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IMPLEMENTATION OF REGULATORY REFORMS: SOME THOUGHTS ON A RATIONALE APPROACH TO IMPROVING OPERATIONS OF THE SUPPLEMENTAL AIRLINE INDUSTRY

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THE UNITED STATES supplemental air carriers¹ trace their origin to the mid-nineteen forties when as nonscheduled carriers they operated largely under exemptions to the Civil Aeronautics Act of 1938,² which were granted by the Civil Aeronautics Board (CAB).³ In 1962, Congress amended the Federal Aviation Act of 1958⁴ to provide for permanent legitimacy of supplemental air carriers under regulations requiring certificates of public convenience and necessity from the CAB.⁵ There are currently eight certificated United States supplemental air carriers, one of which is nonoperational;⁶ each is authorized to engage in both domestic and international charter operations.⁷ Since their very inception, the United States supplementals have continuously attempted to unshackle themselves from the regulatory and legislative constraints which have bound their growth and consequently the availability of their services to the traveling public.

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¹ 49 U.S.C. §1301 (35), (36) (Supp. IV 1975), provides the following definitions:

(35) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation. (36) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d) (1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

² Civil Aeronautics Act, 49 U.S.C. §1301 (1963) (originally enacted as Act of June 23, 1938, Ch. 601, 52 Stat. 973).

³ See *Investigation of Non-Scheduled Air Services*, 6 C.A.B. 1049, 1050 (1946). The Supplemental Carriers have at various times in the past been referred to as "irregular air carriers" but since the mid-nineteen fifties have been consistently and commonly referred to primarily as supplementals.

⁴ Act of August 23, 1958, Pub. L. No. 85-726, 72 Stat. 731.

⁵ Act of July 10, 1962, Pub. L. No. 87-528, 76 Stat. 142, amending 49 U.S.C. §§1301(32), (33), 1371(d), (e) (1962). See generally Comment, *Supplemental Air Carriers*, 43 S.CAL. L. REV. 791, 808-21 (1970); Note, *CAB Regulation of Supplemental Air Carriers*, 76 HARV. L. REV. v450, 1462-67 (1963).

⁶ On March 24, 1975, the certificates of Purdue Airlines, Inc., Standard Airways, Inc., and Universal Airlines, Inc. were revoked and Modern Air Transport is currently non-operational.

⁷ See CIVIL AERONAUTICS BOARD, ANNUAL REPORT TO CONGRESS, FISCAL YEAR 1974 28 (1975). (hereinafter cited as ANNUAL REPORT).

The Association and its individual members are certainly enthusiastic about the Proposed Aviation Act of 1975⁸ as it focuses on the many problems besetting the entire United States air transport system and because it provides a forum for the establishment of long needed solutions. This enthusiasm is based upon a long standing conviction that there is a need for major regulatory reform. This is not to mean that we merely favor the complete unshackling of charters, but there is an urgent need for major regulatory reform within the scheduled airlines system as well.

The United States supplemental airlines are certificated to perform planeload charter flights of passengers *or* cargo in domestic and international markets with one exception which I will note later.⁹ Through the economies achieved by planeload charter, *i.e.*, by the utilization of the entire capacity of an aircraft, there is no charge for the empty space that is present on a scheduled flight and, hence, the cost to the consumer for charter transportation is about 50 percent of that charged for scheduled passenger air services which, on average, are operated halffull.

It would seem that the public benefits derived from this economical form of mass transportation would be appealing to everyone, passengers and shippers alike. Yet, in 1974, the United States' supplementals, the air charter specialists, accounted for only 2.9 percent of all revenues generated by the United States' certificated airline industry and only 1.5 percent of all worldwide passengers flown by the total United States' air transport industry.¹⁰ The charter services performed by scheduled airlines, which also have authority to perform charter transportation, add little to this total.

The reasons for this minimum usage of an attractively economical system of transport may be found in the multitudinous regulatory restraints under which supplementals operate. Consider for a moment the tools supplementals have in order to do business. These tools are the authorities under which supplementals operate passenger and cargo service which are not only highly restrictive *per se*, but become even more restrictive when these regulations are further modified by the governments of the countries to which we fly.

Among the types of passenger charter flights supplementals operate, two involve transportation-only charter service. Each of these have such restrictive covenants that neither service is responsive to the public need

⁸ H.R. 10261, 94th Cong., 1st Sess. (1975); S.2251, 94th Cong., 1st Sess. (1975).

⁹ Federal Aviation Act, 49 U.S.C. §1301, 1371 (Supp. IV 1975). *See generally* 14 C.F.R. 208.1 *et. seq.* (1976).

¹⁰ *See generally* ANNUAL REPORT, *supra* note 4, at 90 Tables 1-17.

for low cost air transportation. The affinity charter flight permits the transportation of a homogeneous group to the destination of its choice provided that: (1) the organization is in business for a purpose other than to secure low cost air transportation; and, (2) the participants have been members of the organization for at least six months prior to flight departure.¹¹ This discriminates totally against non-joiners who are not eligible and members of eligible groups who do not meet the prior membership requirement, resulting in a greatly reduced market potential. Since some foreign countries will not accept affinity charter flights at all and others require that a passenger list be filed 30 days in advance, the availability of an opportunity to reduce costs is even further diminished. With restrictions such as these, it is not difficult to perceive the reasons for the minute part charters have traditionally occupied in the total air transport scheme.

The other type of transportation-only passenger charter service is the Travel Group Charter (TGC) which is available to the general public without a membership requirement but does require: (1) a 25 percent nonrefundable deposit at least two months in advance; (2) full payment not less than 60 days in advance; (3) a sliding price scale based on aircraft occupancy; and (4) mandatory cancellation if less than 80 percent of the flight is not sold.¹² Small wonder that only 1.3 percent of our passengers flew on TGC's last year.

I referred to the 30 day prelisting requirement for affinity charters imposed by some foreign governments. Other and more serious restrictions emanating from foreign capitols range from the complete prohibition of charters, to quotas, and to the requirement that first refusal opportunities be given to a foreign nation's flag carrier for charter programs the supplementals have marketed. Still other countries are presently seeking to control the prices which we charge, seeking to raise them to levels that exceed that which we consider reasonable.

My point in outlining those restrictions is that regulation of international charter operations goes beyond our borders. While essential changes must be implemented by the United States, ultimate regulatory reform is international in scope and effect.

Another important area of operations for supplementals is the authority to operate cargo charters, an area which is similarly burdened with regulatory restraints. The United States supplementals are authorized to perform cargo charter flights within the United States and, with one very important

¹¹ See 14 C.F.R. 208 210(b) (1976).

¹² See 14 C.F.R. Part 372(a) (1976).

exception, throughout the world. The exception to which I refer is the largest international market for the movement of people and goods — the Transatlantic.¹³

Not only are the cargo restraints geographic, but substantive as well. A supplemental may only charter a cargo flight to one shipper. While we can split a passenger flight among any number of groups of 40 or more persons, a cargo charterer must use the entire aircraft. This presents a rather curious situation in that, although the capacity of our aircraft has greatly increased over the years, the number of potential users has decreased. Where many individual shippers were capable of filling a DC-3, there are fewer who can now fill the entire capacity of a DC-8-60, B-747 or DC-10. Further, we are not able to transport passengers and cargo on the same airplane. This not only means less than full utilization of an aircraft such as the B-747 with its large belly compartment, but reduces our flexibility as well.

These examples of regulatory restraints on passengers and cargo charters are some of the more blatant examples of the problem at hand and are illustrative of the urgent need for regulatory reform. None are in fact responsive to the extent necessary to completely satisfy the public's potential need for low cost air charter transportation.

There are, however, some bright spots on the horizon in addition to the Proposed Aviation Act of 1975. Recently the Civil Aeronautics Board authorized a new type of inclusive tour charter, the one-stop tour charter known as the OTC.¹⁴ The OTC allows individuals to purchase charter air transportation and ground accommodations to a single destination at a fixed price subject only to minimum stay and advance purchase controls. As such, the OTC is a significant step forward which we have been seeking in petition after petition to the Civil Aeronautics Board and in legislation before Congress for well over five years. But, its enactment is not without regulatory restriction. One of the most glaring examples of regulation within the framework of the OTC requires that the purchase must be made more than 30 days in advance to most foreign countries.

Regulatory reform must recognize that the purpose of governmental regulation and oversight must be to encourage transportation services which are responsive to growth and the public's right to low cost air transportation. We believe that regulatory reform must address these objectives.

Supplemental air carriers support legislation and regulations that would

¹³ See generally *Transatlantic Route Proceeding*, C.A.B. Docket No. 25908.

¹⁴ See 14 C.F.R. Part 378(a) (1976).

establish simplified tour package charters and transportation-only charter flights such as the Advance Booking Charter (ABC) which has proven so popular in Europe and Canada. The ABC charter does not require the purchase of hotel accommodations and is sold at a fixed price. We believe that the advance purchase requirement should not exceed 15 days, and provisions must be made for split cargo/charter flights and combined passenger/cargo services.

Reform should also create provisions for the carriage of mail by United States supplementals. At present we are precluded from doing so even though we operate many flights over the same routings on a timely and regularized basis. The Postal Service would have the advantage of an additional choice of carriers and as a result, a choice of price.

There is also a need for supplemental carrier relationships with tour operators (indirect air carriers) in a controlled manner which would result in operating efficiencies and the creation of additional marketers. Also, this would place supplementals on a parity with foreign airlines which already control some and are seeking control of additional tour operators.

There has always been an interesting contradiction in the United States airline industry. While scheduled airlines can operate charters, charter airlines can not operate scheduled service. And yet, prior to 1962, we were able to operate individually ticketed way-billed service on a limited basis and our innovative contributions to this service are an acknowledged fact. The proposed legislation would provide for limited operations in this area by supplementals. If enacted, the public would benefit by the introduction of innovative and low cost services.

These are the areas of reform we feel are essential to preserve the United States supplemental airline industry and to maintain and expand the availability of low cost air transportation services for the traveling public. Hand in hand with these needed changes goes the need for reform within the scheduled airline industry as well.

Within the scheduled industry, capacity must be brought into line with demand, and overcapacity must be eliminated. The absurd proliferation of fares must be ended, many of which are below fully allocated costs. If this were to occur, then regular fares could be brought down to the lowest possible denominator. All of these reforms must be implemented and implemented quickly if the United States is to have a healthy air transport industry.

