REMARKS OF
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It is an honor and a pleasure to address this distinguished audience, representing a wide spectrum of companies and governments involved in international aviation.

Like many of my predecessors at this podium, I will use this occasion to discuss some of the recent developments in international aviation, including the Department of Transportation's Notice of Proposed Rulemaking on Foreign Control. I will also outline some of the major issues that Congress will face as we head into the Federal Aviation Administration (FAA) reauthorization over the next few years.

Foreign Ownership and Control

Last week, the Aviation Subcommittee held a hearing to examine in detail one of the most important aviation policy decisions since de-regulation was enacted in 1978 – the DOT's proposal on foreign ownership. The difference here is that airline de-regulation was established by Act of Congress; while the foreign ownership

proposal is inconsistent with an Act of Congress, and is being bargained away in an international trade discussion, like the much bemoaned, and regretted, Bermuda II agreement with the U.K. during the Carter Administration.

The NPRM on foreign ownership in effect would trade away the crown jewel of American transportation -- our nation's airlines – at their most vulnerable moment, to their foreign competitors. This would be done to gain an Open Skies agreement with the European Union, an agreement which may appear to be a major breakthrough, but which in reality, would provide only limited benefits for United States airlines, given the difficulty of getting slots to implement the new rights that our carriers will get at Heathrow.

For the past 65 years, U.S. commercial aviation has been guided by a statute that provides that only an airline that qualifies as "a citizen of the United States" may provide service between cities in the U.S., or on international routes obtained by the U.S. through international agreements. The law provides that an airline may qualify as a U.S. airline, only if the airline is "a corporation or association … which is under the '*actual control*' of U.S. citizens."

The Civil Aeronautics Board, and its successor DOT, have traditionally interpreted "actual control" to mean that there can be "no semblance" of control by

foreign nationals over any management decisions of a U.S. airline. In the 2003 FAA reauthorization, Congress specifically added the requirement of "actual control" to the definition of U.S. citizen. The purpose of including this term was to create certainty that DOT would continue to require that U.S. airlines be under the control of U.S. citizens. If DOT was correct in its interpretation that Congress intended to give DOT total discretion to undo the requirement, then there would have been no reason for Congress to have added the requirement to the law.

Under DOT's proposed new standard, foreign investors would be allowed to exercise control over all *commercial aspects* of U.S. airline operations, including fleet mix, routes, frequencies, classes of service, and pricing etc. U.S. citizens would be required to control only decisions affecting the Civil Reserve Air Fleet (CRAF), transportation security, safety and organizational documents.

It is clear to me that the Department does <u>not</u> have the legal authority to limit the requirement of "actual control," to a requirement of control over <u>only</u> safety, security and CRAF decisions (and not over other economic decisions). Our courts have held that although an executive branch agency has discretion to interpret a statue, an agency does not have discretion to make interpretations that conflict with the "plain meaning" of the law.

I do not see how it can be consistent with the plain meaning of "actual control" to limit it to a requirement of control over some policies of an airline, but not control over many important decisions, such as the rates to be charged and the service to be operated.

If the new standard is allowed to be implemented, there could be serious consequences for our national aviation system, particularly since the most likely foreign investors would be foreign airlines or persons with interests in foreign airlines. Foreign interests could restructure the route system and fleet of a U.S. airline so that the U.S. airline would become, in effect, a "feeder" for the international operations of a foreign carrier. This could limit service and competition in markets served by the U.S. airlines, particularly service to small communities.

There could also be effects on national security: A foreign investor could decide to take an airline out of the CRAF program, or it could accomplish this indirectly by changing the fleet mix of a U.S. airlines to reduce the number of large, wide-body civilian aircraft that the Department of Defense relies on to supplement its military fleet in times of national emergencies.

In addition, U.S. airline employees could lose high-quality job opportunities, in favor of employees of the foreign carrier. There could be similar effects on other

aviation industry employees. Foreign investors would be inclined to support the purchase of aircraft produced by foreign companies, and to have the airline use foreign repair stations.

Late last year, I and over 132 of my colleagues, including Chairman Don Young, introduced H.R. 4542, which prohibits DOT, for one year, from issuing any final decision or final rule on the NPRM that would change its interpretation of what constitutes "actual control" of a U.S. airline.

The cosponsors of the bill are a majority of the Committee on Transportation and Infrastructure and its Aviation Subcommittee. Overall there are 24 Republican cosponsors.

At the Aviation Subcommittee hearing last week, 25 of our Subcommittee Members attended and almost all strongly opposed the NPRM. The tone of the hearing was well expressed in a headline of the *Daily Report for Executives of the Bureau of National Affairs* – "Aviation Lawmakers Slam Bush Plan to give Foreign Airlines Control of U.S. Air Operations." I urge anyone interested in this issue to read the hearing transcript, so that you will understand the strength of the Congressional belief that the NPRM is unlawful, and bad policy.

We intend to go forward with H.R. 4542 to ensure that any changes in the law will come from Congress. If the NPRM is made final before we can act, I strongly believe that the final rule will have a short life span. The new policy is certain to be challenged in court and I cannot imagine a court agreeing with the Department of Transportation that it is consistent with the "plain meaning" of the requirement of "actual control" to only require control of an airline's decisions on safety, security and the CRAF program.

In these circumstances, it is hard to see why the NPRM would persuade any foreign government to enter into an open skies agreement.

Modernizing the Air Traffic Control System

Turning to the FAA reauthorization; the current authorization expires in September of 2007. As we head into the next FAA reauthorization, we will face many challenges in modernizing the Air Traffic Control (ATC) system to ensure that it can handle the expected growth in air traffic over the next several years.

The U.S. has the most robust ATC system in the world to handle its airspace of unmatched complexity. The FAA safely manages approximately 300,000 take-offs and landings every day in a system that moved 700 million airline passengers in 2004,

and whose passenger volume is expected to grow to 1 billion by 2015. By 2025, the DOT predicts that passenger volume, operations, and cargo will triple.

The *Final Report of the Commission on the Future of the United States Aerospace Industry* (the "Aerospace Commission Report") notes that U.S. air traffic management system is not much different from that used in the 1960s; the system it is still fundamentally based on radar tracking, analog radios and ground-based infrastructure. Moreover, much of the FAA's infrastructure—towers, TRACONs, radars, etc. -- is well past its useful life. The General Services Administration rates the average condition of FAA en route centers as poor, and getting worse each year.

At the same time, the proliferation of regional jets, the emergence of low cost and new entrant carriers, the growth of point-to-point service and the anticipated influx of Very Light Jets are placing new and different types of stresses on the system. The Aerospace Commission Report notes that consumers could lose as much as $30 billion annually if people and products cannot reach their destinations within the time periods expected today.

Yet, the Administration's FY2007 budget request dramatically cuts major FAA programs that would enhance system capacity: The request would cut the FAA's facilities and equipment (F&E) program – the primary vehicle for modernizing the

National Airspace System - well below its authorized level for the third straight year, for a combined total cut of roughly $1.5 billion from FY2005 through FY2007. This is more than $600 million below the level authorized by Vision 100 for 2007.

In Vision 100, Congress created the Joint Planning and Development Office (JPDO) within the FAA. The JPDO is tasked with developing an integrated plan for the Next Generation Air Transportation System (NGATS) capable of meeting the anticipated air traffic demand by 2025. Unfortunately, the JPDO's vision already appears to be at odds with the reality of declining trust fund balances, budget cuts, and shrinking capital investments dollars.

While Secretary Mineta has pledged to "harness technology in a way that triples the capacity of our aviation system over the next 15 to 20 years," in reality, there is a serious disconnect between the rhetoric and the resources being applied to a key issue facing the Nation.

In fact, over the last two years, a number of technology programs that seem to fit with concepts outlined in the initial plan – including data link programs and digital communications - have experienced cancellations or deferrals. I am pleased that last week the Administration announced funding for two new enabling technologies that will be key components of the next generation system; one of these technologies --

satellite-based ADS-B surveillance -- is already in use in other countries, and has the potential to provide tremendous savings for the FAA and performance benefits for airspace users. However, preliminary analysis by the DOT Inspector General finds that the level of funding contained in the Administration's F&E request and five-year capital investment program will not support a next generation system.

Clearly, we cannot continue to cut the FAA's capital budget and still technologically "transform" the National Airspace System for the 21st Century. If the United States wants to maintain our leadership position on these important ATC issues, we must come together to develop a strong vision, with the funding to back it up.

This is especially true as Europe moves forward with its well-funded, next generation ATC modernization efforts. The European effort, the Single European Sky ATM Research program (SESAR), is a 2 year, 60 million euro project to define the Master Plan for European ATM, to be followed by an implementation project with an annual budget of 300 million euros. With both the U.S. and EU beginning to consider their next generation ATC systems, it is critical that we find ways to harmonize our respective efforts to modernize ATC systems to ensure seamless global operations for users without duplicative avionics requirements.

Financing the FAA

In developing reauthorization legislation, Congress will also focus on the financial condition of the Aviation Trust Fund, and possible alternative mechanisms for financing the future needs of the aviation system. At the outset, however, I would caution the Administration not to put the "cart before the horse" and push to

bifurcate the FAA reauthorization into a financing piece, and then at some later date, a policy piece. It would be very short-sided to legislate a new FAA financing mechanism before we know what we are buying – that is, before we have a clear vision on what our next generation ATC system is going to be and how much it will cost.

The President's 2007 budget suggests that we need sweeping reform of the current aviation tax system, such as the wholesale adoption of a cost-based user fee. While I am open to all ideas, certain threshold questions must be answered before Congress can seriously consider radical restructuring of the aviation tax system. Foremost, Congress must ascertain the financial health and long term solvency of the Trust Fund.

The downturn in passenger travel associated with the September 11th terrorist attacks clearly depressed Trust Fund revenues. There are also indications that underlying structural changes within the airline industry are affecting Trust Fund revenues, as well as the FAA's ability to forecast those revenues. As a result, the Trust Fund's uncommitted balance has shrunk from over $7 billion in 2000 to $2.44 billion in 2004. Yet, there some indications that the anticipated increase in traffic combined with recent fare increases could reverse this trend. Congress must explore all of these dynamics.

Further, here are some other threshold issues that must be explored before rushing headlong into a user fee system –

First, I do not understand how a user fee will generate more revenue than the current system unless the aviation community in the aggregate would pay more than it does now. To raise more revenue, someone will have to pay more. We need to consider who will be expected to pay more, and the fairness of the proposed increases.

Second, it has been argued that cost-based user fees will lead the FAA to be more efficient in providing services. At first blush, this sounds somewhat theoretical to me. Efficiency in a market system is generally driven by competition. Yet, FAA is not proposing to form a competitor to itself, but merely to alter the way it collects money for its services. I would like to see some detailed explanations and evidence in the coming months regarding how precisely user fees alone will drive down FAA's costs.

Third, a user fee system contemplates that the major system users, principally the airlines, will be saddled with the new fees. In return, airlines will expect to play a

greater role in setting the FAA's policies, and in deciding how much funding FAA will receive and how the funds will be spent.

Some may also question whether a case can be made for a continued general fund contribution. I still strongly support the mechanisms Congress enacted in AIR-21, particularly the guaranteed funding provisions, and the Trust Fund and general fund contribution formula. The FAA's programs should be fully funded at their authorized levels and if Trust Fund revenues fall short, the general fund should contribute whatever it takes to meet the authorized levels. Moreover, hundreds of millions of dollars were spent from the Trust Fund after September 11th on aviation security measures that are now funded by the general fund through the Department of Homeland Security. That aviation security spending was national security spending, and I believe that a larger general fund contribution may now be warranted as a reimbursement for security funding that was spent from the Trust Fund.

Additionally, some have suggested that Congress ought to consider alternative financing mechanisms, such as bonding. Before Congress considers bonding authority, I think that the FAA should explain precisely what it would purchase with such authority. Further, we should anticipate that the Office of Management and Budget and the Congressional Budget Office will raise issues regarding how bonding authority will be scored against the discretionary budget.

Conclusion

In conclusion, I hope my remarks today will start a discussion of the major aviation issues faced by Congress this year – in both our international and domestic aviation arenas. These issues are important and difficult -- how we deal with them will go a long way towards determining whether we will continue to have the world's finest aviation system.