

105TH CONGRESS  
2D SESSION

# H. R. 4577

To amend title 49, United States Code, to improve air carrier service.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 1998

Mr. DINGELL introduced the following bill; which was referred to the  
Committee on Transportation and Infrastructure

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## A BILL

To amend title 49, United States Code, to improve air carrier  
service.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Friendly Skies Res-  
5       toration Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the Airline Deregulation Act of 1978 was  
9       intended to open markets and result in increased  
10       competition and service for the United States public;

1           (2) airline competition benefits communities  
2           and consumers and is under the jurisdiction of, and  
3           should be promoted by, the Federal government;

4           (3) the Department of Transportation is pro-  
5           posing rules to address complaints of unfair exclu-  
6           sionary conduct engaged in by major air carriers  
7           against new entrant air carriers, including drastic  
8           price cuts and flooding the market with new low-fare  
9           capacity;

10          (4) unfair exclusionary conduct hurts consum-  
11          ers in the long run because it deprives the public of  
12          the benefits of competition and alternative carriers;

13          (5) there has been increased concentration with-  
14          in the airline industry and most major hubs are  
15          dominated by one carrier;

16          (6) studies by the General Accounting Office  
17          and independent entities show that concentration in  
18          the domestic airline industry continues to increase  
19          and that, where such concentration exists, fares have  
20          increased, with a significant impact on communities  
21          and their residents;

22          (7) using the Herfindahl-Hirschman Index, an  
23          index that the Department of Justice uses to meas-  
24          ure market concentration, a recent study found that  
25          based on the 50 largest domestic airports, the

1 United States airline industry is excessively con-  
2 centrated;

3 (8) there are proposals before the Department  
4 of Transportation that would combine the Nation's  
5 6 largest carriers into 3 alliances with strengthened  
6 control over the United States market;

7 (9) several studies by the General Accounting  
8 Office reveal that consumers traveling to and from  
9 concentrated hub airports pay prices for air trans-  
10 portation more than 20 percent higher than consum-  
11 ers traveling in competitive markets;

12 (10) the introduction of low-fare competition  
13 into certain markets has enabled more consumers to  
14 fly in those markets, resulting in enormous economic  
15 growth for those communities;

16 (11) although the deregulation of the domestic  
17 airline industry has led to lower fares for many air  
18 travelers, the promised benefits of airline deregula-  
19 tion have yet to be realized;

20 (12) the Secretary of Transportation needs ad-  
21 ditional authority to promulgate and enforce stand-  
22 ards of fair competition in the airline industry under  
23 section 41712 of title 49, United States Code;

24 (13) the General Accounting Office has identi-  
25 fied a number of issues that the Department of

1 Transportation could address to lower barriers to  
2 entry and increase competition in the airline market,  
3 such as slot restrictions and exclusive airport gate  
4 leases;

5 (14) of the more than 3,100 domestic air car-  
6 rier slots at the 4 slot-controlled airports in the  
7 United States, known as “high density airports”—

8 (A) fewer than 45 slots are held collectively  
9 by new entrant air carriers; and

10 (B) foreign carriers hold approximately  
11 twice as many slots as new entrant air carriers;

12 (15) the Department of Transportation allowed  
13 the established air carriers to retain a large portion  
14 of their slots free-of-charge when the current “Buy-  
15 Sell Rule” was instituted in 1985;

16 (16) access to slot-controlled airports is crucial  
17 to establishing new air service in the heavily-traveled  
18 eastern and midwestern markets and if carriers are  
19 going to be able to increase services to markets  
20 served by small hub airports and medium hub air-  
21 ports, particularly in the Southeast and Midwest;

22 (17) the National Commission to Ensure a  
23 Strong Competitive Airline Industry recommended  
24 that the Federal Aviation Administration review the  
25 rule that limits operations at high density airports

1 with the aim of either removing these artificial limits  
2 or raising them to the highest practicable level con-  
3 sistent with safety requirements;

4 (18) the General Accounting Office reports that  
5 additional action is needed because the Department  
6 of Transportation is limited in the number of new  
7 slots the Department can grant through the current  
8 exemption process;

9 (19) recent evidence shows that labor strikes at  
10 major airlines ground thousands of daily flights and  
11 hold hundreds of thousands of United States travel-  
12 ers hostage; and

13 (20) the United States public should be able to  
14 travel at reasonable rates to visit family members,  
15 take hard-earned vacations, visit old friends, be with  
16 a loved one, attend a friend's wedding, visit grand-  
17 children, and make those valuable face-to-face con-  
18 tacts for business.

19 **SEC. 3. JOINT VENTURE UNFAIR PRACTICES.**

20 Section 41712 of title 49, U.S. Code, is amended—

21 (1) by inserting “(a) IN GENERAL.—” before  
22 “On the initiative”; and

23 (2) by adding at the end the following:

24 “(b) JOINT VENTURE UNFAIR PRACTICES.—

1           “(1) DEFINITIONS.—In this subsection, the fol-  
2           lowing definitions apply:

3                   “(A) JOINT VENTURE AGREEMENT.—(i)

4           The term ‘joint venture agreement’ means an  
5           agreement entered into by a major air carrier  
6           on or after January 1, 1998, with regard to  
7           code-sharing, blocked-space arrangements, long-  
8           term wet leases (as defined in section 207.1 of  
9           title 14, Code of Federal Regulations) of a sub-  
10          stantial number (as defined by the Secretary by  
11          regulation) of aircraft, or frequent flyer pro-  
12          grams; or

13                   “(ii) any other cooperative working ar-  
14           rangement (as defined by the Secretary by reg-  
15           ulation) between 2 or more major air carriers  
16           that affects more than 10 percent of the total  
17           number of available seat miles offered by the  
18           major air carriers.

19                   “(B) MAJOR AIR CARRIER.—Term ‘major  
20           air carrier’ means a passenger air carrier that  
21           is certificated under chapter 411 of this title  
22           and included in Carrier Group III under cri-  
23           teria contained in section 04 of part 241 of title  
24           14, Code of Federal Regulations.

1           “(2) SUBMISSION OF JOINT VENTURE AGREE-  
2           MENT FOR REVIEW.—At least 30 days before a joint  
3           venture agreement may take effect, each of the  
4           major air carriers that entered into the agreement  
5           shall submit to the Secretary for review under this  
6           subsection—

7                   “(A) a complete copy of the joint venture  
8                   agreement and all related agreements; and

9                   “(B) other information and documentary  
10                  material that the Secretary may require by reg-  
11                  ulation as necessary for deciding whether to in-  
12                  stitute a proceeding to determine if the joint  
13                  venture agreement violates this section.

14           “(3) INVESTIGATION.—The Secretary may con-  
15           duct an investigation as the basis for deciding  
16           whether to institute a proceeding to determine if the  
17           implementation of the joint venture agreement will  
18           constitute an unfair or deceptive practice or an un-  
19           fair method of competition in violation of this sec-  
20           tion. If the Secretary undertakes an investigation,  
21           the Secretary shall publish in the Federal Register  
22           the reasons of the Secretary for undertaking the in-  
23           vestigation.

24           “(4) SUBMISSION OF ADDITIONAL INFORMA-  
25           TION AND EXTENSION OF WAITING PERIOD.—

1           “(A) ADDITIONAL INFORMATION.—Before  
2 the last day of the 30-day period referred to in  
3 paragraph (2), the Secretary may require the  
4 submission of additional information of docu-  
5 mentary material relevant to the proposed joint  
6 venture agreement from any party to the agree-  
7 ment or from any subsidiary or affiliated cor-  
8 poration of the party.

9           “(B) EXTENSION OF WAITING PERIOD.—If  
10 the Secretary requires the submission of addi-  
11 tional information or documentary materials  
12 under subparagraph (A), the Secretary may ex-  
13 tend the 30-day period referred to in paragraph  
14 (2) until the 30th day following—

15                   “(i) the date of submission of the ad-  
16 ditional information or material; or

17                   “(ii) if the request is not fully com-  
18 plied with, the date of submission of any  
19 additional information or material in com-  
20 pliance with the request and a statement  
21 by the party that the party cannot comply  
22 with the remainder of the request.

23           “(5) PERIOD FOR DECISION.—Before the last  
24 day of the 30-day period referred to in paragraph



1 (2) or the 30-day period referred to in paragraph  
2 (4), as the case may be, the Secretary shall—

3 “(A) decide whether to terminate the in-  
4 vestigation of the joint venture or institute a  
5 formal proceeding to determine if the joint ven-  
6 ture agreement violates this section; and

7 “(B) if the Secretary decides that imple-  
8 mentation of the joint venture agreement ap-  
9 pears likely to be an unfair or deceptive practice  
10 or an unfair method of competition in violation  
11 of this section, institute a proceeding to deter-  
12 mine if the implementation of the joint venture  
13 agreement will constitute such a violation.

14 “(6) STAY AFTER INSTITUTION OF PROCEED-  
15 ING.—If the Secretary institutes a proceeding under  
16 paragraph (5), the Secretary may enter an order to  
17 stay the implementation of the joint venture agree-  
18 ment by the parties to the agreement during the 6-  
19 month period beginning on the date of issuance of  
20 the order.

21 “(7) PRIOR AGREEMENT.—With respect to a  
22 joint venture agreement entered into before the date  
23 of enactment of this section as to which the Sec-  
24 retary finds that—

1           “(A) the parties have submitted the agree-  
2           ment to the Secretary before such date of en-  
3           actment; and

4           “(B) the parties have submitted all infor-  
5           mation on the agreement requested by the Sec-  
6           retary, the waiting periods described in para-  
7           graphs (2) and (4) shall begin on the date, as  
8           determined by the Secretary, on which all such  
9           information was submitted and end on the last  
10          day to which the period could be extended  
11          under this section.

12          “(8) TERMINATION OF WAITING PERIOD.—At  
13          any time after the date of submission of a joint ven-  
14          ture agreement under paragraph (2), the Secretary  
15          may terminate the waiting periods referred to in  
16          paragraphs (2) and (4) with respect to the agree-  
17          ment.

18          “(9) REVIEW OF DECISIONS.—Any decision  
19          made by the Secretary under this subsection with re-  
20          spect to a joint venture agreement may be reviewed  
21          by the Secretary after the expiration of the 3-year  
22          period beginning on the date of the decision.

23          “(10) MEMORANDUM TO PREVENT DUPLICA-  
24          TIVE REVIEWS.—Promptly after the date of enact-  
25          ment of this section, the Secretary shall consult with

1 the Assistant Attorney General of the Antitrust Di-  
 2 vision of the Department of Justice in order to es-  
 3 tablish, through a written memorandum of under-  
 4 standing, preclearance procedures to prevent unnec-  
 5 essary duplication of effort by the Secretary and the  
 6 Assistant Attorney General under this section and  
 7 the United States antitrust laws, respectively.

8 “(11) LIMITATION ON STATUTORY CONSTRUC-  
 9 TION.— The authority granted to the Secretary  
 10 under this subsection shall not in any way limit the  
 11 authority of the Attorney General to enforce the  
 12 antitrust laws as defined in the first section of the  
 13 Clayton Act (15 U.S.C. 12).”.

14 **SEC. 4. REDISTRIBUTION OF SLOTS BY AUCTION.**

15 (a) IN GENERAL.—Subpart III of part A of subtitle  
 16 VII of title 49, United States Code, is amended by adding  
 17 at the end the following:

**“CHAPTER 455—SLOT AUCTIONS**

“Sec.

“45501. General authority to create, withdraw, and auction slots.

“45502. Auction.

“45503. Special rules.

“45504. Definitions.

18 **“§ 45501. General authority to create, withdraw, and**  
 19 **auction slots**

20 “(a) IN GENERAL.—The Secretary of Transportation  
 21 shall allocate slots at each slot-controlled airport for as-

1 signment to new entrant air carriers and limited incum-  
2 bent carriers in accordance with this chapter.

3 “(b) APPLICATION PROCESS—

4 “(1) REQUEST FOR SLOTS.—An air carrier with  
5 appropriate Federal Aviation Administration safety  
6 certification and Department of Transportation eco-  
7 nomic certification may submit a request to the Sec-  
8 retary for slots at a high density airport. The appli-  
9 cation shall include—

10 “(A) the markets to be served;

11 “(B) the times requested;

12 “(C) information on the passenger demand  
13 for the service to be provided; and

14 “(D) such additional information as the  
15 Secretary may require.

16 “(2) ACTION ON REQUEST; FAILURE TO ACT.—

17 Within 45 days after a request under paragraph (1)  
18 is received by the Secretary, the Secretary shall—

19 “(A) approve the request for processing if  
20 the Secretary believes that—

21 “(i) the applicant can operate the  
22 service for a period of not less than 180  
23 days; and

24 “(ii) the service will improve the com-  
25 petitive environment; or

1           “(B) return the request to the applicant  
2           for further information.

3           If the Secretary neither approves the request under  
4           subparagraph (A) nor returns the request under  
5           subparagraph (B) within the 45-day period begin-  
6           ning on the date it is received, then the request is  
7           deemed to have been approved on the 45th day.

8           “(c) ALLOCATION PROCESS.—

9           “(1) IF SLOTS ARE AVAILABLE.—If an applica-  
10          tion under subsection (b) is approved for processing,  
11          the Secretary first shall allocate slots within 60 min-  
12          utes of the requested times if—

13                   “(A) unused slots are available; or

14                   “(B) slots may be awarded through the ex-  
15                   emption process in accordance with the Federal  
16                   Aviation Administration’s air traffic priorities.

17          “(2) IF SLOTS ARE UNAVAILABLE.—If an appli-  
18          cation under subsection (b) is approved for process-  
19          ing but the requested slots are not available for allo-  
20          cation under paragraph (1), then the Secretary may  
21          withdraw slots under subsection (d) for auction  
22          under section 45502 or create new slots.

23          “(d) WITHDRAWAL OF SLOTS FOR AUCTION.—

1           “(1) WITHDRAWAL OF EXISTING SLOT ASSIGN-  
2           MENTS.—The Secretary shall withdraw, from major  
3           carriers at each airport—

4                   “(A) for the first auction under this sec-  
5                   tion, not more than 10 percent of the  
6                   auctionable slots assigned to such carriers at  
7                   that airport; and

8                   “(B) for any subsequent auction under this  
9                   section, not more than 5 percent of the  
10                  auctionable slots assigned to such carriers at  
11                  that airport.

12           “(2) FREQUENCY.—Auctions under this section  
13           shall not be held more frequently than 24 months  
14           after the date of the preceding auction.

15           “(3) AUCTIONABLE SLOTS.—For purposes of  
16           this subsection, an auctionable slot is—

17                   “(A) a slot assigned to an air carrier in  
18                   1985 that is still assigned to that air carrier, or  
19                   a slot received in even exchange with another  
20                   air carrier for a slot assigned to that air carrier  
21                   in 1985; and

22                   “(B) any slot other than a slot used by a  
23                   major carrier to provide direct service to an air-  
24                   port that is a small or medium hub airport.

1 **“§ 45502. Auction**

2       “(a) GENERAL AUTHORITY.—The Secretary of  
3 Transportation shall assign a slot to a qualified applicant  
4 through the use of a system of competitive bidding.

5       “(b) USES TO WHICH BIDDING MAY APPLY.—A slot  
6 may be assigned under this subsection if the Secretary de-  
7 termines that the assignment of such slot will, or is rea-  
8 sonably likely to, increase competition among air carriers  
9 nationally, regionally, or in the markets affected by the  
10 slot assignment in accordance with section 45501(b).

11       “(c) DESIGN OF SYSTEMS OF COMPETITIVE BID-  
12 DING.—In identifying slots to be withdrawn for auction  
13 under section 45501(d)(1), in specifying eligibility and  
14 other characteristics of such slots, and in designing the  
15 methodologies for use under this subsection, the Secretary  
16 shall include safeguards to protect the public interest in  
17 the use of the slots and shall seek to promote the following  
18 objectives:

19               “(1) Increasing competition in the provision of  
20 air transportation in a way that benefits the public.

21               “(2) Promoting economic opportunity and com-  
22 petition and ensuring that air transportation at com-  
23 petitive rates is readily accessible to the American  
24 people by avoiding excessive concentration of slots  
25 among major air carriers.

1           “(3) Recovery for the public of a portion of the  
2 value of the slots made available by competitive bid-  
3 ding and the avoidance of unjust enrichment  
4 through the methods employed to award slots.

5           “(4) Efficient and intensive use of slots.

6           “(d) BIDDER QUALIFICATION.—No air carrier (other  
7 than a new entrant air carrier or a limited incumbent car-  
8 rier) may participate in a system of competitive bidding  
9 under this section. No license shall be granted to an appli-  
10 cant selected pursuant to this section unless the Secretary  
11 determines that the applicant is qualified to utilize the slot  
12 or slots to be so assigned.

13          “(e) RULES OF CONSTRUCTION.—Nothing in this  
14 section, or in the use of competitive bidding, shall—

15           “(1) alter slots allocation criteria and proce-  
16 dures established by the other provisions of this sub-  
17 title;

18           “(2) diminish the authority of the Secretary  
19 under the other provisions of this subtitle to regulate  
20 or reclaim slots;

21           “(3) be construed to convey any rights, includ-  
22 ing any expectation of renewal of a slot assignment,  
23 that differ from the rights that apply to other slots  
24 at the same airport that were not issued pursuant  
25 to this section; or



1           “(4) be construed to prohibit the Secretary  
2           from issuing additional slots.

3           “(f) CONSIDERATION OF REVENUES IN PUBLIC IN-  
4           TEREST DETERMINATIONS.—

5           “(1) CONSIDERATION PROHIBITED.—In making  
6           a decision to assign slots pursuant to this section,  
7           and in prescribing regulations pursuant to this sec-  
8           tion, the Secretary may not base a finding of public  
9           interest, convenience, and necessity on the expecta-  
10          tion of Federal revenues from the use of a system  
11          of competitive bidding under this section.

12          “(2) CONSIDERATION LIMITED.—In prescribing  
13          regulations pursuant to this section, the Secretary  
14          may not base a finding of public interest, conven-  
15          ience, and necessity solely or predominantly on the  
16          expectation of Federal revenues from the use of a  
17          system of competitive bidding under this section.

18          “(3) CONSIDERATION OF DEMAND FOR  
19          SLOTS.—Nothing in this subsection shall be con-  
20          strued to prevent the Secretary from considering  
21          consumer demand for slots-based services.

22          “(g) TREATMENT OF REVENUES.—

23          “(1) GENERAL RULE.—Except as provided in  
24          paragraph (2), all proceeds from the use of a com-  
25          petitive bidding system under this subsection shall

1 be deposited in the Airport and Airway Trust Fund  
2 established under section 9502 of the Internal Reve-  
3 nue Code of 1986.

4 “(2) DEPOSIT AND USE OF AUCTION ESCROW  
5 ACCOUNTS.—Any deposits the Secretary may require  
6 for the qualification of any person to bid in a system  
7 of competitive bidding pursuant to this subsection  
8 shall be deposited in an interest bearing account at  
9 a financial institution designated for purposes of this  
10 subsection by the Secretary (after consultation with  
11 the Secretary of the Treasury). Within 45 days fol-  
12 lowing the conclusion of the competitive bidding—

13 “(A) the deposits of successful bidders  
14 shall be paid to the Treasury;

15 “(B) the deposits of unsuccessful bidders  
16 shall be returned to such bidders; and

17 “(C) the interest accrued to the account  
18 shall be returned to each successful and unsuc-  
19 cessful bidder in the ratio that the amount de-  
20 posited by the bidder bears to the total amount  
21 deposited by all bidders, except that before re-  
22 turning such amounts the Secretary shall de-  
23 duct a sum equal to the administrative expenses  
24 incurred by the Secretary in conducting the

1           auction and shall transfer such sum to the Air-  
2           port and Airway Trust Fund.

3           “(h) EVALUATION.—Not later than 180 days after  
4 the initiation of competitive bidding under this section, the  
5 Secretary shall conduct a public inquiry and submit to the  
6 Congress a report—

7           “(1) containing a statement of the revenues ob-  
8           tained, and a projection of the future revenues, from  
9           the use of competitive bidding systems under this  
10          section;

11          “(2) describing the methodologies established  
12          by the Secretary pursuant to subsections (c) and  
13          (d);

14          “(3) comparing the relative advantages and dis-  
15          advantages of such methodologies in terms of attain-  
16          ing the objectives described in such subsections; and

17          “(4) recommending any statutory changes that  
18          are needed to improve the competitive bidding proc-  
19          ess.

20       **“§ 45503. Special rules**

21          “(a) RESALE OR REVERSION OF PURCHASED  
22 SLOTS.—

23          “(1) RESALE.—A slot assigned by competitive  
24          bidding under section 45502 may be—

1           “(A) sold by the air carrier to which it was  
2 assigned only to a new entrant air carrier or  
3 limited incumbent carrier within 24 months of  
4 the slot acquisition; or

5           “(B) leased to any air carrier, except that  
6 any such leased slot shall be sold to a new en-  
7 trant air carrier or limited incumbent air car-  
8 rier that offers to purchase it.

9           “(2) REVERSION.—A slot assigned by competi-  
10 tive bidding under section 45502 that is lost by the  
11 air carrier to which it was assigned under section  
12 93.227 of title 14 of the Code of Federal Regula-  
13 tions shall be returned to the Federal Aviation Ad-  
14 ministration.

15           “(b) OTHER EXISTING SLOTS.—

16           “(1) EXPIRATION.—Any slot not withdrawn for  
17 assignment under this chapter shall continue in ef-  
18 fect until the earlier of—

19           “(A) the date on which it is subsequently  
20 withdrawn for such assignment; or

21           “(B) the date on which it expires or is  
22 withdrawn according to the terms of its assign-  
23 ment.

24           “(2) FUTURE REVENUES.—Any amount paid  
25 for assignment or use of an expired slot shall be

1 treated in accordance with the provisions of section  
2 45502(h) as if received under that section.

3 **“§ 45504. Definitions**

4 “In this chapter, the following definitions apply:

5 “(1) HIGH DENSITY AIRPORT.—The term ‘high  
6 density airport’ has the meaning given it by section  
7 41714(h)(2).

8 “(2) NEW ENTRANT AIR CARRIER; LIMITED IN-  
9 CUMBENT CARRIER.—The terms ‘new entrant air  
10 carrier’ and ‘limited incumbent carrier’ have the  
11 meaning given such terms by section 93.213 of title  
12 14, Code of Federal Regulations, except that the  
13 term does not include an air carrier at a high den-  
14 sity airport that has a substantial marketing ar-  
15 rangement, as determined by the Secretary, with an-  
16 other air carrier holding more than 10 percent of the  
17 slots at the airport or an air carrier that is owned  
18 or controlled, in whole or in part, by such a carrier.

19 “(3) MAJOR CARRIER.—The term ‘major car-  
20 rier’ means an air carrier to which part 121 of such  
21 title applies.

22 “(4) MEDIUM HUB AIRPORT.—The term ‘me-  
23 dium hub airport’ means an airport that each year  
24 has at least 0.25 percent, but less than 1.00 percent,  
25 of the total annual boardings in the United States.



1 fare pricing that are similar to that which was determined  
2 exclusionary.

3 “(b) **MAXIMUM CIVIL PENALTY.**—Notwithstanding  
4 section 46301(a)(1), the maximum civil penalty for the  
5 violation described in subsection (a) shall be \$10,000.”.

6 (b) **CLERICAL AMENDMENT.**—The analysis for chap-  
7 ter 463 of such title is amended by adding at the end the  
8 following:

“Sec. 46317. Penalties for unfair methods of competition.”.

9 **SEC. 6. REALLOCATION OF SLOTS DURING LABOR STRIKES.**

10 Section 41714 of title 49, United States Code, is  
11 amended by adding at the end the following:

12 “(i) **REALLOCATION OF SLOTS DURING LABOR**  
13 **STRIKES.**—If an air carrier is not using a slot allocated  
14 to the carrier during the period of a labor strike involving  
15 the carrier, the President may authorize another carrier  
16 to use the slot, as well as airport gates and other facilities  
17 associated with the slot, during such period. The President  
18 shall require a carrier so authorized to reimburse appro-  
19 priate persons for use of the slot and associated facili-  
20 ties.”.

21 **SEC. 7. REGULATION OF ROUTES IN AIR TRANSPORTATION**  
22 **WITH INSUFFICIENT COMPETITION.**

23 (a) **IN GENERAL.**—Chapter 415 of title 49, United  
24 States Code, is amended by adding at the end the follow-  
25 ing:

1 **“§ 41512. Authority of the Secretary of Transpor-**  
2 **tation to change prices, classifications,**  
3 **rules, and practices for noncompetitive**  
4 **routes in air transportation**

5       “(a) GENERAL.—When the Secretary of Transpor-  
6 tation decides that a price charged or received by an air  
7 carrier for service on a noncompetitive route in air trans-  
8 portation, or a classification, rule, or practice affecting  
9 that price or the value of the transportation provided  
10 under that price, is or will be unreasonable, the Secretary  
11 may—

12               “(1) change the price, classification, rule, or  
13 practice as necessary; and

14               “(2) order the air carrier to stop charging or  
15 collecting the unreasonable price or carrying out the  
16 unreasonable classification, rule, or practice.

17       “(b) NONCOMPETITIVE ROUTES IN AIR TRANSPOR-  
18 TATION.—For purposes of subsection (a), a noncompeti-  
19 tive route in air transportation is a route for which the  
20 Secretary determines—

21               “(1) that there are less than 2 air carriers in  
22 full competition, as defined by the Secretary by reg-  
23 ulation; or

24               “(2) that an air carrier controls more than 60  
25 percent of the market share, as determined based on  
26 annual passenger enplanements.





1 (b) REPORTS RANKING LARGE HUB AIRPORTS BY  
2 MARKET CONCENTRATION.—The Secretary shall submit  
3 to Congress, and make available to the public, a quarterly  
4 report ranking the large hub airports by market con-  
5 centration using the measure known as the Herfindahl-  
6 Hirschmann Index and identifying the market share of  
7 each airline operating at each of those airports.

8 (c) DEADLINE.—The Secretary shall begin submit-  
9 ting reports under this section not later than 180 days  
10 after the date of enactment of this Act.

11 **SEC. 9. FACILITIES ACCESS.**

12 (a) STUDY.—The Secretary of Transportation shall  
13 conduct a study on the ability of and proposals for new  
14 entrant carriers, and carriers with less than 5 percent of  
15 the departures at a major hub airport, to obtain perma-  
16 nent gates and other facilities at the airport on terms sub-  
17 stantially equivalent to the terms provided to incumbent  
18 carriers at the airport.

19 (b) REPORT.—Not later than 1 year after the date  
20 of enactment of this Act, the Secretary shall transmit to  
21 Congress a report containing the results of the study con-  
22 ducted under subsection (a), including an assessment of  
23 any impact of proposals referred to in subsection (a) on  
24 State and local units of government.

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