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ORIGINAL

DEPARTMENT OF TRANSPORTATION

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC 20590

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DOCKET SECTION

In the matter of expanding	:	
international air service opportunities	:	Docket 46534
to more U.S. cities	:	

COMMENTS OF DONALD L. PEVSNER, ESQ.

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COMMENTS OF DONALD L. PEVSNER, ESQ.

COMES NOW Donald L. Pevsner, Esq., pro bono publico,
and files the following comments with regard to the proposed,
new DOT policy at issue in this Docket:

1. There is no question that a large number of smaller
U.S. cities are underserved with respect to nonstop air service
to foreign destinations.

2. Until the past several years, de facto exclusion of such
cities from nonstop international air service was created by the
fact that, in the main, only large widebody aircraft (notably
the B-747 and DC-10) were suitable for longhaul routes to other
continents. These "long, thin routes" from smaller U.S. cities
were not able to support aircraft with 250-430 seats, so the
issue of such service was a relatively moot point.

3. However, we now live in an aviation world in which the
Boeing 767-ER and Airbus A310 easily span intercontinental
distances with less than half the passenger seats of a B-747;
two-thirds the passenger seats of a DC-10. And they do it with

two-man flight crews, and a fuel burn less than half that of a B-747 as well. Accordingly, there are now no rational obstacles from an airline economics standpoint to inauguration of a host of such new air services. The sole barrier remains the obsolete bilateral air agreement regulatory process, in which the prevailing "bazaar mentality" conspires to deprive the residents of smaller U.S. cities of nonstop air service to far-off destinations--service which several innovative airlines are quite willing to provide.

4. As the attached TRAVEL WEEKLY article (October 26, 1989) states, the Department has properly noted the valid concerns of local government officials and their constituents in the business community as to their bilateral air agreement freeze-out from virtually all nonstop international air service. The Department has reacted properly, if belatedly, in proposing the reform at issue in this Docket. Comments on the six specific tests posited in the article are as follows:

(a)TEST #1: "No other carrier serves the U.S. gateway from the carrier's homeland." If nonstop foreign air carrier service already exists to a smaller U.S. city from a given foreign country, then this rule is fine. However, one-stop single-plane service by a foreign air carrier is a very poor substitute, from the passenger's viewpoint, for nonstop service. The Department is urged to restrict this test to cases in which nonstop service already exists in a given city-pair, provided by a foreign air carrier.

(b)TEST #2: "The carrier's home government has a procompetitive aviation agreement with the U.S." This test is

fine, as no one should reward a Neanderthal, protectionist foreign air carrier with new U.S. gateways.

(c)TEST #3: "The proposal does not involve service to or from third countries." On this point, I must register the strongest possible dissent from the Department's blatant discrimination against KLM Royal Dutch Airlines, in favor of Lufthansa German Airlines.

It is well-known that all U.S. air carriers serving European destinations, and their friends and handmaidens in Congress and other high governmental places, despise KLM as a much-scorned "sixth-freedom" carrier. Mention KLM in these circles, and a plethora of snide and envious comments at once arise, centered around the character of the "wily, trading Dutch" for the most part--and tending to be positively racist in character when the collective mouths begin to foam. It is a fact that, in an air transport regime that is intensely competitive, KLM will often carry substantial traffic percentages via its home Amsterdam hub to beyond points, tacking third and fourth-freedom authority together to create so-called "sixth-freedom" traffic. Logic dictates that there must be a good reason for this, when some passengers will even forego flying on nonstop service to travel via Amsterdam on KLM. One major reason for this consumer preference just might be KLM's worldwide reputation for excellent service.

But Lufthansa also has a worldwide reputation for fine service,

and its own Frankfurt hub is expressly designed to carry precisely the same sort of "sixth-freedom" traffic that KLM is hated for pursuing. Is anyone at DOT--particularly the Assistant Secretary for Policy and International Affairs, Jeffrey Shane--seriously arguing, as a matter of formal policy, that no sixth-freedom traffic will transit Lufthansa's Frankfurt hub when Lufthansa begins to exploit the liberalizations at issue in this Docket? Or that it is a better societal result to deny a sizeable number of smaller U.S. cities nonstop international air service to Europe entirely if such service would be provided by KLM, thereby producing a repugnant and arbitrary regulatory theme of "Lufthansa or bust?"

I submit that the size of a foreign air carrier's home-country market is just not relevant to the important consumer issues raised in this proceeding. And, if the Department is in truth solely interested in protecting those U.S. majors with international routes to Europe, with little or no concern for the welfare, comfort or convenience of those millions of international airline passengers who happen to live in smaller U.S. cities, then it is a perversion of equity for such passengers to continue to be condemned to transit New York's JFK International Airport when they could instead be soaring above it at 37,000 feet.

Mr. Shane's statements to TRAVEL WEEKLY, declaring KLM probably ineligible for new routes under the proposal at issue herein because (one assumes) of the relative size of its home-country market

compared to its total traffic to and from its present U.S. gateways, are the ultimate antithesis to the important concept of a free market, so worshipped by both the Reagan and Bush administrations. The Department is strongly urged to abandon its "third-country" maneuvering at once, in order to preserve a true spirit of competition and service on air routes to and from all U.S. cities, and give both KLM and Lufthansa their chance.

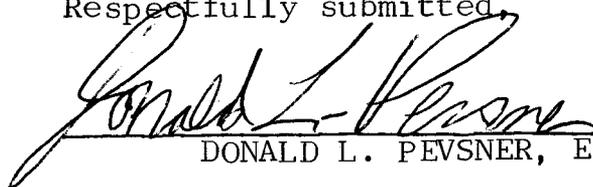
(d)TEST #4: "No interested U.S. parties raise overriding public-interest objections." I concur--but with the sole caveat that any U.S. major air carrier's objections to implementation of new, nonstop international air service from smaller U.S. cities be treated as bearing an inherent, fatal conflict of interest when it comes to defining just what is "overriding"... and what is the "public interest." It should be remembered that such U.S. air carriers are usually free to commence such service themselves at any time--and many of them already own suitable equipment to do so, and in fact are already flying a handful of such routes themselves.

(e)TEST #5: "The carrier meets all other regulatory requirements." Unless this proposed test contains some hidden pitfalls of which this writer is currently unaware, of course this test should stand.

(f)TEST #6: "The carrier has firm plans to operate, and starts service in 90 days." This test is fine in theory, but long lead-times for aircraft delivery (of the B-767-ER in particular) and market development make a 90-day "use it or lose it" rule rather onerous and arbitrary. The Department is

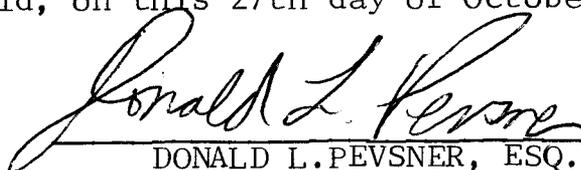
therefore instead requested to adopt a more just and reasonable approach to the time-frame set forth in this test--perhaps first requesting input from the carriers who will be directly affected thereby.

Respectfully submitted,


DONALD L. PEVSNER, ESQ.

Miami, Florida
October 27, 1989

I HEREBY CERTIFY that I have placed one original and twelve true copies of this pleading in the United States mails, first class, postage prepaid, on this 27th day of October, 1989.


DONALD L. PEVSNER, ESQ.

NEWSLINE

Foreign Lines Could Gain More Routes

DOT SEEKS COMMENTS ON EXCEPTIONS TO BILATERALS

BY BILL POLING

■ WASHINGTON — The Transportation Department set Nov. 11 as the deadline for comments on a proposal that could allow foreign airlines to claim additional routes to the U.S., even if they are outside the scope of existing international agreements.

The plan was developed in response to concerns raised by local government officials and their constituents in the business community about the cumbersome process of opening new international routes.

Although the State and Transportation departments negotiate international route rights in the "public interest," the negotiators are always sensitive to the needs of U.S. airlines for reciprocal business opportunities overseas.

Sometimes this quest for reciprocity and balance clashes with the desires of local communities for new service.

As the DOT put it, city and state officials sometimes claim that the process "prevents foreign airlines from responding to their service needs," inhibiting economic growth through tourism and foreign investment.

The DOT, after taking a "fresh look at the process," suggested a policy for allowing new services even when they are not supported by explicit government agreements.

The policy would apply to new route proposals from a foreign airline linking its homeland to a U.S. point, either nonstop or with "one-stop single-plane service" via another U.S. point. Carrier proposals would also have to pass six specific tests:

- No other carrier serves the gateway from the carrier's homeland.

- The carrier's home government has a "procompet-

itive" aviation agreement with the U.S.

- The proposal does not involve service to or from third countries.

- No "interested U.S. parties" raise "overriding" public interest objections.

- The carrier meets all other regulatory requirements.

- The carrier has "firm plans" to operate and starts in 90 days.

The DOT said the plan is "not designed to replace the traditional bilateral negotiat-

Communities worry that existing rules 'prevent foreign airlines from responding to their service needs.'

ing process," but to "address the needs of our communities for additional international air service opportunities while . . . ensuring that the interests of U.S. carriers are taken into account."

The plan's emergence follows the passage of a "sense of the Senate" resolution in September that supports "the designation of markets previously without nonstop international air service."

Sen. Dennis DeConcini (D-Ariz.), a key sponsor of the move, said the resolution "sends the message that other American communities require greater consideration than previously afforded them during the negotiation of air transportation agreements with foreign nations."

Comments on the proposal should refer to DOT docket number 46534.

If the plan is adopted, an early beneficiary may be West

Germany, where two carriers are considering new routes to the U.S. that are outside the scope of the existing bilateral accord.

Lufthansa is interested in secondary gateways such as Charlotte, Detroit, Portland, Seattle and Tampa.

Also, charter carrier LTU has applied for scheduled routes to several U.S. points, including Honolulu, that are not included in the existing agreement.

German lines would appear to qualify because Germany has flexible charter and pricing rules in its air pact with the U.S. and allows any number of U.S. carriers to operate.

In fact, it was largely in recognition of Germany's "pro-competitive" posture that the U.S. allowed Lufthansa to add Washington two years ago at a time when the market was not open to German carriers under the formal route agreement.

KLM is another European airline seeking expanded U.S. routes, but the carrier has already publicly complained that the DOT proposal is "highly conditioned" in a way that would not benefit KLM.

DOT policy chief Jeffrey Shane, who had outlined the plan during a speech before an industry gathering here recently, elicited an immediate complaint from a KLM representative about the plan's restrictions.

Shane acknowledged that the Dutch carrier's Amsterdam hub, which feeds traffic to other countries, would likely make it ineligible because a new route under the plan cannot "involve service to or from third countries."

The same restriction apparently excludes some Asian lines whose U.S. operations depend in part on the traffic support of a Tokyo stop.