Single entity.....	46	122	(76)	(62.3)
ITC.....	3,707	3,185	522	16.4
Split charter.....	(¹)	77	(77)	(100.0)
Hawaii:				
Pax:				
Pro rata.....	91	334	(243)	(72.8)
Pro rata split.....	46	—	46	100.0
Sales incentive.....	—	90	(90)	(100.0)
ITC.....	1,078	369	709	192.1
ITC split.....	119	—	119	100.0
TGC.....	—	36	(36)	(100.0)
Single entity.....	45	77	(32)	(41.6)
Split charter.....	(¹)	185	(185)	(100.0)
Cargo.....	—	20	(20)	(100.0)
South America:				
Pax:				
Pro rata.....	913	24	889	3,704.2
Pro rata split.....	831	—	831	100.0
Sales incentive.....	232	89	143	160.7
Single entity.....	107	74	33	44.6
ITC.....	696	—	696	100.0
Cargo.....	52	—	52	100.0
Freedom traffic:				
Pax:				
Pro rata.....	² 1,209	—	1,209	100.0
Single entity.....	³ 625	—	625	100.0
TGC.....	97	—	97	100.0
Cargo.....	292	—	292	100.0
Wet lease.....	⁴ 99	—	99	100.0
CAM flights.....	—	11	(11)	(100.0)
Total.....	59,065	57,167	1,898	3.3

¹ In 1974, split charters are being shown by charter type. In 1973, split charters were shown in total by area.² Includes \$1,070 for Indonesian HADJ program in November 1974.³ Includes \$373 for ICUM flights in May 1974 and \$96 for Bamako HADJ Program in November 1974.⁴ Includes \$99 for Algerian HADJ program in November 1974.

APPENDIX B.—TGC WAIVER REQUESTS DENIED 1973-74

TGC No.	Operator/carrier	Number of flights	Section and/or waiver requested	Date of denial
74-59	ITT-World	2	372a.26(b)	1-10-75
74-91	International Travel Service/TWA	1	372a	12-12-74
74-53	Europe Travel Pan Am	1	372a.22(b)	9-18-74
73-170	International Travel Service/Pan Am	11	372a	8-14-74
74-47	ITT/World	1	372a.13	8- 6-74
73-93	Travel Unlimited/World	1	372a	3- 4-74
73-164	Agency International World	2	372a	3- 4-74
73-178	Holiday Tours TWA	1	372a.22(b)	3- 1-74
73-75	INTRAV/World	12	372a	12-18-73
73-126	Holidair/Spantax	495	372a.26	12-18-73
73-134		5		
73-141		142		
73-36		99		
73-166	United Buying TWA	216	372a	11-26-73
73-62	Travelmasters/World	1	372a	8-22-73
73-40	International Travel Arrang./ONA	2	Substitute passenger on 1 flight	8- 6-73
73-26	DeBry-Hilton Capitol	61	372a	7- 3-73
73-2	TV Travel/British Midland	1	Substitute passenger	5-11-73
72-1	International Travel Arrang./TIA	3	Add to main list	5- 2-73
72-25	United Charters/TIA	242	Change number of seats on option	4-26-73
72-18	Panda/TIA	17	Change number of seats	4-26-73
73-47	Tradewinds/United	93	do	4-25-73
73-77	Auto Club of S. Cal./ONA	16	do	4- 3-73
72-23	Universal Tours/World	315	1. 3 mo filing.	3- 8-73
			2. Maximum price.	3- 8-73
72-24	Continental Exp./ONA	23	Re ads and agents commission	2-15-73
Total number of flights		1,763		

Mr. HARDENSTINE. Mr. Tom Hughes, vice president of World Airways, has a statement to make.

Mr. HUGHES. Good morning.

Mr. Chairman, I have been asked by Mr. Edward J. Daly to present to you and your committee factual data concerning the Western European rules with respect to advanced-booking charters. When he asked me this, it was his thought and my hope that the experience of these countries who have adopted these rules will be useful to this committee in determining what comparable rules are appropriate in the United States.

My statement has been submitted to the staff, but I would like to pull out one or two highlights, if I may, in that statement.

When ABC's were first conceived by the European Civil Aviation Conference, I recall very clearly working in Europe at that time that many government officials expressed serious doubts as to whether the Government should take this course or live in the same state of confusion that they had had with the rules then existing.

I think it's safe to say now that after 3 years of operation those doubts have now been dispelled and that the advanced booking charter rule as now adopted by 12 countries in Europe is found to be workable and eminently so.

It is also interesting to note that the rules between countries vary slightly. For your information, I have attached some samples of European government rules; but in essence they are all the same.

I would also like to point out that pursuant to so-called memoranda of understandings between the United States and European governments, ABC flights can be operated from the 12 European countries to the United States by both foreign and U.S. air carriers, that is scheduled and supplemental.

To illustrate the kind of programs that are presently being marketed in Europe, I attach for your information a program of Pan American, who is an active participant in this particular type of market, a World Airways program; and I would also like to add to the record a copy of Jetsave, which illustrates TWA, Wardair, and the British air carrier Danair's involvement in the ABC market.

I also attached a small folder which is headed "Advanced Booking Charters," issued by the British Government which sets out better, in simple words, just what ABC's are.

I think it can be summarized simply by three points: simplicity for the public to understand the applicable rule; two, charter operators benefit by working with simple, clearcut rules; and three—and importantly—governments are able to supervise and control more effectively where they feel the need to do so.

Lastly, Mr. Chairman, Mr. Driscoll mentioned in his presentation the common control of charter organizers by foreign—European foreign carriers. This is a very serious situation that has developed over the course of time. All European carriers are permitted to involve themselves either by total ownership or part ownership under the rules of their country, but no U.S. carrier may do so under the rules of this country.

In effect, you have a situation, for example, with British Airways—which is quite typical—where they have an advanced-booking charter program under an organization known as Overseas Air Travel; they have various inclusive tour charter operators under the name—under various brand names; and other carriers do the same thing.

From a competitive point of view in the marketplace, it's a serious impediment to U.S. carriers.

That is all I have, sir. If there are any questions that you have, I will be pleased to answer them.

[The statement follows:]

STATEMENT OF T. G. HUGHES, VICE PRESIDENT, EUROPE, AFRICA AND MIDDLE EAST
WORLD AIRWAYS, INC.

Mr. Chairman, I have been asked by Mr. Edward J. Daly, Chairman and Chief Executive Officer of World Airways, to present to you and the Committee factual data concerning the Western European rules with respect to advanced-booking charters. It was his thought and it is my hope that the experience of these European countries will be useful to this Committee in determining what comparable rules are appropriate in the United States. As a preliminary matter I should like to observe that as recently as 1970 most of the European nations had adopted what we at World and, indeed, what the United States aviation authorities regarded as relatively restrictive charter regulations. For the most part they were coined in the pattern of IATA Resolution 045 with which I am sure you are familiar. There has, however, been an interesting development within the period subsequent to 1970 in the desire of most European countries to encourage low-cost air transportation, to eliminate the unnecessary restrictions or red tape associated with other charter modes, and at the same time to monitor the charter operations so that they did not destroy essential scheduled services.

With that background I would like to call to your attention the fact that the following countries in Europe agreed within ECAC (European Civil Aviation Conference) to adopt a new form of low-cost charter travel known as Advance Booking Charters or ABC: United Kingdom, Eire, Germany, Netherlands, France, Belgium, Luxembourg, Switzerland, Austria, Spain, Portugal, and Finland.

Each country has issued its own rule which can be summarized as follows:

1. ABC flights are available to the general public.
2. Potential passengers may buy their tickets through travel organizers or their agents providing purchase is made not less than 60 days in advance of the date of departure.
3. Passengers must travel as a group outbound; each group to consist of a minimum of 40. They must return with the same group.
4. Passengers must pay a non-refundable deposit of 25% of the round-trip air fare on reservation at 67 days before departure. Balance payable not less than 30 days prior to flight departure.
5. The travel organizer and the airline operator have to meet the following requirements: (a) charter rates and individual rates for resale to the public must be submitted to the Authorities by the airline operator 120 days prior to flight date. (b) Application must be submitted to the Government Authorities for permission to operate an ABC flight not less than 60 days prior to flight departure date including a main/waiting list of passengers. (c) A final list of passengers must be submitted not less than 30 days prior to flight date. (d) Copies of advertising material shall be submitted to the Authorities when the 60-day passenger list is filed. (e) The Authorities may request the airline operator to supply a list of those passengers actually carried on an ABC flight within seven days of its operation.

The airline contracting with the travel organizer is permitted to participate in support advertising and must be clearly identified as the carrier in such advertising.

There are slight variations by country. The rules of the United Kingdom, Netherlands, Germany and France are attached as examples in Exhibits A, B, C and D, respectively.

Pursuant to so-called memoranda of understandings ABC flights can be operated from these European countries to the United States by both foreign and U.S. air carriers. Pan American, as one example, is an active participant in ABC charter programs to the United States as shown in the brochure which is attached as Exhibit E. TWA has an equally ambitious program and World Airways, I am happy to say, has also found its marketing of this charter mode in Europe to be extremely successful. Unfortunately, however, these same simple rules are not available for charter flights from the United States to Europe and this market, I regret to say, is today being served, in part, from Canada.

On the basis of the experience we have had to date it seems to me that the advantages of the ABC concept over other charter rules are the following:

1. simplicity for the public to understand the applicable rules;
2. charter operators benefit by working to simple, clear-cut rules; and
3. Governments are able to supervise and control more effectively where they feel the need to do so.

That concludes my statement and if members of the Committee have any questions concerning this subject I would be happy to attempt to answer them.

ADVANCE BOOKING CHARTERS

WHAT YOU NEED TO KNOW BEFORE YOU BOOK

What is an advance booking charter?

An Advance Booking Charter is a round-trip air travel facility which was introduced by the Civil Aviation Authority in 1973 for journeys to and from North America and the Caribbean area. It is designed to bring relatively low cost air travel within the reach of the public as a whole, without requiring passengers to be members of any club or organisation. Its main feature is the requirement for the passenger to book in advance. ABCs can be organised in this country only by an Air Travel Organiser licensed by the Civil Aviation Authority. To travel on an ABC you must book your flight at least 60 days in advance and stay abroad for at least 14 days, including travelling time (or at least 10 days if you leave after 31 October and return before 1 April).

Are ABCs reliable?

To operate an ABC, airlines have to hold a special licence and only Air Travel Organisers licensed by the CAA are entitled to organise them. The CAA

has power to take away the licence of anyone it considers to be unfit to hold one.

What are the drawbacks with ABCs?

Generally, ABCs do not offer the same guarantee concerning the date and timing of flights which is expected of a more expensive scheduled service. ABC fares can be kept low only if aircraft are full or nearly full, and air travel organisers must therefore have some flexibility in making their arrangements and may change the date and times of flights. They also reserve the right to cancel under-booked flights or to combine several flights in one. However, flights may not be combined less than 30 days before the date of the departure, although flight arrangements may be changed for other reasons after this date.

Most ABC passengers do not encounter these difficulties, but you should bear the possibilities in mind when choosing between an ABC and a scheduled service, and you should read carefully the conditions of booking before committing yourself.

What happens if I cannot get on the ABC flight I want?

If one Air Travel Organiser cannot accommodate you on his flights, you can always try others. If you are unsuccessful in finding a suitable ABC flight, the alternative is to book on a service of some other kind but this will almost certainly be more expensive.

Do I have to be a member of a club or society?

No. ABC flights may be booked by anyone.

Will I risk being stranded in a foreign country?

The Air Travel Organiser is required to issue all ABC passengers with a return ABC air ticket showing clearly the date of the outward and return journeys, and the airline they will be flying with. The outward and return flights must be arranged by the same Air Travel Organiser. These and other measures are designed to reduce to a minimum the risk that passengers will be stranded.

Are charter flights safe?

The safety requirements for aircraft registered in the UK are the same for all aircraft whether they are operated on charter or scheduled flights.

Can I use an ABC flight for a business trip?

Yes, if you can book more than 60 days in advance and are away for at least 14 days including travelling time (10 days in winter).

Can I book a single ticket, or a single ticket with a voucher or an open-dated ticket for the return journey?

No. The rules require ABC passengers to be issued with a return ticket showing dates of departure and return, and the name of the airline. Anyone selling you a single ticket for an ABC flight, or a voucher to be exchanged later for a return ticket, is breaking the rules.

What happens if I miss my outward or return flight?

Although in an emergency, and with the CAA's prior permission, the rules allow passengers to be carried on flights other than those on which they are booked, there is no guarantee that you will be carried if you miss your flight. Your contract with the Air Travel Organiser will usually be for specific ABC flights and carriage on alternative flights is (subject to the CAA's prior permission) at the discretion of the Air Travel Organiser and airline concerned. You should therefore ensure that you arrive in good time to catch your flight. If you miss it, you may have to make your own alternative arrangements, finding yourself both seriously inconvenienced and out-of-pocket.

msp66

What information can I expect when booking an ABC flight?

The Air Travel Organiser or the travel agent should be able to tell you the name of the airline operating the outward and return flights, the dates of the flights, the type of aircraft and the airports of departure and destination. If the person offering you the flight refuses, or is unable to provide this information, you should be very cautious about entering into any commitment or parting with any money.

How much will my ABC flight cost?

ABC fares are not regulated by the CAA but are left to the commercial judgment of Air Travel Organisers. You may find it worthwhile to compare prices. However, fares may be increased because of rising costs, including fuel costs. You should ask your travel organizer about this before you book.

What can I do to make sure that my ABC flight is booked properly and according to the rules?

Air Travel Organisers are required to quote the number of their CAA licence on their brochure and other advertising material. If you have reason to doubt that the regulations are being obeyed, refuse to hand over any money and at once inform:

The Civil Aviation Authority
Room 356 Aviation House
129 Kingsway London WC2B 6NN
Telephone number :01-405 6922
Extension 418

Advance booking charter rules were introduced by the Civil Aviation Authority to enable the public to travel more freely and with greater confidence. The advice in this leaflet is designed to tell you how to take advantage of these rules, and what to do if you suspect that all is not as it should be. A flight operating under these rules is known as an *Advance Booking Charter*, or ABC for short, and brochures and advertisements are required to describe it as such.

Can I fly anywhere in the world?

Not yet. At present ABCs are being licensed only to and from North America and, broadly, the Caribbean. Similar arrangements may be extended to other countries, but this will require the agreement of the foreign governments concerned.

What do I have to do to book an ABC?

You can book an ABC with a licensed Air Travel Organiser or through a travel agent acting for an Air Travel Organiser. You must make your booking more than 60 days before the flight, and give your name and address. You will probably be asked to pay a deposit, although this is not required by CAA rules.

Why more than 60 days?

Because the list of passengers for an ABC flight, together with their addresses, has to be in the hands of the CAA in advance of the date of departure. In fact, you are advised to book at least 70 days ahead, and preferably even longer so that the Air Travel Organiser can process the bookings and send his list to the CAA in time.

What happens if I want to cancel my booking?

If you have to cancel your booking, for example through illness, you may not be entitled to a refund of any money you have paid. Booking conditions usually provide for financial penalties on a sliding scale for cancellation by the passenger and you would be wise to read such provisions carefully before committing yourself and to insure against these, and perhaps other risks.

Senator CANNON. Thank you very much.

Mr. Driscoll?

Mr. DRISCOLL. Yes, Mr. Chairman.

I think that concludes any additional testimony on behalf of our witnesses here.

Mr. Hinckley, I think, has submitted a statement to you for the record.

[The statement follows:]

STATEMENT OF G. F. STEEDMAN HINCKLEY, CHAIRMAN, OVERSEAS NATIONAL AIRWAYS, INC.

Senator Cannon, I am grateful for the opportunity to add my comments to those of Mr. Driscoll of the National Air Carrier Association on these hearings

concerning S. 421 and the need for improvements in the availability of low cost air transportation for the American public. It is an extremely important issue to the public, and reform is long overdue.

Although it would be to the benefit of ONA's corporate self-interest to receive the right to vertically integrate with tour operators, just as it would be for ONA to receive permission for any broadening of its authority, I am not convinced that it would be to the benefit of the public to allow common control of tour operators and scheduled or supplemental air carriers in the United States.

I say this with several reasons in mind.

First, to allow a supplemental carrier to control or be controlled by a tour operator simply puts the supplemental carrier in the position of taking the risk on the load factor. Particularly on the North Atlantic, there are more than enough carriers taking the risk on the load factor; and it has produced a rash of uneconomic fares and has caused the price of scheduled service for passengers desiring the ordinary convenience of on-demand scheduled service, such as businessmen, to pay excessive economy class fares. On the other hand, I strongly believe that the public's access to charters should be as completely easy and free of restrictions and complications as is humanly possible, consistent with maintaining required, but *only required*, levels of scheduled service. A class of carriers should be preserved with their feet held to the fire to provide and promote plane load charter service, in order to insure that this most economical form of packaging the air transportation product will continue to be available in all markets.

Second, the allowance of vertical integration probably would lead to a greater degree of consolidation of tour operator control and joint tour operator/carrier control, which would then make it more difficult for small tour operators and travel agents to compete. I believe that the public will be better served if more tour operators and travel agents are promoting tours, and if small tour operators thereby find it easier to enter the market and grow, thus providing more competition at the tour operator level.

Finally, it appears to me that the high degree of consolidation which vertical integration seems to have led to (or at least allowed) in the United Kingdom has been a significant contributing factor causing some major tour operator/air carrier collapses in the U.K., to the financial damage of many consumers.

In order to avoid a critical competitive imbalance and destructive competition, it follows that it would also be in the public interest to deny scheduled carriers the right to control or be controlled by tour operators in the U.S. However, since some countries where we compete do allow vertical integration, "country of origin" rules should apply, and we should be allowed vertical integration in such countries in order that American carriers can compete there on equal terms.

In all other respects, I fully agree with and adopt the testimony of Mr. Driscoll of the National Air Carrier Association.

Mr. DRISCOLL. I would ask if Mr. Cramer wants to say anything at this point or if Mr. Seligson would like to add anything to this ABC cargo operation or wait for your questions?

Mr. SELIGSON. If I may, Mr. Chairman, I would like to elaborate a little bit and speak on Saturn's behalf in support, particularly, of the whole bill S. 421, but in particular, of section 5 insofar as it would require the CAB promptly to define the proper role for private carriers.

Saturn, as you probably know, is a very large cargo charter operator and it has for many years used the Hercules aircraft which is a unique plane and particularly good for support of oil exploration programs because it can land on a gravel runway, it can take off on a very short runway, and various other technical advantages which make this plane ideal for use, for example, on the North Slope in support of the current drilling operations.

Saturn for several years had an exemption from the CAB which allowed it to use the Hercules aircraft for charters of outsize cargo in

many areas of the world including between Canada and the United States. In the renewal—the renewal of that exemption was denied by the Civil Aeronautics Board, so the blanket authority ended at the end of last year.

This was denied in spite of our presenting a paper which included letters of support from over 50 customers, users of that service. So the staff of the Board was very well aware that Saturn was an experienced Hercules operator, and indeed, is the only certificated U.S. airline which operates that aircraft.

Now what happened in this particular decision? Alaska International Air, which is a private carrier not licensed to engage in common carriage, applied to the CAB for a special exemption for a common carriage program of 2 weeks' duration operating between Canada and the North Slope, which it appears would have generated approximately \$472,000 in revenues.

AIA did not give notice to Saturn of that application, did not serve Saturn with the application. It did serve a few of the carriers who hold specific licenses from the CAB, continuing licenses between Canada and the United States, but it did not serve Saturn, although it well knew that Saturn was the only carrier, other than itself—

Senator CANNON. Did Saturn know about the application even though it wasn't served?

Mr. SELIGSON. No, sir. Saturn did not find out about this until after—well after the authority was granted.

What the staff did was to grant the authority on August—on January 29, 2 days after the application was filed. But the order did not issue until February 6.

We didn't learn about it until the following day. By this time, well over half the program should already have been operated, according to the information that was presented in the application.

As soon as we found out about this, we filed a petition with the Board for emergency relief, cancellation of that exemption, and something that would recognize the rights of common carriers certificated under the act to participate in that transportation.

That was filed on Monday of this week, the 10th of February; and although it says right on the front of it, "Petition for Emergency Review and Immediate Revocation," to my knowledge there has been no action on this whatsoever by the Board or its staff.

We feel that the authorization was clearly illegal because the Federal Aviation Act directs the Board to promote and develop the air transportation industry which means the common carriers certificated by the Board. We feel that at the very least we should have had an opportunity to comment on this before the authority was granted.

Senator CANNON. What was the reason given for the termination of your prior authority?

Mr. SELIGSON. I am very glad you asked that, sir.

The essential reason given was that there were now wide-bodied aircraft in existence which the scheduled carriers had which might be capable of handling the same traffic. Might be capable, not that they were going to handle the traffic, and in fact, the evidence of record showed they had no plans to handle this outsized charter traffic off

route with these aircraft. But on the basis of that mere possibility, the renewal was denied.

Senator CANNON. And was that a denial by the Board or was that a staff decision?

Mr. SELIGSON. That was acted on by the Board.

Senator CANNON. What about the authority that was granted, the new authority that you referred to on Alaska? Was that Board or staff delegation?

Mr. SELIGSON. That was delegated action by the staff under the established delegation procedure.

Senator CANNON. Well, I'm going to ask the Board to respond fully to that particular issue, because it seems to me just on the face of it that this is a very blatant disregard of the authority that they have.

I, for one, would like to know the reasons for it.

Mr. SELIGSON. Thank you, Senator.

Mr. DRISCOLL. That's all we have, sir. We are ready to answer any questions you have.

Senator CANNON. Is it your view that the type of advance-booking charter as provided for in S. 421 would eventually develop to the point so as to replace the current affinity charter program or do you see the affinity would have to be continued as well?

Mr. DRISCOLL. We believe, sir, there is a good possibility that that would replace the affinity. We would only ask that it be authorized, tested in the marketplace to make sure. And if it did—we don't believe that there would be any need probably to eliminate affinity. We think all the traffic would gravitate to that form to the degree that affinity wouldn't be used except by some valid affinity organization.

Senator CANNON. Now, if the Board were to launch a program of single-stop ITC's and ABC's, how should the Board deal with its so-called "2 percent rule" which generally restricts the scheduled carriers to operating charters over their own route system but not over the system of other scheduled carriers?

Mr. DRISCOLL. Sir, that is a question—I would like to go back a little.

When the Board adopted the 2 percent rule, I was then executive director of the Board. We looked at—and the Board was at that time trying to promote air transportation. This is during the chairmanship of Allan Boyd. They were trying to find a niche in the air transportation system for the supplemental carrier and for the all-cargo carrier.

The Board took two actions, one of which ended up in a Supreme Court case; that was where they went ahead and performed for the—authorized for the all-cargo carrier block space arrangements. That became a landmark case. The Supreme Court established the right of the Board to do that.

At the same time, the Board reviewed how much charter activity the scheduled carriers were engaging in off-route. At that time the Board regulations permitted them to operate two and a half percent per quarter, 10 percent per annum. Of all of the carriers certificated, only two carriers ever exceeded 2 percent of their revenue miles, and those were Trans Caribbean and Mackey.

Most all of the others were substantially below that, so the Board, in trying to encourage the development of charter traffic and knowing they had a group of charter specialists that had been authorized by Congress, said:

All right, we will limit the scheduled carriers to off-route, to 2 percent per annum, with the exception of Mackey and Trans Caribbean, who have been performing in excess of that, and we will, honor waivers or exemption requests from them.

Thus the 2 percent rule came into being. The 2 percent rule, as we see it, is fair, is needed, because really the only niche that the supplemental carriers have is the off-route activity. We do compete on an on-route basis where the scheduled carriers have unlimited authority.

If we look at the definition under CAB rules and regulations, as far as on-route is concerned, while you might have a carrier authorized between one single pair of points, such as from Miami to London, that one authorization will give them probably any place from 10 to 15 pair of points that would be considered on-route, because under the bilateral, as an example, a carrier is certificated from the United States to the United Kingdom.

There are various other examples. I dare say that a 2 percent limitation, as far as Pan American is concerned, is meaningless because they can construct, under the Board definition, unlimited on-route operations.

The same, I think, goes for a number of the large scheduled carriers.

We have petitioned the Board heretofore to change the definition of "on-route"; we have asked them to—in the petition, about 2 years ago—we asked them to define "on-route" to cover only flights in markets where the scheduled carrier has nonstop turnaround authority. But right now they can construct everything.

If the 2 percent rule is eliminated, or the regularity provision is changed, Mr. Chairman, it would be our judgement that the supplemental industry will vanish.

Senator CANNON. Will what?

Mr. DRISCOLL. Vanish.

Senator CANNON. In other words, you think it would be a mistake to suggest unlimited competition in all markets which would be the direction it would go?

Mr. DRISCOLL. Yes, sir. There is competition in those markets to the degree of their 2 percent authority. There is competition on on-route, absolutely tremendous competition. Just look at the North Atlantic, where that is competition mainly on all on-route points. The competition there is fierce.

Senator CANNON. Recently, the Board in a rule-making notice proposed a new class of charter called the "Special Event Charter." In view of the omnibus nature of S. 421, do you believe that the bill should also contain a provision authorizing that type of charter or are you satisfied with the Board's current proposal and do you believe it will be ultimately adopted?

Mr. DRISCOLL. The Board's current proposal we commented upon. We made certain recommendations. The Board's proposal on SEC

was somewhat restrictive. I believe that there is a place for Special Event Charters.

There is a possibility some of those could be handled under advanced-booking. I would still feel that possibly the special event should be authorized but the Board's authority to issue that should be confirmed by the Congress.

We recognize that your amendment would authorize it where it's authorized at foreign points. We think that's good. But again, we would query why, since presently the Board has the authority, concerning a scheduled carrier petition for common control of a tour operator, to grant that if it finds it in the public interest.

I think I have to answer, Mr. Chairman, that the degree that an agency has power, if it finds something to be in the public interest to act, it should have the power to act.

Now I think there may be some different views here as far as other members are concerned.

Mr. Hinckley?

Mr. HINCKLEY. Yes, Senator, I would like to comment on that.

That's the only point on which we have a different opinion than the testimony submitted by Mr. Driscoll. In all other respects we support and adopt his testimony.

Our feeling is that overseas or in Canada, in foreign countries where they do have the right to vertically integrate, we as American carriers, both scheduled and supplemental, must have the same right in order that we can compete on an even basis there. However, I myself am not convinced that it's in the public interest for air carriers and tour operators to be under common control in the United States.

From the standpoint of corporate self-interest, of course, we would like to see it as we would like to set any broadening of our authority, from the selfish point of view. I am not convinced it's in the public interest, because if we had such authority in the United States, it would simply give us the right to take the risk on the load factor, which by definition is scheduled service; and particularly on the North Atlantic there are already plenty of carriers taking the risk on the load factor, with the result there are a lot of uneconomic fares offered, and that the businessmen and other people who want to get scheduled service on short notice are having to pay excessive fares for economy class service.

I think there should be a class of carrier maintained by the Government which has their feet held to the fire to produce plane-load charter service, because that's the least expensive way of packaging the air transportation product; and I think the public will benefit.

If there is a class of us who have our feet held to the fire in order to make that service available in all markets—I also feel that if there were allowed common control in this country between tour operators and carriers, either supplemental or scheduled, there would probably tend to be a greater degree of consolidation of such operators and such services; and I think that would be to the detriment of the tour operator and travel agency industry.

I think the public is better off if there are more tour operators and more travel agents, more small businesses competing at the tour operator level.

Thank you.

Senator CANNON. Mr. Driscoll, what is the current outlook insofar as the charter services are concerned in the North Atlantic vacation markets for this year?

Mr. DRISCOLL. I think in general, sir, the market is rather soft and that as the time comes for firming them up, there are a lot of them disappearing. I think actually one of the actual operators here could probably give you a better position than I can.

If anybody wants to say anything more specifically than that?

I guess not.

Senator CANNON. Thank you very much, gentlemen. I appreciate it.

Mr. DRISCOLL. Thank you, sir. We do appreciate your efforts and the efforts of Senator Kennedy in cosponsoring this with you.

We would only hope, sir, that this could move rather rapidly, because we do need authority, broadened authority, urgently if we are to continue to exist.

Senator CANNON. The next witness is Mr. Shelby E. Southard, transportation chairman, Consumer Federation of America, and director of public affairs, Cooperative League of the U.S.A.

STATEMENT OF SHELBY E. SOUTHARD, TRANSPORTATION CHAIRMAN, CONSUMER FEDERATION OF AMERICA, WASHINGTON, D.C.

Mr. SOUTHARD. Good morning, Mr. Chairman.

Senator CANNON. Good morning, Mr. Southard. You may proceed, sir.

Mr. SOUTHARD. I am Shelby Southard, chairman of the transportation committee of the Consumer Federation of America.

As you know, I have appeared before your subcommittee many times in the past in support of legislation that would provide low-cost air transportation to the consuming public.

My last appearance was in May 1973 when I testified in support of S. 1739.

I must say, Mr. Chairman, it is a distinct pleasure this time, as it has been in the past, to testify in support of S. 421—first, because in that legislation you have embraced the entire consumer interest in air transportation, not only as far as charters are concerned but equally as well on scheduled transportation because of your provisions for the young, the elderly, and the handicapped.

The organizations making up the Consumer Federation—more than 200 of them—like this approach.

Last month at CFA's annual meeting, their resolution on air travel said:

Consumers need access to all forms of transportation and the right to spend travel dollars as they choose. CFA members participate in low-cost educational, cultural, and recreational travel by chartered aircraft. These groups resent

roadblocks placed on such travel by restrictive and complex rules of the Civil Aeronautics Board, some foreign governments, and the International Air Transportation Association.

CFA asks the CAB to loosen restrictions on one-stop inclusive cost group charters. We seek to assure reliable air transportation at the lowest reasonable cost for consumers by the planned use of inclusive tour charters and by authorizing carefully regulated reduced rate transportation for the elderly and the young.

We urge adoption of the European plan of inclusive tour charters; we further request the State Department to negotiate agreements with foreign governments that assure charter travelers the same landing and up-lift rights guaranteed to those using scheduled services.

Mr. Chairman, your legislation is very timely, as the consumers were threatened last year with a complete blackout of their opportunity to charter by the CAB in its proposal to terminate affinity charters, a threat from which they were reprieved only last week by the Board.

The alternatives that were available to the consuming public either through the form of TGC's or their proposed OTC were not satisfactory alternatives. No one could figure out a way to use them. They were just too complicated.

Quite frankly, Mr. Chairman, I am amazed at the attitude of the regulatory agencies in their failure to understand what the American public needs and wants.

The great consumer response to the proposal to eliminate affinity charters should have demonstrated to the Board by this time the consumer interest in low-cost air transportation.

I am pleased, and I believe I voice the pleasure of millions of potential air travelers, that both you and Senator Kennedy recognize what it takes to satisfy consumer needs and, in fact, what it takes to build a sound profitable air transportation system for all segments of the industry.

I hope you will not be dissuaded because of the attacks that will be made on this legislation by some who will say it is too broad.

Mr. Chairman, you and I know that unless you are specific in your direction to the CAB, nothing will happen.

On behalf of the consumers of America, I must congratulate the large number of members of both Houses of Congress who are indicating support for this legislation, for it would cure some of the shortcomings of the Board's regulatory processes and at last begin to give the consumers what they need.

Equally important, it will provide a system whereby the air transport industry, both scheduled and charter, can serve the public and we believe increase their traffic, revenues, and profits to return the industry to a healthy condition.

I don't believe I need to elaborate on the benefits of each of the provisions of S. 421. Others have done that and you know better than others how each provision complements the other. I only trust that prompt action will be taken on this matter.

In closing, I would like to mention just a few member organizations of the Consumer Federation of America which have expressed their support of low-cost air transportation.

They include the United Auto Workers, the Cooperative League of the U.S.A., the Credit Union National Association, the National

Council of Senior Citizens, the United Steel Workers, the National Farmers Union, the National Consumers League, the National Rural Electric Cooperative Association, and dozens of State consumer associations.

In addition, many civic and fraternal organizations have also expressed their interest in low-cost charters and reduced-rate transportation on regularly scheduled service.

Mr. Chairman, thank you for giving me this opportunity to testify, and I express the Consumer Federation's thanks for your interest in not only the consumers' welfare, but also in an air transport industry oriented toward serving the real needs of the air traveler.

Senator CANNON. Thank you very much, Mr. Southard. We appreciate your appearance here today.

The committee will stand in recess for about 3 minutes while we see if we can't get this communications systems working.

The Commerce Committee has jurisdiction over the communications of this country and we can't even get the communications to work in this room. We will see if we can get it so you people in the back of the room can hear.

[Brief recess.]

Senator CANNON. The committee will come to order.

The next witness, the Honorable Richard J. O'Melia, Acting Chairman of the Civil Aeronautics Board.

We are happy to have you here.

You may proceed.

STATEMENT OF HON. RICHARD J. O'MELIA, ACTING CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY ELIAS C. RODRIGUEZ, ASSISTANT TO THE ACTING CHAIRMAN; WILLIAM CALDWELL, DIRECTOR, BUREAU OF OPERATING RIGHTS; ARTHUR SIMMS, DEPUTY DIRECTOR, BUREAU OF ECONOMICS; AND THOMAS J. HEYE, GENERAL COUNSEL

Mr. O'MELIA. Thank you very much. Mr. Chairman, first I would like to introduce my colleagues, Mr. Caldwell, Director of the Bureau of Operating Rights, on my left, and Mr. Arthur Simms the Acting Director of the Bureau of Economics, and my Assistant, Mr. Rodriguez. Mr. Heye, our general counsel, will be on my right.

The subject before your committee today, namely the need for assuring the availability of low-cost transportation—is one of the major problems facing the air transport industry and the CAB.

When I received your letter of January 27, inviting me to testify on the Low-Cost Air Transportation Act which you had sponsored, I recognized that your legislative efforts, the deliberations of this committee, and the contribution that the Board might make in this effort could be of landmark importance to air transportation.

It is with that in mind that we bring you our observation on S. 421. We wish also to propose enactment of an alternate measure that we think not only will achieve the purposes of S. 421, but further will provide the Board with a congressional mandate to adopt a

system of charter regulation that is simple, cohesive, and that even in the years to come will remain tailored to the public's air transportation needs.

We have also very much in mind the remarks you made to the Senate on January 27, when you introduced this bill on behalf of yourself and its cosponsor, Senator Kennedy.

We are aware of the ravaging effects that inflation and recession are having on our economy, and their deep impact on civil aviation. The impending threat of higher fuel costs, to which you also referred, can have a disastrous effect on air transport, forcing higher fares and costs which the public and the airline industry may find difficult to afford.

So, we agree with you that our present statutory and regulatory basis for low-cost transportation needs to be reviewed as a matter of priority, and that action needs to be taken.

As you are aware, Mr. Chairman, I was given the responsibility and honor of serving as acting chairman of the Board only last month, and this is my first appearance in that capacity before this committee.

I have made it a matter of primary importance in these few weeks to reexamine our past efforts and our current regulatory situation in the charter field. I have sought together with my colleagues on the Board, and the Board's staff, to attack the problem of low-cost transportation with fresh vigor. Your bill gives us a focal point for our thinking.

Now, where do we stand today? I think we must recognize that we already have a large charter transport industry. The U.S. supplemental air carriers alone carry more than 3 million passengers a year. Moreover, the volume of U.S. charter travel today is three times that which it was only a decade ago.

There is no question about it: The demand is there; the availability of charter air travel constitutes a matter of national interest; it is threatened by critical economic problems; and marketable and viable low-cost concepts must be found for those desiring and needing this form of transportation.

However, the present regulatory situation affecting charters is quite complicated to say the least. We have a proliferation of provisions and technical requirements that are difficult to understand and interpret.

It is fair to say that the current unsatisfactory state of affairs is in a major part attributable to the Federal Aviation Act itself. That statute does not define the term "charter." In attempting to discern Congress' intent, however, the courts have generally held that while the Board has considerable freedom to evolve a definition of charter to meet changing needs, the Board must maintain the distinction between group and individually ticketed travel.

Because the Board has by law been necessarily occupied with insuring that charter travel be available only where the charter participants have some kind of group identity, the Board has been hampered in advancing the goal of simple regulation that would make low-cost planeload travel available to the public without impairing the viability of scheduled services.

For example, the three-stop requirement for our ITC's was imposed primarily to insure that the charter participants have the characteristics of the kind of group that the courts look for. This was accomplished by requiring adherence to a rigid itinerary by all charter participants. Similarly, our TGC regulation is premised on the concept that a number of persons can qualify as a charterworthy group by sharing the total charter cost on a pro rata basis and assuming the risks of the venture.

Neither the three-stop nor the pro rata requirements really are needed to preserve the viability of scheduled services. There are other, more direct, conditions that could achieve that purpose.

Moreover, the restrictions have made both ITC's and TGC's difficult to market. Nevertheless, the restrictions were believed needed in order to meet the legal requirement that charters not be utilized to provide the prohibited individually ticketed service.

The distinction between individual and group travel is an arbitrary one from the point of view of the prospective passenger, and does not serve any necessary regulatory purpose. So far as I am aware, this distinction is unique to our own legal system. The legal requirement that the distinction must be maintained creates uncertainty as to the extent of the Board's power to authorize charters, and the distinction is largely immaterial in terms of economic policy.

Accordingly, I believe that the goals of this committee and the interests of the traveling public can best be served by a simple statutory definition of the term charter so as to incorporate two basic concepts:

First, that a charter consists of planeload air transportation, and second, that such transportation shall be authorized to the extent consistent with the public interest, including the interest of the public in preserving needed scheduled services.

With such a standard, the Board will be able, free from legal uncertainty, to evolve a charter program which would increase the availability of low cost air transportation for broad segments of the traveling public.

In our judgment, such an approach is far preferable to attempting to incorporate in the act specific provisions covering particular kinds of charters, such as ABC's and OTC's. Any attempt to freeze into the statute specific provisions dealing with particular charter types would inevitably tie the Board's hands in dealing with the changing circumstances of this volatile and dynamic industry.

It would complicate our task of reaching accommodations on charter policies with the many foreign countries with which we must deal in this matter. And it could add even further confusion, since adoption of S. 421 could result in a statute that on the one hand still required that a distinction be maintained between individually ticketed and chartered travel, and on the other, eliminated much of that distinction in connection with aspects of the ABC's and one-stop ITC's proposed in S. 421.

Also, Mr. Chairman, in accordance with the committee's request, the Board has prepared a section-by-section analysis of S. 421. In the interest of saving time, I would like to request that my statement providing that analysis be submitted for the record.

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

Mr. O'MELIA. With your permission, I would like to summarize that section-by-section analysis.

As the CAB is an independent agency created by Congress, I would like to be as responsive as possible in giving you my views on what is good and bad in S. 421.

These differences I hope will be helpful and constructive to the committee.

Needless to say, we are at your disposal at any time to discuss in detail any detailed language changes in the bill. With specific reference to the policy statement in section 2 of S. 421, I can say we are in general agreement and can fully support most of subsections 1, 2, 3, 4, and 5.

As to subsection 6, which evaluates the past track record of the CAB, I respectfully decline to comment.

As to the substance of subsection 7, I will cover this later when I comment on section 6 of the bill. Suffice it to say here that we must find some way to meet the needs of these categories of persons.

Section 3, Subsection A, Advance Booking Charters. The advance booking charter has been successful in Europe and would appear to have an equally bright future in the United States.

Under the ABC approach, passengers know when they sign up for a flight, exactly how much it will cost them. This presents no problem. The present mandatory cancellation provisions and at least some of the other complexities now part of the Board's travel group charter regulations can thus be avoided.

Most importantly, a statutory provision incorporated in the Federal Aviation Act in S. 421 covering ABC's would go a long way toward eliminating claims that ABC's fail to maintain the required distinction between individually ticketed and chartered services.

Because of that, in our opinion, the Board has no power to authorize ABC charters. We are presently faced with precisely that problem in connection with our grant to the supplementals of authority to carry foreign originated ABC's under the same circumstances.

On the other hand, the bill as drafted raises some problems. Besides legalizing the concept of the ABC's, the bill seeks to define some of its characteristics which would restrict the Board's flexibility and could have results which are quite apart from what we believe has been intended, in particular, the right to sell up to 25 percent of the seats on every charter at any point up to the time of departure is extremely significant, and as such, is virtually indistinguishable from individually ticketed services. It could very possibly become a major form of scheduled service in the more heavily traveled charter markets.

Senator CANNON. Do you think there is some other percentage point that could be used there that would eliminate that hazard or do you think it's inherent in that type of restriction?

Mr. O'MELIA. In Europe there are degrees of substitution and additions from the original list. That might offer some solution to that problem, but I think any sale of tickets up to the day of departure destroys the distinction between individual tickets and charter.

The 25 percent sale feature, if it remained in the bill, it would be far more liberal than the ABC's in Europe. This is a serious question—there is a serious question whether other charters would be permitted European entry. For these and other reasons, I recommend that this section relating to the 25 percent sale be deleted.

Section 3B—subsection B, inclusive tour charters. The main advantage of section 3, subsection B, which defines ITC trips is that it would specifically provide the Board with authority to authorize one-stop ITC's. Those opposing the CAB one-stop ITC regulation claim that the Board's regulations would eliminate the distinction between individually ticketed charter services; and accordingly, it is not authorized by the Federal Aviation Act.

It is our tentative view that those objections, or objections of that kind are erroneous. However, even if the Board is correct, we can expect court challenges on this question.

Mr. Chairman, the principal difficulty with section 3, subsection B, is that it can be read as requiring the Board to determine the propriety of ITC prices based solely on the just and reasonable fare for charter and transportation plus a compensatory charge for land arrangements.

Our problem here is it would put the Board in the business of examining the claimed costs of land arrangements.

A second point is that it might prevent the Board from doing anything about inclusive tour charters in which the land portion was really just a throwaway, so that the ITC operator is in fact providing individually ticketed point-to-point transportation. We would prefer that this language be deleted.

There are two other problems, both of the same nature. The inclusive tour section includes a provision that the Board assure that this type of charter does not impair essentially scheduled service and it further requires that the Board require reciprocity from foreign countries with respect to ITC's.

However, neither of these two provisions appear in the advance booking rule, with the possible inference that the Board should not be concerned about the impairment of scheduled service or reciprocity for ABC's. We believe that these distinctions, if intended, should be clarified.

Section 3C, the supplemental air carrier and tour organizer relationship. The main advantage of this section is related to competition with foreign charter carriers. The fact of the matter is that foreign charter carriers always have had close ties to tour operators. As things now stand, the U.S. carriers can't. There is some feeling that this puts U.S. carriers at a disadvantage in the foreign markets.

Whether that is, in fact, the case is something that requires a factual evaluation which we have not made. We would note that if a competitive advantage has been attained by the European carriers through their integration with tour operators, then the relationship may have anticompetitive effects if allowed domestically in the United States.

It would seem to follow that if the U.S. carriers entered such a relationship and achieved a competitive advantage over other carriers, that a general trend toward entering control relationships

would begin. This could result in serious harm to tour operators who could not find such a relationship.

In section 3, subsection C could also be read as suggesting that Congress thinks that some control relationship between ITC operators and supplementals should be approved.

That means there could be some limitations on the Board's authority to reject applications asking for approval of these kind of relationships.

Second, historically, ITC operators by the very nature of their business have been risk takers; and sometimes these risks don't work out. As things now stand, the—that is the ITC operators' problem. But if ITC operators were financially tied to supplemental air carriers, that could be a supplemental problem, too.

In our view, section 3, subsection C largely eliminates the distinction between individually ticketed and charter service from the viewpoint of the carrier as well as that of the passenger.

Section 4, maintenance of affinity rules. The last provision of the section dealing with charter travel would preclude the Board from terminating its affinity rules. The Board spelled out in some detail the problems that arise from affinity charters in EDR-237-C on October 30, 1974.

The question now before the Board is whether the benefits growing from the availability of affinity charters outweighs the problems discussed in the Board notes. The industry, the public, and other government agencies have commented on this rulemaking and the Board is proceeding to analyze these comments.

On January of 1975, the Board gave notice that there was need for additional time to consider the many comments from the public and that affinities would not be terminated this year.

I certainly agree with the views the chairman expressed in introducing this legislation that affinities must continue until a viable alternative form of charter transportation is available.

Section 5, travel club regulations. The proposed legislation also includes a provision that would require the Board to issue regulations defining the scope of activities performed by travel clubs, which operate aircraft without authorization of the Board to engage in air transportation.

This section proposes action that the Board has specifically declined to undertake for reasons that have been set out in two recent enforcement cases involving travel club operators.

In brief, the Board's opinion states that a case-by-case approach is required by the nature of the facts and the complexities that may arise. This is consistent with judicial precedent, which has held that a proceeding aimed at the adoption of regulations "defining the boundaries between private carriage and public carriage insofar as flying clubs are concerned, would be little less than futile."

Section 5 also refers to commercial operators of aircraft. Commercial operators present many of the same legal problems as air travel clubs. The complexities apparent in the travel club operations are even more difficult here because of both the ease with which the cargo aircraft can be obtained and the lack of need for mass solicitation of business.

In this context, it is virtually impossible for the Board to know the full extent of such commercial operators' activities and determine whether the operator has or is engaged in air transportation.

Accordingly, we prefer to continue on a case-by-case approach.

The last section, section 6: discount fares for families and handicapped and the elderly. It might be useful, Mr. Chairman, if I submit a statement for the record that describes the action the Board took in the DPFI case on this subject.

Senator CANNON. That will be accepted for the record.

[The following information was subsequently received for the record:]

STATEMENT REGARDING THE BOARD'S DECISION IN THE DISCOUNT FARES PHASE OF
THE DOMESTIC PASSENGER FARE INVESTIGATION

On May 1, 1973, the Civil Aeronautics Board ordered airlines to phase out youth standby, youth reservation and family fares, commencing June 1, 1973, in accordance with the following timetable:

Type of fare	Level of fare stated as percentage of normal fare		
	Predominant pre-June 1, 1973, fares	June 1, 1973	Dec. 1, 1973
Youth standby.....	66 $\frac{2}{3}$ %	78	89
Youth reservation.....	75	83	92
Family fares:			
First accompanying member.....	75	83	92
Additional accompanying members aged 12 to 21.....	75	83	92

Note.—The fares are to be canceled effective June 1, 1974.

The Board's decision was not applicable to children's fares (those offered for children aged 2 through 11 who are accompanied by persons 12 or older), and the carriers may continue to offer these discounts.

The Board's action was taken in the Discount Fares phase of the *Domestic Passenger Fare Investigation*, in which it found, following lengthy public hearings and voluminous evidence, that under the provisions of the Federal Aviation Act of 1958, the youth fares and family fares were unjustly discriminatory.

The Federal Aviation Act outlaws fares which are "unjustly discriminatory." Thus, carriers may not charge different rates and fares for the identical service, nor may they offer a particular service to some persons and not to others, in the absence of justification. While there are some statutory exemptions from this basic "rule of equality," none exists for either youths or families. Accordingly, any special fares for these classes of persons must be affirmatively justified.

The courts have held that in determining whether a discrimination in fares is justified, the Board may not consider broad social policies not specified in the Act or historically considered part of rate regulation. Thus the Board could not accept arguments that families or young persons should be granted special fares not available to others simply because of their status as families or youths. As the Court stated in *Transcontinental Bus System, Inc. v. C.A.B.*, 383 F. 2d 466 (C.A. 5, 1967), a case involving youth fares, "[t]he rule of equality is the very core and essence of the fare structure in the transportation industry, and it should not be rendered a meaningless phrase by the use of spurious justifications for unjustly discriminatory rates." Thus, "equality of treatment is paramount" and the factors alleged to justify departure from the rule of equality "are to be weighed in light of that pervasive requirement."

The Board believes that youth and family fares would have been found lawful if the record had established that they produced substantial developmental benefits to the overall air transportation system resulting in lower fares

or better services to the public generally. Indeed, the Board initially allowed these fares to take effect because it believed that passengers traveling on discount fares filled seats that would otherwise be empty, thus reducing costs that would otherwise be borne by normal fare passengers, and that the traffic generated by discount fares would assist in making possible additional services to the public.

The evidence shows, however, that this is not the case. Rather than using discount traffic to fill empty seats, the record established that the carriers purchased equipment and added schedules on the basis of all traffic, not just normal-fare traffic. In 1966 (the year the youth fares were introduced on a large scale), the trunk airlines filled 56.9 percent of their seats. By 1971, they filled only 49.8 of their seats. In that year, discount traffic amounted to 40.4 percent of their total traffic.

Nor do these discount fares generate as much traffic as had previously been believed. Those fares do attract some new traffic, but the evidence established that most of the passengers using these fares would have traveled at the normal fares in any event. Considering the additional traffic that would be stimulated if normal fares were reduced to the extent possible in the absence of the discount fares, the Board found that the contribution of the discount fares in terms of total traffic is only minor, at best. Finally, the cost of carrying discount passengers was found to be essentially the same as the cost of transporting the passenger who pays the much higher normal fare.

In sum, the Board found that the benefits of these fares fall far short of justifying their discriminatory aspects. The evidence demonstrated that the discount fares contribute only minor benefits to the air transportation system, and furthermore, that the differentiated structure of normal fares and discount fares resulted in higher normal fares than would be the case if the discounts were eliminated.

The Board had previously determined to defer cancellation of the youth and family fares, pending further hearings on the issue of whether adjustments to normal fares should accompany the elimination of these discount fares. The Board decided on reconsideration that it should not hold hearings looking toward a decrease in normal fares. Rather, the Board found that by the time the remanded proceeding could be completed, the decrease in normal fares stemming from the elimination of the discount fares most likely would have to be offset by a fare increase to compensate for intervening cost increases. Under these circumstances, the Board concluded that it should phase out the fares while maintaining surveillance of the carriers' financial results, taking appropriate action if the fare level appears to be markedly above or below the level warranted by the Board's standards.

Notwithstanding the Board's finding that youth and family fares are unjustly discriminatory, the Board found that excursion, standby, and other similar discount fares which are offered to everyone can be useful for short-term purposes, such as alleviating temporary periods of excess capacity. Carriers may continue to offer them if they can be shown to be profitable in the short term. Thus, discount fares should be available to provide low-cost transportation to youths and families, as well as other classes of persons.

Members Minetti and Murphy dissented, in part, from the Board's decision. In their judgment, the youth and family fares, with certain minor modifications, are not unlawful. They viewed these fares as benefiting full fare passengers by contributing to common fixed costs, and they expressed confidence in the ability of airline managements to eliminate discount fares which have outlived their usefulness. Moreover, they found that the singular characteristics of the family justify treating it separately from any other group, and stated that it has long been traditional in various modes of transportation to afford special reductions to families and children. With regard to the timing of the cancellation of these fares, Member Minetti favored further hearings prior to their cancellation, with a view to determining an appropriate downward adjustment in normal fares in the light of the most recent available costs. Member Murphy indicated that in view of the binding force of the Board's decision as to the legality of the fares, he reluctantly concluded that there was no alternative but to phase out the fares on the schedule set forth above.

Mr. O'MELIA. Section 6 of the proposed bill would amend section 403 of the act so as to designate families and handicapped persons

for reduced transportation and would grant the same designation to the use of elderly people on a space-available basis.

We have in the past had occasion to testify before this committee on the consequences of this type of legislation. That was May 8, 1973.

As we stated in that testimony, as a result of the Board's domestic passenger fare investigation, we have learned that any generally available discount fare that becomes imbedded in the fare structure ultimately works a hardship on normal fare-paying passengers, either in terms of increased fare or reduced service.

We would also note for further consideration that the existence of the youth standby fare has in the past tended to aggravate an already difficult problem of no-shows. There is an obvious temptation for a hopeful standby passenger to increase his chance for travel by booking false reservations on the desired flight. There is no doubt that this has occurred in the past and that it resulted in inconveniences to passengers willing to pay the full fare.

As a last matter, we wish to call to the committee's attention that it is our understanding that under the proposed legislation, the Board would retain the power to take steps to help ease the burden that discount fares, such as those proposed in section 6, would impose on normal fare-paying passengers. This would include, for example, the power to: (1) impose limits on the travel periods during which such fares would be available; and (2) regulate the level of such discount fares.

In conclusion, I would like to reiterate that in my view legislation of the type we are proposing in simple terms would eliminate the existing legal requirements that a distinction must be maintained between individually ticketed and group travel.

If the Federal Aviation Act were amended in the way we suggest, it would give the Board the freedom to adopt a system of charter regulations that would increase the availability of low-cost transportation for broad segments of the traveling public; yet it would not impair the scheduled, individually ticketed, transportation system.

Finally, it would permit the Board to adjust its rules as changing circumstances require.

Thank you, Mr. Chairman.

If you have any questions, my colleagues and I will be happy to try and answer them.

Senator CANNON. Thank you, Chairman O'Melia. I am very pleased to see that the Board has come a considerable distance since last appearing before this subcommittee to testify on the liberalization of charter rules and the position the Board has taken today is markedly more progressive than that enunciated by the Board here in 1973.

Nonetheless, I am more impressed with actions than with rhetoric and have yet to be convinced that the Board has the resolve and the will to move ahead in the charter area without specific direction from the Congress.

You have suggested that the only legislative requirement for the liberalization of charter policy would be the simple act of defining in law the definition of "charter."

You also say that if that was done, then the Board, absent specific direction from the Congress, would proceed to adopt more liberal, practical, and easily understood rules.

I may say that I recognize the merit in what you say to the degree that, if we write something into law, it sometimes poses problems that could be handled more easily on an administrative basis.

I would like to know what assurances you could give me that if we don't pass S. 421, the Board will move ahead quickly in this field?

Mr. O'MELIA. Senator, if the act is amended to cover plane load charters and the Board fails to act as I have indicated this morning, all you have to do is call us back up here awful quick to see why we have not taken appropriate action.

Senator CANNON. Well, that didn't quite answer my question.

You said if you fail to act; I am trying to ask you now what assurances you could give me that you would act quickly, that we would get some action, and that we would not be meeting here again in 2 years on this. We started this in 1973 on S. 1739.

Mr. O'MELIA. I think all I can give you is my assurance that I will do everything I possibly can to be sure that action is taken if the act is amended as we suggest.

Senator CANNON. Given the fact that the Board has already put out a notice of proposed rulemaking establishing the so-called OTC, which has generally been negatively received by both the public and the industry, what steps might you take to improve the practicability of the proposal and how soon can you guarantee that such a more practical proposal, economical, single-stop OTC program would go into effect?

Mr. O'MELIA. First, we do have comments from the industry on the Board's proposed one stop. They are being analyzed.

You asked in your letter asking me to testify today that I give you a list of the pending cases before the Board and when they will be decided. I have asked the staff to prepare this list and I have one that I will submit for the record.

[The following information was subsequently received for the record:]

List of significant rulemaking actions taken by the Board since June 1973 with respect to charters

<i>Item</i>	<i>Status</i>
(1) Rules authorizing inclusive tour charters (ITC's) to be operated by U.S. and foreign route carriers, instead of continuing their limitation solely to U.S. supplemental and foreign charter carriers.	Adopted July 17, 1973 (ER-806, ER-807, SPR-70).
(2) Rule requiring all carriers, United States and foreign, to provide security for the protection of charter customers' advance payments.	Adopted July 17, 1973 (ER-809, ER-810, ER-811, ER-812).
(3) Notice proposing to amend the travel group charter (TGC) rule, so as to permit inbound TGC's to be carried, in accordance with the applicable charter rules and the country of origin.	Issued Sept. 4, 1973 (SPDR-33). Adopted Mar. 15, 1974 (SPR-74).
(4) Notice proposing various modifications of the TGC rule intended to enhance the marketability of travel group charters.	Issued Mar. 15, 1974 (SPDR-35). Adopted Aug. 12, 1974 (SPR-78).

<i>Item</i>	<i>Status</i>
(5) Notice proposing to establish rules for a new type of charter, "special event charter" (SEC).	Issued June 18, 1974 (EDR-276, SPDR-37, ODR-8).
(6) Policy statement setting forth guidelines for minimum charter rates in tariffs filed for transatlantic charter service.	Adopted Oct. 18, 1974 (PS-57). Vacated Feb. 11, 1975 (PS-64).
(7) Notice proposing establishment of rules for a new type of charter, "one-stop-inclusive tour charters" (OTC).	Issued Oct. 30, 1974 (EDR-281, SPDR-38, ODR-9).
(8) Notice proposing to eliminate "prior affinity" charter rules.	Issued Oct. 30, 1974 (EDR-237C).
(9) Notice advising that the Board will not prohibit the sale of "prior affinity" charter prior to Dec. 31, 1975.	Approved Jan. 30, 1975 (EDR-237E).

Mr. O'MELIA. But to get back to your question, I think the basic problem that I outlined in my opening remarks is that of trying to find some way to avoid court challenges on whatever regulations the Board issues on one-stop ITC's, to the effect that they are impairing scheduled, individually ticketed service. And if we can get the act changed so that it covers planeload charters, we won't have such challenges.

This may look now like a longer course of action than your bill, but I think it would probably turn out to be the most expeditious way of solving the problem.

Senator CANNON. Of course, the easiest way to keep out of court is to do nothing. You know, you are not likely to be brought into court for just sitting and doing nothing, but I think that sometimes you have to take the risk of action versus inaction, and worry about whether somebody does take you to court.

I am willing to try to work with you on getting something that you can work with more readily, but in the meantime, I don't think you can just sit back and say: "Well, we can't take any action because we are likely to be taken to court."

Mr. O'MELIA. Well, that is not the impression I want to give you. We are moving ahead with the Board's one-stop ITC's; and as I understand it from the staff, that will be up to the Board for consideration in the not too distant future.

How long is that going to be?

Mr. HEYE. There will be something up to the Board probably for the Board's review within the next 2 to 3 weeks and the Board then will issue instructions to the staff. And I would estimate that within the next 60 days that something should be out on the street again.

Senator CANNON. Now, what do you mean by out on the street? Does that mean we will have a new proposal that we could start to see if we can live with?

Mr. HEYE. That would depend upon what the Board instructs when the matter is taken back to the Board.

Senator CANNON. Well, that's kind of hedging a little bit, now.

Mr. Chairman, let me ask you to respond to that.

Mr. O'MELIA. Well, I would take it just one step further and say that the Board will have some—a new proposed rulemaking on one stops out within 60 days.

Senator CANNON. Within 60 days?

Mr. O'MELIA. Yes, sir.

It will be a final rule, Senator.

Senator CANNON. A final rule within 60 days from now?

Mr. O'MELIA. Yes, sir. Maybe 61.

Senator CANNON. I might say it is refreshing to get some answers like that, too, before this committee from the Board.

What plans does the Board have for advancing a proposal for either changing the current unworkable TGC program or, preferably, implementing an ABC program along the lines of the program contained in S. 421?

Mr. O'MELIA. Mr. Heye, I think, should answer that.

Mr. HEYE. Our staff is in the process at the present time of looking into the ABC question; and, again, we hope to have something to the Board within the next 3 weeks on that particular item with request for instructions from the Board as to how we should proceed.

It is in the process of being evaluated at the present time.

Senator CANNON. So, as far as your recommendations for the Board, reported to the Board, they are only about a week behind the previous one you just referred to?

Mr. HEYE. That's correct.

Senator CANNON. Now, your supplementary statement, Mr. Chairman, states that the Board opposes our ABC provision of allowing for the sale of 25 percent of the charter seats up to departure time.

What would the Board recommend in the alternative?

I raised that briefly with you a few minutes ago.

Mr. O'MELIA. I think that when you have such a short time, like 30 days, between the date of signing up for a charter flight and the date of leaving, you are then getting into an area that, in my view, would impair the effectiveness of individually ticketed operations.

I would hope that the 30 days would be sufficient for the supplemental carriers and the scheduled carriers to live with, to maintain the congressional mandate that supplemental charters are, in fact, supplemental to the scheduled carriers.

Senator CANNON. Well, you are saying, then, that you don't think that the tour operator should be permitted to sell, within that 30-day period, any of those charter seats, then, except to people on a standby list?

Mr. O'MELIA. Well, I think we have that in effect for affinity charters as far as the European countries are concerned now, where affinity can be a sold. The participants can sign up the day they leave.

In effect, the Europeans have said that you have to have your list of passengers filed 30 days before departure. They are, in effect, telling us they would not accept less than a 30-day period. That is what their ABC's do.

If we specify less than 30 days, I don't think the foreign countries would accept it.

Then, based on reciprocity with a foreign country, we would then have to say that they cannot bring in their ABC's. Then you would lose that whole segment of the charter industry if you do that.

Senator CANNON. Well, don't we have under our own TGC program a 15-percent-substitution provision now?

Mr. O'MELIA. Yes, that's right, sir.

Senator CANNON. Well, why shouldn't that also apply here?

Mr. O'MELIA. Well, that is a good question. I have thought of that myself, Senator, as far as affinity charters are concerned. But I think, under the proposal we have for planeload charters, you just won't need any. It just won't be needed.

Any group of people that want to go together can go together on the day that they want to leave and come back as long as they go together and come back together. They can go whenever they want.

Senator CANNON. You have indicated that the Board will soon propose an alternative to S. 421. How soon do you expect to have a proposal up to us on that?

Mr. O'MELIA. Senator, I tried to have a draft of the amendment to section 101 today. We don't have a full Board and I want to get their concurrence on it.

We will have it as soon as we have a full Board which will be about 10 days.

Senator CANNON. Are you prepared to explain at this time how it differs from 421 or is it going to be just limited to the definition-type thing that you referred to in your testimony?

Mr. O'MELIA. We have three alternatives that we were going over late last night, hoping that we could get a draft up here for you today.

There is a little dissension on how best to do it, to accomplish legally what we want. We need just a little more time.

Senator CANNON. Now, in refusing to adopt rules and regulations regarding the operation of air travel clubs, the Board has been criticized by some for failing to spell out exactly what is permissible carriage.

Some flying clubs complain that the Board's policy has made it impossible to determine in advance what is permissible.

As you said in your supplemental statement that the adoption of regulations defining the boundaries between private carriage and common carriage, so far as flying clubs are concerned, would be little less than futile.

Why do you believe this to be the case and how can flying clubs be expected to understand Board policy in this area unless you adopt definitions and regulations?

Mr. O'MELIA. Senator, this has been a problem perplexing me for a long time. As former Director of the Bureau of Enforcement, it bothered me.

I always thought that a flying club should be, for example, where people in this room would all buy part of the airplane and we would own an interest in it. We could then use it whenever we wanted to. But when you get outside of owning an interest in that airplane and are just a member of the general public being solicited by an organization, whatever its name—travel club—for the purpose of travel alone, then you are violating the present Board's regulations on charters.

Now, if the act is amended as we suggest, any travel club, whether it is a flying club, a social club, or whatever its name, would be eligible to go on planeload charters.

Senator CANNON. You are really saying there would be no necessity for the flying club if the act were so amended; is that correct?

Mr. O'MELIA. That is my view, with the exception of ownership of the aircraft. If the club owns its own aircraft and then is engaged as a commercial operator, it would have to come in and get a 401 permit from the Board if it wants to solicit participants from the general public.

Senator CANNON. In reviewing the recently agreed to IATA fare package I have noted that the IATA carriers devised an ABC-type charter within scheduled service which they call APEX.

I have also noted that the proposed rates are at or near the level of charter rates and would appear to impose unreasonable and unfair competition on charter services.

Now, I can't understand how these APEX fares can be economically justified when the passengers are traveling in scheduled service.

Could you tell the committee how the Board views the APEX fares and whether in your judgment the fares represent unfair competition with the charter service?

Mr. O'MELIA. Senator, in this case I will have to ask my attorney whether I can answer that question. It is something that will be pending before the Board in the very near future.

Senator CANNON. I think I can guess what his answer will be.

Mr. O'MELIA. I will be glad to have it for the record, anyway.

Mr. HEYE. Inasmuch as the chairman is going to have to pass on this as a voting member of the Board, I would have to advise him that he should not comment on the question.

Senator CANNON. Well, before you act on it I hope you will read that statement I just made a minute ago.

Mr. O'MELIA. I will read yours and Mr. Driscoll's.

Senator CANNON. You heard Mr. Driscoll explain the recent dispute between Alaska International and Saturn Airlines over exemption authority to provide charter service between Alaska and Canada.

Would you please explain how it can happen that the Director of the Board's Bureau of Operating Rights can, on his own, provide exemption authority to a noncertificated operator to perform air carrier service when an air carrier certificated by the Board is ready, willing, and able to provide the service and has, in fact, been turned down in its application for that type of usage, and that the air carrier was never notified of the exemption request until after it was granted by the Board's staff?

Mr. O'MELIA. I heard about this for the first time last Monday, Senator. It had not come to the Board's attention before. The Bureau of Operating Rights has handled this on delegated authority. There is an appeal pending by Saturn, if I am correct, before the Board. We have not acted on it because it hadn't officially gotten to the Board for action.

As to the facts in the case, Mr. Caldwell will be happy to explain them.

Senator CANNON. I would be very happy to hear from you.

Mr. CALDWELL. Senator, the case in question involved the movement of outside air cargo from a point in Canada to a point on the Alaskan pipeline for a single contractor.

The only carriers that are certificated to provide such service from the CAB do not have equipment capable of carrying that. They were

McCulloch and Johnson. They were the only people holding authority other than the supplemental industry to and from Canada. Neither one of those carriers have equipment capable of carrying the type of cargo.

Mr. Seligson, in his remarks, the ones I heard, referred to Saturn's authority. Saturn, up until December 31, 1974, had, by exemption of the Board, authority worldwide for outside cargo. That exemption was not renewed by the Board.

Therefore, Saturn had, in my opinion, no prior right to operate to or from Canada a point where they are not certificated by the agency.

The application was filed with the agency, was posted, as all applications are.

The fact that Saturn did not get notice I don't believe is our fault. We do not require notice, simply because they had no certificate authority to serve Canada.

The mere fact they didn't look at the bulletin board, I am sorry about it, but I don't think that is our fault.

Senator CANNON. Well, isn't it reasonable to assume that they would have been interested in it if they had had that type of authority up to the end of December and the authority was not continued by the Board?

You apparently granted that exemption on your own on the basis that nobody else could furnish that type of capability.

Mr. CALDWELL. Based on the fact that two carriers serving that had authority to serve Canada and Alaska did not have the equipment to serve the customer.

Senator CANNON. Let me ask you, Mr. Chairman: Do you think that is the proper type of authority to delegate to staff people rather than to the Board members who generally act on situations such as this?

Mr. O'MELIA. I think the delegation of authority in the past has probably been tested and found true. The breakdown in this particular case was in getting the petition for recommendation from the staff, where a carrier comes in and files such a request, get it should go promptly from the staff to the Board.

In this case, it has only been a day or two since I received a letter from Saturn on this question.

I think we can probably find a better way to handle this type of a procedure than in this case and I will certainly look into it.

Senator CANNON. It would be reasonable to assume that Saturn would have an interest in it in light of the authority they previously had, would it not?

Mr. O'MELIA. Yes, sir.

[The following information was subsequently received for the record:]

CIVIL AERONAUTICS BOARD,
Washington, D.C., February 28, 1975.

Hon. HOWARD W. CANNON,
Chairman, Subcommittee on Aviation, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: On February 13, 1975, I testified before the Senate Subcommittee on Aviation on S. 421, a bill designed to assure the availability of low cost air transportation, and discussed at some length the problems of charter air transportation. In the course of that testimony I indicated that the

expansion of charter service was being impeded by a relatively restrictive judicial interpretation of the Federal Aviation Act.

The Courts have construed the definition of "supplemental air transportation"—which in turn utilizes the term "charter trip"—so as to preclude the use of an aircraft under a contractual arrangement which would in ordinary usage be considered a "charter", if it appeared that such arrangement would enable the charterer to sell individual tickets to persons who are not members of a "group". *Pan American World Airways v. C.A.B.*, 380 F.2d 770 (2nd Cir. 1967), *aff'd by equally divided court*, 391 U.S. 461 (1968); *American Airlines v. C.A.B.*, 348 F.2d 349, 354 (D.C. Cir. 1965). While the effect of those decisions has been somewhat ameliorated by the subsequent statutory amendment which specifically included "inclusive tour charters" within the Act's definition, as well as by subsequent judicial decision (*Saturn Airways, Inc. v. C.A.B.*, 483 F.2d 1284 (D.C. Cir. 1973)), the limitation inherent in the statutory charter concept, as a result of those decisions, serves to impede an expansion of charter authority.

In that same testimony, I expressed the Board's view that the impediment that the foregoing interpretation of the Act has placed in the way of expanding charter availability is not in the public's best interest. Accordingly, I stated to the Subcommittee on Aviation that:

"... I believe that the goals of this Committee and the interests of the traveling public can best be served by a simple statutory definition of the term charter so as to incorporate two basic concepts: *first*, that a charter consists of plane-load air transportation, and *second*, that such transportation shall be authorized to the extent consistent with the public interest, including the interest of the public in preserving needed scheduled services. With such a standard, the Board would be able, free from legal uncertainty, to evolve a charter program which would increase the availability of low cost air transportation for broad segments of the traveling public.

You subsequently asked me to have the Board submit draft language of a provision that would amend the Federal Aviation Act of 1958 so as to accomplish the aims discussed in my testimony. The attached draft is the Board's response to your request.

The simple definition that we propose would clearly express Congress's intent that the determination of whether any given arrangement is a "charter trip" does not depend on questions as to the ultimate use which is to be made of the aircraft space covered by the charter contract. In short, the proposed definition would make it clear that the question of the basic legality of a charter arrangement permitted by Board rules is separate from the policy questions involved in the Board's determinations of whether—and to what extent—the charterer should be permitted to sell chartered space to members of the public. Such policy questions would of course continue to be made by the Board upon consideration of the normal public interest standards of the Act, including the public's interest in preserving needed scheduled service.

By adoption of the statutory amendment which we propose, the Congress would remove any legal doubt that "charter trip" encompasses not only the various types of charter rules already promulgated by the Board (*e.g.*, "affinity" charters, inclusive tour charters, split charters, and travel group charters, the latter including special rules for foreign-originating advance booking charters), but also encompasses the types of charter rules whose adoption the Board has proposed in proceedings currently pending (one-stop inclusive tour charters and special event charters). Enactment of the proposed definition of "charter trip" would thus enable the Board to fashion charter rules which are free of the kinds of artificial restrictions which have heretofore been imposed, not so much because of their intrinsic desirability, but because they have been regarded as necessary to bolster the legality of a particular rule.

In sum, fortified by the Congress's broad grant of charter-making authority, as signified by enactment of the amendment which we propose, the Board would in turn be able to take necessary regulatory action to authorize the kinds of charters described in S.421, as well as such other kinds of charters as shall, from time to time, appear to be appropriate and desirable, purely from a standpoint of responsible regulatory policy, as being in the public's best interest.

The Board believes that adoption of the proposed new definition of "charter trip" would serve the public interest by providing an explicit legal underpin-

ning for the expansion of charter transportation. The Board stands ready to offer whatever further assistance it might provide to the Subcommittee.

Sincerely,

RICHARD J. O'MELIA, *Acting Chairman.*

Enclosure.

A BILL To amend the Federal Aviation Act of 1958 to provide a definition for charter trips

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (13) through (38) as paragraphs (14) through (39), respectively, and by inserting immediately after paragraph (12) the following paragraph:

"(13) 'Charter trip' means air transportation performed under regulations prescribed by the Board in which the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, or for the movement of property, or for the movement of persons and their baggage and movement of property."

Senator CANNON. Is Saturn the only certificated carrier to operate the Hercules aircraft as well?

Mr. O'MELIA. I believe so.

Senator CANNON. So here the authority was denied a certificated carrier and part 121 operator was granted an exemption?

Mr. O'MELIA. Well, we do goof once in a while.

Senator CANNON. Well, I hope we don't find that this happens too often.

Well, let me say, Mr. Chairman, in closing, that I am pleased with what appears to me to be an attempt on the part of the Board to get with it, so to speak, and get up to date.

I can assure you that the committee wants to work with you and do what they can in trying to solve some of these difficult problems we all have.

I think we are all interested in the same things and it is a matter of getting their statement.

Thank you very much for being here with us today.

Mr. O'MELIA. Thank you, Senator.

Senator CANNON. The next witness is Ms. Mimi Cutler, director, Aviation Consumer Action Project, Washington, D.C.

STATEMENT OF MIMI CUTLER, DIRECTOR, AVIATION CONSUMER ACTION PROJECT; ACCOMPANIED BY PATRICIA KENNEDY, TARIFF ANALYST

Ms. CUTLER. Mr. Chairman, this is Patricia Kennedy of the ACAP staff.

I would like to read my statement.

The Aviation Consumer Action Project appreciates the opportunity to present its views on the Low Cost Air Transportation Act. ACAP is a nonprofit organization engaged in promoting the interests of airline passengers. We have been active as a consumer advocate before the CAB and the courts on issues of economic regulation of air transportation. Recently, we have been especially concerned about numerous Board actions raising the cost of scheduled air travel and denying reasonable public access to low-cost charter travel. We commend the introduction of this timely and important legislation

which would permit carriers for the first time to offer inexpensive, widely available charter and standby services.

In the past year, the airline consumer has been hit from two sides. Scheduled air fares have soared beyond the ability to pay of many potential travelers. Average fares have increased approximately 20 percent while families and persons 21 and under have experienced even steeper price increases when family and youth discount fares expired in June 1974. The recent 4 percent increase was permitted while carriers were reporting record profits.

At the same time, the CAB has repeatedly moved against every type of low-cost air travel.

The Board has recommended against allowing Laker Airways to provide economical full-plane shuttle service between New York and London.

The Board set minimum transatlantic charter rate guidelines, imposing substantial fare increases on unwilling airlines. In the face of legal action by ACAP, the Department of Justice and others, the CAB this week was embarrassed into rescinding this anticonsumer decision.

All types of charter travel are burdened with unfair and limiting restrictions. Charter rules are clearly aimed at reducing public access to this efficient and economical type of air travel.

The Board has even forced carriers to raise prices. Continental Airlines, which offered an economy class service on many of its routes at a substantial discount, has been ordered to increase that fare.

In two related rulemaking proposals, the Board declared its intention to abolish affinity charters and replace them with a complicated, restrictive and expensive form of one stop inclusive tour charter (OTC).

This attack on affinities, used by 80 percent of all charter passengers, threatens to be the Board's most damaging blow to the budget-minded air traveler. To the extent that the affinity rule limits a type of charter travel to members of preexisting groups, it does have a certain discriminatory aspect. However, the Board's solution, instead of broadening the availability of charter services to eliminate any conceivable discriminatory impact, would completely eliminate the type of low-cost charter travel now enjoyed by affinity groups. The Board's OTC proposal carried a high minimum price, excessive minimum stay, schedule limitations, and an absolute 30 day filing requirement. It appeared to be crafted with a single goal—not to maximize charter service but to minimize diversion from scheduled service. No hearings were held, no surveys were conducted, and no apparent effort made to test the public acceptance of OTC's.

The public opposition to the abolition of affinities has been unprecedented. Well over 20,000 letters poured into the Board, and the dockets section received more than 4,000 sets of formal comments, 12 copies of each, from members of the public who opposed the abolition of affinities. This strong evidence of nonsupport appears to have had some effect. Two weeks ago the Board granted affinities a stay of execution. However, it has not yet issued a final order and could

order the elimination of affinities with no satisfactory alternative to become effective at some time during 1976.

Legislation is vitally necessary to require the Board to grant reasonable public access to low cost bulk transportation. We are pleased that the Low Cost Air Transportation Act preserves affinities—these are popular and useful in spite of their imperfections. However, we believe the importance of the proposed legislation is in giving the beleaguered airline consumer both liberalized, one-stop inclusive tour charters and, for the first time, advance booking charters. An ABC allows nonaffiliated members of the public to buy a seat on a charter trip subject only to reasonable advance purchase and minimum stay requirements. This subcommittee's version of the one-stop inclusive tour charter is free of the artificially high price and schedule restrictions of the Board's OTC proposal.

ACAP has expressed its approval of liberalized one-stop ITC's when this subcommittee reported out a charter liberalization bill in the 93d Congress. We are equally enthusiastic about ABC's, which have been popular in Europe for years. It is high time that American air carriers were permitted to offer this simple form of low-cost vacation travel which has already been enjoyed by many millions of Europeans.

Because the proposed legislation makes low-cost transportation widely available, the scheduled carriers will probably dust off their well-worn argument that expanded charter service will endanger the scheduled system. Reasonable availability of charter service may or may not cause some diversion from scheduled service—we really do not know. We do know that many potential passengers are now being diverted to trains, buses, automobiles, and are staying home because they cannot afford the price of a plane ticket. Certainly liberalized charter rules are not to blame for this diversion.

Rather than accepting "diversion" as a scare word, I think it is time we examined what it really is. Diversion is consumers saving money. The extent to which diversion may take place is the extent to which passengers preferring cost savings to convenience are now coerced into the scheduled system by the present CAB rules sharply limiting charter travel. Removal of unreasonable charter restrictions, as required by the proposed legislation, merely allows consumers to purchase the type of air transportation service they really want. This may necessitate some adjustments in the operations of scheduled carriers. If some demand shifts from scheduled to charter service, the certificated carriers can reallocate their personnel and equipment to expanding charter operations. In our view, it is far more logical for the air transportation industry to adjust to consumer demand than the present ludicrous CAB policy of attempting to force demand to fit preexisting patterns of air service. Simply stated, consumers should be allowed to buy the type of product they want.

As an advocate of the interest of all consumers in affordable air fares, ACAP has reservations concerning the discount fares in section 6 of the proposed legislation. Lower rates for youth and families have deep roots in American social tradition and in promoting air travel. Movies, restaurants, and many hotels charge lower prices for

children, as frequently do such quasi-public institutions as museums. From a purely economic perspective, youth and family fares have been effective in promoting air travel. The carriers believe that some of their recent precipitous drop in traffic is due to the loss of family and student traffic coincident to the recent elimination of these discounts. The proposed legislation compassionately includes discount travel not only for families and youth, but for the elderly, handicapped, and ministers of religion as well.

Our concern stems from the difficulty in choosing the groups in society which should have access to low-cost air travel. Why should the handicapped travel for less money than the chronically ill? Why ministers and not their impoverished or unemployed parishioners? Unable to make these choices, we believe that low-cost travel should be made equally available to everyone.

We want to make it clear we do not oppose discounts for youth, families, or the handicapped. We prefer a more equitable approach, one which would be good for these groups as well as the airlines and would provide reduced rate space-available fares for all where vacancies exist shortly prior to flight departures.

What we would really like to do is broaden this and make it more widely available. Airlines would fill seats which are presently empty, and many could travel who are now priced out of the market.

We believe that such innovations in fares and services, combined with liberalized charter regulations contained in this bill, would allow airlines to fill many of the now empty seats while expanding travel opportunities in an equitable way to these now priced out of the market.

Thank you.

Senator CANNON. Thank you very much.

I might add that I am a little hesitant to go along with you on your one proposal to allow a discount fare to everyone, based on the seats available, because you will see a big crowd around the airports of people walking in, seeing the empty seats, and getting on the airplane.

If we require the carriers to fly, then we have got to have some reasonable assurance that seats will be filled, other than by so-called walk-on passengers.

Ms. CUTLER. Well, I think there are various means by which this could be done.

For instance, there is now a conditional reservation plan, I believe, called leisure class, by which space available seats are sold.

Ms. KENNEDY. I think there is another thing we want to point out as well. Many of the carriers do have adult standby fares, with some restrictions. I am not all that familiar with them. I don't believe they are permitted during peak hours; but, with time limitations, it's already being used.

It's been implemented by some of the carriers already. They don't have stampeding problems at the airports there.

Senator CANNON. Thank you very much.

We appreciate your views.

Ms. CUTLER. Thank you.

Senator CANNON. The next witness is the Honorable John W. Barnum, Acting Secretary of Transportation.

STATEMENT OF JOHN W. BARNUM, ACTING SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY JOHN W. SNOW, ACTING ASSISTANT SECRETARY FOR CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS; AND WILLIAM A. KUTZKE, ATTORNEY, OFFICE OF THE GENERAL COUNSEL

Mr. BARNUM. Good morning, Mr. Chairman.

Thank you for the invitation to present our views on S. 421, The Low-Cost Air Transportation Act.

I have submitted a 20-page statement on the bill which, with your permission, I would like to offer for the record, and at this time summarize that statement, if I may.

Senator CANNON. Very good.

Mr. BARNUM. Your hearings come at an important time. For the past several months the administration has been reviewing CAB regulation of air transportation. We are presently in the process of preparing reform proposals for submission to Congress which will require the CAB to place more emphasis on competitive principles, and which will make available more low-cost air transportation to more passengers with less Government interference in regulation. Parts of S. 421 share these objectives and they are sound companions to the proposals we are developing.

Because they would expand service, broaden the fuel-efficient use of group travel, and liberalize unduly restrictive CAB regulations of air charters, we favor many of the objectives of your bill. We could support the charter features of the measure completely if they are modified slightly along the lines which I will describe. On the other hand, we must oppose the approach taken for reduced fare travel for special groups for reasons which I will also describe. Let me discuss in turn the major points raised by the bill.

Section 3(a) adds the definition of "advanced booking charter trips" to the Federal Aviation Act. Subject to certain restrictions, ABC's would offer low-cost travel to a given destination for those who purchase tickets at least a month prior to departure. By limiting the degree of CAB regulation of ABC's, the bill effectively liberalizes CAB regulations for the advanced booking charters now in use—that is, travel group charters, or TGC's. In comparison to the TGC's, ABC tickets can be purchased closer to departure, charter organizers can assume the commercial risks involved rather than prorating the trip cost among passengers, and minimum stay requirements are reduced. Each of the changes will broaden the number of consumers able and likely to participate.

Since the CAB first instituted travel group charters in September 1972, restrictions on such flights have been liberalized. It is our view, however, that even greater liberalization is warranted. At the same time, because the impact of widely used ABC's on scheduled service has never been fully evaluated, we believe that ABC's should be studied closely. The CAB as well as the DOT should evaluate ABC data and report on the results with recommendations for modification, if necessary.

In short, although we believe that the distinction between scheduled and charter service is an important one which should be main-

tained, we agree that present CAB restrictions inhibit development of the advanced booking concept. That concept deserves to be tested. We believe that the standards of section 3(a) will provide a better test than present regulations, and we therefore support enactment of that section.

Section 3(b) of the bill defines "inclusive tour charter trips," or ITC's. Such charter flights, which combine air transportation with land package tours marketed to the public by tour operators, have been authorized by the CAB since 1966. In the past we have criticized as being unduly restrictive, such CAB regulation of ITC's as a three-stop requirement and a pricing requirement based on applicable scheduled air fares. These restrictions have prevented ITC's from achieving their promise. The Department has encouraged their liberalization in testimony before this subcommittee and in filings with the CAB, most recently on the CAB proposal for one-stop inclusive charters, or OTC's.

The ITC definition contained in the bill would effectively liberalize CAB restrictions on ITC's by eliminating the three-stop requirement and by freeing pricing from a necessary relation to scheduled fares. The bill's definition does not require advanced booking, minimum stays, or minimum ground charges. The CAB would still be able to impose these or other restrictions which assure that ITC's don't impair essential scheduled services.

In our 1973 testimony on ITC's, we suggested that a cautious approach to liberalizing ITC restrictions was best. We argued that because of uncertainty over possible impact on scheduled service, a sudden termination of existing restrictions was not desirable. We proposed a six-point affirmative action program to liberalize ITC travel. We still believe that caution is appropriate. But the ITC definition in S. 421 is responsive to the six points we outlined 2 years ago. It permits the Board to limit the areas or markets where ITC's may operate; it permits Board regulation to insure that scheduled services can be maintained; and it is consistent with our view that the best initial approach should be carefully controlled. For these reasons, we support the approach taken in section 3(b).

Section 3(c) would change the definition of supplemental air transportation to include ABC trips and to permit supplemental carriers to control or be under the control of those authorized to sell tickets directly to the public. Because the control must be approved by the Board and must be in the public interest, we support the change in definition, as we did in the 93d Congress.

Section 4 of the bill forbids the CAB to abandon affinity group charters until otherwise directed by Congress. It also restricts any CAB modification of existing rules to those which do not materially diminish availability of affinity charters. Affinity group charters are those which enable members of organizations, groups, or clubs organized for a nontravel purpose, to take low-cost group trips. Eighty percent of traffic carried by the supplemental carriers is now carried on affinity charters. This section of the bill responds to the CAB's recent proposed termination of prior affinity charters, a discontinuation that the DOT has opposed in its Board filings.

We agree with the CAB that present affinity charter rules should not remain the primary regulatory regime. That is one reason we

have supported development of alternatives, such as one-stop inclusive tours and advanced booking charters. But it is clear, for reasons of cost and convenience, that the alternatives presently in service and those foreseeable will not meet the needs of the traveling public sufficiently to replace affinity charters. Until effective substitutes are developed, elimination of affinity charters would sharply limit charter services, harm the traveling public, and cause serious financial problems for U.S. supplemental and scheduled carriers.

Mr. Chairman, in your comments accompanying introduction of S. 421, you indicated your expectation that the advanced booking charter might well replace affinity charters after an 18- to 24-month period. We believe affinity charters should be permitted to operate until it is clear that the proposed replacements meet the test of the marketplace and satisfy the public demand for convenient, low-cost charter travel which is presently met by affinities. The proposed ABC, for example, has advanced purchase restrictions and, because of the way it is likely to be marketed, will be more costly and less convenient than affinity charters. It is not likely to prove a full substitute. We suggest that the CAB study the question of how quickly affinity charters now fill their seats and to what extent there are substitutions within the 30-day period prior to departure so that we can then better judge the effectiveness of the ABC alternative. Public comments on the proposed abandonment of the affinity charters make clear that consumers do not now regard presently available alternatives as adequate substitutes.

Therefore, the Department supports the continuation of affinity charters until such time as adequate alternatives are proven. We also believe, however, that the determination as to when affinities should be eliminated could be made more appropriately by the CAB than by the Congress. With that modification, we support the goal of section 4 of the bill.

Section 6 of the bill would amend the Federal Aviation Act and the Interstate Commerce Act. It would permit air carriers to grant reduced rates to handicapped persons and families and, on a space-available basis, to persons 65 or over and 21 or under. It would permit rail carriers to grant fare reductions to handicapped persons and to persons 65 or over and 21 or under.

The Department is strongly opposed to the enactment of these provisions. While we sympathize with their objectives, in our judgment the provisions are not economical, are unfairly discriminatory, and are inferior to alternatives which would better accomplish the same goals.

The Department understands such provisions. We, too, are committed to improving transportation facilities for elderly and handicapped persons and to making available to all travelers more options for low cost transportation. We have worked to improve accommodations for handicapped and elderly persons at terminals and en route both by issuing guidance material and by testing new vehicles and facilities. Our view is that, rather than grant special fare treatment to selected groups, all members of the traveling public should receive the benefit of reduced fares which are cost related. The Department has proposed, for example, making available reduced fares on a space

available basis, or during offpeak hours, or on lightly traveled days of the week. There would not be any special preferences for any group. Such a system passes on to the offpeak traveler the savings a carrier obtains through better use of equipment and facilities. It spreads traffic more evenly over trips, improves average load factors, and ultimately—and today, very importantly—saves fuel.

The problems with favoring special groups based on age or status are legion. The groups amount to well over half the population. The result would be a cross-subsidy from those who pay full fares, to those who do not. Full-fare passengers who have already watched air fares rise approximately 19 percent in the past year, could expect to pay significantly higher rates. Because some of them will be prevented from using air transportation, and because many of them have the same if not more compelling needs as the groups specified, this would be unfair and inequitable. Moreover, if fares don't rise, air carriers will be forced either to accept a less than reasonable return on investment, or to curtail service. In the case of rail travel, enactment of section 6 would surely result in either larger subsidies from Congress for Amtrak or reduced services, or both. Higher fares would jeopardize our efforts, for energy reasons, to provide a competitive alternative to the automobile.

Similarly, with respect to standby fares, a nondiscriminatory proposal which made standby services available to all passengers would benefit the groups specified without unfairly discriminating against others with the same needs.

The ABC and ITC proposals contained in section 3 of the bill, combined with a cost related offpeak pricing system, will effectively make available low-cost alternatives to the elderly, youth, families, and the handicapped. Use of these proposals is best calculated to achieve the ends the legislation seeks in an economical and fair way. We suggest that the use of rates based on cost rather than age or status and available to all members of the public can better accommodate the needs of those singled out for preference by this section. For these reasons, we oppose enactment of section 6.

The broadened use of charter flights made possible by this bill together with the air regulatory reform proposals soon to be submitted by the administration, should offer the American air passenger the prospect of more and better travel options than ever available before. Lower costs made possible by these changes will make available lower fares. Greater use of ITC's, ABC's, and offpeak pricing will broaden quality and type of service available to consumers. In our judgment, Mr. Chairman, the airlines will also benefit through less unused capacity and more efficient and economical use of their resources.

Thank you for this opportunity. We are, of course, prepared to answer any questions you may have.

May I first introduce, on my right, Mr. John W. Snow, Deputy Assistant Secretary for Policy, Plans and International Affairs in the Department of Transportation and also the Acting Assistant Secretary for Congressional and Intergovernmental Affairs; and, on my left, Mr. William A. Kutzke, an attorney in the Office of the General Counsel of the Department of Transportation.

Thank you, sir.

Senator CANNON. Thank you very much, Mr. Barnum.

You stated that "Because the impact of widely-used ABC's on scheduled services had never been fully evaluated, ABC's should be watched closely."

Does that mean that the Department believes market restrictions or market quotas should be imposed by the Board so as to limit the general availability of ABC's during an experimental period?

Mr. BARNUM. Not at this time, no, sir.

Senator CANNON. If not, do you recommend any restrictions on ABC operations by the Board and, if so, what would they be?

In other words, I am trying to find out what you mean when you say the effects should be watched closely.

Mr. BARNUM. I think we have to see what happens in the marketplace. Although they have been available in one form or another, there are other types of fares that are available. As the mix changes I think we have to see what happens with this particular kind of a fare, to what extent is it adopted, is there a rush towards it, how is it priced, what is its impact on scheduled carriers that either elect to offer it or not, and what is the effect on their scheduled services?

Senator CANNON. You are suggesting then, by watching it closely, that you mean that you go gradually into the program with limitations on the extent to which it could be used?

Mr. BARNUM. No, sir. We would adopt your provisions.

Senator CANNON. Now the scheduled airlines will argue that with the ABC program established in this bill, which permits up to 25 percent of the seats to be sold to the public, up to the date of the charter departure, would result in a large number of passengers diverted from scheduled service to ABC's because of the sales and promotional efforts of the tour operators.

Do you believe that is a valid concern and a threat to the economic viability of the scheduled system?

Mr. BARNUM. I believe it is a valid concern and certainly it is an element of the ABC that should be watched. I do not today, on what we know today, believe it is going to threaten their scheduled services.

Senator CANNON. Do you think that that figure is one that should be experimented with or that we ought to look toward a lesser figure, lower than the 25 percent, or some other type of restrictions on the sale?

Mr. BARNUM. I am afraid we really don't yet know enough about that figure to be able to say finally that is the exact figure. I understand there is also some concern the Board has about that, and I do think that is the very kind of element of the package that you have to watch, we have to watch, and the Board has to watch.

Senator CANNON. The Board's concern seemed to be that this would get into the individually ticketed area which we are trying to keep clear from the charter type operation.

Mr. BARNUM. I understand. Our initial reaction to your proposal is that its a good place to start out.

Senator CANNON. In your statement, in discussing ITC's, you say that DOT favors an approach which "... does not restrict volume

by narrowing the number of city pairs which have access to such service."

However, later on you say, "... The CAB should continue to have regulatory authority to restrict ITC travel;" and you go on further to say "... The CAB should institute an immediate relaxation of ITC rules in select markets where the risk of impairing scheduled service was minimal to measure the impact and benefit consumers:".

Now, it seems to me that those statements are somewhat contradictory. I am wondering if you support a limited or a restricted ITC program?

Mr. BARNUM. I think we support the one that is in the package. What we have in mind there is the thought we offered 2 years ago with respect to S. 1739, that when you start out in some of the off-route services, it ought to be done in some of the high-tourist-attraction markets.

Senator CANNON. Well, if you support a limited ITC package restricted to an experimental program, why is it that you support a virtually nonrestricted ABC program?

Mr. BARNUM. Of course there are some restrictions on the ABC. There is the 30-day element that is not present in the ITC. We do also, with respect to the ITC, support—

Senator CANNON. But there is no market restriction in the ABC program.

Mr. BARNUM. I understand.

Senator CANNON. Do you feel that the advanced purchase would be adequate to protect that area?

Mr. BARNUM. It is enough to distinguish it from the ITC's. You could, of course, merge the two by eliminating the elements—the limitations—that appear in both, but I think it is perfectly appropriate to experiment with two different types of charter services, ABC and ITC.

Senator CANNON. You noted that section 3 of the bill would permit interlocking relationships between air carriers and tour operators.

Are you concerned about the possibility that such control relationships would create vertical integration in the travel industry and lead to anticompetitive practices?

Mr. BARNUM. I am quite aware that it could, but I think so long as the Board has authority in this area and the Board is aware of the problem, that the Board could properly limit that effect.

Senator CANNON. Do you know what position the Justice Department has taken on this particular item?

Mr. BARNUM. I am not aware they have taken any position, Mr. Chairman.

Senator CANNON. Incidentally, I may ask you on this and I know this is a little out of your ballpark, but the Justice Department has taken the position that the antitrust exemption granted in the act should not be renewed.

Does the Department have a position on that?

Mr. BARNUM. Yes.

We are aware of their interest in having a great deal of the antitrust immunity authority presently vested in the Board removed. This has been a subject of discussion between the Department of

Transportation and the Department of Justice, and it will be a continuing subject of discussion as the administration formulates its proposals for air carrier regulation in general.

Senator CANNON. You don't have a position on that at the present time?

Mr. BARNUM. We do. And I am quite aware that the Department of Justice also has certain views, and I am sure before the administration submits its total proposal to the Congress, that we will have found a happy hunting ground in between.

Senator CANNON. I see.

In other words, you have views on it now, but you would rather not express them at this time?

Mr. BARNUM. If that is agreeable to the Chair.

Senator CANNON. How soon do you expect to have your proposal up here?

Mr. BARNUM. I would anticipate within a month, Mr. Chairman.

Senator CANNON. Well, thank you very much.

We appreciate your appearance here. You have been very helpful to the committee.

[The statement follows:]

STATEMENT OF JOHN W. BARNUM, ACTING SECRETARY
OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee, thank you for your invitation to present the views of the Department of Transportation on S. 421, "The Low-Cost Air Transportation Act".

S. 421 has been introduced at an extremely important time. For the past several months, the Administration has been reviewing Civil Aeronautics Board regulation of air transportation with a view to improving both industry performance and economic efficiency. Legislation is presently being prepared for submission to Congress in the near future. The reform proposals will mandate a major departure from the format of past regulation. The objective is to make available more low-cost transportation to more passengers with far less government interference in regulation. The proposals would require the CAB, in its regulation of air transportation, to place greater reliance on competitive principles. Parts of S. 421 share these objectives and are a sound and useful approach to some of the issues that are the subject of our present S. 421 would accomplish five main objectives: (1) it adds to the Federal Aviation Act of 1958 a definition of "advance booking charter trips" (ABC) which would substantially liberalize existing Civil Aeronautics Board regulations covering present travel group charters; (2) it adds to the Act a definition of "inclusive tour charter trips" (ITC) which effectively liberalizes existing CAB regulations for ITC's, and it removes the prohibition against supplemental air carriers' selling tickets indirectly to the public through control of those authorized by the CAB to make such sales; (3) it forbids the CAB to prevent affinity group charters until otherwise directed by Congress and it restricts any CAB modification of existing affinity regulations to rules which do not materially diminish availability of affinity flights; (4) it requires the CAB to issue regulations covering air travel clubs and to define operations in air commerce; and (5) it permits air carriers to grant reduced rates to the handicapped and to families and, on a space-available basis, to those 65 or over and 21 or under, and it permits rail carriers to grant fare reductions to handicapped persons and to those 65 or over and 21 or under.

The Department of Transportation has long supported broadening travel options for consumers. In our comments on previous legislation and in our filings before the CAB, we have urged that an experimental charter program be undertaken to determine the market for such charters and to evaluate their impact on scheduled service. We have urged the CAB to regulate charter service less restrictively. We have supported the maintenance of affinity

charters and other cost-based forms of service to make air travel available to the widest range of consumer needs and income.

Group transportation is a sound method of reducing the cost of air travel which benefits consumers. It also results in more efficient use of aviation jet fuel. In terms of our Nation's energy and inflation problems, group travel is a valuable supplement to scheduled air service.

Because it would expand air travel markets and expand service alternatives available to air passengers, we favor some of the general objectives of S. 421. We look forward to supporting the charter features of the measure completely if they are modified along lines that I will describe. On the other hand, we must oppose the approach taken for reduced fare travel for special groups, for reasons I will also describe.

Section 3(a) of the bill adds the definition of "advance booking charter trips" to the Federal Aviation Act. Subject to certain restrictions, such charter flights would offer low cost travel to a given destination for those who purchase tickets at least a month prior to departure. By limiting the degree of CAB regulations of ABC's, the bill effectively liberalizes existing CAB regulations. For example, where present travel group charter—TGC—rules require that tickets be purchased a minimum of 60 days prior to departure, the bill would prohibit the CAB from requiring that tickets be purchased any more than 30 days before flight. Whereas TGC rules now permit substitution up to flight time of only 15% of seats contracted for, the ABC provision would authorize the sale of up to 25% of the seats at any time prior to departure. Whereas present rules require that the trip cost be pro-rated among passengers, the bill would permit the charter organizer to assume the commercial risk involved and to proceed with the flight without shifts in ticket price, regardless of last minute cancellations. Whereas present rules require a minimum stay of seven days for North American trips and ten days for all others, the bill would reduce the minimum stay to three days for trips within the "Western-Hemisphere" and seven days for all others. Each of these changes will broaden the number of consumers able and likely to participate.

It should be noted that, since the CAB in September 1972 first instituted travel group charters, restrictions on such flights have been liberalized. While the CAB has shown some willingness to experiment in this area, we submit that this Subcommittee's view, expressed in its report to the 93d Congress, remains accurate: "Some of the present provisions of the regulations are unduly restrictive, and it appears that, in their present form, TGC's are incapable of providing an effective and meaningful alternative to affinity charters". (Sen. Rep. 93-387, at p. 8) While changes in those regulations have been made, it is our view that even greater liberalization is warranted.

Because the impact of widely-used ABC's on scheduled service has never been fully evaluated, ABC's should be watched closely. The CAB, as well as the Subcommittee and the Department of Transportation, should evaluate ABC data and report on the results with recommendations for modification, if necessary.

In short, although we believe that the distinction between scheduled and charter service is an important one which should be maintained, we agree that present CAB restrictions inhibit development of the advance booking concept. The ABC proposed in S. 421 would provide a better test to use in properly evaluating the advance booking concept. The concept deserves to be tested. For these reasons, we support enactment of section 3(a) of the bill.

ITC's have been authorized by the CAB since 1966. They are charter flights combining air transportation with land package tours marketed to the public by tour operators. Here especially, as with travel group charters, restrictive CAB regulations appear to have prevented the program from achieving its promise.

In previous testimony before this Subcommittee, we have criticized as being too restrictive CAB regulations requiring three-stops, a minimum stay requirement, and a pricing requirement based on applicable scheduled air fares. ITC's are far more successful in Europe and the United Kingdom than in the U.S. We believe that their more liberal rules for ITC's are largely responsible for this. Were the restrictions imposed by the CAB changed, such service should grow here in a way which would benefit vacation travelers without jeopardizing scheduled service. The CAB's own finding with respect to scheduled traffic to Hawaii supports this view, as your Subcommittee's 1973 report observed (at p. 5).

Section 3(b) of the bill defines inclusive tour charter trips in a way that eliminates the existing three stop requirement for ITC's and permits one-stop flights. Whereas present regulations require a minimum price not less than 110% of any fare charged by a scheduled carrier, the bill provides for a price which is not less than the "just and reasonable" charter air fare plus a compensatory charge for land arrangements. ITC prices should reflect actual cost, rather than a prescribed relationship to scheduled fares. The ITC definition in the bill does not require advanced booking, minimum stays or minimum ground charges. Under the bill, however the CAB would be permitted to establish regulations to insure that ITC's "do not impair scheduled services", and the CAB would thus be free to impose these or other rules "not inconsistent" with the bill.

DOT has consistently supported relaxation of present ITC restrictions. On October 30, 1974, the CAB issued a notice of proposed rulemaking which is presently pending and which, if adopted, would authorize one-stop inclusive tour charters (OTC), subject to various restrictions. In our filing on December 20, 1974, we took the position that the proposed CAB restrictions for OTC's, like earlier CAB restrictions on ITC's, would inhibit their full development. We encouraged Board experimentation, favored elimination of the requirement that fares be set at 110% of applicable scheduled fares, and suggested a less expensive ground package minimum stay from ten to seven days internationally and from seven to three days domestically. We did not object to 30 days advance booking and payment for OTC's, but we believe that it warrants further study.

Basically, DOT favors a flexible approach which (a) does not unnecessarily limit OTC use either through minimum stay requirement or minimum price requirements that exclude interested travelers (b) does not make the air fare portion of OTC's more expensive than comparable affinity charters which closely relate price to the cost of service, and (c) does not restrict volume by narrowing the number of city-pairs which have access to such service.

In our 1973 testimony on ITC's, we suggested that a cautious approach to liberalizing ITC restrictions was best. We argued that because of uncertainty over possible impact on scheduled service, a sudden termination of existing restrictions was not desirable. We proposed an affirmative action program to liberalize inclusive tour charter travel along six guidelines. Those guidelines were: (1) Congress should endorse the ITC concept "as free from regulatory restrictions as is consistent with the maintenance of an essential scheduled transportation system"; (2) the CAB should continue to have regulatory authority to restrict ITC travel; (3) the CAB should permit ITC travel to grow so long as damage to the essential level of scheduled operations is not threatened (4) the Board should be encouraged to act promptly; (5) the CAB should institute an immediate relaxation of ITC rules in select markets where the risk of impairing scheduled service is minimal to measure the impact and benefit consumers; and, (6) the CAB should consider immediate across-the-board easing of such ITC restrictions as the three-stop and 110% of lowest scheduled fare restrictions, and the CAB should monitor the results of such liberalization.

We still believe such caution is appropriate. Because the ITC definition in the bill permits the Board to limit the geographical area or markets where ITC's may operate and because it permits the CAB to regulate ITC's "in order to assume that such charter trips do not impair essential scheduled services", we believe that it is responsive to the six-points we outlined two years ago. It implements our view that the best initial approach is carefully controlled and sensitive to the importance of maintaining scheduled service. For these reasons, we support the approach taken in section 3(b).

Section 3(c) would change the definition of supplemental air transportation to include ABC trips. It would also permit a supplemental carrier to control or be under the common control of a person authorized by the Board to sell individual tickets directly to the general public, provided that the control has been approved by the Board pursuant to Section 408 and 409 of the Act. Because Sections 408 and 409 require that such control be in the public interest and Board approval is required, we support the change in definition, as we did in the 93d Congress.

Section 4 of the bill forbids the CAB from abandoning affinity group charters unless otherwise directed by Congress and it restricts any CAB modification of existing rules to those which do not diminish availability of affinity charters.

Affinity group charters are those which enable members of organizations, groups or clubs organized for a non-travel purpose to take low-cost group trips. Eighty percent of traffic carried by the supplemental carriers is now carried on affinity charters.

On October 30, 1974, the CAB issued a notice of proposed rulemaking which, if adopted, would prohibit sale of all "prior affinity" charter flights after March 31, 1975 and terminate operations after December 31, 1975. The Board has since extended the proposed termination date for sale of affinity charters at least through 1975. DOT has opposed discontinuance.

We agree with the CAB that present affinity charter rules should not remain the primary regulatory regime. That is one reason we have supported development of alternatives such as one-stop inclusive tours and advance booking charters. But it is clear for reasons of cost and convenience that the alternatives presently in service and those foreseeable will not meet the needs of the traveling public sufficiently to replace affinity charters. Until effective substitutes are developed, elimination of affinity charters would sharply limit charter services, harm the traveling public, and cause serious financial problems for U.S. supplemental and scheduled carriers.

In his comments accompanying introduction of S. 421, Senator Cannon indicated his expectation that the advance booking charter might well replace affinity charters after an 18-24 month period. We believe affinity charters should be permitted to operate until it is clear that the proposed replacements meet the test of the market place and satisfy the public demand for convenient, low cost charter travel which is presently met by affinities. The proposed ABC, for example, has advance purchase restrictions and, because of the way it is likely to be marketed, will be more costly and less convenient than affinity charters. It is not likely to prove a full substitute. We suggest that the CAB study the question of how quickly affinity charters now fill their seats and to what extent there are substitutions within the 30 days prior to departure so that we are better able to judge the effectiveness of the ABC alternative. Public comments on the proposed abandonment of the affinity charters make clear that consumers do not now regard presently available alternatives as adequate substitutes.

The European Civil Aviation Conference (ECAC), whose members have made extensive and successful use of ABC's, has urged the United States Government to phase out the affinity charter rule. Several European countries have effectively modified our affinity program by requiring our carriers to file a complete passenger roster 30 days before landing, thereby converting affinity charters into ones with advance booking characteristics. ECAC has taken the position that ABC's are preferable to affinity charters.

DOT supports the continuation of affinity charters until such time as adequate alternatives are proven. We also believe, however, that the determination as to when affinities should be eliminated should be made more appropriately by the CAB than Congress. With that modification, we support the goal of section 4 of the bill.

Section 5 of the bill requires the CAB to issue regulations within 90 days defining in specific terms the full scope of the activities in "air commerce" which are permitted to be engaged in by air travel clubs and commercial operators not authorized to engage in "air transportation" within the meaning of the Federal Aviation Act.

Activities in "air commerce", as distinguished from those in "air transportation", are not now regulated by the CAB. While there may be reasons to regulate air travel clubs, and while there may be value in defining the scope of activities falling within "air transportation", the bill as drafted would expand CAB authority. It would enable it to define the scope of activity for *intrastate* carriers who operate pursuant to certificates of public convenience and necessity issued by state regulatory agencies. Moreover, there are other carriers engaged in operations in "air commerce" which are not regulated by the CAB. We do not believe the Board should be directly authorized to define the scope of their operations. We oppose such an expansion of authority. Air travel clubs and intrastate air operators are subject to FAA safety requirements. Such safety regulation should be the principal if not the only federal role.

Section 6 of the bill would amend the Federal Aviation Act and the Interstate Commerce Act. It would permit air carriers to grant reduced rates to the handicapped and families and, on a space available basis, to those 65 or over and 21 or under. It would permit rail carriers to grant fare reductions to handicapped persons and to those 65 or over and 21 or under.

The Department is strongly opposed to the enactment of these provisions. While we sympathize with their objectives, in our judgment the provisions are not economical, are unfairly discriminatory, and are inferior to alternatives which would better accomplish the same goals.

The Department understands the concern of those who support such provisions. We are committed to improving transportation for elderly and handicapped persons. We have undertaken extensive efforts to insure that there are adequate transportation facilities for the 13,400,000 handicapped persons in the U.S.—over 6% of the population according to the 1970 census.

In July 1974, for example, the Federal Aviation Administration published a notice of proposed rulemaking to increase access of handicapped persons to air transportation where carriers presently have discretion to refuse access, partly for safety reasons. In the case of handicapped persons, factors other than fares, such as physical design and service characteristics, are often more significant barriers to most forms of public transportation. DOT has worked to improve terminal accommodations, as well as accommodations for enplaning, enroute comfort, and deplaning for these passengers. The FAA has issued guidance material for the use of architects and engineers in the design of terminal buildings to adapt airport design to the needs of the handicapped. Similar efforts have been undertaken with respect to other transportation modes where physical facilities present even greater problems.

Because many obstacles faced by handicapped and elderly persons involve daily travel to acquire basic needs such as food, clothing and medical services, our efforts have focused primarily, but not exclusively, on public transportation in local and urban areas of immediate, frequent use. The Urban Mass Transportation Administration, for example, has tested various new vehicles and facilities designed to increase accessibility to public transportation for elderly handicapped persons.

Our view is that, rather than grant special fare treatment to selected groups, all members of the traveling public should receive the benefit of reduced fares which are cost-related. DOT has proposed, for example, making available reduced fares on a space-available basis, or during off-peak hours, or on lightly traveled days of the week. There would not be any special preferences for given groups. In this way, those 21 and under or 65 and over, will have improved access to reduced fares in a non-discriminatory way simply by adjusting the timing of their travel plans to outside peak periods.

Section 6 of S. 421 takes a different approach. What would be its likely impact? The groups identified amount to well over half the population. According to the 1970 census, there are some 20,000,000, or almost 10% of the population, over 65. There are approximately 80,500,000 people under 21, about 39% of the population. 185,500,000 people live together as families, about 90% of the population. While not all of the people in these groups are likely to be air or rail travelers, under section 6 all would be eligible for reduced fares, while those outside the groups would not.

The result would be a cross subsidy from those who pay full fares to those who do not. Air fares have already risen approximately 19% in the past year. Were section 6 enacted, full-fare passengers could expect to pay significantly higher rates to support the below-cost travel of the select groups. To the extent these full-fare passengers include persons who have the same, if not more compelling, financial needs for low cost travel, this would be unfair and inequitable. Some full-fare passengers will be prevented from using air transportation.

If the fares of normal passengers do not increase, the carriers will be forced either to accept a less than reasonable return on investment or to reduce service. In recent months we have seen evidence of the financial difficulties of some air and rail carriers. Moreover, Amtrak, which would lose considerable revenue as the result of such a proposal, already operates at an enormous deficit—estimated at \$350 million in 1976 for operating losses alone. Enactment of section 6 would almost surely result in still larger subsidies or reduced service. Adopting the proposal might also mean higher regular rail passenger fares, thereby jeopardizing our efforts, for energy reasons, to make rail transportation an attractive and competitive alternative to the automobile. None of these prospects is desirable.

The CAB's Domestic Passenger Fare Investigation (DPFI) found that the discount fares then in effect purchased essentially the same service as those provided full-fare passengers. It found that there were not any inherent cost savings which would justify the fare differences.

The bill would permit reduced fares on a standby basis for those 65 or over and 21 or under. DOT does not object to standby fares if they are available to all travelers.

There are several problems, however, with standby fares. First, a standby fare for elderly persons is likely to prove inconvenient for those who find flights filled and are required to wait for hours or perhaps overnight for an available flight. A standby proposal for elderly persons may well discomfort and adversely affect the very group the legislation is trying to assist. Second, although passenger inconvenience is less a problem with youth standbys, the DPFI record shows that carriers experienced many complaints when youth standby fares were in effect. Often, standby travelers cause as much expense as a reservation passenger as the result of repeated calls to determine whether a flight is available. Evidence in the discount fare proceeding suggests that standby passengers sometimes make one or more reservation in another name to improve the chances of obtaining a seat on a given flight. These concerns led several airlines to eliminate their youth standby fares and offer youth reservation fares.

Because the standby fare proposal in section 6 is unfairly restrictive, because lower costs have not been identified for standby travel, and because an off-peak pricing plan would make available reduced service in a non-discriminatory way to these same groups, we oppose the standby provision of section 6.

Finally, non-standby reduced fares for families and handicapped persons in air travel and for the elderly, youth and the handicapped in rail transportation are economically inefficient. There are better ways to achieve the same goal. An off-peak pricing system passes on to the off-peak passenger the savings a carrier obtains through better utilization of equipment and facilities. It spreads traffic more evenly over trips and thereby is likely to improve average load factors and, ultimately, save fuel. A fare structure based on different fare levels reflecting cost is already in operation with night coach fares in some markets.

The ABC and ITC proposals contained in section 3 of the bill, combined with a cost-related, off-peak pricing system, will effectively make available low cost alternatives to the elderly, youth, families and the handicapped. Use of these proposals is best calculated to achieve the ends the legislation seeks in an economical and fair way. We suggest that the use of rates based on cost rather than age or status and available to all members of the general public can better accommodate the needs of those singled out for preference by section 6.

The broadened use of charter flights made possible by this bill, together with the air regulatory reform proposals soon to be submitted by the Administration, should offer the American air passenger the prospect of more and better travel options for different price, quality and type of service than ever available before. Lower costs made possible by these changes will make available lower fares. And the airlines will also benefit through less unused capacity and more efficient and economical use of their resources.

Senator CANNON. The Committee will stand in recess until 2 o'clock this afternoon.

AFTERNOON SESSION

Senator CANNON. The hearing will come to order.

Our next witness is Mr. Paul Ignatius, president of the Air Transport Association of America.

STATEMENT OF PAUL IGNATIUS, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY NORMAN J. PHILION, SENIOR VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS; GABRIEL PHILLIPS, VICE PRESIDENT, INTERNATIONAL SERVICES; AND JAMES E. LANDRY, GENERAL COUNSEL

Mr. IGNATIUS. Thank you, Mr. Chairman. I have a statement which I would propose to read. I would like to call the Chair's attention to the second page of appendix A to my statement, where

the figure 90 days appears twice. That should be 60 days, and it should be corrected.

Mr. Chairman, I would like first, if I may, to introduce the people with me. On my right is Mr. Gabriel Phillips, vice president of International Services; on my left is Norman Philion, and to his left Mr. James Landry, our general counsel.

This opportunity to discuss questions relating to the cost of air transportation, and to offer comments on S. 421, is greatly appreciated. While holding views on the bill which may differ from those of its sponsors, the scheduled airlines are in complete agreement with the views expressed by Chairman Cannon when introducing S. 421 on January 27, with regard to the serious effects of inflation and recession, the heavy impact of increasing fuel costs, and the need to assure provision of air transportation at the lowest possible cost.

By way of summarizing our position, let me say at the outset that, after the most careful consideration, we have reached three basic conclusions on the need for and scope of S. 421.

First, while we agree with some of the objectives of the bill, we do not believe the proposed legislation is necessary for their achievement. In our view, the CAB possesses the necessary authority to carry out the basic aims of S. 421.

This view is supported by the several steps taken by the CAB in recent months to shape new charter rules and to make discount fares available to the public.

Our second conclusion is that the proposed scope of the legislation is not desirable because it would substitute detailed rulemaking for the traditional role of Congress in establishing policy and in setting policy guidelines.

Finally, if the committee nevertheless concludes as a result of these deliberations that some new legislative direction is necessary, we believe a policy-guideline approach should be undertaken with the following basic principles included: (1) Low-cost mass transportation concepts should be encouraged on both scheduled and nonscheduled services; (2) development of charter types must be consistent with sound economics and the need to maintain an adequate, viable scheduled air transport system; (3) the fundamental distinction between individually ticketed and charter services must be maintained through recognition of the charterer as the person with whom the air carrier deals on charter contracts; (4) there must be parallel regulation of scheduled and charter fares and rates to assure cost justified levels for all services; and (5) regulation must preclude uneconomic or discriminatory ratemaking adversely affecting the public and the air carriers, or penalizing air carriers in the application of ratemaking standards.

We hope that Congress would view its role here not unlike that of a board of directors of a large corporation which establishes basic policies and objectives, but leaves their achievement and the related operational and administrative details to management, subject to periodic review.

We believe such an approach is consistent with the intent of the Federal Aviation Act, would help assure meeting the public need, and would provide greater flexibility in the attainment of sound air transport regulation.

Before commenting on why we believe S. 421 should not be adopted, I would like to express our full agreement with the other remarks you made on January 27, when you stated that:

If we are to maintain a healthy air transport system, if we are to make air transportation available to the consuming public, if we are to protect our \$60 billion tourism industry in the United States, then we must take action to make sure that low-cost air transportation continues to be available.

Our objectives are essentially the same: To find ways of providing air transportation serving the needs of the greatest number of people at the lowest possible cost consistent with the economic well-being of the airline industry.

Our dilemma today is how to do this in the face of the dramatic rise in such basic operating costs as the price of jet fuel.

During the past year, the cost of a gallon of jet fuel doubled for domestic air carriers and tripled for the international carriers. While we carried 6 million more passengers in 1974 than a year ago, and used about 1 billion fewer gallons of fuel in doing so, our annual fuel bill increased about \$1 billion. But fuel-related fare increases for domestic operations alone still fell \$300 million short of recovering the higher fuel prices.

Moreover, the administration's proposed energy program could add another \$1 billion in airline fuel costs on an annual basis. Cost increases of this magnitude obviously would have a seriously depressing effect on both the airlines and the air transportation market.

We share the concern you expressed last month when you said:

I am not sure that the air transport industry can absorb any additional costs for aviation fuel or, in turn, pass these costs on to the consuming public in the form of increased fares and rates without seriously damaging our air transportation system and related tourism operations.

Last week I was invited by the Senate Interior Committee to discuss the impact of the administration's energy proposals on the airline industry. I pointed out the devastating effect that fuel-import fees and excise taxes, and decontrol of the price of domestic crude oil would have on the air transport system, with or without additional offsetting fare increases.

I expressed the hope that the Congress and the administration, working together, would establish needed energy conservation programs without adding to the Nation's economic problems, or without hindering the ability of the airline industry to provide the kind of service that the Nation needs.

The single greatest influence on the cost of air transportation today is the price of fuel. It is a matter over which we have little or no control, except to the extent that consumption can be reduced without adversely affecting service. Fuel cost increases have resulted in higher fares and rates for both scheduled and charter services.

If I might at this point, I would like permission to insert in the record appendix B that we have developed since first delivering our statement to the committee.

Appendix B lists a number of actions that the airlines have taken and some chart materials, statistical material on airline costs, and fares over a period of time.

We believe that over the years an effort has been made by the scheduled airlines to provide transportation to broad segments of the public at the lowest cost.

For example, one of the charts shows that in constant dollars since 1938, air fares are 64 percent less than they were in 1938.

Another chart compares air fares with the cost of some other things. We compare, for example, a fare from New York to San Francisco, which during the period 1948 to 1974, rose 21 percent, but in that same period, we show how the costs of many commodities have risen to a far greater extent—a pound of round steak, 100 percent, compared to the 21 percent, a Chevrolet automobile increased over 220 percent, the New York Times over 400 percent.

Our point here is that costs have gone up throughout the economy, and to the extent that these comparisons are valid, and we believe by analogy they are, the cost of air transportation has not gone up as much.

Another chart shows that in comparison to other common carriers, for example, air fares have not risen as much as the fares for either bus or rail fares.

With your permission, we would like to include this material as part of the record.

Senator CANNON. It will be made a part of the record.

Mr. IGNATIUS. Thank you, Mr. Chairman.

Nevertheless, the public continues to benefit from the availability of a wide choice of discount fares depending upon the time of day or week traveled, length of stay, and class of service desired.

For the 12 months ending September 1974, the latest period for which such information is available, use of lower than full fares accounted for almost 33 percent of all coach revenue passenger miles. This level will probably be lower when fourth quarter data are released, but is expected to rise when the effect of the recently approved broad-based discount fare is felt.

In this connection, it might be noted that very few other businesses have come forward with major product line price reductions as high as 25 percent to help ameliorate current economic circumstances, as the airlines are now doing.

Again, if I may, Mr. Chairman, I have another exhibit which I request be made a part of the record, which contains examples of discount fares available to individuals and small groups in scheduled air services today.

I will not read all of this, but it includes coach fares, night coach fares, representing over a 20-percent discount, that are offered by eight airlines; excursion, Bicentennial, and other fares of that kind with discounts of 20 to 25 percent that are offered by at least 10 airlines; individual inclusive tour fares with discounts of 20 to 25 percent offered by 17 airlines; nonaffinity group tour fares, providing discounts of 20 to 30 percent, that are offered by almost all airlines; and other examples of fares of this kind.

Senator CANNON. It will be made a part of the committee files.

Mr. IGNATIUS. Thank you, sir.

The economic situation, of course, is the key problem today for the Government and for airline management. As a result of the

efforts now going forward by the administration and the Congress, we are confident that the air transport industry will be able to cope with rapidly changing economic conditions, and will be able to continue providing regular, reliable, reasonably priced air service to communities throughout our Nation, large and small, as well as throughout the world.

Mr. Chairman, I attached to my statement a detailed analysis of provisions of the bill which we can review with you later.

We can summarize it briefly, however. It raises the question as to whether legislation of this type and scope is required or whether it represents the most effective possible course of legislative action.

It concludes that enactment of S. 421 will cause a number of problems.

We have two concerns about these problems. The first is that the provisions of the bill are much too detailed, having the effect of placing Congress in the role of rulemaker. We question the need for an act of Congress which would legislate, for example, such detailed particulars as the minimum or maximum duration of a trip for an individual charter passenger.

Once embarked on this role, Congress will be pressed both now and in the future to consider other details advocated by other proponents seeking either to further restrict or ease the rules by legislation, or by those seeking similar rights and privileges.

We respectfully suggest that most of the regulatory details appearing in S. 421 are matters more properly within the purview of the CAB, which has the congressionally mandated responsibility for prescribing rules and regulations applicable to air commerce.

We appreciate that dissatisfaction with the regulatory process is frequently expressed in support of detailed, regulatory-type legislation. Nevertheless, we believe that changing conditions require maximum regulatory flexibility within the bounds of policies established by Congress.

We also believe that once such policies are established, Congress has the right to expect full compliance and, through the exercise of its broad review and oversight responsibilities, has the necessary means to assure such compliance.

Our second concern is that S. 421, if enacted in the form now suggested, would cause several far-reaching changes to the air transport system, the real consequences of which no one now can predict with any degree of certainty.

There is understandable apprehension about changes likely to occur as a result of the sweeping authority that would be legislated by section 3 of the bill. Some of the most seasoned executives in the airline industry have grave doubts about what would happen to scheduled services if this provision is adopted.

Quite frankly, we believe that enactment of section 3, among other provisions of S. 421, would leave little judgment to the CAB, notwithstanding its responsibility for the development and maintenance of a sound air transportation system.

Under this provision, the CAB would be required to permit almost unlimited entry, by any number of carriers, over any of many routes, without necessarily assessing or balancing costs versus benefits and need versus potentially harmful effect.

I believe this is true, particularly with respect to the ABC section of the bill, although in the ITC, there are two safeguards mentioned that are designed to avoid that.

Senator CANNON. Of course, I am sure you are aware that the Justice Department's position would impact on that very same proposition are you not?

Mr. IGNATIUS. I am not aware of what you are referring to.

Senator CANNON. I am referring to their proposed deregulation.

Mr. IGNATIUS. Yes. We have testified before Senator Kennedy's committee several days ago with regard to that, and we expect there will be a continuing discussion.

This is one of the aspects of the proposals that concerns us.

Senator CANNON. In other words, if their proposals were carried out, you believe that you would have exactly the same result as that which you are complaining of right here?

Mr. IGNATIUS. You might very well. That is a matter of some concern to our carriers because if you have free entry on the one hand, you presumably have free exit on the other hand, and maintaining a comprehensive network of scheduled dependable air transportation is a matter that we are concerned about.

To continue: The health and future of our air transport system is a major question and concern of the Government today, on which the Congress itself continues to address in several ways. Some of the crucial decisions which ultimately may have to be reached in this regard could be affected unintentionally or inadvertently by enactment of S. 421.

Before concluding, I would like to refer briefly to sections 5 and 6 of the bill. We believe section 5 is a good example of the kind of policy guideline we have in mind in suggesting a possible alternative legislative approach to S. 421. It directs the issuance of appropriate regulations rather than specifying what those regulations should be.

For reasons set forth in the attachment, however, we would recommend the deletion of the term "in air commerce" from the beginning of section 5, and its insertion instead in subsection (2).

Left as written, the perhaps unintended, but undesirable result would be that air travel clubs would become common carriers.

With respect to section 6, we believe the question of reduced-rate transportation authority, as opposed to discount, or promotional fare authority, may require clarification.

Here again, however, we believe a broad policy guideline would be far more preferable than the detailed provision proposed. As explained in our attached analysis, we think it would be both inequitable and inappropriate to isolate and designate by law certain specific groups as being either in need of, or uniquely qualified for special rate privileges. Such an approach condones discrimination, ignores other special interests who may claim equal need or qualification, and invites continuing pressure for further legislative relief.

Senator CANNON. I think you were here when Mr. Barnum testified and I take it you are in agreement with his position on that issue.

Mr. IGNATIUS. Substantially the same; yes, sir. Also, I believe the representative from ACAP commented along that line. I think as a

general proposition, we have the view that there ought to be fares available to all members of the traveling public that are as low as we can possibly make them, and the concern we have, sir, about singling out particular groups—and obviously these are meritorious groups that are singled out—is that there are other groups not included.

Once started in that direction, we have the concern that ultimately more and more groups would be added, so that we take the position essentially that we should try to have a fare for everyone and make it as low as we can.

Senator CANNON. I was impressed by Mr. Barnum's presentation on that point, suggesting that the airlines take advantage of offpeak hours or offpeak days or nights in order to offer the reduced fares to all of the traveling public.

Mr. IGNATIUS. I was impressed with that, also, I think most of our carriers, were they here testifying, would agree: In fact, those who have proposed in recent weeks broad-based discount fares—and I am talking in the range of 20 to 25 percent, which are essentially at offpeak times.

That is a way to do this so that you can fill up airplanes, stimulate demand, and do it at the same time that you are not making it more difficult for people who have to get on airplanes, particularly at busy times, to get a seat.

So, there is much merit in that. I think there is some interest, perhaps, on the part of one or two of our carriers with regard to youth fares. They had some competitive problems, I think, particularly with regard to the Canadians last summer.

As a general proposition, we believe that a broad-based fare, as low as it can be, available to everyone, is something that we should feature. I might say, if I may, just in passing, that I was a little bit surprised that there was testimony this morning that perhaps the scheduled airlines shouldn't offer fares that were this low. It seems to me you are either for low fares or you aren't. You shouldn't single out a particular fare that the scheduled airlines are offering, or a particular effort the scheduled airlines are making to have low fares available and say, "Well, we don't want that kind of low fare, we just want other kinds of low fares."

In any event, whatever legislative course is followed must be accompanied by related legislative amendments to make certain that the air carriers will not be adversely affected or penalized through the application of ratemaking standards which adjust load factors, yield and rate return to reflect the revenue dilution effects of reduced-rate transportation on a space available basis.

In conclusion, Mr. Chairman, the regulatory process of prescribing rules and regulations under appropriate policy guidelines is a workable, meaningful process authorized by the Congress to give due process consideration to all of the public interest and economic factors involved in a particular issue.

Since Congress last considered legislation of this kind, the CAB has undertaken a wide range of charter and discount fare regulatory proceedings with full public participation, and without any new legislative authority.

As was fully intended by the regulatory process, these developments have caused the many interested parties to review their positions, to offer suggestions and proposals, and to participate actively in the procedures established to assure regulation in the overall public interest.

Although differences of view still exist, as they should and always will, the process designed by Congress for the development of meaningful regulation and the evolution of new ideas is constantly at work.

Recently, the CAB considered the affinity charter question and ultimately decided to continue the concept. This issue was dealt with wholly within the existing regulatory framework, without any additional legislative authority, and took into account the views of interested parties.

Since the affinity question appears to have been one of the major reasons advanced in support of S. 421, its resolution through the regulatory process suggests that the matter no longer requires immediate congressional attention.

Nevertheless, if the committee decides to pursue new legislative directives, we would respectfully urge your consideration of the implications and probable effects of legislating detailed and complex rulemaking on the one hand, as against setting policy guidelines which would permit the CAB to carry out the intent of Congress through the carefully designed regulatory process.

In conclusion, we believe that legislation of the type and scope of S. 421 is, in most major respects, not required. We also believe that the CAB has sufficient authority to continue the development of meaningful, productive charter rules, as well as adequate authority for approving discount, or promotional fares which are not unjustly discriminatory.

Some further policy guidelines may be useful, however, to clarify the congressionally intended application of the "unjust discrimination" standard to reduced-rate transportation.

I want to thank the Committee for giving us the opportunity to express the views of the scheduled airlines. We will be pleased to work with the committee and its staff in any way we can to be helpful in seeking a solution to these most important issues.

Senator CANNON. Thank you very much for your statement.

You have taken issue with S. 421 on the grounds that it contains detailed rulemaking type provisions which are better left to the Board after Congress has established the broad policy outline or guidelines.

Quoting from your statement you say, "We also believe that, once such policies are established, Congress has the right to expect full compliance and, through the exercise of its broad review and oversight responsibilities, has the necessary means to assure such compliance."

I am sure you are aware that Congress established the inclusive tour charter concept by legislation in 1968 and I believe you are probably aware of the impact of that program on tourism. I am also certain you are aware of our continuing efforts to prod the Board to adopt more realistic rules on ITC's.

Now, if so, then how can you state that Congress has the means, short of legislation, of seeing to it that regulatory bodies follow congressional policies and intent? We have been prodding the Board over the years just about as much as we could without enacting legislation.

Mr. IGNATIUS. I had the feeling, listening to the chairman this morning, that he expected to be called before this committee if the kind of action that he indicated they were going to take did not in fact occur.

I have always felt that Congress, as representatives of the people, made the laws, and set the policy directions, and then through its oversight responsibility assured that this was carried out.

I think some of these matters that are before us here are matters of considerable controversy. Promoting charter transportation, liberalizing charter rules without impairing scheduled services has been a difficult thing to do and still presents problems. So that I think men of good judgment and wisdom and prudence have differed on the pace at which this might go, and in assessing the problems that might occur.

I suspect that's been part of the difficulty, Mr. Chairman, that's accounted for some of the time involved.

Senator CANNON. Of course, this is the first time in a long time that I can recall when the Board has really evidenced in hearings before this committee some willingness to get off the dime and take some action.

If a broad-scale program of single-stop ITC's and ABC's were begun, would the scheduled airlines ask for a change in the 2-percent rule?

Mr. IGNATIUS. I think that most of the scheduled airlines feel that the present 2-percent rule is satisfactory, although I know at least some of them feel that it should be liberalized.

Senator CANNON. Should be a little higher?

Mr. IGNATIUS. Yes, sir.

Senator CANNON. Would you be interested in seeing us writing this into the bill?

Mr. IGNATIUS. I would like permission to respond to that for the record, if I may, in order to permit me to go into this matter in more detail with our members.

[The following information was subsequently received for the record:]

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., February 27, 1975.

Hon. HOWARD W. CANNON,
Chairman, Aviation Subcommittee, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR Mr. CHAIRMAN: During my testimony concerning S. 421 on February 13, I agreed to submit a further response for the record on two questions which you raised. You asked whether, in the event a broad scale program of OTC and ABC-type charters is initiated the scheduled airlines would be interested in a change in the CAB two per cent off-route charter limitation rule, and whether such a continuing or changed rule should be written into any legislation considered by the Committee.

As we indicated in our testimony, we believe that Congress ought not legislate specific charter rules. Although several of our members believe the

present two per cent rule should not be changed, others feel the current limitation ultimately may require review in the light of other possible charter rule changes. Both groups believe, however, that any such review should be accomplished through the normal regulatory process rather than through legislation. Two of our member carriers hold differing views with respect to the legislative approach and their views have been, or are being presented separately to the Committee.

With respect to advance booking charters, you also asked whether our concern about last minute sales would be ameliorated if the provision of S. 421 permitting up to 25 per cent of the seats to be filled any time before flight departure was modified to make clear that such filling come only from a standby list. Although sensible rules might be in order to deal with emergency or hardship cases, we continue to believe this is a matter better left to the regulatory process under broad legislative policy guidelines. Moreover, we continue to believe that substitutions of such magnitude, at any time before flight time, from whatever source, would be undesirable since they would completely circumvent the purpose of an "advance booking" charter.

I hope these responses will be helpful to the Committee and, as I stated at the hearing, we will be glad to work with you or your staff in any way possible.

Sincerely,

PAUL R. IGNATIUS.

Senator CANNON. You heard Chairman O'Melia's testimony this morning on his suggestions for legislation. What is your view on his proposals?

Mr. IGNATIUS. Mr. Chairman, I haven't had an opportunity to review his proposal with our member airlines. I really can't make a definitive statement about it. My quick reaction is that I thought it was an interesting approach that might well be pursued in further detail and might represent a good start toward dealing with some of these difficult problems.

He did not indicate in fine detail precisely how he would do this, but indicated, as I recall, that he hoped to have something before the committee in a matter of 1 week or 10 days. My concern would be how the Board would propose to provide the safeguards needed to assure adequate scheduled service in the absence of the safeguards that are now present.

We would have a better opportunity to know that once his specific proposals are laid before the committee.

I would think one of the things that would seem to us to be of importance would be the recognition that the charterer is the person with whom the air carrier deals on charter contracts as well as the other considerations that we might have; but we would like the opportunity to review his proposal when he submits them in firmer detail and would be pleased if you wish to communicate what the views of the scheduled air carriers are.

In short, it sounded like an interesting approach.

Senator CANNON. We certainly would be pleased to have your views on the Board's proposals when they are sent here to the Congress. I am hopeful that that will be soon.

Now, as you know, I support legislating charter programs because of the Board's failure to act in the past. Given that position, I wonder if you have specific suggestions as to how this bill could be changed in regard to ITC's or ABC's so as to have the support of your association?

Mr. IGNATIUS. Our preference, as I indicated, would be that if there is legislation it be more broadly stated. We think that it just

works better that way because of this myriad of details surrounding these technical matters. I think there was some testimony to that effect this morning.

I can tell you very quickly some of the concerns that we have on the ABC's, for example, in section 3 of the bill. We think the ABC's as a concept offer some promise. They have been successful in Europe. Our concerns with respect to their definition in the bill would run to the 30-day provision.

As we read that, there could be considerable last-minute sales up to 25 percent of the seats. We think that 25-percent figure is much too high and we think the 30-day provision, which as I read it really means it could be shortly before departure—it says not more than 30 days. It could be shortly before departure.

We think that is something that would need to be looked at, so that we have some concern about—

Senator CANNON. In other words, you are talking about not less than 30 days?

Mr. IGNATIUS. Yes. We would prefer 60, but certainly not less than 30. As it now reads, I believe, sir, it could be almost 1 day or less than 1 day.

Senator CANNON. That was my intent that it be not less than 30. If the language is in reverse, we could certainly take a look at that.

Do you have a point at which you think this top-off issue could be resolved? For example, 10 or 15 percent?

Mr. IGNATIUS. This is percent of seats?

Senator CANNON. Yes.

Mr. IGNATIUS. We think 25 percent is much too high. That's a lot of seats in a large airplane and we would tend to think there shouldn't be any percentage except, I suspect, on a commonsense basis, you probably need something for hardship cases, or last-minute problems.

Senator CANNON. I think you would have to have something.

Mr. IGNATIUS. I would think you would, but I would think the 25-percent figure, in our judgment, is much too high.

We would want to see this figure as low as it possibly could be consistent with some kind of commonsense necessity for a last-minute hardship case.

Senator CANNON. What would be your view of providing that top-off group from a standby list?

Mr. IGNATIUS. Mr. Chairman, I would like with your permission to comment for the record on that.¹ I don't know that we have a view that I can express here today on it. I would like to be specific on it for you.

Senator CANNON. What about the length of stay? Does the industry have a position on that?

Mr. IGNATIUS. We have a general comment.

Again we don't think that ought to be legislated, but rather left to the Board. With regard to the specific length of stay that you talk about here, 3 days in the Western Hemisphere and 7 days in any other location, I would like Mr. Phillips to comment on that.

Mr. PHILLIPS. Mr. Chairman, that length of stay provision has been viewed by most of our carriers as too narrow and too subject to

¹ See Feb. 27, 1975, letter, p. 86.

diversion from regular scheduled service. The issue was addressed in the OTC rule of the Board and the comments by the scheduled airlines were somewhat mixed.

By and large they thought the time was too short.

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

Mr. IGNATIUS. Thank you. We have views on some of the other charters included in the bill. They are part of our statement in the appendix to it. They are available for review.

Thank you, Mr. Chairman.

[The attachments referred to follow:]

ATTACHMENT

ATA COMMENTS ON SPECIFIC PROVISIONS OF S. 421

SECTION 2—FINDINGS AND CONCLUSIONS

The findings and conclusions set forth in section 2 may be unintentionally misleading, and we call it to your attention only because these deliberations should have the widest possible perspective.

We agree that "... promotion, development, and removal of impediments to charter ... services ..." is in the public interest. We question, however, whether that public interest requires either the heavy prominence suggested for "... non-scheduled air carrier services ..." in subsection (4), or that the predominant scheduled service element of our air transport system should be subordinated.

We do not believe this was intended by the drafters of the bill because we are certain it is clear to almost everyone that scheduled service is essential to meet the basic needs of the many millions of users of regular passenger, freight and mail transportation—as well as to meet the needs of many communities, businesses, and those associated with tourism, education, cultural activities, and the professions.

It is also clear that the scheduled air carriers provide, and fully intend to continue providing, charter and other low-cost services beyond the capabilities of the non-scheduled carriers. We see no special need, therefore, for any unusual emphasis on non-scheduled service.

While Section 2 discusses "economies of scale" and takes into account the economics of full capacity, no acknowledgement is given as to how those economics are, or can be, affected by other costs or other fall-out benefits. This consideration is important because there is a tendency to overlook what would happen if operators of non-scheduled services were required to pay, for example, a greater part of the cost of operating the national airport and airways system. Occasional or irregular charter landing charges at current levels would not begin to cover the costs involved—costs now largely financed by scheduled service operations and support. To the extent charter operations become a more substantial portion of the air transport system, they will have to absorb more of these and other "system" costs and will inevitably acquire more of the cost characteristics of the scheduled service system.

It is a fact, unfortunately, that the cost of both scheduled and charter transportation has increased. The cause of this increase, however, has not been charter service "impediments". The real cause is the steeply rising price of jet fuel. And operating costs for the non-scheduled carriers have risen proportionately higher because fuel costs represent a higher proportion of their total operating expenses than those of the scheduled carriers.

Finally, the findings as drafted fundamentally change the present relationship of scheduled and charter services, suggesting that promotion and development of charter transportation would no longer be as a supplement to scheduled services.

SECTION 3—CHARTERS

Subsection (a)—*Advance-booking charter trips (ABC's)*—The bill as drafted provides no protection for scheduled services. For example, the bill

limits advance booking or purchase to no more than 30 days. Nearly all on-demand scheduled service passengers book within 30 days and, thus, would be natural targets for ABC's, particularly in high density markets where ABC's might run with great frequency. CAB's current rule and those of Canada and the ECAC States all provide 60 days advance booking which should be the absolute minimum.

But of even greater concern are the other prohibitions in the bill's provisions, i.e., that the Board shall not prohibit (a) the charter organizer rather than the carrier from assuming the charter risk and (b) the sale of up to 25% of the seats any time before the day of departure.

To illustrate, without minimum load factor requirements a tour organizer with a large program is unlikely to average more than a 75 to 80% load—or 160 passengers on a 200 seat aircraft. He may sell up to 25% of the 200 seats or 50 to persons from the on-demand traveling public. This is about 18% of the passenger load. What about cancellations from the original bookings? Would they be filled by on-demand passengers too? Clearly, since the organizer must assume the risk in cancellation, he'll exert every effort to fill the plane with last minute passengers. One can easily visualize what this will do to the double-booking problem on scheduled services. Particularly in the peak season, fully-booked scheduled services will depart with countless last minute cancellations or "no-shows".

It should be noted that no last minute sales are permitted in advance booking rules of most European countries. All sales must be complete at least 30 days before departure. A few last minute substitutions are permitted in exceptional cases. (A comparison of the U.S., Canadian and European advance booking rules is included in Appendix A.) It should also be noted that despite the prohibition against last minute sales, advance booking charters have become highly popular in Europe and have replaced affinity charters to the general satisfaction of the respective European governments, airlines and traveling public.

Subsections 3(b) and 3(c)—Inclusive Tour Charters-Common Ownership of Tour Operators/Travel Agents. The ITC provisions also fail to provide meaningful conditions to prevent undue diversion from scheduled services.

The definitions of inclusive tour charter trips in subsection 3(b) and of supplemental air transportation in subsection 3(c) although similar in many respects to the CAB's pending OTC proposal contain two provisions which are particularly troublesome. These two exceptions are the minimum price requirement and removal of the prohibition against supplemental air carrier ownership or control of tour organizers or travel agents. These two features ought not be adopted. Effective conditioning of inclusive tours to prevent impairment of scheduled services can only be achieved either by volume limitations or by tour price minimums related to corresponding scheduled service fares. U.S. ITC rules have always maintained a price limitation—(ground services and air transportation combined at no less than 110% of the scheduled service fare). Canada's minimum tour price is even higher—at 115%. European countries similarly impose a minimum tour price related to scheduled service fares on North Atlantic ITC's.

Although the proposed language would confine CAB's ability to condition ITC's to geographic or market limitations, there are situations where the current price minimum might be a more desirable administrative control and the CAB should have this flexibility.

The common ownership provisions of subsection (b) undermine one of the basic objectives of the inclusive tour prescription. For the first time, supplemental carriers would be allowed to own tour operators or travel agents or vice versa. This would completely negate the prohibition in subsection 3(c) of selling individual tickets directly to members of the traveling public because there is no such prohibition against tour operators and travel agents making such sales. The current prohibition, designed to maintain a distinction between scheduled and charter services, would be destroyed. Moreover, allowing common ownership of these sales organizations could have adverse competitive and anti-trust impact. In Europe, where the common ownership practice is allowed, foreign airlines, (which are by and large "chosen instruments") through their control of tour operators, have virtual control of locally originated traffic to the detriment of competing United States air carriers.

SECTION 4—AFFINITY CHARTERS

Section 4 of the bill would retain affinity charters by legislative direction and would inhibit the Board's ability to amend its regulations in this area. While there is general agreement that the Board should not do away with affinities until an adequate substitute has been established, it would be unwise to incorporate this in legislation. Moreover, now that the Board has decided to retain affinities indefinitely, there is no pressing need for this provision.

GENERAL QUESTIONS/COMMENT ON CHARTERS

To illustrate some of the problems raised by charter rule making by detailed statute, consider a few of the questions which arise with respect to the three types of charter contained in S. 421:

1. Section 3(b) governing inclusive tour charters, prohibits the impairment of scheduled service—the other charter definitions do not contain such a provision. This raises a question of intent and inconsistency.

2. Sections 3(b) also restricts grants of inclusive tour charter authority to only those foreign air carriers whose governments grant reciprocal rights to U.S. carriers. The other charter definitions do not contain such a provision. Again, the question of intent and inconsistency arises.

3. The charter types described in the bill would under traditional practice be authorized equally to all currently certificated foreign and U.S. carriers. It would be desirable for the U.S. to be more selective in extending charter authority to foreign airlines to avoid the proliferation of air services, such as now found on the North Atlantic. In view of the nature of international charter traffic, i.e., because it is discretionary pleasure travel it will shift from one destination country to another depending on ease of obtaining landing rights, ground package arrangements and so forth, the United States need obtain and exchange traffic rights with only a few important destination countries rather than, for example, every country in Western Europe as was done for scheduled services.

4. Would it be desirable to apply directional controls in the international charter field—such as the recent U.S.-Canadian agreement—under which the carriers of the country of origin of most of the traffic are entitled to carry the most traffic?

5. As a general rule in foreign air transportation, if Congress fixes in advance all of the significant charter rules, doesn't it become impossible to negotiate an agreed charter traffic regime with the other countries involved in such traffic?

SECTION 5—AIR TRAVEL CLUBS/CONTRACT CARRIAGE

Regarding "air travel clubs," it is clear that such activities have never been, and should not be in "air commerce." Yet this important policy would be changed by Section 5. Such a change is not warranted. If air travel clubs were allowed to operate in air commerce it would suggest that they could be entitled to transport persons, property and mail. They would be eligible to engage in such carriage by virtue of the inclusion of the term, "air commerce" in the statutory language.

Some air travel clubs are *bona fide* membership organizations which are not engaging in commercial operations. On the other hand some entities have purchased large and modern jet equipment and operate a "club" merely as a subterfuge for commercial operations and to avoid the licensing requirements of the Act.

The proposed legislative change would not enhance *bona fide* travel clubs; it would merely encourage sham operators to further blur the line between private and commercial operations. The Board should continue to deal with problems related to air travel clubs on a case by case basis.

With respect to commercial operators, we agree with the objective of S. 421. Since these operators are engaged in the carriage of persons or property for compensation or hire, they are within the meaning of "air commerce". Thus, the legislative policy direction in Section 5 of the bill does not unintentionally grant them additional authority as it would with air travel clubs.

SECTION 6—REDUCED RATES

This provision would set aside the CAB ruling that youth and family fares are unjustly discriminatory and therefore illegal; it would authorize airlines to

grant reduced rate transportation on a reserved space basis to families and handicapped persons and on a space available basis to youths and the elderly. Since this measure was last before the Congress, the CAB has approved substantial discounts for broad based promotional fares on a nondiscriminatory basis in all long haul markets and is considering additional discount fare proposals submitted by various air carriers.

There is no question that the Board may authorize discount fares that meet the just and reasonable tests of the Act. The problem arises with respect to the discriminatory or preferential features of fares to special categories of travelers.

By singling out these special groups the language of proposed Section 6 invites other groups to make a case for special treatment so that before long the "rule of equality" which underlies the entire rate making scheme of the Act will become a rule of exception with few travelers left to pay for regular service. There are other problems with listing such specific categories of reduced rate travel. How does one define a "handicapped" person, for example?

If nonetheless, Congress feels there is a compelling need to provide further direction to the Board, it would be more desirable to reflect such direction by eliminating the last sentence of Section 403(b) and adding a policy guideline in the form of a proviso stating that the provision of different classes of service at different fare levels, or of reduced rate transportation to appropriate groups or individuals from the general public shall not be considered unjustly discriminatory. Such a provision would then require a direction to the Board that it may not penalize air carriers through the application of rate-making standards which adjust load factors, yield and rate of return to reflect the revenue dilution effects of reduced-rate transportation on a space available basis.

APPENDIX A

COMPARISON OF EUROPEAN AND CANADIAN ABC RULES (ECAC) WITH UNITED STATES TGC RULES

Travel group		Advance booking
A. Organizational objectives.	None required.	None required.
B. Charter cost.....	Cost of charter to be prorated equally among participants plus a service charge, which must be sole compensation for organizer.	According to individual government directives; or, if no government directives, the air carrier must file no later than 120 d before the first flight with the official authorities the wholesale charter rates intended to be charged.
C. Ground arrangements.	Optional.....	None required.
D. Duration.....	Minimum time elapse between day of departure and day of return: 7 d North America—10 d all others.	Not less than 14 d during period Apr. 1 to Oct. 31, nor less than 10 d during period Nov. 1 to Mar. 31. ¹
E. Minimum stops.....	None required.....	None required.
F. Organizer status.....	Indirect air carrier. Must be agent for participants.	Air carrier or agent for participants.
G. Advertising.....	Mass media advertising permitted, but only 15 d after he and the direct carrier have made a preliminary filing with the Board of prescribed documents.	To be advertised as "ABC's" with an indication of the main conditions including name of air carrier.
H. Group or charter size.....	All passenger charter types may be comingled where less than the entire capacity of the aircraft is engaged, 40 or more seats shall be contracted and paid for.	40 participants.
I. 1-way/round trip.....	Round trip tour required.....	Round trip required.
J. Participant reservation.	No booking after 90 d before flight.....	Not specified (filing requirements for main and waiting lists would preclude reservation later than 60 d before the flight).
K. Passenger filing list.....	Main list filed at least 90 d before flight departure.	Main and waiting lists to be filed 60 d in advance of flight. Final list to be filed no later than 30 d before flight. Transfer from the waiting list to the main list may not exceed 15 percent of the seats contracted for.
L. Form of payment.....	25 percent initial deposit from passenger on signing contract; full payment no less than 60 d.	25 percent of the air transport price at least 60 d ² ahead of flight. Full payment required at least 30 d ahead of flight.

¹ Germany is currently experimenting with "short term" or weekend ABC's.

² The initial ECAC rule was 90 d, but most member States have now adopted 60 d.

APPENDIX B

NOTES ON AIRLINE COSTS, CAPACITY AND LOAD FACTORS

Since 1938, average scheduled airline passenger fares, in constant dollars have steadily declined relative to costs of all U.S. goods and services. In constant dollars, air fares are 64 per cent less than they were in 1938. (Exhibit 1)

When compared to prices of certain other commonly purchased items in the years 1948 and 1974, air fares represent a bargain to the consumer. During this time the round trip air fare between New York and San Francisco rose 21 per cent; a pound of round steak increased 100 per cent; a pair of men's shoes increased over 120 per cent; a Chevrolet automobile increased over 220 per cent; and the price of a newspaper (the New York Times) increased 400 per cent. (Exhibit 2)

In comparison with other modes of common carrier transportation, air fares, in 1938 constant dollars, have dropped markedly more than either bus or coach rail fares. (Exhibit 3)

Air freight rates have similarly experienced a continued decline relative to costs of all U.S. goods and services in the period 1946-1974. (Exhibit 4)

Public use of the entire range of available scheduled service fares historically has been extensive. For the year ending September, 1974, use of lower than full fares accounted for about one-third of all coach revenue passenger miles. (Exhibit 5)

A 1974 Gallop Survey showed that one of every seven adults making less than \$7,000 annual income flew on the scheduled airlines. Overall, the Gallop data revealed that 18 per cent of all adults making one or more trips by air made less than \$7,000 yearly. (Exhibit 6)

The question of capacity and load factors is not a simple one. There is a tendency among observers of the industry to overlook the fact that, although 30 per cent of our domestic traffic is produced by only 70 per cent of the larger city-pair markets, 40 per cent is derived from 840 markets and another 30 per cent is produced in some 5700 smaller markets. The units of capacity available to serve these disparate markets are not infinitely adjustable. (Exhibit 7)

In 1972, on flights between cities less than 100 miles apart, 90 per cent of all passengers transported connected to other flights or were carried as through passengers; on flights between cities 600-800 miles apart, such connecting or through passengers comprised about one-half of the total. (Exhibit 8)

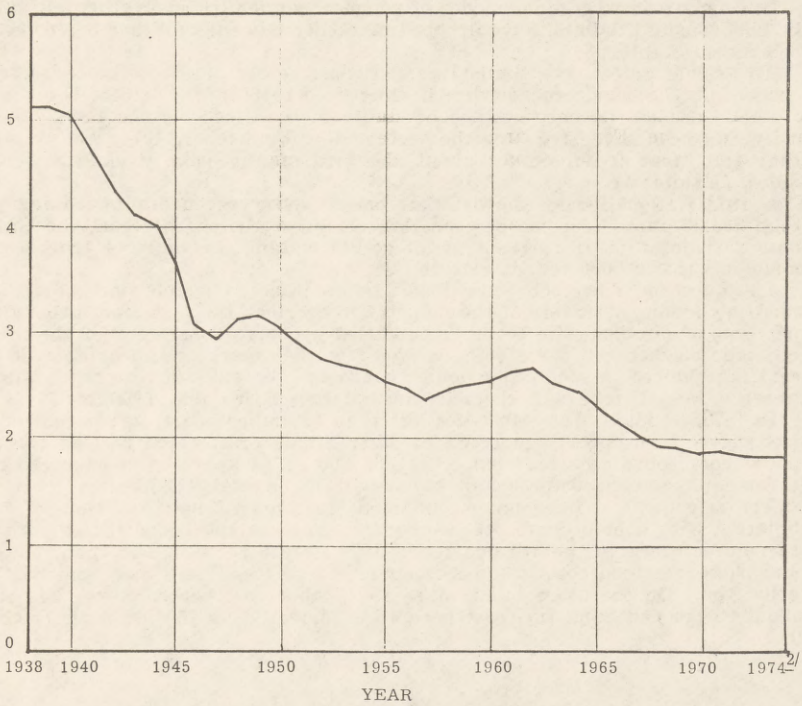
The scheduled airlines have conducted their operations in a time of high inflation with a high degree of cost control. For example, advertising costs per revenue ton mile in the 3rd quarter of 1974 were 8 per cent less than in 1967; and passenger food costs per passenger mile rose less than 5 per cent over the prior year. On the other hand, since 1967, labor cost per employee has risen about 92 per cent, and fuel cost per gallon increased by 150 per cent. (Exhibit 9)

EXHIBIT 1

Exhibit 1

AVERAGE FARE PER PASSENGER MILE
DOMESTIC SCHEDULED SERVICES -- TRUNK AIRLINES
(1938 Constant Dollars)^{1/}

AVERAGE
REVENUE
PER
PASSENGER
MILE
¢



^{1/} Deflated by Implicit Deflator - GNP, Adjusted to 1938 Base.

^{2/} 1974 Yield for First Nine Months.

EXHIBIT 2.—CHANGES IN AIR FARES COMPARED WITH OTHER U.S. PRODUCTS AND SERVICES

[Current dollars]

Item	1948	1958	1968	1974	Percent change 1948-74
House.....	\$47,409	\$59,558	\$72,840	\$100,000	+110.9
Family size Chevrolet.....	\$1,255	\$2,081	\$2,656	+ \$4,119	+228.2
Newspaper (The New York Times).....	5¢	5¢	10¢	15¢	+400
Ticket to Broadway musical.....	\$6.00	\$8.05	\$12.00	\$15.00	+150
Ranch mink coat.....	\$4,200	\$4,000	\$4,200	\$4,500	+7.1
Nathan's Hotdog.....	20¢	25¢	35¢	50¢	+150
Pair of blue jeans.....	\$3.45	\$3.75	\$5.29	\$11.25	+226.1
Gallon of gasoline.....	25.9¢	30.4¢	33.7¢	55.6¢	+114.8
Pair of men's shoes.....	\$9.95	\$11.95	\$16.95	\$21.95	+120.6
Year's tuition at Harvard.....	\$455	\$1,250	\$2,000	\$3,400	+647.3
Hospital cost per inpatient day.....	\$13.09	\$28.17	\$61.38	\$114.90	+777.8
Round trip air fare New York-London.....	\$630	\$453.60	\$484.50	\$640	+1.6
Phone call, New York to Topeka, Kans. (day rate)...	\$1.90	\$1.80	\$1.40	\$1.25	-34.2
Pound of round steak.....	90.5¢	\$1.04	\$1.14	\$1.81	+100.1
Pound of chicken.....	61.2¢	46.5¢	39.8¢	55.7¢	-9
Round trip air fare New York-San Francisco.....	\$286.30	\$208	\$290	\$346.30	+21.0
Median family income.....	\$3,187	\$5,087	\$8,632	¹ \$12,700	+298.5

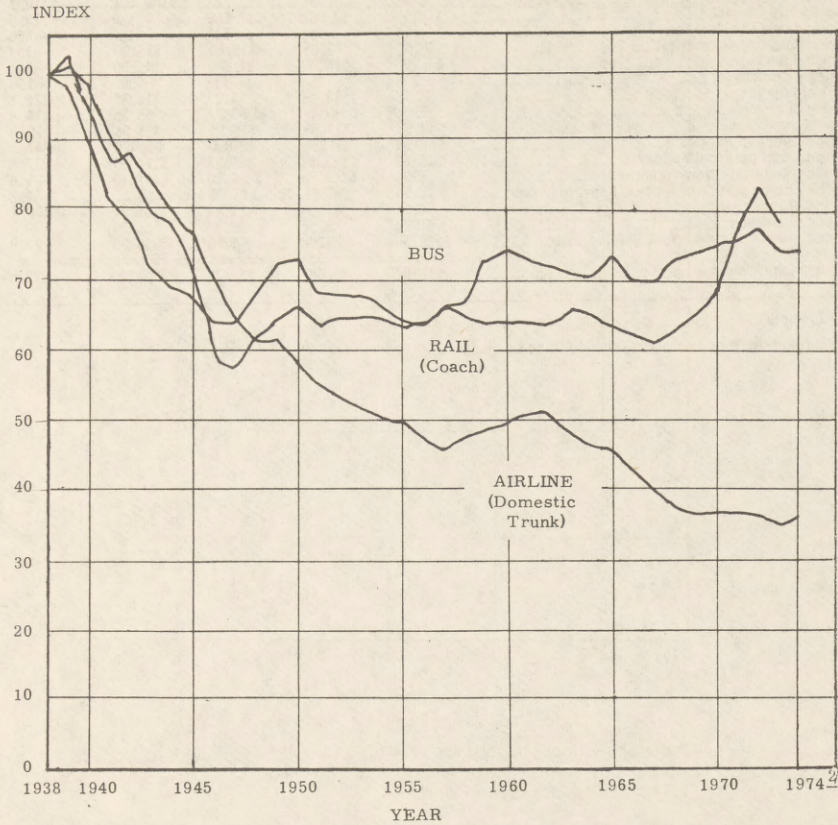
¹ Projected.

Source: New York Times and Official Airline Guide.

EXHIBIT 3

AVERAGE FARE PER PASSENGER MILE

INDEX 1938=100
 (Constant Dollars)^{1/}

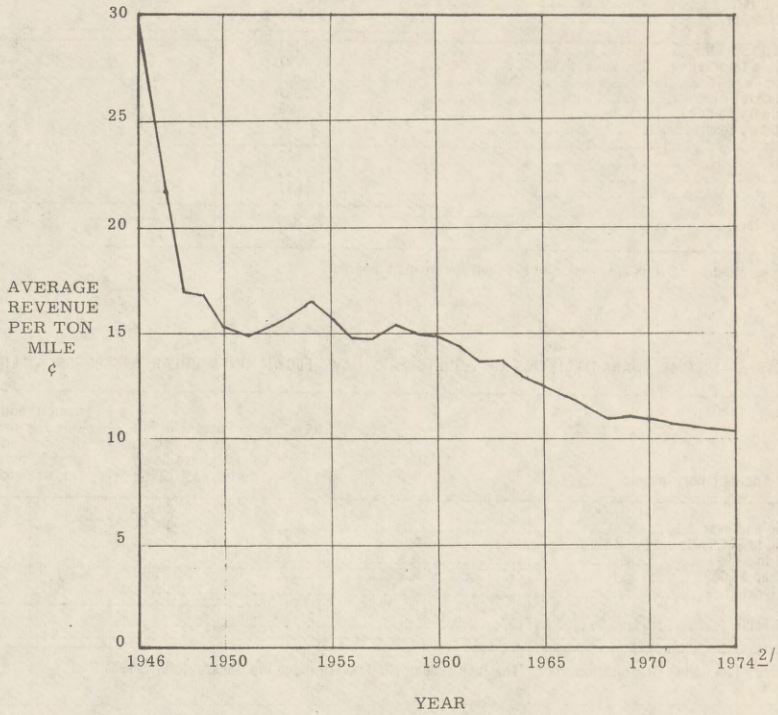


^{1/} Deflated by Implicit Deflator - GNP, Adjusted to 1938 Base.

^{2/} 1974 Data for First Nine Months.

EXHIBIT 4

AVERAGE AIR FREIGHT RATES PER TON MILE
DOMESTIC OPERATIONS
U.S. SCHEDULED AIRLINES
 (1946 Constant Dollars)^{1/}



^{1/} Deflated by Implicit Deflator - GNP, Adjusted to 1946 Base.

^{2/} 1974 Yield for First Nine Months.

EXHIBIT 5.—DISTRIBUTION OF TRUNK AIRLINES SCHEDULED COACH FARES, YEAR ENDED SEPT. 30, 1974, 48-STATE DATA

Fare type	Revenue passenger miles (millions)	Percent of total	Yield (cents per revenue passenger miles)
Total full fare.....	65,132	68.0	7.59
Total discount.....	30,688	32.0	5.71
Youth standby.....	121	.1	6.12
Youth reservation.....	797	.8	6.97
Family.....	6,598	6.9	6.88
Discover America.....	3,957	4.1	5.75
Military standby.....	738	.8	3.80
Military reservation.....	2,555	2.7	5.32
Group.....	1,372	1.4	5.77
Child.....	1,683	1.8	4.76
Excursion.....	1,180	1.2	5.59
Other.....	11,687	12.2	5.30
Total.....	95,820	100.0	6.99

Source: Monthly carriers submission to the Civil Aeronautics Board.

EXHIBIT 6.—INCOME CHARACTERISTICS OF ADULTS WHO HAVE FLOWN ON REGULAR PASSENGER AIRLINE

Annual family income	Percent within each income group who have flown during past 12 mo	Percent of adults making 1 or more air trips during past 12 mo by income group
\$15,000 and over.....	41	46
\$10,000 to \$14,999.....	22	24
\$7,000 to \$9,999.....	16	9
Less than \$7,000.....	15	18
Undesignated.....		3
Total.....		100

Source: The Gallup Organization, Inc., "The Incidence of Air Travel Among the General Public, 1974."

EXHIBIT 7.—DISTRIBUTION OF AIRLINE PASSENGER TRAFFIC BY NUMBER OF CITY PAIRS

[Year ended June 1974]

Percent of total passenger-miles	Number of city pairs	Percent of total passenger-miles	Number of city pairs
10.....	7	50.....	272
20.....	30	60.....	494
30.....	70	70.....	908
40.....	145	100.....	1 58,000

¹ Approximate amount, includes markets partially served by commuter airlines when a part of a trip for which a certificated carrier sells the ticket.

Source: CAB, "Origin-Destination Survey of Airline Passenger Traffic—Domestic," 2d quarter, 1974.

EXHIBIT 8.—PERCENT OF TRANSPORTED PASSENGERS WHO ARE NOT THROUGH OR CONNECTING, BY FLIGHT DISTANCES¹

[For city pairs with nonstop service]

Mileage	Percent	Mileage	Percent
All mileage.....	43.4	600 to 699.....	51.3
Less than 100.....	9.6	700 to 799.....	50.2
100 to 199.....	25.6	800 to 899.....	54.1
200 to 299.....	39.0	900 to 999.....	60.8
300 to 399.....	44.1	1,000 to 1,499.....	75.2
400 to 499.....	43.0	1,500 to 1,999.....	55.8
500 to 599.....	43.8	2,000 and over.....	92.1

¹ Excludes city pairs with fewer than 2,500 nondirectional O&D passengers (approximately 6.8 per day).

Source: CAB, the Domestic Route System; "Analysis and Policy Recommendations," October 1974.

EXHIBIT 9.—ATA AIRLINE COST INDEX U.S. TRUNKS AND LOCAL SERVICE CARRIERS, 3 QUARTERS 1974

	Index (1967=100)	Percent change over 3 quarters, 1973	Percent of total cash operating expenses ¹
Labor (employment cost per employee).....	192.4	7.3	40.7
Capital (interest on long-term debt).....	153.7	12.4	3.3
Fuel (cost per gallon).....	250.9	102.3	18.9
Passenger food (cost per revenue passenger-mile).....	125.3	4.5	3.6
Advertising and promotion (cost per revenue ton-mile).....	92.1	(2.9)	2.0
Landing fees (cost per aircraft ton landed).....	229.2	17.6	2.5
Aircraft maintenance materials (cost per available ton-mile).....	91.8	15.6	2.9
Traffic commissions—Passenger (cost per revenue passenger-mile).....	199.3	20.5	3.9
All other (implicit deflator—GNP).....	146.5	10.4	22.2
Composite.....	174.5	20.2	100.0

¹ Total operating expenses plus interest on long-term debt less depreciation and amortization.

EXAMPLES OF DISCOUNT FARES AVAILABLE TO INDIVIDUALS AND SMALL GROUPS ON SCHEDULED AIR SERVICES

1. *Night Coach Fares*—20% discount. At least 8 airlines offer night-coach discounts, generally 20% below day coach fares, for travel originating between 10:00 p.m. and 4:00 a.m.

2. *Excursion, Bicentennial and Similar Fares*—20–25% discount. At least 10 airlines offer (and many others are proposing) excursion or other promotional fares at 20% in peak season and 25% discount in off peak season. Usually such fares require 7 days advance purchase with a minimum stay of 7 days and maximum stay of 30 days. Usually such fares are not available over holiday periods nor from Friday noon to Saturday noon, nor Sunday noon to Monday noon. Usually there is a minimum distance but no ground package.

3. *Individual Inclusive Tour Fares*—20–25% discount. Seventeen airlines offer 20% to 25% discounts below regular coach fares to individuals for a great variety of tours. Usually there is a ground package, and the length of the tour varies from a minimum stay of 6 or 7 days to a maximum of 30 days. There are usually certain Friday afternoon and Sunday afternoon blackouts. No group travel is required.

4. *Non-Affinity Group Fares*—20-30% discount. Almost all airlines offer groups varying discounts from 20% (for 10 people) up to 30% (for larger groups) travelling together. There are no affinity or other restrictions on who may travel in such groups. Usually there is no requirement for minimum stay no ground package and no restriction on weekend or holiday travel. Although almost all airlines have such group fares, they may not be available in all markets. Special emphasis is placed on special markets such as Hawaii, Las Vegas and Florida.

5. *Affinity Group Fares*—About 25% discount. Usually available to groups of 2 or more. Generally there is no restriction on time or period of travel and no ground package is required. Some carriers require advance ticketing.

6. *Demand Schedule Fares*—23-40% discount. Three transcontinental airlines offer 23 to 40% discount on transcontinental fares if reservations are made 60 days in advance, full payment is made 30-45 days in advance, and the carrier is able to designate the particular flight for the travel. There is no restriction on the days available for the travel but the price varies by days—weekends and high-season being higher than less travelled days.

7. *Military Discount Fares*—25% off. Available on a reserved space basis to military personnel on furlough. Offered by all airlines. No restrictions by day or season.

8. *Special Fares*. Individual airlines offer a great variety of other special and discount fares, usually to special destinations.

Senator CANNON. Our next witness is Mr. Howard Boros, attorney representing the Airline Charter Tour Operators Association.

**STATEMENT OF HOWARD S. BOROS, ATTORNEY, WASHINGTON, D.C.,
REPRESENTING THE AIRLINE CHARTER TOUR OPERATORS
ASSOCIATION**

Mr. Boros. Thank you for inviting us. Mr. Goodwin of Del Webb World Travel Co. joins in our comments and our position. Mr. Goodwin is here today.

With the committee's permission I would like first of all to review our direct testimony, and if you would so permit, comment on some of the testimony that has been offered by others.

Senator CANNON. You may proceed.

Mr. Boros. I am speaking on behalf of the Airline Charter Tour Operators Association. We are 18 tour operators largely engaged in charter transportation. We do approximately \$300 million worth of business annually. We are organized because the CAB was destroying our industry with its regulatory policies. We are not unique in that regard, as you can see from the economic condition of the supplemental air carriers.

My own personal background is that I worked for the CAB as a trial attorney, and was a vice president of a scheduled airline. I was with various other governmental agencies, and since then I have been specializing in the practice of air transportation law.

I heard comments today that there is no need for specific and precise legislation by this committee. The broad grants of authority, the policies that you set forth are adequate.

In 1938 you set forth section 102 of the Civil Aeronautics Act and in 1958 we enacted it into the Federal Aviation Act.

That policy statement talks about encouraging and promoting air transportation at the lowest cost consistent with economic considerations. That just hasn't happened.

The airlines during the forties provided one form of air transportation: First class service. That's all. At first class prices.

Then along came some mavericks called large irregular air carriers; the North American combine was amongst them. They were offering service between New York and Los Angeles at \$89 one-way on DC-6's, which were far less economic aircraft than the 707's. DC-8's, and the jets that came into operation.

Because of the competitive spirit of these carriers, the competitive spirit to which the CAB objected most vehemently, Capital Airlines, then a small trunk line, decided on a new innovation. It was called coach service. There wouldn't have been any coach service without North American Airlines. Capital adopted it.

Finally, National did. Daylight coach service; and we got some form of low-cost transportation.

Every time that there has been a significant proposal to cut the cost of air transportation, the Board has frustrated it.

The large irregular carriers offered individually ticketed service at cut rates. Scheduled airlines said, "That's cream-skimming, you have to stop."

The CAB went to court and got injunctions against the large irregular air carriers. They were virtually put out of business prior to 1960.

Then you legislated something called the supplemental air transportation bill. This was in 1960, and created the supplemental air carrier industry, a charter industry. You decided they shouldn't engage in individually ticketed transportation because that would hurt the scheduled air carriers. Well, what did the Board do to that?

They created a monster called "affinity air transportation."

Now, why is it a monster? It's not because charter transportation is a bad idea. It's a monster because the restrictions imposed by the CAB are so onerous that virtually none can comply with them.

In order to illustrate the difficulty of marketing affinity air transportation on a pro rata basis, I facetiously wrote a letter to Richard O'Melia, who happens to be a close friend of mine, and a person I respect very much. It was a letter from the B. & G. Toaster Co.; the name of our law firm is Boros and Garofalo. It read as follows:

Dear Mr. O'Melia, the B. & G. Toaster Co. is making this introductory offer to only five selected customers.

The intent was the five Board members.

You may procure the enclosed toaster for \$9.99. However, should the anticipated response to this offer fall short of expectations, we may be compelled to charge as much as \$14.99. Alternatively, should our firm's customers be unwilling to pay \$14.99, please understand that we will be required to seize all toasters previously purchased.

Moreover, should any toaster be used without the customer first having paid the appropriate price—which may range anywhere from \$9.99 to \$14.99—you will be informed of the precise price before breakfast on the day before you intend to use the toaster. We are required by the Federal Toaster Regulatory Board to bring suit for the difference.

In connection with this offer, you are quite fortunate because delivery is being made immediately.

We hand delivered it to Mr. O'Melia.

Frequently we do experience delays in shipment so that our customers do not receive this toaster on the anticipated date. In this case, they must wait with

the toaster at least 24 hours before they may obtain a refund. This is also required by the Federal Toaster Regulatory Board.

We trust you will accept this unprecedented offer and that we can count on you for future purchases.

Incidentally, please do not tell your friends about this offer because they will want the toaster also, and may not be qualified.

Dick O'Melia wrote me back and said it sounded like a lot of the proposals they had before the Board. He inserted my document in the record with the toaster.

Senator CANNON. Did he buy the toaster?

Mr. BOROS. I haven't been paid yet. I have to seize that toaster, otherwise I am in trouble with the CAB.

That's one of the reasons why in our testimony here we are proposing an amendment to your section on the affinity rules. And the amendment we are proposing in that connection is that the Board authorize the tour operator to be a risk taker, the same as you propose in your ABC.

That proration should be eliminated. That I believe is section 5 of your bill.

Now, I am very much encouraged by Mr. O'Melia's testimony this morning about eliminating the problem of the distinction between scheduled air transportation and charter air transportation.

I am very much dismayed, however, that the testimony was of such a top secret nature that at 11 o'clock this morning I couldn't get a copy from the CAB to study it in sufficient detail. I will address myself to that in a moment.

It is very clear to the consumer—and that's who we represent, those are our customers, that's our clientele—that the CAB is more interested in protecting scheduled services than in offering low-cost transportation to the mass market.

Now, it has demonstrated that as recently as the last few months when in the face of almost record profits of the airlines it approved a 4 percent fare increase. So far as charters were concerned, it proposed to place a minimum price floor on charters, the only area in which there is any price competition in the air transportation field.

A few days ago, it withdrew its case in the court of appeals where we had sought an appeal from those minimum charter rates.

But I don't think it has had an about-face. The only way it can have an about-face is if the Congress prods it into it. It has to do it specifically. The broad grants of power, the declarations of power in section 102 have had little or no effect.

With respect to the specifics of your legislation, we do have some recommendations insofar as language is concerned which we think would be helpful.

Now, you have section—subsection 1, 2, and 3 of section 3 of the act, which prohibits the Board from imposing certain limitations upon ABC's. The difficulty is that by implication, the Board may interpret that to mean that they may impose additional limitations; and it creates a problem of legislative interpretation.

Therefore, if you do want to be specific—and we support that—we have added additional specificity.

The specificities we have added is that the Board may impose no frequency or geographical limitations without a prior determination

on a record after a full hearing and on the basis of substantial evidence that such restrictions are required to protect vitally needed scheduled service.

Now that's true due process. The Board has always regulated in reverse. They have given you the narrowest type of charter, and then they have said, "As conditions develop, we may expand it."

Well, they botched it. The travel group charter—that was going to be great innovation. They started with a 90-day advance purchase. It was a total failure. Clients of mine invested hundreds of thousands of dollars in their experiment—lost. They said, "Okay, we are going to change it, only 60 days." Travel group charters are still a failure.

They regulate narrowly. In other words, they authorize narrowly. What is their reason for doing that?

Fear of diversion from the scheduled air carriers. Since 1938, the CAB has not made a single study on the diversion that takes place from scheduled service when charter air transportation is introduced. We submit that before you restrict the availability of low-cost air transportation to the public, you ought to have some facts. Those facts ought to be on a full record, after hearing; the public should be permitted to participate, cross-examination should be permitted, the same as in most other administrative proceedings.

Now, what the Board does is they regulate in a vacuum. I asked a former Board member, who is a close friend of mine—I asked him: "Do you know what the market conditions actually are in this business? Do you know how a charter is sold?"

He said "no."

I said, "How can you regulate them?"

He said, "That's one of the problems we have at the CAB."

He is now in a very important position in the industry, and I admire his candor, but that has been our problem.

The word "charter" up until the CAB was created, according to Black, meant "the hiring of a vessel."

That's all it meant: the hiring of a vessel. It was a contractual arrangement whereby an individual assumed the risk of filling that vessel and then he sold that vessel to whomever he wished to.

The distinction between a charter and an individual ticket is that the person who purchases a seat on a charter has no obligations. In fact, even today he can be a no-show. He is not a risk taker. That's the distinction between charter and an individually ticketed transportation.

The scheduled air carriers want to inhibit charters. I don't know why. They can operate charters just as freely as anybody else can. Certainly on-route, and maybe off-route rules ought to be amended so they can operate off-route charters to a greater extent.

ACTOA does not have a position on that at this time, but we want the greatest availability of low-cost charter transportation.

Now, with offices throughout the United States—I don't know how many American Airlines has and I don't know how many Eastern Air Lines has, but there are plenty—are they afraid to compete with supplemental air carriers with 3 or 4 offices in the United States, or with foreign carriers that may have only one?

If they cannot compete for U.S. citizen traffic which, of course, has an affinity to go on U.S.-flag carriers, against the rest of the world, they better get out of the kitchen.

Now, specifically with respect to section 4 of your bill which refers to ITC's, we merely have a language difficulty there.

You insert in section 4 that the Board may enact whatever regulations are necessary pursuant to this bill, but you specifically single out geographical areas and markets as a limitation that is permitted.

It seems to us that by flagging that you are implying that they should impose geographical limits. I trust that's not the intent of the bill.

We would recommend that you do not include any specifics such as the subproviso (A) and simply include our catch-all proposal which is contained in our testimony that any restriction on any form of charter including those proposed in your bill not be imposed until after notice and hearing whereby it is demonstrated that restrictions are required to preserve vitally required, scheduled air service.

To us that's the appropriate way to legislate. That is congressional intent.

We don't think it's adequate that it be in your report, because I don't know how much attention the Board is going to give to your report.

As far as the common control section is concerned, I know why it was inserted in this bill. Presently, the Board has authority under section 408 to permit common control between scheduled air carriers and tour operators and supplemental carriers are specifically prohibited from doing so.

We submit that rather than authorizing supplemental air carriers to engage in common control situations with tour operators that you prohibit all carriers from doing so.

In other words, take away from the Board the discretion to permit a scheduled air carrier to be commonly controlled with, for example, an American Express.

The reason for it is simple: Common control between an air carrier and the tour operator can become one of the most anticompetitive devices in the industry. For one thing, the air carrier can then restrict its capacity to those with whom it is affiliated.

It can offer differential pricing. In other words, I get one price and this affiliate gets another price. The bill invites that type of practice.

Finally, we think that the independents, the tour operators, are a service to the public. The consumer gets a choice of services. If once you start affiliating tour operators with air carriers, you are going to boil this industry down to about 10 or 12 operators because the only ones who are going to survive are going to be those who have arrangements or affiliations with air carriers.

We don't think that serves the public interest.

In other respects, Senator Cannon, We think this is the most forward-looking bill that has ever been introduced in the field of air transportation. We support it. Yes, we have made certain suggestions, alterations. I am also tired of waiting for the CAB to act. I have waited patiently too long.

If the Congress must enact legislation telling the CAB exactly how to regulate, then so be it. The time for action is now past due.

Those are your words, Senator Cannon, and we endorse them to interest. We have made proposals to it in the past. For example, that on affinity charters the affinity operator should be a risktaker.

Do you know how they disposed of that? They said we are going to do way with affinity charters, anyhow, so there's no need to act on that.

We have made proposal after proposal to the CAB, most of them designed to achieve low-cost transportation. We have been ignored. What happens when Congress does act?

Senator Kennedy had hearings on minimum charter rates about 2 months ago in which the Board insisted upon not only the legality of the minimum charter rates, but their good sense.

Well, Senator Kennedy more or less roasted the CAB, and you have a copy, I believe, of his subcommittee report. The CAB responded by removing its policy statement on minimum charter rates.

Unless this subcommittee acts, unless it legislates, I don't think you are going to see any change for the next 37 years, as you haven't seen any for the past 37 years.

I thank you for the opportunity to appear before you; and if there are any questions you care to ask, I would be very happy to try to comment on them, sir.

Senator CANNON. Thank you.

Would you submit a list of your organization members?

Mr. Boros. Yes.

[The list follows:]

ACTOA

Mr. Milton Paige, AITS, 210 Boylston Street, Chestnut Hill, Mass. 02167. 617-969-4100.

Mr. Nick Ruben, Arthurs Travel, 1510 Chestnut Street, Philadelphia, Pa. 19102. 215-854-6900.

Mr. Doran Jacobs, Carefree Travel, Inc., 30 West 57th Street, New York, N.Y. 10019. 212-977-4800.

Mr. Paul Klapper, Creative World Travel, 254 Sutter Street, San Francisco, Calif. 415-398-2909.

Mr. Lennie Lansburg, David Travels, 1175 North East 125th Street, North Miami, Fla. 305-893-0500.

Mr. Elliott Elkins, Elkin Tours, 24275 Northwestern Highway, Southfield, Minn. 48075. 313-358-1234.

Mr. Irwin Chafetz, Gateway World Vacations, 161 Highland Avenue, Needham, Mass., 02194. 617-449-4100.

Mr. Norman Sosner, Hawaiian Holidays, Inc., 500 5th Avenue, New York, N.Y. 10036. 212-736-2929.

Mr. Daniel Mahru, Prestige Vacations, Inc., Suite 112, 1000 Jorie Boulevard, Oak Brook, Ill. 60521. 312-887-0040.

Mr. Ron Tayler, S & H Tours, 19900 West Nine-Mile Road, Southfield, Minn. 48075. 313-354-7373.

Mr. Jack Gorcey, Surrey Travel, 15 East 48th Street, New York, N.Y. 212-755-4004.

Mr. Jerry Mann, Travel Enterprises, 946 No. Northwest Highway, Park Ridge, Ill. 60068. 312-696-2900.

Mr. Fred Rosenthal, United Travel, 111 Washington Street, Brookline, Mass. 02147. 617-738-5700.

Mr. Marty Kauffman, Vacation Ventures, 30 West 57th Street, New York, N.Y. 10019. 212-977-4800.

Mr. Barry Lampert, WTI Group Tours, 387 Park Avenue South, New York, N.Y. 10016. 212-889-1889.

Mr. Ernie Pike, Ernie Pike Associates, Ltd., 308 Fifth Avenue, New York, N.Y. 10001. 212-695-7606.

Senator CANNON. Do you charter internationally or domestically?

Mr. BOROS. Both. One of our biggest markets is your hometown. Las Vegas is the largest single traffic charter market. The traffic from New York to Las Vegas is approximately 2 to 3 times the scheduled air traffic. Of course, you know the figure on Los Angeles.

On that 7-day bit, it's very important in the case of Las Vegas and the Bahamas. Las Vegas market is a 2- or 3-day market. It is not a 7-day market.

The same with the Bahamas. They are not a 7-day market. Europe is a 7-day market and not a 10-day market. You can't back-to-back charters on a 10-day basis or back-to-back rooms.

Now, the CAB knows all of this or should know it, yet when they come out with this ITC proposal, they make it impossible for implementation. That's why you have to act. They have had every opportunity in the past to act.

Their TGC's don't work, the ITC's don't work. Affinity charters, they spend their time in court trying to stop people from operating them.

We implore you as promptly as possible to enact liberal legislation in which you give the Board the authority to restrict only upon substantial evidence in the record.

Senator CANNON. Thank you very much for your testimony.

Mr. BOROS. Thank you, Senator.

[The statement follows:]

STATEMENT OF HOWARD S. BOROS ON BEHALF OF AIRLINE CHARTER TOUR OPERATORS ASSOCIATION, AND DEL WEBB WORLD TRAVEL COMPANY

I am Howard S. Boros and am speaking on behalf of the Airline Charter Tour Operators Association ("ACTOA").¹ This organization is comprised of eighteen tour operators who market over \$300 million of travel arrangements annually. This organization was founded in response to the anti-competitive and anti-low-cost transportation attitude of the Civil Aeronautics Board. I have been selected as spokesman for ACTOA here because of the following background. My air transportation experience began in 1955 when I served as a trial attorney for the Civil Aeronautics Board; thereafter, I was appointed Vice President of a scheduled airline; and during the past fifteen years I have been engaged in private law practice specializing in the representation of scheduled airlines, supplemental airlines, tour operators, and travel agents.

I. WHY ARE WE HERE?

We are here to protect the traveling public—the public upon which we depend for our livelihood. We are here to protect the charter industry which is the principal supplier of air transportation for our clientele. We are here to solicit your assistance in the preservation of our businesses, because without your assistance and given the prevailing regulatory atmosphere at the Civil Aeronautics Board, our demise is certain. Therefore, we are here to comment on the proposed Low Cost Air Transportation Act of 1975 in the hope that our views on this Bill will assist your efforts to make low-cost air transportation available to the mass market in the United States.

II. NEED FOR LEGISLATION

The preamble to S. 421 recognizes that the Civil Aeronautics Board has not been responsive to the public's need for low-cost air transportation. The extent of that unresponsiveness, however, deserves detailed comment because it has not only been continuous, but is so firmly embedded in the Board's regulatory philosophy that only Congress can remedy that agency's anti-consumer bent.

¹ Del Webb World Travel Company joins in this testimony.

Although the Civil Aeronautics Authority, now the CAB, was largely a creation of scheduled airlines, the Congress mandated that the Authority should function in the public interest rather than in the interests of private airlines. The Board has confused that mandate by assuming, more often than not, that what *appears* to be in the interest of the scheduled carriers is necessarily in the interest of the public. When Charles Wilson uttered a similar view with respect to General Motors, he was derided for this confusion of values. The Board has perpetuated this confusion in its administration of the Federal Aviation Act and its predecessor Civil Aeronautics Act. Let us trace this history.

During the Second World War and shortly thereafter, the only air service available was first class on scheduled carriers at extremely high fares. Shortly after cessation of hostilities, a new group of air carriers entered upon the scene, the so-called large irregular carriers. They converted their aircraft into a high density configuration which provided the opportunity to offer fares as low as \$89.00 between New York and Los Angeles on modern DC-6 equipment at a substantial profit to the carriers involved. This was not done at the behest of the CAB, but over its objections. These carriers requested regular certificates of public convenience and necessity. The Board invariably denied their applications.² Instead, it brought enforcement action against all large irregular carriers which exceeded its "frequency and regularity" restrictions, which restrictions were designed to minimize the availability of low priced air transportation to the public. The large irregular carriers slowly disappeared from the individually ticketed market, as did the \$89.00 New York/Los Angeles fare. Even with the advent of more economic jet equipment, the scheduled airlines in 1959 priced coach fares between New York and Los Angeles at \$140.00.

As the air transportation industry moved into the 1960's, the supplemental industry was born. That industry was prevented from selling individually ticketed transportation.³ The supplemental carriers began to flourish largely because of the substantial earnings realized from contracts with the Department of Defense for the movement of military personnel. This cash flow afforded supplementals the opportunity to enter the commercial charter market. They did so with every increasing success and despite the most restrictive charter regulations imaginable. The only charters authorized in the early 1960's were of the affinity and single entity variety. The reason that affinity charters became an important segment of the supplementals' business despite unworkable regulations is that the carriers totally ignored the regulations, and at that time the Board did not pursue a vigorous enforcement program. Incidentally the regulations were similarly ignored by scheduled carriers performing charter services.

Slowly other forms of charters were introduced by the Civil Aeronautics Board, all of which were of extremely limited utility (e.g., Study Group Charter). In 1965 the Board adopted a new form of charter, the so-called Inclusive Tour Charter. The regulation promulgating inclusive tours was so laden with restrictions that it proved to be a dismal failure. For the six year period 1968 to 1973 Inclusive Tour Charters accounted for only 7.8% of the entire international charter market. The predominant form of charter remains the affinity type. In response to this situation, the Board's remedy was to crack down on affinity charters by vigorously enforcing its regulations to the letter. It refused to consider that these regulations were unworkable and should be amended despite numerous petitions seeking amendment of such inane provisions as the pro-rata rule.⁴ Instead, it sought court injunctions against tour operators who do not prorate charters.

² The only new trunkline certified for low-cost service from 1938 to the present was Trans Caribbean Airways. The original certificate covered a single segment between New York and Puerto Rico. Since that carrier's merger into American Airlines fares have been substantially increased and no low-cost scheduled air carrier remains.

³ The only exception to this exclusion is contained in Section 417 of the Federal Aviation Act which permits some individually ticketed transportation under limited and unusual circumstances.

⁴ Hypothetical: Assume the charter of a 250 seat DC-8, 30 days before departure the charterer has sold 200 seats at a pro-rata price based upon 250 seat occupancy. The charterer must now cancel, or increase the pro-rata price by 20%. He persuades the first 195 passengers that he has solicited to make the additional payment. The last five request refunds. The charterer must either cancel at this juncture or resolicit the 195 passengers for an additional payment to cover the five refunds. This process continues *ad absurdum*.

The Board's anti-charter campaign was not limited in scope. Thus, it attempted to eliminate military dependent charters which offered GI's and their families rates as low as \$65.00 per seat from New York to Frankfurt. The Congress intervened to forestall the Board's elimination of these charters. Therefore, the Board enacted a regulation authorizing such charters, which regulation is so laden with restrictions that the military dependent charter market has been crippled.

In response to increasing dissatisfaction with the administration of charters, the Civil Aeronautics Board devised a new form known as the Travel Group Charter. It succeeded in destroying Travel Group Charters aborning.⁵ They are so unworkable that in 1973 they accounted for 1% of the total charter market. They also proved to be an economic disaster for every tour operator who was willing to invest in the Board's experiment.

In 1973 Senators Cannon and Kennedy introduced S. 1739 which would have provided a workable Inclusive Tour Charter. The Board responded with its own one-stop proposal which is defective in so many respects that scheduled carriers, supplemental carriers, and tour operators alike vigorously opposed its adoption.

The ineptitude of the Board over the past generation in regulating charters is perhaps the most eloquent argument favoring elimination of this regulatory agency. But we do not so urge. Rather, we importune Congress to enact a statute which will require the Civil Aeronautics Board to make available low-cost charter transportation to the American public. That public is entitled to this opportunity, but absent action by Congress it will be denied.

III. THE LOW COST AIR TRANSPORTATION ACT OF 1975—AN OVERVIEW

ACTOA will address itself only to those sections of S. 421 dealing with charters, flying clubs and commercial operators. It enthusiastically supports the purpose which this Bill seeks to achieve in the charter area. If this bill is enacted, the mass market for air transportation will be converted from a potential into a reality. The inflation that has plagued the travel industry will be stemmed or, at minimum, slowed. Optimum utilization of equipment and personnel will be realized. Not the least benefit of this legislation is that fuel will be most effectively utilized.

While we endorse this bill, ACTOA respectfully suggests that certain modifications are desirable and, perhaps, essential. In the ensuing discussion we will consider the Advance Booking Charter, the Inclusive Tour Charter, the Affinity Charter, the proviso authorizing common control of air carriers and tour operators, and the section dealing with flying clubs and commercial operators of aircraft.

A. The Advance Booking Charter

Section 3 of S. 421 dealing with "Advance-Booking Charter Trip" (hereinafter ABC) is probably the single most forward-looking proposal since charters became an important mode of transportation. All of the subsections thereto are essential if the ABC is to be successful. The European and Canadian experience with ABC's is an excellent precedent for your proposal. Incidentally, it must be noted that the attractiveness of the Canadian ABC's has served to drain significant transatlantic traffic from the United States which would have flown on U.S. flag carriers had his form of charter been available here.

Subsection (a) is most significant. In this connection it must be recognized that the travel habits of our people are significantly different than those of Europeans and Canadians. Analysis of our bookings demonstrates that a very substantial portion of the charter market makes reservations on very short notice, indeed, as late as the day before departure. This is particularly true of domestic charters. The experience of the moribund Travel Group Charter formulated by the Civil Aeronautics Board confirms the unmarketability of charters with long advance deposit or booking requirements. Originally, the Board required a 90-day advance deposit on Travel Group Charters. It failed. Subsequently, the Board lowered the advance-deposit period to 60 days. Travel Group Charters remains a failure.

⁵ Requirements such as proration, 90 day advance-purchase (later revised to 60 days) 25% non-refundable deposits, the inability of the tour operator to assume any risk conspired to make TGC's wholly unmarketable.

Subsection (b) is a most salutary provision. Absent the ability to fill up 25% of the charter seats any time before departure, the Advance Booking Charter would meet the same fate as the Travel Group Charter. This provision not only maximizes the tour operator's opportunity to mount an economic back-to-back operation, but it also preserves the travel plans of 75% of the passengers who book more than 30 days in advance of departure. We do suggest, however, that as to that 75% who have prebooked, a provision should be added authorizing them to assign their seats at any time prior to departure. Similar provision is included in the otherwise defective Travel Group Charter rules of the Civil Aeronautics Board (Part 372(a).60(b) of the Board's Special Regulations).

Subsection (c) is most desirable in that it affords the public the greatest assurance that once an ABC trip has been booked it will be performed as anticipated. Of course, the charter organizer may wish to cancel a trip for inadequate participation. But such cancellation would be a matter of agreement between the charter organizer and the participants, unlike TGC's which require such cancellation as a matter of law.

The elimination of the pro-rata requirement presently prevailing in affinity and Travel Group Charters is absolutely essential. As noted earlier, proration hamstringing charters, injures the public where it is observed by the charter operator or travel agent, and subjects all elements of the travel industry to criminal penalties when it is not observed.⁶

Moreover, the resolicitation of passengers for additional funds in the event that the booking response is below that anticipated, creates a procedural and administrative nightmare for carriers, tour operators, and travel agents. The bill's proposal to eliminate proration on Advance Booking Charters is eminently reasonable. Furthermore, it does not infringe upon the distinction between individually ticketed travel and charter transportation.

Subsection (d) which prevents the imposition of minimum-stay periods of more than three days on Western Hemisphere charters and more than seven days on other charters reflects the realities of the marketplace. Numerous markets within the United States are principally attractive to the three or four-day visitor (e.g., Las Vegas, the Bahamas, Puerto Rico, and even Miami). These are not significant business travel destinations; they are tailored to accommodate the vacationer. To require a longer stay to these destinations will emasculate the charter passenger potential. Likewise, a requirement of more than seven days for trips outside the Western Hemisphere is counter-productive. The American public has changed its travel habits in recent years; most people take trips of shorter duration than they did formerly. Moreover, charters can only be operated on an economic basis if they can be performed on a "back-to-back" basis. Thus a Monday-to-Monday charter pattern permits the air carrier to shuttle groups back and forth between the point of origin and destination without incurring wasteful and expensive ferry mileage on empty aircraft. This efficient utilization of the air carrier's resources maximizes the productivity of its equipment and personnel while minimizing fuel consumption—matters of utmost significance to the United States economy at this time. It is equally clear that hotel rooms can be purchased at the lowest cost if the operator can assure their occupancy on a full-time basis through the availability of "back-to-back" reservations. These economies can and will be made available to the traveling public.

The concept of ABC's as proposed by S. 421 is exemplary. However, the Civil Aeronautics Board has demonstrated through its history that even the most ideal concept can be frustrated by maladministration. Thus, we recommend certain additional provisions to the subsections of Section 3. We propose that the Board be prevented from enacting regulations which restrict geographical areas in which ABC's may be offered, or the frequency of ABC charter trips in the absence of formal evidentiary hearings which demonstrate on the basis of substantial evidence that such geographical or frequency restrictions are required to protect vital scheduled services. We also recommend that the Board be prohibited from enacting regulations setting minimum charter rates for ABC's which are higher "than the just and reasonable fare for charter

⁶ The enforcement of proration by the Board's staff is such an overwhelming burden that it serves to significantly inflate its budgetary requirements.

transportation". This recommendation is consistent with the provisions included in Section 3(b) of S. 421 which deals with Inclusive Tour Charters.

B. Inclusive tour charters

This section is similar to the proposal incorporated in the original bill reported by this subcommittee in 1973. We fully support this proposal but offer a minor modification to the language. As presently drafted, the bill stipulates that Inclusive Tour Charters (ITC's) should not be priced at "... less than the just and reasonable fare for charter transportation plus a compensatory charge for land arrangements ...". We believe the language "a compensatory charge for land arrangements" to mean that the public will not be charged less for land arrangements than the cost thereof to the Inclusive Tour Charter Operator. This provision appears unnecessary because the ITC operator has no incentive to operate tours lower than cost. Moreover, to prove that the land arrangement charges are compensatory would require revelation of proprietary information, such as the price for which a given tour operator was able to negotiate hotel rooms, or guided tours, car rentals, etc. Finally, the administrative burden that would be imposed upon the Board in monitoring this aspect of ITC's would be substantial and hardly "worth the candle".

The proviso that the Board may enact regulations to insure that Inclusive Tour Charter trips "... do not impair essential scheduled service ..." is appropriate. However, such regulatory restrictions should not be enacted until after notice and hearing on an evidentiary record reveal that regulations are required to prevent such impairment. Such due process will accord the CAB adequate latitude to regulate a sound balance between scheduled and charter services. In any event, given the Board's plenary authority to enact regulations, as the bill presently contemplates, it would appear unnecessary also to include a specific provision that "... the Board may limit by regulation the geographical areas or markets in which such trips may be operated. ...".

The condition that foreign air carriers may operate Inclusive Tour Charters only after their nations of origin accord United States air carriers reciprocal rights insures that United States air carriers are not placed in an adverse competitive position vis-a-vis their foreign competitors.

C. Common control of air carriers and tour operators or travel agents

Section 3(c) would amend Section 101(37) of the Act to provide that a supplemental air carrier may control or be under common control with a person authorized to sell charters, provided that such control is approved by the Board under Sections 408 and 409 of the Federal Aviation Act. We recognize that this provision places supplemental air carriers on an even footing with scheduled air carriers with respect to controlling tour operators or other agencies marketing charters. ACTOA vigorously opposes this provision and suggests that rather than permitting the Board to approve such common control for supplemental air carriers that it direct the Civil Aeronautics Board not to approve such common control by *any* air carrier.

Common control or ownership of air carriers and tour operators is anti-competitive. Independent operators who are not affiliated with air carriers are placed in an unfair competitive position. Obviously, those tour operators affiliated with air carriers will receive preferential treatment with respect to availability of capacity, price, as well as promotional assistance. The unaffiliated tour operator will receive only the dregs. Vertical industrial integration is a concept which has proved so adverse to the public interest that the antitrust laws have been employed to bar it in many instances. We should not encourage such integration in the air transportation industry. To the contrary. Congress should forbid it absent a compelling showing that such integration serves the public.

The existence of the small business has been the most significant impetus to innovation and maintenance of the American style of life as we know it. To be sure, consolidation may under certain circumstances provide for efficiencies. But we have abjured the ultimate in efficiency for the maximum freedom consistent with a viable economic system.

This is the choice that this free society has made. It should not be undermined by consolidation of independent enterprise. The corner grocery has virtually disappeared; let us not invite the same fate for the corner travel agency.

D. Affinity charters

ACTOA strongly supports Section 4 of S. 421 which seeks to preserve so called "Affinity" Charters. However, such charters must be preserved in a practical manner. ACTOA proposes that travel agents involved in promoting Affinity Charters be authorized to take the risk of empty seats and not be compelled to prorate the charter cost among the participants. This proposal was shrugged off by the Board with the assertion that it was not worthy of consideration inasmuch as Affinity Charters were to be eliminated by March 31, 1975. (Order 74-11-221.) Since that pronouncement, the Board has extended Affinity Charters through 1975. We implore this subcommittee to include in Section 4 a proviso that the Board shall not "prohibit the charter organizer from assuming the commercial risk on any Affinity Charter or require him to sell seats at a prorated price per passenger." This proviso is consistent with Section 3 of the bill relating to ABC', and should be enacted for the same reasons that prompted the inclusion of that provision in Section 3.

E. Air travel clubs

ACTOA believes that Air Travel Clubs should not be authorized, unless their scope is so limited that such clubs do not become common carriers. The opened invitation for Air Travel Clubs to solicit the public at large would permit any person to purchase an aircraft to become an airline. This would create chaos in a regulated industry and would inevitably raise problems in the safety area. As this Committee may recollect, when large irregular carriers were rampant during the 1940's and 1950's, their safety record was abominable. Deficiencies in the safety area arose from the fact that many of these carriers operated on a shoe string. They cut corners in maintenance, permissible pilot time and weight limitations. The task of monitoring Air Travel Clubs would probably be more than any governmental agency could handle. Moreover, with liberalized charter rules as proposed by this Subcommittee, no public need for flying clubs exists.

F. Commercial operators

We support the Subcommittee's proposal that rules be promulgated to regulate commercial operators of aircraft. Presently, such rules do not exist. Consequently, commercial operators, who are authorized only to engage in private and contract carriage, frequently cross the line into common carrier operations. We believe a line must be drawn with precision. Such a line will also be of benefit to the commercial operator which will know the rules of the game and could engage in legitimate private or contract operations without fear of enforcement action by the Civil Aeronautics Board.

IV. DUE PROCESS

We offer a comprehensive affirmative proposal that should apply to all charters, namely: "The Board shall not restrict any form of charter presently existing under its regulations or enacted by this Bill, unless, after notice and hearing, substantial evidence of record demonstrates that a restriction or restrictions are required to protect vitally needed scheduled service."

This provision is essential because the Board has consistently enacted charter regulations which were so burdened with restrictions that they either proved unworkable or compelled the purveyors of charter transportation to violate their provisions. In short, the Board has consistently reiterated the errors of the Volstead Act. Traditionally, the Civil Aeronautics Board has tended toward the view that if the public is accorded the transportation it wishes at the prices it is prepared to pay, the air carriers will then be injured. Of course, the Board has no evidence to support this policy. Nor, to our knowledge, have any studies been undertaken to measure the impact of low-cost charter air transportation upon scheduled air transportation. Nevertheless, the Board has shackled charter transportation for fear that it would in some manner impinge upon "vital" scheduled air service. The Board's fears in this regard have prompted it to regulate in a manner precisely the reverse of the dictates of a statute, i.e., to promote "... economical, adequate, and efficient service by air carriers at reasonable charges ..." and to order "... competition to the extent necessary to assure the sound development of an air

transportation system properly adapted to the needs of the foreign and domestic commerce of the United States. . . ."⁷

The Board's historical approach has been to enact regulations which place the most stringent initial restrictions upon charter transportation. Such regulations have been accompanied by the announced intention to liberalize the rules if they prove unworkable. This approach has placed both the air carriers and charter organizers between "the pit and the pendulum." On the one hand, the charter industry is faced with rules which, if obeyed, spell economic suicide. On the other hand, that industry is confronted with enforcement action for disobedience. A regulatory philosophy which poses such alternatives is fundamentally sterile.

The provisions which we are proposing suggests an entirely different regulatory philosophy. We are suggesting liberal charter rules. Only after ascertaining that the impact of such rules would be detrimental to the scheduled industry, after notice and hearing on the evidentiary record, should they be constricted. This philosophy would promote regulations based upon facts rather than suppositions. We are merely requesting on behalf of the charter industry and the public that traditional notions of due process be followed before the rights of the public to low-cost charter air transportation are emasculated. The reverse has been the Board's program in the past.

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

[Whereupon, at 2:58 p.m., the hearing was adjourned to reconvene at 10 a.m., Friday, Feb. 14, 1975.]

⁷ Section 102 of the Federal Aviation Act of 1958, as amended.

LOW-COST AIR TRANSPORTATION ACT

FRIDAY, FEBRUARY 14, 1975

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

The subcommittee reconvened, pursuant to adjournment, at 10:11 a.m. in room 5110 of the Dirksen Senate Office Building; Hon Howard W. Cannon (chairman of the subcommittee) presiding.

Senator CANNON. The hearing will come to order.

The hearings on S. 421, Low-Cost Air Transportation Act, continue today with witnesses representing tour operators, air travel clubs, travel agents, and others.

Our first witness this morning is Mr. Arthur Waltzman, President of American International Travel Service of Boston, one of the nation's largest tour operators.

STATEMENT OF ARTHUR WALTZMAN, PRESIDENT, AMERICAN INTERNATIONAL TRAVEL SERVICE, CHESTNUT HILL, MASS.; ACCOMPANIED BY CHARLES N. COLLATOS

Mr. WALTZMAN. With me is Charles N. Collatos.

As the President of AITS, Inc. (American International Travel Service), which is headquartered in Chestnut Hill, Mass., I am pleased to have the opportunity to submit to the honorable members of this committee our company's viewpoints on the policies of the CAB in regards to their air transportation charter policy.

As a means of introduction, our publicly held company is engaged in the leisure business. Our interests include the ownership of the Riviera Hotel in Las Vegas, and a restaurant and entertainment lounge chain with facilities in Massachusetts, Texas, California, and Hawaii.

However, our principle business is travel, utilizing chartered flights to destinations throughout the world. We market these travel programs through more than a thousand fraternal, social, and business associations throughout the United States, as well as through several thousand travel agent customers. Our entire volume of business during this fiscal year will exceed \$100 million.

We therefore feel qualified to state our views before this committee on the general subject of the CAB's charter policies and the specific subject of the Low Cost Air Transportation Act.

Although we are here as a company with a business interest in this subject, we also feel that our potential to grow in our industry is directly related to the public interest. Therefore, as a company who

exists according to our ability to provide a product the public wants at a price they can afford, we feel qualified in stating, our views naturally coincide with those of your constituents.

Obviously, a key component of our travel programs is air transportation. In this respect, we will spend approximately \$26 million during 1975 on airline transportation alone. Both scheduled and supplemental carriers will share in this income while more than 125,000 persons throughout the country will participate on charter flights we arrange for them.

I cite these figures only to demonstrate the impact of any decisions made by the CAB. When you consider we are only one of many such charter operations, you can readily understand the number of Americans who are directly affected by any price increase in the cost of the air transportation.

As a tour operator, we have two basic responsibilities. First, we must create a tour program and itinerary which will be appealing to the public. Second, we must create a demand for this product from the consumer. There are various promotional techniques we utilize to accomplish this goal, but the important factor to understand and to emphasize is that we must create a traveler.

Our business does not depend on diversion of the already committed traveler, but rather on our ability to create a new traveler; and we have statistics that most dramatically demonstrate this fact.

On every trip, each AITS client receives a questionnaire which allows us to assess the various components of the program on a week-to-week basis. In addition, however, each questionnaire also contains basic marketing information such as whether or not the client would have otherwise traveled to the destination offered, whether or not they have ever flown on a vacation trip previously, whether they would have traveled at that time of the year otherwise, and so forth.

An analysis of these questionnaires specifically indicates that our normal traveler was created by the program and method of product exposure. I think a good example of this was when a few years ago, we decided to offer a 1-week trip to Majorca. Although a popular European vacation destination, and also popular with a limited number of the more sophisticated American travelers, it was little known by the average person in the United States.

Yet, during a 1-year period—out of 30,000 persons carried—more than 3,000 were from the State of Ohio alone. The reason: an attractive tour package, to be sure, sponsored by an organization of which they were a member and therefore endorsed by those in whom they had confidence, but most importantly, it was the most attractive price. This total package price was made possible because of the attractive charter fares we were able to negotiate.

These negotiations have always in the past been based on our ability to program a plane in the most efficient manner possible, which enabled the airline to offer us a rate which was based on guaranteeing them a fair return on their investment. This is only possible when the airline analyzes the cost of a given operation and has the flexibility of rewarding the operator who gives them the best return with the best price.

Likewise, an operator naturally rewards the most efficient carrier with the contract. The end result is, of course, that the real winner is

the public, who can afford to visit new, exciting, educational destinations that perhaps would have been out of their reach without this negotiated rate.

However, as an example of the CAB's general philosophy in this regard, was their attempt to set arbitrary minimum rates. Although just withdrawn by the CAB, ACTOA, our tour operator's association, has decided to continue a court action we instituted to once and for all ascertain whether or not this public regulatory agency has any right to dictate rates to private businesses.

Several months ago, after lengthy negotiations with several airlines, we were able to negotiate a favorable per passenger rate to destinations in Europe. These were rates that the airlines we selected were satisfied with, as rates which gave them a satisfactory return on their investment.

Several other airlines were also within a few dollars of these prices. However, our selection of airlines was made on the basis of several factors, which, of course, included the price. However, these same airlines who were most satisfied with these prices, would have been forced to increase these rates to us, whereby during the high season—when most people desire to travel—they would have had to charge us a considerable per person increase.

Actually it would have meant that every couple on our trip would pay an additional \$160 for the same trip on the same plane. Now, thanks to violent reaction to the proposal, legal rulings by Government agencies and court actions, this additional cost to the consumer is no longer necessary.

The airline did not require this additional money. They are completely satisfied to continue to accept our negotiated rate. However, the CAB in their wisdom had decided that this airline must charge more money for this flight. We don't believe that in a system of free enterprise, a Government agency should dictate price levels to a private business. Supply and demand and common business sense can and should dictate the acceptable rates. The inefficiency of certain suppliers should not penalize an efficient operation.

Frankly, the CAB has demonstrated in practically every instance a lack of marketing knowledge and a lack of understanding of the industry they are regulating. It stands to reason that higher rates will not create new travelers and hence greater volume for the carriers. Nor will higher rates increase a company's efficiency. If anything, it will stifle creativity and encourage inefficiency.

As I mentioned before, the growth of our business depends on creating new travelers and travelers to new destinations. No new business can be created without a sizable investment in time, talent, ingenuity, and promotional dollars.

These dollars must come from the profits in the program. Yet the program, to be salable and excite the public, must be priced at a figure which makes it an obvious value.

Because companies like ourselves are willing to gamble on large commitments to airlines and to other suppliers, we have been able to produce a quality product at a net cost to us that permits us to sell it at a great value while still retaining enough gross profits to be able to properly exploit it. Naturally, this investment in personnel and

advertising dollars is our guarantee of a more successful program. This in turn generates more income for the given airline, hotels, restaurants, and all other suppliers of tour components.

Because we operate our programs on a continuing volume basis—what our industry calls back-to-back or track programs—we have been in a position of purchasing these components at a rate that is better than that which could be expected to be negotiated by an operator who provides these suppliers with less volume on an infrequent basis.

Many operators in our industry, like ourselves, have demonstrated the necessary skills to develop low-cost programs and the courage to make the necessary major commitments that are inherent in any such undertaking.

These facts of travel life are recognized by just about every facet of our industry—except the CAB. It has been their restrictive policies that have stifled the growth of the airline industry and all other segments of the leisure industry, who would also benefit from an enlightened approach to provide the American public with low-cost transportation.

The problem may not be, gentlemen, that the CAB isn't well-intended—we have to assume they are. The real problem may be that they do not seem to apply sound business and marketing sense to the problems of the industry they regulate.

The results are they don't effectively represent the average citizen, nor do they succeed in promoting a larger number of air travelers. They are charged with both responsibilities under their authority.

This committee deserves a great deal of credit for proposing the Low Cost Air Transportation Act. Your bill when enacted will generally prove to be of great service and benefit to the American public. In our opinion, perhaps to the surprise of some opponents to your bill, also of great benefit to all segments of the airline industry.

It is also unfortunate that regulations such as are proposed in your bill were not advanced by the CAB themselves, as obviously they are so greatly in the public interest. However, the difference in this committee's bill and the CAB proposal makes obvious their lack of understanding of the public's need for workable forms of low cost air transportation.

The fact that the CAB finally proposed instituting their version of one-stop ITC's is to their credit. They realize that the public wants it, the travel industry wants it, and many carriers want it.

The lack of success in most markets of the three-stop ITC, the failure of the recently introduced travel group charters, you would think would have enlightened the Board as to the pitfalls inherent in artificial requirements and complicated regulations. This is especially so when these charter categories are compared with the very successful affinity charter concept.

The concept of one-stop ITC's is excellent. It would provide all citizens with an opportunity to benefit from the advantages of charter vacation packages whether or not they were a member of a bona fide group.

In addition, it could also prove to be a great stimulant to all phases of the travel industry and create new domestic vacation destinations and hundreds of thousands of new jobs, as a result.

If the CAB is truly sincere about their stated purpose to “* * * generate new passengers from among those people who have not been eligible to participate in affinity charters, and who would not, or could not, travel except on economical all inclusive tours”—page 5 of their policy statement—then we believe they demonstrate a continuing ignorance of basic sales and marketing principles.

That is why we are pleased to be invited here to comment on the CAB's general charter policies and to make specific comments on your bill which does approach the public's needs in a sensible, enlightened way.

First, we are in almost total agreement in concept and particulars. We agree that because the economics of the business necessitate full capacity, more charter flights will mean maximum use of available energy.

Obviously, liberalized, nondiscriminatory charter regulations would help increase the number of flights and destinations available to the consumer. However, we do not feel that special rates need be made available to segments of our public. Charter flights themselves can serve this need for all persons at the most favorable rates possible.

In like manner, we do not see the need for air travel clubs, and do foresee a major enforcement problem for the Board if these organizations were permitted to proliferate.

Our major objections to articles in the bill lie in two areas: first, from the standpoint of conceptual factors as well as practical reasons, we are against permitting joint ownership or control of air carriers and the authorized charter sales outlet.

A charter is a charter because a third person guarantees a fixed rate of return to the air carrier. If there is no third party “guarantor” there can be no actual tariff, because it will actually fluctuate according to the load factor of the flight. For instance, let us assume an airline owns or controls a travel company and agrees to charter a 250-seat plane for a round-trip price of \$25,000 or \$100 per person for a full plane.

The travel company would naturally add into the selling price their anticipated acquisition costs, operative overhead, land arrangements, and desired profit. Let us assume the direct costs are \$100, making a total package cost of \$200. A \$44 profit is then added to produce a total selling price to the consumer of \$240. So far, so good.

However, let's assume then on a given departure only 150 customers are obtained. There would still be a gross profit of \$40 times 150 persons, or \$6,000. Let's also assume that there would be no—or limited—cancellation fees—for the unused land arrangements, which would not usually be the case.

On this basis, you would have a total income of \$36,000. Yet, your direct expenses would be \$40,000, because to the per person cost of 150 persons at \$200 each you must add the \$100 per person cost of the charter flight for the 100 empty seats. This would mean a net loss of \$4,000 on the flight.

If an airline owned the operator, they would for all intents and purposes be selling the plane at a price of \$4,000 less than their actual tariff. Therefore, there is no guarantee of an actual charter price to the airline, which does exist when a third, disassociated

party makes the same commitment. Not to be overlooked should be the results of similar interlocking relationships in England which resulted in the demise of entire companies with eventual hardships on the consumer.

Also, airline involvement in tour packaging creates a monopoly situation that would most probably result in unfair competition. In addition to the possibilities of favorable rates and departures for their own subsidiary, there is also the specter of promotional dollars and other overhead not charged directly to the tour subsidiary. But, as importantly, is the effect of this approach on the consumer.

Without the imagination and investment of effort and dollars by the creator of travelers—the tour operator—the public would not reap the advantages normally inherent from a free competitive marketplace.

The effect on the supplemental industry should be carefully evaluated. If the supplementals were given this right, precedent has shown, the scheduled carriers would soon be granted equal authority. With vast marketing resources and staff, plus numerous sales outlets and equipment, they would have a tremendous advantage over the more restricted operational potential of their supplemental competitors.

Another area of disagreement with the committee's proposed bill is the authority it gives the CAB to limit the execution of the committee's concept by geographical areas or markets.

The Board has historically shown that they use their regulatory power to stifle the growth of the charter business, not to expand it, as is the sentiment of the committee. This general CAB policy was most recently indicated with their proposal on OTC's. It was fraught with restrictive covenants, and their frequency and other restrictions all but eliminated the possibility of operating any back-to-back charter programs—the only feasible way to offer low cost air transportation to the American public.

Therefore, it is our opinion that unfortunately any charter bill that permits the CAB to indiscriminately place restrictions on its execution is inviting failure in its execution.

Mr. Chairman, we appreciate the opportunity given us by you and your committee to present our views on this subject. And, on behalf of our industry and its millions of clients, we thank this committee for its positive action in presenting its Low Cost Air Transportation Act.

Thank you.

Senator CANNON. Thank you very much for a very good statement. When you develop or attempt to develop your markets, do you go generally into the areas that have high density transportation now, or do you go out where there is less opportunity and try to promote new markets?

Mr. WALTZMAN. We promote new markets. We try to stay away from densely populated areas, from areas where scheduled airlines are available to the public. We normally create a new marketplace.

Just over the last month, we have landed planes that are going to Europe from Des Moines, Iowa, Biloxi, Miss., Jackson, Miss., various cities that do not have scheduled airlines to the destinations that we are going to. We create a new customer.

Senator CANNON. You mentioned that Ohio experience. Are you still promoting that market or was that only a 1-month operation?

Mr. WALTZMAN. We very heavily promote Ohio. We go out of cities in Ohio that normally scheduled airliners do not land. If you have to go to Europe or Hawaii or other destinations such as that, you would have to make one, two, or three stops such as that before you get there.

We just moved a group from Dayton, Ohio, in Hawaii.

Senator CANNON. Was that experience in Majorca long enough to operate a back-to-back operation there on a 1-week basis?

Mr. WALTZMAN. It developed we were operating three charter loads a week into Majorca from various destinations in the United States. We moved about 34,000 people in 1 year. We started as one back-to-back and it developed into three back-to-backs.

Senator CANNON. Are you able to contract for facilities on a long-term basis there at the other end?

Mr. WALTZMAN. We normally contract for facilities over about a year in advance—a year, year and a half in advance for 1 year at a time. In other words, right now we are designing programs for 1976 and are contracting in various destinations for 1976 land facilities.

Senator CANNON. Now this year, are you promoting Majorca?

Mr. WALTZMAN. This year we are not promoting Majorca. This year, to give you an example, we are going to the Canary Islands, an island very similar to the Majorca area.

Senator CANNON. What is your breakout between the carriers? Do you use trunk carriers in your charter as well as supplementals?

Mr. WALTZMAN. Both.

Senator CANNON. Both?

Mr. WALTZMAN. This weekend—I will give you an example—this weekend we chartered two American Airline 747's going to Hawaii.

Senator CANNON. Where from?

Mr. WALTZMAN. One is from—you have to hold me—one is from New York City. I don't know where the other one is from. We have chartered a TIA plane going to the Canary Islands. We have chartered a Northwest Airline plane going to Miami to go on a cruise. We have chartered a TIA plane going to Rio de Janiero. The Rio plane is leaving from the Midwest, I think leaving from either Iowa or Nebraska; I am not sure which. The Canary Islands plane is leaving from Indianapolis, Ind.

Senator CANNON. Now, in your statement you referred to a situation which you said, had it gone ahead, would have resulted in \$160 a couple more for the same trip. Was that the so-called "charter floor" that the Board was talking about?

Mr. WALTZMAN. That was the minimum charter floor the Board had set up. That would be the difference what we had originally negotiated the air fare for and what we would have had to pay.

Remember, we operate two types of trips right now. We operate affinity charters, which are the one-stop affinity charter into, say, Rio or Canary. We operate ITC charters with the three stops. We do that into Hawaii now because it is one of the very few destinations you can officially run a three-stop ITC.

Senator CANNON. Is Las Vegas one of your stops on the Hawaii trip?

Mr. WALTZMAN. That is one of the trips we have—Las Vegas-San Francisco-Hawaii. The other is the Honolulu Islands in a two-week three-stop or even better than three-stop ITC.

Senator CANNON. Majorca or Canary Islands, you wouldn't have the opportunity for three-stop, would they?

Mr. WALTZMAN. We can't do that. We have to go strictly charter airlines with an affinity organization.

Senator CANNON. You mentioned here that you have found that the reason for separation of the ownership is a result of the risk factor and the unfair competition. Do you occasionally end up short on flights and are, therefore, penalized as a result of your assumption of risk?

Mr. WALTZMAN. On ITC, we have numerous times. This weekend is a perfect example. Hawaii is so jammed this weekend, it being a holiday week, that it was a situation where you couldn't get all the rooms necessary to run two 747's in.

I am running one 747 with—both are ITC airplanes, with—let's see, the plane is configured at 407 people. I think I am running one plane with 390 and one with 385 which means I am running short on the plane and absorbing the risk and paying the dollar, the proration.

Senator CANNON. That wasn't because you couldn't promote the passengers; you just couldn't find the facilities?

Mr. WALTZMAN. Yes. But let's say the situation I couldn't promote the passengers. We advertise extensively for ITC's in the media, trade publications. Let's say the trip instead of getting 407, I ended up with 350 or 225 or something. The plane would still go off. The consumer would get his trip. We are prime risk-takers.

Senator CANNON. I don't know whether you were here yesterday or not, but the Board requested that they be given only authority further by definition as to what constituted a charter and that they could then carry out the regulations.

Do you believe, based on the past experiences with the Board, that they would adequately regulate in this area?

Mr. WALTZMAN. No, sir, I don't. I don't think right now the Board itself truly understands the problems of the charter operator or the tour operator or any of us, as to what is necessary, and the rules and regulations necessary to allow us to market and still not compete.

We have no intention of diverting a single passenger from a scheduled airline. No intent at all. Their restrictions in the past, have been so restrictive it has almost been physically impossible to operate a business.

Senator CANNON. Do you have any statistics, as a result of these studies you referred to in your remarks, that might be helpful to us based on your passenger interrogations? For example, statistics relating to the diversion question or whether people would otherwise travel if they were not—

Mr. WALTZMAN. I have cartons and cartons that could probably fill this room.

Senator CANNON. We are not interested in cartons.

Mr. WALTZMAN. What I can do is analyze for this committee the results of all the questionnaires we have issued out. We have been in

business almost 10 years now. I could punch some of that information up and show you exactly how many people said this was their first-time vacation, how many people said this was the first time they were on an airplane in their life, how many people said they would never have taken this trip if we didn't provide it for them, or that if the plane did not land at their homesite so they could get on the plane and go right to their destination.

Senator CANNON. If you could send us in an analysis of some of that information, I think it would be helpful to the committee.

Mr. WALTZMAN. I will do that, sir.

Senator CANNON. Thank you, very much. We appreciate your being here for the committee today.

Mr. WALTZMAN. It was a pleasure. Thank you for your time.

Senator CANNON. Mr. Edward J. McDevitt, vice president, Airclub International, Seattle, Wash.

STATEMENT OF EDWARD J. McDEVITT, VICE PRESIDENT, AIRCLUB INTERNATIONAL, SEATTLE, WASH.; ACCOMPANIED BY ARNOLD J. BARER, LEGAL COUNSEL

Mr. McDEVITT. Mr. Chairman, I am Ed McDevitt, executive vice president of Airclub International, a private nonprofit travel club of Seattle, Wash.

We are very honored to be here because I feel this committee is engaged in extremely important deliberation.

I am here not only as a representative of our club, which last September had 60,000 memberships and some 160 employees, but more broadly on behalf of all our country's citizens.

I am here to beseech you for common sense and justice.

Our concern here is the availability of low cost air transportation to the American public, most specifically the way in which clubs like ours can help to provide it.

The sorry chronicle of CAB history since its establishment can leave no doubt that the American public has suffered enormously and unnecessarily from an almost terminal case of "acute regulitis."

I will confine my remarks to our own experience in attempting to bring safe, low cost air transportation to those folks who demonstrably need and desire it.

Airclub International is composed of members from all over the Northwestern United States and British Columbia. They have joined the club because they have, just as you and I, the inherent human quality of wanting to see what is over the next hill, or what lies beyond a distant horizon. They want to feel the sand of a Waikiki or Bermuda beach between their toes. They want to inhale the exotic odors of a Caribbean marketplace. They want to take their children to a Disneyland or a Williamsburg, or perhaps to visit a grandma and grandpa they've never seen, in Oslo, London, or on a little farm outside New Orleans.

For most of our members, flying to these destinations by common scheduled carrier presents an extremely financial hardship.

Indeed, for our many beloved members who are retired and being eaten alive by inflation, our club, by their own testimony, is the only way they can afford a little pleasure trip now and then.

For our many college students and even high school students with part-time jobs, we have provided a chance to see places, people, and things they could not have afforded any other way.

May I present just a few examples?

Our average roundtrip seat cost between Seattle and Honolulu on weekends is \$160. The scheduled airline fare traveling thrift class is \$268. We save the consumer about \$100, and give him a meal besides.

Roundtrip to Europe from Seattle with us averages a little over \$350. By scheduled carrier, if you stay less than 14 days, \$834. If you can afford to stay for over 3 weeks, the schedules will be happy to charge you only \$488, still almost \$150 more than Airclub.

Seattle roundtrip to the Bahamas average about \$160. By scheduled airline, with two plane charges, \$412.

Gentlemen, our club has scheduled a trip visit here to Washington in April. We will be bringing people to see the traditional cherry blossoms, the other marvelous sights of this wonderful city, and the wonderful subway system which has eliminated all those horrendous traffic jams.

One of these days they will.

Senator CANNON. You may have a problem with false advertising.

Mr. McDEVITT. We haven't told them about it, but we shall.

For this beautiful trip our members will be paying about \$160 roundtrip. My coach ticket to these hearings on Northwest Airlines, cost \$368—more than twice as much.

Obviously the scheduled airlines are attempting, as any business must, to maximize the earnings of their stockholders, and we have absolutely no quarrel with that.

But we are not an airline.

We and the other clubs around the country like us are groups of private citizens who own or are buying or leasing private aircraft for our own use.

We share the costs of ownership and operation and, by so doing, we are able to realize significant savings in our discretionary air travel dollars.

Our club doesn't have a 747 or a DC-10. In fact, we have a 707, one 720, and a rather venerable DC-7.

All of these were surplused airline aircraft. We maintain them to airline standards and have never had a safety violation. They are well equipped for safe flight, but they don't have, nor do our members desire, the frills and frippery so widely splashed in the scheduled airlines television commercials.

Our planes have been called "clubhouses with wings," and that pretty aptly describes them.

Our members would rather have a sturdy, safe, dependable family sedan a few years old than pay the exorbitant fees necessary to support the huge aerial sports cars that cost from \$12 to \$25 million per copy.

Does this philosophy or practice constitute criminal behavior? The CAB certainly seems to think so.

Their interpretation of the present laws has led the Board to spend millions of dollars of the taxpayers' money in an increasingly vigorous campaign of attrition against clubs like ours. Why?

When our club was founded early in 1971 it was done with a dream in the hearts of a few people who wanted a little more out of life than a day-to-day existence. Our idea appealed to the sense of adventure and fun that is a natural part of being human.

Within 6 months we had over 10,000 members because people saw that with the airclub concept their dreams just might have a chance of coming true.

These members are not slick jet-setters. The median income of our people could be called lower middle class to poor by any reasonable standards. They are the people who can pick up the travel section of the Sunday paper and only feel bad. They simply don't have the discretionary funds to afford the prices of the things they see on those pages.

When our people go to Hawaii, for instance, a goodly portion of them buy groceries in a little store on the corner and take them to the room to make sandwiches. They don't travel on company-paid, tax-deductible dollars. They travel on the wages they make as file clerks or stockroom boys, bellhops and cab drivers.

They save a bit from social security or teachers' annuities, put it in the cookie jar for a year or so, and then take a little vacation through our club; and they like the feeling of being with others of like circumstances.

These people are not being stolen from the airlines. Most of them simply can't do it any other way. The scheduled lines don't fulfill their needs. The supplementals don't fill their needs. But clubs like ours do.

A survey of our members by the CAB showed that a significant percentage of them join the club and never do take a trip with us. Evidently, for them, we simply fulfill the role of possibly having a dream come true.

They know they are going to go someday, and that is enough to keep the dreams alive. With us, they have a chance, just a chance to enjoy some of the fun that their more affluent brethren take for granted.

Obviously, I don't pretend to sit before you with all the answers to all the problems of air travel. But for the pensioners, the students, the poor of all descriptions, we do have the answer, and they love it, and the dollars we generate throughout the travel industry are dollars spent not only in fulfilling the long-held dreams of our members, but they provide jobs and help the economy of any destination we happen to fly to.

The basic question before you is simply this: Do the certificated carriers have a "divine right" to all the travel in the American skies?

By what arrogance do they tell the American people that they and the CAB know what is best for us and we must pay for their frills which some of us don't want, or not fly at all?

The members of this subcommittee have the power to give back to the people who elected you, the millions of so-called "little people" in this land, a choice in where they want to do their shopping for a little vacation trip now and then, just as they have a choice in where they will buy their next bag of groceries or pair of shoes.

While you consider that, let me briefly present a few facts about our club and its members since 1972 when the CAB first opened its jaws like a giant rogue shark and came to tear us apart.

Our primary facility is located at Boeing Field in Seattle. We base our aircraft, do our maintenance, and have a central reservations office there.

Our customer service offices are located in Portland, Oreg.; Seattle; Honolulu; and Victoria, B.C.

All our flights leave from Boeing Field, Seattle; and our Oregon and Canadian members have to ride a bus for about 3½ hours before they ever board the plane. But the bargain and the camaraderie must be worth it.

The CAB opened hearings aimed at finding us a common carrier in violation without a certificate in 1972. Further hearings led to a Board decision in September of 1974 which branded us as outlaws and gave us 60 days in which to cease operations in violation of the law.

During those 60 days we were forbidden to advertise or in any way promote the advantages of the club. We could not accept any new members, and in general were given a most emphatic shove towards bankruptcy.

This tactic had already worked quite well for the Board in disposing of several other clubs in other parts of the country, most notably the "Voyagers 1000" club base in Indianapolis.

New memberships which, incidentally, only cost \$25 per year per couple, were a major factor in meeting our ongoing expenses. These immediately ceased.

Bookings for future flights dropped like a goose full of buckshot because, naturally, the members felt quite nervous over the notoriety and possible demise of the club. Refunds had to be made. Flights had to be canceled because too few people were now committing to go on them.

At the same time, creditors became extremely nervous, demanded that all accounts be brought up to date immediately, and cash in advance was demanded for such necessities as fuel, food, office supplies, and all the myriad logistic details that go into the operation and well-being of four large aircraft.

It might have been easier just to say then that it wasn't worth the effort to try to keep going. But when the facts became known to our members, God bless them, they told us they would back us up all the way.

Several members of this subcommittee have read the literally thousands of letters that came pouring into their offices to please do something about the situation.

The response from the respective Senators and Representatives promising these hearings and meaningful legislation was like a transfusion to a wounded soldier.

Our employees, who were emotionally devastated by all this, rallied round. Several, whom we were forced to furlough or terminate, came in unpaid just to help keep things going while the legal appeals process was taking place.

We lost almost half of our 160 employees because the workload dropped and the cash to pay salaries right along with it.

Several examples come to mind rather quickly. We have a 42-year-old stewardess, virtually the sole support for six children, six of them, ages 5 through 14, about to lose her home because we can't give her enough work. And she has never had any other kind of job.

We have several pilots in their late forties and fifties who have never done anything else and cannot find airline work at their age.

I won't belabor you with more of the same. Human heartache is the same for all of us, and God knows there is enough in our country right now.

When Senators Magnuson, Jackson, Cannon, Packwood, and Hatfield drafted a joint letter to the CAB asking a roughly 90-day extension from a December 15 date of demise for the club so that members who had planned trips far in advance might realize their winter holiday dreams, the Board gave 30 days, and as much as said, "Let them eat cake."

The Board allowed the scheduled carriers an exemption to carry our members between January 15 and the end of March at our fares, if the carriers so desired.

Well, they didn't, and they implied that it wouldn't bother them if our members were stranded.

Fortunately, on January 15 the Ninth Circuit Court of Appeals, based on a plan of reorganization and change of modus operandi which we were willing to voluntarily instigate, ordered the FAA to grant us a new operating certificate.

In effect, the judges of that court could see no reason for us to be bankrupted before the case was ever tried in a court of law.

And so, on January 16, just 1 month ago, we had to start all over again.

All old memberships were invalid. No advertising or public promotion allowed.

Our offices, formerly in downtown, street level locations, were "too visible" to the general public, so we will have to move them, at great expense and inconvenience to our members and employees.

Our dues structure, \$15 a year for a single person, or \$25 per year for a married couple, wasn't "high enough" for a "real club" according to the CAB, so we will have to raise that, although the CAB has never told us what would qualify in their eyes as "high enough."

Our creditors have been asked to wait for their money beyond all reasonable expectation. Although we have refunded over \$100,000 to members since the first of October because of flights we had to cancel as a result of the CAB order, we still have tens of thousands of dollars that we owe our members and have not yet been able to repay.

In short, we have a new, valid part 123 operating certificate, but unless you gentlemen generate the legislation that will teach the CAB that it must learn to swim instead of walking on water, as it has these past 37 years, that certificate isn't going to mean much else other than the eventual bankruptcy of another American business and the destruction of the economic life of dozens of good people along with it.

We sincerely applaud the spirit of the Low Cost Air Transportation Act, but we beg you not to leave to the Board the prerogatives of regulation over private travel clubs like ours. The record clearly shows what our chances of survival would be.

We ask that the committee adopt the proposed amendatory language to section 5 of the Low Cost Air Transportation Act. The amendments would, in effect, grant a "bill of rights" to the members of air travel clubs across the land and set congressionally mandated standards for the CAB in keeping with the true spirit of the act.

During the best of times our club averaged about 12 departures per month from the Northwest. The scheduled airlines averaged about 180 departures per day from Seattle alone.

The Canadian members of the club spend somewhere between \$10 and \$12 million per year in the United States as a result of flying with us. This money is spread throughout the resort areas of Hawaii, Nevada, California, and other destination areas of general interest to our friendly neighbors from the north.

Without our club and the service it offers these people, those millions of dollars would be largely lost to the American economy.

Can we afford that, especially now?

Our members have begged you, and I beg you now once again on their behalf and on behalf of the families of our employees to seek out the answers most carefully.

The public outcry against the abuses and malfeasance of the regulatory system is loud and clear. The people are demanding that you gentlemen who have the wisdom and the power to do so make the necessary changes now.

With the spirit and the desires of the people behind you I feel certain that you will have the courage to do so.

We thank the committee for this opportunity to be heard, and we will be praying that your sense of justice to all will guide your decisions.

Mr. Chairman, beside me is Mr. Arnold J. Barer, an attorney from the club, from Seattle, who would like to have a moment or two in regard to the amendatory language to section 5.

Mr. BARER. I have a prepared statement I would like to put in the record. There is no sense in repeating the basic information contained in that.

Yesterday I did have a chance to hear part of Mr. O'Melia's statement, or review part of his statement, and also Acting Secretary Barnum's. I think the—particularly in light of those two statements, we have submitted with our statement some proposed amendatory language which would definitively set some standards.

I think Mr. O'Melia stated they really didn't know how to set standards. We had asked them historically to engage in rulemaking proceedings, both Voyager, the Indianapolis club, and Club International, as well as several other travel clubs that said adopt a rule in which you definitively set the standards.

They consistently stated they don't know how to set the standards. Therefore, it is not a question of their having an expertise in the area.

We certainly agree with the gentleman from AITS that they have consistently displayed a lack of knowledge about what air travel clubs were about and generally what low cost transportation is about.

We agree with Secretary Barnum that perhaps the only regulation necessary for air travel clubs are minimum standards which set a

limitation upon the Board action, the Board's action in regulation and also, of course, the safety regulations which the FAA has administered for many, many years and with respect to air travel clubs that resulted in a fairly successful safety program.

I think the comments which have been made regarding, one, the probable proliferation of air travel clubs and their respective safety are really not to be taken very seriously.

Air travel clubs are highly specialized. They depend an almost—a type of thing just happening. You have to have the right people to promote the club. You have to have the right membership base that support the club. Unless those things come together, you just cannot have a successful air travel club. That is why even under an era before the CAB took any jurisdiction with respect to them, there were only 30 air travel clubs, and 22 or 23 were reasonably successful and served large population areas.

Again we say with respect to the proposed amendatory language, we have to have some definitive bill of rights for the members of air travel clubs.

The Board—the message of low cost air transportation gets lost between Capitol Hill and the Universal Building on Connecticut Avenue. It just gets twisted.

The CAB just doesn't have the conceptual attitude to be able to regulate air travel clubs unless Congress in its expertise provides them with what Congress feels are the standards which we say deal in keeping the costs the same, not unduly hampering the clubs, and not putting a lot of certification proceedings which would result in the extinction of air travel clubs, quantitatively, qualitatively, and certainly the distinction of Club International, which is already under serious threat of a death sentence.

Thank you, Mr. Chairman.

Senator CANNON. Mr. McDevitt, it has been suggested in these hearings that if the CAB adopts broad and general charter rules which would permit the general public to take advantage of simple and convenient charters there would no longer be a need for air travel clubs as club members could obtain low cost transportation by charter.

Do you believe that to be true?

Mr. McDEVITT. No, sir, I don't. The other evening I was in Victoria, British Columbia attending a meeting of our club. There were almost 200 members in attendance. I had an opportunity to speak with them directly.

I think the big difference is that not only do we provide a source of low cost air transportation, but in a true sense we are a club; and we have initiated fairly recently an expansion of other activities into which we will be getting, club activities: ski trips to the mountains near Seattle and Vancouver.

We are planning quarterly dances at each of our locations. We are planning some bus trips into the mountains for the elderly, the retired members, especially, who appreciate these things.

This is in between the trips that they take with us by air and there will be other activities available to them.

We are going to be teaching them just little things like how better to use their cameras to take nicer pictures on their vacations which

we get into that the tour operator just doesn't have the facilities, the time, or the inclination to do.

I think we are planning also different things like a specific location in a clubhouse nature which Mr. Barer just informed me was typical of several other clubs no longer in existence.

We have all kinds of wonderful plans for the future of this nature, some of which are already being implemented. In that sense it will be a true club rather than just a source of low cost air transportation.

Senator CANNON. Now, the Board in the past has found several travel clubs, including your own, to be simple businesses, operating for the profit of the owners and actually performing common carriage under the guide of flying clubs.

Several times in your statement you make reference to "customer service" and "our business." Is it a fact that your club is a business which is privately owned by persons other than the members and, if so, how can you legitimately define that as a flying club?

Mr. McDEVITT. I think, Mr. Chairman, Mr. Barer can give you a more definitive answer to that than I personally can.

Mr. BARER. Mr. Chairman, I think that that oversimplifies an air travel club. I think that the Board has taken that attitude and it makes it very easy to say that.

I think in fact that air travel clubs have to be businesses. Obviously if they don't operate on business—on the terms of sound business judgment, if there isn't risk capital provided for them, which demands a return, they cannot exist.

The board has siezed upon the fact that it—virtually every travel club, there has been somebody who has come along and who has attempted to put the thing together and who has by the necessity had to put up an investment and expects a return upon investment and says well, they are just really businesses. The hard, cold fact is they are a combination of business. They are a combination of business and the fact that they are membership organizations.

Without the promotion, the membership organization cannot exist. Without the membership organization, the business can't exist. And, because of that, it is really unfortunate that the Board would like to think of air travel clubs as businesses. They are just another guy maneuvering in to get part of that industry, but that is a very simple listing, very erroneous idea; and one that was effectively, I think, rejected by the hearing examiner who came out to Seattle, sat in a Federal hearing room and saw the literally hundreds of people who appeared every day because it was their club that was involved. He rejected that finding.

But the Board came back and put it in. They hadn't been there to see the people.

Senator CANNON. Now, under the terms of the Board's cease and desist order against Club International and Voyager, what activities did the Board find to be common carriage that you believe ought to be permitted pursuant to regulation?

Mr. BARER. The Board takes the position—and it has been a gradual extension of their power, that the common carriage follows from the promotional or holding out facet that what would be—now, they say this—I mean this is the lip service that they say. In writing

their decisions which have been affirmed by the court, that if in fact you hold out the same conduct which would be private carriage will be made common carriage by the fact that you promote it and make it available to the public.

As—probably to say it best, if a person flies their own plane and flies it from point A to B, this will be private carriage.

If in fact the person flies their own plane, does exactly the same act, and advertises, the Board will say that that is in fact common carriage.

The problem is that the Board really, in its regulations, has taken a position below the line which they don't enunciate; but if you talk to the people in the General Counsel's office, that anything which legitimately—pardon me, I won't use the word legitimately—which the Board views as competitive with the certificated carriers, irrespective of what you call it, what you design, what you say, they will consider it to be within their jurisdiction and will attempt to regulate it.

That is what I call the hole in the bucket approach. It is that anything they can conceive of as a hole in a bucket. In their view of the bucket it is that everything goes into the bucket.

Senator CANNON. Well, you did everything but answer my question.

Mr. BARER. I am sorry, Senator.

Senator CANNON. Are you now suggesting the holding out theory ought to be modified by regulation?

Mr. BARER. I think in our proposed draft we have chosen the Board up on a letter which Mr. O'Melia, when he was Director of Enforcement, gave to Argosy.

The committee should suggest that the test be codified, that in fact an air travel club should be free to institutionally promote its membership and respective advantage, advertise specific flights, specify destinations, or combinations of prices, destinations, et cetera.

In the memorandum I have given to you there is specific language.

In other words, they can say you save by being a member of a travel club, or they can say all right, last year our travel club served Hawaii or Las Vegas. But they cannot—we can never be able to advertise.

Now, travel clubs should be able to advertise under this proposed scheme: We are leaving next week for Las Vegas. The price will be \$78. We are going next week to Hawaii. We have the following departures. Advertise in that manner.

That would be a congressionally mandated standard of holding out which, if you violated, would be violation of the particular regulatory act.

Senator CANNON. It sounds to me that you are suggesting that you want to indirectly hold out to the public that you can actually do those things.

Mr. BARER. Well, the Board had taken that position because they said that an air travel club could advertise for the purpose of providing air transportation. They wanted to decide—they wanted to decide what the difference between the two was in a particular case, so they made it clear if the outfit got big enough to regulate, any advertisements at all.

Senator CANNON. Do you think it would be a reasonable requirement to require that the club would have to own at least one aircraft rather than to lease the aircraft?

Mr. BARER. Well, the FAA also required under part 123, Senator, that a club own the aircraft or they leased the aircraft for, I think, a period of 1 year. I may be wrong. It was a substantial period of time—to preclude somebody from taking a surplus use of an aircraft and phasing it in and out of club operations.

That's a very legitimate requirement. The question of whether it's ownership or lease is actually just a question of financing. As we all know, you can lease a car, you can buy a car, you can buy it on a conditional-sales contract.

Oftentimes it is better for a club maybe to lease a plane than to own it, because it gives them some particular flexibility.

They could, for example, lease it on a block-hour basis over a period of time. It should be a substantial period of time, because otherwise you get every person who owns a surplus aircraft and has no use for it, he could push it in and out of air travel club certificates.

Mr. McDEVITT. I think, Senator, if I might, the regional office of the FAA, which is right across the runway from our office, several of their people have expressed to me in the recent past that they are concerned that a travel club has the exclusive use of its planes. And on the part 123 certificate, the particular aircraft used by that club are listed by N number, and they are the only planes able to be used by the club unless there is a change in their operating certificate.

Because of the maintenance factors and what not, the FAA, as a matter of fact, has two reserved spots right outside our maintenance hangar for their own cars and they are over there every day virtually overseeing the maintenance program.

This is a very strong concern of theirs, that we have the exclusive use and that they have access to the planes themselves at all times for purposes of safety oversight. We have never had a violation.

Senator CANNON. Well, when a flying club advertises cheap flights to destinations, the only basic requirement being to be a member of the club, isn't that really a holding out of common carriage?

Mr. McDEVITT. Well, this is what the CAB has found in the past. Under our proposed reorganization plan, which was submitted to the ninth circuit court, and upon which we were granted the new 123 certificate a month ago, we have instituted a number of new requirements for membership which did not exist previously, because no—

Senator CANNON. For example?

Mr. McDEVITT. For example, we have built in a waiting period of 30 days; we have built in a screening process; we have built in a number of questions relating to the background and the interest of the particular applicant.

Senator CANNON. But if you just build in the questions, you don't necessarily require it, do you? You don't turn a person down if they don't answer the question correctly, do you?

Mr. McDEVITT. If we find that the answer would be in a negative sense to the spirit of the question, yes. We have turned people down

since we began accepting new memberships in the new reorganized club this last month.

Senator CANNON. Give us an example of a question that you would turn a person down on.

Mr. McDEVITT. Well, one of the provisions that we have in there is the fact that we don't want people traveling on a point-to-point arrangement, on a business basis. If we have anyway of finding out about it—we did find out in our Vancouver office. There was a gentleman there who is in the business of selling condominiums on the island of Maui.

He thought a very convenient way for him to get back and forth each week—the question was in the questionnaire that we submitted to him, and he openly, voluntarily said: "Yes, I will be traveling on business back and forth."

We said: "Sorry. That is not a club member in our eyes. We will have to refuse passage for you."

He was turned down.

Senator CANNON. Did you turn anybody down on any other basis other than just business travel to and from your two points of destination?

Mr. McDEVITT. We have had several people—I couldn't give you an exact number because I don't know the number—but one of the office girls in Vancouver told me the other night at the meeting there that several people had been turned down because they were looking at the club as simply a means of every once in a while doing a little gambling, doing a little surfing, and so on and no interest in any other activities that the club was going to be promoting. They had no interest in ever attending any of the functions like the dances, like the parties we were putting on, things of that nature.

And that is right in the application now: What other activities—and we enumerate several—will you be participating in?

They are required to attend at least two of these social functions per year, and we take membership at the meetings and these will be checked against the membership file. We want people who are interested in the other people in the club, not just loners who will occasionally take a trip.

Senator CANNON. Did the court actually approve the reorganization and the approval of the part 123 certificate, or did they simply say that this reorganization would allow the Board to see if it would work while, in the meantime, approving a 123 certificate?

Mr. BARER. Senator Cannon, the—I think one thing should be stated clearly. Mr. McDevitt is not a lawyer, and I think there may have been a wrong inference in his statement which isn't in mine, because the court of appeals for the ninth circuit, when the cease-and-desist order against Air Club was issued by the CAB, the club immediately commenced a restructuring to attempt as best you could under the relatively vague language of the cease-and-desist order, to comply with the cease-and-desist order.

Obviously, if it did not do that then any continued operation of the organization would place the organization and its officers and agents in contempt. There were two choices: You either attempted to comply or you got out of business completely.

What the club's attorneys in that instance—I did not represent the club in that instance—did was they took a look at the cease-and-desist order. They took a look at the language of the decision; and they submitted a plan to the FAA which is also, in light of the Voyager and Club International decisions, has stopped issuing part 123 certificates to those clubs which were organized in the Voyager format, which was about 15 or 20 of the 30 clubs. They had some of the activities which had been criticized in the Voyager case.

The FAA had taken a position that they would not issue those clubs any certificates under part 123.

So what Air Club did was it reapplied and presented a new format which the attorneys for the club felt complied literally with every requirement that the CAB had decided in their cease-and-desist order.

The CAB had no part in that, but the—except to advise the FAA by letter, as I understand it, that they shouldn't grant any 123 certificates.

The club took the FAA Administrator to the ninth circuit on a review under the act, and the ninth circuit reviewed the plan and it was argued to them as to whether this complied with the cease-and-desist order.

Knowing courts, the order is only a three-paragraph order. What went through the court's mind I can't really say. I can only speculate. The court immediately issued an interlocutory injunction staging the FAA's refusal in mandating them to immediately issue the new 123 operating certificate and joining that procedure with—that proceeding with the club's appeal from the CAB's decision in one consolidated proceeding.

So the determination granting Air Club an operating certificate under part 123 is interim, pending the review.

The review specifically does not—the order of the ninth circuit specifically does not preclude the CAB from coming in and enforcing their cease-and-desist order which they could do if in fact they took a position that the reorganized plan doesn't comply with the cease and desist order.

They are free to do that. They haven't done it. I don't know whether they would do it. I obviously didn't talk to Mr. Degrey about it and the representatives of the general counsel's office. They are free to do that. So far they haven't done it. I would think—I would hope certainly that a very conservative reading of the cease-and-desist order was taken by the club's attorneys in that instance. And we have tried to comply.

It's a hampering plan. It's radically changing the format which 50,000 members relied upon, but the people involved just aren't going to violate the law if they can help it.

Senator CANNON. What will be the next step now, assuming the Board doesn't come in and attempt to enforce the cease-and-desist order? Does that entire matter then go up on appeal?

Mr. BARER. As usual in these cases, what will happen is that the existing enforcement order, the decision in Air Club International by the Board is on review in the ninth circuit. The FAA proceedings

are on review before the ninth circuit. So that's where it is procedurally. It is briefed. The brief data is on the 24th for opening briefs and there's an expedited appeal procedure.

However, we have no assurance that the ninth circuit will sustain the fact that even the revised—their decision is interim only, in which case if they decided in this—in the ninth circuit case that what we suspect the CAB is—has really said is that Air Club's using large aircraft contemplated by 123, operating in the Voyager pattern, even without advertising, and without some of the other facets which are present are within the Board's jurisdiction.

Then it's all over for air travel clubs.

That's what we suspect may well happen.

The Board has taken a very, very, very hard line toward air travel clubs. Unless we get some type of congressional statement of minimum standards of what an air travel club can do which is viable, and can operate and provide services to the members, and the members are—not in a legal Board sense. The Board says the members are part of the general public. Therefore, you are always holding out if you have members, but in a practical sense, we have to be able to serve our public.

MR. GINTHER. Mr. Barer, why is it that out of some 25 or 30 travel clubs which operated periodically in the last 30 years that only Voyager and Air Club International have been singled out for enforcement and other clubs, such as Atlanta Skylark, which is a larger club based in Denver that is going to testify this morning, have not been subject to enforcement?

Is it the nature of the clubs which has brought about the CAB's enforcement activity?

MR. BARER. Mr. Ginther, other travel clubs have and they were not pure travel clubs in the sense that I think the Board has—went after one called ITIS or something like that. AITS, I think, was the other club. The principal reason that they went after Voyager was a test case to establish the jurisdictional limits.

The real reason they went after Voyager was because Voyager and Air Club International are the two largest, two most successful air clubs in the business. They are the ones that have the large membership and fly the aircraft.

It presents no effective threat to the Board's jurisdiction to take a situation where they want to go after an outfit that flies one DC-3 or DC-7 on a very sporadic basis. Certainly maybe they advertise; a lot of them do. We have four or five other clubs; several of them have jets. They have approached those clubs indirectly. They have gone to the FAA; they have given the FAA an advisory letter, and as a result, Jet Set had their 123 certificate revoked. Sunfari has its 123 certificate under revocation, and now they have issued it pending the *Air Club* case.

They haven't had to bring the enforcement because they are accomplishing the same result indirectly by in effect enunciating what the carriage—the common carriage rule is, and then going over to the FAA, which obviously in part is one of the requirements of a part 123 certificate. It is that it be legal.

They don't have to go against them. They are getting them through the FAA, and that has precluded the necessity of their directly commencing enforcement actions against them.

I have little doubt—also you have to remember that while Mr. Gingery has increased the size of the enforcement capacity of the CAB, Mr. Ginther, as I remember he only had five enforcement attorneys when the *Air Club* case started and two of them were involved in Air Club and two of them were involved in Voyager—and he had all of the rest of the entire industry to regulate from the air taxis to the foreign air carriers.

I think that answers your question.

Senator CANNON. Senator Stevens?

Senator STEVENS. When you go to Hawaii, Mr. McDevitt, where do your people stay?

Mr. McDEVITT. We stay, oh, I'd say the big percentage of them do stay in Honolulu.

Senator STEVENS. What hotel?

Mr. McDEVITT. They have used various ones in the past. One of them now, the Coral Reef, is the primary hotel that we use at this time.

Senator STEVENS. Do you make the arrangements for them?

Mr. McDEVITT. Yes.

Senator STEVENS. On a block basis?

Mr. McDEVITT. Yes.

Senator STEVENS. What do you have to pay for those rooms?

Mr. McDEVITT. They vary. They depend on the negotiated contract. It averages out for the weeks's stay, the people might, oh, be paying an average of about \$15, \$17 a day for a double room.

Senator STEVENS. In season?

Mr. McDEVITT. Yes. It varies. Sometimes it's a little bit more depending upon exactly when.

Senator STEVENS. How about when you go to our chairman's State?

Mr. McDEVITT. Whatever kind of contract you can negotiate.

Senator STEVENS. How about Las Vegas? Where do you stay here?

Mr. McDEVITT. In Las Vegas there have been several different places, primarily—I think a lot of the people in that case make their own arrangements. We have quite a few who have people there with condominiums and things like that who stay there, or relatives, whatever.

But we stay at various hotels there. The Thunderbird has been used quite a bit, and the—occasionally we find them scattered all over. Some want to go to Caesar's Palace. Some want to go to the Landmark. Most of them want to go to the less expensive ones.

Senator STEVENS. Do they have to stay where you make the arrangements?

Mr. McDEVITT. No. They have the option at all times to simply pay their share of the air fare and provide any other ground arrangements they want.

Mr. BARER. Senator, in the Air Club proceedings we—Air Club called as a witness the representative of Cinerama Hotels. They own a number of hotels in Honolulu. They testified that the practice of Air Club in setting up membership resulted in the lowest rate they had ever charged. They were able to quote Air Club for its block booking.

We have a problem with the State of Washington, which we resolved by allowing people—they should be able to have their choice of the State asked. At one time at a conference we allowed people to determine whether they wanted to take rooms and full accommodations or not.

If you gave a price based upon a total package, you had to distinguish it. After that they allowed people to choose their own hotels if they wanted to.

By and large, at the time of the sharing at least they block-booked and were able to get the lowest price in Cinerama hotels that they had ever offered anybody.

Senator STEVENS. If I were a member of your club, I wouldn't have to stay there, right?

Mr. BARER. That's right.

Senator STEVENS. I could stay with a friend in Hawaii as well as Las Vegas?

Mr. BARER. The principal—Las Vegas, particularly Reno, is one where people don't even book a hotel room. They figure they are going to go down for a weekend. They never want to go to a hotel room. That's a waste of time.

Senator STEVENS. How many trips per year would I have to take if I were a member?

Mr. McDEVITT. There is no restriction on the number of trips you have to take.

Senator STEVENS. I was interested in the statement you made. The CAB showed a significant percentage of them joined the club and never take a trip with them.

Mr. BARER. I, of course, remember that survey from the case. The CAB did a survey of our members which we maintain showed an entirely different representation thing than the CAB expected to find.

One, they found out they had anticipated that the result would show the people purchased air travel club memberships for point-to-point transportation. The result was exactly the opposite. Most of the people—many of the people did not have a trip in mind when they bought it; but an overwhelming majority, even if they had a trip in mind, didn't take that trip when they joined the club.

As I remember, about 66 percent of the people who joined Air Club either didn't have a specific trip in mind or they had one and they decided not to go on that one.

Senator STEVENS. I am interested primarily in that statement, though, because another statement says, "New memberships, which incidentally only cost our members \$25 per couple, were a major factor in meeting our expenses."

Can you explain that to me? Are you cross subsidizing your air operation of your hotel operation with your membership fee?

Mr. BARER. No. Part of the operation—that is, conceptually part of an air travel club—the person joins the club and pays a membership fee to join the club.

Senator STEVENS. If I joined yesterday, could I travel tomorrow?

Mr. BARER. Not under the revised plan.

Senator STEVENS. When was that revised?

Mr. BARER. After the cease-and-desist order. It never really worked that way, but specifically not a very substantial portion of people ever would do that.

There was no preclusion and that was one of the bases that the Board held you were holding out.

Senator STEVENS. You would have no objection to a standard that you have to be a member for a year before you could travel?

Mr. BARER. If you put it a year, that would be so unduly restrictive that no travel club could ever form and probably you could never replace your membership lost by normal attrition and turnover of people moving out of the area.

You have to put it down substantially. We suggested 30 days, maybe because that's what you have for advanced booking charters. It may be that it may be 60 days. You get farther away than 60 days, and people—our experience shows people think they have a trip in mind. That was the evidence that the Board had.

They join, thinking there is going to be a use of a trip.

Senator STEVENS. Now, you have business trips and dances and these other activities. You are mainly interested in club members, aren't you? It doesn't seem to make any difference whether they fly or not to you; is that right?

Mr. BARER. They obviously have to justify the utilization of a large aircraft. When we originally commenced the club, we went to the FAA and we went to get a certificate, and they initially turned us down. They said one of the criteria for a safe and efficient operation of an air travel club is you have to have enough members to support the operation of the aircraft. If you don't, you are going to not have competent people working for you because you can't afford to pay them. You are not going to do proper maintenance, et cetera.

Senator STEVENS. Under the present situation, a person that joins can actually figure that the membership costs are basically the costs of the first trip. You said you could come here a lot less expensively, \$175, than a person that was joining, going to travel in 30 days, and saying that trip really cost \$195. That would be all they would spend at that time, wouldn't it?

Mr. McDEVITT. Yes.

Senator STEVENS. They wouldn't have gone to your dances, taken your business trips. They could take a trip immediately by air without participating in anything else, couldn't they?

Mr. McDEVITT. That could be their first function, yes.

Senator STEVENS. I am also interested in your comment that the median income of your people could be called lower middle class to poor, by any reasonable standards.

Do you have any statistics to show that? Does the CAB questionnaire go into the income level of your members?

Mr. BARER. No, but Senator, at the time of the hearing, we had several hundred people who had volunteered to testify who were members; together with the CAB and the hearing examiner, we randomly selected, I think, either 10 or 11 people who represented couples who were members, out of those people and that was stipulated to be representative testimony.

We had never even—the lawyers for Air Club had never even talked to the people before the time. They just went through and said, "Okay, you can go, you can go, you can go."

We went out and talked to them.

Interestingly, the people that—this may be skewed by the fact that those are the people who came to the hearings subsequently, signed up as being willing to testify. And as a result, you get people, for example, who have full time jobs and can't come in, but the stipulation was still that this was representative of the testimony that the club would prepare.

Almost all of those people were retired, divorcees, women who were divorced and working, and almost of the people were in—came out of that area which Mr. McDevitt has quoted.

Significantly, only one person out of the 10 or 11 people involved had ever gone on a nonbusiness trip before in their life. One person had once been on a charter flight to Europe. And out of those 11 couples, their families were members.

The only other people were people who had gone—one of the men was a retired sea captain whose company had sent him.

One had gone because his brother died and he had to go to the funeral. That was the only time he had been on a flight before in his life.

Senator STEVENS. Again, what I really asked was do you have any records in your club that would show the income level of the people involved? Is it part of your application?

Mr. McDEVITT. No. Not income level. We do have occupation listing on the application, but not a specific income level.

Senator CANNON. Do you take a credit risk check on your people? How do you know they will be able to pay the bills in Hawaii and Las Vegas?

Mr. McDEVITT. They pay in advance.

Senator STEVENS. Before they board?

Mr. McDEVITT. Right. If they make their accommodations through the club optional package, that must be paid in advance.

Senator STEVENS. What would that trip for a week to Hawaii—you mentioned a week—what would that trip cost an individual to go over and come back, to pay for the—

Mr. McDEVITT. It would cost approximately, depending upon exactly when they went and exactly where they stayed, the average

price would be in the \$260, \$270 range for a week, including the share in the hotel.

Senator STEVENS. You listed your aircraft, the 707—

Mr. McDEVITT. Yes.

Senator STEVENS [continuing]. And a 720?

Mr. McDEVITT. Right.

Senator STEVENS [continuing]. and a DC-7?

Mr. McDEVITT. Yes.

Senator STEVENS. Did you own those?

Mr. McDEVITT. The DC-7 is owned outright. The 707 is owned outright. The 720 is on lease.

The 707, I might make mention, is an ex-TWA aircraft with a single class configuration of 189 seats; and—this is kind of an aside, but I think an important little point. Just to show the spirit of the club members and the employees during these last months that have been rather trying emotionally, financially, and otherwise, we were reduced financially to the point where even on a Honolulu trip, which is about a 6-hour shot from Hawaii, we had to give up the catering service that we have been using for a long time. We used to provide meals. We even had movies on the Honolulu flights.

We had to give up the catering service, but we knew that a 6-hour flight meant one of two things. People were going to pack peanut butter sandwiches themselves, or whatever, and we asked the employees what they thought we should do because we just didn't have the money for the caterer. This was, like, during the Christmas period and since.

Several of our stewardesses volunteered to stay up the whole night—our flight to Honolulu would normally leave at, like, 7 o'clock in the morning. Several stewardesses volunteered at no pay to stay up all night and make sandwiches and pack little individual packages of sandwiches and maybe a little ham and cheese, several homemade cookies, which they made themselves, and a piece of fruit and maybe some carrots and celery.

That is no exaggeration. This is what we had to provide in the way of food.

Senator STEVENS. I take it your members aren't members of organized labor.

Mr. BARER. Senator, you know, that's a very interesting question, because the principal impetus for the formation of Air Club in its early days, as testified to, came from organized labor.

Senator STEVENS. Are your members organized? Are your employees organized?

Mr. McDEVITT. No, sir.

Senator STEVENS. Any of them? The pilot, stewardesses?

Mr. McDEVITT. No, sir. But they perform to the same specifications and receive the same FAA safety checks that the airlines do. That's what our members are interested in, the safety and competency of the people.

Senator STEVENS. Well, I will tell you very frankly I am interested because I have seen many airlines come and go in our State. We are down now to a dismally low service in my State. I am trying to find

out why; and I faintly suspect it is because of the growth of the various services that are what I would call "milking off" the surplus, the revenue that used to come in that helped us to modernize and provide competing air service, such as travel clubs.

I think we have to—if we are going to permit them at all—permit them in an area where it's a true club, an identifiable organization. That is why I am here particularly to hear the student organizations. I think they might have an identity of interest.

From everything you said, I can't see why the people that you are involved with couldn't have a group that would plan and get the group rate on any one of the carriers that fly out of Seattle. I am quite familiar with the Seattle carriers. They can perform the same service that you perform as a club by arranging hotel space, arranging trips once you get there, and they are the certified carriers.

I have yet to be convinced that that couldn't happen.

Mr. McDEVITT. Well, I think the Senator might be convinced if the Senator would attend one of our membership meetings and talk to our members specifically. We have on file with the committee—probably Mr. Ginther could tell you how many—thousands of letters expressing the sentiments of the members and their feelings on it, and the fact that we have generated for the certificated carriers a tremendous amount of business that they probably would never have achieved otherwise.

We have had many tell us that because of the low rate they took their first air trip of any kind with us; and the impetus was because of the club atmosphere. They were traveling with some favorite friends of theirs at a very low price, and it was white knuckles time. They all of a sudden discovered they liked to fly.

From there on, when they are going to different destinations, they have flown the scheduled carriers. We have generated a lot of business rather than take it away.

Mr. BARER. Senator, you know—

Senator STEVENS. I appreciate your comments. I just wanted to be sure you understand my feelings.

Thank you, Mr. Chairman.

Senator CANNON. Thank you, gentlemen.

[The statement follows:]

STATEMENT ON BEHALF OF AIRCLUB INTERNATIONAL

Mr. Chairman and Members of the Committee: My name is Arnold J. Barer. I am a lawyer in Seattle, Washington, and I am speaking to you on behalf of the thousands of people who have either been members of air travel clubs, employed by air travel clubs, or are in service industries which derive substantial income from the patronage of air travel club members. These people whom I represent here today are genuinely concerned with the language contained in Section 5 of the proposed bill, which is the subject of today's hearing. While we commend Senator Cannon and those of you who have publicly announced your support of the air travel club concept, the history of the CAB's activities with respect to air travel clubs as evidenced by your proposed legislative finding in Section 2(6) of the proposed bill, gives us reasonable cause to believe that the proposed language of Section 5 of the draft bill would, *practically*, result in the death knell of the air travel club concept.

For purposes of my testimony here today, I think that the subject can best be approached by initially developing the history and present status of the air travel club situation.

GENERAL BACKGROUND

The concept of air travel club originated in the middle 1960s with a Washington, D.C.-based club acquiring a DC-7 aircraft and forming a nonprofit air travel club. Other air travel clubs followed this concept. Under the usual format, promoters who have purchased large aircraft, usually surplus to a trunk carrier's needs, form a nonprofit corporation and either sell or lease the aircraft to it. Members join the association and pay dues (usually quite minimal). A number of trips are scheduled and those trips which fill up are actually operated.

The members of the air travel clubs enjoy a substantial price advantage over trunk carriers' prices. The destinations served by the air travel clubs have almost entirely been resort or vacation spots, and particularly the Caribbean, Mexico, Las Vegas, Hawaii, and Europe.

In 1968, the Administrator of the FAA adopted FAR Part 123, setting the criteria for the formation and operation of air travel clubs. Thereafter approximately 30 air travel clubs formed and qualified under the terms of the regulation. The aggregate membership of air travel clubs prior to the decision of the CAB in the *Voyager 1000* case is unknown, but was probably in excess of 200,000 members. The FAA assisted in the formation of a number of air travel clubs, apparently under the belief that to do so was in conformance with its statutory mandate to foster aviation.

A review of communications to and from staff members of the CAB indicates that the agency has been aware of the development of air travel clubs since their inception. It certainly was apprised of the promulgation of FAR Part 123.

The CAB first commenced enforcement action against *Voyager*, an Indianapolis-based air travel club, in 1972, and thereafter commenced enforcement actions against other bona fide air travel clubs, including the Seattle-based *Airclub International*.

In the *Voyager* case, the Board's then senior Administrative Law Judge concluded in his initial decision that air travel clubs were private carriage, exempt from regulation under the terms of the Act. The CAB reversed that decision and held that *Voyager* was in violation of the Act and could not continue to serve its members. That decision was affirmed by the Court of Appeals for the Seventh Circuit in November of 1973.

Of the three appellate judges who heard the *Voyager* case, one of the judges, Judge Pell, wrote a special concurring opinion, stating that while the result reached was legally correct, he questioned the propriety of the policy enunciated by the Board. He specifically stated: "It is somewhat ironical, and perhaps to be deplored, that in a society which generally encourages competitive free enterprise a service is to be stifled which a substantial segment of citizenry of the Midwest portion of the country found to be highly desirable in making available travel by air which might not otherwise have been enjoyed by them, and which travel has been conducted in full compliance with governmental safety requirements." Judge Pell in his opinion pointed to the freedom-of-travel right inherent in the U.S. Constitution and enunciated by the Supreme Court in its cases, including *Shapiro v. Thompson*, 394 U.S. 618 (1969), and lamented the fact that the Board's decision restricted that right. He tacitly chided Congress for what he felt was an arbitrary resolution of conflicting interests affecting the public interest.

The *Airclub International* case was decided by the CAB in September 1974, and the Board's decision followed the *Voyager* precedent. That decision is currently under appeal to the U.S. Court of Appeals for the Ninth Circuit, and the club is currently operating pursuant to an order issued by the Ninth Circuit requiring the FAA to issue a Part 123 certificate to *Airclub International* pending review of both the CAB order and a prior FAA order.

Since the CAB's decisions, the FAA has commenced to decertify air travel clubs, and it is now apparent that the future viability of the air travel club movement in any form is heavily clouded, and if the members do not receive some assistance from Congress, there is a strong possibility that the public service afforded by air travel clubs will be extinguished.

It should also be noted that in both *Voyager* and the *Airclub International* case, substantial testimony was introduced to show that air travel clubs do not present substantial competition to trunk carriers or even to supplemental

carriers. In the *Airclub International* case, testimony stipulated as being representative by CAB counsel indicated that only one person in ten who had ever traveled on an air travel club flight had ever traveled upon certificated carriage for vacation purposes.

THE EFFECT OF THE PROPOSED BILL

While the intent of the proposed bill generally is to provide and encourage low cost air transportation, Section 5 and Section 5(1) of the bill dealing with air travel clubs merely would allow the CAB to adopt regulations dealing with air travel clubs. There appears to be no ascertainable standard to mandate the CAB to encourage air travel club operations. There is no requirement which would grant a "Bill of Rights" to air travel club members. As evidenced by the purpose of this proposed act, we agree with its sponsor, that the message of low cost air transportation often becomes twisted between Capitol Hill and Connecticut Avenue. It is apparent that historically the Board has felt that its function is not to regulate air commerce in the public interest, but rather, to regulate the public in the industry's interest. As examples, one might say that had the Board extended its regulations to the permissible limits of authority under the Supplemental Air Transportation Act, substantial portions of the proposed bill under consideration today would be unnecessary. In addition, the Board's regulation of military furlough and dependent charters, after prodding by the Interstate and Foreign Commerce Committee of the House, resulted in an almost total obliteration of the availability of such charters. Other examples, such as the Board's recent action on industry price increases, now subject to judicial attack, and charges of conflict of interest recently raised against the Board, inescapably lead to the conclusion that air travel clubs cannot rely upon the Board's unbridled discretion in promulgating regulations.

It should also be remembered that five U.S. Senators asked for a 90-day extension of the effective date of the Airclub enforcement order and the Board refused to comply. Thus Airclub members know the effect of Congressional wishes, as opposed to statutory direction, upon the CAB.

PROPOSED AMENDATORY LANGUAGE

We have thus submitted to your staff, proposed amendatory language which would specifically and definitively limit the Board's absolute discretion in adopting proposed regulations. These proposals, which deal with insuring that air travel clubs are not unduly hampered or made more expensive to their members, represent our desire to be afforded a minimal protection against air travel clubs being totally run out of business by a cumbersome, impossible regulatory framework which would spell out and confirm the death knell of any practical hope for air travel club service to the general public.

In essence, this Bill of Rights would require that the Board not change the historical method of operation of air travel clubs, a method of operation which has brought low cost air transportation to thousands of people who could not otherwise afford it.

CONCLUSION

We thank the Chairman and members of the committee for this opportunity to present the views of people who are not always heard in the formulation of regulatory policy. We also thank the Chairman and those of you who have publicly stated to your constituents that you believe in the future of the air travel club movement. We hope and pray that the essence of our amendatory language appears in the final bill. If it does not, we would respectfully ask that Section 5(1) be omitted entirely, since without this type of language, it is all over for the members, employees, and service industries who support and benefit by air travel clubs.

In closing, I should state that we urge you to take some action to preserve air travel clubs, since in the public interest there should be a place for uncertificated, nonscheduled vacation travel to serve the American public.

I shall happily answer any questions of the committee.

AMENDATORY LANGUAGE TO PROPOSED LOW-COST AIR TRANSPORTATION ACT.

Sec. 5. Within 90 days after the effective date of this Act, the Civil Aeronautics Board shall issue regulations, in accordance with Section 553 of

title 5, United States Code, defining in specific terms the full scope of the activities in air commerce which are permitted to be engaged in by persons who have not been authorized to engage in air transportation within the meaning of the Federal Aviation Act of 1958 but who are—

(1) air travel clubs which operate aircraft and which are engaged in the carriage of persons who pay an assessment, dues, membership fees, or any similar type of remittance; (or) *Provided, that such regulations issued with respect to air travel clubs shall not result in any material diminution of the availability of air travel club services, and specifically such regulations shall not:

(A) require any air travel club to increase its dues, initiation fees, assessment, or trip charge;

(B) require a greater waiting period than 30 days between a member's initial application for membership and first trip;

(C) restrict the geographic destination or frequency of air travel club flights;

(D) preclude an air travel club from soliciting the public for membership as long as the air travel club does not advertise specific departure dates and/or prices for specific trips in mass media;

(E) limit the maximum number of members in any air travel club so long as bona fide membership is a requirement for air travel club services and members are required to maintain their membership by the payment of periodic dues, membership fees, trip charges, or similar assessments as established by the respective air travel club.

(F) require any air travel club owning or leasing its aircraft and having a history of air travel club operations to submit to any prolonged or burdensome qualification or certification proceeding; or

(2) . . .

ANALYSIS OF AMENDATORY LANGUAGE TO PROPOSED LOW COST AIR TRANSPORTATION ACT.

The proposed amendatory language would grant a "Bill of Rights" to members of air travel clubs and set a Congressionally determined, ascertainable standard mandating the CAB to act consistently with the purposes of the Low Cost Transportation Bill.

The amendments would contain both a general standard by adding language to Section 5(1), and in addition add six lettered subparagraphs, each of which would contain a specific limitation on the mandated regulations.

GENERAL STANDARD

Section 5(1) would be amended to preclude "material diminution of the availability of air travel club services." The language was essentially the same as that found in Section 4 of the bill with respect to "affinity" charters.

SPECIFIC LIMITATIONS

A. Increased costs

This limitation would preclude the Board from requiring clubs to increase the cost of joining, maintaining membership, or service, and in this respect would be consistent with the purposes of the proposed act.

B. Waiting period

Conceivably the Board could require a prolonged waiting period between initial membership and first flight. This would mean that no club could practically establish its own operations. The 30-day time specified would be consistent with the 30-day period contemplated in Section 3(2) with respect to "advance booking charters." However, ABCs would still have their specific advantages.

C. Destination and frequency

The Board could hamstring air travel clubs with extensive frequency or destination limitations, which could preclude effective utilization and service. Traditionally air travel clubs operate to vacation spots, and testimony has

* New language commences here.

shown that members' travel is not directly competitive with certificated carriage.

D. Solicitation

The proposed limitation upon Board authority would codify the holding-out test enunciated in the air travel club enforcement actions. Clubs would be free to solicit members, but not advertise specific departure dates, times, or prices for specific trips. They could advertise institutionally and with respect to cost savings.

E. Membership limitations

This restriction would preclude the Board from limiting size of membership. The FAA had always taken the position that an air travel club must be of sufficient size to economically justify its operation for the purpose of efficiency and safety. It is contemplated that any travel club must remain "bona fide," i.e., it must not be a disguised charter or quasi-scheduled carrier.

F. Preclusion of certification proceedings

This section would preclude the Board from requiring an air travel club which is established from having to engage in prolonged or burdensome certification proceedings. Such proceedings would be costly and uncertain. It is anticipated that the Board could use some blanket exemption proceeding similar to air taxi authorization (14 CFR Part 298), and of course the Board would still be entitled to receive information as to air travel club activities.

Senator CANNON. The next witness is Mr. James A. Miller, vice president of the American Society of Travel Agents.

STATEMENT OF JAMES A. MILLER, VICE PRESIDENT, AMERICAN SOCIETY OF TRAVEL AGENTS, EAST LANSING, MICH.; ACCOMPANIED BY PAUL S. QUINN, GENERAL COUNSEL

Mr. MILLER. I am accompanied today by Paul S. Quinn, general counsel to the American Society of Travel Agents.

He would like permission to enter some remarks into the record.

Senator CANNON. Very Well.

Mr. QUINN. Thank you, Mr. Chairman.

Having listened for the last hour to the testimony of the two previous witnesses, I think it might be helpful to try to respond to two questions; one you raised, and one Senator Stevens raised about travel clubs in general, and about Airclub International in particular.

Before doing so, I would like to observe that I think the impassioned plea of the two previous witnesses comes about 27 years too late. The Congress decided in 1938 that the air transport industry would be a regulated industry.

As such, the Congress attempted to devise a scheme of regulations to meet the public interest through the CAB.

What is being argued now, I think, gets back to that basic decision.

Secondly, questions were raised by both you, Mr. Chairman, and by Senator Stevens about the profit motive of Airclub International.

I would like to read from two paragraphs of the brief of the Bureau of Enforcement to the CAB in docket 24387, which is the Airclub International Enforcement Proceeding.

I quote:

Club International is controlled and operated as part of a business enterprise of Joel and June Eisenberg. As the Administrative Law Judge found from the record ***

And I quote:

***From the record it is clear that Eisenberg was the moving force behind the formation of Club International.

The brief continues:

Mr. Eisenberg admitted under oath that he intended to make a profit from the lease of the B-707. "In early March, 1971, a Boeing 707-131 aircraft was purchased from TWA by the Eisenbergs, doing business as Air International, for a base price of approximately \$431,000." The aircraft was then leased to Club International, accumulating lease payments of \$914,500 to the Eisenbergs through September 1972 ***

Just more than a 1-year period.

***at which time it was sold to the Club for \$1,500,000, providing the Eisenbergs a grand total of \$1,069,000 over the original base price, and this from a Club they dominate by self-admission. Indeed, the Club's General Manager testified that a later fan-engine version of the B-707 . . . would cost only \$1,000,000.

That's the end of the quote from the brief.

I think it shows pretty clearly that this was and is a profitmaking organization, and the Board so found and the court of appeals for the ninth circuit sustained that finding.

It might be helpful to provide for the record, a copy of this brief as well as a copy of the Board's final order in the Airclub International.

Senator CANNON. We have that in our files.

Mr. QUINN. Thank you.

Senator CANNON. Mr. Miller?

Mr. MILLER. Thank you, Mr. Chairman.

I am James A. Miller, a travel agent from East Lansing, Mich., and, along with my wife, own and operate travel agencies in East Lansing.

I am also vice president of the American Society of Travel Agents, Inc. (ASTA), the world's largest trade association in the field of travel and tourism, with headquarters located at 360 Lexington Ave. in New York City.

I am accompanied this morning by Paul S. Quinn, a partner in the Washington law firm of Wilkinson, Cragun & Barker, general counsel to ASTA.

It is a pleasure for me, Mr. Chairman, to appear before you today and testify on behalf of the more than 6,000 members of ASTA on S. 421, the Low-Cost Air Transportation Act of 1975.

I would like to condense my remarks somewhat. We have supplied written details of our testimony, and would like your permission to condense the remarks somewhat as we proceed.

Will that be in order, sir?

Senator CANNON. Yes, sir.

Mr. MILLER. Thank you.

As an individual travel agent, and as spokesman for ASTA, I share the deep concern which you recently expressed about the serious threat posed to our Nation's \$60 billion tourism industry and to our air transport system by a combination of rising costs and declining discretionary dollars in the pockets of our consumers. Therefore, I commend you and the cosponsors of S. 421 for the initiative you

have shown in introducing a comprehensive bill designed to focus the attention of the Congress on the need to take action to assure the continued availability of low-cost air transportation to the general public.

I would like to address myself to each of the six issues covered by S. 421 separately, and to give you the views of ASTA concerning them, but before doing so, I would like to make a general statement which reflects the policy and philosophy of the travel agents whom I represent this morning.

Based on previous experiences before you Senator Cannon and members of the subcommittee, and our written testimony, I believe you are well aware of the size of the travel agent industry and its contribution to travel and tourism originating in our country.

The statistics are well known, and I will not repeat them at this time.

Because of the great amount of reliance placed by the traveling public on the services of travel agents in connection with the purchase of air transportation, and because of the great degree of which travel agents rely upon the sale of those services for their livelihood, the travel agency industry has a deep and growing concern with the present and future role of air transport system.

It is for that reason that we believe the Congress is providing a valuable public service in inquiring into the role of charter air transportation in our air transport system and in trying to design new, nondiscriminatory types of charter programs to be sold by those scheduled and supplemental carriers.

We were impressed yesterday by the testimony of Acting Chairman O'Melia and by Acting Secretary Barnum of the DOT.

The sharp reduction in load factors reported in recent months by both domestic and international air carriers is a cause of grave concern not only for travel agents, but for all who have the interest of our travel and tourism industry in mind.

Although there were slight increases in domestic traffic—1.9 percent in December—there was an actual decrease in international service of 1 percent compared with December 1973. More troublesome is the fact that, because of an increase in available seat miles, load factors dropped from 57.1 percent to 51.2 percent for domestic service and from 57.7 percent to 50.7 percent in international service during the last month of 1974.

Mr. Chairman, as you have pointed out, the factors contributing to this dramatic decrease in passenger transportation include:

1. Sharply increased costs of both scheduled and supplemental services, primarily a result of increased fuel costs and inflation; 2. the virtual elimination of previously available promotional fares, including the family plan, youth fares, and "Discover America" excursion fares; 3. a reduction in the availability of disposable dollars for both business and discretionary air travel; and 4. sharp increases in unemployment and a general deterioration of the economic situation in our country and in most industrialized nations throughout the world.

Therefore, it is extremely timely, in ASTA's view, for the Congress, and in particular, this subcommittee, to look at the role of

charter air transportation and to determine what changes should be made in the Federal Aviation Act to bring those services in tune with the times.

In ASTA's view, charter services and air transportation provided by both scheduled and supplemental carriers, have a legitimate and important role to play.

However, we believe that charter services should be supplemental to the backbone of our air transport system; that is, the individually ticketed services offered by our scheduled carriers.

Furthermore, it is ASTA's view that, in making available low-cost air transportation to the general public, the first emphasis should be on encouraging the CAB and the carriers to experiment with nondiscriminatory, discount services on scheduled flights, readily available to all members of the public. These discounts on scheduled services should be supplemented with a carefully designed selection of non-discriminatory charter services available on both scheduled and supplemental flights which do not impair essential scheduled services.

In other words, it is ASTA's view that the total framework of our air transport system, including individually ticketed services on scheduled flights and charter services on scheduled and supplemental flights, should combine to provide a system of air transportation for the general public, which is as inexpensive as possible, consistent with the need to provide safe, efficient, and reliable services to all members of the traveling public on a nondiscriminatory basis.

This system should be so structured as to assure that air carriers, functioning efficiently, have the opportunity to make a reasonable profit, and that the travel agency distribution system be afforded the opportunity to make these fares available to all members of the traveling public on a basis which enables them to recover their costs and earn a reasonable profit.

Within this general framework we have the following specific comments to make regarding the six separate sections of S. 421.

A. ADVANCED BOOKING CHARTERS: ABC'S

ASTA is sympathetic to and, in theory at least, supports the concept of advanced booking charters, the chartering of all or part of an aircraft by a charter organizer who would be an indirect air carrier, and who would resell seats on the aircraft to members of the traveling public on an advance-purchase basis.

We are concerned, however, that unless the ABC device is carefully studied and evaluated prior to the actual implementation of specific ABC regulations, the Nation's scheduled air system could be seriously and unnecessarily undermined.

ASTA believes that it would be appropriate at this time for the Congress to authorize the CAB to undertake to develop and implement a carefully designed set of ABC regulations. In doing so, however, the Congress should specifically direct the Board first to conduct a comprehensive study of the following considerations:

1. The experience of other nations, CANADA, Great Britain, and other European countries, with the ABC device;
2. the probable impact of ABC's upon scheduled air service, if ABC's were to be

implemented in selected markets, as opposed to the likely impact of a nationwide ABC program; 3. the desirability of implementing ABC's on an experimental rather than permanent basis; and 4. the efficacy of the various alternatives available in terms of specific conditions and regulations.

No such study has been undertaken by any governmental body or industry organization, and until such a study has been conducted, no one will be in a position meaningfully, to project the impact of an ABC program upon scheduled service.

With respect to the specific provisions of S. 421 as presently drafted, ASTA has several serious reservations. Specifically, ASTA believes that at least the following modifications should be made by this subcommittee in the course of its consideration of this bill:

1. The advanced reservation, deposit and prepurchase requirements must be sufficient to assure that ABC's do not create undue diversion from essentially scheduled service.

Traditionally, a 60-day advanced deposit requirement has been implemented in connection with ABC's and we do not believe that the Congress should enact a provision in this law which would prohibit more than 30 days advance purchase, as would the current provisions of S. 421.

The CAB should be free to evolve the length of time for advanced reservations, deposits and purchases and, in so doing, to study carefully the Canadian and European experiments with ABC's to propose appropriate guidelines.

2. Under S. 421, a charter organizer would be allowed to sell up to 25 percent of the seats of any advanced booking charter trip up until the time of departure. ASTA believes that this would be extremely unwise, and would create a situation in which 25 percent of the capacity of an ABC flight would be directly competitive with scheduled service.

3. The bill contains a proposal which would allow a charter organizer to assume the commercial risks on any advanced booking charter trip and a prohibition on requiring the charter organizer to prorate the price per passenger for such trips.

ASTA supports this proposal, and believes that it would eliminate one of the basic defects in the current TGC experiment; that is, the fluctuating cost of a TGC seat which makes it very unattractive to any potential passenger, creates uncertainty and confusion, and has been a contributing factor in the lack of commercial success of TGC's.

4. If ABC's are to be implemented, the Board must be required by the Congress to assert sufficient control over the charter organizers to assure not only their financial stability, but also their professional expertise and qualifications to deal appropriately with the traveling public.

In no event should a direct carrier—whether scheduled or supplemental—be authorized to own, control or be controlled by a charter organizer acting as an indirect carrier with respect to the operation, promotion and sale of ABC's.

Furthermore, regulations must be established to assure that ABC's are sold only through professional travel agents, regulated by the

Board and/or the direct air carriers providing the air transportation in order to assure the degree of public protection which the American consumer needs and deserves.

B. INCLUSIVE TOUR CHARTERS, ITC'S

That provision of the bill which defines ITC's appears with one exception, to conform with the provisions of S. 1739 as modified after it was reported by this Committee during the last Congress.

The exception is the language added to the ITC section of the bill which provides, starting at line 13 on page 4:

... sold to members of the public at a price which is no less than the just and reasonable fare for charter air transportation, plus a compensatory charge for land arrangements. . .

This language is objectionable to ASTA since it would appear to proscribe adoption by the Board of a formula, such as the one currently in effect for ITC's, of placing the minimum ITC fare level at 110 percent of the lowest available fare on scheduled services.

Denying the Board the authority to impose such restrictions could well result in undue diversion by ITC's from essential scheduled service. Here again we favor giving the Board general guidelines and authority to determine what the minimum pricing levels of ITC's should be.

As in the case of ABC's, ASTA reiterates that it is in the public interest and that of our air transport industry to assure that ITC's are sold only through financially stable and professional qualified charter organizers and travel agents if the traveling public is to be protected.

The Congress should make it clear to the CAB that it regards such rules and regulations as mandatory elements in any ITC regulations which are ultimately adopted.

We note that testimony of previous witnesses, and your questions to them concerned the operation, ownership, and control of tour operators by direct air carriers. ASTA is strongly opposed to such ownership and control, and asks the Congress not to authorize or encourage such a development.

3. DEFINITION OF SUPPLEMENTAL AIR TRANSPORTATION

That provision of S. 421 which would redefine Section 101 of the Federal Aviation Act of 1958 specifically to include advanced booking charter trips and inclusive tour charter trips within the definition of supplemental air transportation is, in ASTA's view, a highly desirable proposal.

Of course, ASTA's support of the inclusion of ABC's in this definition is subject to the same qualifications as those which I have expressed with regard to the ABC proposal itself.

One of the great difficulties which has plagued the air transport industry since the early 1960's, has been the uncertainty and confusion which has surrounded the general term supplemental air transportation. This has led to expensive and protracted litigation in connection with the introduction of ITC's and has tended to thwart

what could have been the natural evolutionary development of new and different charter concepts in both domestic and international air transportation.

4. AFFINITY CHARTERS

You, Mr. Chairman, and this committee, are strongly aware of ASTA's opposition to affinity charters. Our submitted written testimony continues to support this opposition.

I would like to call to the special attention of this committee, the Canadian experience with alternative devices. The Canadian ABC program became effective on April 1, 1973, the Canadian regulations dealing with applications for pro-rata affinity charters were revoked effective that same day, and the regulations governing the operation pro-rata affinity charters were ceased as of June 30, 1973.

Leaders of the travel industry in Canada are virtually unanimous in their belief that the simultaneous elimination of affinity charters was a major factor in the successful implementation of the ABC concept in that country.

We believe that the same would be true in the United States—no alternative charter regime will be able to operate successfully as long as it must compete with the long-discredited affinity charter. The affinity charter must, we believe, be eliminated at the outset.

E. TRAVEL CLUBS

With respect to travel clubs, ASTA endorses that portion of your bill which would require appropriate CAB regulation in this area.

We hope such regulations will be very, very carefully prepared. I would depart from my text for a moment to say, in my own small travel agency operation, I have had a most expensive lesson in seeking to serve the traveling members of my community as a ground organizer for the now late-lamented and departed Air Holiday Organization of Wisconsin, and later of Michigan.

We were penalized to the extent of \$8,000 plus for landing arrangements which we arranged for that organization at their request; and we did secure a judgment in the State Court of Milwaukee to recover our money only a week before Air Wisconsin—Air Holiday of Wisconsin went bankrupt.

We later learned to our sorrow, that they were setting up a division called Air Holiday of Michigan, which purported to operate; and we were considered persona non grata for their landing arrangements because of our desire to recover the arrangements—the money from Air Holiday of Wisconsin.

It was interesting to note that we found that one of the important things that was reported to us by a CAB enforcement officer who investigated Air Holiday of Michigan, that Air Holiday of Michigan was planning to carry the baseball team of Michigan State University from Lansing to Florida on a one-way basis at approximately half fare, and for a \$1 membership fee.

Similarly, to our distress, we learned later that within the last week of the operation of Air Holiday of Michigan, that twelve of our community's citizens submitted checks for life memberships in

this organization; and I doubt very seriously whether they have recovered very much in the process.

Our recovery effort has indicated that through the sale of the real assets of Air Holiday of Wisconsin, \$12,000 were recovered, and our losses are relatively small compared to the reported losses of the fuel companies in the vicinity of \$60,000; and my lawyer in Wisconsin has just reported that for some reason Air Holiday neglected to pay any Federal transportation tax during their existence and a tax lien has now been filed against this bankrupt organization in the amount of \$130,000.

Quite an experience, Mr. Chairman, if I may remark on that.

To continue with point F, reduced rate transportation on scheduled services.

ASTA has traditionally opposed the granting of discounts in either scheduled or supplemental air transportation on the basis of discriminatory personal characteristics of the potential passenger.

For that reason, as a matter of policy, ASTA does not favor the enactment of section 6 of the act except insofar as it would authorize the granting of reduced-rate transportation to families. ASTA's justification for the family fare discounts are best articulated by CAB members Minetti and Murphy in the Board's order of December 5, 1972, in the Domestic Passenger-Fare Investigation, Phase 5—Discount Fares.

I included in the written testimony, an excerpt of these dissenting remarks.

I note Chairman O'Melia referred to multiple booking practices in connection with standby youth fares; and as a travel agent from East Lansing, Michigan, the home of Michigan State University, I can personally testify to the seriousness of multiple booking practices, which did create lost airline revenues and serious inconvenience to regular passengers desiring space from my community.

6. CONCLUSION

Anyone who is an observer of the air transportation industry in the United States today knows that one of the principal reasons for the sharp decline in passenger growth was the decision by the Board to eliminate in 1972, widely accepted and extremely popular discount fares, including the Discover America excursion fare.

Recently, the CAB in approving American Airlines Bicentennial excursion fare, displayed an encouraging departure from its rigid adherence to the formula it adopted in the general Passenger Fares Investigation. In ASTA's view, it is in the public interest that the Congress encourage the Board as you stated, in introducing this legislation, Mr. Chairman, to:

***allow the carriers some leeway in experimenting with promotional and discount fares. In times of serious recession and inflation, and with airline travel slumping dramatically, innovative fare proposals are desperately needed to try and generate new traffic.

ASTA has this week filed an answer in support of Allegheny Airlines' proposal to eliminate all arbitrary minimum mileage requirements on the new domestic excursion proposals.

A copy of ASTA's filing is attached to my statement for the information of the committee.

The thrust of ASTA's argument is essentially the same as your views contained in the Congressional Record of January 27, 1975, at page S. 897.

In conclusion, I am confident, Mr. Chairman, as a result of the work of this committee and other committees of the Congress and an enlightened view on the part of the CAB, the air carriers, and all of us who work to make the travel and tourism industry such a vital economic and social force in our country, we can find ways to assure that the great benefits of air transportation remain accessible to the widest possible number of our citizens and our visiting friends from abroad while, at the same time, assuring the economic viability of our total air transport system.

Mr. MILLER. Thank you, Mr. Chairman, for the opportunity to appear here today.

We would be happy to answer any questions.

Senator CANNON. Thank you very much for a fine, comprehensive statement.

Senator STEVENS?

Senator STEVENS. I just have one question, and that is, do you have any feelings whether discount fares, particularly those that might be on a standby basis, should be cost related?

Mr. QUINN. I think I might try to answer that, Senator STEVENS.

We, I think, embrace the same philosophy that the DOT does, that discount fares should be cost related and there should be some effort made to weigh the factors that go into the promotional fare against the normal fare levels.

In other words, the CAB in recently approving the Bicentennial promotional fare of American, I think quite properly concluded that the advance purchase requirement and the advanced ticketing requirement plus the minimum stay factors, would sufficiently justify the discount.

Still, the amount of the discount was related to the value of the services. The concept of having promotional fares is not inconsistent with the philosophy of having them cost-related.

Senator STEVENS. Well, as I said, I had only one question. But, I have always been of the opinion, seeing these planes that go to my State in midwinter one quarter or less filled, that promotional fares might well result in a turnaround of what is the real tourist season to Alaska. Actually, people that see my State in the summertime, really see it in a different light than those that come in the winter.

We think our best friends come in the wintertime; but that has not quite been the travel agent's viewpoint, I am afraid.

I wonder whether we should not have some sort of discretionary authority to experiment with fares so that the low density scheduled service might well find that it could improve its return by a lower fare in the off-season, rather than having special fares created in the season which seems to be the case as the travel is concerned to my State right now.

You can actually travel at a lower cost in the summertime than you can in the wintertime.

Mr. QUINN. I think, Senator Stevens, again we fully endorse the concept of giving the carriers the degree of discretion in evolving promotional fares. Certainly the promotional fare applicable to off-season makes a lot of sense.

Now we have filed earlier this week, a petition with the Board that would make the travel agent's commission on the new Bicentennial promotional fare, a level of 8 percent, which was the case with the Discover America fares in effect 2 years ago.

Just yesterday, TWA filed in support of that proposal by the travel agents. In doing so, they estimated that its own system would realize a benefit of $8\frac{1}{2}$ million from the promotional fare that the Board has already approved.

Our point is that—again we agree with the chairman in this regard—that imposing a minimum mileage requirement on these types of fares does not make sense, because it precludes, as the attachment to our statement indicates, travel within certain areas. It can be very important.

Again, the load factor problem, seasonal as well as regional; and in our view, the degree of discretion, which the Board should give the carriers, has been much too restrictive.

We hope that that would change.

Mr. MILLER. If I may add to that, Senator Stevens, Mr. Chairman, that as a travel agent experienced with travel between Fairbanks and Anchorage, there is no reason why there should not be an attractive discount fare for the purposes of attending what I think used to be called the Fur Rendezvous, or the Winter Carnival in Fairbanks. You do have a fan for those two in Michigan, I might add.

Senator STEVENS. Good.

Thank you.

Senator CANNON. What is the rationale for ASTA's suggesting an increase in the Bicentennial promotion commission?

Mr. QUINN. In 1967, Mr. Chairman, when then Chairman Charles Murphy of the CAB urged the introduction of Discover America fares, the promotional fare was consistent with President Johnson's effort to increase domestic tourism. He, with the support of the five members of the Board, urged the carriers to pay an incentive commission level to travel agents in order to make those fares more attractive and more salable.

The carriers agreed to do that.

From the period 1967 until 1972, this type of discretionary promotional fare was commissioned at 8 percent rather than 7 percent to recognize the fact that it was generating new traffic.

In the domestic passenger fares investigation, the Board found that the Discover America discount was illegal, improper, and required that it be eliminated. When it was eliminated, the 8-percent commission level went out with it.

What we are saying now is that the Board is apparently changing its direction; and having approved the Bicentennial promotional fare for the same reasons that the previous Board approved the Discover America fares in 1967; but by the same token the travel agent should be given an added incentive to advertise more, to

promote, to put more effort and emphasis in making those fares successful.

Senator CANNON. Are you suggesting that ASTA members would not be interested in trying to promote the Bicentennial unless they got an extra commission on it?

Mr. QUINN. I think we are saying their degree of interest would be heightened.

Mr. MILLER. I think they could be stimulated.

Senator CANNON. That was an indirect way of answering my question.

Thank you.

Thank you very much, gentlemen.

[The statement follows]

STATEMENT OF JAMES A. MILLER, VICE PRESIDENT OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

Mr. Chairman, members of the Subcommittee, I am James A. Miller, a travel agent from East Lansing, Michigan, and, along with my wife, own and operate travel agencies in East Lansing and Lansing. I am also Vice President of the American Society of Travel Agents, Inc. (ASTA), the world's largest trade association in the field of travel and tourism, with Headquarters located at 360 Lexington Avenue in New York City. I am accompanied this morning by Paul S. Quinn, a partner in the Washington law firm of Wilkinson, Cragun & Barker, general counsel to ASTA.

It is a pleasure for me, Mr. Chairman, to appear before you today and testify on behalf of the more than 6,000 members of ASTA on S. 421, the Low-Cost Air Transportation Act of 1975.

As an individual travel agent, and as spokesman for ASTA, I share the deep concern which you recently expressed about the serious threat posed to our nation's \$60 billion tourism industry and to our air transport system by a combination of rising costs and declining discretionary dollars in the pockets of our consumers. Therefore, I commend you and the co-sponsors of S. 421 for the initiative you have shown in introducing a comprehensive bill designed to focus the attention of the Congress on the need to take action to assure the continued availability of low-cost air transportation to the general public.

I would like to address myself to each of the six issues covered by S. 421 separately and to give you the views of ASTA concerning them, but before doing so, I would like to make a general statement which reflects the policy and philosophy of the travel agents whom I represent this morning.

The United States travel agent is an essential and vital element in this country's tourism industry, which as your comments introducing this legislation noted, constitutes a \$60-billion-a-year economic activity and which directly and indirectly employs more than four million Americans.

There are today in the United States more than 10,000 travel agents. As you will note from Exhibit No. 1 attached to my testimony, the number of travel agents serving the public today represents a dramatic growth from fewer than 7,000 in 1968 to more than 10,000 in 1974—an increase of 52.5 percent during that six-year period.

Exhibit 2, attached to my testimony, shows the distribution of travel agency locations throughout the United States by region. This distribution of travel agents in virtually every community throughout our country assures public access to the services which travel agents provide, and supplements the limited distribution systems of airline ticket offices, 95 percent of which are located in Metropolitan core cities. In fact, 50 percent of the travel agents in the United States are located in cities, towns and suburbs which otherwise would be left completely unserved by airline information and ticketing facilities.

A breakdown of travel agency revenues shows that sales of domestic air transportation constitute 35 percent and the sale of international air travel 24 percent of total agency revenues. During 1974, United States travel agents produced total travel bookings of an estimated \$9.5 billion. The most dramatic

growth in travel agency sales came in connection with the sale of domestic air transportation which resulted in total sales of the Air Traffic Conference Area Settlement Plan of more than \$4 billion for the first 11 months of 1974.

Because of the great amount of reliance placed by the traveling public upon the services of travel agents in connection with the purchase of air transportation, and because of the great degree of which travel agents rely upon the sale of those services for their livelihood, the travel agency industry has a deep and growing concern with the present and future role of our air transport system. It is for that reason that we believe the Congress is providing a valuable public service in inquiring into the role of charter air transportation in our air transport system and in trying to design new, nondiscriminatory types of charter programs to be sold by those scheduled and supplemental carriers.

The sharp reduction in load factors reported in recent months by both domestic and international air carriers is a cause of grave concern not only for travel agents but for all who have the interest of our travel and tourism industry in mind. Although there were slight increases in domestic traffic—1.9 percent in December—there was an actual decrease in international service of one percent compared with December 1973. More troublesome is the fact that, because of an increase in available seat miles, load factors dropped from 57.1 percent to 51.2 percent for domestic service and from 57.7 percent to 50.7 percent in international service during the last month of 1974.

Mr. Chairman, as you have pointed out, the factors contributing to this dramatic decrease in passenger transportation include: (1) sharply increased costs of both scheduled and supplemental services, primarily a result of increased fuel costs and inflation; (2) the virtual elimination of previously available promotional fares, including the family plan, youth fares and Discover America excursion fares; (3) a reduction in the availability of disposable dollars for both business and discretionary air travel; and (4) sharp increases in unemployment and a general deterioration of the economic situation in our country and in most industrialized nations throughout the world.

Therefore, it is extremely timely, in ASTA's view, for the Congress, and in particular this Subcommittee, to look at the role of charter air transportation and to determine what changes should be made in the Federal Aviation Act to bring those services in tune with the times.

In ASTA's view, charter services and air transportation provided by both scheduled and supplemental carriers have a legitimate and important role to play. However, we believe that charter services should be supplemental to the backbone of our air transport system, *i.e.*, the individually ticketed services offered by our scheduled carriers. Furthermore, it is ASTA's view that, in making available low-cost air transportation to the general public, the first emphasis should be on encouraging the CAB and the carriers to experiment with nondiscriminatory, discount services on scheduled flights, readily available to all members of the public. These discounts on scheduled services should be supplemented with a carefully designed selection of nondiscriminatory charter services available on both scheduled and supplemental flights which do not impair essential scheduled services.

In other words, it is ASTA's view that the total framework of our air transport system, including individually ticketed services on scheduled flights and charter services on scheduled and supplemental flights, should combine to provide a system of air transportation for the general public which is as inexpensive as possible, consistent with the need to provide safe, efficient and reliable services to all members of the traveling public on a nondiscriminatory basis. This system should be so structured as to assure that air carriers, functioning efficiently, have the opportunity to make a reasonable profit, and that the travel agency distribution system be afforded the opportunity to make these fares available to all members of the traveling public on a basis which enables them to recover their costs and earn a reasonable profit. Within this general framework, we have the following specific comments to make regarding the six separate sections of S. 421.

A. ADVANCED BOOKING CHARTERS (ABC'S)

ASTA is sympathetic to and, in theory at least, supports the concept of Advanced Booking Charters—the chartering of all or part of an aircraft by a

charter organizer who would be an indirect air carrier and who would resell seats on the aircraft to members of the traveling public on an advance-purchase basis. We are concerned, however, that unless the ABC device is carefully studied and evaluated prior to the actual implementation of specific ABC regulations, the nation's scheduled air system could be seriously and unnecessarily undermined.

ASTA believes that it would be appropriate at this time for the Congress to authorize the CAB to undertake to develop and implement a carefully designed set of ABC regulations. In doing so, however, the Congress should specifically direct the Board first to conduct a comprehensive study of the following considerations: (1) the experience of other nations (Canada, Great Britain, other European countries) with the ABC device; (2) the probable impact of ABC's upon scheduled air service if ABC's were to be implemented in selected markets, as opposed to the likely impact of a nation-wide ABC program; (3) the desirability of implementing ABC's on an experimental, rather than permanent, basis; and (4) the efficacy of the various alternatives available in terms of specific conditions and regulations. No such study has been undertaken by any governmental body or industry organization, and until such a study has been conducted, no one will be in a position meaningfully to project the impact of an ABC program upon scheduled service.

With respect to the specific provisions of S. 421 as presently drafted, ASTA has several serious reservations. Specifically, ASTA believes that at least the following modifications should be made by this Subcommittee in the course of its consideration of this bill:

1. The advanced reservation, deposit and prepurchase requirements must be sufficient to assure that ABC's do not create undue diversion from essential scheduled service. Traditionally, a 60-day advanced deposit requirement has been implemented in connection with ABC's, and we do not believe that the Congress should enact a provision in this law which would prohibit more than 30-days advance-purchase as would the current provisions of S. 421. The CAB should be free to evolve the length of time for advanced reservations, deposits and purchases and, in so doing, to study carefully the Canadian and European experiments with ABC's to propose appropriate guidelines.

2. Under S. 421, a charter organizer would be allowed to sell up to 25 percent of the seats of any Advanced Booking Charter trip up until the time of departure. ASTA believes that this would be extremely unwise, and would create a situation in which 25 percent of the capacity of an ABC's flight would be directly competitive with scheduled services.¹ It is, therefore, ASTA's position that all of the seats on an ABC flight should be subject to a 30-day advance-purchase requirement or other advance-purchase requirement as may be from time to time implemented by the Board.

3. The bill contains a proposal which would allow a charter organizer to assume the commercial risks on any Advanced Booking Charter trip and a prohibition on requiring the charter organizer to prorate the price per passenger for such trips. ASTA supports this proposal, and believes that it would eliminate one of the basic defects in the current TGC experiment, i.e., the fluctuating cost of a TGC seat which makes it very unattractive to any potential passenger, creates uncertainty and confusion, and has been a contributing factor in the lack of commercial success of TGC's. However, ASTA believes that this provision should be clarified so as to insure that the pricing arrangement included in a ABC application will in fact be applied to all sales for that flight.

4. The bill would provide that an ABC within the Western Hemisphere need not exceed three-day duration or in any other market exceed a seven-day duration. These minimum-stay requirements are the same as those advocated by ASTA in its comments to the CAB in support of the Board's proposal to establish One-stop Inclusive Tour Charters (OTC's).

5. If ABC's are to be implemented, the Board must be required by the Congress to assert sufficient control over the charter organizers to assure not only their financial stability but also their professional expertise and qualifications to deal appropriately with the traveling public. In no event should a

¹ It is also ASTA's belief that a regulation under which a charter organizer were permitted to sell up to 25 percent of the seats on the day of an ABC departure would be extremely difficult to enforce, and would be conducive to abuse.

direct carrier—whether scheduled or supplemental—be authorized to own, control or be controlled by a charter organizer acting as an indirect carrier with respect to the operation, promotion and sales of ABC's. Furthermore, regulations must be established to assure that ABC's are sold only through professional travel agents regulated by the Board and/or the direct air carriers providing the air transportation in order to assure the degree of public protection which the American consumer needs and deserves.

B. INCLUSIVE TOUR CHARTERS (ITC'S)

That provision of the bill which defines ITC's appears, with one exception, to conform with the provisions of S. 1739 as modified after it was reported by this Committee during the last Congress. The exception is the language added to the ITC section of the bill which provides, starting at line 13 on page 4, "... sold to members of the public at a price which is no less than the just and reasonable fare for charter air transportation plus a compensatory charge for land arrangements. . . ." This language is objectionable to ASTA since it would appear to proscribe adoption by the Board of a formula, such as the one currently in effect for ITC's, of placing the minimum ITC fare level at 110 percent of the lowest available fare on scheduled services. Denying the Board the authority to impose such restrictions could well result in undue diversion by ITC's from essential scheduled service. Here again we favor giving the Board general guidelines and authority to determine what the minimum pricing levels of ITC's should be.

As in the case of ABC's, ASTA reiterates that it is in the public interest and that of our air transport industry to assure that ITC's are sold only through financially stable and professionally qualified charter organizers and travel agents if the traveling public is to be protected. The Congress should make it clear to the CAB that it regards such rules and regulations as mandatory elements in any ITC regulations which are ultimately adopted.

C. DEFINITION OF SUPPLEMENTAL AIR TRANSPORTATION

That provision of S. 421 which would redefine Section 101 of the Federal Aviation Act of 1958 specifically to include Advanced Booking Charter trips and Inclusive Tour Charter trips within the definition of supplemental air transportation is, in ASTA's view, a highly desirable proposal. (Of course, ASTA's support of the inclusion on ABC's in this definition is subject to the same qualifications as those which I have expressed with regard to the ABC proposal itself.) One of the great difficulties which has plagued the air transport industry since the early 1960's has been the uncertainty and confusion which has surrounded the general term supplemental air transportation. This has led to expensive and protracted litigation in connection with the introduction of ITC's and has tended to thwart what could have been the natural evolutionary development of new and different charter concepts in both domestic and international air transportation.

D. AFFINITY CHARTERS

It is and has for more than ten years been ASTA's view that affinity charters are a discriminatory and unacceptable method by which to afford low-cost air transportation to certain select segments of the traveling public. The problems which have accompanied affinity charters, including difficulties in enforcement, discrimination, and excessive diversion in certain markets, are common knowledge to the public, the Congress, the CAB and the travel industry. Therefore, ASTA has urged and does now strongly urge the elimination of affinity charters at the earliest possible date with the introduction of a range of viable alternative charter concepts such as ITC's, TGC's and ABC's.

We note that the CAB on February 7, announced that it is modifying its previous decision to terminate affinity charters effective March 31, 1975, and that it will not terminate affinity charters at least prior to the end of this year. In ASTA's view, quick action by the Congress to authorize ABC's and to clarify the Board's authority to introduce ITC's on a one-stop basis should provide more than ample opportunity during this calendar year to develop the viable alternative to affinity charters advocated by so many for so long. I

would further point out that the Canadian experiment with ABC's, introduced in coincidence with the elimination of affinity charters, clearly illustrates that the only effective way of testing and implementing an alternative to affinity charters is to eliminate affinity charters and simultaneously to substitute for them a program which will be acceptable and of good service in the market place.

The Canadian ABC program became effective on April 1, 1973, the Canadian pro-rata affinity charter regulations were revoked effective that same day, and all pro-rata affinity charter operations were ceased as of January 30, 1973. Leaders of the travel industry in Canada are virtually unanimous in their belief that the simultaneous elimination of affinity charters was a major factor in the successful implementation of the ABC concept in that country. We believe that the same would be true in the United States—no alternative charter regime will be able to operate successfully as long as it must compete with the long-discredited affinity charter. The affinity charter must, we believe, be eliminated at the outset.

E. TRAVEL CLUBS

Travel agents throughout the United States have long been greatly concerned with the dramatic increase in so-called flying clubs which are generally nothing more than devices by certain people to reap substantial profits by acting as common carriers without securing Board certification.

More than two years ago, in comments filed with the Board in connection with its consideration of the Voyager 1000 flying club operation, we urged the Board to find that that so-called flying club was operating in violation of the Act under established legal precedent and, at the same time, to promulgate proposed rules which could serve as guide lines in determining those terms and conditions under which flying clubs in the future could operate. We support that provision of S. 421 which calls upon the Board to promulgate rules and regulations for flying clubs, but point out that those rules and regulations must be tightly and carefully drawn to assure that the so-called flying club concept does not continue to be exploited by those who would offer common carriage for hire without complying with the Act or the Board's regulations.

ASTA believes that groups who wish to band together for the purpose of promoting travel programs should be encouraged to do so by using the equipment and services of both scheduled and supplemental carriers authorized by the Board to provide such transportation. Certainly there is adequate capacity available now and there will be in the future to meet any such requirements. Consequently, any authorization for the continued operation of travel clubs should be very carefully circumscribed and ownership and operation of private aircraft for the purpose of transporting individuals would be on a very limited and unusual basis.

We note that that section of S. 421 referring to travel clubs contains the following language, beginning at line 13 of page 6: "... defining in specific terms the full scope of the activities in air commerce which are permitted to be engaged in by persons who have not been authorized to engage in air transportation within the meaning of the Federal Aviation Act of 1958, but who are air travel clubs. . . ." This language is most troublesome since it implies—perhaps inadvertently—that there is some place in the air transport system for air travel clubs to "engage in air commerce" without being authorized to engage in air transportation within the meaning of the Act. In ASTA's view such a concept is totally unacceptable, and the rules and regulations governing travel clubs, which Section 5 of this bill would require the Board to adopt, must be confined to describing those types of activities which travel clubs might engage in which do not amount to "activities in air commerce" or engaging "in air transportation within the meaning of the Federal Aviation Act of 1958."

F. REDUCED-RATE TRANSPORTATION ON SCHEDULED SERVICES

ASTA has traditionally opposed the granting of discounts in either scheduled or supplemental air transportation on the basis of discriminatory personal characteristics of the potential passenger. ASTA, on behalf of its membership and the almost 50 percent of all passengers in domestic air transportation and 75 to 85 percent of all passengers in international air transportation who rely on travel agents to make their arrangements are opposed to the granting of

discounts to certain passengers based upon personal characteristics of the passengers or other discriminatory factors which do not relate to the providing of the services in question. For that reason we have been opposed to limiting benefits of low-cost charter transportation on the basis of so-called affinity among passengers, *i.e.*, membership in clubs, associations, organizations and to the granting of discounts to persons on the basis of age whether it be youth or old age. For that reason, as a matter of policy, ASTA does not favor the enactment of Section 6 of the Act, except insofar as it would authorize the granting of reduced-rate transportation to families. ASTA's justification for the family fare discounts are best articulated by CAB Members Minetti and Murphy in the Board's order of December 5, 1972 in the Domestic Passenger-Fare Investigation, Phase 5—Discount areas.² In that order the Board, by a three-to-two margin, struck down family fare discounts. Members Minetti and Murphy dissented from that decision stating:

"A special word is in order on the matter of family fares which we do not consider to be unreasonable or unjustly discriminatory. The record clearly indicates that family fares are endorsed in a retention supported by 19 airlines who were parties to the investigation plus our Bureau of Economics and the General Services Administration. Certainly, recognition of the family unit is not a "spurious justification" for different treatment of "like" traffic. As the Administrative Law Judge points out, the family fares have advanced the developmental aims of the Act, they are available to a very broad segment of the public; they have successfully generated traffic and benefit the entire air transport system, including normal fare passengers. Thus, it would appear that there is an eminently sound basis for selecting the family unit for special consideration. We further note that it has long been traditional in various modes of transportation to afford special reductions to children as well as to families."

Despite the obvious discrimination in extending discount fares to individual passengers merely on the basis of their age or handicapped status or occupations such as "ministers of religion", ASTA acknowledges that whether or not such discounts are to be permitted is a policy decision for Congress to make. Should the Congress decide to amend the Act specifically to provide these personal characteristics as bases for granting discount fares, then ASTA urges that the discounts not be granted on the basis of space available, but rather under the same terms and conditions which the international air carriers have provided for youth fare discounts in the transatlantic market, *i.e.*, no firm reservation can be made for such transportation more than seven days prior to departure. However, if space remains available on a particular flight less than seven days prior to departure, then those passengers can purchase the tickets in accordance with applicable tariffs and obtain guaranteed space on a particular choice. This approach would afford the opportunity for passengers traveling at full fare or under generally applicable discount fares to acquire space prior to the time that space becomes available to passengers who might benefit because of their age under a special tariff. At the same time, it would avoid the very troublesome and disruptive practices which confronted the industry and the public when youth fares were available on a space-available basis. Furthermore, particularly in the case of the elderly and the handicapped passengers, this approach would be a much more desirable alternative than forcing those passengers to wait at airports to see whether space becomes available with no assurance that their travel needs will be taken care of.

CONCLUSION

Mr. Chairman, I would like again to express my appreciation for the opportunity to appear before the Subcommittee this morning and give you the benefit of the travel agent's view of the role of charter air transportation in our air transport system as we know it today. As I have previously indicated, it is ASTA's sincere hope that the Congress will assert itself quickly and forcefully to provide the kind of guidelines and directives which the air transport industry and the Civil Aeronautics Board need to assure that the greatest air transport system in the world continues to bring to the traveling public, on a nondiscriminatory basis, the benefits of air transportation. In so doing, ASTA urges that the Congress and the Board take into full account the

² Docket 21866-5, Order 72-12-18.

fact that the backbone of that air transport system is the individually ticketed service offered by scheduled carriers, and that any proposal to introduce liberalized charter services should be undertaken with a view towards supplementing that scheduled service.

Anyone who is an observer of the air transportation industry in the United States today knows that one of the principal reasons for the sharp decline in passenger growth was the decision by the Board to eliminate in 1972 widely accepted and extremely popular discount fares including the Discover America excursion fare. Recently, the CAB in approving American Airlines Bicentennial excursion fare, displayed an encouraging departure from its rigid adherence to the formula it adopted in the general passenger fares investigation. In ASTA's view it is in the public interest that the Congress encourage the Board, as you stated in introducing this legislation, Mr. Chairman, to "allow the carriers some leeway in experimenting with promotional and discount fares. In times of serious recession and inflation and with airline travel slumping dramatically, innovative fare proposals are desperately needed to try and generate new traffic."

ASTA has this week filed an answer in support of Allegheny Airlines' proposal to eliminate all arbitrary minimum-mileage requirements on the new domestic excursion fare proposals.³ A copy of ASTA's filing is attached to my statement for the information of the Committee. The thrust of ASTA's argument is essentially the same as that contained in the *Congressional Record* of January 27, 1975, at page S897, where you, Mr. Chairman, said in connection with the Bicentennial promotional fares:

"I fail to understand why the Board continually injects itself into management-type decisions by quarreling over whether a fare may be available in all markets or just in markets 1,500 miles apart. Let us let airline management make such decisions at least until such time as it can be proven that such promotional fares are eroding the regular fare base and airlines yield per passenger mile."

In ASTA's view, the basic elements of the Bicentennial promotional fare available in scheduled service in the United States, the advanced purchase and ticketing requirement and the minimum and maximum stay limitations are in themselves sufficient, specific, objective conditions which justify the amount of the discounts offered and which will serve to prevent the erosion of carrier yields while, at the same time, generating substantial additional traffic. Therefore, it is neither necessary nor desirable to limit those fares to particular markets by requiring them to be 1500 or 750 or 600 miles apart.

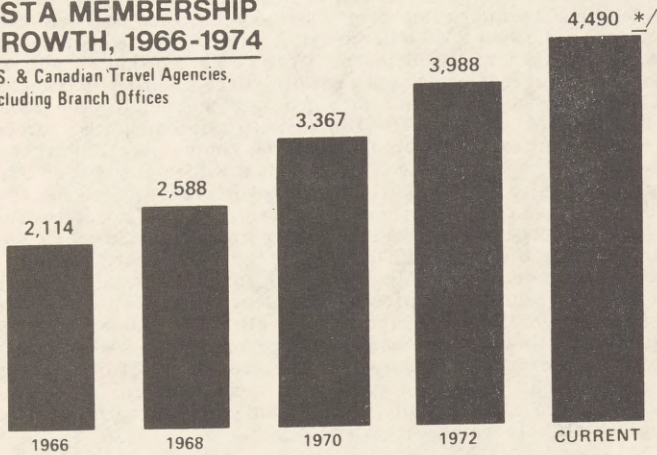
In conclusion, I am confident, Mr. Chairman, that, as a result of the work of this Committee and other Committees of the Congress and an enlightened view on the part of the CAB, the air carriers, and all of us who work to make the travel and tourism industry such a vital economic and social force in our country, we can find ways to assure that the great benefits of air transportation remain accessible to the widest possible number of our citizens and our visiting friends from abroad while, at the same time, assuring the economic viability of our total air transport system.

³ CAB Docket 27416.

EXHIBIT 1

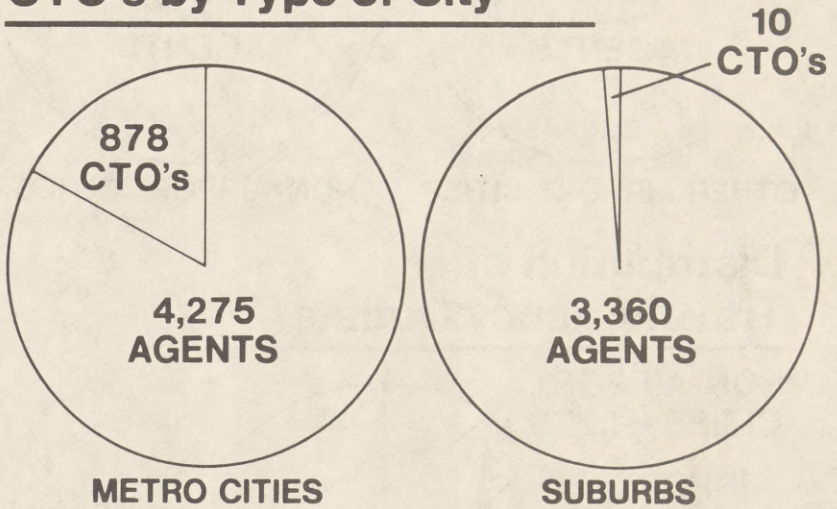
**ASTA MEMBERSHIP
GROWTH, 1966-1974**

U.S. & Canadian Travel Agencies,
excluding Branch Offices

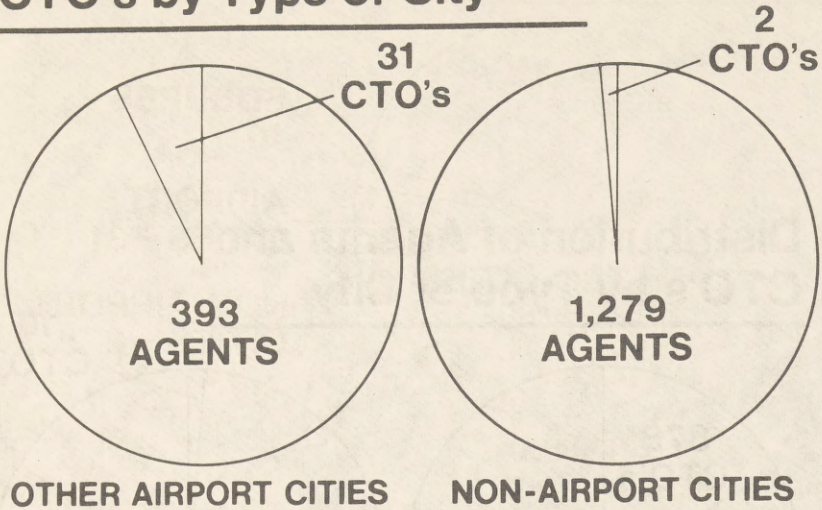


*/ These 4,490 travel agent owners operate more than 6,500 travel agency locations in the United States and Canada.

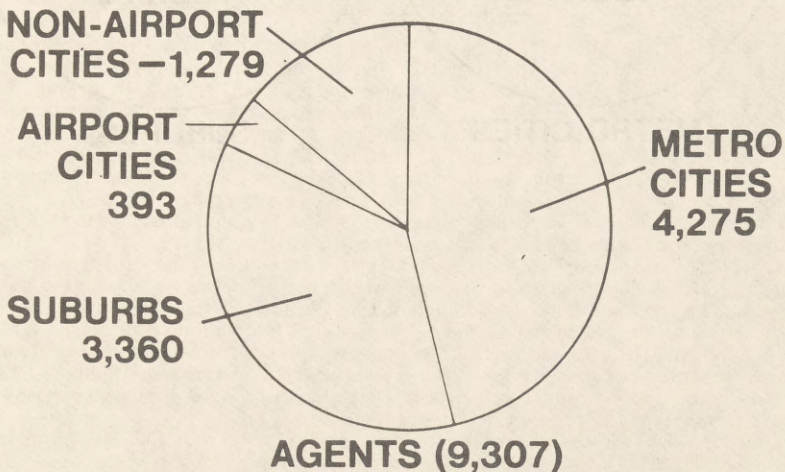
Distribution of Agents and CTO's by Type of City



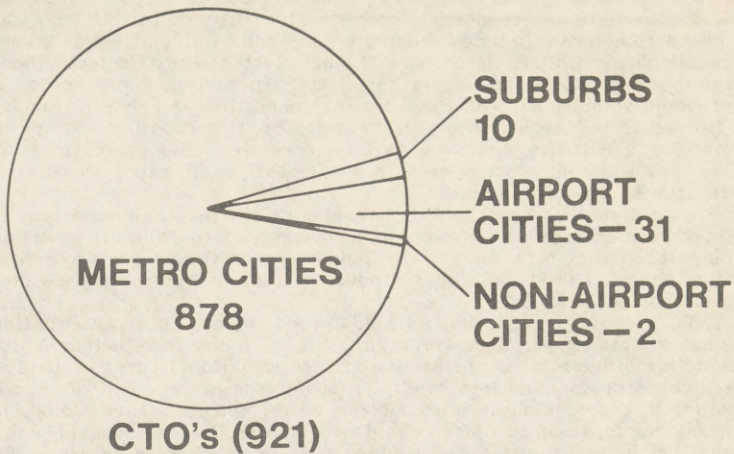
Distribution of Agents and CTO's by Type of City



Distribution of Travel Agency Outlets



Distribution of Airline CTO's



EXCURSION FARES PROPOSED BY

AMERICAN AIRLINES, INC.,
UNITED AIR LINES, INC.,
TRANS WORLD AIRLINES, INC., AND
NORTHWEST AIRLINES, INC.

ANSWER OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC., IN SUPPORT OF THE PETITION OF ALLEGHENY AIRLINES FOR RECONSIDERATION OF ORDERS 75-1-72

On behalf of its more than 6,000 travel agency members, the American Society of Travel Agents, Inc. (ASTA) hereby answers the petition recently filed with the Board by Allegheny Airlines, and joins Allegheny in urging the Board to reconsider its decision to make the proposed new domestic excursion fares unavailable in short-haul markets. ASTA concurs in the judgment of Allegheny that such a restriction is inflexible and illogical, and believes those carriers who desire to experiment with these new fares in short-haul markets should be permitted to do so, subject to ongoing scrutiny and reevaluation.

In suspending several excursion fare tariffs which would have been applicable in short-haul markets, the Board simply stated:

"... [E]vidence adduced in [*the Domestic Passenger-Fare Investigation*] suggests that discount fares are significantly less generative in shorter-haul markets. The various examples of generation/diversion cited by United in its justification ... do not provide a basis upon which to conclude otherwise..."¹

In other words, the Board refused to approve the tariffs not because it found that the excursion fares would not be productively generative in short-haul markets, but simply because it believes that they would be less generative in short-haul markets than they would be in long-haul markets.

In Order 75-1-87, the Board suspended a similar tariff filed by Frontier Airlines, Inc., which would have been available on a system-wide basis. In "... [W]e find it difficult to believe that the rather small dollar savings involved in many of Frontier's markets would generate new air traffic ... [W]e are inclined to believe that the proposed 20 percent discount would not provide a sufficient incentive, and that there is considerable risk of revenue deletion..."²

To the extent that any "finding" was involved in that order, it was certainly not based on any evidence or concrete economic data.

The negative attitude reflected in those two orders is, ASTA believes, most unfortunate, especially in light of the severe economic situation confronting the domestic carriers at the present time. Recent declines in domestic air passenger traffic dramatically illustrate the immediate need for a stimulus. In markets of all distances, revenue passenger miles and load factors continue to fall and the number of excess seats continues to rise. And, in light of the uniformly pessimistic national economic forecasts, the situation can be expected to continue to deteriorate unless innovative and affirmative action is taken. ASTA, like Allegheny, United, Frontier, and Northwest Airlines, believes that general availability of the proposed new fares would provide a badly needed stimulus and would significantly contribute to the generation of new air travel.

Moreover, the negative approach taken by the Board in its most recent excursion-fare orders stands in stark contrast to earlier evaluations of similar fares. For example, with respect to the recently eliminated Discover America fares, the Board stated that:

"[It was] unable to conclude that it supports the reasonableness of eliminating Discover America excursion fares in all markets up to 600 miles in distance. The dollar differential between this fare and the normal round trip coach fare in a 300 mile market is \$11.00, a magnitude which might well influence a decision on whether or not to fly."³

ASTA certainly agrees that an \$11.00 discount may in many situations serve to generate air travel. Moreover, in light of the many fare increases since 1970, the dollar differential in an excursion fare situation is greater today than it was five years ago. And in a family situation, the savings will of course be far greater. If, for example, a husband and wife could each save \$11.00, and each of their accompanying children could save \$22.00, it is inconceivable that there would not be many instances in which a decision whether or not to fly would be based on the availability of such a discount.

It is clear that the marketing, revenue accounting, and reservations experts of at least four of the domestic carriers believe that the new fares would have a significant generative effect and a favorable profit impact in short-haul markets. If this is true—and the Board has been presented with no evidence to the contrary—it is irrelevant whether the fares would be as productive in short-haul markets as in long-haul markets. It is quite possible—in ASTA's opinion, probable—that, if permitted on an experimental basis, the new fares will easily "pass" both the "profit-impact test" and the "generation/diversion test". With respect to the overall concept of the new domestic excursion fares, the Board has recently stated that:

There is some reason to believe that elasticity of demand for discretionary travel may be higher under present conditions than it was when the Board reached its decision in Phase 5 of the *DPII*. *Only a period of experimentation with these fares can provide any basis for conclusion.*"⁴

ASTA submits that precisely the same reasoning should be applied with respect to determining the markets in which the new fares are to be available. Only a period of experimentation with these fares in short-haul markets can provide any basis for conclusion in this regard. As Allegheny indicates in its petition for reconsideration, "there is little to lose" and "much to gain" in permitting those carriers who so desire "to experiment with the subject excursion fare for a short period during these troubled times".⁵ The domestic airline industry and the nation's potential travelers are entitled to the benefit of such an experiment.

II

In its petition for reconsideration, Allegheny has understandably emphasized one very important discriminatory element of the Board's present position. That is, the exclusion of short-haul markets from availability of the new fares "virtually forecloses any meaningful discount fare experimentation in the part of the regional carriers."⁶ ASTA agrees with Allegheny that such a prejudicial impact should not be brought to bear on the nation's short- or medium-haul carriers.

³ CAB Order 70-5-142, Docket 22239 at—.

⁴ CAB Order 75-1-72, *supra*, at 4 (Emphasis added).

⁵ Petition of Allegheny Airlines for Recommendation of Order 75-1-72, Docket 27416, at 7.

⁶ *Id.* at 3.

There is, however, another and ultimately more important element of discrimination inherent in an arbitrary 1500-, 750- or even 600-mile cutoff. That is, large segments of the public would arbitrarily be prohibited from making a free and unfettered decision as to their choice of travel destination. Fortunately, the Board recognizes that a 1500-mile restriction would effectively eliminate the availability of these fares (regardless of market) to millions of persons who live in the nation's central states. However, a 750- or 600-mile restriction would be equally arbitrary, and would still have a serious and discriminatory impact upon very large segments of the nation's population.

The Board should also be mindful of the fact that, while official Bicentennial Celebration events will be held throughout the country during the next two years, the focal point of bicentennial activities will be in Washington, D.C. Even if the Board were to drop the restrictions to 600-mile markets, the entire northeast corridor and large portions of the midwest and the south would be prohibited from traveling to Washington at the excursion fare level. For example, persons traveling to Washington from Boston, Chicago, Atlanta (or Nashville) or Montreal would be precluded from using the excursion fares. In the Boston-Washington market, a husband and wife traveling in an off-peak season with two children would save \$135 under the proposed fares as compared to normal coach fares (\$360 normal/\$225 excursion); in the Chicago-Washington market, \$180 (\$480 normal/\$300 excursion); in the Atlanta- (or Nashville) Washington market, \$174 (\$464 normal/\$290 excursion); in the Montreal market, \$184.86 (\$492.48 normal/\$307.80 excursion). Certainly, such differentials would in many cases be the determining factor in whether or not such a family would fly to Washington.

Similarly, persons traveling to Chicago from Rochester, Washington, Atlanta, or Kansas City would be precluded from traveling at excursion fares. In these markets, too, the price differentials are clearly great enough to generate substantial amounts of new discretionary air travel: Rochester-Chicago, \$165 (\$440 normal/\$275 excursion); Washington-Chicago, \$180; Atlanta-Chicago, \$180 (\$480 normal/\$300 excursion); and Kansas City-Chicago, \$135 (\$360 normal/\$225 excursion).

The Board may fear that the generative effect of the new fares in these markets will not outweigh the dilution of revenues which would occur when persons who would have flown at full fare take advantage of the excursion fare discount. ASTA does not share that fear, but would in any event emphasize that, if the new fares are permitted for an experimental period under close scrutiny and oversight, no significant adverse effects upon the carriers can be expected. If the new fares do not prove to be significantly generative and profitable, the carriers and the Board can take appropriate corrective action.

It is important also that the Board keep in mind the vast differences in amounts of discretionary income available to different segments of the nation's population. There are many persons indeed who, even with an excursion discount, could not afford to travel coast-to-coast with their families. Many such families, however, might well be able to avail themselves of vacation travel by air in a short-haul market if excursion fares were available. Exclusion of these short-haul market from availability of the proposed fares will economically preclude many thousands of Americans from enjoying the benefit of air transportation in their vacation travel. The imposition of such a prohibitive barrier to Americans of modest means certainly would not be in the public interest.

One further consideration which ASTA believes the Board should weigh in reconsidering the appropriateness of a minimum-mileage cutoff for the excursion fares is the fact that if Americans are deprived of the availability of these fares in 300-, 400- and 500-mile markets, many of them are going to take the same trip by automobile. At this period of the nation's history, when, as a matter of national policy, persons are being discouraged from unnecessary automobile travel, it would seem highly inappropriate for the Board to force Americans into a choice between traveling by automobile and not traveling at all. The availability *vel non* of excursion fare discounts in these mileage markets can be expected to have a significant impact upon the fly/drive ratio between these city-pairs. The Board should do everything in its power to encourage the use of air transportation in these situations.

III

In a recent floor statement, Senator Howard W. Cannon, Chairman of the Aviation Subcommittee of the Senate Committee on Commerce, referred to Order 75-1-72, and expressed disappointment at the Board's "consistent refusal to allow the carriers some leeway in experimenting with promotional and discount fares."⁷ He went on to say:

"In this time of serious recession and inflation and with airline travel slumping dramatically, innovative fare proposals are desperately needed to try and generate new traffic. I fail to understand why the Board continually injects itself into management type decisions by quarreling over whether a fare may be available in all markets or just in markets 1500 miles apart. Let's let airline management make such decisions at least until such time as it can be proven that such promotional fares are eroding the regular fare base and the airlines yield per passenger mile."⁸

ASTA shares Senator Cannon's belief that the airline management should be permitted, on an experimental basis at least to offer the proposed excursion fares in those markets which it believes will be productive and profitable.

ASTA therefore joins Allegheny Airlines in urging the Board to reconsider its decision to make the proposed new domestic excursion fares unavailable in short-haul markets, and to permit those carriers who desire to experiment with these new fares to do so, subject to ongoing scrutiny and reevaluation.

Respectfully submitted,

WILKINSON, CRAGUN & BARKER,
General Counsel to the American
Society of Travel Agents, Inc.
By PAUL S. QUINN.

FEBRUARY 11, 1975.

[The following information was subsequently received for the record:]

WASHINGTON, D.C., February 14, 1975.

HON. HOWARD W. CANNON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR: During our appearance before your Aviation Subcommittee this morning on behalf of ASTA, you raised a question about the relevance of the commission levels paid to travel agents on the newly-approved Bicentennial promotional fares. Enclosed is a copy of a petition which we filed with the Board on February 3. This petition was made necessary because the ATC rejected a proposal by TWA and United Airlines which was supported by other members of the Conference to retain the 8% commission level on this successor fare to the Discover America Fare.

Significantly, TWA on February 12, filed the enclosed answer in support of ASTA's petition stating categorically that that provision of the ATC Sales Agency Agreement which proscribes 8% commission level on these types of promotional fares is adverse to the public interest. As you are aware, the Board is required under Section 412 of the Act to disapprove any resolution adverse to the public interest.

We appreciated the chance to appear before your Subcommittee this morning on S. 421 and if there is any additional information or materials which we can provide, we would be more than happy to do so.

Warm regards.

Sincerely,

WILKINSON, CRAGUN & BARKER,
By PAUL S. QUINN.

Enclosure.

⁷ Congressional Record, January 27, 1975, at S-897.

⁸ *Id.*

[Before the Civil Aeronautics Board, Washington, D.C.]

Docket 27466

IN THE MATTER OF AIR TRAFFIC CONFERENCE OF AMERICA,
RESOLUTION 80.10 & VIII, AGREEMENT CAB 5044-A144ANSWER OF TRANS WORLD AIRLINES, INC. TO PETITION OF THE AMERICAN SOCIETY
OF TRAVEL AGENTS, INC. AND THE ASSOCIATION OF BANK TRAVEL BUREAUS

On February 3, 1975, the American Society of Travel Agents, Inc. ("ASTA") and The Association of Bank Travel Bureaus ("ABTB") petitioned the Board either to disapprove ATC Resolution 80.10 § VIII, Agreement CAB 5044-A144 or condition its continued approval upon carrier agreement to pay a 8% travel agent commission on sales of the new domestic excursion fares filed by the carriers in accordance with Board Order 75-1-72.¹ Board action was requested on an expedited basis, with the express expectation such relief will be of interim nature, pending anticipated revision of the current ATC agency commission structure. Trans World Airlines, Inc. hereby answers in support of this position, stating the following:

1. As noted by the Board in Order 75-1-72, the new domestic excursion fares were explicitly designed by the carriers to fill the void in promotional fares for the personal and pleasure traveller that was created by the discontinuance of such previously available fares as Discover America, Youth Fare and Family Plan. From the carrier standpoint, the new domestic excursion fare is of vital importance in face of the sustained softening of traffic experienced by them, as a result of general economic conditions, and the forecast of almost flat traffic growth for 1975, absent discounted fares.

It is apparent from the face of Order 75-1-72 that the Board felt fares constructed in accordance with the restrictions and conditions set forth therein are an appropriate response to the needs of the discretionary traveller and the carriers for a discount fare that would ameliorate an otherwise grim traffic picture.

Some indication of the magnitude of carrier need for this fare, and the consequent value of service travel agents provide in marketing this fare, can be gleaned from the fact that TWA forecasts a 30% generation, contributing over \$8,500,000 in annual net revenues.² As summarized in Appendix B to Board Order 75-1-72 generation forecasts of United Air Lines and American Airlines were similar in scope. The Board, thought even these estimates might be conservative.³ It is reasonable to expect that this already significant degree of generation can be further enhanced if additional incentive is provided by means of a commission level commensurate with the increased efforts and expense associated with Travel Agent sales of these new fares.⁴

2. There is no question the present commission structure, as approved by the Board,⁵ incorporates a system whereby higher rates of commission are authorized with respect to discretionary travel as opposed to point-to-point sales. For this reason, Discover America and Family Plan fares, among others, were commissionable at 8%. Without prejudice to TWA's position on the anticipated new ATC structure, the arbitrary refusal to authorize the higher rate of commission on these new excursion fares, serves to make this aspect of the ATC resolution adverse to the public interest.

Wherefore, Trans World Airlines, Inc. respectfully
Respectfully submitted,

TRANS WORLD AIRLINES, INC.
By MARLENE AKSEN, Attorney

FEBRUARY 12, 1975.

¹ Round Trip Excursion Fares, as published in Rule 135 of Local & Joint Passenger Rules Tariff No. PR-6, CAB No. 142, issued by Airline Tariff Publishers Inc., Agent.

² TWA forecasts no difference in generation and net revenue impact as a result of its substitute filing for the December 6, 1974 Getaway Excursion Fare filing that was the subject of Board Order 75-1-72.

³ Order on Page 4.

⁴ These are detailed at length in the subject Petition at Page 8 et seq and we will not reiterate them here.

⁵ Order 70-12-165.

[Before the Civil Aeronautics Board, Washington, D.C.]

IN THE MATTER OF AIR TRAFFIC CONFERENCE OF AMERICA, RESOLUTION 80.10
§ VIII, AGREEMENT CAB 5044-A144

PETITION OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC. AND THE ASSOCIATION OF BANK TRAVEL BUREAUS FOR DISAPPROVAL OR MODIFICATION OF AGREEMENT CAB 5044-A144 AND REQUEST FOR EXPEDITION

On January 17, 1975, the Board issued Order 75-1-72, thereby approving the day coach excursion fare proposal submitted by American Airlines, Inc. At the same time, the Board suspended and ordered an investigation of similar tariffs filed by United Air Lines, Inc., Trans World Airlines, Inc., and Northwest Airlines, Inc., and an American Airlines tariff proposal for a night coach excursion fare.

In its order, the Board indicated that "a properly constructed discount fare would be consistent with the Board's [Domestic Passenger-Fare Investigation] Phase 5 decision."¹ The Board went on to enumerate five "basic issues" which it believes should be considered in determining whether an excursion fare proposal is, in fact, "properly constructed."² In its discussion of those issues, the Board provided guidelines which will be applied in the impending investigation and which will presumably be heeded and followed by the domestic carriers in their future excursion fare proposals.

On January 16, 1975, the Air Traffic Conference of America (ATC) voted—over the objection of at least two of its members—to deny the payment of an eight-percent commission to travel agents for sales under the new excursion fare proposals.³

The American Society of Travel Agents, Inc. (ASTA) and the Association of Bank Travel Bureaus (ABTB) wholeheartedly endorse the concept of discount excursion fares, and believe that such fares can and should be used productively in the development and promotion of discretionary air travel. The recent action of the ATC, however, threatens both to undermine the successful marketing of these new fares and to impose upon travel agents additional administrative, sales and informational burdens and expenses without providing any offsetting compensation.

When the Board approved Agreement CAB 5044-A144 in 1970, thereby permitting the implementation of the basic ATC agency commission structure, it did so only after considering each of what it considered to be the essential factors in the development of a multi-tiered compensation schedule.⁴ In doing so, the Board attempted to strike a balance among these diverse ingredients. The recent elimination of youth, family, and Discover America discount fares has affected that balance and has seriously impacted the travel agency industry. The national economic situation has also had a seriously repressive influence on the agency industry in the face of soaring agency costs. The most recent ATC decision represents a drastic and unwarranted action which ignores every consideration weighed by the Board in 1970, which seriously distorts the agency commission structure, and which poses a severe and immediate threat to the economic well-being of travel agents throughout the country.

For these reasons and for the reasons set forth hereinbelow, ASTA and ABTB respectfully urge the Board either to disapprove ATC Resolution 80.10 § VIII, Agreement CAB 5044-A144, or to condition its continued approval of that agreement upon the payment of an eight-percent travel agent commission on sales made under the proposed new excursion fares.⁵

¹ CAB Order 75-1-72, at 2.

² See *id.*

³ While the ATC's rule of secrecy makes it impossible for any outsider to ascertain what arguments, if any, were raised in opposition to the eight-percent commission level or to determine which or how many member carriers opposed the proposal, it has been reported that Trans World Airlines, Inc., and United Air Lines, Inc., were the parties who proposed the payment of an eight-percent commission in recognition of the additional costs which travel agents will incur as a result of the additional time and effort required for selling, explaining and administering the new fares. *Aviation Daily*, January 20, 1975; see also *Aviation Daily*, January 15, 1975. The Vice President of at least one other ATC carrier (Frontier Airlines) has publicly expressed disappointment at the ATC action. See *Travel Management Daily*, January 24, 1975, at 2. Because of the ATC's unanimous voting requirement, it is, of course, possible that the proposal was defeated by the negative vote of one carrier.

⁴ See CAB Order 70-12-165 (December 31, 1970).

⁵ In view of the current ATC travel agent commission "study" authorized by Board Order 74-9-44, the modification requested herein would be in the nature of interim relief, pending completion of that "study" and final action on the outcome thereof.

I.

In approving the existing ATC travel agent commission structure, the Board noted that:

"For the carriers the commission rate is a tool which is designed to establish an incentive in the agent and channel his energies into those areas of air transportation where the performance of his services to the public is particularly desired by the carriers, i.e., those geographic areas or classes of customers which are not deemed by the carriers to be most efficiently covered by the carriers' own sales facilities. Thus the commission level has a direct bearing upon the carriers' financial fortunes, both by virtue of its cost to the carriers and its influence on the carriers' own sales activities and its effect on the revenue generated for them by their agents."⁶

The Board went on:

"The relative range of emphasis reflects itself in the higher rates of commission which we are authorizing with respect to tours and other "discretionary" travel such as Discover America and Family; [and] on the somewhat lesser rate with regard to point-to-point sales. . ."⁷

The ATC itself has emphasized the "discretionary"/"point-to-point" distinction on numerous occasions. Indeed, in proposing in 1969 to increase the commission rate for the sale of Discover America and family travel from seven to eight percent, the carriers took the position "that such increases reflect the value to them of agent activities in their discretionary air travel markets."⁸ More recently, in opposing efforts by ASTA to secure the payment of commissions on the sale of domestic point-to-point transportation paid for under the Universal Air Travel Plan, the ATC members argued as follows:

"The airlines have made fully commissionable all the types of *truly discretionary* air travel which might be purchased under the Universal Air Travel Plan—tour sales and Discover America and family travel. . ."⁹

The new domestic excursion fares most certainly represent "truly discretionary air travel." Indeed, it is clear that these new fares have been developed by the carriers as a replacement for the previously disapproved Discover America fares upon which an eight-percent commission was always paid. Furthermore, in developing the new fares, the carriers have added and will continue to add conditions and restrictions which highlight the discretionary nature of the travel for which these fares will be available. This travel is precisely the sort of travel on which the carriers have argued—and the Board has agreed—that an incentive commission should be paid.

II.

In reaffirming its commitment to a uniform commission structure, the Board went on in Order 70-12-165 to observe that:

"[U]nder the uniform commission structure the travel agent industry has grown and prospered; it has produced a body of expert travel counselors on whom the airlines and the public have placed reliance. For their contributions and efforts the agents are entitled to a fair level of remuneration, and our action on the various rates . . . is predicated on our determination that the structure approved so provides."¹⁰

Turning to the task of determining this "fair level of remuneration", the Board stated:

" . . . that the rate on any given product line could be fixed at or below fully allocated cost, so long as the overall structure provided an *opportunity to cover costs and make a profit*. In determining what the overall structure should be, we believe that consideration should be given to the following factors: the findings of the cost study; the value of the agents services to the carriers; the comparable costs to the carriers providing their own services; the ease of entry into the travel agent industry; the vitality of *both* industries; and the impact of the commission structure on the services provided to and the costs incurred by the traveling public.

⁶ *Id.* at 6.

⁷ *Id.* at 21.

⁸ CAB Order 70-5-35, Docket 21305, at 4. *See also* CAB Order 69-8-75, Docket 21305; CAB Order 70-12-165, *supra*.

⁹ Consolidated Motion to Dismiss and Answer of the Air Carrier Members of the Air Traffic Conference of America, Docket 25879, at 4 (November 14, 1973) (emphasis added).

¹⁰ CAB Order 70-12-165, at 12-13.

"The determination of the commission structure overall, and each of its components, is a matter of judgment, based on an assessment and weighing of these factors . . ." ¹¹

The refusal of the ATC to make excursion fare sales commissionable at eight-percent undermines the basic premise of the Board's philosophy on travel agent commissions—that a commission structure must provide "an opportunity to cover costs and make a profit." And it is an action taken in total disregard of one of the most fundamental and important factors in the Board's 1970 order—travel agency costs.

Never has the Board deviated from its basic approach to travel agent commissions. It is absolutely unfair and unreasonable—and in contravention of the basic principles enunciated by the Board—for the ATC carriers to develop and implement a system of excursion fares to take the place of the Discover America fares, thereby increasing the workload and costs of travel agents, without providing compensatory remuneration to those agents. This is particularly true at the present time, in light of the critical impact of the nation's economic inflation upon the financial position of the travel agent and the travel agent's increasing responsibility in the marketing of discretionary air transportation.

The new excursion fares—conditioned as they are and will be upon adherence to minimum- and maximum-stay requirements, a mandatory round-trip requirement, an advance-booking requirement, and blackout periods—will create new complications and additional burdens for the travel agent. Among the increased efforts which the agent will have to expend in effecting a sale under these tariffs are: Additional time in providing explanations to clients of the nature of the fares and the restrictions upon their availability; additional time in requesting and confirming advance reservations because of the mandatory round-trip requirement and the advance-purchase and minimum- and maximum-stay requirements; additional record-keeping functions; an additional number of reservations charges; an increased incidence of refund requests and transactions; additional deposit payments and time payments; and increased marketing efforts. All of these represent efforts and time not involved in transacting a routine sale of point-to-point transportation. At the same time, because the new fares will be lower, the agent's yield per transaction will be reduced.

Since 1967 (the last period covered by the 1968 Touch Ross cost study), the United States cost-of-living index has risen 53 percent. And, since each of the components contributing to this inflationary spiral has directly impacted travel agency costs, this 53 percent figure represents a very real measure of impact insofar as the travel agency industry is concerned. It cannot be argued that this negative impact of inflation has been offset by corresponding air fare increases. Indeed, in the 1970-1974 period, airline—and travel agency—yield per revenue passenger mile has improved by only 20.8 percent. The severity of the gap between a 53 percent increase in costs and 20.8 percent increase in yield is obvious.

In an effort to quantify the impact of the new fares upon the day-to-day operation of a travel agency, ASTA has conducted a telephone survey of a random sampling of its membership. Every agent contacted in the course of that survey indicated that he or she believes that a very substantial amount of additional time will be required simply in explaining the new tariffs to clients. In connection with telephone inquiries and sales, 30 percent of the agents indicated that required telephone time will be more than double that which is required for an ordinary inquiry or sale; an additional 40 percent felt that this time would be increased by 50 percent or more. With regard to in-person inquiries and sales, 30 percent believe that the time involved will be at least doubled, and 45 percent foresee an increase of 50 percent or more.

Seventy-eight percent of the agents responding to the question felt that additional bookkeeping will be required as a result of the implementation of the new fares, and all of the responding agents indicated that additional time will be required in requesting and confirming advance reservations.

Sixty percent of the agents believe that they will experience a significant increase in reservations changes, and 75 percent predict a significant increase in the incidence of refund transactions.

¹¹ *Id.* at 17 (Emphasis added).

Seventy percent of the agents surveyed pointed out miscellaneous factors, not listed above, which they feel will result in additional administrative costs. Notable among these was the fact that additional training of agency personnel will be necessitated by the new fares.

There can be no question but that the new fares will involve a substantial increase in the work and expenditures required of the travel agent marketing the travel product. It is equally clear that the "balance" achieved by the Board in 1970 has been disturbed by a number of factors which have rendered the existing travel agent commission structure noncompensatory. Continued approval of that situation without at least some interim relief by way of an eight-percent commission on the new excursion fares would be unwarranted and contrary to the public interest.

III.

As indicated above, ASTA and ABTB believe that the new excursion fares represent a potentially significant device for the development and expansion of discretionary air travel. However, the air carriers must be made to realize that the success of these new fares will, to a very large degree, be dependent upon the complete and unfettered support of the travel agency industry. Unless a full and adequate commission is made available to them, travel agents will be quite justifiably reluctant to undertake active and zealous marketing of the new fares. And, unless the Board acts to require the payment of adequate commissions, successful marketing of the new fares simply cannot be achieved.

The Board has long recognized the tremendous role of the travel agent in the marketing of all forms of discretionary travel. Moreover, the Board has repeatedly noted the need for adequate travel agent commission—first, for the purpose of providing incentive for the marketing and promotion of such travel, and second, for the purpose of compensating these professional people for their services. The discretionary nature of the travel involved and the additional costs and burdens imposed by the new fares have been discussed above. From a purely business viewpoint, it should be clear and must be emphasized that the decision to deny eight-percent commissions on sales under these new fares is absolutely contrary to fundamental marketing principles. That decision, if permitted by the Board, will prove to be destructive to the incentive previously provided to agents in connection with the sale of Discover America excursion fare travel. Such an impact must not be permitted by the Board at this time of severe uncertainty throughout the entire air transport industry.

IV.

In June of 1974, the Board authorized the ATC member carriers to undertake a review of the Conference's overall travel agent commission structure to be completed by March 31, 1975.¹¹ Pursuant to that authorization, the ATC has appointed a Study Group which is currently in the process of studying *carrier* costs insofar as they are attributable to travel agent commissions. To date, the carriers have refused to include in their "overall" review a study of travel agency costs; they have refused to make available to ASTA, ABTB or any other travel agency organization any of the data which is being gathered; and they have thwarted efforts by ASTA, ABTB and the other agency groups to secure a means by which to provide constructive input to the review process. In an effort to insure that the ATC commission study will produce an objective and meaningful reevaluation of the current commission structure, ASTA, ABTB and AAA have today filed a motion in Docket 26809, requesting the Board to require that the ATC modify its present course of action in the conduct of that study. By that same motion, the parties thereto have also requested that the completion date of the study be extended to September 30, 1975.

It is the belief of ASTA and ABTB that an objective and thorough reevaluation of the travel agent commission question will ultimately reveal that an eight-percent commission on the sale of transportation on excursion fares such as those here under consideration to be inadequate unless the entire commission structure is revised. To this extent, ASTA and ABTB do not view the relief sought by this petition to be a panacea of any sort. Rather, in light of the

¹¹ CAB Order 74-9-44.

severe economic strain presently affecting travel agents, and in light of the additional effort and expenses which agents will incur in selling the new fares, ASTA and ABTB seek the payment of an eight-percent commission thereon as an interim measure which would remain effective only until the overall commission structure review has been completed and acted upon. Similar temporary approval was given by the Board when it originally approved the payment of an eight-percent commission on Discover America and family travel in 1969.¹²

The Board should also be mindful of the fact that the payment of an eight-percent commission on these new fares would represent nothing more than a reinstatement of the eight-percent commission which was, until mid-1974, paid on the Discover America excursion fares for which the new fares are a replacement.¹³ When the Board disapproved the Discover America fares, it effectively eliminated a source of substantial travel agency revenue. Those revenues have not been recovered, and the added work involved in selling the new fares will cut into agency revenues even further. If the Board permits the new fares to go into effect without providing for an eight-percent commission, it will have *reduced* agency commissions while *increasing* agency costs. Such an action would, ASTA submits, be inequitable and unwarranted, and certainly not in the public interest.

V.

The Board must act now to provide a measure of interim relief to the nation's travel agents whose present economic situation is indeed precarious. ASTA and ABTB therefore urgently request the Board to condition its approval of the new domestic excursion fares upon the payment of an eight-percent travel agent commission.¹⁴

It is further requested, pursuant to Rule 14(a) of the Board's Rules of Practice, 14 C.F.R. §302.14(a), that the Board deal with this petition on an expedited basis.

Respectfully submitted,

THE AMERICAN SOCIETY OF TRAVEL
AGENTS, INC.,
THE ASSOCIATION OF BANK TRAVEL
BUREAUS,

By PAUL S. QUINN, Esquire,
Wilkinson, Cragun & Barker,
1735 New York Ave. NW.,
Washington, D.C. 20006.

FEBRUARY 3, 1975.

Senator CANNON. The next witness is Mr. Harry Maugans, manager, Atlanta Skylarks Travel Club.

STATEMENT OF HARRY R. MAUGANS, JR., MANAGER, ATLANTA SKYLARKS AIR TRAVEL CLUB

Mr. MAUGANS. Senator, I would like to correct one thing if I could. On the witness list I was listed as the Atlanta Skylark Travel Agency. I am certainly not a travel agency. I represent a club.

¹² See CAB Order 69-8-75, Docket 21305; CAB Order 70-5-35, Docket 21305.

¹³ Indeed, it does not appear that the ATC Agency Resolution would even have to be formally amended to effect the relief sought by ASTA. Section VIII D(7) of ATC Resolution 80.10 presently reads as follows:

"For the sale of any ticket for travel at 'Discover America' Tariff, ATB. No. 38, CAB No. 90, published by Airline Tariff Publishers, Inc., or revisions or reissues thereof, eight percent (8%) of the tariff fares and charges applicable to the domestic air passenger transportation covered by such ticket, or a minimum commission of \$1.00." (Emphasis added.)

In reality, the new excursion fares are no more than "revisions" of the old Discover America fares.

¹⁴ This petition has addressed one element of the proposed excursion fares—the need for the payment of an eight-percent commission to travel agents. It is ASTA's intention to participate in the investigations ordered by the Board in connection with those excursion tariffs which the Board has decided to suspend. It is ASTA's belief that further substantive amendments of those tariffs (e.g., elimination of the long-haul-market restrictions) would be in the public interest.

My name is Harry Maugans, manager of the Atlanta Skylarks Air Travel Club. The Skylark Club is an air travel club organized for the primary purpose of providing its members low cost air travel to vacation resorts. Since our club began flight operations in May of 1966, club members have flown over 45 million passenger miles—an amount equal to 1,800 times around the world.

Our first aircraft was a Delta Airlines DC-7 which served the club well for 7 years.

In July 1973 we purchased a Boeing 720 from United Airlines and joined the jet age. With this acquisition we could offer our members the luxury of speed and comfort. The directors agreed from the beginning, that the Skylarks will be as safe on their aircraft as is humanly possible.

Our Boeing 720 is maintained and operated by professional licensed flight and ground crews with many years of flight and maintenance experience. Our standards of maintenance and operations are well above that required by both commercial and government regulations.

We are proud of our spotless safety record. In the 11 years of its existence, the air travel club industry has attained an enviable record of safety. During this time there have been no injuries in any club. This is strong evidence that safety regulations in FAR Part 123 have worked well, and the FAA should be commended for their outstanding job in creating and policing these safety rules.

The Skylarks schedule about 40 trips per year. Most of these trips are planned for weekends and last 3 or 4 days. These trips go to the Caribbean, Mexico, northern South America, and Canada. A long trip to Europe or South America is scheduled each quarter.

Professional travel planning is utilized on all flights. Hotel accommodations are reserved for club members. The club also arranges ground transportation, tours, fishing trips, sightseeing trips, and the like. A flight director, in addition to the entire crew, is available to help and advise members during their vacation.

Our membership growth has been slow and deliberate. In 1970 when the present management was employed by the club, we had 400 members. Our growth has continued and presently we have 2,600 memberships. Yearly dues of \$25 are charged to defray administration and fixed expenses. Initiation fee and dues of \$100 for a married couple or \$75 for a single person, are charged. The actual operation cost of each trip is shared by passengers on that particular trip.

As a medium-size air travel club in an industry which has previously discouraged large growth, we face many problems. Uppermost of these problems is the grey area in which we operate in regard to government regulatory agencies.

In 1968 the FAA created FAR Part 123 with the sole purpose of regulating air travel clubs. This regulation has done a superb job of administering safety, but it is silent when it comes to operations. The CAB is concerned with the economic aspects of the scheduled airlines, and with common carriage and should not be concerned with operational rules such as advertising and aircraft usage in air travel clubs.

Such operational rules that your committee, the air travel clubs, and the FAA feel should be put into effect, should be submitted

through existing amendment procedures into FAR Part 123, and be administered by the FAA. Time is of the essence in this project, and it should be completed 90 days from the enactment of this bill.

Recruitment of new members is another problem we face. As a result of the *Voyager* last year, the CAB wrote us that, in their opinion, advertising in the mass media was illegal.

We obeyed and ceased all forms of advertising. However, we desperately need to advertise for new members. A recent survey in our club showed that a member in his first year took 1.72 trips, while one in his second year took 1.1 trips, and a member in his third year took 0.65 trips.

We concur that advertising specific trips, price comparisons and trip schedules does put us into the CAB's domain by competing with the airlines for general public travel. Advertising for new members does not offend anyone and we urgently need it in our case.

Competition for landing rights, especially in Europe, is another problem. When the inter-nation reciprocal landing rights and "the one for ones" have been used up by the scheduled and supplemental airlines, there are none left for air travel clubs. We have had to apply on a personal appeal, face-to-face basis for all landing rights.

The Skylarks currently have sound diplomatic relations with over 25 countries. We have rarely asked the U.S. Government for any help and resent government officials who destroy the good will we have built in the past.

We feel that air travel clubs should not become charterworthy. Anyone that wants to promote a charter by solicitating the general public could become an air travel club. Travel agents could form air travel clubs and use this as a primary tool for selling air transportation. At that time existing air travel clubs would completely lose their identity.

Since the Skylarks are the third oldest air travel club in the country, since we have never been accused or charged with breaking any laws or regulations, since we were cited in a feature article in *FAA World* magazine in 1972 as being one of the best managed and most efficient air travel clubs in the country, and since the FAA has used our operation as a model for new applicants both nationally and locally, we feel qualified to recommend to this committee the following specific language be added to Senate bill 421 beginning with section 5:

Within 90 days after the effective date of this act—new language begins—the Federal Aviation Agency shall issue regulations as amendments to FAR Part 123 in accordance with existing amendment procedures—new language ends—defining in specific terms the full scope of the activities in air commerce which are permitted to be engaged in by persons who have not been authorized to engage in air transportation within the meaning of the Federal Aviation Act of 1958, but who are.

Senator Cannon, this is the extent of my remarks. I will be glad to answer any questions you might have, especially concerning any comparisons with the other travel club that testified today.

Senator CANNON. You indicate that you think you ought to be permitted to advertise, but you recognize the problems involved when advertising low-cost transportation.

What suggestion do you have in there for the intermediate position?

Mr. MAUGANS. I feel advertising the trip costs, the trip schedule, anything to do with how a trip is operated, charged, or priced, should be prohibited to us.

I feel that we should be able to advertise only for memberships.

Senator CANNON. When you advertise only for memberships, if it is going to do you any good, aren't you going to have to advertise on the basis that your members are getting something in the way of air transportation that they couldn't get by not being a member?

Mr. MAUGANS. No, sir.

We have been in the business 9 years in the Atlanta area we serve. Just by keeping our name and our emblem in front of the public is all we ask. We feel that that will continually assure our members that we are still in business, we are operating as normal, and anyone can apply and get the information personally.

Senator CANNON. You don't, in your advertising, imply that you could go to Mexico, or go to Europe, or things of this sort, if they joined the club?

Mr. MAUGANS. I don't feel we should in the future.

In the past we did. This was 2 years ago. I don't feel that we should, no.

Senator CANNON. You feel that all you need to do is just to advertise for membership in your club?

Mr. MAUGANS. Yes.

Senator CANNON. That memberships are available at \$100 initiation fee?

Mr. MAUGANS. And \$75 for single persons.

Senator CANNON. \$75 for single, and \$25 dollars a year?

Mr. MAUGANS. Yes, sir.

Senator CANNON. Thank you very much.

The committee will stand in recess until 2 o'clock this afternoon.

AFTERNOON SESSION

Senator CANNON. The hearings will come to order.

Our next witness is Mr. Arthur T. Rodbell, executive director, National Student Lobby.

STATEMENT OF ARTHUR T. RODBELL, EXECUTIVE DIRECTOR, NATIONAL STUDENT LOBBY, WASHINGTON, D.C.; ACCOMPANIED BY JAY HENDERSON, LEGISLATIVE DIRECTOR

Mr. RODBELL. Mr. Chairman, I would like to thank you on behalf of the National Student Lobby for the opportunity to testify today.

I am Arthur Rodbell, executive director of the lobby, which represents 300 colleges and universities with a combined enrollment of over 2.1 million students. With me today is our legislative director, Jay Henderson.

I would like to say for the record that NSL is in support of the basic concepts of charter travel. Yet we would like to make clear our first concerns must be the economies of education, and second, the economies of reduced fare vacations or excursions.

Paragraphs of the bill which will affect students most directly refer to reduced domestic air fares. It is to this point we wish to address ourselves.

When the CAB ruled in a 3 to 2 decision 2 years ago that air fare discounts for special groups were unjustly discriminatory and ordered their termination, the National Student Lobby joined efforts to reinstate standby fares for youth, the elderly, and the handicapped. Our work to reestablish this one particular type of air fare discount has been carried out unremittingly in concert with more than 70 State and national organizations and more than 2,000 college newspapers.

We come before your subcommittee today to make two basic points: first, that S. 421 is a fair, equitable, and urgently needed piece of legislation, and second that it is within the purview of the legislative branch to review this CAB decision and to overturn it.

In fact, the CAB decision was based on certain considerations which it was not empowered to take into account: as former CAB Chairman Robert Timm made clear in his testimony before the Senate in 1973, the courts during the late 1960's had " * * * instructed the Board that in passing upon discount fares, the Board was not empowered to take matters of social policy into consideration." It is clear that the determination to grant special treatment to one group of Americans over another for socioeconomic reasons is not within the purview of a regulatory, ratesetting body. It is, rather, a determination which must be made by Congress.

The CAB's usurpation of a congressional prerogative notwithstanding, the Board's description of air fare discounts as unjustly discriminatory is not appropriate. The National Student Lobby feels that standby fares, in particular, are in no way discriminatory. We feel they are necessarily selective. If such discounts are discriminatory, so are a businessman's tax deductions for travel expenses and so are discounts for children and military personnel who still retain discount privileges. But just as special circumstances exist which justify giving children, military, and businessmen preferential treatment, so are there a host of reasons for treating youth as distinct from other passengers. The National Student Lobby believes that reduced space-available fares for youth are rational and are called for on the basis of three facts:

1. The especially flexible time schedules and unique traveling habits of youth,
2. The lower median incomes of young students, and
3. The economic benefits which the air carriers and certain colleges stand to realize from proper administration of standby discount fares.

As a group, youth are not usually restricted by tight travel schedules. When they travel they are rarely bound by time, but more predominantly they are bound by cost. Youth are able to plan departures during nonpeak periods when full-fare air traffic is lightest.

According to the U.S. Office of Education, 1.6 million students attend colleges 500 miles or more from their homes. The cost of this necessary travel contributes heavily to the overall price tag of a

college education; when noninstructional costs such as transportation increase—as they have done since the CAB decision and the onset of the energy crisis—it imposes an extreme burden upon the student, the student's family and upon the financial resources of the student's educational institution. A report issued in December 1973 by the President's National Commission on the Financing of Postsecondary Education reported that 21½ percent—approximately 250,000—of the total number of students are forced out of public colleges whenever tuition is raised \$100. Of course, a \$100 increase in the cost of traveling to and from school has the same effect as a similar tuition raise.

In our testimony today, we would like to discredit the popular notion that students constitute a privileged class who use air fare discounts to take vacations. It is not true that students are privileged, for students operate on a negative or limited income while going to school full time; nor is it true that students use air fare discounts to any extent other than as a means of going from home to work. For those 1.6 million students who live far away from home, occasional travel is inseparable from his or her occupation as a student.

Reinstatement of youth standby air fares would therefore fill an urgent need for America's college students, especially those from underprivileged, economically pressed backgrounds. Not having standby opportunities for travel is estimated to cost students \$100 million every year in added air fares. In 1975 it is our responsibility to support legislation such as S. 421 until we have a law which will permit airlines to reinstate standby discounts.

Finally, in urging this subcommittee to report favorably on S. 421, the National Student Lobby is mindful of economic considerations which the airlines industry must take into account in offering standby discounts to youth. The airlines, of course, must speak for themselves in this regard. But young students who need standby fares are dismayed when denied seats on airplanes which continue to take off half empty. The passenger load factor for 1973, according to the Air Transport Association of America, was 51.9 percent—a figure from the same yearend announcement which also reported an increase in youth standby fare revenues of \$60 million, up 50 percent from the previous year's announcement. During the next year, 1974, airline domestic passenger capacity was decreased by 4 percent, but the planes still flew only 55 percent full.

Whereas the CAB's judgment which forced standby fares from the scene occurred at the time airlines were making more and more money off standby passengers and while fewer and fewer people were flying per plane, we find the Civil Aeronautics Board's decision to be economically and socially counterproductive.

It must be further noted that S. 421 would permit, not force, the discounts. Any airline which determined standby fares to be unproductive would not be obligated to offer them to youth. Some have argued that air fare discounts will harm the commercial airline industry. Others believe such arguments to be nonsense. The National Student Lobby does not pretend to know, but we do suggest that any decision by an administrative, ratemaking body which

affects both a consumer and a producer negatively is patently un-American. It is up to the Congress and the distinguished members of this subcommittee to right this wrong.

The National Student Lobby does not support youth, senior citizen or handicapped reserved discount fares. Guaranteed seat discounts pose ineconomies in comparison to standby discounts and are unjustly discriminatory in that they do take seats away from those able and willing to pay full fare for a reserved seat.

We do feel, however, that the reasons we have stated constitute a compelling case for congressional reinstatement of standby air fare discounts. At a time when dollars are shrinking faster than the distance between airports and energy conservation is paramount, the case for early passage of S. 421 becomes overwhelming.

We thank you again for this opportunity to testify, Mr. Chairman, and welcome any questions you or your colleagues may have.

Senator CANNON. Were you present at the hearings yesterday?

Mr. RODBELL. No, sir; I was not able to attend.

Senator CANNON. We heard testimony yesterday to the effect that the fares as proposed in the bill would be discriminatory and the suggestion was made that instead discount fares might be offered on a standby basis to all the public, not just to student standby, during the nonpeak hours and slack days of the week.

What would be your position if the committee were to make that kind of a determination?

Mr. RODBELL. I think one of the things we would have to take into consideration—although conceptually it sounds like a very sound idea—is how much would such across the board standby fares restrict travel by just the sheer numbers of people wishing to travel on a standby basis? Would it resolve the problem that we could expect anyone who wants to fly standby to show up at the same time for those three or four standby seats? I think before we could take a formal position on that, we would have to take that into consideration.

It seems to me the people who would benefit most from a determination to offer standby fares to the general public would be those individuals who are willing to endure the rigors of standby travel in return for a fare discount. The first few months of discount fares for the general public would probably see a large number of previously ineligible individuals flocking to the airports; during that period, youth, handicapped, and elderly might, indeed, find their standby opportunities restricted. But after a while, you can be sure that a student's unique traveling habits and low income would produce an uncommon determination and ability to persevere.

What concerns me though, is the suggestion of limiting standby eligibility to slack hours and slack days of the week. A plane which flies half full is half full whether it takes off at 10 in the evening or 10 in the morning.

Stated simply, Mr. Chairman, a standby passenger should never be allowed to threaten the seat of a full-fare passenger. On that basis the considerations involving seat availability during peak hours or peak days must always be irrelevant. If it is a peak period, standby passengers do not stand a chance of getting a seat and will just have to wait for another flight.

On the surface, it seems like an equitable idea.

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

Mr. RODBELL. Thank you.

Senator CANNON. The next witness is Mr. Glenn Strahs, director of the National Student Travel Bureau.

STATEMENT OF GLENN STRAHS, DIRECTOR, NATIONAL STUDENT TRAVEL BUREAU, WASHINGTON, D.C.

Mr. STRAHS. Mr. Chairman, distinguished Senators of the subcommittee, I sincerely appreciate this opportunity to testify today on an area of air transportation policy. At the National Student Travel Bureau, we are primarily involved in providing travel opportunities, both domestic and international, for college students. Whereas the youth fare section of this bill has an obvious relation to our involvement, it is not the only fare that we would or do use in our travel programs. According, we would like to comment upon all the fares that are contained in this bill.

We feel that travel is an essential part of education and that persons of all ages should experience it. We also feel that cost should never be a deterring factor; especially when very economical means are available. Scheduled fares have, as you know, reached horrendous heights and the development of those economical alternatives has, in the past, been stifled. Thus, we heartily applaud this bill as a comprehensive and equitable measure to insure those alternatives in the future.

The American people have seen, in recent years, the cost of air travel rise astronomically because of inflation, fuel surcharges, the anticompetitive influence of an international ratesetting cartel, and the protectionistic attitude of a government agency. Some of these factors were unavoidable; but Congress can remedy or at least significantly curtail the diseconomic effects of the others.

To address the problem more directly, plane-load charter aircraft are the most economical and efficient means of air travel. Couple that with a back-to-back or weekly departure operation and a tour operator can offer air-only or a package vacation for a phenomenally low price. Additionally, this method facilitates the greatest conservation of energy resources; and as we are all well aware, that is a preponderant and timely concern. This bill so admirably incorporates these principles of air travel and advances aviation regulation. Americans will truly be availed low-cost air transportation.

We described this bill as comprehensive because it accounts for the different traveling habits of the population. For a certain segment that desire and even depend on inexpensive air packages, the single-stop inclusive tour charter fits the specifications superbly. With removal of the existing restrictions and an eye to the effects on the travel industry as a whole, it should prove to be versatile and flexible and a major step in the modernization of air transportation concepts. The successful examples set by Europe and Canada with the inclusive tour charter should give us reason to believe that it will be as important to the travel industry in this country.

The National Student Travel Bureau believes that convenient and reliable scheduled service is essential to the air transport network and serves well a segment of the traveling public, primarily business travelers and the very wealthy. However, as the bill indicates, it does not serve "millions of Americans who want to travel by air." Students are among those millions and like the rest are entitled to have travel opportunities that are commensurate with their incomes. Aviation regulators have lost sight of their role in air travel. The emphasis has shifted from fair and impartial regulation to a protectionistic attitude towards a certain interest in the airline industry. The overwhelming concern of these regulators has been to insure the economic health of scheduled carriers and it is the traveling public that is forced to bear the cost of this preferential treatment. We think this bill has the substance to redress that imbalance.

The travel group charter also seems to have the potential of being an extremely useful charter concept and once again we urge the most liberalized regulations. The full potential can be realized only if the specifications are eased enough to give it the flexibility to perform in various markets. Otherwise, it will be cumbersome and restricted and will have contributed little to the betterment of the air travel system. With an advance booking time of 30 days, the concept is still workable and the regulation does not deter bookings. Also, it is a long enough time in advance not to jeopardize the advantage of last-minute reservations that scheduled service offers.

In our role as the student travel advocate, we would like to point out a certain logistical problem that many students are faced with in relation to the advance booking time. Students often learn of their final exam schedules very late in the semester, usually about a month or less before they commence. Especially then for full-time students, we encourage the shortest feasible advance time. Others will benefit in a similar manner, no matter what their occupation, and in time, the travel group charter could become the mainstay of air-only charter travel. However, we must recognize that it has not yet been proven marketable. The liberalized regulations should significantly improve their attractiveness, but until that is the actual situation, we should not seek to terminate other charter forms.

Student travel is heavily dependent on affinity charters and to terminate them would be to pull a base out of our operation. You may be familiar with our activity of having encouraged student organizations to file comments with the Board in opposition to eliminating that kind of charter and we have fervently counseled against such an action. We are pleased to note recently that the Board indicated it will not terminate affinities in 1975, and we feel that this provision is necessary to insure their continuance even longer.

A final tribute to the extensiveness of this bill is that it contains a discount fare for youth, the elderly and the handicapped. There are valid economic reasons for treating certain groups differently in the regulations; and youth, who are primarily students with the financial burdens of college and lower earning capacity, are a group that qualify. A special consideration should also be given to the elderly and handicapped in the form of a reduced fare on a space available basis.

The National Student Travel Bureau does not feel that the reduced fare should be available on a confirmed basis because if the air carrier can fill the seat with a full-fare passenger, it should retain that option until departure time. However, we feel that both air carrier and eligible passengers can benefit from a reduced rate standby fare. Potentially empty seats can be filled by those persons who can wait in terminals for hours if they were unsuccessful in boarding other flights. If they are willing to wait, they should be given the opportunity to save some of their scarcest resource, money.

There is a feature of student demographics, however, for which the youth fare provision does not fully account. We find that although many youth are in college for 4 years from ages 18 to 22, more and more students take off for 1 year or 2 and work in a related field, for example, and are students until about age 24.

Additionally, many students continue in graduate school and have student financial woes until much past age 22. Therefore, we urge the cutoff age to be extended to 24 and thus offer the benefit to more who are actually eligible.

There is further justification for offering reduced rate transportation to these groups of citizens that can be found by looking internationally. The European governments have set a fine example by providing reduced fares to these same groups in their own societies. You may be familiar with the European Civil Aviation Conference and provision 6 of that conference which enables students between ages 16 and 30 to travel for sometimes less than one-half of full fare. The Europeans have long recognized that students are a worthwhile investment and that travel can greatly complement their educational experience. This is the perspective that we feel should be adopted in this country.

Government has a very important role in the regulation of the aviation industry. Government also has a responsibility to provide the traveling consumer with the most reasonably priced travel opportunities. It is with this bill that government can fulfill both commitments.

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

Mr. STRAHS. Thank you.

Senator CANNON. The next witness is Mr. Robert Hausman, attorney representing Aeroamerica, Inc.

[No response.]

Senator CANNON. Mr. Morten S. Beyer, president and chief executive officer, Johnson International Airlines.

STATEMENT OF MORTEN S. BEYER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, JOHNSON INTERNATIONAL AIRLINES, MISSOULA, MONT.

Mr. BEYER. Thank you, Senator Cannon.

I am Morten S. Beyer and I am president of Johnson International Airlines.

Mr. Chairman, I appreciate the opportunity to be here again today. Johnson International Airlines is the Nation's oldest and smallest operating supplemental. We are based in Missoula, Mont., and are

certificated only to serve the United States and Canada. Historically, most of our operations have been on behalf of the U.S. Forest Service—moving fire crews, dropping smoke jumpers and cargo, dumping retardant on fires, reseeding forests, and aerial spraying of timber tracts. We are now expanding our commercial operations with our fleet of jet-prop Electras, and are experiencing an encouraging upsurge in our business.

We certainly welcome the initiative which this committee has taken in the introduction of the low cost air transportation bill. The Congress has been more than patient with the CAB and given them ample time to act on their own initiative. However, since the Board has failed so miserably to respond to the challenge, it is high time that Congress acts. We wholeheartedly endorse all the specific provisions of the proposed legislation relating to charter regulations.

Yesterday's testimony indicates there may be a dawn of enlightenment within the portals of the Universal Building. We urge the Congress to press on, anyhow.

However, we do question the wisdom of the proposed change to paragraph 37 of the Federal Aviation Act authorizing tour operators to own supplemental airlines or the supplementals to own tour operators. This is the area where in my personal experience and observation, most European failures have occurred—such as Court Line. I think it would be better to maintain the distinction between tour operators and airlines for the mutual benefit of both. I do suggest greater freedom be allowed for the two entities to cooperate, as I will discuss later.

Also, I would note that the proposed legislation as written would appear to permit a scheduled airline to own a supplemental; 2 years ago, I proposed to this committee that the regional carriers be permitted to have supplemental subsidiaries. But to permit the Big Skeds to do this would be inviting a major battle between these carriers which could be ruinous. Consider what a strong, charter-minded carrier such as United could do to Pan Am if it was permitted to run worldwide charters on an unlimited basis.

Clarification of the role of the flying clubs and contract operators is desirable, but care must be taken that this does not become a back door entrance into the airline business by scofflaw promoters any more than it is already. Any new entrants should be required to meet the strict standards of need and fitness imposed by the Board on incumbent airlines.

I will confine my further remarks today to some specific suggestions to make the various types of mass-market charters—ITC's, OTC's, and TGC's—more economical to the public, salable by the travel trade, and profitable to the airlines and tour operators. I suggest that, should the committee deem my suggestions reasonable, they either be incorporated in the legislation or included in the committee's report as the intent of the Congress for the guidance of the CAB in the preparation of implementing regulations.

One of the things we notice so much in attempting to promote and organize charters in the smaller cities and smaller agencies is the sheer weight and burdensomeness of the CAB's paperwork requirements. They simply scare people off. They are not willing to put

up—go through the agony they have to to comply with the Board's paperwork regulations. The present TGC and proposed OTC charter rules require the airline and tour operator jointly to prepare pre- and post-flight manifests listing each passenger's name, sex, address, telephone number, passport number, and social security number. They have a great big form a yard long to prepare this on. These lists must be submitted before and after each flight to the vigilant staff of the Supplementary Services Division of the CAB, who will compare the two manifests for conformity.

Not only is this requirement burdensome to the agent, the airline, and the bloated enforcement staff of the CAB, but it also reeks of a big brother attitude that presumes charter passengers, airlines, and tour operators are all would-be crooks who are attempting to cheat on the rules. Worse, it invades the right of Americans to travel privately as they see fit. Further, the airlines are required to play policeman at the departure gate and verify the identity of each passenger against the manifest by checking his passport number, social security card, and other documents. On a lot of flights these days, the CAB enforcement agents show up and have to go through this routine. Presumably, anyone failing to produce satisfactory identification is to be banned from the flight.

We submit it would be more reasonable to trust the innate integrity of the American people and to strike down these clumsy, costly bureaucratic efforts at built-in enforcement and simply use spot checks where violations are suspected. Even the IRS operates on the principle of public honesty and audit.

A recent statistic I saw indicated that the cost of just complying with the paperwork requirements runs about \$10 a head on a charter flight. That is high when you are talking about \$250 transatlantic, and ruinous when you are talking about a \$50 or \$60 domestic flight.

Johnson believes there would be merit in the Board permitting the airline and the tour operator to share the risk—and the profits—inherent in operating charters. As presently constituted, the burden of the risk of empty seats falls on the tour operator, whose only alternative is cancellation of a weak flight 30 days in advance. In a back-to-back program, this creates two empty legs—which the airline has little opportunity to resell and therefore must eat or charge the tour operator a cancellation penalty fee. This is a serious economic problem to both the airline and the tour operator, not to mention the inconvenience to the passengers who did book and are canceled out or rescheduled 30 days prior to their planned departure. Johnson suggests that the carriers and tour operators be permitted to negotiate a fixed price for the charter based on 80 percent occupancy with compensation to the airline for additional seats on a per head basis. This is widely done in Europe. It is one of the ways the system works over there. It does also have the advantage that it would eliminate some of the problems of the advanced booking mechanism were there are any limitations placed on the ability to sell down to departure time.

Further, Johnson believes that there should be provision for the tour operator to offer 3 days, 1 week, and two-or-more week tours on the same aircraft as is universally done in Europe. This would

accommodate the widest range of public demand rather than confining all charter participants to the lockstep of a fixed duration trip. It is contemplated that OTC's will operate on a twice or three times a week basis in most major markets. Therefore, the participants could return on the same program but not necessarily on the same aircraft.

Regulations should not discourage the offering of a wide variety of ground packages: ski lifts, sightseeing, rental cars and other attractions—as part of the charter package. Some participants will want a low-cost, family-style hotel while others desire first-class accommodations.

I think the freedom of the tour operators to put together a program that responds to the public's desires should be encouraged.

Regulations should assure the payment of adequate commissions to the tour operators and their agents and proposed limitations on the airline's ability to pay legitimate commissions should be eliminated.

We have no objection to unlimited on route ITC and OTC charter operations by the Big Skeds, but off route should continue to be limited to 2 percent of their scheduled operations lest the more insecure skeds suffer undue diversion from their more aggressive brethren.

Lastly, the CAB should be plainly admonished not to invent a whole new set of clever rules, regulations and restrictions designed to circumvent the intent of Congress. The bill attempts to eliminate the currently effective CAB-invented restraints on freedom to charter, and it should clearly ban any newly contrived schemes to perpetuate present Board policy.

Before closing, I would like to make two observations. First, some of the Big Skeds have conjured up the specter that relaxation of the charter rules will cause a wave of bankruptcies among the airlines and tour operators. They cite the recent failure of Court Line and a handful of other European carriers—out of approximately 50 European charter airlines. They ignore the tragic record of the supplementals in this country. Out of 13 certificated in the last dozen years, only five are active in passenger charter today—the Big Four and Johnson.

Saturn has suspended all passenger service. Two others are marginal: Modern flies only one plane, and McCulloch is engaged in the land business of its parent company.

Five have perished: Universal, Standard, Purdue, American Flyers, and Interstate. The record could not be much worse.

The M.S. supplementals today operate only 33 passenger jet aircraft between them: one 747, five DC-10's, and 27 DC-8's. Contrast this with Europe where 51 charter airlines, mostly privately owned, operate 351 jet aircraft: 53 707/720's, 29 DC-8's, two 747's, three DC-10's, one L-1011, 30 B-727's, 29 DC-9's, 23 B-737's, 19 F-28's, 70 Caravelles, 30 Comets, and 56 BAC-111's.

Second, some of the Big Skeds trundle out the hobgoblin that relaxation of charter rules will somehow destroy scheduled air service to small communities. This scare campaign was mounted all across the USA last year in a successful effort to head off similar legislation. Nothing could be farther from the truth. The "skeds" them-

selves have been dumping the small cities for a decade, turning them over to third-level carriers, and/or curtailing service to the point of tokenism. Under the proposed legislation, Johnson will be able to market and operate charters directly to the sun spots from 2695 airports in the United States—most of which have never seen a Big Sked airplane.

Under this committee bill, operation of low-cost charters will become practical from every community in the United States, rather than to only a handful of major hubs as is the case today.

Charter regulations must no longer be a form of aerial prohibition designed to protect the inefficiencies of a few giant scheduled airlines, but rather should be designed to encourage the mass of American people to utilize low-cost, convenient charters for family vacations at home and abroad. The low cost air transportation bill sponsored by this committee will be a giant step forward for the American people, and we hope it is quickly taken. As the smallest U.S. supplemental with the most limited certificate, Johnson particularly needs, and will most fully develop, the new opportunities which enactment of this legislation will bring.

Senator CANNON. Thank you very much, Mr. Beyer.

You indicate you are going to the Electras now and are subsequently experiencing an encouraging upsurge in business. Is this upsurge of business the type that you describe in your statement, that is, the Forest Service, fire crews, and so on, or is this upsurge in the actual passenger charter?

Mr. BEYER. Yes, sir, this is an upsurge in the commercial charter business. We are flying these airplanes with 94 seats in them, at relatively low acquisition costs. With a very good airport performance, you can operate them in and out of 5,000 foot fields. You can take care of the smaller groups, smaller cities, and it is almost all new business. We are very encouraged by it.

Senator CANNON. Thank you very much.

Is Mr. Hausman here now?

Would you like to submit your statement for the record and summarize briefly from it?

STATEMENT OF ROBERT M. HAUSMAN, ATTORNEY, WASHINGTON, D.C., REPRESENTING AEROAMERICA, INC.

Mr. HAUSMAN. Yes.

Senator CANNON. Fine. All right.

I guess you want to make it clear this is Aeroamerica, Inc., and not America?

Mr. HAUSMAN. Yes. Yes, indeed.

As far as I know, there never has been any connection.

Mr. Chairman, Mr. Stevens, to summarize the testimony that I have prepared on behalf of Aeroamerica: Although the matter is not urgent, it might do some good to codify, that is to put into the statute, a legitimate and clear role for commercial operators.

On the other hand, it is not an urgent situation, and there is no reason to do so precipitously.

If it is done at all, then it should be something which preserves the situation, preserves the status quo to the extent possible; and without disturbing the business, the investment, the careers and the employment of numerous people who have been in this private carriage business for a very long period of time. It is, after all, the oldest form of air transportation since everyone was in private carriage before common carriage began in air transportation.

It is also the most flexible form; and business particularly—for that matter anyone who chooses this form of transportation, chooses to pay for it, and finds that it meets their needs, ought to have the right to use it.

Therefore, we suggest that there be included in the bill, a provision which would secure to the commercial operators the rights that they have under an FAA advisory circular which is now more than 10 years old, but which is still current. FAA has been the agency which has supervised commercial operations, private carriage. It has always done so. The CAB has had almost nothing to do with that. Occasionally when the CAB feels there are violations, then on that basis it might have an enforcement case. Basically it has no expertise or knowledge, no experience, no way to make regulations, particularly within a 90-day period or any finite period.

However, the FAA circular—it is appended to my testimony—has been relied on for over 10 years by many, many people; investments have been made on that basis; there has been no difficulty with it. To codify the FAA circular by reference, in section 401(a) of the act, as recommended in my statement, is probably the best way to accomplish what I think the committee wants to accomplish; that is, to settle the role and to still uncertainty and litigation. Any new rules to be made by the CAB would certainly raise uncertainty and litigation, since those rules likely would not be completely consonant with the FAA circular, or with the way that the industry and their legal advisors have for years considered the legal situation to be.

So the status quo basically is satisfactory, if not ideal. The best way to make it more ideal would be a reference to this FAA advisory circular.

Finally, any legislation should protect the grandfather rights of the present commercial operators and should also protect the accessibility and the availability of private carriage to those people who want to use it. There should be no diminution in that availability.

Now this bill, S. 421, in discussing affinity charters, says clearly there should be no diminution of the availability of affinity charters. I think that is a good formula, and I think the same should be true with respect to commercial operations.

It is something of an anomaly that this bill, which is intended to free charterers from the straitjacket of restrictive CAB regulation—some of which, by the way, is the result of the CAB not understanding the way the industry works—that the very same bill should come along and say, “Now, CAB, devise your straitjacket for commercial operations.” It does seem to be an anomaly.

I think that adequately summarizes my testimony.

Mr. GINTHER. One of the things that the bill contains is a provision for requiring the CAB to regulate air travel clubs. I think it

was on the request of your client, Joel Eisenberg, to this committee, that that particular provision was included in the bill. In other words, that club and others have found the absence of CAB regulation more painful than knowing what the ground rules really are; and it has been suggested to the committee that commercial operations follow the same situation, in which the rules are up—there are no rules and the practices are sometimes vague and the parameters of commercial operations are not well understood as a result of the FAA circular.

Mr. HAUSMAN. Let me say, first of all, that I am not fully knowledgeable on the air travel club situation, so that I can't speak with that background; but some things are apparent to me on the face of it, the difference between commercial operations and air travel clubs in this respect.

First of all, there is the uncertainty on air travel clubs, there is the litigation, there is a pressing immediate need for the matter somehow to be settled.

That is not the case, I think, with commercial operations.

Second, air travel clubs, I think do not simply fit into a nice, neat classification of private carriage or common carriage. Air travel clubs—I think it is legitimate for air travel clubs to advertise to the public for members, for example, although not to sell air transportation by holding out to the public.

Now there is a very fine line. It is definitely a gray area, it is definitely a penumbra. It calls for the Congress to take air travel clubs on their own merits and give them a role, a legitimate role, and not try to fit them into private carriage or common carriage. That is not the case with commercial operators. At least my commercial operator, Aeroamerica, and I think the others, are satisfied to remain clearly within the area of private carriage.

Senator STEVENS. May I inquire, Mr. Chairman: Are you saying that the fine line is really between the air travel club that owns its own aircraft as opposed to the air travel club that gets groups together and then makes an agreement where the commercial operator fulfills the air travel enforcement?

Mr. HAUSMAN. No, Senator Stevens. I wouldn't consider that to be material. I want to be responsive; on the other hand, I am not here to discuss air travel clubs or to defend them, so that if you want me to answer, I will answer.

Senator STEVENS. I am not asking you to defend them. All I am saying is that in light of what you just said, in looking through your statement, is that you think the commercial operator ought to be completely excluded from the CAB's regulating of operating under an FAA exempt permit; is that right?

Mr. HAUSMAN. Yes. It is a safety permit. It is not an economic license at all. The Federal Aviation Act does not require an economic license. There is such a thing in the Federal Aviation Act as air commerce which is defined as being not common carriage.

Senator STEVENS. I am quite familiar with it. Alaska has a lot of it.

Now if you get a situation where someone has such an organization, a commercial contract carrier type of operation, and I form an air travel club and I put together the hotels and the land transporta-

tion and I go to operator A for the air transportation, you are saying that should not be subject to the same regulations as if our club owned the airplane?

Mr. HAUSMAN. I don't say that at all. I never made that distinction. I would say an air travel club is a private association which uses the right—it is a voluntary association. It uses the right we have throughout American life of voluntary association which bands together in order to own or lease aircraft and have their own club vacations on their own aircraft.

I think that, like anything that happens in America, somebody has to provide money, there has to be risk taking. I think there should be free contracting with the people who provide the aircraft, or provide the financing for the aircraft, free contracting for maintenance, free contracting for management, whatever, like mutual funds. They contract for management. I don't see why they should have any fewer rights in the way of contract than anybody else. I don't see why they should have to live outside the economic system.

Senator STEVENS. Thank you.

Mr. HAUSMAN. I think any voluntary association, for example, rents its premises from a landlord. It doesn't own them.

Senator STEVENS. Maybe Mr. Ginther can answer my question: Will this bill affect the 121 operator who occasionally does carry a club, be it a travel club, a Kiwanis Club, anything else? Would it affect them?

Mr. GINTHER. It would require the CAB to provide regulations for the operations of commercial carriers or 121 operators.

Senator CANNON. In other words, his client is a part 121 operator, and he says that they can get along under the act as it is and they don't like this section 5, subsection 2, which would direct the CAB to issue regulations, to regulate those people. He is saying that they are regulated properly now by the FAA under the part 121 provisions; is that correct?

Mr. HAUSMAN. That's correct. The FAA advisory circular is attached to my testimony. Those are the guidelines. Every 121 operator uses them. It seems to me to be pretty satisfactory.

Senator CANNON. You would have no objection to us legislating on Section 5(1) of the air travel club?

Mr. HAUSMAN. I am not here to speak to that at all, Mr. Chairman. I have private opinions on that. Do you want to hear those?

Senator CANNON. I recognize you don't represent an air travel club here. You are directing your comments to part 5(2) of the bill which you are in hopes that the committee would not enact?

Mr. HAUSMAN. That's correct, Mr. Chairman.

Senator CANNON. And you have no comments or made no comments with respect to part 5(1) which relates to the air travel club?

Mr. HAUSMAN. That's correct, Mr. Chairman.

Senator CANNON. Thank you very much.

[The statement follows:]

STATEMENT OF ROBERT M. HAUSMAN, ON BEHALF OF AEROAMERICA, INC.

Mr. Chairman and members of the committee, Aeroamerica, Inc., has asked me to appear on its behalf and testify with respect to Section 5(2) of S.421.

That Section would require the Civil Aeronautics Board, within 90 days of the effective date of the Act, to "issue regulations . . . defining in specific terms the full scope of the activities in air commerce which are permitted to be engaged in by persons who have not been authorized to engage in air transportation within the meaning of the Federal Aviation Act of 1958 but who are . . . commercial operators of aircraft who are engaged in the carriage of persons or property for compensation or hire."

Aeroamerica, Inc., is such a commercial operator and holds a commercial operator's certificate under Part 121 of the FAR's. Its business consists of the carriage of invitees without charge of three Las Vegas hotel casinos under a long-term contract with each, on a one aircraft-one contractor basis, and the carriage of forest fire fighters for the Bureau of Land Management of the U. S. Department of Commerce. Aeroamerica employs approximately 200 people in the Seattle Area.

We urge the Committee and the Congress not to adopt Section 5(2) in the proposed form.

SATISFACTORY GUIDELINES FOR COMMERCIAL OPERATORS HAVE
EXISTED SINCE 1964, AND SHOULD BE CODIFIED

New CAB regulations are unnecessary and would be disruptive.

Section 51 of FAR Part 121 requires that, for issuance of an FAA operating certificate, the applicant "holds the economic authority required by the Civil Aeronautics Board, if any." In carrying out its responsibilities under that Part, the FAA both advises commercial operators, and monitors their operations, to make sure that they do not cross the line into common carriage. FAA Advisory Circular AC-120-12, *Private Carriage v. Common Carriage by Commercial Operators Using Large Aircraft*, was issued June 24, 1964, and is still current today. A copy is appended to this statement. The Advisory Circular has now been relied upon for over ten years, is written in fully understandable language, and provides guidelines as good as, and probably better than, any regulations or policy statement that the CAB is likely to issue. Any CAB regulations would probably conflict with the Advisory Circular in some measure, and in so conflicting, would create uncertainty and jeopardy, and might well destroy businesses, investments, careers, and employment, which have been based on the Advisory Circular.

We suggest that Section 5(2) be deleted from the Bill, and that instead, a Section 7 be added thereto, as follows:

SEC. 7. Section 401(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1371(a)) is amended to add the following sentence: "Nothing in this Act shall prohibit a person from engaging in air commerce consistently with Federal Aviation Agency Advisory Circular No. AC-120-12, effective June 24, 1964, and entitled, "Private Carriage v. Common Carriage by Commercial Operators Using Large Aircraft." ¹

We do not think that the Civil Aeronautics Board or its staff has the requisite knowledge or experience to make rules with respect to commercial operators within 90 days, as Section 5(2) of the Bill would require, or within any finite period of time. We expect that any CAB regulations with respect to commercial operators would be overly restrictive, therefore, and that we would be petitioning this Committee and the Congress for liberalizing legislation immediately thereafter. It is anomalous that Section 3 of this Bill is intended to free up charter transportation from the overly restrictive regulations of the Civil Aeronautics Board, while Section 5 would give it the power to impose such regulations on commercial operators. We ask that this Committee and the Congress not create for us the very straitjacket from which it is now rescuing the charter operations of the supplemental carriers.

No set of regulations can still uncertainty and prevent litigation entirely. However, the above proposal to codify the FAA Advisory Circular of ten years standing is much more likely to do so than the enactment of an entirely new set of regulations by the CAB, which has not previously been involved with commercial operations except for occasional enforcement actions.

¹ Reference to an agency-issued document in Section 401 of the Federal Aviation Act would not be unusual. Section 401(k) requires "every air carrier . . . to conform with decision numbered 83 made by the National Labor Relations Board on May 10, 1934. . . ."

NEW REGULATIONS WOULD DO MORE HARM THAN GOOD

If the approach of codifying the existing and historic FAA guidelines is not accepted by the Committee and the Congress, then we would ask that Section 5(2) simply be dropped from the Bill. There is no need for it, and it is likely to do more harm than good.

It has always been axiomatic that legislation and regulation carry their own problems, and that there should be no legislation unless there is a substantial problem which requires a legislative solution. In the field of regulating industry, particularly air transportation, this axiom has new validity. The annual Report of the Council of Economic Advisors (January 1975) finds that "airline regulation imposes . . . costs, which are not generally well perceived," and calls for easing entry into the field. The Departments of Justice and Transportation have so testified before another Senate Committee, and have characterized the CAB as overly protective of its licensees by preventing competition with them. Commercial operators have been the unregulated sector of air carriage for hire since the beginning of aviation, and there have been no substantial problems requiring economic regulation. Now certainly is not the time to impose such regulation, or to give the Civil Aeronautics Board any power whatever over their business.

The status quo is satisfactory, although not ideal. Unlike the case of air travel clubs, there is no substantial uncertainty about what is lawful, or about what constitutes common carriage, and there has been no CAB harassment of commercial operators.

As there is no substantial problem requiring a legislative solution, there is also no need for the haste and abbreviated consideration inherent in placing Section 5(2) in this Bill. This Bill being primarily concerned with an immediate and pressing problem of public policy, i.e., the provision of low cost air transportation to the largest possible segment of the public at a time when both the economy and the industry need it, it is not likely that the commercial operator section, which appears neutrally to hand all substantive questions over to the CAB, will get adequate consideration either in the Committee or in the Congress at large. There simply is not enough interest in the matter. Committee and Congressional deliberations will not seriously consider the commercial operator section; unless dropped, it may simply be carried along to eventual passage. The commercial operator section has not even been mentioned in Senator Cannon's floor statement of January 27, 1975, or in the trade or general press. Not only does this indicate the prospect of inadequate consideration, it also means that commercial operators have not had adequate notice of their jeopardy nor adequate reaction time, and thus have not had an adequate opportunity to present their views to this Committee. Of this I am virtually certain: that no representative or member of the commercial operator industry asked for the inclusion of this provision in the Bill. They would not have done so; but such a request might well be made by anyone with an interest in destroying this segment of the industry or seriously curtailing its operations.

The commercial operator provision is not germane to this Bill. It affects private or contract carriage, i.e., non-public carriage; while the Bill is entitled "the Low Cost Air Transportation Act" and concerns itself with the provision of Advanced Booking Charters, Inclusive Tour Charters, and Affinity Charters, all of which are common carrier products offered to the public. That is the case, also, with discount fares for families, handicapped persons, the aged, and youths. Air travel clubs offer membership to the public, and thus give members of the public the alternative of low cost air travel in their own club aircraft. Only the section on commercial operators has nothing whatever to do with either low cost air transportation or with the public. If substantive, innovative legislation on commercial operators is to be considered, then it should be considered separately, in a separate bill, and without haste.

IF RETAINED, SECTION (5) 2 SHOULD BE MODIFIED

Finally, if this Committee and the Congress feel compelled to delegate to the Civil Aeronautics Board any measure of definition or regulation of commercial operations, we would ask that the Section be modified to require the CAB to issue a "statement of general policy," rather than "regulations," or modified in some other way, to be sure that whatever regulations are issued by the CAB

(1) do not require licensing or approval of the commercial operator's activities in any form, or burden the commercial operator with any affirmative duties, (2) do not invade the grandfather rights of existing commercial operators, and (3) do not diminish the availability of commercial operator services to business or others who find, or in the future may find, that their needs are best met by private, rather than common, carriage.

Such a provision might read as follows:

Section —. Within 90 days after the effective date of this Act, the Civil Aeronautics Board shall issue a statement of general policy, following the procedures set forth in Section 553 of Title 5, U.S.C., defining in specific terms the full scope of the activities in air commerce which are permitted to be engaged in by persons who have not been authorized to engage in air transportation within the meaning of the Federal Aviation Act of 1958 but who are commercial operators of aircraft who are engaged in the carriage of persons or property for compensation or hire, *provided*, that such statement of general policy shall not require any form of economic licensing or approval of the commercial operator's activities or impose any affirmative duty on the commercial operator, and *provided further*, that such policy statement shall not prohibit any activity which is consistent with the guidelines contained in FAA Advisory Circular AC No. AC-120-12, effective June 24, 1964, and entitled "Private Carriage v. Common Carriage by Commercial Operators Using Large Aircraft." Nothing in this Act or any policy statement adopted by the Civil Aeronautics Board hereunder shall prevent commercial operators from performing services under contracts in existence on February 14, 1975, or successor contracts which are substantially similar in their terms and conditions, nor result in any material diminution of the availability of commercial operator services in kind or quantity.

FEDERAL AVIATION AGENCY ADVISORY CIRCULAR

Subject: Private carriage versus common carriage by commercial operators using large aircraft

1. *Purpose.*—This Circular furnishes FAA personnel and interested segments of the industry with general guidelines for determining whether current or proposed transportation operations by air constitute private or common carriage. If the operations are in interstate or foreign commerce, this distinction also determines whether the operator needs economic authority as an "air carrier" from the CAB or whether he may operate with only a commercial operator certificate from FAA.

2. *Background.*—"Common carriage" and "private carriage" are common law terms. The Act uses the term "common carrier" but does not define it. It has therefore been determined that guidelines giving general explanations of the term "common carriage" and its opposite, "private carriage," would be helpful.

3. *Guidelines.*—A carrier becomes a common carrier when it "holds" itself out" to the public, or to a segment of the public, as willing to furnish transportation within the limits of its facilities to any person who wants it. Absence of tariffs issued, transportation only pursuant to separately negotiated contracts, or occasional refusals to transport, are not conclusive proof that the carrier is not a common carrier.

This "holding out" which makes a person a common carrier can be done in many ways and it does not matter how it is done.

(a) Signs and advertising are the most direct means of "holding out" but not the only ones.

(b) A "holding out" may be accomplished through the actions of agents, agencies or salesmen who may themselves procure passenger traffic from the general public and collect them into groups to be carried by the operator. It is particularly important to determine if such agents or salesmen are in the business of selling transportation to the traveling public not only through the "group" approach but also by individual ticketing on known common carriers.

(c) Physically holding out without advertising where a reputation to serve all is gained, is sufficient to constitute an offer to carry all customers. There are many means by which this physical holding out takes place. For example, the expression of willingness to all customers with whom contact is made that the operator can and will perform the requested service is sufficient. The fact that

the holding out generates little success is of no consequence. The nature and character of the operation are the important issue.

(d) Carriage for hire which does not involve this "holding out" is private carriage. Private carriers for hire are sometimes called "contract carriers," but the term is borrowed from the Interstate Commerce Act and legally inaccurate when used in connection with the Federal Aviation Act. Private carriage for hire is carriage for one or several selected customers, generally on a long-term basis. But the number of contracts must not be too great, for otherwise it implies a willingness to make a contract with anybody. A carrier operating pursuant to 18-24 contracts has been held to be a common carrier because it held itself out to serve the public generally to the extent of its facilities. Private carriage has been found in cases where one and three contracts have been the sole basis of the operator's business. Special adaptation of the transportation service to the individual needs of shippers is a factor tending to establish private carriage.

(e) A carrier holding itself out as generally willing to carry only certain kinds of traffic is, nevertheless, a common carrier. For instance, a carrier authorized or willing only to carry plane-loads of passengers or cargo on a charter basis is a common carrier, if it so holds itself out, and this is, in fact, the basic business of the supplemental air carriers licensed as common carriers by the CAB.

(f) A carrier flying charters for only one organization may be a common carrier if membership in the organization and participation in the flights are in effect open to a significant segment of the public. Similarly, a carrier which flies planeload charters for a common carrier, carrying the latter's traffic, engages in common carriage itself.

(g) Occasionally, offers of free transportation have been made to the general public by hotels, casinos, etc. In such cases nominal charges have been made which, according to the operators, bear the expense of gifts and gratuities. However, the operators maintain that the transportation is free. The courts have held that such operations are common carriage based on the fact that the passengers are drawn from the general public and the nominal charge constituted compensation.

(h) Persons admittedly operating as common carriers in a certain field (for instance, in intrastate commerce) sometimes claim that transportation for hire which they perform in other fields (for instance, interstate or foreign commerce) is private carriage. To sustain such a claim, the carrier must show that the private carriage is distinguishable from its common carriage business and outside the scope of its holding out. The claimed private carriage must be viewed in relation to and against the background of the entire carrying activity. The CAB has said that only in rare instances could carriage engaged in by a common carrier be legitimately classified as private.

4. *Action*.—Applicants for commercial operators certificates are encouraged to discuss their proposed operation with the Regional Counsel of the region in which it intends to establish its principal business office. Such early interviews will materially assist the applicant in avoiding, subsequent to the issuance of a commercial operators certificate, many of the "pitfalls" which could result in illegal common carriage operations.

GEORGE S. MOORE,

Director, Flight Standards Service.

Senator CANNON. There are no further witnesses scheduled for today.

I would like to have included in the record at this point a statement of Mr. Melvin A. Brenner, vice president of marketing planning for Trans World Airlines, Inc.

(The statement follows:)

STATEMENT OF MELVIN A. BRENNER, VICE PRESIDENT—MARKETING PLANNING,
TRANS WORLD AIRLINES, INC.

My name is Melvin A. Brenner. I am Vice President of Marketing Planning for Trans World Airlines, Inc.

Insofar as this legislation seeks to assure the availability of low cost transportation to the general public, TWA is fully in support of that basic objective. We differ with some of the specific provisions of this legislation as we shall indicate further below.

We particularly welcome a provision of this bill which would recognize the importance of flexibility for offering promotional fares on scheduled service. Indeed, for reasons which we discuss below, we believe this is the best way to assure that the board spectrum of all users' needs for air transportation will be satisfied at minimum cost, minimum consumption of scarce resources, and most particularly, maximum conservation for fuel resources.

However, if the Committee also continues down the road of trying to superimpose an unfettered charter service on top of the existing scheduled service, then it must recognize that in doing so it will be bringing to an end the benefits of scheduled service which the public enjoys today.

In the recent past, there has been resistance to promotional fares on scheduled services in various quarters and we would welcome enactment of Section 2(7) of Bill S.421 insofar as it would clarify Congressional intent and confirm that promotional pricing on scheduled services is a sound and highly important means of providing low cost air transportation.

The enormous progress and advances achieved in air transportation, both domestically and internationally, over the past several decades were due in large part to the recognition throughout most of this period, that the total public interest will best be served by a system that simultaneously accommodates the needs of all types of travelers, those traveling for personal and pleasure reasons as well as those traveling for business. In the joint accommodation of the full spectrum of needs, there is the capability to support the type of system—both in service levels, frequency levels and low cost levels—which neither sector of the travel market could support on its own if the two were treated as separate and distinct markets to be served on separate and distinct flights.

This is nowhere more true than in international service, where the total sizes of individual city pair markets is at best limited, and where the sustainable frequency level of service is minimal, even when both types of travelers are served jointly. Table I shows for TWA the average number of passengers per day that we carried in individual nonstop markets across the Atlantic in 1974.

Table II shows how even these relatively small volumes would have been subdivided into intolerably small volumes if the business portion of the market had to be treated as another completely distinct market segmentation.

Table III shows the limited frequencies that are being offered—typically one flight per day in each market or in many cases less than daily service—even when we have the ability to serve jointly both the discretionary and non-discretionary markets.

Quite clearly, if we had to treat these two markets as completely subdivided and handled them on different flights instead of jointly, the level and frequency of service we did offer to each of the then further subdivided markets would be less convenient and a less economical service for both groups.

The fundamental proposition that the totality of the market is best served by handling both together, and by doing so through the offering of promotional fares on scheduled services, has in the past been repeatedly accepted and reaffirmed by the Civil Aeronautics Board.

When the full economic necessity of handling the two groups together on scheduled service is recognized, then even the issue of so-called discrimination is found to be more one of semantics than of reality. Indeed, the best answer to the argument of so-called discrimination was given by the Board itself in the following language:

"Where the total market is composed of several segments with different travel characteristics and elasticities of demand, the differentiated price structure is fully justified. This type of pricing broadens the market, spreads cost over a greater volume of traffic and permits increased service to every passenger's benefit, and results in lower fares to all." (CAB Order 70-2-123, February 27, 1970, Page 3)

What the Board was there strongly affirming was the valid principle that where there is a segmented market with different portions having different elasticities, a differentiated fare structure can benefit all by enabling the more price sensitive traveler to help fill seats that would otherwise be empty. Even the passenger paying full fare benefits from having the seat next to him occupied by a discount fare passenger, if the alternative is to merely have that seat stay empty, in which case the full fare passenger's own fare would have to be raised further in order to help bear the cost of the empty seat.

There are other reasons as well why the public as a whole benefits by the ability to handle price sensitive passengers on promotional fares on scheduled services. To be sure some part of the price sensitive market will find they can adapt their travel desires to the particular dates and routes on which charters may be offered. But unless someone visualizes charters really becoming synonymous with scheduled services and operating over the full range of routes and full range of frequencies that scheduled services now provide, there will always be another part of the price-sensitive market which for one reason or another must travel on routes where it does not serve the convenience of charter operators to fly, or at times when it does not serve the convenience of charter operators to fly.

Unless reasonable promotional fares are offered on scheduled services, this important part of the personal travel market will find itself deprived of the ability to obtain low cost air transportation.

As the Board so wisely said in the language quoted above from its 1970 decision, the ability to have a differentiated fare structure in relation to the differentiated market benefits all travelers. And this includes the full fare passenger as well as the passenger traveling on a promotional fare.

TWA is proud of its record of sponsoring and supporting reasonable experimentation in promotional fares. Recently we started a day-time excursion fare transcontinentally, which became effective just at the start of this month. Last year we started the Demand Scheduled service. Also last year we tried to get reinstated an international youth fare and we are now about to file our justification in support of another effort to get international youth fares. And more generally, over the years we have either initiated or strongly supported all reasonable efforts at sound promotional fares.

These, and the other promotional fares, have expanded the air travel market by making air travel available to those persons who could not afford or were unwilling to pay the existing full fare ticket price. That promotional fares were effective in making air travel more available is evidenced by the increasing proportion of the U.S. population who have at least once in their lifetime taken a trip by air. For example, studies of air travel show that in 1955 only 24% of the U.S. population had ever taken a trip by air. But by 1974, over half of the U.S. population had done so.

The use of air travel has spread even more rapidly among lower income families. In 1955, only 12% of adults from families with incomes under \$4,000 had ever taken an air trip. By 1974, that percentage had risen to 40% for families with the same real income.

It would be inconceivable that these results could have been achieved without the reductions in air fares that have been made available through special promotional fares.

The net result of having promotional fares on scheduled services has been a vast expansion of the travel market, better utilization of the capacity available and lower fares for *all* the passengers traveling in the market, including those who could not use the special promotional fares. As shown in the chart below, air fares are one of the few real bargains available today compared to 25 years ago.

CHANGES IN AIR FARES COMPARED WITH OTHER U.S. PRODUCTS AND SERVICES

[Current dollars]

Item	1948	1974	Percent change 1948-74
Round trip air fare New York-London.....	\$630	\$640	+2
Round trip air fare New York-San Francisco.....	286.30	346.30	+21
House.....	47,409	100,000	+111
Family size Chevrolet.....	1,255	4,119	+228
Ticket to Broadway musical.....	6.00	15.00	+150
Pair of men's shoes.....	9.95	21.95	+121
Pound of round steak.....	90.5¢	1.81	+100
Median family income.....	3,187	12,700	+299

Source: Aviation Daily, Feb. 10, 1975.

We do not claim each and every promotional fare has always been right. But we do believe the pendulum has swung too sharply against the concept of promotional pricing. We, therefore, welcome the provision of this legislation which would specifically affirm the desirability of promotional pricing on scheduled service.

Many of the very same considerations outlined above, however, compel us to oppose most strongly those provisions of this legislation which would substantially further liberalize charter authority and further blur the distinction between charter service and scheduled service.

As we stated above, the ability to handle the needs of both the business travel market and the personal/pleasure travel market has been basic to the support of the highly developed network of convenient dependable scheduled air service which is so important to this nation's commerce, industry, tourism, defense and other objectives. From the very start of Congressional authorization of supplemental air carriers, there have been repeated warnings by Congress, by the CAB, by Executive agencies that the broadening of charters must not be allowed to go to a point where it would impair the viability of the scheduled air network. And, of course, the reason why this is so desperately important gets back to the need for continuing to serve both segments of the market if there is to be, on a viable basis, anything approaching regularity, frequency and dependability of today's air transport network.

Referring again to the data we previously submitted in Table I and II above, if more and more of the personal/pleasure market were diverted from scheduled services and on to separate plane load charters, it is evident from the data presented that there then could not be the ability to preserve even the minimal frequency patterns we now offer across the Atlantic and all parties would suffer—the full fare passenger as well as the promotional fare passenger.

For years when the scheduled airlines warned against the repeated liberalization of charters, we were accused of crying wolf.

Unfortunately, the actual record of the recent past should all too painfully make clear that we were not in fact "crying wolf". The desperate financial plight of the transatlantic scheduled industry at this time should certainly be well known to all. The efforts devoted by various government agencies to help alleviate the plight of the transatlantic U.S. flag industry are also well known. The overall record of losses for the transatlantic industry as a whole is shown below.

IATA NORTH ATLANTIC CARRIER PROFITABILITY, 1968-73

[Dollars in millions]

	Operating profit/(loss)	Net income
1968	\$70	(\$86)
1969	63	(120)
1970	2	(236)
1971	(99)	(374)
1972	(27)	(333)
1973	(130)	(492)

Source: IATA

It surely can no longer be suggested that anybody is crying wolf we point with deep concern to the impact of still further liberalization of charters.

In this connection, the data shown immediately above should make clear that while the fantastic increases in fuel prices were indeed the straw that is coming close to breaking the camel's back, that the industry was experiencing severe problems even before the fuel crisis. Note that in calendar 1973—ten months of which did not have any fuel crisis—the overall loss for transatlantic operations had already risen to \$130 million. Obviously, that cannot be blamed on fuel. We submit that it is largely the result of the constant liberalization of charters which impacted both directly and indirectly upon the economics of the transatlantic operation.

In opposing those provisions of this bill which would by legislation further substantially liberalize charters we are not opposing charters as a valid and important segment of the meeting of the low cost needs for air transportation. But particularly in the face of the plight of the international industry, it is important at this time to recognize the extent to which further liberalization is now pending consideration of the CAB.

During the past several years the following major liberalizations of charter rules took place:

1. Authorization of three-stop Inclusive Tour Charter (ITCs);
2. Introduction of split charters, then liberalization of split charter rules to permit the intermingling of different types of groups on the same flight, and setting aside the limit on the number of groups permitted on each flight;
3. Elevation of study group charters into a separately defined and regulated charter category, and subsequent liberalization of study group charter rules;
4. Introduction of Travel Group Charters, followed by the recent liberalization of TGC rules to shorten the advance booking period and to permit 15% of the passengers to be drawn from the general public; also the proposed elimination of the time limit to the TGC experiment;
5. Development of special category of Overseas Military Personnel charters;
6. The authorization of foreign origination Advance Booking Charters (ABCs) which make no pretense of catering to any restricted segment of the public so as to make them "charterworthy": the ABC organizer advertises to the general public, and sells seats to the general public; and restrictions applying to such charters play no significant role in distinguishing ABC passengers from the general public;

Most recently, the CAB has issued a proposed rule-making to set up a new category of Special Event Charters, with rules and conditions so loosely defined as to be an open invitation to general abuse. The Board is also proposing, in a separate rule making proceeding to establish yet another type of charter—one-stop inclusive tours (OTC).

Each of the liberalized charter regulations has led to a further erosion of the U.S. Flag scheduled system. Each new charter category has over the years attained increased importance in the U.S. charter market and has further weakened the scheduled carrier system.

As shown in Table IV, in 1968 the only important charter categories were planeload affinity charters and single entity charters, accounting, jointly, for 98% of the transatlantic charter market or 876,000 passengers. In the following five years affinity and single entity charters increased $2\frac{1}{2}$ times to 2,264,000 passengers. However, their share of the charter market dropped to 77% as new charter categories were developed with the liberalization of charter rules. These new types of charters accounted for over 700,000 passengers. Thus, in 1973 passengers were traveling under eight different sets of charter rules—Single Entity Charters, Affinity Charters, ITCs, Split Charters, TGCs, ABCs, Study Group Charters and Overseas Military Personnel Charters.

To ignore the recent liberalizations and the still pending other possible liberalizations and now to throw the door wide open to further wholesale liberalization of charters can only have the effect of totally negating all efforts made by the carriers and by government agencies to help alleviate the plight of international air operations.

Moreover, in the face of the efforts that must now be made to conserve fuel, throwing the gates wide open to much more liberalization of charters can only be counterproductive from the fuel standpoint.

As already shown in Table III, in the important transatlantic markets (which has been the main area of charter activity) scheduled services have already been pared down to the bone. With the less than daily service offered now on many important routes, there is very little opportunity for further reduction of scheduled capacity without totally gutting the whole concept of regular dependable service.

To the extent that more liberalized charters divert still more personal/pleasure travel from this remaining minimal frequency pattern, it will result in more empty seats on the schedules, little ability to cut back capacity correspondingly, but then the addition of new flying and more fuel consumption in order to have a separate charter flight flying wing-tip to wing-tip a scheduled flight.

The type of charter which the proposed legislation contemplates would, in fact, have few, if any, recognizable features of charter as we know them today or as they were contemplated in original Congressional intent. The Bill proposes to make available to the public charters at a prefixed price with the charter organizer assuming the commercial risk.

Under this type of charter regime, the charter organizer, or risk taker, would have to include in the charter price an allowance for seats unsold at departure, as well as an allowance to cover his financial risk. This in itself would reduce the ostensible bargain of today's full plane load charter. Moreover, the require-

ments for the financial success of such so-called charter operations are so stringent that any miscalculation in market demand or of the breakeven price can rapidly lead to financial disaster in the charter industry, and result in the collapse of tour operators and charter airlines. This is precisely what happened in the United Kingdom in 1974, and led to the collapse of the Court Line, a giant in the industry and at that time a rapidly growing and apparently successful charter airline. In that instance the economics of plane-load operation resulted in not only the collapse of a number of previously successful operators and airlines, but also wrought untold hardship and financial losses to literally tens of thousands of travelers who were caught in the midst of this gigantic collapse.

Because the public's needs for low cost transportation can be met by promotional fares on scheduled service, TWA believes it would be inadvisable for the Congress at this critical juncture to enact a Bill that would further expand charter services into the individually ticketed travel market. Therefore, that part of S. 421 dealing with charter services should not be put forward in its present form.

We would recommend instead that the public would be best served if the Congress would enunciate the principle of expanding the availability of low fares by permitting the airlines to utilize promotional fares on scheduled service.

Once the policy guidelines are established, TWA believes it would be best to leave the implementation of such policy to the CAB under the established regulatory process where each proposal can be evaluated within the existing economic environment.

TABLE I.—TWA TRANSATLANTIC PASSENGERS BY SEGMENT, 1974

Transatlantic segment	Average daily passengers each way	Transatlantic segment	Average daily passengers each way
Boston to—		Milan.....	91
London.....	88	Paris.....	165
Paris.....	67	Rome.....	217
Santa Maria.....	17	Shannon.....	59
New York to—		Zurich.....	17
Athens.....	95	Philadelphia to London.....	94
Frankfurt.....	165	Washington to Frankfurt.....	95
Geneva.....	25	Chicago to.....	
Lisbon.....	100	London.....	138
London.....	341	Paris.....	24
Madrid.....	167	Los Angeles to London.....	176

Source: TWA Co. records.

TABLE II.—TWA TRANSATLANTIC PASSENGERS BY SEGMENT AND TRIP PURPOSE, 1974

Transatlantic segment	Average daily passengers each way	
	Business	Nonbusiness
Boston to—		
London.....	38	50
Paris.....	25	42
Santa Maria.....	4	13
New York to—		
Athens.....	23	72
Frankfurt.....	66	99
Geneva.....	10	15
Lisbon.....	24	76
London.....	133	208
Madrid.....	40	127
Milan.....	32	59
Paris.....	63	102
Rome.....	76	141
Shannon.....	14	45
Zurich.....	6	11
Philadelphia to London.....	40	54
Washington to Frankfurt.....	38	57
Chicago to—		
London.....	59	79
Paris.....	9	15
Los Angeles to London.....	76	100

Source: TWA Co. records.

TABLE III.—TWA TRANSATLANTIC NONSTOP SCHEDULES, WINTER 1975

Transatlantic segment	Daily frequencies	
	747	707
Boston to—		
London		1
Paris		1
Santa Maria (weekly)		1
New York to		4
Athens (weekly)		
Frankfurt	1	
Geneva		1
Lisbon	1	1
London	1	
Madrid		5
Milan (weekly)		
Paris	1	
Rome	1	
Shannon (weekly)		2
Philadelphia to London		1
Washington to Frankfurt	4	1
Chicago to London (weekly)	5	
Los Angeles to London (weekly)	5	

¹ Westbound only.

Source: TWA Co. records.

TABLE IV.—TRANSATLANTIC CHARTER TRAFFIC BY TYPE OF CHARTER, 1968-73

[In thousands]

Year	Affinity	Single entity	Split	ITC	Overseas military personnel	Group	ABC	TGC	Other	Total
1968	790	86	14	10						900
1969	1,394	122	55	39						1,610
1970	1,453	210	169	62						1,894
1971	1,769	281	375	106						2,531
1972	1,748	324	266	152	42	5			5	2,542
1973	1,922	342	284	208	17	11	91	45	20	2,940

Source: CAB form 41, schedule T-6, as compiled by Systems Analysis and Revenue Corp. and converted to passengers assuming 95 percent load factor.

Senator CANNON. The committee will be in recess, subject to the call of the Chair.

(Whereupon, at 2:48 p.m., the hearing was adjourned, subject to the call of the Chair.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF CYRIL F. BRICKFIELD, COUNSEL TO THE NATIONAL RETIRED
TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS

The National Retired Teachers Association and the American Association of Retired Persons appreciate this opportunity to comment on S 421, the Low-Cost Air Transportation Act. Our Associations support this legislation because we believe that low-cost air travel should be made more available to the general public. We feel that S 421 will accomplish this without doing injury to the scheduled air carriers.

NRTA and AARP are nonprofit associations representing more than 7.8 million older persons. Most of our members must live on modest, fixed incomes. Over the years, thousands of NRTA and AARP members have enjoyed the benefits of travel during their retirement years by taking advantage of reasonably-priced affinity group charters and inclusive tour charters sponsored by our two Associations and by other organizations. Because of their modest means, many of these retired persons could not afford the higher costs of scheduled airline travel. This has become increasingly true as scheduled airline costs have spiraled at the same time that inflation has reduced the discretionary income of retirees.

Our Associations support the one-stop inclusive tour charter described in S 421 because we believe that it will allow tour operators to offer a greater variety of inclusive tours at lower cost. Present ITC's, which are required to make at least three stops, are more limited in appeal and higher in cost. NRTA and AARP strongly opposed the one-stop inclusive tour charter proposed by the Civil Aeronautics Board in its proposed rulemaking of October 30, 1974, because we felt that it was unduly restrictive and would not provide a viable form of low-cost travel for the general traveling public. The restrictions as to rates, the cost of ground arrangements, the length of the tour and the number of passengers which a supplemental carrier might transport during a given time period severely limited the acceptability of this proposal to tour operators and would make one-stop ITCs undesirable to many potential passengers as well. The one-stop ITC described in S 421, however, is more flexible and would permit tour operators to offer a wider variety of desirable low-cost inclusive tours.

NRTA and AARP support the "advance booking charter" defined in S 421 because we believe that it will provide flexible, low-cost air travel to the general public without the complexities and potential for abuse associated with the affinity group charter. At the same time, however, we applaud the provision in S 421 which provides for retaining affinity group charters until further action is taken by Congress. We feel that affinity group charters should be retained until advance booking charters have been thoroughly tested to assure that they will, in fact, provide a viable alternative form of charter travel for persons who do not wish to buy an all-inclusive package tour.

Many older persons use affinity group charters to visit relatives in other countries and have no need or desire for ground travel arrangements. For this reason, affinity group charters should not be abolished until they can be replaced by an equally flexible low-cost alternative. Abolishing affinity charters at this time of rapidly rising prices and especially of rising air travel costs would deprive countless numbers of older persons with modest incomes of the pleasure of travel at a price they can afford. Many of our members would be forced to forego travel altogether if low-cost affinity group charters were abolished without first establishing a viable substitute.

NRTA and AARP strongly support the provision in S 421 permitting airlines to offer reduced-rate fares on a stand-by basis to persons over age 65. Our Associations feel that such a measure would be of economic benefit not only to the airlines which choose to offer these reduced fares, but also to other categories of airline passengers. Scheduled flights generally travel with less than

their full complement of passengers. Allowing older persons to fly as stand-by passengers would enable the airlines to fill seats that would otherwise remain empty, thus increasing revenues. This additional revenue would reduce the need for increasing rates for other categories of passengers.

A major problem suffered by many older persons is the lack of an income which will allow them to make use of the leisure time provided by their retirement years. While 10 percent of our population is over 65, persons in this age group make up only 5 percent of all airline passengers. This can be attributed in great part to the fact that older persons, living on fixed, limited incomes in a time of inflation are unable to afford the luxury of air travel.

Our Associations support the concept of stand-by air fares for older persons because we feel that this type of fare will allow discounts sufficient to attract new customers who otherwise could not afford to fly. At the same time, since stand-by travel is less convenient, customers who were previously willing and able to pay full fare for air travel will continue to do so.

The experience of Hawaiian Airlines with senior fares indicates that reduced-rate, stand-by fares for older persons can be especially profitable for the airlines. The rate of growth in passengers over age 65 was substantially higher than the rate of growth for the airline as a whole for the period during which Hawaiian Airlines offered reduced-rate senior stand-by fares.

NBTA and AARP feel that older persons as a group are particularly suited to stand-by travel because their schedules can be flexible. Without deadlines to meet, they can plan their travel for times when the airlines are least crowded and they are most likely to get a seat. They can afford to be flexible in their planning because they have no two-week limit to their vacations, no set time by which they must return home.

Our Associations disagree with those who would say that stand-by travel is too arduous for older persons. All too often we have a stereotyped image of older people. We think they are feeble, crotchety and easily confused. This image is not at all realistic. Many older persons are vigorous, competent and fully capable of waiting overnight, if necessary, to fly stand-by to their destination.

If air travel were brought within their financial reach, more older persons would travel by air. It is certainly less tiring to wait four or five hours in an airport for a two-hour flight to Chicago than to spend 16 hours making the same trip by bus.

In an age of increasing mobility, the children and grandchildren of an older person may live half a continent away. Reduced-rate stand-by fares for persons over age 65 would allow our older citizens an opportunity to maintain family ties and to avoid the isolation so common to older persons cut off from family and friends.

Granting reduced-rate stand-by fares to older persons is not discriminatory because the younger generation of today will be the older generation of tomorrow. Retired persons living on fixed, limited incomes in a time of inflation deserve to enjoy the same advantages that younger generations take for granted or as a matter of right. This is especially true since during their working years these same retirees contributed so much to the quality of life we enjoy today.

Our Associations urge the enactment of S 421, allowing airlines to grant reduced-rate stand-by fares to persons age 65 and older and establishing two new types of low-cost, flexible air charters.

AMERICAN NURSING HOME ASSOCIATION,
Washington, D.C., February 7, 1975.

HON. HOWARD W. CANNON,
U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: On behalf of the American Nursing Home Association, a non-profit organization representing some 7,500 proprietary and non-proprietary facilities with more than 500,000 patient beds, I wish to compliment you for introducing the Low-Cost Air Transportation Act of 1975 (S. 421), a bill that would authorize reduced rates for the handicapped, the elderly, and the young.

Representing a profession that provides health care for the elderly, ANHA recognizes the problems facing our older citizens, not the least of which is

limited finances. With an increasingly mobile population, many older Americans are finding that the miles between their children and loved ones are too numerous to be crossed practically by any other mode of transportation than air travel. Many, being on low and fixed incomes, have found air travel to be a luxury they could ill afford. Your bill, if enacted, would bring air travel within reach of our too often ignored older citizens. It is, therefore, with great pleasure that the American Nursing Home Association stands in support with you in urging passage of this important legislation.

Sincerely,

WILEY M. CRITTENDEN, Jr., *President.*

AIRPORT OWNERS AND PILOTS ASSOCIATION,
Washington, D.C., February 7, 1975.

Hon. HOWARD CANNON,
*Chairman, Subcommittee on Aviation, Committee on Commerce, U.S. Senate,
Washington, D.C.*

DEAR SIR: This is in reference to your hearings on charter air transportation policy.

These comments are filed on behalf of more than 181,000 aircraft owners and pilots who have authorized the Aircraft Owners and Pilots Association (AOPA) to represent their interests in aviation matters. Our members own and fly most of the civil aircraft in the United States and we have in the past provided affinity tours for our members. We, therefore, have a vital interest in this matter.

The CAB has proposed the eventual elimination of affinity group charter flights and the replacement of them with one-stop inclusive tour charters (OTC), fixed price package vacations offered to the general public.

AOPA is in favor of the one-stop charter concept but it is opposed to the CAB's version which sets minimum rates and maximum flights.

As you know, the purpose of group charters is to make air travel available at low cost to a broader spectrum of the public, especially those who in these times of inflation and recession cannot afford the regularly scheduled airlines. The CAB version does not even attempt to achieve this purpose. The CAB has decided to tell travelers how much they must spend on group arrangements to qualify for these trips. For domestic flights, it is \$25.00 a day, though tour operators are presently offering hotel accommodations in Las Vegas for as low as \$7.00 a day. For transatlantic flights, the tour package price must be 10 percent higher than the applicable individual ticket fare on a scheduled IATA carrier. If a tour operator can offer a lower price and make a profit, he is forbidden to do so. This is not the way to encourage low cost.

The CAB, instead of encouraging these flights would limit each charter airline to carrying no more than one-fourth of one percent of the total number of annual passengers carried on scheduled flights between two domestic cities. This would drastically curtail the present charter market. Under the formula proposed, each carrier flying between New York and Las Vegas would be limited to 398 passengers per quarter, about one wide-bodied jet every three months. Some airlines at present operate almost daily charters between these two cities. St. Louis residents could be offered one flight to Hawaii every six months and travel between Los Angeles and Miami would be limited to 433 passengers every three months.

While we agree with the CAB that individually ticketed service must be protected to some extent, it is questionable whether the proposed rules would provide any such protection. Most of those who currently fly by charter could not afford individual ticket service and hence would simply not fly. It must not be forgotten that the scheduled airlines also provide a substantial chartering service. In 1973 and 1974 they provided 970 and 498 charter flights respectively. It should also be remembered that a certain amount of free enterprise also needs protection.

On the basis of the above, AOPA suggests that the OTC concept be revised to make it more workable and more conducive to the goals of low cost air travel for the public at large. AOPA further suggests that the affinity group charters be continued until there is a substitute more adequate than abandoning all

these passengers to the scheduled airlines. Last year approximately 60 percent of the affinity group passengers traveling on U.S. charter airlines opted for the freedom to make their own ground choices. An inclusive tour charter will not give passengers this choice.

We would like this letter to be included in the hearing record. Thank you for this opportunity to participate in your hearing.

Respectfully submitted,

JOHN S. YODICE, *Washington Counsel.*

VOYAGER, INC.,
— *Indianapolis, Ind., February 10, 1975.*

Senator HOWARD W. CANNON,
*Russell Senate Office Building,
Washington, D.C.*

DEAR SENATOR CANNON: I have just received a copy of your statement before Congress on Low Cost Transportation Bill S-421.

Having been General Manager of the former Voyager 1000 Air Travel Club which was ordered to cease and desist, myself and I am sure all former members, concur with content of your bill.

At the beginning of the Voyager 1000 proceedings our counsel recommended to the Enforcement Bureau that the Air Travel Clubs submit suggested rules for the CAB to consider in order that they may have proper guidelines for which there were none.

The CAB order for Voyager 1000 to cease and desist stated that Voyager 1000 had suggested submitting rules, however, the Board felt this of no consequence.

I personally was involved in the hearings which only produced four witnesses for the CAB. Two were former employees, one a former Voyager 1000 Board Member and a former club member. CAB Administrative Judge William Madden found in favor of Voyager 1000. The Enforcement Bureau requested a review before the Board. Mr. Timm and Manetti were present.

The Board reversed the Administrative Judge's decision and ultimately eliminated the Voyager 1000 Air Travel Club, fellowship and pleasure of the members traveling together as a group with a common bond.

After the cessation of Voyager 1000 many of the former members wanted to ban together as a group in order to continue the fellowship which had been developed through the Voyager 1000 Club.

A social club, Voyager, Inc., was formed December 28, 1973. Incorporated under the statutes of the State of Indiana as a not for profit corporation. The club members participate in parties, bus trips and utilize commercial airlines, however, have been denied affinity rights by the CAB (correspondence attached). I am aware that two social clubs in Indianapolis have affinity rights this was brought to the Boards attention by Mr. Glenn Jones letter of June 5, 1975 (attached).

Our Board of Directors and members feel that they are again being deprived of their rights since the club is definitely contributing to the airline economy.

Affinity rights would give our members an opportunity to travel together in many instances at less cost and as a group.

We have only been able to obtain an opinion from the Board and as the result have been denied the rights given to other social clubs.

Although air travel clubs are still operating (one club based at Indianapolis) Voyager, Inc. has been discouraged by the CAB and F.A.A. relative to forming an air travel club.

In addition to our present activities many of our members have requested that the Board of Directors explore the possibility of obtaining an aircraft for the club. A preliminary request to the F.A.A. indicated a negative position (copies of correspondence attached).

I had been involved in commercial aviation for 25 years prior to my employment at Voyager 1000 as Director of Operations and Assistant General Manager for Purdue Aeronautics Corporation and Purdue Airlines based at Lafayette, Indiana—a supplemental carrier.

Mr. Glenn Jones, President of Voyager, Inc. and myself will be most happy to forward any additional information that may be of value and certainly congratulate you and your committee for your efforts.

Sincerely,

R. D. MCKINLEY, *General Manager.*

Enclosures.

VOYAGER, INC.,
Indianapolis, Ind., December 31, 1973.

DEAR VOYAGER: If you are one of the hundreds who have called to ask what can be done to keep the Voyager concept going—rejoice—this is directed to you! A nucleus of dedicated Voyagers have been diligently working on this problem and have good news to announce NOW.

Finally there is a firm plan for the future of all Voyager members. Because of the very nature of Voyager and its vast number of members, we can continue to offer economy in all our activities that is not possible for a small or new club: social events, racing, horse and auto; trips, air, bus, and ship; theatre parties; gourmet dining; snow fun—sun fun.

By all staying together, we can use a new lower dues structure—\$25.00 family membership annually—\$10.00 now, balance in six months as shown in the application form.

The first two activities for your consideration are:

1. *Hawaiian Luau*—fourth floor ballroom, Indianapolis Athletic Club—350 N. Meridian Street, Saturday, January 12th, 1974, Cocktail Hour—6:30 P.M.—food, cash bar, dancing, favors—All for \$10.00 per person.

2. *Hawaiian flight February 9th, 1974*—two weeks, four islands, all air and ground arrangements—get out of the snow and fly with your friends again—details upon request at the office.

To keep Voyager a part of your life style, complete the enclosed form, send your check to the Voyager office—Weir Cook Airport, Beechcraft Suite #39, Zip 46241. Please send a separate check made payable to Voyager, Inc. Escrow Account for your Luau reservation.

Sincerely,

TOM JOHNSON, *President*
TONI SEXSON, *Secretary*
ROGER MCKINLEY, *Vice President*,
ART BROWN, *Treasurer*.

VOYAGER, INC.,
Indianapolis, Ind.

The response has been terrific! Already more than 1000 memberships have been received. Our first party was a smashing success with over 500 members enjoying a fine luau at the Indianapolis Athletic Club with good food, good music and good-good friends.

From the many telephone calls and conversations we now know what questions about the new Voyager Club need to be answered. These you will find on the enclosed fact sheet.

Representatives from Pan American, TWA, American Airlines, Delta, and Eastern have been in and have set up an exciting schedule of flights. So that we do not violate any CAB rules and so that we are not "holding out to the public," flights are only published and announced to members. However, we can advise that already scheduled in addition to flights is a dual city horse race trip, a Sweetheart Dance, an Evening of Gourmet Dining, a Theatre Party, a Bluegrass Party, a Cruise and the Indy 500 Race. In other words, a varied program of entertainment and travel to meet the desires of all and because of volume purchasing at bargain prices.

We again invite you to join with us by completing the enclosed membership application form with your check for either \$10.00 or \$25.00. Future mailings will be made to Voyager, Inc. members only. We trust you will want to join our Voyager, Inc. Family.

Sincerely,

TOM JOHNSON, *President*
TONI SEXSON, *Secretary*,
ROGER MCKINLEY, *Vice President*,
ART BROWN, *Treasurer*.

TRANS WORLD AIRLINES, INC.,
Indianapolis, Ind., March 19, 1974.

Mr. R. D. MCKINLEY,
Voyager, Inc.,
Indianapolis, Ind.

DEAR MR. MCKINLEY: Please do not use TWA's name in connection with any charter advertising or solicitation of any sort.

We would appreciate your cooperation in this respect.

Sincerely

R. V. KAIL, *Manager-Passenger Sales.*

APRIL 4, 1974.

Mr. HAROLD PARROTT,
Civil Aeronautics Board,
Washington, D.C.

DEAR MR. PARROTT: I want to again thank you for the opportunity to discuss our Voyager Inc. Social Club.

The day following our meeting we were advised by TWA that a letter had been received from the CAB Legal Counsel relative to our affinity status.

Voyager Inc. is a not-for-profit social club chartered under the laws of the State of Indiana.

Voyager Inc. will not solicit to the general public. Attached you will find the directive from the Board of Directors to the membership.

We currently have scheduled approximately 25 future activities for the next six months which do not involve air travel. The Board of Directors are aware that the club may utilize ITC's and GIT's, however, desire that our future plans include as occasional group to affinity charter.

Voyager Inc. desires an opinion as to the club being affinity worthy. We would appreciate a reply at your earliest convenience in order that we may project our future activities.

Sincerely,

GLENN JONES, *President.*

APRIL 4, 1974.

Mr. JAMES WELDON,
Bureau of Enforcement, Civil Aeronautics Board,
Universal Building, Washington, D.C.

DEAR MR. WELDON: I want to thank you for your courtesy and time spent with Mr. McKinley and myself while in Washington.

Since I am not involved in aviation the meeting was very informative.

I am enclosing a copy of my letter to Mr. Parrott concerning a clarification of our affinity status.

Sincerely,

GLENN JONES, *President.*

CIVIL AERONAUTICS BOARD,
Washington, D.C. April 15, 1974.

Mr. GLENN JONES,
President, Voyager, Inc.,
Weir Cook Airport, Indianapolis, Ind.

DEAR MR. JONES: This is in reply to your letter of April 4, 1974, requesting an advisory opinion on the charter worthiness of Voyager, Inc.

We have reviewed your letter and the attachment thereto, but we are unable to reach a definitive conclusion on this organization's charter-eligibility. Before we can render an opinion, we must have further information about this organization. As a minimum, we ask that you furnish the following:

1. A list of all activities of the organization;
2. The requirements for participation in a charter flight;
3. The requirements and qualifications for membership in the organization;
4. The procedures used in soliciting new members;
5. The manner in which a member maintains or updates his membership to retain active status in the organization;
6. The number of active members;

7. The number of members who formerly were members of the Voyager 1000 Flying Club;
 8. The location of a central membership list;
 9. The date of incorporation and a copy of the certificate of incorporation;
 10. The organization's by-laws, publications, and any printed matter soliciting new members;
 11. An accounting of the organization's source and use of funds and details as to whether members participate in the control of the organization's assets;
 12. Details concerning operational control of the organization—whether the membership elects all officers and directors or whether the membership is "controlled" by the organization;
 13. The extent to which the organization engages in travel activities in relation to all other activities for the membership, and the extent to which members participate in organization activities other than travel;
 14. Describe all financial, organizational, and operational relationships between Voyager, Inc. and the Voyager 1000 Flying Club;
 15. Identify any officer or director of Voyager, Inc. who is presently or was formerly an officer or director of Voyager 1000; and
 16. Identify all full- and part-time paid employees of Voyager, Inc.; indicate whether these employees are present or former employees of Voyager 1000.
- The above information is necessary before we can determine definitively the organization's charter eligibility. Upon receipt and review of the above information, we will advise you.

Sincerely yours,

HAROLD S. PARROTT,
Chief, Supplementary Services Division, Bureau of Operating Rights.

VOYAGER, INC.,
Indianapolis, Ind. April 29, 1974.

MR. HAROLD S. PARROTT,
Chief, Supplementary Services Division, Bureau of Operating Rights, Civil
Aeronautics Board, Washington, D.C.

Re Voyager Inc. charter eligibility
Your reference B-76.

DEAR MR. PARROTT: We are in receipt of your letter of April 15, 1974 relative to additional information pertaining to our request for an opinion on affinity worthiness.

Following is the requested information:

1. A list of all activities of the organization. Activity list—Voyager Inc. newsletter attached Exhibit A
2. The requirements for participation in a charter flight. The club rules to participate in a charter flight are in accordance with the CAB regulations. The club must be approved for charter worthiness—a member must have been a member for a minimum of six (6) months and in good standing.
3. The requirements and qualifications for membership in the organization. In order to become a member an application must be completed (application form enclosed) and signed by the applicant. The membership dues are \$25 per year for family or single membership.
3. Requirements and qualifications continued. The application is screened by the membership committee. If approved the person is assigned a membership number. A membership card and a list of the activities is sent to the new member. Activity information is mailed to members only in good standing. (Membership Application) Exhibit B
4. The procedures used in soliciting new members. The club restricts its solicitation of memberships to current members inviting their friends or colleagues to participate. The club rules do not permit solicitation to the general public. The membership will be limited to approximately 4,500.
5. The manner in which a member maintains or updates his membership to remain active status in the organization. All current members will receive a billing for their next dues payment approximately 35 days before expiration of the current paid dues. Members who become delinquent will not be permitted to participate in any activity.
6. The number of active members. The current membership is 2,487.

7. The number of members who formerly were members of the Voyager 1000 Flying Club. It is difficult to project the exact number of Voyager Inc. members who were formerly members of Voyager 1000. The basic reason for the formation of Voyager Inc. was the desire of many former Voyager 1000 members to continue their fellowship and maintain their relationships with many acquaintances while members of Voyager 1000. A survey indicates that approximately 46% of our membership were former members of Voyager 1000. Many of the former Voyager 1000 members interest were for an Air Travel Club and not a social club.

8. The location of a central membership list. The central membership list is maintained at the Voyager Inc. office, Suite #39, Indiana Beechcraft Bldg., Weir Cook Airport, Indianapolis, Indiana 46241.

9. The date of incorporation and a copy of the certificate of incorporation. The corporation was formed December 28, 1973. (Copy of incorporation papers enclosed) Exhibit C

10. The organization's by-laws, publications, and any printed matter soliciting new members. The organization by-laws, publications and printed matter enclosed. Exhibit D

11. An accounting of the organization's source and use of funds and details as to whether members participate in the control of the organization's assets.

A. All monies for any activity are deposited in the Voyager Inc. Escrow fund at the American Fletcher Bank, Indianapolis, Indiana.

B. Only dues received are deposited in the general fund.

C. Monies deposited in the Escrow fund are not transferred to the general fund until a minimum of 48 hours after the termination of the activity.

D. The monies received from dues are utilized:

1. Payment for activities until monies may be transferred from the escrow fund for the particular activity.

2. Payroll

3. Insurance

4. Other expenses such as office equipment, rent, publications, member information, tax and other minor miscellaneous expenses required in the daily operation.

E. Any member in good standing may attend Voyager Inc. Board of Directors meetings and inspect the records of the club.

12. Details concerning operational control of the organization—whether the membership elects all officers and directors or whether the membership is "controlled" by the organization. Refer to Article IV Voyager Inc. By-laws. Exhibit E

13. The extent to which the organization engages in travel activities in relation to all other activities for the membership, and the extent to which members participate in organization activities other than travel. Planned activities listed in newsletter—manifests of party activities enclosed. Exhibit F

14. Describe all financial, organizational, and operational relationships between Voyager, Inc. and the Voyager 1000 Flying Club. None—(Voyager 1000 is in receivership as of November 19, 1973)

15. Identify any officer or director of Voyager, Inc. who is presently or was formerly an officer or director of Voyager 1000. Mr. Glenn Jones, former director Voyager 1000; Mr. Arthur Brown, former director Voyager 1000; Mr. Curt Benner, former director Voyager 1000; Mr. Robert Brown, former director Voyager 1000; Mr. Lee Clifford, former director Voyager 1000; Mr. Jack Lazaro, former director Voyager 1000; and Mr. Joe Power, former director Voyager 1000.

16. Identify all full- and part-time paid employees of Voyager, Inc.; indicate whether these employees are present or former employees of Voygar 1000. Roger McKinley—General Manager—former employee Voyager 1000 Katie Platt—Secretary—former employee Voyager 1000

Please advise should you require any additional information. We are hopeful that you may arrive at an opinion in the near future relating to our request.

Sincerely,

GLENN JONES, President.

CIVIL AERONAUTICS BOARD,
Washington, D.C., May 28, 1974.

Mr. GLENN JONES,
President, Voyager, Inc.,
Weir Cook Airport,
Indianapolis, Ind.

DEAR MR. JONES: We have reviewed the material accompanying your letter of April 29, 1974, wherein you request our views on the charter eligibility of Voyager, Inc. (Voyager).

Voyager is an outgrowth of Voyager 1000, an organization which functioned for several years as an "air Travel club". By Order 73-3-1 dated March 1, 1973, the Board found that Voyager 1000 was a common carrier in violation of the Federal Aviation Act of 1958, as amended, in that Voyager 1000 held no authority from the Board to engage in air transportation. The Board's decision was affirmed in *Voyager 1000 v. Civil Aeronautics Board*, C.A. 7, No. 73-1222. Voyager 1000 has been in receivership since November 19, 1973.

On December 28, 1973, Voyager was incorporated as a "not-for-profit" corporation in the State of Indiana. Article II of the Articles of Incorporation specifies that the purposes for formation of Voyager are "... to organize recreational and social events, theatre parties, gourmet dining parties, sporting events . . . , and any other legitimate social and recreational function . . ." for the benefit of the membership.

Obvious efforts have been made to structure the present Voyager as a social organization that would satisfactorily comply with the Board's criteria applicable to charter eligible affinity groups. Our reading of the material furnished shows that:

(1) Annual family and individual membership dues of \$25 are required each year to maintain active status in the organization;

(2) Members elect a board of directors to govern the organization;

(3) There is a provision in the by-laws requiring an annual meeting of the general membership;

(4) A central membership list is maintained and membership cards are issued; and

(5) Only Voyager members will be solicited for charters and only those members of at least six months will be permitted to participate on the organization's charters.

It is our view that the distinctions between Voyager and Voyager 1000 are more of form than of substance. Granted, Voyager is now a social-type club and is not directly associated with its predecessor, the air travel club. The fact, remains, however, that Voyager is a travel-oriented organization.

The obvious propensity toward travel can be demonstrated in part by a review of Voyager's planned activities for the period of April 13-November 29, activities planned during the eight-month period. Of these, 31 (76%) involve some form of travel, and 18 (45%) involve air travel. Furthermore, a few of the non-travel social activities would appear to revolve around a travel theme for a future trip.

In addition, it is quite evident that Voyager has not entirely disassociated from Voyager 1000. The mere fact that this organization is using the "Voyager" identification strongly suggests that it proposes to trade on the past travel reputation of Voyager 1000. Presumably, individuals who join the present Voyager would do so primarily on the presupposition that travel opportunities would be available. The organization itself has done nothing to discourage this conclusion. If anything, Voyager has attempted to encourage membership through its travel orientation. Even changing the name of the organization at this point would not alter the other major difficulties mentioned herein.

It is also noteworthy that, of the 11 initial Voyager board of directors, eight were former directors, officers, or employees of Voyager 1000. In addition, of the 2,500 present Voyager members, approximately 46% are former members of Voyager 1000. Moreover, solicitation originally sent to former members of Voyager 1000 advised:

"In order that the club [Voyager] may arrange charter flights as a part of our future activities, government regulations requires [sic] a person to be a member 6 months. We urge you to join now to insure full participation."

The central focus of Voyager is travel, particularly travel by air. Moreover, the initial membership drive was directed at former members of Voyager 1000, an organization that had as its only "affinity" the common desire of the membership to travel long-distance by air at less-than-commercial rates. Yet, the Board's charter regulations provide that "bona fide" members of a chartering organization are those who "have not joined the organization merely to participate in the charter as the result of solicitation of the general public"—see, for example, section 208.210 (copy enclosed).

In view of the foregoing, it is the opinion of this Bureau that Voyager is ineligible to engage in pro rata "affinity" charter flights on behalf of its membership. There is little doubt that Voyager was established primarily for the purpose of travel, and that the membership was induced to join Voyager with this singular purpose in mind.

The Board's regulations governing Inclusive Tour Charters (Part 378) and Travel Group Charters (part 372a) are enclosed. Since both of these charter types can be made available to non-affinity groups—i.e., the general public—Voyager may offer these types of charter service to its membership.

Sincerely yours,

WILLIAM B. CALDWELL, Jr.,
Director, Bureau of Operating Rights.

JUNE 5, 1974.

Mr. WILLIAM CALDWELL, Jr.
Director, Bureau of Operating Rights,
Civil Aeronautics Board,
Washington, D.C.

DEAR MR. CALDWELL: I am in receipt of your letter dated May 28, 1974 relative to the denial of affinity rights to Voyager Inc.

Even though many of the former Voyager 1000 Air Travel Club members are now members of Voyager Inc. The club was formed as a social club with air travel as a portion of the activities.

Voyager 1000 was ordered to cease and desist in accordance with the Board ruling that it was acting as common carrier without license. The Court of Appeals upheld the Board ruling indicating that Voyager 1000 was competing with the air carriers.

Voyager Inc. does not own or operate an aircraft and utilizes all commercial services for any activities requiring air transportation which we feel contributes support to the carriers.

Our club has many social functions and not for the purpose indicated in the opinion relative to themes for travel functions. Luau parties are common in many social clubs. With the many various activities we have nothing to gain by using social functions for promotion.

It has been brought to my attention that two (2) social clubs in Indianapolis promote participation in charter flights for their active members and families. I am sure after investigating that these clubs have very limited activity in the social area, however, evidently do have affinity rights for charter flights.

I am enclosing a portion of the activities of each club for your information. Active members and families indicate affinity status.

Since Voyager Inc. puts forth much effort in planning its social functions and other activities for its members and utilizes the commercial carriers for required air transportation we would appreciate a review of our original request and any changes that the board would require in order that we have the same affinity right.

Thank you for your consideration.

Sincerely,

VOYAGER, INC.
GLENN JONES, President.

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 9, 1974.

Mr. GLENN JONES,
President, *Voyager, Inc.*,
Weir Cook Airport,
Indianapolis, Ind.

DEAR MR. JONES: This is in response to your letter dated June 5, 1974, seeking reconsideration of our opinion on the charter eligibility of *Voyager, Inc.*

Nothing presented in your letter causes us to reverse or modify our opinion of May 28, 1974. *Voyager* was established and presently exists primarily for the specific purpose of travel by its members. The fact that *Voyager* offers occasional non-travel, social functions does not overcome the inherent problem—the organization's travel orientation. Therefore, we remain of the view that *Voyager* is not a charterworthy "affinity" organization.

The mere fact that other so-called social clubs may be operating charters at variance with the Board's rules does not warrant reversal of our opinion on *Voyager's* lack of charterworthiness. The charter eligibility of each organization must be evaluated on its own merits. The charter solicitation material of the International Leisure Association, Inc. and the Global Sportsmen's Club, Inc. accompanying your letter does not permit us to resolve your challenge to charter-worthiness of the two organizations. We are referring the matter to the Bureau of Enforcement for further consideration. If you have additional information on possible charter violations by these two clubs, we ask that you forward such information to that Bureau. Thank you for bringing this matter to our attention.

Sincerely yours,

WILLIAM B. CALDWELL, Jr.,
Director, Bureau of Operating Rights.

INDIANAPOLIS, IND., May 16, 1974.

Mr. BERNARD F. DIEDERH,
Bureau of Enforcement, Civil Aeronautics Board,
Washington, D.C.

DEAR MR. DIEDERH: Enclosed find requested information relative to our telephone conversation.

I would appreciate any Board guidelines that may be available for Air Travel Clubs.

Sincerely,

R. D. MCKINLEY.

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Des Plaines, Ill., September 16, 1974.

Mr. ROGER MCKINLEY,
Voyager, Inc.,
Weir Cook Airport,
Indianapolis, Ind.

DEAR MR. MCKINLEY: This letter is in response to our conversation of this date in which you advised us of your intention to organize an air travel club involving a limited operation. During our conversation you requested our comments and information regarding the format of your formal application and rules or policy in effect.

An application for an air travel club certificate must be submitted, in triplicate, at least 60 days prior to the intended date of operation. The application should be in letter form. The format and content should be such as to clearly show how the applicant intends to comply with the requirements of each applicable section of Federal Aviation Regulations Parts 121 and 123. Submission of an application indicates that the applicant is ready for inspection and that all manuals that will provide the needed information for application processing are completed. Copies of these manuals must be submit-

ted with the application. A specific aircraft with applicable records should be available.

If any required facilities or services are to be supplied by parties other than the applicant, three (3) copies of the associated contracts must be submitted with the application. If formal contracts covering such facilities or services have not been completed, a letter showing agreements between the contracting parties will be accepted until such time as copies of the formal contracts are obtainable.

The application should contain, or have attached to it, a signed statement showing the name and address of each director and each officer of the air travel club. The statement should also contain the names and addresses of each person who will be employed in a management position, as well as a list of flight crewmembers with the type of airman's certificate held, including ratings and certificate numbers.

It should be noted that the certification rules and some operating rules for an air travel club are contained in Part 123 of the Federal Aviation Regulations. The majority of operating rules applicable to air travel clubs using large aircraft are contained in those Sections of Part 121 applicable to supplemental air carriers and commercial operators.

It is suggested that you provide this office with a Maintenance plan depicting specifically how you plan to handle Maintenance requirements. A discussion of the Maintenance plan should be scheduled after we have had time to review it so that anticipated problems may be corrected. The Maintenance manual must show specifically how you will handle all Maintenance requirements.

Due to special circumstances related to an air travel club operator, the formal application, should include a copy of the club charter or a listing of the club bylaws. It will be necessary for our Regional Counsel to review your club bylaws and sample membership contracts prior to certification. The structuring of an air travel club may take any form agreed to by the membership. It should not be used either directly or indirectly as a device for charging fares, making arrangements for charters, or ticketing passengers on an individual trip basis.

To aid you in your planning, we are enclosing a copy of a portion of Advisory Circular 123-1. Regulatory material required for your operation may be obtained through the Government Book Store in the Federal Building, Downtown Chicago. They are located at 219 South Dearborn Street and the phone number is 312-353-5133.

We trust that the above information will be of use to you in your preparation for certification as an air travel club.

Sincerely,

C. E. MOODY,
Chief, Air Carrier Operations Unit.

OCTOBER 8, 1974.

MR. JAMES E. STRANGE,
Chief, Air Carrier District Office,
Des Plaines, Ill.

DEAR MR. STRANGE: Voyager Inc. a social club incorporated under the statutes of the State of Indiana is presently preparing an application for a 123 Air Travel Club certificate.

Our club was formed January 1, 1974. We currently arrange many social activities for our members. In addition to these programs the club has utilized group fares and ITC programs for Hawaii, Mexico and other points.

After eight months of club operation we find that many of our members desire weekend trips to the Caribbean due to their limited time. Since group fares are not available to this area and the loss of much of their limited time due to the carrier's schedules, the club plans to utilize one L-188 aircraft for this purpose and occasional dinner flights.

The club aircraft operation would not affect our utilization of carriers for Hawaii and other long haul requirements.

The operation would be limited to Indianapolis departures and a maximum of 5000 memberships.

Our club is tentatively planning to submit our application for certification approximately December 1, 1974.

We certainly appreciate your arranging our meeting October 1, 1974 relative to the areas involved in applying for a 123 certificate and I am hopeful that the information contained in my letter may be of value prior to our formal application. Attached you will find a list of administrative personnel.

Sincerely,

GLENN A. JONES, *President.*

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Des Plaines, Ill., January 3, 1975.

MR. GLENN A. JONES,
*President, Voyager, Inc.,
Weir Cook Airport, Indianapolis, Ind.*

DEAR MR. JONES: This is to acknowledge receipt of your letter dated October 8, 1974, advising us of your proposed air travel club.

We have reviewed your general proposal. The name Voyager, Inc. should not be used to identify the new travel club. The name may be confused with the Voyager 1000 Travel Club which also was based in Indianapolis. They were found to be operating contrary to Federal Regulations. Consequently their operating certificate was not renewed.

The new travel club should not include, on its Board of Directors, any of those persons who were members of the Board of Directors of Voyager 1000, Inc. Our thoughts on this matter are based on the guidance in FAR 123.17(b) (2).

Please advise this office of your intention.

Sincerely,

JAMES E. STRANGE,
Chief, Air Carrier District Office 31.

F.A.A. REGULATIONS

FAR 123.17-(B) (2)

That a person who was employed in a management position similar to any listed under 123.13 or 121.59 of this chapter with (or has exercised control with respect to) any air travel club or any certificate holder under part 121 of this chapter whose operating certificate has been revoked, will be employed in any of those positions or a similar position with applicant and that the person's employment or control contributed materially to the reasons for revoking that certificate.

FAR 123.13

Management Personnel Required

A. Each applicant for a certificate under this part must show that it has enough qualified management personnel, including at least a Director of Operations, to assure that its operations are conducted in accordance with the requirements of this part.

B. Each applicant shall—

1. Set forth the duties, responsibilities, and authority, of each of its management personnel, in the general policy section of its manual;

2. List in the manual the names and addresses of each of its management personnel;

3. Designate one person as responsible for the scheduling of inspections required by the air travel club manual and for the updating of the approved weight and balance system on all aircraft operating by the air travel club.

C. Each air travel club shall notify the FAA district office charged with the over all inspection of the air travel club of any changes made in the assignment of persons to the listed positions within ten days of such change.

FEBRUARY 9, 1975.

JAMES E. STRANGE,
*Chief, Air Carrier District Office 31, Department of Transportation, Federal
Aviation Administration, Des Plaines, Ill.*

DEAR MR. STRANGE: I am in receipt of your letter of January 3, 1975 relative to the Voyager, Inc. general proposal of October 8, 1974 (prior to formal

application) for a Part 123 Air Travel Club Certification. Mr. Roger D. McKinley, our General Manager, advised me that he had talked with you concerning your reply letter of January 3, 1975.

I am aware of the content of F.A.R. 123.17-B-(2), however, the Voyager 1000, a Corporation, certificate *was not revoked*. Voyager 1000, a Corporation, submitted the necessary documents for renewal within the regulatory requirements, however, F.A.A. did not act on the renewal request pending the Seventh U.S. District Court decision.

The C.A.B. did not, and to this date does not have published regulations relative to the operations of an Air Travel Club. Voyager 1000, a Corporation, was approved and operating within the F.A.A. regulations and to our knowledge there were no violations of any F.A.A. regulations pending against Voyager 1000, a Corporation. I fail to understand how the above mentioned F.A.R. 123.17-B(2) can be applicable to Voyager, Inc. since the Voyager 1000, a Corporation, certificate was not revoked. Perhaps you can enlighten me further.

As a matter of fact it may be of interest to you, now that one year of activity has been completed and as a result of our first annual membership meeting, the board of directors of Voyager, Inc. now include five members who have never held a management position with the former Voyager 1000, a Corporation.

We are inclined to agree with you that there might be a chance of confusion between the names of the former Voyager 1000, a Corporation, and our name of Voyager, Inc. and thank you for bringing this to our attention. To rename our club would pose no problem and could possibly be to the best interest of all concerned.

We would appreciate a review of your letter of January 3, 1975 in light of the above and would appreciate an early reply in order that I may promptly notify the membership.

Yours very truly,

GLENN JONES, *President.*

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES,
Washington, D.C., February 10, 1975.

HON. HOWARD W. CANNON,
*Chairman, Subcommittee on Aviation,
Senate Committee on Commerce,
Washington, D.C.*

DEAR MR. CHAIRMAN: In connection with your forthcoming hearings on S. 421, the "Low-Cost Air Transportation Act," we wish to respectfully invite to your attention a subject which you and your subcommittee may wish to take under consideration.

We are indeed in sympathy with and support your efforts to provide reduced airline fares to certain segments of our population under appropriate circumstances.

Among those who we believe should be included, both to their benefit and to the benefit of our nation's defense effort, are a significant number of members of the Ready Reserve segment of our Reserve Components.

Our Association addressed itself to this subject in adopting ROA Resolution No. 12 on 16 February 1973, a copy of which is attached. We believe the thrust of this resolution is as valid today as it was at the time our National Council approved its adoption.

As pointed out therein, there are a number of members of the Ready Reserve serving voluntarily whose assignments require them frequently to travel considerable distances to the place of their assignment for inactive duty training. As you well know, they are individuals of considerable qualifications whose talents would be invaluable to our defense effort in the event of mobilization.

Unlike annual tours of *active duty* for training (usually of fifteen days' duration), Reservists are not reimbursed for travel to their duty assignment for *inactive duty* training periods (usually of short duration, one or two days) but must bear the cost themselves.

We firmly believe that if reduced airline fares were provided under the above-mentioned circumstances, this action would significantly improve the capability of the Services to attract and retain valuable members of their Reserve Components.

This would not only increase our defense capability but would reduce its cost through the utilization of trained Reservists in lieu of full-time active duty personnel.

For the foregoing reasons, we strongly urge the inclusion in the bill now under consideration provisions for reduced commercial air fares for members of the Ready Reserve traveling to and from their training location for authorized inactive duty training.

We believe this could be accomplished by including in Section 6(a) of S. 421 wording to the effect: "to members of the Ready Reserve of the Armed Services while traveling to and from their place of abode and place of training assignment to perform inactive duty training as defined in Section 101(31) Title 10, United States Code."

Your approval of this proposal is earnestly solicited.

Sincerely,

JOHN T. CARLTON,
Executive Director.

Enclosure.

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

RESOLUTION NO. 12—REDUCED FARE ON COMMERCIAL AIRLINES READY RESERVISTS TRAVELING TO RESERVE DUTY AT THEIR OWN EXPENSE

Whereas, there are many members of the Ready Reserve who have inactive duty assignment locations at considerable distance from their places of residence, and

Whereas, except for their annual active duty training period or for special tours of active duty they are not authorized reimbursement for travel to and from their inactive duty training assignment location, and

Whereas, many such Reservists in order to perform their inactive duty training requirements find commercial air travel to be the only expeditious and appropriate means of travel, and

Whereas, this means a considerable personal financial sacrifice to the individual concerned, and

Whereas, this inactive duty training is necessary and beneficial to our national security, and

Whereas, the benefit of reduced fare commercial air travel is a necessary added incentive towards recruitment and retention of personnel in the Ready Reserve,

Now therefore be it resolved by the Reserve Officers Association of the United States that the Secretary of Defense be requested to seek reduced fare commercial air travel for Ready Reservists traveling at their own expense, in uniform, to and from their home and place of inactive duty training.

Adopted by the National Council 16 February 1973.

Attest:

JOHN T. CARLTON, *Executive Director.*

CONTINENTAL AIRLINES,
Washington, D.C., February 12, 1975.

Hon. HOWARD CANNON,
*Chairman, Aviation Subcommittee,
Russell Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is intended to reflect Continental Airlines comments with regard to S. 421.

You will recall that Mr. Six stated in testimony before your Subcommittee in February 1971 the following:

"So long as I am permitted to compete with them (supplemental air carriers) on reasonably equal terms, I look upon them as a benefit, because they have brought to air transportation many passengers who would not otherwise have flown. They have had their greatest success in markets where there is a lack of effective competition by the scheduled carriers. I did not support the campaigns of the scheduled carriers against the supplementals in 1962 and 1968, and I could not support today restrictions which would put them out of business."

We do not oppose enactment of S. 421. However, we do believe that the public interest requires that such legislation have a provision which would revoke the currently restrictive off-route charter limitations currently imposed upon us by OAB regulations. Without this provision we would be precluded from participating in the realization of the benefits to be derived by the public through the enactment of S. 421. Again, with this suggested provision, we would not be "permitted to compete" on reasonably equal terms.

Continental has long believed in various promotional and discount fares. We concur with the provision of making reduced rate transportation available for youth and the elderly on a space available basis. We do not agree that it would be in the public interest to make such reduced rate transportation available to "handicapped persons" because we believe it impossible to clearly define the term "handicapped". Thus, inclusion of that category of the general public would ultimately lead to widespread litigation and confusion.

Our last comment is in connection with the proposed provision of S. 421 whereby "a supplemental air carrier may control or be under common control of a person authorized by the Board to make such sales." This represents an extreme form of vertical integration and is patently anti-competitive in nature. Accordingly, we believe that such common control, whether it be a supplemental or a scheduled carrier, should be made unlawful.

Respectfully yours,

HARVEY J. WEXLER.

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,

Washington, D.C., February 13, 1975.

HON. HOWARD W. CANNON,
Chairman, Subcommittee on Aviation,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In lieu of a personal appearance before your Subcommittee, I am submitting the following statement on behalf of the National Association of Motor Bus Owners (NAMBO) in opposition to the reduced fare provisions of S. 421.

NAMBO is the national trade association for the intercity bus industry. Our 450 operator members provide more than 90 percent of all intercity motor bus transportation in the United States.

Section 6 of S. 421 would authorize air and motor carriers regulated respectively by the Civil Aeronautics Board and the Interstate Commerce Commission to publish reduced fares for the transportation of handicapped persons, the elderly (persons 65 years of age or older), and young people (21 years of age or younger). The authorization respecting reduced air fares is broader in that it covers family fares, but more restrictive in that reduced air fares for the elderly and the young could be granted only "on a space-available basis."

For the reasons hereinafter explained, any extensive reduction in either airline or bus fares pursuant to the provisions of Section 6 to S. 421 would be highly detrimental to the intercity bus industry. With respect to the authorization of reduced bus fares for "persons who are blind or otherwise physically or mentally handicapped," intercity bus operators now permit a blind person and another person traveling as a guide to travel together at the price of one ticket. No charge is made for the transportation of seeing eye dogs which accompany the blind.

Section 216(d) of the Interstate Commerce Act makes it unlawful for motor common carriers of passengers to subject any person or group of persons to undue discrimination or to extend to such persons any undue preference or advantage. The exceptions of the statutory rule against discrimination are set forth in Section 22 of the Act. The principal exception in Section 22 is that motor carriers of passengers, notwithstanding the Section 216(d) prohibition against discrimination, may provide for "The transportation of persons for the United States Government free or at reduced rates. . ."

The proposed Surface Transportation Act of 1974 considered in the last Congress reflected a broad consensus among Members of Congress, government officials, and the regulated surface transportation industries that the Federal government, except in time of war, should not benefit from discriminatory

freight rates authorized by Section 22.¹ As a matter of principle, we do not believe the Federal government should be the beneficiary of discriminatory rates and charges underwritten indirectly by non-governmental shippers and passengers. Accordingly, we believe it would be most unfortunate if the Congress sanctioned an extension of discrimination, as proposed by Section 6 of 421.

As indicated, the legal effect of the pending bill is to declare that reduced air and bus fares to special categories of travelers do not constitute an unreasonable preference to any class of passengers or subject any class to unjust discrimination within the meaning of Section 216(d) of the Interstate Commerce Act or Section 404(b) of the Federal Aviation Act. In other words, what is patently discriminatory as a matter of fact would be declared to be non-discriminatory as a matter of law. Among those subjected to the possibility of discrimination would be millions of unemployed persons between the ages of 21 and 65 and members of disadvantaged minority groups falling within those age brackets.

The extent of discrimination inherent in such fare differentials was recognized by the Civil Aeronautics Board when it required the airlines to cancel youth and family fares (Order 72-12-18, Phase 5, *Discount Fares, Domestic Passenger Fare Investigation*, Docket 21866-5). The Board said: "However, the record in this proceeding establishes that the developmental benefits of those fares are at best, marginal, and that youth and family fares burden the normal-fare passenger in the long run."

In actual practice, however, discrimination against bus passengers between the ages of 21 and 65 would probably not be widespread. The underlying premise of the proposed amendment to Section 22 is that motor carriers of passengers desire to transport elderly persons and young persons at reduced fares but are prohibited from doing so by the anti-discrimination provisions of the Interstate Commerce Act. In fact, few intercity motor bus operators would voluntarily reduce fares for the elderly and for young people while charging higher fares for passengers who are no more affluent. Thus, enactment of permissive fare reduction legislation would generate false hopes of lower bus fares among many thousands of people.

The basic reason why most intercity bus operators would not reduce fares in the manner proposed to be authorized by Section 6 of S. 421 is that any significant reduction for both young and elderly passengers would be an act of economic suicide.

Unlike the airlines, intercity bus operators do not require passengers to obtain reservations in advance of travel. Consequently, they are unable to limit the number of persons traveling at reduced fares to available unoccupied space. To illustrate the problem, a 43-passenger bus traveling 300 miles between points A and D via points B and C, may carry only 20 passengers between A and B, 42 between B and C, and 30 between points C and D. It would be unthinkable to sell young and elderly passengers reduced fare tickets for transportation between A and D but to evict them at point B; and it would be inordinately expensive to add a second bus at point B. On the basis of long experience with a wide variety of promotional fares, intercity bus operators are convinced that substantially lower fares for the elderly and for young people would require a large investment in additional drivers and equipment which could not be justified on any economic basis.

A survey of intercity bus travel in the *National Travel Survey* of the 1972 Census of Transportation indicates that approximately 52 percent of all round-trip bus travelers to points at least 100 miles away from home are 65 years of age or older or 21 years of age or younger.² No intercity bus operator would be financially able to reduce fares substantially for such a large percentage of its passengers without inviting bankruptcy.

The intercity bus industry is not opposed to incentive fares but believes they should be economically justifiable and made available on a non-discriminatory basis. Bus transportation is by far the most economical mode of transportation

¹ The proposed Surface Transportation Act of 1974 was approved by the House of Representatives on December 10, 1974, but the Senate failed to act prior to the end of the 93rd Congress. However, there was no substantial opposition to Title V of the bill (H.R. 5385) prohibiting reduced government rates under Section 22 of the Interstate Commerce Act except "to the extent such services are performed in time of war . . ."

² The number of bus passengers potentially affected by S. 421 would be somewhat less than 51 percent because children under the age of 12 are presently carried at half fare.

in the country today. In spite of constantly rising operating costs, bus fares have been held well below those of other modes. Round-trip bus fare between Washington and New York for example, is only \$27.20. Air shuttle fare is \$60.74 and government-supported Metroliner fares are \$72.00 first class and \$44.00 coach. Bus transportation is a good buy without any additional discount.

The economic harm threatened by Section 6 of the pending bill flows primarily from paragraph (a) authorizing reduced air fares rather than from paragraph (b) authorizing discriminatory bus fares. Most intercity bus operators, being unable to confine the reductions to a space-available basis, would not lower their fares. Air carriers, on the basis of past experience, probably would be compelled for competitive reasons to offer family and youth fare discounts with consequent economic injury to both the airline and intercity bus industries. In Docket 21866-5, Phase 5, *Discount Fares, Domestic Passenger Fare Investigation*, the Civil Aeronautics Board found that family and youth discount fares were not only unjustly discriminatory but also unreasonably low and noncompensatory in the long run. As aptly put by then Chairman Timm in his testimony before this Subcommittee on May 7, 1973, on various bills providing for reduced rate transportation for youth, elderly and handicapped:

"Mr. Chairman, what all this comes down to is that in air transportation, as in everything else, you can't get something for nothing. Someone would have to pay for the shortfall that would result from the enactment of the bills under consideration in this hearing. And that someone is the normal fare paying passenger."³

The bill, in authorizing family, elderly and youth fare discounts, distorts the relative inherent economic advantages of both air and motor carriers of passengers. An important inherent advantage enjoyed by motor carriers of passengers is that they are the most energy-efficient mode of passenger transportation. A 43-passenger intercity bus fully loaded can produce 258 passenger miles per gallon of fuel. By contrast, the air passenger miles produced per gallon of fuel in fully loaded aircraft range from 30 to 60 depending on type of equipment and length of flight.⁴ Legislation which would encourage diversion of traffic from a more energy-efficient mode to a less efficient mode is not consistent with sound national energy policy.

Another important inherent advantage of motor carriers of passengers is their ability to provide intercity transportation at a cost far below that of any other mode. The economy of intercity bus service has a particularly strong appeal to young people and to the elderly because many in those age groups tend to place a relatively low value on their time. Air transportation, on the other hand, is far more expensive than bus travel but it has a special appeal to businessmen and to others who place a relatively high value on their time. We must question the wisdom of a legislative proposal which contemplates a reduction in air fares charged to businessmen and affluent tourists over the age of 65.

In the past, air carriers have not published reduced fares generally available to the elderly on a space-available basis. As Section 6 of the bill is presently written, it would be permissible for air carriers to publish reduced fares for the benefit of young people while charging the regular fare to all persons 65 years of age or older. Although it is obviously discriminatory to favor the young and the elderly at the expense of other equally deserving classes of persons between the ages of 21 and 65, the discrimination would be compounded if reduced air fares were extended to the young but not to the elderly. In the light of past experience, the probability is that those 65 years of age or older would derive no benefit whatever from enactment of Section 6 of the pending bill.

CONCLUSION

Hopes would be generated by enactment of Section 6 of the pending bill and promises implied. By enacting the bill the Congress would be promoting a hope, if not making a promise, that the young and the elderly who travel by bus and the elderly who travel by air will derive some benefit from the legislation. When

³ Hearing before the Subcommittee on Aviation, Committee on Commerce, United States Senate, 93rd Cong., 1st Sess., *Miscellaneous Bills to Reduce the Rates for Air Transportation for the Youth, Elderly, and Handicapped Persons*, May 7, 1973, p. 41.

⁴ Detailed figures are set forth in Appendix C to *Report to the Congress on the Rail Passenger Service Act*, U.S. Department of Transportation, July 1974.

these people discover they are not to be the beneficiaries of reduced transportation fares, they may well conclude, albeit erroneously, that they are the victims of some legislative hoax.

I respectfully request that this statement in opposition to enactment of Section 6 of S. 421 be placed in the record of the hearings of your Subcommittee.

Sincerely yours,

CHARLES A. WEBB, *President.*

INTERNATIONAL AIR TRANSPORT ASSOCIATION,
Geneva, February 24, 1975.

HON. HOWARD W. CANNON,
Chairman, Senate Aviation Subcommittee, U.S. Senate, Washington, D.C.

DEAR SENATOR: In the context of the present Sub-Committee Hearings chaired by you and directly affecting *international* air transportation, I have the honour to attach a note quoting relevant extracts from a statement made by me on 10th February 1975 to a world tourism/air transportation conference organised by IATA/IUOTO (WTO), under the auspices of the Philippine Government.

I would request that this document be made part of the official record of the Sub-Committee Hearings.

Yours sincerely,

KNUT HAMMARSKJOLD.

Enclosure.

EXTRACTS FROM ADDRESS TO THE WORLD CONFERENCE ON TOURISM AND AIR TRANSPORT IN MANILA BY MR. KNUT HAMMARSKJOLD, DIRECTOR GENERAL OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION—10 FEBRUARY 1975

The basic values and elements of any economic venture, especially of the magnitude of *international* air transportation and tourism, have undergone revolutionary changes during the last two years—one could also term it a revolution of international air transport—and the sooner we recognise fully that we now live in a new and different world, the better for all concerned. In other words, the fundamental concepts of *international* airline economics have changed. The change is continuing and it must be recognised that new approaches are needed to compensate for conditions in the new environment.

The time has come for sharing ideas in an *international* air transport system where problems are so complex that no suggestions for remedying them should go ignored. We must overcome the obstacles in our path, while continuing to provide economically viable and necessary scheduled and programmed services, both for individual and bulk travel, which are vital to keeping the political, social and economic wheels turning.

This implies re-examining some of the 'Sacred Cows' standing in the way of progress. Examples of these include outmoded definitions, artificial market segregation and excess capacity. To obtain maximum benefits from existing resources, the challenge of these problems must be met. I am convinced that this is possible in the interest of both the public and the industry—if the artificial, man-made obstacles can be removed.

A realistic appraisal of the airlines' response to an unprecedented combination of adverse economic forces during the past year leads me to conclude that, given the necessary determination by all concerned to overcome existing man-made obstacles of all natures to new and imaginative solutions, air transport will overcome the present problems and face constructively the new world within which it has to provide its *international* public service.

In the world of today, common sense and public opinion cannot tolerate continued wastage of resources, no matter what form they take. The sooner we all realize this and adjust accordingly the better. Therefore maximum use has to be made of all existing resources, including utilization of aircraft in *international* traffic, thereby ensuring the lowest possible bulk and individual fares to the public and, at the same time, maintaining satisfactory services necessary for the vital international commercial, economic and political relations. This objective obviously requires both imagination and the abandonment of dogmatic regulatory and legal concepts.

AMERICAN AUTOMOBILE ASSOCIATION,
Falls Church, Va., February 28, 1975.

Senator HOWARD W. CANNON,
Chairman, Subcommittee on Aviation, Senate Commerce Committee, Russell
Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: The 16 million member American Automobile Association applauds your continuing efforts to provide the American public with low-cost air transportation. In this connection, we heartily support the concepts embodied in S. 421, better known as the Low-Cost Air Transportation Act. The enactment of this type of legislation should enable more Americans, particularly those in the lower and middle income groupings, to enjoy the benefits of air transportation.

We would, however, like to call to your attention two sections of S. 421 which we think could have serious negative implications for the future of low-cost charter air transportation. These deal with (1) relationships between air carriers and tour operators and (2) the authority of the Civil Aeronautics Board (CAB) to regulate "affinity" charters.

The language on page 5, lines 17-21 gives supplemental air carriers the right to control or be under common control with persons authorized to sell tours, subject to the approval of the CAB. AAA feels that approval of such relationships would foster an anti-competitive situation. The language in section 3(c) of S. 421 would allow the eight presently active supplemental carriers to market tours through their own tour operators. This would enable these tour operators to package tours using hotels and other ground arrangements owned by the air carriers, thus resulting in an absolute vertical integration of the tour industry. Small tour operators and travel agents probably would find it difficult to compete against the prices of their rivals under the control of supplemental carriers. Those unable to enter into these relationships could soon be driven out of business, thus reducing the competition to the detriment of the consuming public. Recent history shows clearly that CAB regulatory moves often lead to a lessening of competition and higher prices for consumers. We think the public would be better served by the present law which prohibits these "control" relationships.

Proponents of this section point to the existence of common control relationships between foreign air carriers and tour operators in Europe and Canada. However, the record is devoid of any factual basis for concluding that U.S. air carriers are actually suffering competitively with foreign air carriers in such a manner that could be cured by enactment of the "common control" language in section 3(c). In addition, proponents do not mention the increased risk that supplemental carriers would have to bear where a financially related tour operator marketed the program. Assumption of risk by supplemental air carriers would tend to divert their management from their primary business, that is, providing quality air transportation. AAA hopes that this provision will be dropped from what is otherwise a most worthy piece of legislation.

AAA is also hopeful that the Advanced Booking Charters (ABC) and Inclusive Tour Charters (ITC) developed by S. 421 may lead to the abandonment of "affinity" charters. Although they have had some success, "affinity" charters discriminate against the many thousands of people who are not fortunate enough to belong to a charter-worthy group. As you know, the CAB has found it very difficult to enforce "affinity" rules and regulations. Hopefully, the new types of charters will open low-cost air transportation to a much broader spectrum of the American public. For these reasons, AAA urges that the language in Section 4 of the Bill (line 22 on page 5 through line 9 on page 6) be removed so that the CAB will be able to terminate "affinity" charters once viable alternatives have been put into operation and tested.

In summary, AAA favors the enactment of S. 421 subject to the changes noted above.

Sincerely yours,

JOHN DE LORENZI,
Managing Director, Public Policy Division.

BALLARD & BEASLEY,
ATTORNEYS AT LAW,
Washington, D.C., February 28, 1975.

HON. HOWARD W. CANNON,
Chairman, Aviation Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On February 13, 1975, Mr. Paul R. Ignatius, President of the Air Transport Association, testified before your Aviation Subcommittee on S. 421. You directed an inquiry to him involving the interest of the scheduled carriers in a change in the CAB 2% off-route charter limitation rule and whether such a continuing or changed rule should be written into legislation.

As a general matter, Southern Airways, Inc. concurs with the position of the Air Transport Association as expressed by Mr. Ignatius in opposition to legislating detailed charter rules. On the other hand, Southern has and has had over a period of years a strong interest in the CAB's liberalizing the 2% off-route charter limitation for subsidized local service carriers. The purpose of this letter is to advise that, in view of the importance to Southern of revenues from off-route charters and of the fact that the 2% limitation has in the past and will in the future limit its charter revenues, Southern favors Congressional action unless your committee can obtain assurances from the Civil Aeronautics Board that it will ease the 2% off-route charter limitation for Southern and other subsidized local service carriers.

Briefly stated, the reasons Southern favors this action are as follows:

1. Southern is a subsidized carrier which has substantial charter business and, as a result, has reduced its dependence on subsidy and benefited the traveling public, both the users of its certificated service and its charter passengers as well.

2. The 2% limitation on off-route charters has in the past and still today very definitely prevented Southern from maximizing its charter revenues.

If we can be of further assistance by giving you detailed data regarding Southern's charter activities and its relationship to subsidy reduction as well as to public benefits conferred on the traveling public by its off-route charter operations, please feel free to call upon us.

Sincerely yours,

CECIL A. BEASLEY, Jr.,
Attorney for Southern Airways, Inc.

OZARK AIR LINES,
March 4, 1975.

HON. HOWARD W. CANNON,
Chairman, Aviation Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the hearings on S. 421 you raised a question concerning the present 2% off-route charter mileage limitation maintained by the Civil Aeronautics Board, and requested airline views as to its validity. The Air Transport Association, in its letter dated February 27, 1975, has responded to your inquiry on behalf of its membership, including Ozark.

While we generally agree with the ATA comments, we wish to expand somewhat on our own position with respect to this matter.

It is our view as a matter of principle that the regulation of airline charter operations should be developed and administered by the Civil Aeronautics Board within broad legislative guidelines, and that Congress should not become involved in this area in the detail contemplated by S. 421. In any case, however, we strongly believe that in restructuring the existing charter regulatory scheme, whether it be accomplished by the CAB in rule-making proceedings or through Congressional action, the present off-route charter mileage limitation should be removed as contrary to the public interest. This is particularly true with respect

to the local service carriers, such as Ozark, which have a small on-route mileage base against which to apply such limitation, and with respect to which the salutary effect of added revenues from whatever source, as an offset to subsidy requirements, is so obvious.

The existing charter mileage limitation is an unjustifiable constraint insofar as our present operations are concerned, in that it serves to limit the booking of charter business offered to us, in many cases because of our ability to make available on a flexible basis the smaller-capacity jet aircraft which we and other local service carriers operate, and which are ideally suited to a wide variety of charter movements. It is only through the revocation of this rule that our contribution to the public benefits to be derived from the operation of charter services can be maximized, and our ability to compete on equal terms in the charter market be realized.

Sincerely yours,

FREDERICK DAVIS.

AMERICAN COUNCIL OF THE BLIND,
Washington, D.C. March 6, 1975.

Senator HOWARD CANNON,
Subcommittee on Aviation, Senate Committee on Commerce, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: I enclose a copy of a statement filed for this organization on February 28, 1975 to be included in the hearings record on S. 421. With further reference to the *right* of handicapped persons to travel on airlines. I call your attention to an article in the February issue of *Performance* which is published by the President's Committee on Employment of the Handicapped. The title of the article is, "Hi! I'm Judy. Fly Me." which appears on page 4 and which refers to other incidents of discrimination against handicapped passengers.

It is imperative that Congress establish legal rights for handicapped persons to travel on airlines without restrictions imposed by the FAA and the airlines. We hope that the Senate will establish those rights through S. 421 and that free or reduced fares will be authorized for attendants of handicapped passengers but that the use of such attendants will be at the option of the passenger according to his convenience or necessity.

Rules recently proposed by the FAA would restrict the number of handicapped passengers who would be permitted to fly on each flight. This and other limitations on the rights of handicapped persons will occur unless Congress acts to prevent them.

Respectfully,

DURWARD K. McDANIEL,
National Representative.

Enclosure.

STATEMENT OF FLOYD QUALLS, PRESIDENT, DR. S. BRADLEY BURSON, CHAIRMAN, LEGISLATIVE COMMITTEE, AND DURWARD K. McDANIEL, NATIONAL REPRESENTATIVE, AMERICAN COUNCIL OF THE BLIND

SUMMARY

The American Council of the Blind:

1. Favors the enactment of S. 421 with amendments.
2. Favors the inclusion by reference of the definition of blindness in Section 216 of the Social Security Act.
3. Favors the extension of reduced fare permission to sighted attendants of blind persons who choose to travel with such attendant for reasons of necessity, convenience or safety.
4. Opposes the restricting of authorization to grant free or reduced fare concessions to a "space available" condition.
5. Favors amendments prohibiting air and surface carriers from limiting travel by a blind or otherwise handicapped person who elects to travel alone or without an attendant.

We concur in the remarks of Senator Cannon in introducing S. 421 on January 27, 1975. We welcome the inclusion of handicapped, aged and youths in the

amendments to both air and surface transportation. Suggested amendments to S. 421 will appear at the end of this statement.

In 1927 Congress amended the Interstate Commerce Act to permit bus and rail carriers to grant free or reduced fares to a blind passenger traveling with a sighted attendant. Fare concessions were granted by all of the rail and bus carriers, and the arrangement has worked satisfactorily for the blind passengers and the carriers. The American Foundation for the Blind has at all times acted as the certifying agency to establish the eligibility of blind passengers for the authorized fare concessions. The Foundation's service has been provided without cost to the carriers and has been an accurate and convenient means of establishing eligibility, based upon the findings of ophthalmologists and optometrists. The Foundation still provides this service and issues identification cards and between 20,000 and 30,000 books of travel coupons per year to eligible blind persons for their use when bus or rail tickets are purchased. It has been the Foundation's experience in issuing these coupon books that less than seven percent (7%) of the eligible blind persons in the United States have applied for these books and that a smaller percentage use them.

The American Foundation for the Blind is willing to add to the existing service a similar function for the convenience of air lines at any time when free or reduced fare concessions are authorized and established.

The reasons which brought about the legislation pertaining to surface carriers were: to facilitate travel by blind persons; to relieve transportation employees of the necessity of assisting blind passengers; and to permit the blind passenger to have the assistance of a sighted person after reaching his destination. The concession generally granted by surface carriers was free transportation for the sighted attendant, but with no reduction in the fare of the blind passenger. Thus the blind passenger was spared the double expense to which he would have been subjected if the existing law had not been enacted.

It is quite true that many blind persons travel by trains and buses without the assistance of sighted attendants, and the law does not require that blind passengers have sighted assistants when traveling. Nevertheless, many blind persons lack the experience, confidence or ability to travel conveniently and safely alone either during the actual travel or upon arrival at a destination. Approximately two-thirds of those who come within the legal definition of blindness lost their sight after the age of sixty (60) years. While some of these persons adjust very well to traveling with impaired vision, many do not. We are pleased to report that younger blind persons in increasing numbers are becoming more efficient in traveling and have demonstrated their abilities; but we cannot forget those who want assistance for reasons of necessity or convenience.

The rationale for free or reduced fare concessions on surface carriers is equally applicable in the case of airlines. Generally, airline employees are quite helpful, but the fact remains that the assistance rendered by airline personnel for severely handicapped passengers is requiring an increasing amount of their time. More and more blind and other physically impaired persons (many of them with more than one impairment) are finding it necessary or desirable to travel by air. It is only equitable that handicapped passengers who need or want the assistance of an attendant should be spared the double cost which will continue to be imposed unless this legislation is enacted.

This kind of legislation imposed no economic hardship upon surface carriers, and it will not be costly for airlines. None of the surface or air carriers consistently sells all available seats. This legislation will increase the use of airlines by handicapped passengers. It is well understood that this legislation is permissive and that no airline will be required by these provisions to grant free or reduced fare concessions. We do not contend that mandatory legislation should be enacted, but we do point out to the Subcommittee and to any airlines which may oppose this legislation that citizens and taxpayers do have a vested interest in air transportation through the investment of tax dollars in municipally constructed airports and direct subsidies paid to airlines by the Civil Aeronautics Board and the U.S. Postal Service.

With particular respect to blind passengers, the Civil Aeronautics Board and the airlines will have no difficulty in determining who is "blind." The Social Security Act and the Internal Revenue Act both define the term, and it would probably be desirable to include that definition in this legislation. Sight loss is objectively measurable by ophthalmologists and optometrists, and such findings,

when processed through the procedures employed by the American Foundation for the Blind, provide an orderly and accurate determination of eligibility without expense or inconvenience to the airlines.

It may be construed by some that such concessions should be granted on a "space available" basis only. The uncertainties which "space available" would create for the blind passenger and for the airlines would be so undesirable that no concessions would ever be granted. Consider, for instance, the confusion and inconvenience which would exist in a busy airport where the passenger and his guide are waiting at the departure gate on a "stand by" basis, with their luggage, which cannot be checked until the passenger has a seat on the plane. No airline will want to face the inevitable consequence of having a blind passenger stranded in a strange airport because there is no available space on a flight. The surface carriers recognized from the first that such an uncertainty would make problems for them and therefore never used a "space available" rule. While airline travel is greatly curtailed at this time, and seats are available, it is neither practical nor desirable to base the granting of free or reduced fare concessions on the availability of space. We know that such concessions will not have an adverse economic effect, but it is imperative that their use be trouble-free for the airlines.

The Federal Aviation Administration has on two occasions proposed regulations which would restrict air travel by handicapped persons. Moreover, the FAA entered into an agreement in 1962 with the Air Transport Association dealing with interline acceptance criteria for disabled persons under section 412 of the Act. Under this agreement and other rules of the FAA air carriers have been permitted to exclude handicapped persons for a variety of unjustified reasons or upon the arbitrary decision of airline personnel. The official rationale for excluding handicapped passengers is based on safety. With reference to the apprehensive assumptions about evacuating handicapped passengers, there is not in any event any guarantee by the government or an airline that any passenger will be safely evacuated after a survivable accident. Handicapped passengers are as aware of the risks of flying as anyone else, and it is no solution to merely exclude such persons. Nor is it any solution to anybody's problems to exclude such persons on the speculative assumption that their presence might increase the risks for other passengers. This organization urges a revised governmental perspective, one which would regulate the airlines rather than the passengers. We request that the Subcommittee on Aviation review the regulations proposed by the FAA and the 1962 agreement with the Air Transport Association. We recommend that S. 421 be amended to preclude the exclusion of handicapped passengers by air and surface carriers.

A number of incidents have occurred in which handicapped passengers have been excluded because they were not accompanied by attendants. We urge the Subcommittee to deal with this subject by amendment or by a definite policy statement in the committee report which will provide a legal base to prohibit such discrimination, whether a blind or handicapped passenger is accompanied by an attendant or traveling at a free or reduced rate.

SUGGESTED AMENDMENTS TO S. 421

1. That the following language be inserted in the printed bill immediately after the word 'persons' in line 6, page 7: "and to a sighted attendant traveling with such persons."

2. That the following language be inserted in the printed bill by adding a new sentence after the closing quotation marks on line 12, page 7: "As used in this subsection the term 'the blind' means persons whose visual acuity is no better than that prescribed in the definition contained in section 216(i) of the Social Security Act. Nothing in this subsection shall be construed to limit air travel by a blind or handicapped person traveling alone or without an attendant."

THE FLYING TIGER LINE INC.,
Los Angeles, Calif., March 13, 1975.

HON. HOWARD W. CANNON,
Chairman, Subcommittee on Aviation,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to offer certain comments on behalf of The Flying Tiger Line Inc. with regard to the proposed Low-Cost Air Transporta-

tion Act (S. 421). As a certificated all-cargo carrier, Flying Tiger has no significant interest in the proposed Act insofar as it relates to passenger air transportation. However, we are very concerned about the possible implications for air freight transportation of S. 421 and of the alternative legislation suggested by Mr. Richard O'Melia as Acting Chairman of the Civil Aeronautics Board. Our comments are directed to those concerns.

We firmly believe on the basis of our experience that the issues raised by the question of cargo chartering are significantly different from the issues considered by the Committee with regard to the relationship between scheduled and charter passenger transportation. It is our conviction that a broad scale program of cargo chartering would benefit only the largest shippers and forwarders and would tend to restrict the access of smaller shippers to air freight transportation at a reasonable cost. In our opinion, such a program would drive the cost of air freight transportation for the small businessman and the general public up, rather than down. The bases for our views in this regard, in summary form, are as follows:

(1) Air is the lowest cost mode for the transportation of passengers over long distances. The air passenger market is therefore a broad consumer market based to a large and increasing extent on the discretionary demand of a broad segment of the public for vacation travel. Consequently, the demand for air passenger transportation is extremely price sensitive, and volume can therefore be expected to grow significantly, and has grown significantly, with price reductions.

(2) Air freight transportation is inherently the highest cost mode for moving goods. Internationally, the highest effective ocean freight rates are one-tenth to one-fifth of the prevailing air freight rates. Domestically, surface freight rates are approximately one-third or less than one-third the prevailing air freight rates, and domestic air freight rates do not at present fully recover the cost of domestic air freight transportation and have never earned a reasonable return on investment.

The air freight market is a commercial and industrial market, not a consumer market. Given the inherent disparity between surface and air freight rates, commerce and industry use higher cost air freight only to obtain the special value of air freight service. They are seeking the service element, and only purchase air freight in response to service requirements and service performance. There is no hope of sufficiently lowering the cost of air freight through cargo chartering or any other means, absent a great and as yet unconceived leap forward in aircraft technology, to attract large volumes of freight from the surface into air, and to thereby create a mass market for air freight transportation similar to that which exists for passenger travel. Air freight will continue to grow, but will always be a specialized part of the total freight market.

(3) While a broad program of passenger chartering could benefit a mass consumer market by bringing air transportation within the reach of a wide segment of the public, a broad scale program of air freight chartering would benefit only a few large shippers both internationally and domestically who generate sufficient volumes of traffic to warrant the chartering of aircraft as opposed to the use of the scheduled system. By withdrawing their large volume shipments from the scheduled system in favor of a private chartering system tailored to their own particular needs, the large business entities which are in a position to use chartering would gain a competitive advantage over their smaller competitors through lower cost air transportation. The withdrawal of their volume from the scheduled system would also undercut the scheduled system and reduce the scheduled service made available to the smaller shippers who make up the vast majority of the shipping public.

(4) Historically, in markets in which adequate freighter service is available, forwarders and consolidators have used consolidated charters not to benefit the shipping public as a whole through price reduction, but to increase the control of the largest forwarders over air transportation in general and over the forwarder industry in particular. The only domestic forwarders who have obtained sufficient volume to engage in regular and frequent chartering of aircraft in major markets have maintained general commodity rates higher than their competitors in the market in which the charter operates, and have used the leverage of the charter to compete with the smaller forwarders in the market through marginal or below cost pricing of selected specific commodities to capture the base loads of their forwarder competitors. In this case, as in the case of single entity chartering on a broad scale, the result is a benefit to the largest forwarders, and a detriment to their smaller competitors, and a benefit

to those few large shippers who offer sufficient volume to command marginal or below-cost pricing, and a detriment to the remaining smaller shippers through the loss of scheduled common carriage service and the payment of general commodity rates much higher than the specific commodity rates made available to their larger competitors.

We believe that the tremendous pressure which has developed in favor of the removal of restrictions on the availability of passenger charters may be felt by the Civil Aeronautics Board or its staff to be a mandate from the public and the Congress to move also to encourage broad scale cargo chartering. Despite the fact that S.421 has arisen from the Committee's consideration solely of passenger issues, we are concerned that the enactment of the bill without an amendment to clearly limit its scope and effect to passenger transportation will further encourage the inappropriate application of passenger principles to freight matters. This concern is heightened and underscored by the fact that the alternative measure suggested in Acting Chairman Richard O'Melia's letter to you of February 28, 1975 could be interpreted to: (1) *authorize for the first time split cargo charters and separate passenger and cargo charters on the same aircraft, and* (2) *authorize the Civil Aeronautics Board to permit cargo charters to freight forwarders, thereby resolving, quite incidentally and against the interests of the scheduled all-cargo industry, and in our opinion, of the public, a significant question under the present Act as to the Board's authority to permit such charters.*

The issue of cargo chartering has never received the consideration of the Congress and has never been included in the public debate which has occurred with regard to the role of charters in air passenger transportation. We strongly urge that significant issues with regard to cargo matters should not be dealt with by inadvertence in the context of a resolution of very different issues relating solely to passenger transportation.

For these reasons, we very strongly urge that S. 421 or any substitute measure be amended in appropriate respects to make very clear:

(1) that, since Congress has not specifically considered the question of cargo chartering, the proposed bill is limited in scope and effect exclusively to passenger transportation; and

(2) that The Federal Aviation Act, as it presently stands and as it will be amended by the proposed bill, does not authorize the Board to permit regular and frequent air freight charters to forwarders in markets otherwise adequately provided with scheduled freighter services.

Sincerely yours,

ROBERT W. PRESCOTT.

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C. March 17, 1975.

HON. HOWARD W. CANNON,
Chairman Aviation Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As suggested during the recent hearings on S. 421, we have reviewed the draft language of a provision submitted to you by the Acting Chairman of the Civil Aeronautics Board which would define a "charter trip".

The proposed definition, in our opinion, is defective in at least four areas. First, it is unclear as to which types of carriers may perform charter trips. Second, it inadvertently precludes split passenger charters which are now authorized. Third, it fails to take into account the essential major role of charterers in arranging charters. And fourth, it raises a series of complex questions concerning cargo charter traffic which were not considered during the course of your recent hearings.

However, as is usually the case in defining new terms in the Federal Aviation Act, we encountered several new problems in trying to correct those found in the Board's proposal. Our efforts to resolve them with suitable language changes were unsuccessful because of the inherent difficulty involved in writing a simple, uncluttered definition while doing justice to the several issues which must be addressed in developing a meaningful definition of charter transportation.

As a consequence, we suggest for your consideration an alternative to the Board's proposal in the form of a new section of the Act entitled "Charter Transportation", which would for the first time express the intent of Congress on a positive charter transportation policy, while leaving to the Board the responsibility for defining detailed rules under the Act. A suggested policy expression, making clear the Board's obligation to authorize charter transportation meeting the public need, is contained in the attached draft.

We would be pleased to work further with you and your staff on this important matter.

Sincerely,

PAUL R. IGNATIUS.

Attachment.

NEW SECTION 418 "CHARTER TRANSPORTATION"

"Sec. 418.(a) The Board shall, by regulation, establish categories of charters that may be offered to the public by an air carrier or foreign air carrier. In establishing categories of charters, the Board shall take into consideration: (1) the need to maintain the distinction between charter and individually-ticketed transportation; (2) the need to assure the continued provision by air carriers of regularly scheduled air transportation; (3) the need for simplified regulatory controls which are meaningful in meeting public demand for low-cost air transportation; and (4) the need to assure that charter rates meet the requirements of Section 1002 of this Act."

○

As a consequence, we suggest for your consideration an alternative to the present program in the form of a new section of the Act entitled "General Provisions", which would lay out the general principles of the law in a positive, constructive manner, while leaving the detailed policy responsibilities and details to the various departments and agencies. This would be a more logical arrangement in view of the fact that the various departments and agencies are the ones who will be responsible for the implementation of the law.

Very truly yours,

WILLIAM H. HARRIS, Chairman, Commission

Enclosed for the Commission are two copies of the report of the Commission on the subject of the proposed amendments to the Act. The report contains a detailed statement of the Commission's views on the proposed amendments, and also a list of the various departments and agencies which are responsible for the implementation of the law. The Commission believes that the proposed amendments are in the best interests of the country, and that they should be adopted as soon as possible.

