US AIRLINES FOR OPEN SKIES

March 14, 2017

The Honorable Frank Lobiondo, Chairman
The Honorable Rick Larsen, Ranking Member
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Lobiondo and Ranking Member Larsen,

As CEOs of the members of U.S. Airlines for Open Skies (USAOS), we respectfully submit the following comments for the record in connection with the March 8 hearing of the Aviation Subcommittee, entitled "Building a 21st Century Infrastructure for America: Air Transportation in the United States in the 21st Century." We believe it is critical to move forward with ATC system modernization and operational reform. We also believe it is important not to turn back the clock on the aviation accomplishments our nation has achieved.

In our view, aviation infrastructure includes not only physical infrastructure, such as airports, runways, and air traffic control facilities, but also legal and regulatory infrastructure that allows cargo and passenger airlines to operate with maximum efficiency. One essential element of that legal infrastructure is the network of Open Skies agreements that the United States has negotiated with 120 countries around the world. These agreements create open markets for airline service, allowing passenger and cargo carriers to determine the routes, frequency, and price of their service, based on customer demand.

Open Skies delivers substantial benefits for the U.S. economy. It not only opens markets for U.S. airlines, but also reduces fares for passengers, facilitates U.S. exports, and connects U.S. communities with foreign tourists and businesses. For U.S. cargo airlines, Open Skies allows the combination of traffic flows in different markets to create global route networks. For U.S. passenger airlines, Open Skies expands opportunities to provide international service directly and in partnership with foreign carriers.

Unfortunately, the three U.S. legacy carriers (United, Delta, and American) are asking the U.S. government to take action that would breach specific Open Skies agreements and endanger the vital Open Skies network. Specifically, they are demanding that the United States unilaterally restrict access to the U.S. market for three Gulf carriers (Emirates, Etihad, and Qatar) based on allegations of unfair subsidies. The legacy carriers, however, have not identified any violation of the Open Skies agreements with the UAE and Qatar, nor have they pursued their claims through the independent, fact-based procedures established by Congress under the International Air

Transportation Fair Competitive Practices Act, 49 U.S.C. 41310. Rather, they are seeking a political fix to shield themselves from the competition that Open Skies affords.

The companies we represent – Atlas Air Worldwide, FedEx, Hawaiian Airlines, and JetBlue Airways – formed USAOS to educate policymakers and the public about the benefits of Open Skies agreements and to oppose the demands of the legacy carriers. Our companies, as well as other U.S. airlines not aligned with the legacy carriers, collectively employ more than 942,000 workers, almost three-and-a-half times the number of workers employed by the legacy carriers (275,000). We support Open Skies because we support competitive airline markets at home and abroad.

We appreciate this opportunity to share our views. The attached annex includes additional information about the benefits of Open Skies. We would welcome the opportunity to discuss this issue with you and would be pleased to respond to any questions.

Sincerely,

William J. Flynn
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Atlas Air Worldwide

David J. Bronczek
David Bronczek
President and Chief Operating Officer
FedEx Corporation

Robin Hayes
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JetBlue Airways

Mark B. Dunkerley
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USAOS Supports Open Skies and Opposes Demands of Legacy Carriers

1) Open Skies promotes U.S. jobs, competition, made-in-America exports, growth, and national security

- Open Skies agreements create competition by allowing air carriers, not governments, to decide the routes, capacity, frequency, and pricing of their services, based on market demand. This competition benefits all sectors of the U.S. economy, facilitating the movement of people and goods around the world, fueling growth and creating jobs. As with many other American businesses, the airlines in our coalition depend on Open Skies every day to compete successfully and grow in domestic and global marketplaces.

- Open Skies agreements are an essential part of a rules-based economy. Without these agreements, market access for our airlines and our customers would depend entirely on the discretion of foreign governments, and the shifting political winds that can influence their decisions.

- Open Skies enables U.S. companies large and small to reach export markets and maintain global supply chains through worldwide delivery networks established by U.S. air cargo carriers. Over 300,000 U.S. businesses, 98 percent of which are small and medium-sized businesses, depend on these supply chains to sell and compete in the global market place.

- Open Skies benefits U.S. consumers by reducing the cost of and increasing access to international air travel. According to a study by the Brookings Institution, existing Open Skies agreements generate approximately $4 billion in annual savings for passengers on U.S.-international routes.

- Open Skies expands international air service to more U.S. cities, making them more attractive locations for businesses to establish and expand. Before Open Skies, cities such as Detroit, Las Vegas, Memphis, Minneapolis, Portland and Salt Lake had limited or no direct access to international destinations. After the United States built its robust network of Open Skies agreements, service expanded dramatically.

- Open Skies increases demand for international air travel, which in turn promotes jobs and economic growth. A study by InterVISTAS concludes that air service liberalization leads to a 16 percent increase in air traffic, which in turn supports approximately 9 million additional jobs in aviation and aviation-related industries.

- Open Skies increases the number of foreign tourists who visit the United States. In 2014, the Gulf carriers alone brought 140,000 international visitors to the United States, who spent nearly $1 billion and generated over $2 billion in economic output. This spending benefits a wide array of travel-related businesses such as hotels, rental car companies, restaurants and retailers. In fact, because tourism spending has such far-reaching effects, adding a single daily wide-body flight carrying predominantly foreign-originating tourists can result in $65 million in direct spending, $117 million in U.S. GDP growth, and more than 1,150 U.S. jobs.

- Open Skies benefits U.S. consumers by increasing competition on domestic routes. Gulf carriers and other foreign airlines not aligned with the legacy carriers bring thousands of passengers to the United States, creating demand for connecting flights for smaller U.S. airlines, such as JetBlue Airways and Hawaiian Airlines. These additional passengers allow smaller passenger airlines to expand their domestic services, creating more competition, which promotes innovation in the aviation sector and more choices and lower prices for consumers.

- Open Skies allows U.S. airlines to maintain global delivery networks through which they transport troops and vital supplies for the U.S. military. U.S. carriers rely on Open Skies to overfly partner countries; stop for refueling and repair in partner countries; and transport supplies and troops between the United States and partner countries, and between those countries and destinations beyond. Since 1991, commercial carriers operating under the Civil Reserve Air Fleet (CRAF) have transported almost 40 percent of the equipment, supplies, and food to support operations in Iraq, Afghanistan, and the Persian Gulf, and more than 90 percent of U.S. forces to and from Iraq.

2) The legacy carriers' subsidy allegations, even if assumed to be true, do not establish a breach of Open Skies

- The legacy carriers have effectively acknowledged there is no breach of Open Skies. As part of its investigation of these claims, the U.S. government asked the legacy carriers to identify the specific provisions of the UAE and Qatar agreements that these parties have breached. The legacy carriers dodged the question and failed to identify a single operative provision of either agreement.

- The legacy carriers completely ignore the one specific provision of these agreements that relates to subsidies. This provision allows a party to request consultations if the prices charged by an airline of the other party are "artificially low due to direct or indirect governmental subsidy or support." The legacy carriers do not claim that Gulf carrier fares are below their own, much less that they are "artificially low."

- Instead, the legacy carriers rely on the general obligation to accord airlines of the other party a "fair and equal opportunity … to compete." This obligation requires each party to refrain from imposing any of a series of restrictions (e.g., on volume, frequency, and aircraft type) on the *airlines of the other party*. The legacy carriers offer no support for their argument that the obligation applies to subsidies or other government measures that a party takes in respect of *its own airlines*.

- The legacy carriers attempt to support their claims by selectively invoking inapplicable WTO rules. They incorporate rules and definitions from the WTO agreement on subsidies, which applies only to goods, not services. They ignore the WTO agreement on services, which does not discipline subsidies and specifically carves out airline services from the scope of the agreement. The trade rules are inapplicable because the United States – with the support of the legacy carriers – and many other governments decided that Open Skies, not trade agreements, should regulate international airlines services.

- If the legacy carriers were more confident about their claims, they would have utilized the complaint procedure established by the International Air Transportation Fair Competitive Practices Act (IATFCPA). This procedure allows U.S. airlines to file complaints regarding unfair practices by foreign governments and airlines, which the Department of Transportation then investigates. The legacy carriers likely were hoping that their demands would be decided in a political context rather than a thorough, evidence-based proceeding.

3) The demands of the legacy carriers, if pursued, would endanger Open Skies

- Open Skies works because countries abide by their commitments and refrain from restricting airline traffic. The legacy carriers are asking the United States to renege on this commitment and take unilateral actions that would breach Open Skies.

- The legacy carriers are asking the United States to violate its commitments by freezing the Gulf carriers' access to the U.S. market. Open Skies agreements explicitly prohibit either party from acting unilaterally to limit access by airlines of the other party. While the legacy carriers occasionally disavow this demand, it appears repeatedly in their public statements and written submissions. Such a freeze not only invites retaliation from the UAE and Qatar but also raises questions in the minds of all U.S. partners about its overall commitment to Open Skies.

- The legacy carriers' demands would invite other countries to make similar claims against the United States**.** Many governments support their domestic airlines, including the United States, whose airlines have received tens of billions of dollars through programs such as the Fly America Act, the Air Transportation Safety and Stabilization Act, federal and state tax credits, and debtor-friendly bankruptcy laws. If the U.S. government were to pursue the claims of the legacy carriers, foreign governments seeking to protect their airlines from U.S. competition could target these programs.