

Future of Aviation Advisory Committee
Subcommittee on Competitiveness and Viability
Record of Meeting
November 18, 2010
Covington & Burling, 1201 Pennsylvania Avenue
Washington, DC, 20004

Public Announcement

The U.S. Department of Transportation (DOT), Office of the Secretary of Transportation, told the public of this Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability meeting in a Federal Register notice published November 1, 2010 (75 FR 67163).

Subcommittee Members in Attendance

Name	Affiliation(s)	
Glenn Tilton, <i>Subcommittee Chair</i>	Chairman	United Continental Holdings, Inc. (UCH)
Susan Baer	Director, Aviation Department	Port Authority of New York & New Jersey (PANY/NJ)
Russell Bailey, <i>alternate for</i> <i>Ana McAhron-Schulz</i>	Senior Attorney	Air Line Pilots Association, International (ALPA)
Severin Borenstein ¹	Professor	Haas School of Business, University of California, Berkeley
Patricia Friend	International President	Association of Flight Attendants (AFA) Communication Workers of America (CWA), American Federation of Labor–Congress of Industrial Organizations (AFL-CIO)
William McGee	Travel and Aviation Consultant	Consumers Union
Daniel McKenzie	U.S. Airlines Research Analyst	Hudson Securities, Inc.
Jack Pelton	Chairman, President, and Chief Executive Officer	Cessna Aircraft Company (Cessna)
Frank Quinn, ¹ <i>alternate for</i> <i>Chris Williams</i>		Williams Capital Group

Committee Members Not in Attendance

Name	Affiliation(s)	
Bryan Bedford	Chairman, President, and Chief Executive Officer	Republic Airways Holding, Inc.

¹ By Phone

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Other Officials Present

Name	Affiliation(s)	
Todd Homan, <i>Designated Federal Official (DFO)</i>	Director, Office of Aviation Analysis	DOT
Susan Kurland, <i>FAAC Committee Chair</i>	Assistant Secretary for Aviation and International Affairs	DOT

Other Persons Present

Name	Affiliation(s)	
Mark Anderson	Vice President, Government Affairs	United Air Lines, Inc. (United)
Aleta Best	Transportation Industry Analyst	DOT
Bill Bottoms	Executive Vice President	Team SAI Inc.
Chris Brown	Senior Advisor	United
Mary Buckley	Director, Government, and Community Affairs	Denver International Airport
Patty Clark	Senior Advisor to the Aviation Director	PANY/NJ
Andrew Compart	Commercial Aviation/MRO Editor	Aviation Daily/Aviation Weekly
James Dann	Deputy Director for the Office of Aviation Analysis	DOT
Dennis DeVany	Chief, Essential Air Service and Domestic Analysis Division	DOT
Ed Faberman	Executive Director	Air Carrier Association of America
Paul Feldman	Vice President for Government Affairs	General Aviation Manufacturers Association
David Goehler	Director, Government Relations	Jeppesen
Debbie McElroy	Executive Vice President, Policy and External Affairs	Airports Council International-North America
Neil Modzelewski	Director, Regulatory Affairs	PAI Consulting
Rosemary Moon		United
Robert Peterson	Technical Fellow, Air Transportation Industry Infrastructure Research, Aviation Security	The Boeing Corporation (Boeing)
Lisa Piccione	Senior Vice President, Government Affairs	National Business Aviation Association
Courtney Robinson	Director, Civil Aviation Infrastructure	Aerospace Industries Association (AIA)

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Ashleigh de la Torre	Director, Government Affairs	Bombardier
Kristi Warden	Program Manager	Federal Aviation Administration (FAA)
Stephen Welman	Principal Economics and Business Analyst	The MITRE Corporation
Jeffrey Wharff	Senior Economic Advisor	FAA

BACKGROUND AND WELCOMING REMARKS

Mr. Glenn Tilton, Subcommittee Chair, UCH, welcomed the participants. He stated that the subcommittee's agenda for the meeting was comprised of reviewing and finalizing its draft proposals. Mr. Tilton thanked Ms. Susan Kurland, Committee Chair, DOT, and Mr. Todd Homan, DFO, DOT, for their work in developing a framework within which the differing opinions of the subcommittee members could be expressed. He then turned the meeting over to Ms. Kurland and Mr. Homan for remarks and opening formalities.

DOT REMARKS ON FAAC PROCEDURES

Ms. Kurland noted that this was the final subcommittee meeting, all of the other subcommittees having met earlier in the week. She thanked the subcommittee members for their efforts and cooperation.

Mr. Homan read the formal statement required under the Federal Advisory Committee Act. He noted that, although the meeting was open to the public, participation in the meeting was limited to subcommittee members, their alternates, and Federal officials. Mr. Homan added that only subcommittee members and their alternates were entitled to vote on subcommittee business. He stated that interested people have the opportunity to submit comments before each meeting, either by email at faac@dot.gov or by submission to the regulatory docket at <http://www.regulations.gov> (Docket No. DOT-OST-2010-0074). He noted that the meeting minutes will be made available both in the regulatory docket and on the FAAC Web site at <http://www.dot.gov/faac>.

Mr. Homan stated that corrections to the draft minutes of the August 24, 2010, meeting of the subcommittee had been received, and the corrected minutes had been circulated, ratified, and certified. He noted that draft minutes of the October 15, 2010, meeting had been circulated to the subcommittee members and requested that any comments or corrections be submitted by close of business Wednesday, November 24, 2010. Mr. Homan added that a revised draft of the minutes would be circulated by close of business December 1, 2010, and, barring any further comment, would be ratified and certified on December 6, 2010.

DISCUSSION

Mr. Tilton reminded the subcommittee that all proposed recommendations were due to Ms. Kurland no later than Monday, November 22, 2010. Ms. Kurland confirmed this requirement, and noted that the subcommittees' proposals would be packaged and distributed to the FAAC members for review prior to the final meeting of the FAAC on December 15, 2010. She stated that, at that meeting, each

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subcommittee would be afforded 30 minutes in the morning session to address the FAAC regarding its recommendations. She stated that the final recommendation package would be assembled during the lunch break, and the FAAC would present its recommendations to Secretary of Transportation Raymond LaHood during the afternoon session.

Mr. Tilton thanked Ms. Kurland and turned the meeting over to Mr. William McGee, Consumers Union, to discuss the draft recommendation proposals on air carrier competition and passenger protections, and on the Essential Air Service (EAS) Program.

Air Carrier Competition and Passenger Protections

Mr. McGee echoed Mr. Tilton's earlier thanks to the DOT representatives present for their efforts to bridge the differing opinions held by the subcommittee members. He stated that there had been significant disagreement among the subcommittee members early in the discussions of air carrier competition and passenger protections. He noted that, while the subcommittee had moved closer to consensus, further discussion of some issues remained necessary.

As a preliminary matter, Mr. McGee reiterated his earlier statements that there is currently a tremendous amount of discontent among air carrier passengers. He acknowledged that Secretary LaHood has been very proactive with respect to passenger concerns, and stated that the Secretary's actions have demonstrated his earnest interest in the issue. He stated that, nevertheless, the provisions of a recent notice of proposed rulemaking (NPRM) do not go far enough in protecting passengers. Mr. McGee stated that, among advocates for passenger rights, Consumers Union has taken a relatively moderate position, and had respected Secretary LaHood's request for consensus within the FAAC subcommittees. He cautioned that if moderate proposals are not adopted, parties outside the DOT, including Congress, may put forth more extreme proposals. He noted that some proposals under discussion within the framework of the NPRM call for elimination, rather than transparency, of ancillary fees, or for reregulation of air carriers.

Mr. Tilton observed that the subcommittee's proposal reflects the result of its earnest efforts, and he suggested that it should not attempt to predict the impact of legislative activity or other political efforts in developing its recommendations.

Mr. McGee stated that the first issue addressed by the proposed recommendations is transparency. He stated that there was desire for transparency of fees—particularly baggage fees—and for transparency of flight operations undertaken by various air carriers, particularly code share operations and operations by regional air carriers on behalf of major air carriers. Mr. McGee stated the belief that there is significant consumer confusion regarding air carrier pricing because of the various ancillary fees charged by air carriers. He also stated that, despite the DOT's efforts in recent years, there is continuing confusion or lack of knowledge on the part of passengers regarding operations by regional partners and code sharing.

Mr. McGee reviewed the proposed recommendations, including a recommendation to continue efforts to ensure transparency in pricing and in disclosure of code share operations and similar air carrier

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arrangements. He noted that the subcommittee had reached consensus on these recommendations generally, but that questions remained about how information would be communicated to passengers purchasing air transportation under different means of distribution. Mr. McGee asked Mr. Tilton to comment on the inclusion of a reference to global distribution systems (GDSs) in the subcommittee's proposal. He noted that GDSs had not been a subject of discussion in previous meetings of the subcommittee, and he stated that transparency should be consistent across all methods of purchase.

Mr. Tilton stated that relationships between the air carrier industry and GDSs are in a continual state of flux and are subject to negotiations between air carriers and GDSs. He noted that some air carriers use GDSs and others do not, and he added that this unequal participation introduces a complexity to the issue of disclosure of fees. He stated that, if air carriers, in their proprietary customer communications, follow the provisions the subcommittee proposes, passengers will have sufficient opportunity to determine the existence of fees. Mr. Tilton also noted that GDSs are not represented on the FAAC.

Mr. McGee stated that, regardless of the distribution channel, the concern is ensuring that appropriate information is communicated to the consumer. He noted that the DOT has a long and active history of monitoring and regulating GDSs and their dealings with consumers. He stated that any rationale which supported transparency in only some avenues is troubling.

Mr. McGee also stated that the subcommittee's recommendations do not address the view of air carriers that the products and services for which ancillary fees are charged are optional. He stated that whether services such as carriage of checked baggage are optional is subject to debate. He noted that this issue is of particular interest if taxes are to be imposed only on airfares and not on ancillary fees.

Mr. Tilton stated that the language of the proposal has been drafted to make clear that some concepts do not have the universal support of the subcommittee membership as well as to ensure that all viewpoints are acknowledged. He reiterated that the subcommittee should not attempt to take the political acceptability of its recommendations into account, but should recommend those actions it believes to be the best advised. He noted that the FAAC's recommendations would likely be a starting point, and political and market forces would influence the further evolution of any actions undertaken by the DOT.

Ms. Patricia Friend, AFA, noted that the proposed recommendation does not call for any change or new activity, only for the DOT and Secretary LaHood to continue in certain efforts. She asked Mr. McGee what he felt should be added to or changed in the proposal. Mr. McGee stated that, with respect to transparency, the Secretary of Transportation should take action to ensure that, in all distribution channels, consumers are aware of the total cost of their air travel, including all fees, and of the identity of the air carrier conducting the flights for which they purchase tickets.

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Mr. Daniel McKenzie, Hudson Securities, noted that the subcommittee is not positioned to determine the technical ability of participants in all paths of distribution to comply with proposed requirements. He stated that one GDS does not possess the technological infrastructure necessary to comply, and it would likely be forced out of business by the proposed requirements. Mr. McGee stated that some would view this as a positive result of market forces. Mr. McKenzie stated that such an occurrence would not benefit consumers.

Ms. Baer cautioned against making overly prescriptive recommendations to Secretary LaHood. She noted that the subcommittee's recommendations should be broadly stated but should not prescribe specific methods. She added that following this rationale, the subcommittee could recommend that the Secretary require transparency of pricing to consumers, but not prescribe precisely how consumers should be apprised of pricing.

Mr. Tilton reiterated that because GDSs are not represented in the FAAC or the subcommittee, the subcommittee is not informed as to their abilities and limitations. He also reiterated that the subcommittee's proposal makes clear that there is a difference of opinion with respect to the application of its provisions to GDSs. Mr. McGee noted that the Rationale section of the proposal contains the following passage:

Some Subcommittee members maintain that a hyperlink to a page disclosing optional fees would provide a fully-accessible notice to passengers of optional fees, and airlines should not be forced to provide fee schedules for optional services to alternative distribution channels.

Mr. McGee requested that the words, "other subcommittee members do not" be inserted before the final period of that passage. There was no objection to this request.

Ms. Friend again noted that the proposal does not recommend actions beyond maintaining the status quo, and suggested the subcommittee consider a more robust recommendation. Mr. Tilton noted that the subcommittee's mandate did not require it to make any recommendations in addition to the proposed rules contained in the NPRM and, in fact, industry representatives on the subcommittee had initially taken the position that the NPRM sufficiently addressed passenger protection concerns. He noted that Mr. McGee and others had persuaded the subcommittee to propose recommendations incremental to the NPRM's provisions.

Ms. Friend stated that even given the legitimate concerns of passenger rights advocates, she could not support a proposal that recommends that the Secretary of Transportation "continue to" take measures already underway. Mr. Tilton stated he would be amenable to removing the words "continue to" from the proposal, which would have the effect of recommending that the Secretary ensure transparency in pricing and operations. Mr. McGee, Ms. Susan Baer, PANY/NJ, and Ms. Friend expressed support for this amendment and stated that it would provide for a stronger proposal.

Mr. McGee observed that the subcommittee's discussions seem to assume that the provisions in the NPRM will be promulgated. He noted that this is not a foregone conclusion.

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Mr. McGee moved on to the portion of the proposal calling for transparency with respect to airline contracts of carriage. He stressed the importance of this issue, and recounted his statements at the previous meeting of the subcommittee regarding difficulties in obtaining and understanding typical contracts of carriage. Mr. McGee noted that the subcommittee had considered a more robust proposal, which would use the European Union model for contracts of carriage as a benchmark, but he expressed confidence that if presented with the current language, the Secretary of Transportation would take appropriate steps to examine the issue and ensure adequate disclosure to consumers. Mr. McGee sought comments in favor of or in opposition to the current language. There was no opposition to the language. Ms. Friend, Ms. Baer, and Mr. Tilton clarified that the removal of “continue to” from the lead-in to the recommendations also affects the recommendation regarding contracts of carriage.

Next, Mr. McGee discussed the portion of the proposal calling for transparency in departmental reporting of consumer air travel statistics. He briefly summarized his statements from the previous meeting of the subcommittee. He noted that Consumers Union has regarded the statistics published by the DOT as a valuable tool for more than 20 years, but that their value is being eroded because the DOT and FAA differentiate between certificate holders, while the traveling public tends to view each major air carrier and its regional partners as a single brand. Mr. McGee noted that the the reduction in value of these reports is exacerbated because statistics on major air carriers and regional air carriers are not presented together. He added that the issue is further complicated because a single major air carrier may have multiple regional partners, and a single regional air carrier may partner with more than one major air carrier. He stated that regional air carriers now account for 50 percent of domestic departures.

As an illustration of potential for confusion, Mr. McGee presented the subcommittee with a passenger information card prominently bearing branding for Delta Air Lines, Inc. (Delta), noting that the card was actually from a flight operated by Atlantic Southeast Airlines, Inc. (ASA), Delta's regional partner. He noted that ASA's logo is much less conspicuous on the card, and he stated that a typical member of the traveling public might mistakenly believe that the flight was operated by Delta.

Mr. McGee stated that the proposal calls for the DOT to examine the reporting of consumer air travel statistics. He acknowledged that the details of addressing the issue would be problematic, and he stated that the DOT would be better able than the subcommittee to determine a methodology. He noted that any changes would likely not result in significant additional costs to air carriers already providing data to the DOT, but he noted that, currently, many regional air carriers do not provide data because their revenues do not exceed minimum levels for which reporting is required.

Mr. McGee reiterated that there is a fundamental difference between how the DOT and FAA differentiate between air carriers and how the public views carriers marketed under the same brand. He described numerous indicators—from credit card billing to terminal markings—which tend to create confusion in the traveler's mind as to the identity of the air carrier operating his or her flight.

Mr. McKenzie drew an analogy to telecommunications and noted that an international telephone call may be serviced by a carrier other than the customer's domestic provider without providing disclosure

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to the customer. He stated that, in any network industry, some complexity resulting from connections between separate entities is inevitable.

Mr. Tilton also drew analogies to other industries, such as the hotel industry, and noted that common branding of disparate business entities is common in network and hospitality environments. He noted that common branding of major and regional air carriers also ties the major air carriers to the performance of their regional partners in consumers' minds. He stated that major air carriers have a vested interest in ensuring that their regional partners' statistics reflect positively on their brands, and that the major carriers are incentivized to self-police to protect their brand images. Mr. Tilton observed, however, that this did not represent a basis for opposing improved transparency, and he expressed support for efforts to ensure better passenger understanding of the relationships between major and regional air carriers.

Citing the passenger information card to which Mr. McGee had referred, Mr. Tilton stated that the use of a card produced by Delta, as opposed to one produced by ASA, represents a positive commitment to safety by the major air carrier partner. Mr. McGee reiterated that the branding on the card could cause confusion, and he noted that the issue of passenger confusion had been discussed at a recent National Transportation Safety Board forum on air carrier safety. He observed that the FAA and the DOT recognize a fatal accident in 2003 as involving Air Midwest, Inc., but he stated that the families of the victims perceive the flight to have been a US Airways flight.

Ms. Friend noted that, while similarities exist between the air carrier industry and the telecommunications and hospitality industries, the risk of fatal accidents is not as pervasive a concern for those industries and their consumers as it is for the air carrier industry. She noted that a passenger interested in the safety record of the air carrier operating his or her flight might examine data from the major air carrier carrying the brand, and not the regional partner actually operating the flight. Mr. McGee agreed and reiterated a previous statement that families of victims of fatal accidents involving regional air carriers partnered with major air carriers took offense at statements to the effect that there have been no fatal major air carrier accidents in recent years.

Mr. Tilton stated that there is a distinction between the uniform branding of major and regional air carriers—as a representation of the commercial relationships between them—and the responsibility of a certificate holder to conduct a safe operation. He stated that increasingly it will be the nature of the air carrier industry for a passenger purchasing a ticket from one air carrier to be transported by another, whether it is a regional partner or a code share partner.

Ms. Friend noted that major air carriers are quick to disavow responsibility when operations by partner air carriers result in harm to passengers. Mr. Tilton stated that that type of behavior warrants scrutiny, but he felt that it represented a different problem than the one addressed by the subcommittee's proposal. Ms. Friend stated that improved transparency would prevent such behavior. Mr. Tilton disagreed.

Mr. Tilton recognized Mr. Bob Peterson, Boeing, who observed that the proposal calls for transparency in reporting statistics, not in disclosing air carrier partner relationships. Mr. McGee stated that an

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analogy could be drawn to the proposal for transparency with respect to ancillary fees. He stated that the objective is to make clear at every step in the process the identity of the air carrier operating a given flight. Ms. Baer noted that the proposal regarding transparency of partnership arrangements more squarely addresses this concern.

Ms. Baer also asked whether the language of the proposal was acceptable to the subcommittee. There was consensus that it was. Mr. Tilton noted that the subcommittee seemed to be spending an inordinate amount of time discussing points that, in the interest of compromise between different viewpoints, were not included in its proposals. He asked that the subcommittee focus on determining whether the language of the proposals is acceptable. Mr. McGee stated that the ultimate objective is for the DOT to ensure that consumers have access to data sufficient to make a meaningful and informed comparison between carriers. Multiple subcommittee members agreed with this objective.

Essential Air Service

Mr. Tilton turned the meeting over to Dr. Severin Borenstein, University of California, Berkeley, to discuss EAS. Dr. Borenstein noted that the proposal was straightforward, and that he did not foresee lengthy discussion. He stated that Ms. Friend had previously expressed reservations with respect to the EAS proposal, and asked that she comment on it.

Ms. Friend stated that she did not agree with the approach of addressing EAS and intermodalism in separate documents. She stated she did not object to the proposed suspension or freezing of EAS eligibility, provided such action was dependent on moving forward with the subcommittee's recommendations regarding intermodalism. Ms. Baer suggested that such a provision could be inserted into the proposal.

Mr. McKenzie noted that the subcommittee's discussion of EAS had contemplated eliminating EAS subsidies for communities that are otherwise adequately served. He stated that as a result, no community should be left wanting for service because of the proposed actions. Dr. Borenstein stated that the proposal calls for a review of eligibility and, pending that review, a freeze on eligibility for new communities to prevent runaway program growth.

Mr. Tilton recognized Mr. Peterson, who agreed with Mr. McKenzie's statement that the subcommittee's proposal would only affect communities served by a suitable alternative to EAS. Ms. Friend expressed concern that there is no assurance that such alternative service will remain in place, and she noted that the overarching concern is to ensure continuing reasonable access to the air transportation system.

Ms. Baer stated that intermodalism speaks to the proposed review of eligibility criteria, rather than the proposed freeze on eligibility. Ms. Friend asked why the proposals are not merged to incorporate the subcommittee's intermodalism recommendations into the review process. Ms. Baer noted that the intermodalism recommendations could be applicable under numerous circumstances outside of the context of EAS, and therefore warranted a separate proposal. Ms. Kurland stated that EAS was important enough to examine independent of intermodalism. She stated that EAS was one area in

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which intermodalism might come into play but that intermodalism represents a broader policy initiative. Mr. Homan noted that while a change to the EAS program would require congressional action, the DOT could take action on intermodalism under its existing authority. He stated that combining the two proposals could limit the DOT's ability to act on intermodalism.

Ms. Friend stated that even if the two recommendations remain separate, she thinks that the subcommittee's recommendations regarding EAS should be made dependent on adoption of the intermodalism recommendations. Dr. Borenstein stated he had no objection to making the EAS proposal contingent on review and adoption of the subcommittee's proposal regarding intermodalism. Mr. Homan, Mr. Jack Pelton, and Ms. Baer suggested language that would reference intermodalism as an alternative mode of service, without explicitly requiring implementation of the intermodalism proposal.

Mr. McGee suggested that the proposal make clear that any community made ineligible by the availability of alternative means of transportation could become eligible if those alternative means cease to exist. Dr. Borenstein agreed with this suggestion but noted that under existing criteria, a community that is ineligible for EAS at the time eligibility is frozen could not become eligible because of a sudden apparent need for transportation. Mr. Peterson pointed out that the freeze would only be needed pending the proposed review of eligibility criteria, and once the review is complete and new criteria are established, the freeze could be lifted. Dr. Borenstein suggested that the proposal should recommend that the freeze on eligibility include a sunset date in the event that the proposed review of eligibility does not occur.

The subcommittee members agreed that Mr. Homan would draft language reflecting the suggestions made and would circulate it for comment prior to the November 22, 2010, deadline for submission of proposals. Mr. Tilton suggested that, when presenting proposals to the FAAC, the subcommittee present its intermodalism proposal first, because intermodalism represents an important part of the EAS proposal.

Intermodalism

Mr. Tilton asked Ms. Baer to discuss the subcommittee's proposal regarding intermodalism. Ms. Baer noted that legislative and regulatory inertia and other political and bureaucratic factors have hindered meaningful progress on implementation of intermodal efforts. She stated that there has been some limited implementation of intermodalism, and she added that increasing environmental pressures have made evident the need to examine opportunities to join with other modes of transportation.

Ms. Baer summarized the subcommittee's proposals. She noted that the subcommittee had already discussed the first proposal, which calls for implementation of intermodalism in coordination with a reexamination of the EAS program.

Ms. Baer stated that the second proposal would make intermodal efforts a priority in any infrastructure development projects, particularly those connected to the infrastructure bank. She noted that funding for these efforts should not be diverted from funding for the Next Generation Air Transportation

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System (NextGen). Ms. Baer stated that the subcommittee's recommendation for intermodal development in no way lessens the need to move forward with NextGen development and implementation.

Ms. Baer stated that the third proposal recognizes that the Secretary of Transportation is positioned to tap the expertise of top individuals in each transportation mode.

Mr. Peterson suggested that the proposal call for a system-level evaluation of any intermodal initiative to ensure that it serves goals of customer utility, cost effectiveness, and energy and environmental effectiveness. He noted that high-speed rail in particular can offer tremendous efficiencies where infrastructure is already in place, but justifying implementation where infrastructure does not exist may take decades because of economic and environmental factors and concerns.

Ms. Baer agreed and stressed that any such evaluation would examine the transportation system as a whole, and not be limited to a single mode. Mr. McGee urged that when performing evaluations, care be taken to ensure that comparisons between different modes are on an equal footing and to take total door-to-door efficiency into account.

Ms. Baer noted that, although intermodal transportation encompasses more than rail transportation, high-speed rail represents a focal point of intermodalism discussions. She noted it is important for aviation to be part of those discussions because of the potential benefits to the industry regarding optimal use of limited airport facilities. Ms. Baer stressed that surface modes other than rail should not be ignored. She stated that aviation can benefit by tapping the enormous investment the United States has made in roads.

Mr. Tilton stated that development of a comprehensive intermodal policy is a daunting prospect, especially when viewed in comparison to long overdue improvements to the air traffic control system, which is arguably a lesser challenge. He noted that ATC inefficiencies have resulted in economic losses of \$33 billion, and he expressed surprise that there is not greater public interest in addressing them. Ms. Baer noted that efforts are underway to educate the business community about its interest in seeing the system updated. Mr. Tilton, Mr. McGee, Mr. Pelton, Ms. Baer, and Mr. Peterson discussed some of the factors that have prevented significant public interest in advancing development of NextGen.

Prior to the end of the meeting, Mr. Homan suggested the following language linking the Intermodalism proposal to the EAS proposal:

The committee recognizes the increasing importance of intermodal solutions to connect small and rural communities to the national air transportation system. The committee therefore recommends that the Secretary implement its recommendations on intermodalism expeditiously, to support the recommendations on EAS reform.

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Jet Fuel Price Volatility

Mr. Tilton turned the meeting over to Mr. McKenzie to discuss the subcommittee's proposal on jet fuel price volatility. Mr. McKenzie observed that the issue had been one of the more vigorously debated at prior meetings of the subcommittee. He stated he did not foresee lengthy discussion at this meeting because the proposal represents the compromises reached in those prior discussions. Mr. McKenzie asked Dr. Borenstein to comment on the language of the proposal.

Dr. Borenstein stated he was largely satisfied with the proposal, and requested only one change. He stated that the second to last sentence of the Rationale section of the proposal reads—

The Subcommittee is aware that the Department had earlier filed comments with CFTC, documenting the adverse impact of fuel price fluctuations on the transportation industry and stating it would support remedial measures if speculative investing were determined to be responsible in part for the volatility.

Dr. Borenstein requested that the last portion be amended to state the DOT “would support remedial measures if speculative investing were determined to be responsible in significant part for the volatility.” There was no objection to this amendment.

Federal Aviation Taxes and Fees

Mr. Tilton turned the meeting over to Mr. McKenzie for a discussion of the subcommittee’s proposed recommendations with respect to taxation of air carriers and passengers. Mr. Tilton and Mr. McKenzie expressed hope that the proposal distributed to the subcommittee members represents a compromise position arrived at in the course of earlier discussions, and would require little or no amendment.

Dr. Borenstein stated that he had reservations about the tenor of the distributed proposal. He stated that the Problem/Challenge and Rationale portions of the proposal seem to assume that taxes are too high and should be lower. He questioned the basis for using taxation levels in 1990 as a baseline for the proposal, and stated that this date was arbitrary.

Dr. Borenstein suggested that the subcommittee consider a much shorter, more neutral proposal, posing the following questions: (1) how the Federal tax burden imposed on the U.S. aviation industry compares with burdens imposed on other modes of transportation, and (2) how the Federal tax burden imposed on the U.S. aviation industry compares with government expenditures in support of the industry.

Dr. Borenstein reiterated that taxation did not threaten the viability of the industry as a whole. He also expressed support for points made by Professor Kenneth Button, George Mason University, in a presentation at the subcommittee’s August 24, 2010 meeting. Dr. Borenstein stated that Dr. Button had framed the discussion in the form of two operative questions: (1) are the taxes and fees imposed on the industry proportional and fair, and (2) are they being collected efficiently. Dr. Borenstein suggested

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that bullet Nos. 1, 3, and 4 in the distributed proposal be eliminated, and that the last sentence of bullet No. 6 be changed from—

The Subcommittee recommends that the Secretary review the results of the study and pursue appropriate legislative and regulatory actions that may be needed to ensure that the aviation tax burden on passengers, airlines and general aviation does not hinder the viability and competitiveness of the U.S. aviation industry and the nation's economic recovery.

to—

The Subcommittee recommends that the Secretary review the results of the study and pursue appropriate legislative and regulatory actions that may be needed to ensure that the aviation tax burden on passengers, airlines and general aviation is fair and is collected efficiently.

Dr. Borenstein reiterated that comparison of the current level of Federal taxation to that present in 1990, and the implication that taxes should return to 1990 levels, is unnecessary. Mr. Tilton agreed that the subcommittee's proposal should be limited to facts and inquiries intended to foster factual determinations, and he proposed removing language that predetermines conclusions.

Ms. Baer agreed that the language of the proposal lacks neutrality, and she suggested that the phrase "tax burden" could be amended to refer to "tax." She also expressed the opinion that the distributed draft of the proposal was overly prescriptive. Ms. Baer and Mr. Tilton also supported Dr. Borenstein's argument that taxes should be tied to corresponding benefits enjoyed by the industry and air travel consumers, and should be apportioned accordingly. Mr. McGee agreed, and restated that travelers are particularly vulnerable to the imposition of taxes and fees that are not of benefit to them because they lack elected representation in the communities imposing the taxes and fees. He noted that taxation unrelated to the service or benefit enjoyed is common in other areas of the travel industry, such as automobile rental, and he expressed concern about the prospect of such taxes and fees being imposed on air carrier passengers.

Mr. Tilton recognized Mr. Peterson, who stated that while there are some egregious examples of inappropriate taxation, some fees are relevant to the enjoyment of a service or privilege. He suggested that analysis should pose three questions:

- What taxes and fees are being collected?
- Are those taxes and fees relevant to the services on which they are imposed?
- Are those taxes and fees efficient and appropriate for the level of service provided?

Mr. Tilton stated that a nexus could be drawn between taxation and competition. He added that the air carrier industry represents a positive economic force because it can generate wealth and create jobs.

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He also suggested that any analysis of whether taxes are fair and appropriate should examine whether the loss in economic activity because of the tax would outweigh the tax revenue collected.

Mr. Homan submitted, for the subcommittee's review, a modification of bullet No. 3 of the distributed proposal from—

Does the existing level of aviation taxes and fees hinder the performance of U.S. airlines and general aviation exports in larger global markets, thereby adversely impacting the U.S. trade balance?

to—

Does the existing level of aviation taxes and fees reflect the true cost and value of the aviation services provided and are taxes and fees levied efficiently and appropriately with respect to the services provided?

Mr. Homan noted that this language does not address Mr. Tilton's position that the economic benefits of the aviation industry should be considered in determining the propriety of taxation. Mr. Tilton agreed and suggested that the proposal include language permitting the Secretary of Transportation latitude in determining whether specific taxation prevents more valuable economic activity.

Dr. Borenstein expressed concern with giving the Secretary of Transportation the responsibility of judging the aviation industry's contributions to the U.S. economy. He noted that while many industries may claim to generate wealth, tax revenue sources are necessary for economic health. Mr. Tilton stated that he would not begrudge other industries the opportunity to pursue similar evaluation by their regulators.

Mr. McKenzie noted that the FAAC's and the subcommittee's charters task them with developing recommendations to enhance the competitiveness of aviation, not of other industries. Dr. Borenstein replied that the FAAC and the subcommittee are not simply advocates for the interests of the aviation industry. He stated that the subcommittee should present a balanced view, taking the overall impact on the economy into account.

Mr. Tilton stated that the distributed proposal is overly long and editorial in nature. He added that the document could be made clearer, more concise, and more objective. Ms. Baer stated that such a document would present a more compelling recommendation to Secretary LaHood.

Mr. Homan submitted an amendment to bullet No. 3 of the proposal, addressing Mr. Tilton's position on the aviation industry's contribution to the economy, as well as Dr. Borenstein's position regarding the lack of a threat to viability. Mr. Homan suggested the bullet be revised to read—

The subcommittee recommends that the Secretary review the results of the study and pursue appropriate legislative and regulatory actions that may be needed to ensure that the aviation tax burdens on passengers, air carriers, and general aviation is fair and collected efficiently,

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and appropriately recognizes the role aviation plays in fostering economic growth and development.

Mr. Homan asked whether the proposed language was acceptable to the subcommittee. No member of the subcommittee opposed the revision.

Dr. Borenstein stated that he still had significant reservations about the Problem/Challenge portion of the proposal. Mr. Tilton acknowledged that the language of the Problem/Challenge section is overly editorial. Ms. Baer suggested that the section could be reduced to a single paragraph on the growth of aviation taxes and fees.

Ms. Baer stated that the industry is concerned with both the amount and the number and diverse nature of taxes imposed by different authorities. Mr. Tilton stated that there are inherent inefficiencies in the taxation structure. He expressed dissatisfaction with the lack of accountability on the part of taxing authorities and with the lack of coordination or appreciation of the cumulative impact of different taxes and fees. He stated that simply asking that these issues be examined will benefit the industry, without prejudicing the outcome of such an examination.

Ms. Baer suggested that the Problem/Challenge section could be appended with a paragraph discussing the industry's benefit to the economy. She added that what is currently the last paragraph of the Rationale section, which discusses the various taxes imposed on the industry, could be moved to the Problem/Challenge section. She reiterated that in its most basic form, the problem is the large number of taxes imposed without meaningful examination of whether they are fair, equitable, or efficient. She stated that much of the remainder of the language of the distributed proposal is unrelated to taxation, and that the economic health of the industry is only partly a taxation issue. Mr. Peterson observed that the existing language implies that taxes and fees are the primary cause of the industry's economic woes. Mr. Tilton stated that the operative question is to what extent taxation prevents the aviation industry from generating a larger benefit to the national economy.

Dr. Borenstein stated he wanted to remove any reference to the viability of the industry, and he suggested that the proposal instead refer to the "economic health" of the industry. Mr. Tilton noted that the term "viability" is specifically used in the subcommittee's charter, but he stated that he was nevertheless willing to use the term "economic health" in its stead. Dr. Borenstein asserted that it would be useful to tell Secretary LaHood that, while the health and stability of the industry may well be at issue, its overall viability is not.

Mr. McGee noted that, unlike the other proposals discussed, the proposed changes to the taxation proposal were significant and would involve a wholesale rewrite of the document. He noted that the deadline for the submission of proposals was rapidly approaching, and he asked how the subcommittee would meet that deadline. Mr. Homan stated that he would begin redrafting the document immediately following the meeting and would circulate the revised draft no later than noon the following day. Ms. Kurland urged the subcommittee members to limit their comments to only necessary submissions. Mr. Homan asked that the subcommittee members submit proposed revisions only and limit extraneous commentary.

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Global Competitiveness

Following a break for lunch, Mr. Tilton initiated discussion of the subcommittee's proposal on global competitiveness. He reiterated that, although the subcommittee's charter speaks to the issue of viability of the aviation industry, Dr. Borenstein's position that the viability of the industry is not seriously in question is well taken. Mr. Tilton stated that he remained content to limit the subcommittee's discussion and recommendations to competitiveness.

Mr. Tilton stated that the subcommittee's position on competitiveness had been the subject of extensive discussion and scrutiny. He expressed hope that the draft proposal addressed the subcommittee's mandate. Mr. Tilton noted that, if accepted, the proposal would transfer a challenge from the subcommittee to the Secretary of Transportation and the DOT.

Mr. Tilton read briefly from the subcommittee's charter, noting that it characterized a competitive air carrier industry as critical to the national economy. He stated that the charter calls for the subcommittee to examine changes in the operating and competitive structures of the U.S. air carrier industry, and to consider innovative strategies to access international markets and expand opportunities in existing markets. Mr. Tilton stated that those two points capture the essence of the subcommittee's efforts. He noted that the subcommittee had not debated whether this tasking is appropriate. Mr. Tilton stated that, while significant editing had improved the proposal, there still might be room for further improvement.

Mr. Tilton introduced Mr. Russell Bailey, ALPA, who attended the meeting in place of Ms. Ana McAhron-Schulz. Mr. Tilton stated that Mr. Bailey had expressed interest in commenting on the Global Competitiveness proposal.

Mr. Bailey noted that, like the other proposals, the Global Competitiveness proposal is the product of compromise. He stated that the proposal does not address the controversial topic of ownership and control. Mr. Bailey distributed a revised proposal and reviewed the changes suggested in that document.

Mr. Bailey noted that the subcommittee proposes to recommend that Secretary LaHood reaffirm the general objectives of the DOT's 1995 Statement of U.S. International Air Transportation Policy. He stated that ALPA is generally supportive of that proposal, but it harbors concerns regarding two elements of those objectives.

Mr. Bailey stated that one of the objectives set forth in the Policy Statement -- to encourage development of a cost effective and productive air transportation industry -- includes as a sub-objective a mandate to reduce barriers to the creation of a global aviation system. He stated this includes such efforts as limitations on cross-border investments wherever possible. Mr. Bailey stated that ALPA does not support that particular sub-objective. Mr. Bailey suggested that text could be added to the first footnote in the subcommittee's proposal, stating that the subcommittee was unable to reach consensus supporting the policy statement's endorsement of reducing existing limitations on cross-border

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investment. Ms. Friend concurred with Mr. Bailey's suggestion, and she stated that labor interests generally do not support a policy of reducing limitations on cross-border investment.

Mr. McKenzie cited a statement made in 2000 by then-Secretary of Transportation Rodney Slater, who served in the Clinton administration. He stated that Secretary Slater envisioned a globally consolidated air carrier industry by 2020. Mr. McKenzie stated that it was of note that such a position was adopted by a Democratic administration. Ms. Friend stated that, while such a vision may well have been the policy of Secretary Slater and the Clinton administration, it is not representative of the position of labor interests. She noted that labor interests have frequently disagreed with elements of transportation policy advanced by Democratic executive and legislative officeholders.

Mr. Bailey stated that, in addition to a policy of reducing limitations on cross-border investment, ALPA also disagrees with the language in the 1995 Policy Statement providing that the United States should seek changes in air carrier foreign investment law, if necessary to ensure trading partners' security interests. He requested that the subcommittee's proposal include the following language: "Accordingly, the subcommittee was unable to reach consensus on whether DOT should reaffirm these particular statements of the 1995 Statement."

Mr. Bailey noted that the subcommittee's proposal currently states that the subcommittee supports the objectives of the 1995 policy statement. He requested that, because of the exceptions noted, the proposal be revised to state that the subcommittee "generally" supports the objectives of the 1995 Policy Statement.

Mr. Tilton noted that the existing draft of the proposal was the product of lengthy discussion and compromise. He stated that there were differing opinions among the subcommittee members: some stated the constituent parties should address protection of labor interests in cross-border investment or partnership arrangements through collective bargaining, while others preferred that the government address those issues through limitation or intervention.

Mr. McKenzie noted that the proposal contains language to the effect that some subcommittee members have adopted the position that the DOT should predicate the approval of global alliances on an assurance that U.S. air carriers perform a reasonable share of the physical flight operations under such alliances. Mr. McKenzie stated that from the perspective of a financial commentator, that position would likely be unpopular with investors. He suggested that to portray the differences of opinion within the subcommittee in a balanced manner, the proposal should also state that other subcommittee members maintain that the issue should be addressed in collective bargaining agreements. Mr. Tilton, Mr. Bailey, and Ms. Friend indicated that inclusion of both statements would comprehensively portray the different viewpoints of the subcommittee members.

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Mr. Tilton opened the floor to general questions on the draft proposal. Ms. Baer expressed an interest in addressing airport competitiveness and cited the appropriate Federal authority requiring such competitiveness. Mr. Tilton stated that he supported content addressing airport competitiveness. Ms. Baer indicated she would submit content for inclusion in the final proposal. Mr. Peterson and Mr. Pelton indicated that language addressing competitiveness and viability of the aircraft manufacturing industry should also be included.

Dr. Borenstein requested minor changes to the specific recommendations contained in the proposal. He asked that the second bulleted recommendation, which reads—

Ensure that, as DOT performs its public interest analysis, it gives greater weight to existing statutory criteria that would help ensure a viable and globally competitive U.S. airline industry and prosperous workforce,

be changed to read—

Ensure that, as DOT performs its public interest analysis, it gives substantial weight to existing statutory criteria that would help ensure a healthy and globally competitive U.S. airline industry and prosperous workforce.

There was no opposition to this requested change.

Dr. Borenstein also questioned whether the final bulleted proposal, which calls for an expansion of the DOT's role in promoting aviation exports and facilitating international tourism, is more appropriately a function of the Department of Commerce. Mr. Tilton suggested that the subcommittee defer to Ms. Kurland's discretion. He stated that Secretary LaHood and the DOT had been named to the Export Cabinet. He noted that this was an unprecedented step, and he expressed the opinion that it indicated an intention on the part of the Obama administration to expand the DOT's role in international commerce.

Ms. Kurland indicated that the recommendation was appropriate. Mr. Peterson noted that the subcommittee could express a desire to see such an expanded role of the DOT continue beyond the present administration. Mr. Tilton suggested that the language could be changed to indicate that the subcommittee supports the DOT in its expanded role.

Dr. Borenstein suggested significant changes to the Problem/Challenge portion of the proposal as follows:

- Eliminate the first two paragraphs of the section and all but the first sentence of the third paragraph.
- Change the last sentence of the fourth paragraph from—

Such artificial service restrictions limit the ability of U.S. network airlines to optimize their competitiveness both domestically and globally,

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to read—

Such artificial service restrictions limit the ability of U.S. network airlines to optimize their networks, and to compete internationally.

- Eliminate the last two paragraphs.

Dr. Borenstein stated that these changes would make the points that the U.S. air carrier industry must be able to get access to foreign markets, and that existing restrictions artificially limit the ability of U.S. air carriers to optimize their networks.

Ms. Baer disagreed with the removal of a reference to domestic competitiveness in the fourth paragraph, because domestic operations are part of the air carriers' overall networks, and are impacted by international restrictions. Dr. Borenstein stated that international restrictions do not significantly impact competitiveness in the domestic marketplace, which also includes low cost air carriers. Mr. McKenzie agreed with Ms. Baer and stated that parts of a network cannot be viewed in isolation, and that factors affecting one part will impact other parts. Mr. Tilton noted that much of the content of the subcommittee's proposals deals with domestic competitiveness, and only this particular proposal addresses global competition. He suggested that reference to domestic competitiveness is necessary to tie the proposals together.

Dr. Borenstein also noted that the first sentence of the third paragraph of the Other Significant Issues portion of the proposal states that the subcommittee agreed that the development of global alliances is an important element in enhancing the viability and competitiveness of the U.S. airline industry. He stated that this belief was not unanimous and requested that the sentence be amended to state that many members of the subcommittee so agreed. The other members of the subcommittee agreed that this more accurately described the viewpoints of the subcommittee members. Dr. Borenstein noted that this change to the third paragraph makes unnecessary the first paragraph, which refers antitrust concerns of some subcommittee members, and he suggested that that paragraph be eliminated.

Mr. McGee made two suggestions regarding the subcommittee's recommendations. He reiterated an earlier concern expressed by Dr. Borenstein that different methods were used to compare sizes of air carriers, and he requested that the subcommittee ensure that a consistent methodology is used when referring to such comparisons. He also expressed support for an earlier suggestion by Ms. Baer that the subcommittee provide sources for all factual or statistical statements contained in its proposals.

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Mr. McGee also raised a question regarding the last paragraph of the Other Significant Issues portion of the proposal. He noted that the proposal states that some subcommittee members would like the DOT to condition the approval of any grant of antitrust immunity to a cross-border partnership on an assurance that the U.S. air carrier involved conduct a proportionate share of the flight operations under the arrangement. Mr. McGee noted that the conduct of flights by a U.S. air carrier would not necessarily protect the interests of U.S. workers, because of the level of outsourcing in the air carrier industry. Mr. Tilton reiterated that there was disagreement within the subcommittee regarding whether the DOT should impose such conditions or whether protection of workers' interests should be addressed through collective bargaining.

Mr. Bailey suggested that the paragraph in the Other Significant Issues portion of the proposal that addresses the lack of subcommittee consensus on reducing limitations on cross-border investment would more appropriately be located in the Rationale portion of the proposal.

CLOSING REMARKS

Mr. Tilton asked Ms. Kurland whether she had any final words for the subcommittee. Ms. Kurland once again thanked the subcommittee members for their efforts. She noted that the subcommittee was the largest of the five the FAAC chartered.

Mr. Tilton noted that the subcommittee's final proposal would be distributed to the subcommittee members. He thanked the subcommittee members for their participation and expressed his confidence that Secretary LaHood and the DOT would be pleased with the subcommittee's efforts. He stated that as a group of individuals with diverse interests, the subcommittee had performed admirably and had developed the basis for a good product that had the potential of serving the DOT and the industry well.

ADJOURNMENT

Mr. Homan solicited a motion for adjournment. On motion, duly seconded and approved by the majority of the FAAC members present, the meeting was adjourned.

The meeting adjourned at 1:18 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Approved by: 
Todd M. Homan, Designated Federal Official

Dated: January 12, 2011

Ratified on: January 12, 2011