

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309

Telephone [202] 298-8660 Fax [202] 342-0683

**Remarks of
CHARLES J. SIMPSON, JR.
ZUCKERT, SCOUTT & RASENBERGER
AITAL GENERAL ASSEMBLY
June 5 - 6, 1992
Montevideo, Uruguay**

Thank you. It is indeed a privilege to address the AITAL General Assembly.

I've been asked to address recent and current developments in U.S. international aviation policy and bilateral relationships and I will proceed to do that. But as is customary in speeches in the United States, however, I would first like to tell one brief story.

There was a mountain climber who was climbing a very, very steep cliff. When he was about a thousand feet above the ground, he suddenly lost his grip and began falling to a certain death. As if by a miracle, he was able to grab hold of a small tree that was sticking out of the side of the cliff. The man then looked up and saw a ledge, and hoping that somebody might be up there on that ledge, he called out, "Help! Help! Is there anybody up there?" Well, to the man's great surprise a great, deep voice came back and said, "Yes, I am here. I can help you." The man was very startled and said, "Who are you?" And the deep voice answered, "I am God, I can help you." And the man said, "Great, great. What do I have to do?" And God said, "Are you a true believer?" And the man said, "Yes, I am a believer." And God said, "Well, if you truly believe, then let go of the tree." Well, the man thought about that suggestion, looked down 1,000 feet to the bottom of the cliff, decided that wasn't such a good idea, and called back up, "Is there anybody else up there?"

The point of this story is that it is the United States Government and the U.S. air carriers who are standing comfortably on the ledge offering doctrinaire suggestions, while the people hanging on to the small tree for dear life are foreign air carriers. The U.S. is saying, "All you have to do is believe in free competition; just let go and everything will be fine." Everyone else fears what might happen if they let go.

I should add, not to be accused of plagiarism, that I heard that story in a speech given recently by Mr. Crandall of American Airlines. I am certain that the point he was making was quite different from the point I am trying to make.

The tension between the U.S. desire to have world aviation community adhere to a doctrine of open skies and absolutely free competition -- while others believe that that such a doctrine is a luxury they cannot afford -- will be a major part of my remarks today.

In order to get where we are today in U.S. international aviation policy, it is first necessary to touch briefly on U.S. deregulation of the domestic airline industry beginning in 1978. That deregulation process logically and predictably has resulted in a major consolidation of U.S. air carriers: fewer carriers, bigger carriers, stronger carriers, more efficient carriers, domestic carriers with international route systems, international carriers with domestic route systems, and in short, what former Secretary of Transportation Sam Skinner described as "lean, mean fighting machines" which foreign carriers are going to have trouble catching up to. The process of deregulation has resulted both in a consolidation of the domestic industry, but also ultimately a major shift in the balance of power of U.S. carriers in international markets.

Where once our international markets were served by Pan Am, TWA, Northwest, and to a degree, Eastern, we now have American, United, Delta, and Northwest, and to a lesser degree, TWA. This shifting of the balance of power began in 1985 with the sale by Pan American of its Pacific Division to United Airlines. That was followed after some time by the transfer of Eastern's Latin American Division to American Airlines, by the transfer of Pan Am's Atlantic routes to United Air Lines and Delta Air Lines in 1991, by the transfer of TWA's Atlantic routes to American Airlines in 1991, and finally, by the transfer by Pan Am to United of Pan Am's South American operations. In addition, agreements with bilateral partners in Europe and Asia resulted in additional new entry by the strongest U.S. carriers. This shift in the balance of power has significantly accelerated the change in U.S. aviation policy toward an "open skies" approach. The United States is increasingly willing to grant concessions to foreign governments in order to gain new opportunities for strong U.S. carriers because it knows those strong U.S. carriers are in a position -- probably a unique position -- to take advantage of those opportunities.

Until recently, that was not quite the case, because the U.S. negotiators had to be concerned to some degree with protecting the weaker U.S. carriers operating in international markets, such as Eastern, Pan Am, and TWA. Thus, the United States was less aggressive and doctrinaire in its approach to bilateral relations -- or even multilateral relations -- than it is today.

An example can be seen in a recent agreement entered into in 1990 between the United States and Singapore. That agreement gave Singapore transatlantic rights to the United States for the first time. The U.S. specifically negotiated a provision, however, that prevented Singapore from serving New York via Frankfurt with Fifth Freedom rights until 1993. The reason for that phase-in of those rights was quite clearly to protect Pan Am, which was operating in the New York-Frankfurt market. Well, as soon as Pan Am went out of business, Singapore Airlines filed an application with the Department of Transportation, saying, in effect, we'd like to begin serving in 1992, even though the bilateral says 1993; and we all know that the reason the bilateral says 1993 was to protect Pan Am, but there's no reason to do that anymore, since there's no Pan Am to protect and Pan Am's replacement -- Delta-- doesn't need protection from us. The United States agreed, and gave Singapore the right to fly between Frankfurt and New York in 1992. We're happy, said the United States, to give these pro-competitive opportunities a chance to be realized.

As I see it, U.S. international aviation policy today has three major thrusts. The first thrust involves general initiatives within the bilateral framework; the second thrust involves U.S.

responses to specific bilateral situations; the third thrust reflects an emerging desire to pursue a multilateral framework for aviation relations.

As to the first thrust, the general initiatives within the bilateral framework, in 1990 the Department of Transportation promulgated its so-called "Cities Program." That is a reflection of a new U.S. policy (or it was new then) under which the United States will grant extra bilateral authority to foreign carriers to serve points in the United States provided that the U.S. point in question is not receiving non-stop or one-stop service from the foreign from which service is proposed, provided that a pro-competitive bilateral agreement is in place and that there are no existing bilateral problems between the United States and the country in question. In short, under the Cities Program, the United States will give away authority without compensation if the United States has everything it wants within the bilateral relationship and the U.S. point in question is currently underserved. I should add that the Department of Transportation earlier this year further liberalized that program, and since the program went into effect, approximately seven carriers have applied for and obtained authority under that program, including Ladeco.

The second -- and more recent -- general initiative by the Department of Transportation is what is known as the "open skies" initiative. Actually, there are two such initiatives.

Within the last half year or so, the Department has proposed to European governments that it enter into open skies agreements on a bilateral basis with as many European countries who want to do so. The elements of an "open skies" agreement are: complete open entry on all routes; unrestricted capacity and frequencies; unrestricted intermediate and beyond rights; double disapproval pricing; unrestricted currency conversion; liberal cargo and charter regimes; unrestricted rights of self-handling; and non-discriminatory operation and access to computer reservation system. It bears noting that there has been virtually no response by any European nation to this initiative.

The second open skies initiative, which should be of particular interest to this audience, involves Central and South America. I should note that this initiative is only now being finalized by the United States Government and communicated to foreign governments. It is very important to note that unlike the U.S.'s open skies approach to Europe, which involved a series of bilateral agreements between the United States and European countries, this Central and South American initiative is a multi-lateral concept which envisions the United States entering into a single multilateral agreement. Initially the targets of this initiative will be Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. Subsequent membership by Mexico and South American countries is also contemplated.

The elements of this Central and South American open skies initiative are: complete open entry; unrestricted gateways; unrestricted intermediate and beyond rights; complete freedom of member country carriers to operate between any member country and the United States (unlimited Fifth Freedom rights to the United States, in other words); unlimited frequencies, unlimited designations; double disapproval pricing; and a variety of other doing business provisions such as self handling and computer reservation system operation. Interestingly, as to ownership of airlines, the initiative envisions that any member country carrier

could be owned and controlled by persons from any other member country, but not from persons outside of any of the member countries.

The second thrust of U.S. international aviation policy involves U.S. responses to specific bilateral situations. I divide these into two general groups: one I will call "progressive" and the other I will call "regressive," for lack of better words. In the progressive situations, the United States has shown a clear willingness to grant significant new opportunities to foreign carriers in order to obtain small gains or -- in some cases -- no real gains at all for U.S. carriers. The common characteristic of these situations is that the net effect is an overall expansion of opportunities in the market, which the United States believes will then have pro-competitive effects.

There are some very clear examples of these "progressive" situations. The first I want to mention involves the United States and the United Kingdom. As you will recall, United Air Lines agreed to purchase Pan Am's routes to London and American Airlines agreed to purchase TWA's routes to London. These were all routes being operated to Heathrow Airport. An issue that led to significant negotiations between the United States and the United Kingdom in 1991 was whether, under the Bermuda Two bilateral agreement, any U.S. carrier other than TWA and Pan Am could serve Heathrow. If not, United and American would have to fly to Gatwick, which was viewed as the less favorable gateway. The United Kingdom, naturally, took the position that United and American could not serve Heathrow and the U.S. argued that they could. Each side had some support for its position. This dilemma, of course, put the United States government under tremendous pressure from United and American, the two largest U.S. carriers, and of course, from Pan Am and TWA, which needed the money from the route sales.

Therefore, in March, 1991, after lengthy eyeball-to-eyeball negotiations, the two sides entered into an agreement which provided that United and American could serve Heathrow in place of Pan Am and TWA. In return, the United Kingdom obtained from the U.S.: the right to designate a second British carrier, which turned out to be Virgin, to serve the United States from Heathrow; new rights to operate to the United States from six European points on what can be called a Seventh Freedom basis; new beyond rights to points in Latin America, Canada and Asia; new rights to U.S. points; and new code-sharing rights. All of this in return for allowing United and American to fly to Heathrow in place of Pan Am and TWA. The agreement provided for nothing else for the United States; no new or additional rights for U.S. carriers were obtained. The U.S. (and U.K.) recognized, of course, that United and American would be far better equipped to exploit the route rights than were Pan American and TWA, thereby increasing U.S. benefits under the bilateral. Thus, the U.S. did gain from the agreement.

As to U.S.-U.K. bilateral relations, I should add that there is a series of working groups and consultations, which is ongoing, as part of an effort -- driven by the United States -- to liberalize the Bermuda II agreement, which as you probably know, contains numerous capacity and frequency limitations. Notwithstanding that effort, the United Kingdom is complaining about U.S. carrier frequent flyer programs, airport access, disadvantages created by computer reservation systems, and, perhaps most importantly, the inability of U.K. carriers to exploit the

U.S.-U.K. market without cabotage rights in the United States. It is too early to tell, really, what will happen in this situation.

An even clearer example of the U.S.'s willingness to grant new opportunities to foreign carriers in order to ensure that U.S. carriers are able to exploit their own opportunities is the case of the dispute with Spain last year. The United States had designated Continental to serve Madrid from Newark, United to serve Madrid from Washington, and American to serve Madrid from Miami, all under the 1973 bilateral agreement. It was clear that under the terms of the 1973 bilateral, the United States was entitled to make those designations and those carriers were entitled to operate those routes, without further negotiation.

Spain did a very effective job of playing what is known in the United States as "hard ball" and said "no," the bilateral is imbalanced and we will not let any of those carriers into Madrid unless the bilateral is amended to provide new opportunities for Spain. Spain took a position which, if they had been dealing with a commercial contract, would probably have been untenable from a legal point of view; Spain no doubt recognized that an aviation bilateral is quite different than a commercial contract.

In response, the United States threatened to suspend Iberia's authority to serve New York and Miami. The two sides then sat down, and in May 1991 they reached an agreement in which Spain said "yes," American, United and Continental may operate to Madrid, (just as the bilateral already said they could). No new or additional rights were given to United States carriers in this agreement. In return for this concession by Spain -- which may have been no concession at all -- the United States gave to Spain three new U.S. gateways, for a total of 11, extensive beyond rights from Miami, which has enabled Iberia to establish a hub operation in Miami, the ability to serve the United States via Canada, and code-sharing rights to 15 U.S. points.

By any reasonable measure, that was a major victory for Spain, and yet United, American, and Continental got what they wanted, and if they were happy, then the United States government was happy. So ultimately, everyone was happy. It is noteworthy that Spain agreed to create a balance in the market by receiving new opportunities for its carriers as opposed to placing restrictions on U.S. carriers.

Less dramatic examples of U.S. willingness to give up major opportunities while obtaining little or nothing in return can be seen in the recent cases of Singapore and Malaysia. In the case of Singapore, the U.S. and Singapore had long enjoyed a liberal relationship. There was little that Singapore could offer or that the U.S. wanted. But in December 1990, the United States agreed to give Singapore a transatlantic route to New York and three other U.S. points via intermediate points in Europe. Previous to that, Singapore had been restricted to transPacific service. Singapore also got beyond rights to Canada, additional transpacific rights to two new U.S. points, and beyond rights to Canada, Mexico and Chile. In return, the only traffic right obtained by the United States was the right for its carriers to set up a cargo hub at Singapore on a Seventh Freedom basis, plus liberal CRS and ground-handling provisions.

By the same token, when Malaysia and the United States sat down to talk late last year, Malaysia had very little it could give to the United States. U.S. carriers already had broad rights to serve Malaysia from the United States and in fact only one U.S. carrier -- Federal Express -- even serves Malaysia. However, the two sides agreed that Malaysia, like Singapore, would receive: a transatlantic route to two U.S. points via European intermediates (like Singapore, Malaysia had no transatlantic rights before that); transpacific rights to five U.S. points; and beyond rights, (which Malaysia Airlines will soon be exercising to Mexico). In return for this, U.S. carriers got: rights to operate beyond Malaysia; the right to operate all cargo operations between Singapore and Malaysia; and again, liberal provisions relating to computer reservations systems and ground handling.

Before I turn to the so-called "regressive" situations, I would like to discuss one bilateral relationship which falls somewhere in between the progressive and the regressive, and that is the United States' relationship with Australia. In 1988, the two sides agreed to amend the 1946 bilateral by giving each side new route rights and the right to designate one new carrier during the first three years of the agreement. But the agreement also contained very detailed capacity restrictions. Basically, each carrier operating in the market is allowed to operate only four frequencies per week, with an upward adjustment possible if a carrier's load factor were to exceed 70%. Each carrier is allowed to increase its capacity every twelve months by the equivalent of two 747 frequencies per week, but each government has the right to deny those increases if the increases would result in the carriers of one country having a market share in the total market of greater than 62.5%.

Subsequent to the signing of that agreement in 1988, United Air Lines has attempted repeatedly to inaugurate daily service from the United States to Sydney via Tokyo. The Australian Government has strenuously resisted these efforts, claiming that United will place undue reliance on Fifth Freedom traffic between Tokyo and Sydney. The Australian Government is under great pressure from Qantas, which is deeply concerned about the erosion of its market share. United has sued Australia, and the matter is still unresolved, although Australia has agreed to allow United to operate two weekly frequencies between Tokyo and Sydney and to increase those frequencies if at least 51% of its historic traffic on the route is Third and Fourth Freedom traffic. United, of course, is not satisfied, and it still wants daily frequencies. Last year, Northwest was authorized to operate three flights a week on a New York-Osaka-Sydney route, subject to same condition the traffic be predominantly Third and Fourth Freedom. Although the United States takes the position that United is entitled to daily frequencies, it has not taken a very hard line on this matter and has limited its retaliation to granting Qantas only short-term authorizations to serve the U.S. It is probably fair to say that the U.S. takes a somewhat benevolent view toward Australia since Australia has embarked on its own course of deregulation.

I would like now to discuss what I call the "regressive" situations. Frankly, I think this is really where the action is now and where the action will continue to be for the next several years. "Regressive" situations are those in which the United States views the other side as seeking to restrict competition, while the foreign interests involved claim that restrictions are needed to restore a bilateral balance in the face of capacity dumping and below-cost pricing by U.S.

carriers and because circumstances have changed significantly since their bilaterals with the U.S. were negotiated. Those changed circumstances are, of course, the replacement of Pan Am and TWA by United, American and Delta in international markets.

The situations I will describe have arisen in Europe and Southeast Asia. However, the dynamics that exist in these various relationships are clearly similar to the dynamics at work in U.S. bilateral relationships with a number of the countries represented in this room today.

I would first like to discuss the U.S.-Thailand relationship. Thailand has long complained of provisions in the U.S. bilateral that restrict the number of frequencies that Thai Airways can operate to the United States via Tokyo. The Thais have also complained of the significant imbalance of frequencies in the U.S.-Thailand market, noting that U.S. carriers have operated 35-40 flights per week while Thai has operated only 4-7 flights per week. The Thais have complained about capacity dumping by U.S. carriers, and they have pointed to a major change of circumstances: in 1980, the only U.S. carrier serving Thailand was Pan American; in 1992, Northwest, Delta and United all serve Thailand.

The United States and Thailand sought to resolve their differences in 1989 but were not able to do so. In November 1989, Thailand became the first country in some time to renounce its bilateral with the United States, and that bilateral terminated in November 1990.

Thailand continues to seek a new bilateral including major restrictions on capacity and on U.S. carrier Fifth Freedom rights. Surprisingly, however, since the bilateral agreement terminated, the relations have been quite amicable. Thai has increased its frequencies to the United States, and the United States has even granted new Fifth Freedom rights for Thai to operate from Bangkok to Guam via Manila. Recently, however, Thailand has advised the U.S. that it is very concerned about Fifth Freedom traffic being carried by U.S. carriers and has told U.S. carriers that their Fifth Freedom traffic cannot exceed their Third and Fourth Freedom traffic. It remains to be seen how long this amicable relationship will last but, as I say, at the moment the U.S.-Thailand relationship demonstrates that life can go on after a bilateral agreement has been terminated.

Now I'd like to turn to the hot news -- the recent developments in U.S. relations with several European countries. If I were seeking to read tea leaves to determine what the future of U.S. aviation relations might look like, these are the tea leaves I would read. I say that because the issues and problems are common to many U.S. bilateral relations and because there appears to be some possibility of coordinated action by the foreign governments in question -- as well as some possibility that the European Community may become involved. A question I ask rhetorically is whether what we are now seeing in Europe is a precursor of future multilateral U.S.-EC negotiations. If so, it will be particularly interesting to see if the Europeans seek -- at least for bargaining purposes -- to treat Fifth Freedom intra-EC travel as forbidden cabotage for U.S. carriers, in retaliation for U.S. refusal to allow European carriers to engage in cabotage operations within the United States.

First comes France and, frankly, I would have thought several months ago I'd be saying "first comes Germany." But France beat everybody to the punch by renouncing its bilateral last month. France's basic concern is capacity dumping by U.S. carriers. Only two years ago in 1990 the United States and France entered into a significant amendment to their bilateral agreement. That amendment gave France three new U.S. points and the U.S. one new point. It also included, however, an agreement by the United States to limit the number of designations of U.S. carriers and to limit capacity.

Earlier this year France proposed to amend the U.S. bilateral again. It wanted the bilateral to provide that the carriers of each side serve an equal number of points in each country. It wanted to provide that there be only single designation on routes with less than 300,000 passengers a year and double designation on routes of greater than 300,000 passengers per year, with the exception of triple designation on the New York-Paris route. Furthermore, France wanted to institute a provisions which would place a cap of 150% on the capacity of one side versus the capacity of the other side, both on a route-by-route basis and on a country-to-country basis. In other words, this would limit the carriers of one country to no more than 60 percent of the market.

When these proposals were not eagerly adopted by the United States, France also demanded a reduction by 500,000 seats of the scheduled U.S. carrier capacity for the summer of 1992; this, incidentally, would still have allowed a significant increase in U.S. capacity over 1991. The United States, predictably, took the position that such restrictions were not acceptable but that it was willing to consider new opportunities for France to address any imbalance. The U.S. also offered a voluntary reduction in U.S. carrier seats for summer of 1992 in the amount of 255,000 seats, which France rejected. This created an impasse, and so France renounced the bilateral, which will terminate in May of 1993. France also imposed a reduction of 255,000 seats on U.S. carriers, and, although this 255,000 seat reduction is a reduction from what U.S. carriers planned to operate, it still represents a 30 percent increase over what the U.S. carriers operated last summer.

I understand that as a practical matter the U.S. carriers have voluntarily complied with this reduction by downsizing aircraft and reducing frequencies. Negotiations are scheduled to begin later this month. France wants U.K.-type capacity restrictions and restrictions on designations. As I suggested earlier, there is some possibility that France's position may be coordinated with positions to be taken by Germany and Italy.

Having said that, let me turn to the situation with Germany. Suffice it to say that the U.S.-German bilateral relationship is extremely strained at the moment; it will not be at all surprising if Germany renounces the bilateral as early as this month. Germany is concerned about the economic imbalance in the bilateral relationship resulting from the substitution of United, American and Delta for Pan Am and TWA since the existing bilateral was signed in 1978. I attended a speech given by Lufthansa Chairman Juergen Weber earlier this year in Washington. He made several key points. He said that the concept of open skies is valid only for U.S. megacarriers who can exploit the opportunities presented by open skies. He said that the existing liberal bilateral between the United States and Germany had resulted in excess

capacity, below-cost pricing and a disastrous dilution of yields. He pointed to the changed circumstances, not surprisingly, and noted that when the bilateral was signed TWA and Pan Am were all that Lufthansa had to worry about. They, of course, did not have massive interline feed systems, much less control over computer reservation systems. Now United, American and Delta have all of those advantages plus frequent flyer programs which, as you well know, have the very object of diverting traffic away from other carriers. Mr. Weber said that to Lufthansa the concept of open skies was only meaningful if it includes cabotage rights within the United States.

Not surprisingly, the position of the German government is quite close to the position of Lufthansa's Chairman. Earlier this year Germany proposed a new bilateral to the United States which included: capacity restrictions which would limit U.S. carriers to 60 percent of the market; restrictions on intermediate and beyond rights; single designations in certain markets; country of origin pricing; increased access by German carriers to the U.S. markets; an article allowing intervention to prevent practices that "tend to establish a dominant position," (notably CRS and frequent flyer programs); cabotage rights for German carriers within the United States (but, notably, not any cabotage rights for U.S. carriers within Germany);. The United States response was predictable. The status quo is fine and we're not going to retreat from our open skies position. The United States did, however, offer nine new U.S. points to Germany, but that is not what Germany wanted to hear..

There are many of us who anticipated that the bilateral might be renounced as early as March, but when the German government saw that U.S. carrier schedules for the summer of 1992 represented less capacity than they had expected, the crisis was averted momentarily.

Since March the situation has not gotten better. Germany has refused Delta's requests to increase the number of frequencies that it operates beyond Germany to Warsaw. It has refused to allow two U.S. carriers, Tower and Evergreen, to commence scheduled services to Germany. The U.S.'s response has been that these refusals are clear violations of the bilateral, that U.S. carriers can operate as they please. It is certainly possible that the United States will retaliate; currently, the United States is denying any discretionary extra-bilateral requests by German carriers. Negotiations are scheduled to begin on June 9 in Bonn. Renunciation by Germany is viewed as a strong possibility, and I think that Germany will be both fortified and perhaps even challenged by France's renunciation of its bilateral.

Finally, I will turn to Italy, which is the other hot spot at the moment, and I say "at the moment" because other hot spots could emerge in the near future. The United States and Italy entered into an agreement in February of 1990 -- only a little over two years ago -- that gave Italy three new U.S. points (for a total of twelve U.S. gateways), and gave the United States the right to designate additional carriers to serve Italy, with those designations to be phased in over a number of years. This agreement however, also contains frequency limitations based on aircraft capacity as well as country of origin pricing with certain double disapproval zones. Now that was only two years ago. This year Italy has become very concerned about the presence of U.S. megacarriers and, of course, the bilateral imbalance, and it wants restrictions on capacity and

pricing. Italy points out that since 1990 Delta has replaced Pan Am and TWA is likely to be replaced as well.

Talks were held last month. Italy took the position that if TWA is replaced, its successor cannot operate frequencies or provide frequencies or capacity in excess of what TWA offered. Italy wants to prevent what it calls predatory pricing by establishing controls over fares at the upper and lower ends of the spectrum. And, finally, it wants to restrict U.S. carrier ability to operate to Italy from points behind the U.S. gateways, such as a Chicago-New York-Rome operation. The U.S., of course, has said these limitations are not acceptable and, of course, has offered additional U.S. points to Italy. The outlook is not bright. Reportedly, at the recent talks Italy hinted strongly that it might renounce the bilateral; thus, I would say that renunciation is a serious possibility. I would also say that it's quite likely that France, not wanting to be caught out alone, is pressuring Italy to renounce its bilateral with the United States.

The third thrust of U.S. policy is an emerging desire on the part of the United States to pursue a multilateral framework. There is an increasing frustration with the bilateral system both in the Department of Transportation and within Congress. There is a view that it is cumbersome, anti-competitive, inelastic, and that it has simply outlived its usefulness. The U.S. always likes to point out that at the original Chicago Convention it favored a multilateral system and only over its objections was the existing bilateral framework adopted. There have been calls in Congress for a new Chicago Convention which would lay the groundwork for a multilateral framework, and of course, I have mentioned earlier today the developing proposal for open skies with Central American countries on a multi-lateral basis.

As to the bilateral framework, Jeff Shane of the Department of Transportation describes the framework as an "anachronism" which he says needs to be "normalized." He uses the term "normalization" because he says that to describe what the U.S. wants as "liberalization" ignores the fact that most other markets and industries operate without the sort of bilateral restrictions that exist in the aviation industry. Therefore, to remove the restrictions of the bilateral system is simply to make things "normal," and not really "liberal."

Although the U.S. has a desire to pursue a multilateral framework, comments by people within the U.S. administration make clear that they recognize that vested interests and numerous other factors make multilateral agreements, at least on a broad scale, quite unrealistic. Ironically, if what some predict actually occurs, the U.S. may find itself involuntarily dealing on a multilateral basis with Germany, France, Italy and possibly even the EC in the next few months. In this context, the United States may conclude that multilateral dealings are more painful than they are worth.

I would like now briefly to describe two more components of current U.S. international aviation policy. The first involves air carrier ownership. The U.S. strongly favors privatization of foreign carriers, on the theory that private interests -- unsubsidized private interests -- will be far more efficient and in the long run far more effective competitors than air carriers that are owned and ultimately operated by government interests. The U.S. also is loosening its position on the ability of foreign interests to invest in U.S. carriers. Although the Federal Aviation Act

still limits foreign investment to 25 percent of the voting stock, the Department of Transportation has taken the position that foreign interests may own up to 49 percent of the equity of a U.S. carrier -- but only 25 percent of the voting stock -- provided that the U.S. has a liberal bilateral relationship with the foreign countries in question. The KLM-Northwest transaction is the first example. DOT has also encouraged the passage of legislation that would allow foreign interests to own 49 percent of the voting stock of U.S. carriers.

This ownership policy ties in to the U.S.'s desire for a multilateral framework, because by encouraging multi-nationality of airline ownership, you (at least in theory) enhance liberalization of bilaterals by blurring the nationalities of the beneficiaries of new bilateral opportunities. And if you blur the nationality of the beneficiaries, then, at least in theory, you hasten the demise of the bilateral system itself.

And finally, while we're talking about liberalizing -- or normalizing -- the aviation markets, I will turn to the possibility that the U.S. will terminate the immunity enjoyed by IATA rate and other agreements from the application of U.S. antitrust laws. Without that immunity, carriers who join in those agreements would almost certainly be found to be engaging in price fixing and other conduct that violates U.S. law. Currently, the Department of Transportation is under enormous pressure from the Department of Justice, which has jurisdiction over antitrust matters generally, to end that immunity. DOT is seriously evaluating whether to do so. Proponents of continued immunity must convince DOT that removing the immunity will lead to consumer harm, not an easy task in light of the harm generally presumed to flow from price fixing. The Department of Justice has argued to DOT that, contrary to statements by IATA and others, the interlining system will not collapse without immunity because (according to Justice) there is no connection between interlining and horizontal price fixing. My guess is that the immunity will eventually be eliminated, and the common thinking -- at least among U.S. lawyers anyway -- is that when that happens many carriers will have a lot of learning to do and will have to change a number of their marketing and pricing practices in order to avoid running afoul of the antitrust laws from which they've been protected for so long.

That concludes my summary of major developments in U.S. international aviation policy. I would, however, like to take advantage of this opportunity to offer a few views of an observer of that policy in action.

I think it is safe to say that the U.S. interest in promoting competition and liberalization is necessarily self-serving. Last year, then-DOT Secretary Skinner stated, "An article of faith in formulating U.S. international aviation policy has always been that a procompetitive environment allows U.S. carriers to thrive." That is an accurate statement. There should be no doubt that, behind the open-skies rhetoric, the U.S.'s paramount objective is the promotion of U.S. interests and the creation of an environment that can favor U.S. interests. I am not saying there is anything wrong with that; in fact, it makes perfect sense. But, I think it is necessary to see U.S. policy for what it is.

It is also necessary to see that there is a real difference, as everyone here knows, between creating equality of opportunity, on the one hand, and creating equality of benefit, on the other hand, in bilateral relationships. The United States, and more particularly U.S. carriers, have the

luxury of being able to focus on expansion of opportunities because U.S. carriers are uniquely situated to exploit those opportunities. Many foreign carriers are more concerned -- and rightly so -- with maintaining equality of benefits because they are generally less well equipped to exploit broad opportunities. There is a good reason for that: it is what we call in the United States the lack of a "level playing field."

U.S. carriers, as you all know, have massive domestic systems to feed their international services. They have local traffic rights to improve the economics of operations from behind gateway points to points in foreign countries. They have unique advantages offered by their computer reservation systems--advantages that have been diminished somewhat over time, but are still very strong adjuncts to their marketing efforts. U.S. carriers receive major traffic boosts from their frequent flyer programs, which allow their passengers the reward of free transportation between, for example, New York and Chicago if they buy a ticket from Miami to Buenos Aires. No carrier in this room -- no matter how ingenious or hard working -- can do that. No carrier in this room can carry local traffic between Miami and New York. No carrier in this room can reproduce a domestic feed system in any way comparable to the feed systems of Delta, United and American. No carrier in this room has a fleet of approximately 500 aircraft, or annual operating revenues of 11.3 billion dollars (US); those are the average fleet and revenue figures for American, Delta and United.

So, when the United States talks about equality of opportunity, it is somewhat disingenuous, because it knows full well that only U.S. carriers are in a position to take advantage of those opportunities.

In the face of this, it is not surprising that there has been a tepid foreign response to the U.S. open skies initiatives. In the face of this, it reasonable for foreign carriers to take a longer range view of "competition" and the viability of competitors than the U.S. does. I will add that there is certainly validity to the proposition that, over time, smaller carriers may be driven from the market -- regardless of their ingenuity or efficiency -- just as has happened in the U.S.

The ultimate question is whether a reduction in the number of carriers -- whether caused by capacity dumping or below-cost pricing or some other factor -- will lead to higher prices and consumer harm in the long run. Under U.S. antitrust law, the notion of predatory pricing is a very elusive one and a very difficult one to prove in court. However, it does not take a great leap of faith for a businessman to see that a major bilateral imbalance can result in dominance and a degradation of competition and, ultimately, in consumer harm. Do governments have a responsibility to attempt to avoid such an outcome? I think so.

I also think it is quite reasonable for foreign governments and foreign carriers to take a "now or never" approach to these developing problems with the United States and to act quickly, as France has done, as Germany and Italy may do. As we have seen, an increasing number of countries have concluded that obtaining new opportunities will not alleviate the bilateral imbalances they are experiencing and that drastic action is needed.

I don't offer any magic solution to the situation today, but I do have two thoughts. First, although renouncing a bilateral is an extreme step, it is becoming increasingly fashionable and justifiable. There was a time when filing for bankruptcy protection was considered extreme and shameful, but that has certainly become a fashionable step for U.S. carriers to take.

Second, the most effective way to proceed may well be through coordinated regional action and negotiations. This may be the best way to test how far the U.S. is willing to go to protect open skies concepts without jeopardizing its overall bilateral relationships. It stands to reason that such an approach could be more likely to cause the U.S. to understand that -- notwithstanding the glories of free competition -- remedial steps are required to preserve the U.S.'s aviation relations with its neighbors in the long run.

Obviously, I think the United States negotiations and the developments in its relationships with France, Germany and Italy bear very close scrutiny to see how far each side will go, to see how resistant the U.S. will be to accepting new restrictions on capacity and pricing, and to see the extent to which there is any coordination of action by the three foreign governments and carriers. If any such multinational coordination in those negotiations proves successful, then it may bode well for future actions by other foreign governments and carriers on a regional basis.

That concludes my remarks. I would like again to thank AITAL for giving me the opportunity to address this group. I look forward to being able to speak with you individually during the remainder of the assembly. Thank you very much.

Charles J. Simpson, Jr.
Zuckert, Scoutt & Rasenberger
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 298-8660