

**The original documents are located in Box 1, folder “Civil Aeronautics Board - Publication of Decisions” of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.**

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THE WHITE HOUSE

WASHINGTON

October 9, 1975

MR PRESIDENT -

The attached memorandum from Phil Buchen requests approval to release to the Senate Commerce Committee a CAB decision which is coming to you for review. We staffed the memo to Jack Marsh, Jim Cannon and Brent Scowcroft. Your advisors are sharply divided on the issue.

Buchen, Cannon and Lynn argue that you should permit the CAB decision to be transmitted to the Commerce Committee. Jim Cannon's comments are attached at Tab B.

Jack Marsh and Brent Scowcroft disapprove of Buchen's proposal and Brent's extensive comments are attached at Tab C.

Jim Connor

*Check with me  
on Saturday A.M.*

THE WHITE HOUSE

WASHINGTON

October 3, 1975

MEMORANDUM FOR:

THE PRESIDENT

FROM:

PHILIP BUCHEN

P.W.B.

SUBJECT:

Publication of CAB Decisions

As you know, the Act creating the Civil Aeronautics Board (CAB) provides that certain of its decisions affecting overseas or foreign air transportation are subject to your approval. The statute requires the Board to submit such decisions to you "before publication thereof," (See Tab A).

As a practical matter, it is not possible to keep decisions of the Board confidential pending your review of them. The results of important decisions invariably become known from sources within the Board or its staff almost immediately and the texts of decisions are widely circulated prior to your review among concerned Executive Branch departments for comment.

A recent decision of the Board awarded a new route to Continental airlines between Japan and Saipan in the Marianna Islands. The Senate Commerce Committee very soon thereafter asked CAB to furnish the Committee a copy of its decision, and the Board has responded that it could do so only if authorized by you but was requesting this authority from you.

I know of no valid grounds for declining to furnish the Committee a copy of the Board's decision, and my recommendation is that you authorize the Board to supply the Committee with a copy. Also, I raise the point that it may be prudent for you to authorize the Board to release its decisions routinely at the time they are submitted to you. The advantage of doing so is that the public awareness of the outcome

of the decision, which occurs in any event, is then coupled with a full explanation as to how the Board arrived at its decision. I do not believe that this practice would in any way interfere with your freedom to approve or disapprove any particular decision as you see fit. Once you have acted, your action will be judged publicly against the background of the full opinion of the Board, and that opinion, if known in advance, should not make your decision any more difficult.

Jim Lynn concurs with the Counsel's Office in recommending this practice.

RECOMMENDED ACTION

1. Authorize release just to the Senate Commerce Committee on a confidential basis of the Saipan/Japan decision.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

2. Authorize the CAB as a matter of practice to release each of its decisions at or shortly after the time it is submitted to you.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

Attachment

*A*

## **49 § 1461 TRANSPORTATION**

### **SUBCHAPTER VIII.—OTHER ADMINISTRATIVE AGENCIES**

**§ 1461.** The President of the United States; suspension and rejection of rates in foreign air transportation

(a) The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

(b) Any order of the Board pursuant to section 1482(j) of this title suspending, rejecting, or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order, shall be submitted to the President before publication thereof. The President may disapprove any such order when he finds that disapproval is required for reasons of the national defense or the foreign policy of the United States not later than ten days following submission by the Board of any such order to the President.

As amended Pub.L. 92-259, § 2, Mar. 22, 1972, 86 Stat. 96.

*B*

THE WHITE HOUSE

WASHINGTON

October 6, 1975

MEMORANDUM FOR :

JIM CONNOR

FROM :

JIM CANNON

SUBJECT : Buchen Memo Regarding CAB Releases

I concur with Jim Lynn and Phil Buchen on this matter. Alerting the Senate Commerce Committee will reduce the possibility of incorrect "rumors" without adversely affecting the President's prerogatives. Certain of these decisions will be sensitive, e.g.; the Continental Award at a time when Pan Am is struggling. However, closing the decision process gains us very little while risking a "secretive image."

*C*

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

October 9, 1975

MEMORANDUM FOR: JAMES CONNOR  
FROM: BRENT SCOWCROFT *BD*  
SUBJECT: Publication of CAB Decisions

We have the following comments on Phil Buchen's memo of October 3 on the subject of publication of CAB decisions.

The President's authority to approve decisions of the Civil Aeronautics Board affecting overseas or foreign air transportation was established in order to allow for review of CAB decisions which could create serious foreign policy consequences. In many cases the mere knowledge on the part of a foreign government that an adverse decision has already been rendered could complicate negotiations, close off courses of action and create confrontation which could reduce or negate the value of the Presidential approval authority as a policy instrument. It could force the President into an awkward negotiating position resulting from domestic and international pressures.

Several recent controversial cases have dragged out for long periods while accommodation of interagency differences was sought. The likelihood that a case will be leaked has tended to increase with the length of time it has been under review within the Executive Branch. An improvement in orderly and expeditious procedures for reviewing policy issues in 801 cases (those referred to the President for foreign policy or national defense consideration) could offset this tendency.

That the "Service to Saipan" case may have become known prematurely should not become the basis for precedent setting through regular release of material which would have the end result of reducing the President's negotiating flexibility in international aviation cases. Release of a decision now would also complicate a lawsuit, in which Justice is involved, over the issue of the release of CAB decisions.

In the Service to Saipan case, itself, serious differences among agencies have necessitated preparation of an options memorandum for the President. Publication of the Board's decision would have the undesirable effect of

making public these interagency differences. Releasing the Service to Saipan decision would also establish a precedent for the routine release of all such decisions.

We therefore recommend against release of the Saipan/Japan decision and authorization of the public release of other CAB decisions at the time they are submitted to you.

