TTD A BOLD VOICE FOR TRANSPORTATION WORKERS

July 5, 2006

The Honorable Jeffery Shane
U.S. Department of Transportation
400 Seventh Street, SW, Nassif Building
Room PL-401
Washington, DC 20590-001

RE: Actual Control of U.S. Air Carriers
Supplemental Notice of Proposed Rulemaking
Docket No. OST-2003-15759

Dear Mr. Shane:

On behalf of the Transportation Trades Department, AFL-CIO (TTD)[1], I am writing to express our continued opposition to the Department of Transportation's (DOT) proposal to allow foreign interests to exercise actual control over U.S. airlines and specifically to respond to the Supplemental notice published in the *Federal Register* on May 5, 2006. This proposal has been repeatedly criticized and rejected on Capitol Hill and the numerous policy questions inherent in allowing foreign interests to control U.S. airlines have not been addressed. We therefore urge the DOT to withdraw this proposal and instead go to Congress if it seeks to make such fundamental changes to the rules governing foreign ownership and control of U.S. airlines.

As you know, TTD has already submitted comprehensive comments to the docket on the original notice of proposed rulemaking (NPRM). It is not our intention to restate those arguments in detail here. We would only add that nothing contained in the supplemental notice addresses the core deficiencies that we and others have identified with this proposal.

Specifically, the Administration's plan remains contrary to the statutory requirement that U.S. citizens exercise actual control over U.S. airlines. The national security and defense issues – specifically in relation to U.S. airline participation in the Civil Reserve Air Fleet (CRAF) program have been well-documented. Simply put, we question whether U.S. citizens, employed in an airline whose commercial functions are controlled by foreign interests, will actually be in a position to make independent decisions on CRAF participation. Finally, this proposal will directly threaten the jobs and rights of the airline pilots, flight attendants, mechanics and others who are represented by our aviation unions. In short, this proposal will weaken the U.S. aviation industry at the worst possible time and undermine a key component of our national defense apparatus.

In the Supplemental notice, the DOT introduces a new concept to an already complicated proposal. It seeks to satisfy the actual control test by explaining that the U.S. owners of an airline under foreign control will have the ability to "revoke" such authority. In this way, the notice explains, actual control will be vested with U.S. citizens. This legal fiction ignores the basic realities of the aviation industry and is inconsistent with the DOT's own supposed rationale for this rule – to encourage

[1] Attached is a list of TTD member unions.

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foreign investment in U.S. airlines. A foreign interest will invest in a U.S. carrier under this proposal so that it can exercise actual control over the carrier. If the U.S. owner revokes the authority granted to a foreign interest, the U.S. investor will in all likelihood be forced to return the capitol invested by the foreign interest – funds that a U.S. carrier will be hard-pressed to return. In fact, if the U.S. carrier had sufficient available cash to make this type payment, it would not have had to give up control to the foreign interest in the first place. Finally, we would note that the revocation of authority power, as flawed as the concept is, does not even appear in the proposed revised regulations. It is simply a point of discussion in the preamble to the rule. Clearly, the statutory requirement, as codified by Congress in 2003, that U.S. citizens exercise "actual control" over U.S. airlines, deserves more than the Supplemental now supposedly offers.

We also note that nothing in the Supplemental even pretends to address the core labor issues raised by TTD and others in response to the NPRM. Instead, the Supplemental restates the argument, without any substantive support, that the proposal will not harm U.S. aviation workers.

Specifically, the Supplemental states that "we do not believe that this proposal will impact a carrier's incentive to outsource." We find this statement lacking in understanding of current industry practices and the scope of the proposal on the table. There are now more than 640 foreign repair stations certified by the Federal Aviation Administration (FAA) to work on U.S. aircraft, and U.S. air carriers are taking full advantage of the FAA's lax attitude towards policing these facilities for the safety and security risks we have pointed out over many years. Air carriers already outsource half their maintenance work to both foreign and domestic stations – they do so because the FAA has failed to step in and ensure that the use of third-party facilities does not pose a safety or security risk to the flying public. It takes little imagination to assume that a foreign entity taking control over the commercial aspects of a U.S. carrier will be empowered to push the envelope on outsourcing repair work to foreign maintenance facilities. And if the controlling foreign entity is a foreign airline with maintenance capacity in place around the world, the financial incentive to outsource will only be enhanced. A foreign entity will simply be free to transfer work from U.S. repair stations to foreign stations. We do not understand how or why the DOT can dismiss this problem as non-existent.

The Supplemental notice also fails to address the concern that pilot and flight attendant positions would be transferred to foreign carriers. Instead, the DOT again simply points out that U.S. carriers would continue to be governed by U.S. labor law, and that unionized workers would "continue to enjoy the rights under their collective bargaining agreements." That declaration by the DOT has little meaning to U.S. aviation employees who fear their bargaining rights and collective bargaining agreements under U.S. labor law are at risk if control of their employer falls in the hands of a foreign entity.

A foreign entity that controls a U.S. airline will also have complete say over the route system of the U.S. carrier and could use this power to limit international flights and use the U.S. system to simply support the foreign airline. It is also possible the foreign airline or entity could use its power as leverage to secure wage and benefit concession from U.S. workers. Given the state of the aviation industry and the sacrifices workers have already made, further downward pressure on wages and benefits from foreign airlines is simply not in order and must be accounted for in this proposal. The DOT has simply chosen to ignore these issues and concerns.

Given the problems with this rule, it is not surprising that since it was unveiled last fall, Congress, on a bipartisan basis, has consistently attempted to slow down or stop this change in law. In fact, less than two weeks after the NPRM was first published in the *Federal Register*, 85 House Members,

including 22 Republicans, wrote to Secretary Mineta in "strong opposition" to the proposal and asked that it be withdrawn. The letter correctly described the NPRM as a "back door effort to accomplish what the Department has failed to accomplish by legislation." Since the Administration ignored this plea, Rep. Jim Oberstar (D-MN), the Ranking Member of the Transportation and Infrastructure Committee, and Rep. Frank LoBiondo (R-NJ), introduced legislation (H.R. 4542) that would delay the rule for at least a year and require DOT to submit information to Congress on the impact such a change would have on U.S. aviation and security interests. This bill now has 196 co-sponsors including a majority of the House Transportation Committee. Similar legislation has been introduced in the Senate by Commerce Committee Co-Chair Senator Dan Inouye (D-HI).

Members have also moved to block this rule through the appropriations process. Specifically, the House Appropriations Committee voted to include language in the Emergency Supplemental House Report (H.R. Rep. No. 109-388) expressing serious concerns with the proposal and directing DOT to refrain from issuing a rule for 120 days. The Senate Appropriations Committee, through an amendment introduced by Senator Inouye, and supported by Senator Ted Stevens (R-AK), the Chairman of the Senate Commerce Committee, went even further. The Inouye amendment added legislative language that barred the DOT from using funds "to issue or implement a decision ... that would change the Department of Transportation's long-standing interpretation concerning what constitutes "actual control" of an airline ..." Pursuant to direction from the White House, this language was removed in Conference.

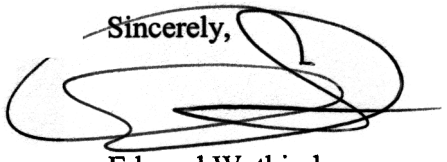
In response, Reps. Oberstar, LoBiondo and Ted Poe (R-TX) offered an amendment to the Transportation Appropriations bill (H.R. 5576) to prevent funds from being used to finalize or implement the NPRM. The amendment passed overwhelmingly on the floor of the House by a vote of 291 to 137, with 97 Republicans voting in opposition to the Administration's position. While the Senate has not yet considered this bill, it is expected that a similar amendment will be offered at the appropriate time.

Finally, Rep. Duncan Hunter (R-CA), Chair of the House Armed Services Committee, and Reps. Oberstar, LoBiondo, Poe and Jerry Costello (D-IL), Ranking Member of the Aviation Subcommittee, sent a letter after the House vote calling on the DOT "to respect Congressional actions and end the rulemaking process." We could not agree more with this sentiment.

If the DOT wants to make changes to airline foreign ownership and control rules, it should go to Congress, carefully explain what those changes are, why they are needed and then let the legislative branch work its will. With this NPRM, the DOT has overstepped its authority and done so in a manner that will weaken the U.S. aviation industry, its workers and threaten national security. It is time for the DOT to step back from this misguided proposal and announce that it will withdraw its proposal to allow foreign interests to control U.S. airlines.

Thank you for the opportunity to share the views of transportation labor.

Sincerely,



Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)
United Transportation Union (UTU)

April, 2006