October 12, 2005

I request confidential treatment of this letter pursuant to 49 U.S.C. § 115

Mr. John Byerly
Deputy Assistant Secretary for Transportation Affairs
U.S. Department of State
EB/TRA Room 5830
2201 C Street, NW
Washington, D.C. 20520-5820

Mr. Paul Gretch
Director
Office of International Aviation
Room 6402
U.S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590

Re: US-EU Air Services Negotiations

Dear Messrs. Byerly and Gretch:

In anticipation of the resumption of air services negotiations between the U.S. and the E.U., I want to reiterate the views of the aviation unions represented by the Transportation Trades Department, AFL-CIO on the issues that would have a significant effect on U.S. airline workers.

Ownership and Control. For reasons that we have spelled out in past correspondence, we remain firmly opposed to any change in the existing rules concerning the ownership and control of U.S. air carriers. We understand that this issue will not be part of the upcoming round of negotiations, but that the U.S. Government is conducting an independent review to determine whether any change in existing law on that subject is warranted. We expect that we will be given an appropriate opportunity to present our views to those who are conducting that review, so that we can bring to their attention the far-reaching effects that changes in the ownership and control rules could have on the stability of the U.S. airline industry.

Principal Place of Business. The Memorandum of Understanding (MOC) that was drafted during the last round of negotiations includes in paragraph 6 the statement that "under European Community legislation, an EU airline must receive both its AOC and its operating license from the country in which it has its principal place of business." This important rule was not, however, incorporated into the text of the proposed agreement, and it should be. The preservation and enforcement of the rule is not merely a matter of concern for the EU; it is also a key protection for U.S. airlines and their employees against flag-of-convenience competitors. For this reason, the agreement should not only incorporate the rule, but should also include a clear definition of "principal place of business." We suggest the following definition:

> "Principal place of business" means the Member State in which an air carrier is established and incorporated in accordance with national laws and regulations, and in which the carrier undertakes the largest portion of its activities. To determine where the largest portion of the carrier's activities are located, the following facts shall be considered: where the carrier has the largest number of flights departing and returning each week, has a significant capital investment in physical facilities, pays income tax, registers its aircraft, and employs a significant number of nationals in managerial, technical, and operational positions.

Indirect Air Carriage. Toward the end of the last round of negotiations, the U.S. hastily drafted and presented to the EU a proposal that would authorize EU air carriers to perform interstate air transportation in the U.S. as air freight forwarders and tour operators. This proposal was not discussed in advance with stakeholder representatives, and in its present form it would create an enormous loophole for EU carriers to circumvent the ownership and control rules. The whole concept of a direct air carrier operating as an indirect air carrier is entirely unprecedented, and raises a myriad of issues under DOT regulations, as I pointed out in my letter to you of March 28, 2004. We strongly urge that this ill-considered proposal not be renewed in the upcoming round of negotiations. If it is not dropped altogether, it should be deferred for future and more deliberate consideration in connection with the broader issues of market access and ownership and control.

Wet Leasing. In the prior round the U.S. proposed language that would allow EU carriers to provide aircraft with crew to U.S. carriers. In response to our concerns about the impact of this provision on U.S. aviation workers, we were assured that language would be included to provide that such wet-leasing would only be permitted in emergency circumstances and for short periods of duration, and that it would be totally prohibited if the U.S. carrier was involved in a labor dispute. We remain strongly opposed to granting

foreign carriers the right to provide aircraft and crew to U.S. air carriers. If the U.S. determines to include that right in any agreement, however, we strongly request that the promised safeguards be included as well.

Joint Committee. We urge that language be added to Article 17, dealing with the Joint Committee, to guarantee the participation of stakeholders, including labor representatives, in Joint Committee deliberations. Although the proposed MOC included a sentence stating that "[s]takeholder representatives may be invited as appropriate," we believe this language -- with the words "may" and "as appropriate" -- is too weak and ambiguous. We suggest that stakeholder participation be clearly provided for in the Agreement itself, by amending paragraphs 1 and 4(b) of Article 17 to add the language underscored below:

> 1. A Joint Committee consisting of representatives of the Parties, and interested stakeholders as observers, shall meet at least once a year to conduct consultations relating to this Agreement and to review its implementation.
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> 4(b). considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate, while fully involving stakeholders representing employees and, if appropriate, employers;

Cabotage. Finally, we expect the U.S. to maintain its firm opposition to the exchange of any form of cabotage rights as part of an agreement. As we have explained in the past, we see no justification for changing this longstanding prohibition and doing so would only weaken our industry and cause economic problems for our members.

Thank you for considering the views set forth above. We would be glad to have further discussions concerning these or any other issues if you believe that would be helpful.

Sincerely,

Edward Wytkind
President