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**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

U.S. - U.K. Alliance Case

Docket OST-2001-11029 - 44

**JOINT STATEMENT OF  
CHARLES A. HUNNICUTT AND A. BRADLEY MIMS**

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December 19, 2001

**JOINT STATEMENT OF  
CHARLES A. HUNNICUTT AND A. BRADLEY MIMS<sup>1</sup>**

My name is Charles A. Hunnicutt. From January 1996 until March of 1999, I served as Assistant Secretary of Transportation for Aviation and International Affairs.

My name is A. Bradley Mims. From August 1998 until January 2001, I served as Deputy Assistant Secretary of Transportation for Aviation and International Affairs. I served as Acting Assistant Secretary of Transportation for Aviation and International Affairs from March 1999 until September 2000.

During our respective periods of service with the Department of Transportation, we were each involved in reviewing a joint application filed by American Airlines, Inc. and British Airways, plc, in January 1997 requesting antitrust immunity for a proposed alliance. During this time we each became familiar with the competitive issues raised by that application. That proceeding was ultimately terminated in July 1999.

We are each familiar with this pending joint application of American Airlines and British Airways for antitrust immunity for a new proposed alliance and the joint application of United Airlines, Inc., British Midland Airways, Ltd., Austrian Airlines, Lauda Air Luftfahrt AG, Deutsche Lufthansa AG and Scandinavian Airline System for approval of, and antitrust immunity for, a bilateral alliance agreement between United Airlines and British Midland and a multilateral coordination

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<sup>1</sup> We have no economic or financial interest in any of the parties to this proceeding, nor do we have any economic or financial stake in the outcome of this proceeding. In the interest of full disclosure, Mr. Hunnicutt represents Northwest Airlines, Inc. on issues unrelated to this proceeding. Mr. Mims is a principal in The Ferguson Group, which represents Memphis International Airport on issues unrelated to this proceeding.

agreement among all these applicants. We have reviewed pleadings filed with the Department of Transportation by the applicants and by opponents and proponents of the applications. We also are aware that the United Kingdom has indicated that the Department's approval of the alliances is a precondition to the U.K. entering into an open skies agreement with the United States.

We believe that while there are some factual differences between the American/British Airways immunity application in 1997-1999, and the present applications, the underlying situation of infrastructure constraints and potential market power concentration remain unchanged. In fact, the fact pattern presented today presents even more concern with regard to market power concentration in the relevant market(s). Immunized alliances require market conditions that protect consumers and competition. It is our position that this protection can only be provided where there are no significant restrictions on the ability of other airlines to enter the markets served by the alliance partners and to respond freely to their initiatives. We certainly have made many statements regarding the recognition of the potential benefits in the international context of such alliances, particularly end-to-end combinations. However, we have equally expressed concern regarding potential issues of competition policy relative to the alliances.

In particular, as was the case in 1997-99, we are concerned that the proposed alliances here are likely to harm competition and lead to higher fares for consumers in numerous U.S.-London and U.S.-Heathrow city-pair markets. Heathrow is a distinct market, separate from service to Gatwick Airport. Heathrow is strongly preferred by business travelers. The fact that service from U.S. points to Heathrow commands a substantial revenue premium over service from U.S. points to Gatwick is confirmation that service to Heathrow must be considered a distinct market.

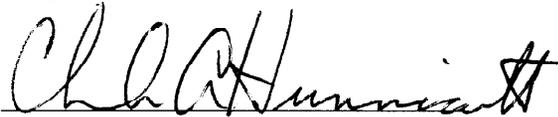
The central problem with Heathrow was, and remains, that slot constraints preclude entry by carriers who could otherwise provide new competition in U.S.-Heathrow city-pair markets; simply put, slots that could be used for new U.S. service are not available. Furthermore, the U.S.-Heathrow markets remain highly concentrated -- American and British Airways operate 61 percent of U.S.-Heathrow frequencies and are each other's principal competitor in U.S.-Heathrow markets. Thus, the barriers to entry represented by the slot constraints guarantee that the competitive effects of the alliance will go unchecked.

The proposed American/ British Airways alliance is unlike any alliance the Department of Transportation has ever approved. That was also the case with the original American/British Airways proposal. First, of course, no other alliance has ever involved the two principal competitors in the largest U.S. international aviation market. Second, the alliance is not structured to provide primarily new end-to-end network service benefits of the sort that have justified the approval of other alliances. As is discussed in pleadings filed by other parties, the proposed alliance appears designed to consolidate the positions of American and British Airways in the overlap markets in which they are the principal competitors and to facilitate the reduction of capacity, at least by British Airways, in the overlap Heathrow markets.

When DOT dismissed the original American/British Airways antitrust immunity application in 1999, the Department of Transportation stated that if the United States were to enter into an open skies agreement with the United Kingdom, such an agreement must assure de facto open skies, i.e., the agreement must provide for adequate new entry by U.S. carriers at Heathrow Airport. The Department also stated that the ability -- or inability -- of U.S. carriers to provide competitive new service at Heathrow was a critical consideration in its evaluation of the original application. Replacing the unfortunate, restrictive Bermuda II Agreement should remain a national aviation priority. However, replacing Bermuda II with a theoretical open skies which can never be effectuated because of infrastructure constraints and market power would be a mistake.

Because the facts remain essentially unchanged since 1999, in our view the United States must not proceed to enter into an open skies agreement with the United Kingdom until the Department of Transportation has carefully considered and satisfactorily resolved the entry problems at Heathrow and the competitive implications of the new proposed alliances. Concomitantly, these concerns militate against approval of these alliances unless and until these concerns are adequately addressed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document by hand-delivery or via first class mail postage prepaid to all persons on the attached service list.

A handwritten signature in black ink, appearing to read "Chahumian", followed by a star symbol. The signature is written in a cursive style.

December 19, 2001

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