

Prepared remarks of
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United States Senate
Committee on Commerce Science and Transportation
S. 415, Aviation Competition Restoration Act

I appreciate the opportunity to appear before this Committee today. As a point of departure, I believe we can agree that we are now at a particularly critical juncture in the nation's efforts to create a competitive airline industry. Travelers and the business community alike are keenly aware that a major airline consolidation effort is proposed that would have seemed incredible to industry experts just a few years ago. If this consolidation isn't halted, we have to consider the possibility that the entire U.S. air transportation industry may be in the hands of three or four major companies within the next few years.

The Uneven Impact of Deregulation

Deregulation of the airline industry has largely been a success with better service and better prices for the traveling public. Nonetheless, in many areas of the country, we have witnessed more costly airfares, a reduction in new entrants into air markets, and lessening competition among the major carriers with their grasp on key hubs. We have come to understand how fundamentally the lack of real competition and meaningful access to air service is linked to the economic development and vitality of our communities and states in addition to its impact on the leisure traveling public.

Initiatives of State Attorneys General

Over the past three years I worked closely with over thirty-five state attorneys general who have learned that the benefits of deregulation have yet to be

realized in significant parts of the states that they represent. Having formed a multi-state Airline Working Group, the States have taken concrete steps to ensure access to the advantages of deregulation for their citizens, especially through the support of an open and fair competitive environment in which low-cost and new entrant airlines can compete on a level playing field.

In the course of this effort we have learned a great deal. We have worked closely with others interested in these issues, including the Department of Transportation, the Department of Justice, as well as the Congress. We have also met with and listened to key consumer and industry groups on numerous occasions. We filed several sets of comments on proposals that were being considered by the Department of Transportation for dealing with the problem of unfair competition against new and emerging small carriers. And we contributed to the work of the National Transportation Research Board in its study of these same issues.

Currently we are examining dedicating substantial resources to investigating the airline mergers that have been announced, as well as looking into the possible impact of Orbitz, the airline owned internet ticket business currently in the formulation stage.

Benefits of Competition and Increased Airport Access: Specific Examples

In certain fortunate markets we have learned clear lessons about the benefits of competition to the consumers and business communities. Competition among the major airlines in our airports is a good start for our traveling public. We have also come to realize that low cost carriers can be a real asset for generating competition. One low cost carrier showing consistent growth reports that when it enters a new market that fares to the new markets that it serves are reduced by fifty percent and the passenger traffic increases by one hundred percent. I think that a few examples effectively illustrate this point.

Recently upstate New York has seen the advent of a local low cost carrier which has created immediate and significant competition for passengers with the result that some communities went from experiencing some of the highest prices in the nation to very competitive prices. In the hub city of Atlanta, a low cost carrier has moderated prices significantly for travelers in many city pairs.

When the Department of Transportation has elected to become proactive in encouraging competition through the distribution of slots, we have witnessed real competitive results. The provision of 75 slots at Kennedy airport in New York to a new low cost carrier, for example, has generated competition in numerous key markets including the traditional high cost area of upstate New York.

On the other hand, the historical trend can be seen with the acquisition of TWA by American Airlines. At National Airport in Washington TWA has 49 slots -- all of which may go to American -- giving that carrier a total of 390 slots at this airport which is one of the most important in the nation to travelers. This is precisely the circumstance which this bill is designed to address. Parenthetically, we believe it is already possible and entirely appropriate for the Department of Transportation to shift a number of these slots to competitors, especially low cost carriers which wish to enter the market but are prevented from doing so by the barriers to entry that we noted earlier.

Examples abound of the barriers to entry presented by a lack of gates, including such constricted locations as Boston and Philadelphia. When gates have been made available the results are good for competition and consumers. A low cost carrier fought for over a year to get gates at Newark where majors held control of the airport. In a number of instances the gates were not being fully utilized but were withheld from carriers trying to obtain space to run their operations. When the gates were finally opened, a reduction in prices to the markets served by this new competitor were immediately felt by local travelers. A similar story can be told about another small carrier, who after a two-year effort finally succeeded at obtaining gates at Detroit, to the benefit of consumers.

I would like to touch upon one final point I believe merits this Committee's consideration. While major airlines challenge the studies showing that consumers pay a premium at hub airports-- often called fortress hubs --, it seems fairly clear to most of us that the premiums are real and frequently substantial. When a competitor, especially a low cost carrier, is allowed to enter the market and compete for local traffic, the outcome is telling. In Atlanta a low cost airline has challenged the incumbent carrier in its own hub and prices to communities served by that airline have dropped substantially. We feel that this needs to occur elsewhere to provide the benefits of competition to consumers living in hub cities and this bill helps us do that. Again, we believe that the DOT can take steps to promote this healthy competition using its own authority.

S. 415 and Airport Access: Importance of Slots and Gates to Competition

We come before this committee in support of efforts by this Congress to pass legislation that will ensure a fair and equitable opportunity for competing airlines to obtain slots and gates and thereby access to key airports in our country.

Our involvement with airline issues has taught us that one of the primary factors that impedes competition in the industry lies in the ability of airlines to dominate individual airports. Quite obviously if competing airlines cannot get access to an airport, competition is impossible, regardless of any other factor. In

our view, airport access is a key to a real competitive marketplace. Access refers to both the physical space and also the vital time periods when people want to travel.

Our current system consists of a unplanned mixture of airport rules, transportation regulations, lease obligations, and squatters rights, that allow individual carriers to gain significant power to control access to individual airports. These conditions allow carriers such as Northwest to dominate the hub at Minneapolis-Saint Paul, for United and American to dominate O'Hare in Chicago, and for Delta to dominate Atlanta. And the most remarkable thing about this phenomenon is that it is effective against even the most powerful competitors in the industry. Not only making it difficult for small carriers to serve Chicago, Atlanta and Washington, the lack of access curbs the major carriers' ability to compete effectively in those markets as well.

Air transportation is a network business. That is, successful airlines have come to believe fervently in the idea that their growth and prosperity depends on their ability to fly everywhere, to offer major corporations and travel agencies unlimited options for reaching any destination. However, this desire to create a complete network collides head-to-head with the airport access problem.

We know that true and effective competition cannot be mandated or regulated. But what the government can and has the duty to do, is address the artificial structural barriers to entry created by arcane airport access rules as well as

de facto control of certain airports by the major carriers. We believe that these tactics are stifling competition.

Support for the General principles of S. 415

Airports are public facilities which must be accessible to all competitors on reasonable terms. As more and more people crowd the airlines, it is of paramount importance that the government devise a means of insuring that competitive initiatives are not thwarted as a result of structural conditions at the airports. Consequently, we strongly support efforts to create a better system for the allocation of gates and slots.

As we understand it, the underpinning of S-415 is twofold:

- C To grant the Department of Transportation greater power to approve airline mergers and acquisitions under new standards, and
- C to address more effectively the problem of the allocation of slots and gates.

Locus of Enforcement: DOT and DOJ

First, I want to note at the outset Transportation Secretary Mineta's recent commitment to place more emphasis on ways the Department can take a more proactive role in addressing crucial issues in the airline industry. This is a development that we welcome.

For some time we have recognized the potential for DOT to play a significant role in promoting competition in the market. In January, Secretary Slater and the DOT staff produced several papers that outlined the authority the Department already has to address anti-competitive behavior in the industry. In this regard we believe that the Department of Transportation currently has authority to take actions in regard slots and gates when their allocation becomes an impediment to competition. That authority is embodied in current statutes and has existed for many years. However, to date it has not been employed effectively.

To the extent the S. 415 further develops and enhances the Department's authority specifically to open access to airports through modest redistribution of slots and gates, it could move us closer to the open competitive environment we are seeking. Any legislation that focuses on restructuring the rules that govern airport access will address one of the most significant impediments to competition in the industry and the factor that is leading to these unprecedented consolidation efforts.

I would emphasize that I do not believe that we should in any way withdraw authority to review mergers from the Department of Justice. In working closely with the Justice Department on many investigations of all kinds in the past, I have come to have great respect for the Department's resources, its depth of knowledge, and

its commitment to applying the appropriate standards in an objective manner. I would note that it has not been that long since the Justice Department has had primary responsibility for addressing airline acquisitions. Changes regarding the primary responsibility for airline mergers should be made only when a reasonable degree of confidence can be developed that we are proceeding in the right direction.

Access to Airports: Opening Slots and Gates to Competition

A principal feature of the bill is to shift slots and gates to foster real competition in markets. When the States were participating with the Transportation Research Board in its examination and evaluation of competition in the airline industry we began to clearly understand the importance to meaningful competition of access to airports through the provision of slots and gates. Indeed, the TRB recommended letting pricing and market-based methods of allocating slots drive access to markets for competitors to the entrenched major carriers.

The TRB went on to observe that a long history of government involvement with the major carriers and with the airports themselves had created an artificial barrier to entry for competitors. Consequently, they suggested that airports should take steps to assure a sufficient availability of gates to competitors wishing to enter the market, including allowing for the purchase of gates from dominant carriers

controlling gates at the airport. They additionally urged that the Department of Transportation monitor the availability of gates and presumably take steps within its authority to resolve existing conditions in favor of competition for local passengers.

S. 415 seems to me to state categorically and unequivocally that access to our key airports through the provision of gates and slots is crucial to promote competition that will serve the interest of business and leisure travelers across the country. Even in the event that this bill does not become law, this Committee has provided a blueprint for future competition. The dialogue here today will provide greater awareness and useful information about how we can open our airports to the clear and convincing benefits of competition. Time will tell whether these standards work and whether they are effective in this industry.

Conclusion

I note that there is still much to learn about the airline industry. There are limits on our ability to see into the future that we must respect. What we do know with reasonable assurance is that the lower the barriers are to entry in the marketplace, the more likely it will be that consumers will find the choices they prefer at the lowest possible price. Increased access to our nation's airports through the provision of slots and gates to competitors will enhance the

opportunity for healthy competition that will extend the benefits of deregulation to communities across the nation. We applaud your proposals to spur real competition in the airline industry.

Thank you for the opportunity to appear before you today.