

Congress of the United States

Washington, DC 20515

November 18, 2005

The Honorable Norman Y. Mineta
Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Secretary Mineta:

We write in strong opposition to the Department of Transportation's (DOT), November 7, 2005, Notice of Proposed Rulemaking that would change longstanding policies prohibiting foreign interests from exercising actual control over United States airlines (*Actual Control of U.S. Air Carriers* (OST 03 15759) (NPRM). This NPRM would make fundamental changes to our nation's aviation system, is contrary to recent Congressional mandates in this area, and should not be unilaterally imposed by the Executive Branch.

The NPRM is a back door effort to accomplish what the Department has failed to accomplish by legislation. The Department has been trying for years to persuade Congress to pass legislation changing statutory requirements that require U.S. interests to own 75% of the voting stock of U.S. airlines. Congress has refused to do so. Throughout its 37 year history, the Civil Aeronautics Board (CAB) went beyond the statutory requirement that U.S. citizens own 75% or more of the voting stock of U.S. airlines. The CAB also required that U.S. interests be in "actual control" of the airline. These policies were continued by the DOT when it took over CAB's responsibilities in 1985.

Moreover, in 2003, Congress passed an amendment requiring the Department to continue to prevent foreign interests from exercising actual control over U.S. airlines. The proposal to water-down the statutory "actual control" requirement by rulemaking flies in the face of the 2003 legislation. When this actual control test was made a statutory requirement, it clearly was intended to codify the policy developed by CAB and the DOT, which required that U.S. interests control economic and competitive decisions of the airlines, as well as safety and security decisions. In the NPRM, DOT is proposing to change the control test so that it would only cover safety and security decisions. Under the proposal, there could be "actual control" by U.S. citizens even though foreign officials controlled, in the words of the NPRM, the "airlines day-to-day operations," "setting market strategy" and "purchase of aircraft."

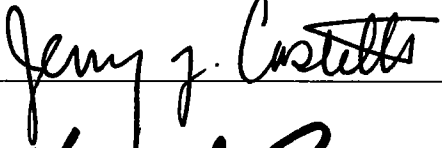
This is a major impairment of the policy Congress required by statute in 2003 and that has been followed for well-over 60 years. A major change, such as this, should only be accomplished through the legislative process. If the Department seeks to make a major change in the "actual control" provisions, then it should submit a legislative proposal to be considered and debated by the appropriate Congressional committees that are vested with the jurisdiction in such international aviation matters.

Accordingly, we believe that the Department has overstepped its authority in this proposal with its revised interpretation of "actual control" as it relates to the citizenship of a U.S. airline, and we urge the Department to withdraw the NPRM.


Our request to withdraw this proposed rule, however, does not mean we oppose the principle of open skies. To the contrary, we support the DOT's ongoing effort to further liberalize current international agreements. Open skies is a worthy goal, but it must not be achieved at the expense of our airlines, our laws or the democratic process.

Sincerely,


James L. Oberstar
Ranking Democratic Member





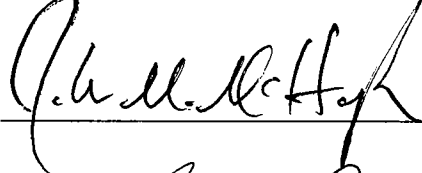




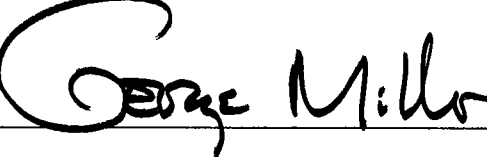



Frank A. LoBiondo
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