

**United States House of Representatives  
Transportation and Infrastructure  
Hearing of the Subcommittee on Aviation**

**The Honorable Frank LoBiondo (R-NJ) Chairing**

***Building a 21st Century Infrastructure for America:  
Air Transportation in the United States in the 21<sup>st</sup> Century***

**Wednesday, March 8, 2017**



**Testimony of  
Sara Nelson  
International President  
Association of Flight Attendants-CWA, AFL-CIO**

Association of Flight Attendants-CWA, AFL-CIO  
501 Third Street, NW, Washington, DC 20001  
Government Affairs Director Stephen Schembs, 202-434-0568

Chairman LoBiondo, Congressman Larsen, Members of the Committee:

Thank you for the opportunity to testify today about maintaining the safest, globally competitive U.S. aviation system with the necessary resources directed in the next Federal Aviation Administration (FAA) reform and reauthorization bill. My name is Sara Nelson, International President of the Association of Flight Attendants-CWA, AFL-CIO (AFA). AFA represents nearly 50,000 flight attendants at 19 mainline, niche, regional, charter and international airlines. It is fitting that on International Women's Day, the union that was founded by strong women and which remains largely a workforce of women would have a platform to testify in the United States Congress. Thank you again.

AFA's expert voice from the aircraft cabin continues to grow. This past year we welcomed flight attendants from ATI, GoJet and Cathay Pacific U.S.-bases. As a result of the merger with Alaska, AFA will soon be certified as the representative of Virgin America flight attendants. Also, the members of the Norwegian Cabin Crew Association (NCCA), comprised of U.S.-based Norwegian Flight attendants, begin voting this month to form the twentieth airline chapter of AFA. Across the industry flight attendants serve as aviation's first responders and the last line of defense in aviation security. We need proper rest to do our work, an orderly and secure cabin free of voice calls, a reality check on the disparate compensation at regional airlines and global competition on a level playing field that pushes U.S. aviation forward instead of choking out this cornerstone of the U.S. economy.

Aviation, born in the U.S., is perhaps one of the greatest symbols of our freedom. Our members and our passengers fly to every corner of the earth when some can only dream of crossing borders. Aviation is the symbol of American progress, innovation and opportunity. I understand with gut-wrenching, first-hand experience, that safety and security are paramount for an industry that continues to capture the imagination and attention of the world. As a Boston-based Flight attendant on September 11, 2001, I lost my dear friends Amy King, Michael Tarrou, Robert Fangman, Amy Jarett, Kathryn Laborie, Alfred Marchand, Alicia Titus, Jesus Sanchez and Marianne MacFarlane. I know too that, in the midst of our grief and our resolve to keep our airlines flying, we faced the loss of over one hundred thousand aviation jobs, massive cuts to

pay, the destruction of retirement security with loss of pensions, more time away from our families and staffing cut to minimums. There will always be a pre-and-post 9/11 in aviation. September 11th is not the exception to the rule for our charge as stakeholders in aviation together with your careful oversight; it is forever the reality that a breach in aviation security and a wounded U.S. aviation industry is a threat to the very freedom of our nation and the prosperity of every community across the United States.

## **Consolidation/Mergers**

Fifteen years after 9/11, increased productivity, consolidation with capacity cuts, lower oil prices, and other factors have resulted in U.S. airlines' return to profitability.<sup>1</sup> This success should be celebrated. And, just as we all played a role in making that success a reality, we all have a responsibility to ensure it is sustained as we remember and recognize the painful sacrifices by the people of aviation who made it possible. The hundreds of thousands who continue to work in U.S. aviation deserve to share in its success and work without worry.

One thing flight attendants did not have to worry about during the latest round of mergers and consolidation was their seniority. AFA has a long history of promoting seniority integration that maintains credit for the service Flight Attendants bring to any merger. In 2007, Congress took action in response to our union's advocacy and adopted the McCaskill/Bond Amendment, which ensures fair and equitable seniority integration for aviation workers across the industry.<sup>2</sup> Airlines have also benefited from this straight-forward procedure that avoids never-ending litigation that previously tied up operational integrations for years following a merger.

According to a U.S. Department of Transportation and Federal Aviation Administration report from November 2016, the U.S. Aviation industry accounts for 5% of U.S. gross domestic product, contributes \$1.6 trillion in total economic activity and supports nearly 11 million jobs.

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<sup>1</sup> IATA, "Another Strong Year for Airlines Profits in 2017" <http://www.iata.org/pressroom/pr/Pages/2016-12-08-01.aspx>

<sup>2</sup> AFA-CWA, "Flight attendant Union Wins Seniority Protections for Flight attendants" [http://www.afacwa.org/flight\\_attendant\\_union\\_wins\\_seniority\\_protections\\_for\\_flight\\_attendants](http://www.afacwa.org/flight_attendant_union_wins_seniority_protections_for_flight_attendants)

The mergers and increasing consumer demand have prompted growth and airlines have been hiring again. The Bureau of Labor Statistics projects growth for the flight attendant profession through 2024.<sup>3</sup> That is a great sign for our airlines and airline workers.

Aviation workers have been able to partially recoup losses in recent years. AFA has negotiated new contracts at Alaska, Spirit, United, and American, as well as mid-term agreements at Endeavor, Envoy and Horizon.

## **Wages**

But the success at many mainline carriers has not been felt by flight attendants who work for our nation's regional carriers. Even as the mainline carriers experience growth following consolidation, the number of regional airlines remains substantial while regional operational growth has slowed. In part, the surplus of regional capacity has provided economic leverage to the mainline carriers. Regional carriers, pressured to underbid competitors, have kept relentless downward pressure on wages for flight attendants and other airline workers.

However, flight attendants at regional airlines do the same work as mainline flight attendants and have the same safety and security responsibilities. The service to the traveling public is branded under the flags of major airlines, seamless in the reservations process, check-in, route options, jet service and interchangeable gate areas. Based upon an AFA comparison of flight attendant wages, regional flight attendants make a fraction of what their mainline counterparts earn, up to 42% less. AFA is working to bridge the gap and increase the wages and working conditions for flight attendants serving as aviation's first responders on regional jets integral to the network of mainline airlines.

Earlier this week flight attendants at regional carrier Mesa Airlines began casting ballots for a strike vote after five fruitless years of negotiations and the last two in mediation. Mesa flight

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<sup>3</sup> Bureau of Labor Statistics, Occupational Outlook Handbook, 2016-17 Edition, Flight attendants, on the Internet at <https://www.bls.gov/ooh/transportation-and-material-moving/flight-attendants.htm#tab-6>

attendants are paid an average of 20 percent lower wage scale than their regional counterparts doing flying for American and United. Flight attendants working a full time schedule at Mesa can make as little as the equivalent of a \$7.50 an hour minimum wage job. That airline management believes it is acceptable to pay aviation's first responders so little reveals how critical security jobs are still undervalued in an economy that drives toward low wages.

The problem is compounded because flight attendants at Mesa are paid according to their *scheduled* flight time and not their actual time worked. This shifts all of the economic risk to flight attendants for schedule delays that are entirely out of our control. Tarmac delays or unscheduled stops and diversions are frustrating for passengers who are delayed, hungry or anxious to get to responsibilities at work or home. Flight attendants at Mesa are charged with keeping order in the cabin, calming passengers and remaining professional under often stressful circumstances that also increase the likelihood of managing medical issues without being paid for this extra time. Today they are only paid for their originally scheduled flight time. These Mesa flight attendants also shoulder high healthcare costs for minimal coverage. Often they must make choices between paying rent or utility bills and buying food. This is completely unacceptable for any American worker, let alone people performing life-saving work and serving as critical partners in aviation security.

We see this as part of a larger trend that our members are experiencing. Even though many carriers are reporting record profits, conditions in the aircraft cabin changed significantly after 9-11. As airlines cut back on inflight amenities, they also significantly reduced staffing levels. Most carriers are staffing the cabin at FAA minimums, which means fewer Flight Attendants on board even as passenger load factors are at an all time high. Although airlines have been, more recently, increasing inflight services and amenities, staffing has not returned to pre-9/11 levels.

Flight attendants are proud to serve as aviation's first responders and last line of defense in the aircraft cabin. But fewer flight attendants and more passengers diminish our ability to do our jobs. With longer work days and more flights, fewer flight attendants and more passengers it is more important than ever to ensure flight attendants have the tools we need to perform at our

peak.

## **Rest Requirements**

As Members of this Committee know, AFA continues to advocate for a 10-hour minimum rest requirement and the implementation of a Fatigue Risk Management Plan (FRMP) for flight attendants as was included in HR 4441, 114<sup>th</sup> Congress.

It was not until 1994 that the FAA promulgated the first rule for flight attendant duty period limitations and rest requirements. In adopting that rule, the FAA stated the rule was necessary to ensure flight attendants would be alert and responsive to perform their routine and emergency safety duties.<sup>4</sup> The FAA rest minimum for flight attendants, still in effect today, is 8 hours even after a 14-hour duty day. Chairman Norman Mineta at the time had proposed a 10 hour minimum rest. Even in the best circumstances an 8-hour break provides a rest opportunity of less than 6 hours because deplaning, eating dinner, checking into and out of the hotel, and reporting for duty after transiting security when returning to the airport are all counted within the 8-hour break. The reality is much more like four to five hours opportunity for rest.

Between 2009 and 2012, The FAA Civil Aerospace Medical Institute (CAMI), as directed by Congress, released a series of reports, which concluded that changes to flight attendant work rules are necessary and that reform is needed to combat fatigue. The CAMI reports recognized several contributing factors to flight attendant fatigue, including scheduling and missed meals, but especially insufficient rest.

On the basis of the CAMI recommendations, AFA is calling for a 10-hour rest requirement from the time a Flight attendant is released from duty until they are scheduled to report for their next duty period.

A 10-hour minimum rest period for flight attendants creates a harmonized approach with 14 CFR Part 117, *Flightcrew Member Duty and Rest Requirements*, which requires that pilots be

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<sup>4</sup> Office of the Federal Register, National Archives and Records Administration, *Federal Register Volume 59, Issue 201, "59 FR - FLIGHT ATTENDANT DUTY PERIOD LIMITATIONS AND REST REQUIREMENTS" (October 19, 1994)*

given a rest period of at least 10 consecutive hours preceding a flight duty period or reserve assignment.

The United States lags behind other countries in equalizing rest regulations for both pilots and flight attendants. In 2009, the International Civil Aviation Organization (ICAO) made recommendations introducing new definitions and amendments with respect to the limits for flight time, flight duty periods and rest periods for fatigue management.<sup>5</sup> The ICAO recommendations would help ensure an equal rest and safety from nose to tail.

AFA is also calling for the implementation of a fatigue risk management plan (FRMP) for flight attendants. Pilots already take part in an FRMP, therefore airlines are familiar with the process and plan requirements. We believe it is imperative that regulators and air carriers develop and implement an FRMP specific to flight attendant operations under Part 121 that follow the structure of the flight crew FRMP. Plans may vary by airline, but it's crucial that flight attendants learn to recognize when they're tired, how to stay rested longer, and what to do when they feel fatigued.

I would like to thank Chairman LoBiondo, Congressman Capuano, Ranking Members DeFazio and Larsen, and the members of this Committee for working with us to include 10 hours of rest and the fatigue risk management plan in last year's FAA Reauthorization bill. We strongly encourage the Committee to include that language again in the 115th Congress and we look forward to working with you to enact this important safety provision.

### **Safety in the Cabin**

I would be remiss if I didn't mention other provisions that were included in last year's bill that would improve safety for all passengers and crew: revisiting evacuation standards, notification for insecticide application, the ban on e-cigarettes, flight deck secondary barriers, a permanent ban on knives, cyber-security provisions, penalties for assault on customer service agents consistent with that of crewmembers, and a ban on voice communications in the aircraft cabin.

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<sup>5</sup> International Civil Aviation Organization (ICAO), *Annex 6, Operation of Aircraft, Part I: International Commercial Air Transport - Aeroplanes Ch. 9.6, Attachment A*, Ninth Edition (July 2010)

One issue clearly needs attention by this committee to ensure that the near-unanimous will of the traveling public and those of us on the frontline of aviation is carried out in law and policy. That issue, of course, is the recent foray by the FCC and DOT into the use of cellular telephone, or other emerging technologies, for voice communications on aircraft. In comments submitted to the DOT Advance Notice of Proposed Rulemaking (ANPRM), AFA recommended banning voice calls in the cabin of commercial flights due to potential inflight disruptions, crew and passenger discomfort, and unacceptable risks to aviation security<sup>6</sup>. In the nearly three years since submitting the ANPRM comments, airplane and electronics manufacturers have improved the technical capabilities of inflight communications equipment. Despite these improvements, we see no evidence of any resolution to the adverse impact on passenger comfort or aviation safety and security that we and other commenters foresee if in-flight voice calls are permitted. Nevertheless, DOT issued the NPRM which furthers our concern that flight attendants would be charged with enforcing inconsistent policies across the industry, increasing the opportunity for conflict within the aircraft cabin.

One of our gravest concerns is the potential increased risks to safety and security due to voice call-related operational vulnerabilities. In flight voice calling will allow unauthorized persons to communicate by voice off the airplane or within the airplane. This creates an environment where terrorists will be able to blend in with ordinary passengers; just one of many plausible scenarios that will inevitably increase safety and security risks. Safety and security must be considered and addressed comprehensively *before* consideration is given to permitting the use of voice call services by passengers on commercial transport airplanes.

In addition to AFA's comments, there has been overwhelming opposition from the traveling public to permitting voice calls on planes. Several foreign carriers, including the ME3 (Emirates, Etihad & Qatar) have begun to permit voice calls on planes, even touting this in their advertisements and on their websites.<sup>7</sup> This is another example of foreign regulations that are incompatible with norms, practices and regulations in the United States. U.S. regulators must

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<sup>6</sup> AFA; *Re: Use of Mobile Wireless Devices for Voice Calls on Aircraft*; DOT-OST-2014-0002; March 26, 2014.

<sup>7</sup> The Telegraph, "Which Airlines Allow In-Flight Mobile Use?" February 11, 2014



hold the line against in flight voice calls, even as this international competition creates pressure to put economics before safety and security.

### **Unlevel Playing Field/Foreign Competition**

Over the past few years there has been increasing pressure from foreign carriers and governments to gain additional access to the lucrative U.S. market place.

Since 2004, international markets have been leading market growth for U.S. carriers when compared to the crowded and established domestic markets. However a recent report from the FAA states that in 2015 U.S. carrier international growth was flat and that the U.S. market share of international passengers, with the exception of the Caribbean, Oceania and Central America, has decreased. That trend is expected to continue.<sup>8</sup>

The U.S. has negotiated 120 Open Skies agreements with the intention of providing “increased travel and trade, enhancing productivity, and spurring high-quality job opportunities and economic growth.” The majority of these Air Transport Agreements have provided growth opportunities for U.S. airlines and economic benefit to the U.S. economy. However, to ensure this remains true, our government must see to it that these agreements are enforced and that we continue to promote high-quality job opportunities and economic growth.

The Obama Administration’s decision to grant the Norwegian Air International (NAI) a foreign air carrier permit is one example of a current Open Skies violation that threatens both jobs and economic growth. NAI violated article 17 *bis* of the EU/US Opens Skies Agreement by setting up an Irish subsidiary to capitalize on Ireland’s less restrictive labor laws. Article 17 *bis* states, “[t]he opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws.”<sup>9</sup> NAI's deliberate effort to undermine Norway’s strong labor protections not only violates the agreement, it sets in motion a downward spiral for U.S. Aviation and 300,000 U.S. jobs.

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<sup>8</sup> FAA, *FAA Aerospace Forecast, Fiscal Years 2016-2036*

<sup>9</sup> “Protocol to Amend the Air Transport Agreement Between the United States of America and the European Community and its Member States” <https://www.state.gov/documents/organization/143930.pdf>, (April 30, 2007)

Norwegian has, for the time being, successfully introduced a “flag of convenience” business model into the aviation sector. It permits airlines to establish operations in countries with the lowest labor standards, the direct opposite of the stated purpose of these trade agreements. Other European airlines, including SAS and Air France are already changing their business plans to duplicate NAI.

While we have been vocal in our opposition to the NAI foreign air carrier permit, we want to be clear: our fight against the flags of convenience business model is also a fight to preserve good jobs.

Contrary to Norwegian's public assertions about NAI, Norwegian executives have refused to confirm that NAI will hire flight attendants and pilots in the U.S. or under European contracts. They won't even admit to being the employer.<sup>10</sup> Instead, they assert that, as the hiring company, OSM is the employer and, therefore, NAI does not have an employment relationship with the flight attendants and pilots. Cutting through their PR, *that* is the airline's position. We disagree in the strongest possible terms. Their position means the jobs of NCCA members – who will soon be part of our union – are at risk because nothing would stop NAI from ending individual contracts with the U.S.-based Norwegian flight attendants and instead hiring from wherever they can find the lowest labor standards. That's what Irish law permits.

I know this Subcommittee is well aware that this flag of convenience business model was responsible for the destruction of the U.S. flagged commercial shipping industry. The pace of airline competition forecasts a much faster destruction of U.S. aviation. All of our jobs are at risk, today. If NAI's scheme is not stopped, U.S. commercial aviation will go the way of the shipping industry.

The failed enforcement of these Open Skies Agreements has put 300,000 U.S. aviation jobs at risk. And make no mistake – this is just the first wave of foreign-owned corporations entering the U.S. aviation sector in an effort to undermine U.S. wages and job protections. If we do not act swiftly we will witness a radical shift in the aviation industry, where foreign corporations will dominate the U.S. market but keep their money overseas and out of the hands of American

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<sup>10</sup> 43 NMB No. 21 pg. 98, April 19, 2016

workers. Our aircraft will be staffed with workers from the countries with the lowest labor standards, lowest wages, and lowest safety standards. Norwegian's executives hoped to use the upstanding reputation of Ireland and Norway to hoodwink the public as they create a whole new set of rules for aviation without any future oversight by the United States, Norway or Ireland.

The Norwegian Air violation is not only a threat to U.S. jobs and aviation, but also to safety and security. The European Transport Workers' Federation (ETF) and the Transportation Trades Department, AFL-CIO,<sup>11</sup> submitted joint testimony in the NAI foreign air carrier application docket. The testimony raised questions on whether European civil aviation legislation provided sufficient safety guarantees for aircrews based outside the EU or U.S. and if the hiring agency "Adecco," as utilized by the Irish subsidiary NAI, could guarantee the same level of background checks that exist for European and U.S.-based aircrews. Those questions remain unanswered. This Committee is uniquely positioned to take up this issue and stop the expansion of approval of foreign air carrier permits for airlines operating according to this flag of convenience model.

The threat to U.S. workers is not *just* from the flag of convenience business model. Our jobs are also being threatened by massive, anti-competitive government subsidies to the Middle East Carriers Emirates, Etihad and Qatar, in violation of the Open Skies Agreements with the Gulf States.

The governments of the United Arab Emirates (UAE) and Qatar have provided enormous subsidies to their state-owned carriers, Emirates, Etihad and Qatar Airways, inundating the Middle East market and undermining fair competition.

These Gulf carriers have received over \$50 billion in government subsidies. The subsidies have been received in a variety of forms, including interest-free "loans" with no repayment obligations, capital infusions, government loan guarantees, cash grants, and free land and subsidized airport facilities. The Gulf carriers would not be commercially viable without these subsidies, creating an uneven global playing field.

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<sup>11</sup> EFT and TTD, *Joint submission to the DOT's August 4 Notice*, DOT-OST-2013-0204-0145, August 19, 2014

Middle East carriers are looking at the lucrative U.S. market to help build their airlines. Their collective goal is to dominate international aviation and they are well on their way. New flights do not represent increased passenger growth. They siphon flyers from U.S. carriers, from the U.S. to India and Asia. Billions in subsidies are what makes that possible; without it they could not compete with U.S. carriers.

For every international long-haul flight lost to the Gulf carriers, economists now estimate over 1,500 American jobs are lost.<sup>12</sup> We have seen this happen at United Airlines, where flight attendants already have lost flights to the Gulf carriers due to these enormous subsidies. United successfully operated the Dulles-Dubai flight for seven years. But on January 25, 2016, the flight ceased to operate, nearly 200 flight attendant bid positions gone with it

It is not just the direct competition in the Middle East markets. Gulf Carriers are intent on subsidized growth by expanding 5th Freedom Air Rights which is the right or privilege of a country's airline to carry passengers or cargo between two other countries<sup>13</sup>. Emirates currently operates a 5th freedom flight from New York to Milan - a market served by all three major U.S. carriers. On March 12 Emirates launches its newest 5th freedom route from Athens to Newark, which due to market demand, is flown seasonally today.<sup>14</sup> However, due to its subsidies Emirates can operate the flight year-round regardless of the route's financial performance. Once again, flight attendants at U.S. carriers are at risk for losing premium long haul flying routes to these subsidized carriers.

To level the playing field, we urge the United States government to convene formal in-depth consultations with the governments of the UAE and Qatar to ensure the parameters of our Open Skies agreements are enforced. We call on the Administration to support U.S. aviation jobs and

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<sup>12</sup> Partnership for Open & Fair Skies, "Statement from the Partnership for Open & Fair Skies on Emirates' Route to Newark" January 23, 2017

<sup>13</sup> Freedoms of the Air, ICAO, <http://www.icao.int/Pages/freedomsAir.aspx>. March 6, 2017

<sup>14</sup> Travel Weekly, "Emirates to Launch Daily Newark-Athens Service" <http://www.travelweekly.com/Travel-News/Airline-News/Emirates-launch-daily-Newark-Athens-service>

suspend these route authorities which promote illegal and unfair competition until our governments reach a solution to end the massive subsidies provided to Emirates, Etihad and Qatar Airways.

## **Conclusion**

In closing, I would like to again thank the Chairman, the Ranking Member and the Members of this Subcommittee for this opportunity to provide a flight attendant perspective on the state of the airline industry. We are proud of our work as aviation's first responders and the last line of defense in aviation security. Proper rest, a secure cabin free of voice calls, fair compensation at regional airlines, and a level playing field for U.S. cabin crews in the face of global threats to our job security – those are the key issues facing flight attendants in 2017. Flight attendants appreciate your continued support and efforts to maintain a strong, safe aviation industry that expands economic opportunity and good American jobs.