Airline Deregulation—A Mixed Bag, But A Clear Success Nevertheless

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I. INTRODUCTION

It is probably not surprising that Melvin Brenner and I—one a strong opponent, the other an active proponent and practitioner of airline deregulation—should each find that subsequent experience has vindicated his

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position. The reader however, should not, be asked to add up our two views of the facts and, figuratively, divide by two. Therefore in this comment on Mr. Brenner's piece, I will acknowledge the blemishes and imperfections in the ten year record[1] and the problems and uncertainties that remain, while at the same time documenting my own conviction that it is, on balance, a record of substantial success.

In so doing, I will concentrate primarily on Brenner's factual depiction of the recent performance of the industry; I will make no effort systematically to appraise the fairness with which he has characterized the *expectations* (or "promises") of the proponents of deregulation about how it would work out, for two reasons:

First, while it is fairly easy, by assembling a collage of views expressed here and there by one or another of the many supporters of deregulation (including this one) to put together a picture like the one he has drawn, it would take a massive effort to document my general reaction that Brenner has, nevertheless, constructed a strawman. I believe it will suffice merely to pause occasionally and demonstrate to what an extent it is indeed a caricature of the views I expressed at the time.[2]

Second, there can be no quarrel with Mr. Brenner's general proposition that we proponents of deregulation did expect elimination of the comprehensive governmental restrictions on entry and price competition to bring the public very large benefits. I am confident he would agree, therefore, that the more important part of his article, by far, is his review of the recent historical record, which he believes demonstrates that this radical change in policy was a mistake.

While I propose to respond, point by point, to the list of "promises" and "facts" of deregulation with which Brenner introduces his article, I will only occasionally supplying a correction to his characterization of the "promises," as far as my own predictions were concerned. I will, however, comprehensively review his "facts" and in so doing will offer the basis for my own conclusion that those expectations have, on the whole,

1. The Deregulation Act was passed in October 1978, but, as I will observe, the process began about two years earlier.

2. No doubt some of the pro-deregulation rhetoric suggested that some proponents indeed expected the change in policy to usher in a paradise on earth, problem-free and calling for no further governmental scrutiny or interventions. The general philosophical position of such leading proponents of deregulation as Ralph Nader's Public Citizen, the Consumer Federation of America and Common Cause, however their enthusiastic support, for example, of vigorous government enforcement of the antitrust and consumer protection laws—should make Mr. Brenner's readers suspicious that they had any such naive expectation.

For a comprehensive review of the ways in which the deregulation experience has diverged from expectations and the reasons, *see* Levine, "Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy," 4 *Yale Journal on Regulation* 393-494 (1987).

been strikingly realized. Specifically, I will (following Mr. Brenner's own list) confront the expectation that a deregulated industry would:

1. be more competitive (it is);
2. offer substantial reductions in average fares (it has);
3. distribute its benefits more equitably (this one is more complicated, but, it general, it has);
4. provide new lower fare/quality options (it has);
5. be more efficient (it is);
6. be less prone to engage in non-price, cost-inflating competition (it is);
7. continue, on the whole, to serve the network it previously served (it does);
8. *not* subject the industry to severe financial distress (on this one we were wrong, but the one thing I did *not* do was promise either the industry or its employees a rose garden. The critical question is whether this financial distress threatens to deprive the public of the enormous benefits of deregulation. My—somewhat peremptory—answer is that it does not).

The foregoing list omits explicit reference to the quality (and safety) of service, except as it is implied under points 4, 6 and 7. In view of the widespread conception—in some measure justified—that quality has deteriorated, I assemble some of the pertinent evidence under topic 5, since a reduction in cost associated with a decline in service quality is not necessarily an improvement in efficiency.

II. Competition and Concentration

A. *The World According to Brenner (hereinafter "WAB")*

The promise: "wide open competition," disciplined by free entry.

The fact: increased industry concentration, with "little future prospect" of significant new competitive entry.[3]

B. *The World According to Kahn (hereinafter "WAK")*

Promise:

1. The natural structure of most airline markets, I observed, was monopolistic or oligopolistic—a market structure "simply not conducive to bitter-end price competition."[4]

3. Brenner, Airline Deregulation—A Case Study in Public Policy Failure, 16 Transp. L.J. 179 (1988), at 184 [hereinafter Brenner].

4. This kind of structure could still be conducive to highly effective competition if only the government would get out of the way: the ease of potential entry into these individual markets, and the constant threat of its materializing, could well suffice to prevent

2. While counting on the relative ease of entry into airline markets to limit the exploitation of monopoly power, I repeatedly expressed skepticism about its adequacy.[5]

The facts:

1. Bankruptcies and mergers have indeed, after an initial period of substantial deconcentration, left us with an industry somewhat more concentrated on a national level than before deregulation, as Brenner demonstrates.

2. The pertinent measure of concentration, however—changes in which he nowhere attempts to depict[6]—is on *individual routes*. That is the measure of the availability of competitive offerings to travelers. The average number of carriers *per route* is apparently higher today than it was under regulation.[7]

> monopolistic exploitation. Still, that kind of market situation. . .is simply not conducive to bitter-end price competition.

"Talk to the New York Society of Security Analysts," (Feb. 2, 1978), at 24. *Cf.* Brenner, "Rejection of the oligopoly scenario was absolutely basic to the deregulation rationale" at 6.

5. For example, in testimony before the House Aviation Subcommittee, I strongly supported the proposition that

> "No automatic upward [pricing] freedom should be allowed in markets dominated by a single carrier."

Hearings on H.R. 11145 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transp., 34, 37 (March 6, 1978) (statement of Alfred Kahn).

In a memorandum to the Board on the eve of our decision to open up the transcontinental U.S. market to free entry, with World and Capitol promising to offer very low fares, I urged us to consider imposing some limitations on the permissible competitive response by the incumbent carriers, because of the likelihood that, if they were entirely free to do so, they would match the much lower fares on those particular routes, discriminatorily, and drive the new entrants out of business. I further expressed the opinion that if this happened, it was highly unlikely the incumbents would be deterred from raising their fares back to previous levels by the prospect that other entrants would be tempted to emulate World and Capitol, and risk suffering the same fate. Large segments of this memorandum are reproduced in Kahn, "Deregulatory Schizophrenia," 75 Calif. L. Rev., No. 3, forthcoming.

6. He does show how concentration has increased at the principal hubs, and that clearly suggests a troubling reduction in the competitive alternatives available to travelers on flights *originating* and *terminating* at those hubs. (Many of these changes have been effected by mergers that a Federal Government conscious of its continuing—indeed enhanced—antitrust enforcement responsibilities in a deregulated industry would not have permitted.) But this showing ignores the very marked increase in competition among offerings of flights over competing hubs.

7. Unfortunately most of the systematic evidence with which I am familiar dates back to 1984, and does not reflect the more recent wave of mergers:

a. According to the survey by John S. Strong, the average number of carriers serving each airport apparently increased between 1978 and 1984 by 31 percent at large hubs, 51 percent at medium hubs, 42 percent at small hubs, and 15 percent at nonhubs. J. MEYER, C. OSTER, The Effect on Travelers: Fares and Service, in DEREGULATION AND THE FUTURE OF INTERCITY PASSENGER TRAVEL, 120 (1987).

b. The more recent compilation by Julius Maldutis, however, shows a sharp increase in the average concentration of business at individual airports between 1984 and 1987, mainly because of the wave of mergers that took place in that period. *Hearings before the Senate Comm.*

3. The point is that the removal of the pervasive regulatory restrictions on the operating rights and service offerings of incumbent carriers radically diminished the significance of the national concentration figures on which Brenner relies. The relatively small number of airlines were under regulation prevented from competing with one another; since deregulation they have been free to invade one another's markets, offering whatever combinations of price and service they choose, and they have done so vigorously. Active competition among them has, therefore, sharply increased, and each is now a potential direct competitor of every other. Consider the implications for competition on the East Coast posed by American Airlines' new hubs at Raleigh/Durham and Nashville, United's at Dulles, and Continental's (taken over largely from People Express) at Newark.[8]

4. These market interpenetrations show up indirectly in one aspect of Brenner's own national concentration figures (his Figure 3), on which he fails to remark: there has been a significant turnover in the membership and relative positions of the top six carriers he lists. Of the top six on his 1978 list, three gained market share in the ensuing nine years and three lost it (TWA and PanAm substantially). Any one familiar with the histories of these companies during the intervening nine years will recog-

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on Commerce, Science and Transportation, 8 (Nov. 4, 1987) (statement of Julius Maldutis). On the other hand, he points out, a Boston/Phoenix passenger has a choice of nine hubs at which to make his or her connecting flight.

c. Between March 1, 1978 and March 1, 1984, the number of markets served by a single airline dropped from 3,978 to 3,592, while the number served by two airlines and by three or more increased, respectively, from 824 to 955 and from 356 to 876. U.S. General Accounting Office, *Deregulation: Increased Competition Is Making Airlines More Efficient and Responsive to Consumers*, Washington, D.C. 61 (Nov. 6, 1985).

d. A colleague of mine at National Economic Research Associates took a 20 percent random sample—admittedly a small one—from the 70 city-pair routes cited by Mr. Brenner in M. BRENNER, J. LEET, E. SCHOTT, AIRLINE DEREGULATION (1985) and found that the average number of airlines providing them with single-carrier service increased from 3.4 in 1977 to 6.6 in 1986—nearly a doubling in this particular measure of the competitive alternatives available to travelers. To some extent the measure he chose (because it would have been much more difficult to count all the available interline connecting possibilities) may have biased the result, because of the drastic decline in interlining after deregulation. On the other hand, single-carrier service is definitely more attractive to travelers than multi-carrier, and it is unclear how much competition is actually provided by carriers that can offer only a portion of an interline journey.

8. Significantly, while recognizing this phenomenon, Brenner ignores it totally when, after pointing out the fate of new airlines and the unlikelihood of significant further entries by *them*, he concludes that this experience "has invalidated the theory that market contestability would 'police' the market." Brenner, *supra* note 3, at 194. I have no recollection that in expressing the expectation that the possibility of entry would prevent grossly monopolistic exploitation, the advocates of deregulation clearly distinguished the roles they expected would be played, respectively, by totally new entrants and by existing carriers invading one another's markets. Manifestly, however, it is irrational to conclude, from the unlikelihood of the former, that the anticipated effectiveness of contestability has therefore been disproved.

nize what turbulence, travail, and entrepreneurial creativity lies behind both the gains and the losses. Moreover, the number one spot was taken over by a carrier, Texas Air, that was not on the list at all in 1978. Even the most casual newspaper reader knows what a vigorous price competitor Texas Air has been and, in large measure, remains.

5. The bankruptcies, mergers and acquisitions, at least some of which both Brenner and I lament, have largely been the consequence of the intensely competitive nature of the industry since deregulation.

6. They have also been *permitted* by a totally, and in my view indefensibly, complaisant Department of Transportation. It is absurd to blame deregulation for this abysmal dereliction.[9]

7. The industry remains to this very day far more intensely competitive than it was before 1978. Brenner cannot have it both ways—asserting or implying on the one hand that competition has proved to be a lost cause[10] and, on the other, that it has been and remains to this very day[11] catastrophically destructive of the industry's financial health.

8. He will undoubtedly retort, just as he did ten to fifteen years ago, that competition *will* eventually kill itself off and that concentration trends to date are only the harbingers of that ultimate outcome. To which I respond, just as I responded then: the possibility, which no one can deny with total certainty, that competition *may* one day prove not to be viable was hardly a reason to have suppressed it thoroughly in the first place, through regulation.[12] The billions of dollars a year of benefits to consumers that deregulation has produced in the interim, and continues to produce to this very day (see Section II below), continue to vindicate that contention.

9. *See, e.g.*, "Deregulatory Schizophrenia," *supra* note 5; Kahn, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, on the Administration's proposed amendments to Section 7 of the Clayton Act, Feb. 26, 1986; Subcommittee on Antitrust, Monopolies and Business Rights of the Senate Committee on the Judiciary, on competitive issues in the airline industry, March 25, 1987; Subcomm. on Aviation of the Senate Comm. on Commerce, Science and Transportation, Nov. 4, 1987; Maldutis, *supra* note 76, at 9.

10. "It is inconceivable that Congress would have enacted deregulation if it were foreseen that the public would end up with *neither* the protection of regulation, *nor* the protection of vigorous multi-carrier competition." Brenner, *supra* note 3, at 186.

11. *See Id.* at 202 (Figure 11) and my discussion below of the behavior of air fares through 1987.

12. *See, e.g.*, "The Airline Industry: Is It Time to Reregulate?" Second Annual William A. Patterson Lecture, The Transportation Center, Northwestern University, April 28, 1982 (White Plains: National Economic Research Associates, 1982), at 9.

III. Fare Levels

A. *WAB:*

Promise: "Deregulation would bring substantial fare reductions."

Fact: "deregulated pricing has *not* shown major improvement compared with prior trends."[13]

B. *WAK:*

The facts:

1. Brenner compares a 2.6 percent average annual decline in real—i.e., inflation-adjusted—yields between 1978 and 1986 with the 2.2 percent average annual decline in the 1970-78 period, as the basis for his conclusion that the rate of decline since deregulation has not been "materially different."[14] His choice of 1978 for the dividing point is profoundly misleading. It was in early 1977 that the CAB, under my predecessor, John E. Robson, began to relax its previous strict controls on the offering of discount fares. The relaxation was far advanced by 1978.[15] Manifestly the proper base year for these comparisons is, therefore, 1976, not 1978. The effect is dramatic: it drops the average annual rate of decrease during the prederegulation period, 1970-76, from Brenner's 2.2 percent to 1.5, and raises the average annual change after deregulation—i.e., between 1976 and 1986—from Brenner's 2.6 percent to 3.5.

2. One does not have to be an economist to understand the importance of "ceteris paribus." The very satisfactory decline in fares during the prederegulation decades (to which I referred favorably at the time[16]) represented primarily the contribution of technology—in the 1960s, primarily the jet revolution. After deregulation, in contrast, primary credit must go to the enormously accentuated incentives and pressures of com-

13. Brenner, *supra* note 3, at 198.

14. *Id.*

15. The first major proposal, Texas International's Peanuts fare, was approved in Feb. of 1977, and American Airlines' Supersavers, which very shortly spread across the entire country, almost immediately therafter. Strong, *supra* note 7a., at 109. Reading from a graph in the Strong study at 117, it appears that the percentage of travelers in the top 50 markets using discount fares rose from slightly over 20 percent in 1976 to about 48 percent in 1978; the corresponding respective percentages in the 51st to 200th markets were approximately 15 and 25, and in the 201st through 500th, perhaps 12 and 25 in these two years. According to the Air Transport Association, the proportion of revenue passenger miles at "reduced fares" increased from 36.9 percent of the total in 1977 to 45.6 percent in 1978. Statistics for earlier years are unavailable.

16. *See* Kahn, *The Economics of Regulation*, Vol. II, 100 (New York: John Wiley & Sons, 1971). In alluding to similar trends in the regulated industries generally, including airlines:

> It bears repeating that these impressive accomplishments must reflect, above all, the enormous potentialities of the technology with which these industries work. . .

petition.[17] As I have already observed, Brenner cannot have it both ways—claiming that deregulation has been a catastrophe because the price competition it unleashed has been so financially destructive to the carriers, on the one hand, and that is has not produced any real difference in the behavior of fares and costs, on the other.

3. Will it last? I have little doubt that the factors to which Brenner refers—the disappearance of most of the price-cutting new entrants and the marked reconcentration of the industry—will produce higher fares: I did indeed observe late in 1986 that yields at the levels then prevailing were not sustainable, because the industry as a whole was losing money. In fact, after dropping some eight percent in 1986 alone and actually running below 1986 levels during the first five months of 1987, average passenger yields improved markedly and had by September and October 1987 almost regained the levels of the corresponding months of 1985.[18] But those 1985 levels would still have represented savings to airline passengers in 1986 alone of $11 billion. That is how much more they would have paid in that single year if average airline yields had merely remained constant in real terms, at 1976 levels. (Of course many fewer of them would have traveled in that event.)

IV. Discrimination and Inequities

A. WAB:

Promise: "Benefits of deregulation would be equitably distributed. . . ."

Fact: "Serious inequities have developed between fares in markets with limited competition vis-a-vis the more intensely competitive markets."[19]

B. WAK:

1. The benefits of price competition have indeed been unevenly distributed geographically, because the intensity of competition has varied substantially from one market to another.

2. The structure of fares has, however, come much more closely to track the structure of costs—reflecting the economies of distance, market density, and of serving discretionary as compared with business scheduling needs.[20] Airline fares have also come much more fully to reflect the relative costs of providing carriage on and offpeak, first in openly quoted

17. *See* Meyer & Oster, *supra* note 7a., at 84.
18. Information from the Air Transport Association.
19. Brenner, *supra* note 3, at 182.
20. E. Bailey, D. Graham & D. Kaplan, Deregulating the Airlines (1985); *see* Strong, *supra*, note 7a., at 121-22.

fare differentials and second, and far more important, in the widely diverging availability of deeply discounted fares from flight to flight, depending upon the probability of the carriers being able to sell full-fare tickets.

3. In 1986, 90 percent of all passengers traveled on discount tickets, at an average discount of 61 percent below coach fare.[21] Clearly, the benefits of price competition have therefore been extremely widely distributed. Prominent among the beneficiaries have been people of modest means—which surely accords with the usual conception of "equity."[22]

4. The troublesome disparities that have emerged between fares in dense and thin markets are not wholly discriminatory. It costs more per passenger to provide service on small airplanes, serving thin routes with the frequency required to meet the needs of business travelers, than it costs on the dense routes, where it becomes economic to use larger planes.

5. It is by no means obvious to what extent travelers in the less competitive markets have actually been exploited because of the lesser intensity of competition for their patronage. That fares in the denser markets have gone down, dramatically, is unquestionable; that they have failed to go down as much in the thinner markets, or that unrestricted coach fares have actually increased (even in real terms) is likewise unquestionable.[23] What is extremely dubious (and widely assumed), however, is that fares have gone up in the latter markets *because* they have gone down in the former. As Brenner puts it,

> because these lower fares [i.e., in the competitive markets] are below the full average cost of many carriers, they have found it necessary to compensate,

21. Air Transport Ass'n, ANNUAL REPORT 1987 at 5.

22. Obviously also, with business travelers accounting for some one-half of the total, most of them too have been taking advantage of discount fares, and enjoying the additional compensation—for example, for the increased congestion and discomfort of air travel—of frequent flyer credits.

23. The increases have however been much smaller, on average and in real terms, than is generally assumed. Strong deflated the lowest unrestricted coach fares—which, recall, only a small minority of travelers pay—in a large sample of markets with the index of input costs on the basis of which they had previously been regulated, and found that, thus reduced to real terms, they *declined* by 9 percent on average between 1976 and 1984 in the top 50 markets, and rose by 3 percent and 6 percent respectively in medium-density and low-density markets. *Supra* note 7a, at 112-13, 121-22.

Incidentally, Brenner's comparisons almost certainly egregiously exaggerate these disparities, because—in sharp contrast with his Figure 8, which presents information about actual average yields per mile (thereby fully reflecting the influence of discount fares)—his market by market fare comparisons are of "the lowest one-way coach fare(s) available for travel during the following week" coach fares (footnote to Figure 7). Since 90 percent of travel in 1986 was at discount fares, and it is my impression that the preponderance of discounts offered by the major carriers are for round-trips, manifestly only a very small percentage of travelers—probably even on the thinner routes—paid the fares Brenner compares in Figure 7. Brenner, *supra* note 3, at 197.

> by raising fares substantially in less competitive markets.[24]

Again:

> In short, some parts of the public get bargains, while other passengers are subsidizing those bargains by the steep escalation in their fares.[25]

These assertions are economically ignorant. First, and less important, they ignore the fact that the identities of the airlines in the two categories of markets are not necessarily the same. There is no reason why, when United, Frontier, Continental and People Express became embroiled in intense price competition centered on Denver, USAir and Piedmont—both consistently extremely profitable carriers with the highest average yields per mile among the majors—should have been induced or required to compensate by increasing fares in *their* markets.

More generally, the assumption that high fares in some markets "subsidize" lower fares in others requires a belief that business would for substantial periods of time sell some services at prices below *incremental* costs and others at prices below profit-maximizing levels, then raise the latter only after and *because* competition had forced them to reduce fares in the former. Airline companies irrational enough to engage in either of these practices for any extended period of time would quickly be driven out of any businesses as competitive as this one.

6. On the contrary, if the introduction of intense price competition on the dense routes has any effect on prices on the thin ones, it is more likely to be to reduce than to increase them. When SuperSavers were introduced, first between New York and Los Angeles, it was not very long before transcontinental carries serving Philadelphia and Boston came to the CAB and asked to be permitted to offer SuperSavers on those routes as well. Why? Because they were losing large chunks of their trancontinental traffic, since many of their previous passengers were now flying to New York in order to take advantage of the SuperSavers available from that city. The Board consented. Before long we had SuperSavers available between all major cities in the United States. There is a very strong tendency of discount fares to spread in this way from one market to another. Doubtless this factor—as well, of course, as the fact that most travel is on the dense, highly competitive routes—helps explain the fact that the overwhelming proportion of all travel is at fares far below the published coach level.

7. Competition in the real world is, always and inevitably, imperfect. The question for public policy is always whether the imperfections are so severe as to justify comprehensive regulation of the kind that we practiced in the airline industry before 1978—at costs to the economy at large

24. *Id.* at 195.
25. *Id.* at 198.

of billions of dollars a year. I find it significant, in this connection, that even Brenner is proposing not a return to the comprehensive cartelization that prevailed before 1978, but only some "middle ground which will overcome the more serious problem areas of deregulation, while still leaving ample latitude for the exercise of management initiative and creativity."[26] On the other hand, whereas the imperfections of competition I have identified suggest the possible desirability of *maximum* fares on inadequately competitive routes (which I advocated at the time not be abandoned),[27] Brenner's tastes run clearly to restrictions on competition—*minimum* fares, mandatory system-wide rate averaging and capacity restrictions. That kind of "partial re-regulation" is, I suggest, just about as feasible as partial pregnancy.

V. The Availability of Lower-Fare No-Frills Options

A. WAB:

Fact: "By 1987, however, most of the new low-fare entrants had dropped out of the picture."[28]

B. WAK:

True, the People Express competitive option—uniform low fares, no meals, no free baggage handling—has proved not to be competitively viable, for a large number of reasons. One of the most important of these, however, has been the development of comparable options by the major incumbent carriers—very deeply discounted fares (below levels that even a lower-cost carrier like Peoples could charge on a uniform basis), with tighter seating, advance purchase and other restrictions, long lines, and so on. Business travelers complain, with some justification, that the resulting congestion and tighter seating have deprived them of the more comfortable options they previously enjoyed—a defect in the industry's performance since deregulation that we will trace in part below to major derelictions of government policy. The fact remains that, under pressure of competition, the airlines have also developed a variety of business, executive, and first class offerings, priced far more flexibly and made available in a far greater variety of ways than was permissible under regulation, as well as separate lines for such customers and—a very important compensation—frequent flyer benefits.

Brenner's proffered "factual" demonstration of the failure of deregulation to deliver on this particular promise obviously confuses the survival of low-fare no-frills *carriers* with that of low-fare no-frills *service*. The se-

26. *Id.* at 227.
27. *Supra* note 25.
28. Brenner, *supra* note 3, at 192.

lectivity of this "evidence" will be obvious to any airline traveler or, indeed, to anyone who merely reads the newspaper advertisements of the trunk carriers, including the fine print.[29]

VI. Efficiency and Costs

A. *WAB:*

Fact: "Deregulation did lead to lower *labor* costs—but this was substantially offset by hidden costs and inefficiencies. . . ."[30]

B. *WAK:*

This is a ludicrously inadequate appraisal of a record of striking improvement in productivity and reduction in cost that can be attributed only to the undeniable increase in the intensity of competitive pressures on the carriers unleashed by deregulation and the freedom it conferred on them to control their own operations:

1. Between 1980 and 1983, United Airlines reduced its labor force from 50,000 to 42,000 while retaining essentially the same totality of operations. This alone amounted to a 20 percent increase in labor productivity. American Airlines reduced its labor force from 40,656 to 36,924 during the same period.[31]

2. Output has expanded so sharply that total employment in the industry has gone up—from 303,000 in 1976 to 422,000 in 1986, a 39 percent increase. Total revenue passenger enplanements went up 87 percent and revenue passenger miles 105 percent during the same decade.[32] The difference between the first percentage increase and the other two provides a fair reflection of the productivity improvement enforced and made possible by deregulation.

3. United Airlines reported that by taking advantage of its newly conferred freedom to restructure its routes, it increased the daily average revenue-producing usage of its planes from 8.5 to 10.5 hours in the short space of two years.

4. Brenner's only reference to the dramatic move to hub-and-spoke operations in this context is to cite it (correctly) as having increased con-

29. In short, the "fare-matching strategy of the incumbent carriers" that helped do in the low-fare specialists retained that option for the great majority of travelers. Mr. Brenner's assertion that these Ultimate Supersaver offerings, however, retained all the "amenities" of full-fare travel is likely to elicit a sardonic smile from anyone who has enjoyed the narrower seating, long lines, fuller lanes, not to mention the various restrictions, including less than full refundability, associated with these options. *Id.* at 193.

30. *Id.* at 217.

31. Air Transport Ass'n, Annual Report 1981 at 6-7; Air Transport Ass'n, Annual Report 1984 at 4-5.

32. *Supra* note 21, at 3.

gestion and delay costs. This observation inexcusably ignores the principal motivation for that dramatic change and its enormous advantages—fuller utilization of larger and more efficient planes, made possible by combining at the hub traffic from each spoke to each destination, and the possibility of offering a wider range of destinations from all originating points, because of that same confluence of traffic.

5. Similarly, his only reference to the change in the use of equipment is to "less-than-optimum seat-mile costs because of the pressure for smaller planes."[33] Brenner offers no support whatever for characterizing this change as inefficient, and ignores the fact that, on the contrary, deregulation has permitted a much more efficient adaptation of type of equipment to type of market. Smaller communities have of course complained about the loss of jets, but jets are uneconomic for short hops—indeed they were being pulled out of small towns for years before deregulation—and increasing fuel prices made them even more so.[34]

6. Brenner's failure to cite the substantial increase in average load factors[35] as relevant to the effect of deregulation on efficiency is particularly entertaining, in view of the confident predictions by its opponents that free skies would be filled with airplanes flying half empty. On the contrary, as its proponents pointed out at the time, it was under the previous regime that they were doing so, because regulation, by stifling price competition, encouraged inefficient competition in cost-inflating ways—specifically, by more intensive scheduling.[36] As we did indeed predict—and as economic logic told us—price competition has driven break-even load factors up and scheduling competition down.[37] The sharp increase in peak/offpeak fare differentials, likewise attributable to deregulation, has further contributed to this clear improvement in efficiency.

Brenner dismisses this striking vindication of the economic logis of deregulation as "almost meaningless" on the ground that "excess seats can be filled by virtually giving them away in price wars"[38] and because the break even load factor has increased even more dramatically.

Higher load factors are not an unequivocal evidence of improved efficiency—not for the reasons Brenner adduces, but because they do involve some corresponding decline in the quality of service. But his

33. *Brenner, supra* note 3, at 217.

34. BAILEY, GRAHAM & KAPLAN, *supra* note 20, at 113, 119.

35. Brenner, *supra* note 3, at 206.

36. *See, e.g.*, Kahn, *Economics of Regulation*, *supra* note 16, at 209-12, pointing out that if regulation prevents competition from driving price down either to marginal cost or to minimum average unit costs it encourages competition in ways—like denser scheduling—that drives costs up to those levels.

37. *See* Kahn, "Applying Economics to an Imperfect World," the Richard T. Ely lecture, 69 *American Economic Review, Papers and Proceedings*, 10, 11 (May 1979).

38. Brenner, *supra* note 3, at 206.

dismissal of this clear evidence of fuller and physically more efficient use of capacity—over and above the fact that the airline companies have also increased the average number of seats per plane—on the ground that the seats have been "virtually given away" is economically ignorant. He does not suggest that these low fares have been below short-run or, indeed, even long-run marginal costs. Any economist would recognize at once that filling seats at least some of which would otherwise be empty with fares that exceed marginal costs represents an unequivocal improvement in economic efficiency (setting aside its effect on the quality of service, to which I will return).

Brenner's argument is, rather, that the financial health of the industry would have been better had competition not forced the carriers to do these things. I agree, and turn to his criticisms of deregulations in that respect in Section VIII, below.

7. We must of course confront on the other side the undeniable increase in congestion and delays during the last several years: lower costs achieved at the expense of quality of service[39] are not an unequivocal evidence of improved economic efficiency. By the same token, neither are increasing congestion and inconvenience in themselves a sign of failure. After deregulation, low-cost, aggressively-competing airlines offered the public very low fares for necessarily correspondingly lower quality service—narrower seating, longer lines, fewer amenities. The deeply discounted fares with which the incumbent carriers responded could be justified likewise, at least partially, by the introduction of similar economies. The enormous response of travelers to the availability of these new options is a vindication of deregulation, not a condemnation of it.

8. At the same time, these annoyances have been the result also of major failures of government policy.

For one thing, after denying for many years the validity of the criticisms, the FAA conceded in 1987 that it was inadequately staffed with fully experienced flight controllers, and announced plans, in two separate stages, for sharply increasing their numbers.[40]

Far more important, the most severe congestion has been at peak

39. The same observation applies of course to safety. I refrain from discussing this aspect of the industry's performance since deregulation because Brenner does not claim that flying has become less safe—doubtless because in fact accident rates during the 1979-86 period have averaged some 35 to 40 percent below pre-deregulation levels. Calculations from annual reports on airline accidents and departures by the National Transportation Safety Board. *See* Morrison & Winston, *Air Safety, Deregulation and Public Policy*, 1988 BROOKING REV. 10; *see also* N. ROSE, FINANCIAL INFLUENCES ON AIRLINE SAFETY (M.I.T. Sloan School of Management Working Paper No. 1890-87) 1987.

40. N.Y. Times, Dec. 4, 1987, at A22.

travel times in and out of a few major airports. The FAA placed a large share of the blame for this on the scheduling practices of the airlines—observing, for example, that they typically scheduled many more flights in and out of those airports at such times as 8:00 a.m. and 5:00 p.m. than could possibly be accommodated even in good weather. Brenner in effect does the same: the fault, in his view, lies in competition and hubbing. An economist would quickly observe that the airlines were merely doing what they are supposed to do in a market economy—trying, under pressure of competition, to give travelers what they want. The fault lies, instead, in the failure of the pertinent government agencies to respond with minimum economic intelligence to the resulting queuing, which clearly reflects a situation in which demand outruns supply.

The inescapable inferences are two. On one hand, the pertinent authorities have failed sufficiently to expand airport capacity. On the other, the right to take off and land at congested airports at times of excess demand is underpriced. What is obviously called for is to price those scarce "slots" at their marginal opportunity costs, either by auctioning them or by varying take-off and landing fees so as to reflect the principles of peak responsibility pricing familiar to all students of utility regulation[41]—the same principles that competition has forced the airlines to follow in pricing their services. At present, most airports still set their fees without differentiation between peak and off-peak, at levels intended merely to cover the historic costs of construction, and on the basis of the weight of the planes, both of which have very little to do with true economic costs. In consequence, private planes permitted to land at the highly congested Washington National Airport, for example, were still in 1987 paying landing fees of $2.75 to $8.00 per flight, using up slots whose value—i.e., opportunity cost—is almost certainly thousands of dollars. No wonder demand exceeds supply.

9. The monopoly returns from the suppression of competition under regulation showed up not in company profits—average returns on investment were chronically below the economy-wide average—but in egregiously inflated wages.[42] The intense pressure of competition during the last decade has compressed them substantially. From the standpoint of the public welfare this had been an additional, substantial benefit of deregulation: monopoly wages are no more acceptable than monopoly profits.

At the same time, competition has brought insecurity and turmoil to the affected workers (but not unemployment in the aggregate; recall that

41. *See, e.g.*, *supra* note 16, at 89-103.

42. P. JOSKOW & N. ROSE, THE EFFECTS OF ECONOMIC REGULATION (MIT Working Paper No. 447) 1987 (to be published in R. SCHMALENSEE & R. WILLIG, THE HANDBOOK OF INDUSTRIAL ORGANIZATION).

total employment has increased substantially). The resulting conflict—in many cases bitter and still unresolved—between labor and management, which may well have adversely affected the quality and perhaps even the safety of service.

These undeniable costs are part of the price we are usually willing to pay for the benefits of a competitive economy. The fact that they tend to be unusually severe during a transition from protectionism to a free market may just as logically be blamed on the regulation that created vested interests in its perpetuation as on the deregulation that dissolved them.

VII. Competition In Scheduling And Excess Capacity

A. *WAB:*

Promise: Price competition would diminish the pressure for service rivalry "and would particularly eliminate scheduling pressure for excess capacity."

Fact: Service and scheduling rivalry continues and "deregulation has actually increased the tendency for excess capacity."[43]

B. *WAK:*

Promise: Brenner has here subtly and illegitimately merged two separate expectations: the first, that the release of price competition would diminish cost-inflating service competition, including overscheduling; the other, that there was no reason to expect competition in a deregulated industry to be chronically destructive.

The facts:

1. As for the first of these "promises," I have already alluded to the evidence, vindicating our predictions. Contrary to those of our opponents, load factors have been consistently higher than in the prederegulation years of the '60s and '70s, even during the most severe recession in 45 years, when, for the first time in history, the number of air travelers declined in absolute terms for two years in a row. I have alluded also to the widespread offering, since deregulation, of low-quality, low-price service options. The fact, cited by Brenner, that service and scheduling rivalry continues is neither a refutation of our predictions nor a defect in the industry's performance. As we consistently observed, these are socially beneficial forms of competition, *provided* consumers are offered a sufficient choice among low and high price/quality options[44]—which they

43. Brenner, *supra* note 3, at 201.

44. *See* Kahn, *Economics of Regulation*, Vol. II, *supra* note 12, at 216, 220; *Hearings on Civil Aeronautics Board Practices and Procedures, Before the Senate Comm. on the Judiciary*, (testimony of Alfred Kahn) 94th Cong., 1st Sess. 87-99 (1975).

were not under regulation and are now.

2. As for the second "promise," I concede that the industry continues, in the face of poor financial results overall[45], to add to capacity. Its willingness to do so, however, whether or not rational, is a vindication of deregulation from the standpoint of the public, rather than a condemnation of it. The ultimate public concern about the possibility of destructive competition is that it may result in impairment of an industry's ability to finance needed expansions of capacity, and a consequent deterioration in the quality of the services it provides.[46] Brenner's triumphant assertion, therefore, that carriers continue, perversely, to add to capacity is in effect a concession that this particular threat to the consumer has not materialized. One very important reason for this, of course, is that while the profit record of the industry as a whole has been poor, several of the airlines—American, Delta, USAir, Piedmont, Southwest, to take the most prominent examples—have been doing very well indeed.

VIII. Disruption Of Previous Service Patterns

A. WAB:

Promise: "the prior route network would continue to be served with little disruption."

Fact: "The turnover of routes has been massive."[47]

B. WAK:

Promise: As I have pointed out for decades (with a total lack of originality), any society that craves stability and predictability will opt for regulation and insulation from competition; a society that is willing to pay the price of instability in order to encourage creativity, innovation, and continuous improvement in productivity will opt for competition. This does not mean I expected large portions of the public to lose airline service; but no realistic advocate of deregulation could possibly have denied that it would

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45. *See infra* at 247.

46. Why might competition prove to be excessive from the standpoint of the consumer?. . .

> One possible reason is that the pressures of declining or inadequate revenues might force the curtailment of many postponable expenditures that the consumer would in the long run be better off having continued. . . .
>
> The decline in price to average variable costs can lead to a skimping on safety, reliability, and frequency of service that consumers may have difficulty in detecting promptly. The greater that difficulty, the greater the temptation of competitors to cut corners, since the competitor that skimps does not at once lose all his customers, while the one that scrupulously maintains quality may be inadequately rewarded for the higher costs of doing so.

Kahn, *supra* note 16, at 175-76.

47. Brenner, *supra* note 3, at 208.

introduce some uncertainty and instability.[48]

The facts:

1. Thanks in important part to the Essential Air Services Program incorporated in the 1978 Deregulation Act, not a single community that enjoyed a minimum level of certificated service at the time of deregulation has lost it. Many communities have lost uncertificated—that is, unregulated—service since that date, just as many had lost it under regulation.[49] But obviously that had little or nothing to do with either regulation before 1978 or deregulation since.[50]

2. Considering the maniacally detailed restrictions on the operating authorities of airline companies under regulation, it would have been shocking if their removal had not resulted in a very substantial reordering of routes. Indeed, the more "massive" those changes (to use Brenner's adjective) the stronger the inference that the previous regulatory restrictions were grossly inefficient.

3. The statistics Brenner presents showing the very high percentage of *nonstop* routes dropped by the incumbent carriers between 1978 and 1983 (Figure 14) could equally well be interpreted therefore as evidence of the improvement in efficiency made possible by deregulation. In fact, the phenomenon disclosed by those figures was probably a reflection above all else of the widespread recourse to hub-and-spoke opera-

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48. The virtues of the competitive market are many . . . . But these very virtues of competition are its defects from the regulatory standpoint. . . .Regulation necessarily places a high value on predictability and continuity. . . .Competition introduces strong elements of unpredictability—unpredictability about prices, instabilities of market shares. Industry planning is one thing, competition quite another, and there are strong incompatibilities between the two.

Id. at 12-13.

This does not mean that I was neutral in the choice between the two systems:

Regulated monopoly is a very imperfect instrument for doing the world's work. It suffers from the evils of monopoly itself—the danger of exploitation, aggressively or by inertia, the absence of pervasive external restraints and stimuli to aggressive, efficient and innovative performance. Regulation itself tends inherently to be protective of monopoly, passive, negative, and unimaginative. . . .Regulation is ill-equipped to treat the more important aspects of performance—efficiency, service invocation, risk taking, and probing the elasticity of demand. Herein lies the great attraction of competition: it supplies the direct spur and the market test of performance.

Id. at 325-26.

49. *See*, GAO, *supra* note 7c, at 29.

50. Of course, the removal of obstacles to entry elsewhere presented the previously unregulated carriers with new opportunities, which may have led to a diversion of their efforts from marginal to more attractive markets. As Brenner would be the first to proclaim (and lament), however, the industry's capacity is readily expansible. If unregulated carriers served communities before deregulation, it must have been because they found it profitable to do so. If they ceased to provide that service in order to take advantage of the new, more attractive opportunities for the use of their (in the short-run) fixed capacity, there is no reason why they would not have acquired additional capacity and continued to provide the previous service as well, so long as it continued to look profitable.

tions, the superior efficiency of which I have already explained. Moreover, the careful reader will already have observed, these statistics are suggestive only of *changes* in service, not *losses*: they tell us nothing about the extent—which we know was considerable—to which these (gross) cessations of nonstop service by incumbent carriers were followed by the provision of comparable service by others. And they totally ignore the considerable extent to which the replacement of both nonstop and multistop service by one-stop over a hub[51] has made possible the greatly increased variety of destinations that, according to the authoritative study by Winston and Morrison, has been the principal source of the multi-billion dollar annual benefit the flying public owes to deregulation.[52]

4. Another of Brenner's purported evidences of "massive disruption" is that the *percentage share* of the country's weekly flight departures has gone up at large and medium hubs and down for the nonhubs[53]. If I had just as many weekly departures today from my hometown airport as I had under regulation, I would properly be regarded as perverse if I though I had suffered a "massive disruption" of my service because departures from all the other airports in the country had increased, thereby reducing my *percentage share*. Yet those are the facts behind his percentages: according to his Figure 15, non-hubs have experienced practically no change in their average weekly departures between 1978 and 1987, while small hubs have enjoyed a 42 percent increase![54]

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51. *See* Strong, *supra* note 7a. at 120-21. In fact, Strong found that non-stop flights increased just as much as one-stop—both about 50 percent between December 1978 and December 1983—while three- to six-stop flights declined by 20 to 60 percent.

52. THE ECONOMIC EFFECTS OF AIRLINE DEREGULATION, 1986 BROOKINGS INST. 30.

53. Brenner, *supra* note 3, at 210.

54. The table shows that at the same time non-hubs experienced a 17 percent decrease in the number of *weekly seats*—obviously reflecting the more efficient adaptation of the type of equipment to market that was taking place before deregulation as well. The same observation applies to Brenner's implied criticism of deregulation for slowing down the rate of increase in the average size of aircraft:

> Deregulation, with its emphasis on frequency and hubs, replaced previous fleet planning policies with a new emphasis on smaller aircraft.

This criticism simply ignores the superior convenience of improved frequency and the fact that the industry entered the deregulation era with a great surplus of wide-bodied aircraft. The competitive success of such carriers as USAir and Piedmont, was in large measure attributable to their use of smaller aircraft, to provide more convenient frequencies—a perfect example of the competitive market working more effectively than a regulated one.

It is an elementary economic principle that economic efficiency requires a balancing of minimum cost and optimum quality. We could conceivably maximize the "efficiency" of carrying people between Bozeman, Montana and Montgomery, Alabama, according to Brenner's implicit standard, by providing only wide-bodied jet service once every two weeks, thus forcing people traveling between those two points to plan their travel for the one day every two weeks when such a "most efficient" method of carriage was available to them; that would also, of course, minimize the pressure on airport capacity, which Brenner seems also to regard as an absolute desideratum. Id. at 211.

IX. THE FINANCIAL RESULTS

There is no denying that the profit record of the industry since 1978 has been dismal, that deregulation bears substantial responsibility,[55] and that the proponents of deregulation did not anticipate such financial distress—either so intense or so long-continued.[56] However:

1. Brenner's figures are for net profits, i.e., return on equity. It is of some significance that the industry's rate of return on annual total invested capital—interest on debt plus net profit after tax—has been no lower during the deregulation period than under regulation, as shown in the attached table.[57]

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55. *See also* Maldutis, *supra* note 5b. Winston & Morrison and Meyer & Oster both conclude that at least during the recession years 1981-82 the financial showing of the industry would have been even worse had it not been deregulated, because the benefits of their increased operating freedom outweighed the financial costs of intensified price competition. I do not have an independent judgment of this conclusion, but have no doubt either that, to take the extreme case, the very poor financial showing in 1986, a year of prosperity for the economy at large, must be attributed preponderantly to the intense price competition that deregulation permitted.

56. I do not presume to guarantee you that the industry will be a model of prosperity in the transition to a more intensely competitive regime. May I be permitted to whisper, however, that the industry's financial record has not exactly been *éclatant* under the CAB's protection? I cannot believe, in any event, that it requires governmentally-imposed cartelization to make this or any other industry creditworthy.

Kahn, *supra* note 4, at 28.

57. Since as the table shows, different groupings of years produce somewhat different results, it seems prudent to explain the particular ones I have selected:

1. The first, second and fourth groupings omit the results for 1978—the highest during the 22 years covered by the table—from both pre- and post-deregulation averages. The reason is not only that October of that year marked the passage of the Airline Deregulation Act, but that, as I have already observed, the CAB had during the 1976-78 period put into effect a very large number of the deregulatory policies that were ultimately given the sanction of law in 1978. If anything, it would seem the more logical to include 1978, therefore, in the post-deregulation years, thereby increasing the mean return during that period from 6.4 to 7.2 percent, as shown in the third line of the table.

2. The second and fourth groupings compare the results for the eight pre- and eight post-deregulation years. Since 1969 through 1973 were comparatively unprofitable, and 1965 and 1966 highly profitable years, the table presents also a prederegulation average for the entire 1965-1977 period: it comes to 6.3 percent, which is still slightly below the eight post-deregulation years, at 6.4 and even more below the 1978-86 period level of 7.2 percent. Incidentally, the fact that 1965 was a cyclical peak argues further against including the second cyclical peak year of 1978 in the pre-deregulation series, for comparative purposes.

TABLE 1

	Mean	Standard Deviation
1965-1977	6.3	3.5
1970-1977	5.3	3.1
1978-1986	7.2	3.1
1979-1986	6.4	2.4

Source: Calculated from Air Transportation Association of American, *Air Transport—Annual Reports of the U.S. Scheduled Airline Industry*, Washington, DC: 1975-1987.

2. Perhaps equally striking, deregulation evidently has not increased the volatility of these returns: as the table shows, their standard deviations have actually declined slightly. This showing is even more surprising than the level of investment returns, considering that the years since 1978 have been years of turbulent entry and exit, sharply declining concentration and then reconcentration of the industry, extreme differences in the costs of new entrants on one side and incumbents on the other—all of which have very substantially abated—and dramatic externally-imposed vicissitudes—the air controllers strike, the most severe recession in 45 years, and the explosion and subsequent partial recession of fuel prices.

3. What has deteriorated so dramatically, then, has been the industry's rates of return on equity, as Brenner's figures clearly show, reflecting the drastically increased cost of debt service.[58] I am not aware of any basis for choosing between these two measures of financial results as a general proposition. From the economic standpoint, it is the return on total investment, undistorted by differences in debt/equity ratios, that tends to be the more widely used in inter-industry comparisons. On the other hand, it would presumably be the return on equity that would best reflect the pressures on companies to cut costs—or, in the airline context, to cut corners on safety or service quality.

4. Average rates of return in the airline industry have been chronically low, both before and after deregulation. For example, the mean rate

58. Calculations from the same source as Table 1 show an average industry net profit margin of 1.30 percent in 1970-77 and a puny 0.10 in 1979-86.

The post-deregulation record is heavily skewed by the crushing losses experienced by Pan American and Eastern Airlines: omission of these two raises the 1979-86 average to 0.77 and 1970-77 to 1.88. Inclusion of the very satisfactory 5.2 percent margin achieved in 1978 with the post-deregulation record further improves the picture, but a symmetrical inclusion of 1965-69 (when the simple average of yearly margins was 4.9 percent) would of course have the opposite effect, leaving the conclusion in the text unaltered.

of return on investment for all U.S. industries was 12.8 percent during the 1973-77 period (as compared with the airlines' 5.3 percent in 1970-77) and 13.0 in 1979-86 (as compared with the airlines' 6.4).[59] The ultimate explanation—and it is more of a tautology than an explanation—seems to be the continuing willingness of investors to make capital available in adequate—indeed, by the test of comparative rates of return, excessive—quantities. So long as that continues—and prominent among Mr. Brenner's complaints is the continued willingness of the industry to expand capacity—the inability, predicted by opponents of deregulation, of a financially weakened industry to raise the capital required to provide satisfactory service has simply not appeared. One reason, as I have already suggested, is that these poor financial results for the industry as a whole, reflecting the turbulent process of weeding out high-cost and/or competitively weak firms, has not been incompatible with very satisfactory earnings by the leading survivors.

6. This last consideration returns us to the question of whether, as Brenner maintains, the multi-billion dollar annual savings to consumers will prove to have been a purely temporary benefit at the expense of profits and wages, and will ultimately disappear as the weeding out process is completed. To this there are two answers. First, these savings have come not at all from dimished returns on invested capital, as we have seen; partially from returns on equity and monopolistically high wages; but also largely from the substantial increase in efficiency that has been made possible by deregulation and compelled by competition. If the gain from unsustainably low returns on equity capital proves only temporary, there is no reason why the other sources will not persist as long as competition remains effective. Second, as I have already explained, there is no reason to believe that the oligopoly that emerges in this industry will be incompatible with effective competition—for many of the reasons that Brenner himself sets forth—any more than in a wide range of other unregulated industries. Finally, even if ultimately competition does prove to be inadequate, that does not prove it would have been wise social policy to have suppressed it through comprehensive regulation in the first place.

X. Conclusion

In framing its economic policies, a society's choices are, inevitably, among imperfect institutions. During the 1960s and 1970s there emerged something close to a consensus among disinterested students of the airline industry—among which I do not, of course, include spokesmen for the airlines themselves or their labor unions—that regulation had: denied

59. Standard & Poor's Corporation (available July 10th, 1987, on Compustat Aggregate Data Base).

the traveling public the benefits of price competition; sheltered inefficiency; systematically encouraged competition in wasteful, cost-inflating ways; and encouraged the wage-price spiral that, in a broader context, might be conceived of as the mircroeconomic component of our national stagflation problem.

Deregulation and the competition it unleashed, however messy and imperfect, have brought the traveling public benefits worth billions of dollars a year, curbed and reversed the wage/price spiral, broken up institutional rigidities, and swept away legal and psychological barriers to productivity and innovation. It has been very hard on the industry itself; but it is the function of competition to be a hard taskmaster.

There have of course been severe problems and reasons for concern even from the public's standpoint: most prominently sharply increased congestion and delays, increased concentration at hubs, monopolistic exploitation of a minority of customers, and possibly a narrowing of the margin of safety, even though actual accident rates have run consistently 35-40 percent below prederegulation levels. It seems absurd, however, even to consider returning to economic regulation in these circumstances, when the first and most logical way of confronting these problems would be for the government to fulfill responsibilities that we deregulators never intended it to abandon—responsibilities for intense surveillance of safety practices, adequate budgets and personnel for air traffic control, expansion of airport capacity to meet growing demands, efficient pricing of access to scare airport facilities and airways, and vigorous enforcement of the antitrust and consumer protection laws. No sensible deregulator intended government to abandon these heavy responsibilities; on the contrary, we explicitly pointed out the necessity for increased effort and vigilance along all these lines even as we were freeing the industry—and its consumers—from the straightjacket of comprehensive cartelization.