The original documents are located in Box C28, folder "Presidential Handwriting, 10/8/1975 (2)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

October 8, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR

SUBJECT: Airline Regulatory Reform Legislation

Confirming discussions with members of your staff, the President reviewed your memorandum of October 7 on the above subject and approved the following:

"Agree to submit legislation"

Please follow-up with appropriate action.

cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

DECISION

October 7, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Airline Regulatory Reform Legislation

The Task Force on Airline Regulatory Reform has completed action on the proposed airline regulatory reform legislation. This bill would:

-- Increase entry into the industry and liberalize charter service.

-- Remove certificate restrictions (route regulation) within five years and after five years would allow a limited amount of entry into new markets.

-- Provide for rate flexibility within a designated zone (limits) of price competition.

-- Eliminate anticompetitive agreements by the industry.

-- Adopt a liberal merger standard along the lines of the Bank Merger Act.

-- Allow carriers to abandon routes after providing sufficient notice to affected communities.

-- Provide an incentive for better management of airlines.

-- Benefit consumers, eventually, through lower air fares.

These reform proposals have received favorable support from Congressional members during informal discussions and the tentative promise of hearings this year.

The bill has been discussed several times at the Economic Policy Board and has been cleared by Secretary Coleman, Attorney General Levi, OMB, Robert T. Hartmann, Jack Marsh, Phil Buchen and Alan Greenspan.

The attached memorandum from Paul O'Neill requests your decision on submission of this legislation. I recommend that you agree to send this legislation to the Hill.

If a decision is made by the morning of Wednesday, October 8, this bill can be sent to the Hill prior to the recess.

DECISION:

_____ Agree to submit legislation

_____ Disagree

_____ See Me

SEP 29 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PAUL H. O'NEILL /S/

SUBJECT: Airline Regulatory Reform

Drafting of legislation to reform airline regulation has now been completed. This bill is the third and final piece of legislation in the Administration's transportation regulatory reform program. The Railroad Revitalization Act was sent to the Congress in May. Legislation dealing with the trucking industry is ready for submission pending discussions with industry and union representatives. This memorandum seeks approval to forward the proposed air bill to Congress as soon as possible.

While the rail and truck bills each propose important reform measures, the air bill is the most publicly visible in that it deals with a direct consumer service and pocketbook issue. Accordingly, we plan to accompany the announcement of the bill with intensive briefings of the press and various consumer groups in order to assure increased consumer attention to the legislation.

The proposed legislation reflects a consistent Administration approach in dealing with economic regulation. That is, wherever possible, economic regulation which constrains competition, increases prices unnecessarily, bars entry of new firms or inhibits innovation, should be eliminated. The specific reform measures are designed to produce the type of domestic airline system we would like to have ten years from now--one that is healthy, competitive, and efficient and which gives the public the best possible service at the lowest possible cost.

Like the rail and truck bills, the air bill provides increased flexibility for the airlines to adjust fares to meet changing market conditions without Civil

Aeronautics Board (CAB) interference. It provides for liberalization of entry and exit in order to encourage competition and innovation and help keep prices down. To accompany these reforms, the bill also provides for antitrust enforcement by requiring airline mergers to be subjected to proceedings and standards similar to those in the Bank Merger Act. Further, it requires the CAB to subject intercarrier agreements to a balancing test to weigh competition against transportation needs before granting such agreements antitrust immunity. It also provides an opportunity for the Justice Department to challenge any agreements they feel are anticompetitive. A detailed summary of the legislation and a draft Presidential message are attached.

As drafted, the legislation directs the CAB to implement reform gradually over a five-year period. This approach serves to minimize the spectre of chaotic market conditions which the critics of reform claim will result from changing the present system. By announcing a schedule for change, the bill eliminates the uncertainties of the future and provides the industry time to plan for an orderly adjustment of financial and investment policies to correspond to the changed regulatory environment. As currently contemplated, it will be 1977 before the proposed reform measures begin to go into effect. Accordingly, the bill will have little or no effect on the short-term financial condition of the airlines.

This legislation is the product of lengthy discussion and careful analysis by an Executive Branch task force on transportation reform. The group has had a number of formal and informal consultations and discussions with the industry, labor groups and Members of Congress. For example, the Department of Transportation last April sponsored a day long Public Hearing of all interested parties to get their views on problems with the airline regulation system and potential solutions.

It appears there is growing interest and enthusiasm for this reform and that we will be able to secure sponsorship for the legislation from several key legislators. There

is some chance that hearings in the Senate could be scheduled this session. However, because we are nearing the end of the congressional calendar, there is a better likelihood that hearings will not be possible until early next session.

Recommendation

That you approve submission of the legislation at earliest possible date.

Decision:

Agree _____

Disagree _____

See me _____

cc:
Official File - DO Records
Director
Director's Chron
Deputy Director
Mr. Collier
Mr. Morris
Return: Room 9201 NEOB
DSteen/SMorris:dw:9-19-75

LEGISLATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Aviation Act of 1975."

SEC. 2. Except as otherwise specified, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958, as amended.

Definitions

SEC. 3. Section 101 as amended, is further amended by renumbering paragraphs (2) through (19) as paragraphs (3) through (20) and by inserting therein the following new paragraph:

"(2) 'Advance-purchase charter trip' means a charter trip arranged pursuant to a contract between an air carrier or foreign air carrier and a person authorized by the Board to act as a charter organizer, and sold by such charter organizer to members of the general public on an advance purchase basis in accordance with regulations prescribed by the Board. Such regulations may not require that participants purchase the transportation or pay any deposit more than thirty days prior to departure, prohibit the charter organizer from selling up to

twenty-five percent of the seats at any time prior to the departure date, require a prorated price, prevent the organizer from assuming the commercial risk of the venture, require that the trip exceed three days in the Western Hemisphere or seven days in other areas, or otherwise unduly restrict the availability of such charters."

(b) Section 101 is further amended by renumbering paragraph (2) as that paragraph was numbered prior to the enactment of this section as paragraph (22) and paragraphs (21) through (36) as paragraphs (23) through (38), and by inserting therein the following new paragraph:

"(21) 'Inclusive tour charter trip' means a charter trip which combines air transportation, pursuant to a contract between an air carrier or foreign air carrier and a person authorized by the Board to sell inclusive tours, and land arrangements at one or more points of destination, sold to members of the public at a price which is not unjust or unreasonable for the charter air transportation plus a charge for land arrangements and subject to such other requirements not inconsistent herewith as the Board shall by regulation prescribe to assure that such charter trips do not substantially impair essential scheduled service.

(c) Paragraph 34 of section 101 as that section was numbered prior to the enactment of this section is amended as follows:

"(37) 'Supplemental air transportation' means charter trips, including advance-purchase charter trips, inclusive tour charter trips, and other types of charter trips in air transportation, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, but a supplemental air carrier may control or be under the control of a person authorized by the Board to make such sales, if such control has been approved by the Board pursuant to sections 408 and 409 of this Act.

Declaration of Policy: The Board

SEC. 4. Section 102 is amended to read as follows:

"SEC. 102. In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

"(a) The encouragement and development of an air transportation system which is responsive to the needs of the public and is adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the National defense;

"(b) The provision of a variety of adequate, economic, efficient and low-cost services by air carriers without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices; and the need to improve relations among and coordinate transportation by air carriers;

"(c) Maximum reliance on competitive market forces and on actual and potential competition to provide the needed air transportation system;

"(d) The encouragement of new air carriers; and

"(e) The importance of the highest degree of safety in air commerce".

Procedural Expedition

SEC. 5. Section 401(c) is amended as follows:

"(c)(1) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the Secretary of the Board and to such other persons as the Board may by regulation determine.

Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Unless the Board issues an order finding that the public interest requires that the application be dismissed on the merits, or the application requests authority to engage in foreign air transportation, the application shall be set for a public hearing within sixty days from the date the application is filed with the Board. Any order of dismissal issued by the Board shall be deemed a final order subject to judicial review as prescribed in section 1006 of this Act. Mutually exclusive applications shall be heard at the same time. If an application regarding interstate and overseas transportation is set for public hearing, final disposition of such application must be made within ten months of the date such application was filed, except where the Board finds that the application raises issue of major air transportation significance, in which case the decision must be made within twelve months of the date the application was filed. In addition, by order in extraordinary circumstances, the Board may delay decision for up to thirty days beyond the applicable date for decision.

"(2) The dates specified in paragraph (1) do not apply to applications pending on the date of enactment of this paragraph or to applications filed within twelve months of such enactment. Applications pending on the date of such enactment must be disposed of within eighteen months of the date of such enactment. Applications filed within twelve months of the date of enactment must be disposed of within eighteen months of the date of application.

"(3) If the Board does not act within the time specified in paragraphs (1) and (2), the certificate authority requested in the application shall become effective, and the Board shall issue the certificate as requested without further proceedings."

Entry

SEC. 6.

(a) Subsection 401(d)(3) is amended as follows:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board shall issue a certificate, as may be required by the public convenience and necessity, authorizing the whole or any part thereof and for such periods as the Board may specify, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application

and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

(b) Section 401(d) is amended by adding the following paragraphs:

"(4) The Board shall issue a certificate for interstate air transportation between any two cities not receiving nonstop scheduled air transportation by an air carrier holding a certificate of public convenience and necessity to an applicant if it finds the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

"(5) Any air carrier that engages in interstate air transportation solely with aircraft having a capacity of less than fifty-six passengers or 16,000 pounds of property shall not be required to obtain a certificate of public convenience and necessity if that carrier conforms to such financial responsibility requirements as the Board may by regulation impose. The Board shall by

regulation increase the passenger or property capacities specified in this paragraph when the public interest so requires. Air transportation pursuant to this paragraph is not subject to sections 403, 404, 405(b), (c), (d), 408, 409 or 412, except for the provisions regarding joint fares and through rates."

(c) Section 401(e)(1) is amended to add at the end:

"The Board shall not, however, impose closed-door, single-plane service, mandatory stop, long-haul restrictions, or similar restrictions, on any new certificate or amendment to any existing certificate." By January 1, 1981 the Board shall reissue all certificates for interstate air transportation in the form of an unduplicated list of city pairs that each certificated air carrier is authorized to serve pursuant to the terms of subsection (o)(1) or as otherwise provided by this section. Subsequent to January 1, 1981 each amendment to a certificate authorizing interstate air transportation shall take the form of additions to, or deletions from, such listing.

Route Transfers

SEC. 7. Section 401(h) is amended to read as follows:

"(h)(1) By January 1, 1978, the Board shall prepare an unduplicated list of city pairs that each interstate certificated air carrier is authorized to serve on January 1, 1981, pursuant to the terms of subsection (o)(1). This list shall be the basis for determining whether a city pair route is eligible for transfer, sale, or lease pursuant to the provisions of subsection (h)(2).

"(h)(2) On or after January 1, 1978, each air carrier engaged in interstate scheduled air transportation may transfer, sell or lease any of its authority to engage in scheduled interstate air transportation or the authority conferred by section 401(o)(1) to engage in interstate scheduled air transportation to any air carrier the Board finds is fit, willing and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board thereunder.

"(h)(3) In the case of an application for transfer, sale or lease of a route pursuant to section 401(h)(2) to an air carrier which the Board has found fit, willing and able to engage in air transportation, and conforms to the provisions of the Act and the rules, regulations, and requirements thereunder, the Board shall approve the transaction unless the transaction fails to meet the standard in section 408. If the transferee of the route does not hold

certificate authority from the Board, the Board shall determine whether the applicant meets the requirements of section 401(h)(2) within six months of the date the request is filed.

"(h)(4) Prior to January 1, 1978, a certificate may not be transferred unless such transfer is approved by the Board as being consistent with the public interest.

Abandonments

SEC. 8. Section 401(j) is amended as follows:

"(j)(1) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment meets the standards set forth in this subsection or is otherwise found to be in the public interest. Except as provided in paragraph (3), any carrier shall be permitted to abandon any route or part thereof for which a certificate has been issued:

"(A) if that carrier has operated the route or part thereof below fullo allocated cost (including a reasonable return on investment) considering payments pursuant to section 406(b)(3), for a period immediately preceding the abandonment petition of at

least one year, except the Board may require continuation of service for one additional year if the public interest requires; or

"(B) if a carrier can demonstrate its operations for the route under consideration have been conducted below the direct cost for that route for a period of at least three months immediately preceding the abandonment petition; or

"(C) upon ninety days notice to the Board if the carrier can demonstrate that service will be provided by another air carrier.

"(2) Any interested person may file with the Board a protest or memorandum of opposition to or in support of any abandonment petition. The Board may require any air carrier abandoning a route or part thereof to establish reasonable, cooperative working relationships with any air carrier providing replacement services.

"(3) The Board may require continuation of service to a point if the local community or State or other public body agrees to provide sufficient support to assure that the carrier's total revenues, including any subsidy payments pursuant to section 406 the route or part thereof, cover fully allocated costs (including reasonable return on investment) for the specific service at issue.

"(4) Any carrier may temporarily suspend service on any route or part thereof upon reasonable notice to the Board if service is provided by another air carrier. In the absence of such service temporary suspensions shall be authorized if the suspension meets the standards set forth in subsection (j)(1) for abandonments or is otherwise found to be in the public interest."

Route Expansion

SEC. 9. Section 401 is amended by adding the following new subsections:

"Removal of Restrictions"

"(o)(1) On or after January 1, 1981, each air carrier engaged in interstate scheduled air transportation may engage in nonstop scheduled air transportation without regard to any certificate limitations or other restrictions between any points in the United States named in its certificate or certificates on January 1, 1975. Within sixty days of the enactment of this paragraph, the Board shall undertake a proceeding to phase out all existing restrictions in such certificate or certificates authorizing interstate air transportation. In exercising this authority, the Board shall proceed equitably, giving due consideration to the effects of elimination of restrictions on each air carrier. The

Board shall proceed expeditiously and report its progress to Congress annually.

"(2) On or after January 1, 1981, each air carrier engaged in foreign air transportation may engage in nonstop scheduled air transportation between any United States points named in its certificate or certificates and served by that air carrier on January 1, 1975. Sixty days from enactment, the Board shall undertake a proceeding to eliminate any requirements which preclude such nonstop service.

"Discretionary Scheduled Operations"

"(p)(1) The authority granted in this paragraph shall become effective on January 1, 1981.

"(A) determine and publish the number of available seat miles operated in interstate passenger scheduled air transportation by certificated air carriers and the number of available seat miles operated in intrastate passenger scheduled air transportation by air carriers certificated by a State regulatory authority during the preceing calendar year;

"(B) determine and publish the number of available ton-miles operated by certificated all-cargo air carriers interstate scheduled air transportation during the preceding calendar year;

"(C) establish classes of scheduled passenger air carriers, as follows: in Class I, those air carriers which operated in excess of five billion available seat miles in interstate scheduled air transportation during the preceding calendar year, or which operated in excess of one billion available seat miles in interstate and intrastate scheduled air transportation during the preceding calendar year and did not receive subsidy payments pursuant to section 406; in Class II, those carriers which operated in excess of one billion available seat miles in interstate and intrastate scheduled air transportation during the preceding calendar year but less than five billion available seat miles in interstate and intrastate scheduled air transportation during the preceding calendar year and which are not in Class I; and in Class III, those carriers which operated less than one billion available seat miles in interstate and intrastate scheduled air transportation during the preceding calendar year except those carriers certificated by State authorities and who have not operated at least 100 million availabl seat miles in intrastate scheduled air transportation shall not be in this class; and

"(D) determine and publish the average number of available seat miles in scheduled air transportation for each of the three classes of air carriers in (C) and of available ton-miles for those carriers referred to in (B).

"(3) Notwithstanding any other provision of this section, each air carrier holding a certificate of public convenience and necessity for scheduled air transportation and each air carrier engaged in intrastate scheduled air transportation pursuant to a certificate issued by a State regulatory authority and which reports its available seat miles in passenger scheduled air transportation to the Board may engage in interstate scheduled air transportation in any and all markets of its choosing in addition to that transportation otherwise authorized, subject to the following limitations on the level of such additional operations--

"(A) a carrier in Class I shall be limited in each calendar year to a level of additional operations which does not exceed five percent of the average number of available seat miles in interstate and intrastate scheduled air transportation operated by carriers in its class during the preceding calendar year; and

"(B) a carrier in Class II or Class III shall be limited in each calendar year to a level of additional operations which does not exceed ten percent of the average number of available seat miles in interstate and intrastate scheduled air transportation operated by carriers in its class during the preceding calendar year or which does not exceed ten percent of the available seat

miles operated by the individual carrier in interstate and intrastate scheduled air transportation, whichever is greater; and

"(C) all-cargo carriers shall be limited in each calendar year to a level of additional operations which does not exceed ten percent of the average number of available ton-miles operated in scheduled air transportation by carriers in its class during the preceding calendar year.

"(4) Carriers in Classes I through III shall be permitted to carry mail and cargo on any flights conducted pursuant to this paragraph.

"(5) Operations conducted pursuant to this paragraph may be combined with any other authority held by the carrier to permit single-plane and single-carrier services using combinations of the carrier's existing authority and the new authority.

"Additional Authority"

"(q) Any carrier engaging continuously for twelve consecutive months in nonstop scheduled air transportation pursuant to the authority conferred by subsection (p) of this section may apply to the Board for a certificate of public convenience and necessity authorizing unrestricted nonstop scheduled air transportation in such market. Within thirty days of the date of application, the Board shall grant such application and issue the certificate as requested.

unless the Board determines that the applicant has not conformed to the provisions of this Act with respect to the service in question. Breaks in service occasioned by labor disputes or by factors beyond the control of carrier shall not destroy the continuity of services rendered before and after the break in service, but such periods of time shall not be counted towards meeting the requirement that service be offered for twelve months."

"Scheduled Air Transportation Defined"

"(r) For the purposes of paragraphs (d)(4), (o), (p) and (q) 'scheduled air transportation' means interstate air transportation performed by a carrier between two or more points, with a minimum of five round trips per week, pursuant to published flight schedules which specify the times, days of the week and places between which such flights are performed."

Transportation of Mail

SEC. 10. Section 405(b) is amended to read as follows:

"(b) Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points,

setting forth in respect of each such schedule the points served thereby and the time of arrival and departure at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail. No change shall be made in any schedules designated except upon ten days' notice thereof as herein provided. No air carrier shall transport mail in accordance with any schedule other than a schedule designated under this subsection for the transportation of mail."

Consolidation, Merger, and Acquisition of Control

SEC. 11. (a) The first sentence of Section 408(b) is amended by inserting after the first reference to the word "Board" the following:

"and at the same time a copy to the Attorney General and the Secretary of Transportation".

(b) The first proviso of Section 408(b) is amended by adding after the first "That" the words "(i) with respect to an application filed within thirty months from enactment of the Aviation Act of 1975," and by adding after the last word of that

proviso (and before the colon therefollowing):"; and (ii) with respect to an application filed more than thirty months from enactment of the Aviation Act of 1975, the Board shall not approve such a transaction:

"(1) if it would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of air transportation in any part of the United States, or

"(2) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are outweighed in the public interest by the probable effect of the transaction in meeting the transportation convenience and needs of the community or communities to be served, and unless it finds that such transportation convenience and needs may not be satisfied by any less anticompetitive alternative. The party challenging the transaction shall bear the burden of proving the anticompetitive effects, and the proponents of the transaction shall bear the burden of proving that it meets the transportation convenience and needs of the community or communities to be served and that such convenience and needs may not be satisfied by any less anticompetitive alternatives:"

(c) Section 408 is further amended by adding the following new subsection:

"(g)(1) Any transaction specified in subsection (a), regarding which an application is filed more than thirty months following enactment of this paragraph, may not be consummated before the ninetieth calendar day after the date on which the application therefor was presented to the Board, and the Attorney General. The Attorney General may bring an action under the antitrust laws arising out of such a transaction in the United States District Court for the District of Columbia or in any other appropriate District Court within such ninety-day period. The Attorney General shall publicly notify the Secretary of Transportation before filing such an action. No transaction specified in subsection (a) shall be consummated until the antitrust action, and all appeals from such action, which shall be taken pursuant to Expediting Act, as amended, 15 U.S.C. §§ 28-29, have been concluded. After the filing of such an antitrust action, all proceedings thereunder shall be stayed until the termination of the Board proceeding under subsection (b) and the termination of all judicial proceedings, if any, brought under Section 1006 with respect to a Board order issued pursuant to subsection (b). The Attorney General may not

however seek judicial review under Section 1006 of a Board proceeding on a transaction as to which the Attorney General has a pending antitrust action pursuant to this subsection.

"(2) In any action brought by the Attorney General under this subsection, the standards applied by the court shall be identical with those that the Board is directed to apply under Section 408(b)(ii), and the court shall review de novo the issues presented.

"(3) The Board may appear as a party of its own motion and as of rights and be represented by its counsel in any action brought by the Attorney General pursuant to this subsection, and in any such action the Secretary of Transportation shall file with the District Court a statement setting forth his views on the challenged transaction and the implications of the challenged transaction upon national transportation policy.

"(4) Upon the consummation of a transaction approved under this section and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself

constitutes a violation of any antitrust laws other than Section 2 of the Sherman Act, 15 U.S.C. § 2, but nothing in this chapter shall exempt any person involved in or affected by such a transaction from complying with the antitrust laws after the consummation of such transaction. For the purposes of this section, the term 'antitrust laws' means the 'antitrust laws' as defined in Section 1 of the Clayton Act as amended, 15 U.S.C. §12.

"(5) All transactions approved by the Board pursuant to this section may be challenged by the Attorney General in an action brought to enforce Section 2 of the Sherman Act, 15 U.S.C. § 2, notwithstanding any other provision of this section or section 414."

(d) Section 408 is further amended by adding the following new subsection:

"(h) The Board must issue a final order with respect to any application filed pursuant to Section 408 within one calendar year.

Agreements

SEC. 12. Section 412 is amended by striking subsection (b) and adding immediately after subsection (a) the following new subsections:

"(b) After each agreement is filed, the Board shall give notice of the agreement to the Attorney General and the Secretary of Transportation within ten days of receipt of the agreement. The Attorney General or the Secretary of Transportation may request the Board to hold a hearing in accordance with 5 U.S.C. §556 to determine if the agreement is consistent with the provisions of this Act, and if so requested, the Board shall hold such a hearing. If the Attorney General or the Secretary of Transportation believes that because of changed circumstances, any agreement which has been previously approved by the Board has anticompetitive implications or no longer serves a transportation need, the Attorney General or the Secretary of Transportation may request the Board to hold a hearing in accordance with 5 U.S.C. §556 to determine whether the agreement remains consistent with the provisions of this Act. If so requested, the Board shall hold such a hearing, and may after such hearing disapprove the agreement.

"(c) The Board may not approve any contract or agreement in interstate or overseas air transportation (1) which controls levels of capacity, equipment, or schedules, (2) which relates to pooling

or apportioning earnings (except for mutual aid pact agreements among air carriers), losses, traffic, or service, (3) which fixes rates, fares or charges (except for joint rates, fares or charges), or (4) which fixes prices, commissions, rates or other forms of contracts for goods or services provided to or for air carriers by persons other than air carriers. For the purposes of this section, agreements among carriers allocating operations at high traffic airports as identified by the Secretary of Transportation shall not be deemed pooling or capacity agreements. In addition, the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

"(d) The Board may approve any such contract or agreement, whether or not previously approved by it, which it finds not adverse to the public interest, not in violation of this Act, and which does not reduce or eliminate competition, unless there is clear and convincing evidence the contract or agreement is necessary to meet a serious transportation need or to secure important public benefits, and no less anticompetitive alternative is available to reach the same result.

"(e) With respect to foreign air transportation the Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of the Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act."

Antitrust Immunity

SEC. 13. Section 414 is amended by adding the words "in air transportation" before the word "authorized".

Rates

SEC. 14. Section 1002 is amended by:

(a) Amending paragraph (d) so as to read:

"(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe

the maximum or minimum lawful rate, fare, or charge thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective:

Provided, however, that a rate above direct costs may not be found to be unjust or unreasonable on the basis that it is too low, and the Board may not require an air carrier to charge, demand, collect or receive compensation in excess of that air carrier's direct costs for the service at issue."

(b) Amending paragraph (e) so as to read:

"(e) In exercising and performing its powers and duties with respect to the determination of maximum rates for the carriage of persons or property, the Board shall take into consideration, among other factors - -

"(1) the effect of such rates upon the movement of traffic;

"(2) the need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

"(3) the quality and type of service required by the public in each market;

"(4) the need for price competition to promote a

healthy air transportation industry which provides maximum benefits to consumers;

"(5) the need of each carrier for revenue sufficient to enable such air carrier, under honest, economical and efficient management, to provide adequate and efficient air carrier service; and

"(6) the desirability of a variety of price and service options such as peak and off-peak pricing to improve economic efficiency."

(c) Amending paragraph (g) so as to read:

"(g) Whenever any air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon the Board, by filing with such tariff, and delivering to such air carrier

affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice for a period of no longer than 90 days if:

(a) with respect to any proposed increase the proposed tariff would be more than 10 percent higher than the tariff in effect 365 days prior to the filing of the proposed tariff; or

(b) with respect to any proposed decrease, there is clear and convincing reason to believe that the proposed tariff will be below the direct costs of the service at issue; or

(c) with respect to any decrease filed within one year following the enactment of this paragraph, the proposed tariff would be more than 20 percent lower than the tariff in effect on the day of the enactment of this paragraph and the Board believes the tariff will be found to be unlawful; or

(d) with respect to any decrease filed in the period commencing one year from the enactment of this paragraph and ending two years from such enactment, that the proposed tariff would be more than 40 percent lower than the

tariff in effect on the day of enactment of this paragraph and the Board believes the tariff will be found to be unlawful.

If the proceeding has not been concluded and a final order made within the initial period of suspension, the Board may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect. After hearing, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. Any proceeding pursuant to this subsection shall be completed and a final order issued within one hundred and eighty days of the time when such tariff would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: Provided, that this subsection shall not apply to any initial tariff filed by any air carrier. Provided further, that the fact that a tariff may be suspended pursuant to this paragraph shall not create a presumption with respect to its ultimate lawfulness."

(d) Amending paragraph (i) so as to read:

"(i) The Board shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and the maximum joint rates, fares, or charges for interstate or overseas air transportation, or the classifications, rules, regulations, or practices affecting such rates, fares or charges, and the terms and conditions under which such through service shall be operated."

(e) Add a new paragraph (k) to read as follows:

"(k) 'Direct Costs' means the direct operating cost of providing service to which a rate, fare, or charge applies, and shall not include such items as general and administrative expenses; depreciation; interest payment; amortization; capital expenses; costs associated with the development of a new route or service; and other fixed costs or costs which do not vary immediately and directly as a result of the service at issue."

Postal Service Contract Authority

SEC. 15. Section 5402(a) of title 39, United States Code, is amended to read as follows:

"(a) If the Postal Service determines that service by certificated air carriers between any pair or pairs of points is

not adequate for its purposes, it may contract for the transportation of mail by air in such manner and under such terms and conditions as it deems appropriate:

"(1) with any certificated air carrier between any of the points between which the carrier is authorized by the Civil Aeronautics Board to engage in the transportation of mail;

"(2) with any other certificated air carrier, if no certificated air carrier so authorized is willing so to contract, or between points between which no certificated air carrier is authorized by the Civil Aeronautics Board to engage in such transportation; or

"(3) with any other air carrier, if no certificated air carrier is willing so to contract."

Local Service Subsidy Study

SEC. 16. The Secretary of Transportation shall undertake a Study of the Local Service Air Carrier Subsidy Program and make recommendations to Congress for any necessary changes in the subsidy system within one year of the date of enactment of this section. The Secretary shall consult with community leaders in the cities now receiving subsidized air service, the local service air carriers, the Chairman of the CAB, and the

relevant Committees of Congress. As part of this study, the Secretary shall identify the cost of local service subsidy involved in providing service at each city.

AVIATION ACT OF 1975

SECTION-BY-SECTION ANALYSIS

Section 1. Cites the Act as the Aviation Act of 1975.

Section 2. Provides that any reference to a section, unless otherwise indicated, refers to the Federal Aviation Act of 1958, as amended ("the Act").

Definitions

Section 3. This section amends Section 101 of the Act dealing with definitions. The purpose of this section is to liberalize permanently and by statute the availability of charter services. The Board has generally placed limitations on the growth of charter services.

Prior to August, 1975, the Board required for inclusive tour charters: (1) a minimum of three stops; (2) a minimum of seven days between departure and return; and (3) a minimum rate not less than 110 percent of any available scheduled fare. Legislation presently before Congress, S. 421, "The Low-Cost Air Transportation Act", would substantially broaden the availability of charter services. In response to this legislation and public criticism the Board has recently expanded the availability of inclusive tour charters on its own initiative, effective September 13,

1975. [40 F.R. 34089]. The Board's new rules would allow one-stop inclusive tour charters. The minimum stay requirement would be reduced to three nights for a North American charter and six nights for an international charter. Minimum rates would not be pegged to the scheduled fare but would be based on a reasonable rate for the charter air transportation plus $15 a night for land arrangements. The new rates also provide that tickets must be purchased 15 days in advance for North American trips and 30 days in advance for overseas trips.

This amendment incorporates many of the features of S. 421 to guarantee the continued availability of low cost charter service. It provides new definitions of "Advance-purchase charter trip" and "Inclusive tour charter trip" and amends the present definition of "Supplemental air transportation". The proposed definition of "Advance-purchase charter trip" contained in paragraph (2) would authorize a new type of charter similar to the present Board authorized travel group charters. Such advance purchase charters would be sold by tour organizers to members of the general public and would not be required to include a ground package. The Board would be prohibited from requiring purchase of tickets more than 30 days in advance of the flight or from restricting the charter

organizer from selling up to 25 percent of the ticket seats at any time prior to departure. Minimum stay requirements could not exceed 3 days in the Western Hemisphere, nor 7 in other areas.

The proposed paragraph (21) would authorize one stop inclusive tour charters. The rate for such charters would be based on the cost of the air transportation plus the charge for ground arrangements. The reference to "unjust or unreasonable" rates refers to the standard set out in section 1002(d) and (j), as amended by section 14 of the bill. The Board would be authorized to assure that one stop inclusive tours do not impair scheduled services.

The proposed paragraph (36) provides an amended definition of "Supplemental air transportation" and it removes the prohibition against supplemental air carriers selling tickets indirectly through control of those authorized by the CAB to make such sales. The new definition would delete the prohibition against the carriage of mail by supplementals in the present Act and would delete the language "to supplement the scheduled service . . ." The latter language is inconsistent with the present role of supplemental air carriers in providing low-cost charter air transportation.

Declaration of Policy

Section 4. This section amends Section 102 of the Act dealing with the Declaration of Policy of the Board. Every decision of the Board must reflect the basic guidance provided for by the Declaration of Policy which is an integral part of the Act. This amendment rearranges the order of the Declaration into a more logical form, but more importantly, it changes the basic thrust of the policy announced in the declaration.

The present policy declaration is protectionist and promotional of the industry in tone. It speaks in terms of promotion of the industry in several places, and at the same time provides for competition "only to the extent necessary . . ."

The amended policy declaration recognizes the need for "encouragement and development" but clearly states that the basic policy goal is to develop a system to satisfy the needs of the public, not just the airline industry itself. It speaks in terms of a "variety" of "efficient and low-cost services". It reaches this goal by "maximum reliance on competitive market forces" and by the "encouragement of new air carriers" rather than the heavy hand of Federal economic regulation. It recognizes that safety must be continued to the "highest degree". In essence then, the thrust

of the amendments is to focus upon the public needs, and to rely upon competition and the market to provide such needs, including the liberalized entry of new carriers, while at the same time preserving the highest degree of safety. Needless to say, the words "promotion" and "competition to the extent necessary" have been deleted.

Procedural Expedition

Section 5. Section 401 presently provides that no air carrier may operate unless it holds a certificate of "public convenience and necessity" from the Board. By this requirement the Board regulates entry into the industry and into new markets. This section amends section 401(c) which provides that the Board act on applications for certificates of public convenience and necessity "as speedily as possible". The Board has been very reluctant to allow new entrants to the industry - there have been no new "trunk" carriers since the inception of the original Act in 1938 - and for the last 5 years the Board has imposed a "route moratorium" and refused to grant entry into new markets by established carriers.

To prevent another moratorium, and to assume that cases are decided within a reasonable period, the proposed subsection

(c)(1) would require a speedy hearing on all applications for certificates of public convenience and necessity. Any person seeking a Federal license is entitled to a prompt decision on the merits. All applications regarding interstate and overseas transportation, set for public hearing, must be disposed of within ten months of the date of the application except where the Board finds that the application raises issues of "major air transportation significance", and in those cases the decision must be made within twelve months of the date of application. The Board is also given an extra 30 days for decision if it finds there are "extraordinary circumstances". This term is not defined in the Act and is left to the discretion of the Board but it is meant to cover "last-minute" problems and delays.

Applications to engage in foreign air transportation do not fall under these deadlines. The time limits also do not apply to applications pending at the time of enactment or filed within twelve months of enactment. For these applications, a somewhat longer time limit applies. This longer period will allow the Board to process the back load of past applications and any new applications filed to take advantage of the liberalized entry provisions of this Act. The Board may decide not to set an application for hearing in which one it must dismiss the application on the merits, thus giving

opportunity for court review.

If the Board fails to meet the deadlines, the certificate requested must be issued by the Board without further proceedings.

Entry

Section 6. This section would amend section 401(d) of the Act to liberalize entry into the air carrier industry by new entrants, and permit the supplemental carriers to operate scheduled services.

Section 6(b) of the bill provides a "fit, willing, and able" entry test for transportation "between any two cities not receiving non-stop scheduled air transportation by an air carrier holding a certificate of public convenience and necessity. . ." In other words, for city-pairs not receiving scheduled air service by a certificated carrier, there is no necessity to prove "public convenience and necessity". "Scheduled air transportation" is defined in section 9 of the bill to mean a minimum of 5 round trips per week.

The second part of section 6(b) exempts from economic regulation those air carriers who engage in interstate air transportation solely with planes with a passenger capacity of less than 56 or a cargo capacity of 16,000 pounds. Commuter air carriers now operate

pursuant to this exemption. The Board, at present by regulation, exempts air carriers operating aircraft with a capacity of less than 30 passengers or 7,500 pounds of property. The exemption in the bill would be a new higher minimum and would be statutorily imposed. This section would also authorize the Board to further increase exemption. Carriers exempted by this section would still be required to conform to financial responsibility requirements and joint and through authority of the Board unless otherwise exempted under section 416.

Section 6(c) of the bill would substantially limit the Board's authority to impose conditions on any future or amended certificates of public convenience and necessity. Specifically, the Board would be prohibited from imposing any closed-door, single-plane service, mandatory stop, long-haul restrictions, or any similar restriction. It is the intention of this provision to remove from the Board the authority to impose conditions designed to protect the markets of other carriers. (See analysis of section 9 for removal of past protectionist conditions). In addition, this section requires the Board by January 1, 1981 to reissue all certificates for interstate air transportation in the form of a listing of the city pairs air carriers can serve.

Route Transfers

Section 7. This section provides a new procedure for route transfers, and beginning January 1, 1978 allows carriers to transfer route authority freely to other qualified carriers subject to proceedings under section 408.

Abandonment

Section 8. This section provides a new abandonment procedure. At present, carriers are free to provide various levels of service, and may substantially reduce service without Board permission. To completely abandon service, however, the carrier must obtain approval from the Board in accordance with 401(j) of the FAA Act. Abandonment of service has not been a substantial problem in the airline industry, but by this amendment carriers would be assured that they would not be required to provide non-compensatory service.

The section would amend 401(j) and provide that a carrier may abandon a route if

(A) the carrier has operated the route below fully allocated cost (including a reasonable return) for at least one year, except the Board may postpone the abandonment for up to one year;

(B) the carrier has operated the route below direct costs for a period of at least three months - in this case there is no postponement; or

(C) upon 90 days notice if the carrier can demonstrate that service will be provided by another carrier.

An exception to the above occurs if a community or another public body agrees to provide sufficient payments to a carrier to ensure that the carriers revenues (including any subsidy) at least equal its fully allocated costs, including a reasonable return. In this case, the carrier may not abandon the route as long as the payments are made. Thus, continuation of service is left to the option of the affected community. This revised abandonment provision will not result in the loss of service at cities where Federally subsidized service is provided by local service carriers.

The proposed paragraph (4) provides that temporary suspensions must be granted if the carrier can show that service will be provided by another carrier or if similar circumstances exist to those necessary for abandonment.

Route Expansion

Section 9. The first part of the amendment of this section would add a new subsection to section 401 mandating the Board to remove protectionist conditions on past certificates in a phased procedure.

The proposed subsection (o)(1) provides that on or after January 1, 1981, every air carrier engaged in interstate scheduled service may engage in "non-stop scheduled air transportation without regard to any certificate limitations or other restrictions between any points in the United States named in its certificate . . . on January 1, 1975". In other words, starting in 1981, a carrier can fly non-stop between any two cities named in its certificate on January 1, 1975. The removal of these restrictions will substantially increase competition between existing carriers who may now have authority between cities but who are not effective competitors because of the many restrictions imposed upon them by their certificates. To avoid undue disruption, this section directs the Board to undertake a proceeding after the enactment of this Act to gradually and equitably phase in the elimination of these conditions. All conditions would be eliminated, however, by 1981.

The proposed paragraph (2) of section (o) applies the same type of procedure to carriers engaged in foreign air transportation and allows such carriers to provide non-stop service between any cities in the United States named in its certificate and served on January 1, 1975.

The second part of this section would add new subsections (p) and (q) to section 401 of the Act. These new subsections would permit carriers to gradually expand and rationalize their route authority on a voluntary basis. This procedure will be another mechanism to provide increased competition. To avoid undue disruption, it will not commence until 1981 and as indicated, it is a gradual, phased procedure.

The proposed subsection (p) provides that each year, starting in 1981, the Board shall calculate the number of available seat miles operated in interstate or intrastate commerce ("ASM") by State or Board certificated carriers in scheduled passenger transportation during the preceding year, and similarly, the available ton-miles operated by all-cargo carriers.

The Board is then directed to establish three classes of passenger carriers; Class I, those carriers with over 5 billion ASM in the preceding year or 1 billion ASM in intrastate and interstate transportation and not receiving subsidy payments; Class II, those interstate or intrastate carriers over 1 billion ASM but less than 5 billion ASM; and Class III, those carriers which operate less than 1 billion ASM in interstate and intrastate transportation in the preceding year.

The Board is then directed to calculate the ASM's for each of the three classes and available ton-miles of all-cargo carriers. Beginning in 1981, each Class I carrier may expand its operation by 5 percent of the average ASM's of the class, and each Class II and III carrier may expand its operation by 10 percent of the average ASM's of its respective class or by 10 percent of its own ASM's, whichever is greater. The different basis and percentage for Class I and Class II and III carriers is necessitated by the relatively low absolute mileage of these latter carriers and the desire to make them effective competitors. All-cargo carriers will be allowed each year to expand their cargo routes by ten percent of the average number of available ton miles of the class.

New scheduled air carriers, such as supplemental air carriers that acquire authority to engage in scheduled air transportation would also be eligible for this discretionary authority. These carriers would be placed in Classes I, II or III based on their scheduled available seat miles in the previous year.

The proposed subsection (q) provides that any carrier operating pursuant to the above process for a period of twelve consecutive months in scheduled nonstop service with a minimum of five round trips per week may apply, and the Board must issue, a permanent certificate for the nonstop operation in such market. Once the certificate is issued, it becomes part of the base for future expansion pursuant to the procedure outlined above. The expansion procedure contained in this section is permanent.

Transportation of Mail

Section 10. This section amends section4405(b) of the Act dealing with mail schedules. This amendment would preserve the requirement that each carrier file schedules with the Postmaster General but remove the authority of the Postmaster to require additional schedules for the transportation of mail. It should be noted that Section 10 of this bill would expand the authority of the Postmaster General to contract for mail transportation.

Consolidation, Mergers and Acquisition of Control

Section 11. This section would amend section 408(b) of the Act dealing with mergers and other restructurings. The present section 408(a) provides that all restructurings must be approved by the Board under a "public interest" test. The Board's decision can then be reviewed in the court of appeals on a substantial evidence test in accordance with general review procedures. The amendment would retain the present section 408(b) for a period of 30 months after enactment of this bill with respect to any cases filed at the Board in that period, but would then impose a new two-part procedure and a new substantive test.

The format is similar to that used in the Bank Merger Act. Specifically, the amendment provides, in place of the "public interest" test, that all restructurings be judged first by a standard similar to that used in the Clayton Act. Unlike the Clayton Act, however, there would be a weighing of the anti-competitive effects against the transportation convenience and needs of the communities. Specifically, the amendment provides that a restructuring may not be approved if it would result in a monopoly in any part of the United States or if its effect in any part of the

country may be to substantially lessen competition or tend to create a monopoly, unless the Board finds the anticompetitive effects are outweighed by the transportation convenience and needs of the communities and such needs may not be met in a less anticompetitive manner.

This test will first be administered by the Board, as in the present procedure. The Attorney General, however, would have the option of seeking the review of the Board's decision either in the U.S. Circuit Court of Appeals on a "substantial evidence test" or in the U.S. Federal District Court on a de-novo basis. The Attorney General would indicate which method of appeal he would choose within a certain time. The Attorney General could not seek review in the Court of Appeals if there were pending antitrust action in the District Court.

If review were sought in the District Court, the amendment provides that the Secretary of Transportation must submit his written views directly to the court regarding the transportation aspects of the case. The Board may also intervene in the District Court proceeding to present its views. A merger may not be consummated before the Board acts and any judicial review is completed. Appeals from the District Courts decision could

be taken directly to the Supreme Court under the Expediting Act as is the case with actions under the antitrust laws and the Bank Merger Act. Finally, this section would also provide that any merger case must be decided by the Board within one year of the date it was filed.

Agreements

Section 12. This section amends Section 412(a) of the Federal Aviation Act which deals with air carrier agreements. Section 412 now requires the filing of all agreements, and requires the Board to disapprove any agreement contrary to the "public interest". The intent of this amendment is to prohibit in toto pooling, capacity, price fixing, and other anticompetitive agreements while retaining the authority of the Board to approve agreements which are not anticompetitive, and which relate to such areas as training, baggage handling, equipment interchanges and the like.

If the Board does not approve an agreement, such non-approval does not prevent the agreement from becoming effective; it merely prevents antitrust immunity from attaching.

This amendment first provides that after any agreement is filed with the Board, notice must be given to the Secretary of Transportation and the Attorney General, either of whom can require

the Board to hold a hearing with respect to the agreement.

Second, this amendment provides specifically that the Board may not approve any agreement relating to interstate or overseas air transportation for controlling capacity, for the pooling of earnings or losses, or for fixing rates (except for joint rates) or fixing the prices or terms of contracts for goods and services provided to air carriers by non-air carriers. This amendment also provides a new test for all other agreements and forbids the Board to approve any agreement that reduces or eliminates competition unless there is clear and convincing evidence the agreement is needed to meet a serious transportation need and no less anticompetitive alternative is available to reach the same result.

Finally, this amendment allows the Attorney General or the Secretary to require the Board to review previously filed agreements, and such review must be made in accordance with the above standard.

Agreements in foreign air transportation would not be effected and the present standards for review of such agreements would be continued.

Antitrust Immunity

Section 13. A technical change is made to make it clear that antitrust immunity only attaches to a Board Order affecting air transportation.

Rates

Section 14. This section amends section 1002 of the Federal Aviation Act and deals directly with the question of rate flexibility. It proposes substantial changes in the Board's power with respect to pricing. It provides for a much more flexible regulation of pricing to complement the liberalized entry provisions of this bill. Without flexible pricing, liberalized entry may result only in more of the "same old thing".

Section 1002 of the present Act provides the Board broad authority to regulate rates, and to ensure that they are not "unjust or unreasonable" or prejudicial or discriminatory. This amendment restricts the authority of the Board in several ways.

First, this amendment would amend Section 1002(d) to provide that a rate above "direct costs", as defined by this Act, may not be found unjust or unreasonable on the basis it is too low. By limiting the Board's minimum ratemaking authority in this way, the Act provides for considerable downward pricing flexibility. The Board's present authority with respect to the ultimate

lawfulness of rate increases is not affected.

Second, this amendment also amends Section 1002(e) which provides guidance to the Board in its ratemaking considerations... These amendments stress the need for price competition as a means of promoting a healthy air transportation industry and the desirability of a variety of services. Removed from the list of matters to be considered is the reference to "the inherent advantage" of air transportation, a phrase transported from the Interstate Commerce Act, and having no real function in the present Act.

Third, subsection (c) amends Section 1002(g) to create a non-suspend zone. Rate increases may be suspended but only if they exceed 10 percent of the rate in effect one year prior to the proposed change. Rate decreases may be suspended but only if there is a clear and convincing reason to believe that they do not cover the direct costs of the service at issue or if the resulting rate decrease exceeds certain limits. In the first year after enactment, the Board may suspend a rate which provides for more than a 20 percent decrease in the rate in effect on the date of enactment; and in the second year after enactment, the Board may suspend a rate which provides for more than a 40 percent

decrease in the rate in effect on the date of enactment. Again, it is to be noted that this zone relates only to suspensions, and does not affect the Board's authority to rule on the ultimate lawfulness of a rate.

Finally, this amendment also provides a time limit for rate cases. If the Board has not completed its proceeding within 180 days of the time allowed the tariff goes into effect without further proceeding.

Subsection (d) amends Section 1002(i) to remove the Board's power to establish minimum through rates. Subsection (e) provides a definition of "direct cost" which defines this term to be the "direct operating costs of providing the service" and excludes overhead, fixed costs and any non-variable costs from the defintion.

Postal Service Contract Authority

Section 15. This section amends Section 5403(a) of Title 39 of the United States Code dealing with the transportation of mail by air. It would authorize the Postal Service to contract with certificates carriers for mail carriage.

Local Service Subsidy Study

Section 16. This section requires the Secretary to undertake a one-year study of the Local Service Air Carrier Subsidy Program and make recommendations to Congress for any necessary changes. As part of the Study, the Secretary is to identify the costs of the local service subsidy involved with each city.

PRESIDENTIAL MESSAGE

PRESIDENTIAL MESSAGE

AVIATION ACT OF 1975

TO THE CONGRESS OF THE UNITED STATES:

As part of my program to strengthen the Nation's economy through greater reliance on competition in the marketplace, I announced earlier this year my intention to send to the Congress a comprehensive program for the reform of transportation regulation. In May, I sent to the Congress the Railroad Revitalization Act aimed at rebuilding a healthy, progressive rail system for the Nation. Today, I am pleased to submit the Aviation Act of 1975 which will provide similar improvements in the regulatory environment of our airlines. To complete the package, I will soon forward similar legislation for the reform of regulation governing the motor carrier industry.

The result of the regulatory reform measures proposed in this legislation will have a direct and beneficial impact on the American consumer. Countless Americans use air travel on a regular basis in their jobs and for leisure activities. But for many Americans, air travel has become a luxury too expensive to afford. Part of today's high costs of air transportation are attributable to inflation and the rising cost of fuel and labor. But long years of excessive economic regulation also have added extra costs.

- more -

In 1938, when the Congress authorized the creation of the Civil Aeronautics Board, there was a belief that some form of Government intervention was needed to protect the infant airline industry. Accordingly, the Board was instructed to regulate this industry to promote its growth and development. Entry into the industry was strictly controlled. Even those airlines allowed entry into the industry were controlled rigorously with respect to the markets they could serve and fares they could charge. Real competition was intentionally dampened.

In the almost four decades since economic regulation of airlines was established, this industry has grown tremendously. It can no longer be called an infant. Consequently, protective Government regulation established to serve the particular needs of a new industry has outlived its original purpose. The rigidly controlled regulatory structure now serves to stifle competition, increase cost to travelers, makes the industry less efficient than it could be and denies large segments of the American public access to lower cost air transportation. In a number of studies, economists estimate the cost of air transportation to American consumers is far higher than necessary as a result of overregulation.

The overriding objective of the proposed legislation is to ensure that we have the most efficient airline system in the world and the American public is provided the best possible service at the lowest possible cost. We must make sure that the industry responds to natural market forces and to consumer demands rather than to artificial constraints of Government. This legislation would replace the present promotional and protectionist regulatory system with one which serves the needs of the public by allowing the naturally competitive nature of the industry to operate. It provides the airline industry increased flexibility to adjust prices to meet market demands. And it will make it substantially easier for firms who wish and are able to provide airline services to do so. These measures will be introduced gradually to permit the industry to adjust to a new regulatory environment. Government will continue to maintain rigid safety and financial standards for the airlines. But the focus of the new regulatory system will be to protect consumer interests, rather than those of the industry.

I urge the Congress to give careful and speedy attention to these measures so the more than 200 million passengers who use our airlines every year are given the benefits of greater competition that will flow from regulatory reform of this industry.

end

FACT SHEET

AVIATION ACT OF 1975

The President is transmitting to Congress today the Aviation Act of 1975 which is designed to provide consumers better air transportation services at a lower cost by increasing real competition in the airline industry, removing artificial and unnecessary regulatory constraints and ensure continuance of a safe and efficient airline system.

This is the second legislative initiative in the President's program to reform transportation regulation. The Railroad Revitalization Act is currently under consideration by the Congress. Similar legislation to improve regulation governing trucking firms will also be submitted this session. These three bills constitute an unprecedented legislative agenda in reforming transportation economic regulation. When enacted they will result in substantial benefit to the American public.

Principal Objectives of the Legislation

1. To introduce and foster price competition in the industry. Presently, airlines do not compete over the price of a ticket. Generally, interstate airlines providing scheduled service between two cities charge the same fare for that flight even though some airlines may be more efficient and could provide the same services at a lower price. The result has been that consumers are paying more for air travel than they should. The bill would eliminate this problem by gradually introducing pricing flexibility allowing airlines to adjust fares to reflect more accurately prevailing market conditions. This will permit a greater range of price/service options to the consumer.

2. To encourage the entry of new airline firms into the industry providing consumers greater variety of domestic air transportation services. Since its creation, the Civil Aeronautics Board has restrained competition by severely restricting the entry of new firms into the industry and tightly controlling which cities existing airlines are allowed to serve. This legislation will remove these artificial barriers to entry, thereby providing consumers the benefits of increased competition including new and better service at lower costs. Qualified firms will be encouraged to enter new markets and offer air transportation services which they feel the travelling public desires.

3. To eliminate anticompetitive air carrier agreements. The CAB currently grants antitrust immunity to all types of carrier agreements. This permits carriers to set capacity levels, to pool revenues, and to engage in other activities which deliberately dampen competition and increase costs to the travelling public. The bill would outlaw these anticompetitive agreements. However, carriers also enter into numerous agreements which are not anticompetitive but actually serve to facilitate air transportation. For example, carriers agree to transfer baggage on connecting flights; they honor ticket exchanges and joint reservations for the convenience of their passengers. The bill permits the CAB to approve these useful agreements subject to the weighing of potential anti-competitive effects against public transportation needs.

4. To ensure that the regulatory system protects consumer interests rather than the interests of the airline industry. In addition to its regulatory responsibilities, the CAB, since its creation, has been charged with promoting the aviation industry. Often these two objectives may be in conflict with each other. In the past, the Board has tended to limit competition and protect the industry rather than the public. The air transportation industry no longer needs the protection sometimes accorded to infant industries. Therefore, this legislation is designed to diminish the Board's promotional responsibility and emphasize protection of the public interest through maximum reliance on competition.

Section-by-Section

1. Definition of Charter and Supplemental Air Services. To spur competition and provide consumers greater choice of air transportation, this section removes rigid CAB restrictions on charter and supplemental services so that more airlines will be able to offer these services which are desired by the public.

2. Policy Statement. The Act revises the CAB's declaration of policy to stress the desirability of competition and de-emphasize its promotional responsibilities. This change is a major step in focusing attention on protecting consumer interests rather than industry interests.

3. Procedural Expedition. Slow and cumbersome regulatory procedures have in the past provided a means to restrict entry thereby protecting existing carriers from new competition. The bill proposes procedural changes which will require cases to be heard and decided expeditiously.

4. Entry. The bill contains several provisions designed to gradually but substantially increase entry. It permits qualified applicants to provide nonstop service between points not already receiving such service from existing carriers. It requires the CAB to eliminate artificial route restrictions on operating certificates thereby permitting carriers to provide better more efficient service. New carriers which meet strict safety and financial standards may also gain entry by purchasing or leasing route authority from an existing carrier. Finally, the bill will permit existing carriers some discretion to expand their operations into new markets by between 5-10 percent each year, beginning in 1981. Such action facilitates a gradual move toward a more competitive market place.

5. Abandonment. The bill makes it easier for carriers to abandon routes which do not pay for their operation. But where the public interest requires continuation of air transportation service, the bill provides for subsidy payments by the Federal, state or local Government. By liberalizing abandonment, the bill seeks to make entry by new carriers more attractive.

6. Transportation of Mail. The bill provides for continued air transportation of the mails. Airlines are required to publish schedules from which the Postmaster General designates mail flights. Where scheduled service is not available, the Postal Service is authorized to contract for the necessary air transportation services.

7. Mergers. In accordance with the policy of substituting antitrust enforcement for administrative regulation, the bill adopts a standard and procedure similar to those applicable to bank mergers. This standard provides for the careful weighing of transportation needs against the anticompetitive effects of a proposed merger.

8. Intercarrier Agreements. The bill eliminates anti-trust immunity currently granted to anticompetitive air carrier agreements. It prohibits the CAB from approving agreements to control capacity levels, equipment or schedules and to pool or apportion revenues or fix rates. Other agreements which facilitate air transportation could be approved if the benefits to be gained clearly outweigh the potential adverse effects on competition.

9. Ratemaking. Under provisions of this bill, airlines would be free to raise or lower fares within specified percentage bands. Maximum prices would continue to be subject to CAB ruling as would discriminatory or preferential pricing. The Board would also be responsible for preventing predatory pricing by the airlines.

10. Subsidy. The bill authorizes a study of the local service subsidy program. Recommendations for improving the current system will be sent to Congress within one year after enactment of the bill.

AVIATION ACT OF 1975

* * * *

ANALYSIS OF THE NEED FOR THE BILL

Federal economic regulation of air commerce began with the Civil Aeronautics Act of 1938. The intent of that legislation was to protect, nourish and foster the growth of an infant industry. Since 1938, airlines have grown from an infant industry to become a mature and healthy part of the Nation's economy and have evolved into the dominant mode of public transportation for intercity passengers.

Unfortunately, Federal regulatory practices have not kept pace with the growth of the airline industry. The regulatory practices of the Civil Aeronautics Board are badly out of date and no longer serve the public interest in the manner which they might. Instead, the Board has attempted to protect established firms within the airline industry from the forces of healthy competition. These attempts to minimize competition have resulted in holding fares at higher levels than necessary, disallowing price competition and discouraging new service innovations which would better meet consumer needs. Ironically, there is little evidence that the Board has actually helped established carriers, for in stifling competition they have often stifled initiative on the part of carrier management and have limited opportunities for the industry to expand and prosper.

The defects of the present regulatory system have recently been spelled out in detail in the draft report of the Senate Committee on

Administrative Practice and Procedure, by the Board's own internal staff on Regulatory Reform and other studies. These reports conclude, as does the Administration's Task Force on Aviation Regulatory Reform, that the effect of CAB regulation has been to stifle innovation, protect inefficient practices, and create many distortions and inefficiencies, including a chronic tendency towards excess capacity.

The Aviation Act of 1975 is designed to correct this situation. The Act is designed to increase competition within the airline industry by making prices more flexible, by reducing barriers which qualified firms must overcome in order to enter the industry, and by reducing or eliminating arbitrary and inefficient restrictions on the operations of existing firms. Enactment of the proposed bill will pay large dividends to the traveling public in lower fares and more responsive service.

At the same time, the proposed legislation should have no detrimental effects on the long-run profits of the airline industry because Board regulation has served to protect inefficient firms without enriching more efficient carriers. Poorly-managed firms will ultimately face the pressures of a more competitive environment. But well-managed firms will have greater opportunities to prosper than ever before. Because airlines have become accustomed to the sheltered regulatory climate of the past 37 years, it is recognized that the transition to a more competitive environment must be gradual. The proposed bill provides adequate transition periods so that short-run distortions will not occur.

International air travel is conducted within the context of bilateral and multilateral agreements. Accordingly, while the draft bill would substantially change the ground rules within which domestic air

carriers operate, it would not touch upon the practices and procedures of international aviation. Similarly, the draft bill deals with economic regulation and will not affect airline safety. Safety regulation, by statute, is vested in the Federal Aviation Administration and the present legislation does not touch upon its responsibilities and procedures in the area of safety regulation. Finally, the draft bill in no way dismantles or abolishes the Civil Aeronautics Board. Rather, the proposed bill redirects the Board's efforts into seeking a more competitive and more efficient airline industry.

There follows an outline of the major aviation industry problems which the bill addresses, along with an analysis of the effect of the bill in redressing those problems.

ENTRY INTO AIR CARRIAGE

No air carrier may operate unless it holds a certificate of "public convenience and necessity" (PC&N) from the Civil Aeronautics Board. By this requirement, the Board controls the entry of new firms into the industry and controls the expansion of existing firms into new markets. The Board has interpreted this requirement so restrictively that no new carrier has evern been permitted to enter trunk line service since the Board was established in 1938. With minor exceptions (primarily, Air New England and Kodiak-Western Alaskan Airlines), no scheduled passenger carrier has been certificated since 1950.

With respect to entry by established firms into new markets, the Board has been erratic--tending at times to permit carriers to expand and at other times denying expansion. For the past five years, the Board

maintained an unannounced route moratorium during which it refused to even consider any major applications for new service.

The effect of precluding entry by new firms has been to protect the markets of existing carriers and to deny consumers the benefits normally associated with vigorous competition. For example, in 1967, World Airways (a large charter carrier) filed an application for transcontinental service with a one-way fare of $75, far below the prices then prevailing. The Board failed to grant World's application a hearing and took no action whatever until the application was dismissed six years later as being "stale."

The Aviation Act of 1975 is designed to substantially reduce the barriers facing qualified firms who wish to enter into air transportation, expand into new markets, or offer new varieties of service. Yet, the proposed bill is far from "free entry." It contains nine separate provisions designed to gradually but substantially increase entry into air transportation while providing adequate time for existing carriers to rationalize their operations and adjust to the changing economic environment.

First: Policy Changes: The Board's present Declaration of Policy (Section 102 of the Federal Aviation Act), written some 37 years ago, was framed in the context of an infant industry in need of protection rather than a mature industry capable of operating in a competitive environment. The Board has, in the past, relied on its Declaration of Policy to limit competition. Accordingly, the Aviation Act of 1975 proposes to revise this Declaration to stress the desirability of competition and to deemphasize the protection of established carriers.

Second: Procedural Changes. The Board has often refused to hear applications and to render decisions within a reasonable period of time and often it has used the device of procedural motions to settle substantive questions. The Aviation Act of 1975 deals with these matters by proposing procedural changes which would require the Board to hear and decide cases speedily. In order to avoid burdening the Board with the necessity of hearing spurious applications, the Board will be given the option of dismissing any cases it chooses not to hear. However, any cases dismissed shall be dismissed for cause and will be reviewable by the Court of Appeals--thus ending the practice of dismissing applications on procedural grounds and leaving the applicant with no recourse to court review.

Third: Supplemental vs. Scheduled Service. Some doubt exists as to whether paragraph 401(d)(3) of the Federal Aviation Act was intended to prevent supplemental carriers (i.e., charter carriers) from also applying for authority to provide scheduled service. The Board has recently undertaken to address this question but no decision has been rendered. Partly as a result of this legal ambiguity, no supplemental carrier has ever been permitted to undertake scheduled service even though qualified in every other respect. Accordingly, the Aviation Act of 1975 proposes to amend paragraph 401(d)(3) so that supplemental air carriers will clearly have the same right as anyone else to apply for authority to provide scheduled service.

Fourth: Charter Service. In the past, the Board has generally placed such strict limitations on charter services that their growth has been severely impaired. For example, prior to August 7, 1975, the only inclusive

tour charter rule in effect contained a number of highly restrictive conditions. These conditions included: (1) the number of days required between departure and return; (2) provision of overnight hotel accommodations at a minimum of three places, other than the point of origin, no less than 50 air miles from each other; and (3) a tour price which was not less than 110 percent of any available scheduled fare. The price of an inclusive tour was not based on the cost of the specific charter flight and the related ground accommodations, but on the price of an unrelated scheduled fare. This condition, taken in conjunction with the three stop requirement, severely limited the saleability of inclusive tour charter services.

Legislation presently before Congress (S. 421) would substantially broaden the availability of charter services. In response to this legislation and substantial public criticism the Board has recently expanded charter availability on its own initiative (Part 378(a), effective September 13, 1975). The Aviation Act of 1975 incorporates the essential features of S. 421 in order to guarantee the continued availability of charter services which are not unduly restricted.

Fifth: Unserved Markets. Under present law, a Board finding of public convenience and necessity is required even though the applicant is otherwise fit, willing and able to serve and service is not being provided by established firms. When qualified firms are prevented from offering service which established firms are not willing to provide, no useful function is served--not even the dubious function of protecting existing firms. Accordingly, the Aviation Act of 1975 guarantees approval

for qualified applicants wishing to provide non-stop service between points not receiving such service from certificated carriers.

Sixth: Liberalized Exemptions. In 1952 the Board exempted operators of small aircraft from the detailed economic regulation administered by the Board. The original aircraft limitation, 12,500 pounds, was set at approximately half the weight of a DC-3--then the equipment operated by the Nation's major airlines. So long as they operated aircraft smaller than that size (approximately 19 seats), commuter air carriers (also called scheduled air taxis or third level air carriers) were free to charge whatever price they wished to set and to operate where and when they chose. Operating within this exemption, a vigorous and rapidly growing industry of more than 200 firms has developed, primarily providing service to small and isolated towns not served by certificated carriers. Recently, the Board increased its exemption so that commuter carriers could fly aircraft containing up to 30 seats without becoming subject to Board regulation. Now, the Nation's smallest certificated air carriers are completing their conversion to all jet aircraft having a normal minimum capacity of approximately 90 passengers. The Aviation Act of 1975 would liberalize the exemption for commuter carriers by allowing them to increase the size of aircraft operated from 30 seats to 55 seats. This change will enable commuter carriers to purchase larger turbo-prop pressurized aircraft and should materially expand their scope of operations. This provision will be most significant for small points not attractive to certificated carriers operating large aircraft.

The six entry provisions outlined above all leave considerable discretion to the Board or affect charter operations or are directed at specific localized problems. Thus, it is possible that these changes will have only a minor impact on scheduled service in the major city-pair markets where the bulk of air passengers are carried. The next three provisions are designed to gradually but substantially increase the extent of competition in these major markets.

Seventh: Certificate Restrictions. Over a period of years, the Board has attached numerous types of conditions and restrictions to the operating certificates held by air carriers. In many instances they may not carry local passengers, may not provide through plane service, must continue flights to points beyond a certain destination, or abide by other restrictions. These restrictions were generally imposed either to protect the markets of established carriers or to prevent the creation of inadvertent operating authority. Viewed as a comprehensive whole, these restrictions serve only to protect the markets of established air carriers by preventing other carriers from offering services they would like to provide.

These restrictions are both wasteful and indefensible. Accordingly, the Aviation Act of 1975 would direct the Board to undertake a proceeding to eliminate all existing certificate restrictions within a five year period and would prohibit the Board from imposing such restrictions in the future. In so doing, the Board would be directed to proceed carefully with an eye toward the effects on various carriers and the traveling public. The phasing of the restriction removal program is dictated by the desire

to provide all existing carriers with adequate opportunity to increase their efficiency and adjust their operations to the requirements of a more competitive environment.

Eighth: Sale of Certificates. The Aviation Act of 1975 provides that, after January 1, 1978, a carrier may sell, transfer, or lease any portion of its operating authority to another carrier so long as the purchaser is fit, willing and able to undertake the transportation and so long as the transfer does not diminish competition. This provision will enable carriers to rationalize their operating systems by the purchase and sale of operating authority.

The pattern of routes currently served by most carriers reflects the erratic manner in which the Board has dispensed route awards. With new markets opened to service infrequently and sporadically, many carriers have felt compelled to apply for permission to provide service in numerous markets in the hope that they would receive authority to serve at least a few of the new markets. The resulting pattern of route awards has meant that the system of routes operated by many carriers are not tied together in the most efficient manner. Accordingly, this provision will present carrier management with the opportunity to improve their route network.

This provision also provides an additional way for new firms to enter the business of scheduled air transportation. Any firm found to be fit, willing, and able to provide air service by the Board may purchase route authority from an established carrier. In particular, this may be expected to help the supplemental air carriers who have for years sought to provide scheduled service. While this provision will open

markets for new firms and permit existing firms to rationalize their own systems, it will not increase the number of carriers in any market--since the transfer of operating authority will merely result in one carrier being substituted for another.

Ninth: Discretionary Mileage. Some measure of flexibility and entry will be needed in the long term in addition to that provided by the removal of current certificate restrictions. The final provision of the Aviation Act of 1975 dealing with entry is aimed at providing this flexibility over the longer term.

At the present time, existing air carriers are permitted to fly up to two percent of their aircraft miles in charter markets not specified in their operating certificates. The so-called "two percent off-route rule" thus permits carriers a measure of discretion in the markets that they may serve without formal Board approval. This program offers carriers a means of entering new markets without the requirement for expensive and burdensome legal proceedings.

Following the completion of the certificate restriction removal program, the Aviation Act of 1975 would allow each carrier to provide a limited amount of scheduled service in addition to those services specified in its operating certificate. In essence, this provision is analogous to the present two percent off-route charter rule. Carriers could use this authority for a gradual expansion and rationalization of their route systems. The expansion process would be gradual since the total amount of new authority created each year would be limited to approximately five percent of system operations. Following a period of satisfactory service in markets entered under the discretionary mileage rule, the points served could be added automatically to the carrier's operating certificate without the requirement for further legal proceedings.

ABANDONMENT OF SERVICE

As it controls entry into air carriage, so does the Board control exit from air carriage (or abandonment of service). With the exception of routes receiving subsidy, the Board has tended to be fairly liberal with regard to abandonment. As trunk carriers progressed to larger aircraft, they withdrew from smaller communities and were replaced in most instances by local service carriers. As local service carriers progressed to larger aircraft, they too have withdrawn from a number of markets, often to be replaced by commuter carriers. Indeed, the number of points served by certificated carriers has declined markedly since the mid-1960's.

By all appearances, trunk air carriers serve few points which they would wish to abandon and which would not receive air service if abandonment were completely unregulated. During 1974, trunk carriers (not on subsidy) served only three points which, by the Board's estimate, might be jeopardized by unregulated abandonment. In contrast to the trunk lines, local service air carriers receive subsidies explicitly designed to promote service to small communities. With an adequate subsidy program, such subsidized service would not be in jeopardy even if abandonment were completely free.

Despite the fact that abandonment does not seem to be a major problem, the existing standard for abandonment should be changed for two reasons. First, to the extent that carriers are compelled to serve losing markets against their wishes and without subsidy, a scheme of cross-subsidy payments must be employed—meaning that the costs of such service are defrayed by passengers elsewhere on the carrier's system. There is simply no justification for such a situation; if subsidy is deemed desirable, it should be explicitly paid by the government rather than by

air travelers flying in other parts of the air system. Second, carriers are more likely to enter new markets if abandonment provisions are liberalized. A carrier facing the decision of whether or not to enter a marginal market must surely take into consideration his ability to cease providing the service if his judgment should prove wrong and if the market should prove unprofitable. To the extent that liberalizing abandonment increases the willingness of carriers to test the water and to enter new markets, liberalizing abandonment will actually increase the number of points receiving scheduled air service by certificated carriers.

The Aviation Act of 1975 deals with the abandonment issue in the following manner. First, where alternative scheduled air service is provided by another carrier, carriers would be permitted to exit upon 90 days notice. Where alternative scheduled air service is not provided, carriers would be permitted to exit whenever, after taking into account subsidy payments, they were unable to cover fully allocated costs for a period of one year or they were unable to cover direct operating costs for a three-month period, except that the Board could require continued service if the community or another public body were willing to defray the carrier's losses.

The new abandonment standard will have the effect of reducing whatever inadvertent and unintentional cross-subsidies now exist. It will also encourage entry into marginal markets where the provision of such service is now discouraged by the possibility that a carrier may be trapped into providing unprofitable service.

PRICING

The Board has broad powers with respect to the regulation of air fares, or prices. Price competition has been discouraged and, indeed, virtually non-existent. As a result, consumers have been deprived of the benefits of vigorous competition.

In intrastate markets where both entry and pricing have been less restricted, prices have been markedly lower than in comparable interstate markets. Similarly, commuter air carriers, operating completely free of controls over entry and pricing, and operating equipment which is more costly per passenger mile, tend to charge comparable or lower fares than regulated carriers on flights of similar distances. The evidence is clear that restrictions on price competition have significantly harmed air travelers.

Ironically, at the same time consumers have been harmed by fares higher than they otherwise would have been, air carriers have not benefitted from this lack of price competition. Instead, air carriers, operating in a structurally competitive industry, have tended to dissapate any excess profits which might have been earned by engaging in service competition--most visibly in the form of in-flight movies, free drinks, and other amenities but most expensively in terms of scheduling more and more additional flights.

With the expansion of opportunities for new firms to engage in air transportation, whatever rationale originally existed for inflexible prices has evaporated. Accordingly, the Aviation Act of 1975 proposes substantial changes in the Board's powers with respect to pricing. Maximum price regulation would be left to the Board, as it presently is, along with the Board's traditional function of preventing discriminatory

and preferential pricing. Minimum prices, however, would generally not be regulated except that the Board would retain powers to prevent predatory pricing. In addition, the proposed bill would alter the Board's powers with respect to suspending questionable rates. The proposed bill would permit the Board to suspend any rate increase where the change would result in prices more than 110 percent of the level existing a year earlier but would not permit the suspension of smaller increases.

With respect to minimum prices, the Board would be empowered to suspend any rate which, on the basis of a preliminary finding, the Board believed to be below direct operating costs. This provision would be phased in over a period of three years. During the first year, the Board could suspend any rate decrease of more than 20 percent; during the second year, the Board could suspend any rate decrease of more than 40 percent. During the third and suceeding years, the Board could not suspend any rate unless it believed, on the basis of a preliminary finding, that the rate was likely to be below direct operating costs. The direct operating cost criteria is established as a protection against predatory pricing and, within certain guidelines, the specific definition of the term is left to the Board's discretion.

ANTICOMPETITIVE AGREEMENTS

The Federal Aviation Act presently provides that all agreements among air carriers must be filed with the Board and that the Board must approve or disapprove such agreements. Further, once Board approval is given, agreements are immune to any challenge under the antitrust laws. Most of the agreements filed with the Board are undisputably innocuous and do not raise serious antitrust considerations. Nevertheless, some agreements, particularly agreements to restrict capacity, do have serious anticompetitive effects.

While broad and special exemptions from the antitrust laws may have some validity during the years when Congress was seeking to protect and foster an infant industry, the need for such special exemptions has long since passed. The Aviation Act of 1975 provides both procedural and substantive changes to the Board's powers to approve such agreements and to confer antitrust immunity.

From a procedural standpoint, the Act requires the Board to notify both the Secretary of Transportation and the Attorney General of all agreements filed with the Board and, if requested, to hold a hearing in accordance with 5 USC 556. Such a procedural requirement will eliminate the type of situation which occured during the early 1970's when the Board first approved domestic capacity agreements and then extended those agreements without hearings.

On a substantive level, the Aviation Act of 1975 prohibits the Board from approving agreements which control levels of capacity, equipment or schedules, or which relate to pooling or apportioning of earnings or of fixing of rates. The Board could continue to approve all other types of agreements and could continue to confer antitrust immunity.

However, before approving such agreements, the Board would have to find that the agreements meet two stringent tests. First, the agreement must meet a serious transportation need. Second, other reasonable, less anti-competitive alternatives must not be available. These improvements will assure procedural fairness, eliminate antitrust abuses, and place airlines more nearly on a par with other sectors of our economy.

SUBSIDIES

The Civil Aeronautics Board now administers a subsidy program directed at ensuring the continuity of service to small communities. The subsidies, primarily to the Nation's local service air carriers, now cost more than $60 million per year. The efficiency of this program has been sharply questioned. Indeed, the Board itself has periodically recommended revision of the subsidy program. The Aviation Act of 1975 proposes no substantive changes in the subsidy program. Rather it directs the Secretary of Transportation to undertake a comprehensive study of the present subsidy system and to report the results to Congress within one year. In undertaking this study, the Secretary is directed to do so in full consultation with the Board, the communities affected, and the airlines involved. Based on this study, the Secretary is directed to develop recommendations and propose legislation for the improvement of this program.