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CORRESPONDENCE

DEPARTMENT OF TRANSPORTATION

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Committee on Transportation and Infrastructure

Congress of the United States

House of Representatives

Washington, DC 20515

August 4, 1998

ACTION	
is assigned to	
CONTROL NO	
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SIMS	S-10

Bud Shuster
Chairman

James L. Oberstar
Ranking Democratic Member

Jack Schenendorf, Chief of Staff
Michael Strachn, Deputy Chief of staff

David Heymsfeld, Democratic Chief of Staff

The Honorable Rodney E. Slater
Secretary of Transportation
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

OST-98-4363-5

Dear Mr. Secretary:

On October 27, 1997, the Fiscal Year 1998 Transportation Appropriations bill was enacted expanding permissible operations at Love Field in Dallas, Texas. That bill contained a provision that expanded the so-called Wright Amendment to permit non-stop flights from Love Field to Kansas, Mississippi, and Alabama, and clarified that any jet aircraft (under 300,000 pounds) with 56 seats or less can be operated from Love Field to any destination.

DOT's General Counsel, Ms. Nancy McFadden, recently wrote a letter regarding Continental Express's proposed service from Love Field to Cleveland. The service provided by Continental Express would use jet aircraft under 300,000 pounds and with 56 seats or less. Ms. McFadden's letter implied that such service would be consistent with the current federal law. In addition, DOT has provided Continental Express with the necessary certificate to provide such service from Love Field.

Nevertheless, a Texas state court has imposed an injunction against Continental Express as a result of a lawsuit brought against them by the City of Fort Worth. The injunction would forbid Continental Express from offering the Love Field-Cleveland service until further notice.

In the injunction ruling, the presiding judge, Bob McCoy, stated that one justification for prohibiting the proposed actions of Continental Express is that "there is substantial probability that those flights will be in violation of the covenants in Section 9.5 of the 1968 Regional Airport Concurrent Bond Ordinance enacted by the Cities of Dallas and Fort Worth; and that Fort Worth will probably prevail on the trial of the cause."

I am concerned about this ruling because it appears that the Texas court has already determined that additional flights out of Love Field should be prohibited, regardless of federal laws to the contrary.

Under current federal law, 49 U. S.C. 41713, a local authority is preempted from enforcing a "provision having the force or effect of law related to the . . . service of an air carrier." Moreover, the FAA, in providing AIP grants to airports, demands assurance that "the airport will be available for public use on reasonable conditions and without unjust discrimination."

The local bond ordinance states that the City of Dallas and Fort Worth agree ".to provide for the orderly, efficient and effective phase-out at Love Field, **Redbird**, GSIA and Meacham Field of any and all Certificated Air Carrier Services, and to transfer such activities to the Regional Airport..."

Accordingly, my question is -- does DOT believe that this agreement between two cities on service to Love Field supersedes the preemption and grant assurances in federal law as described above? If so, this could affect airlines that are not signatories of the Dallas Fort Worth (DFW) airport bond agreements. Can the local authorities also restrict service from Love Field by airlines who have not signed DFW airport bond agreements?

My concern is not just for Continental Express but for any service at Love Field. If the local communities can limit air service to Love Field, it calls into question who controls interstate commerce and would seem to render meaningless the expansion of the Wright amendment enacted in 1997.

In addition, it calls into question why the federal government should invest in an airport which may not be abiding by its grant assurances. The federal government has provided \$16.3 million in Airport Improvement Program grants at Love Field over the last 5 years.

We must protect our national transportation system and the authority of Congress and the Department of Transportation over interstate commerce. I would urge DOT to carefully look into this matter and to take appropriate action to protect interstate commerce. I look forward to hearing your response to these important questions.

With kind regards, I remain.

Sincerely,

A handwritten signature in black ink that reads "Bud Shuster". The signature is written in a cursive, flowing style.

BUD SHUSTER
CHAIRMAN