The original documents are located in Box 2, folder "Civil Aeronautics Board (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

CAB (Hale Boggs)

July 25, 1975

Dear Mrs. Boggs:

Thank you for your letter to the President concerning the Civil Aeronautics Board's forthcoming decision in the transatlantic route proceeding, and recommending the inclusion of New Orleans as a co-terminal on a transatlantic route.

As I am sure you are aware, the President has only limited authority to review decisions of the Civil Aeronautics Board, which is an independent regulatory agency. Your letter is appreciated, however, and you may be assured that your views will receive appropriate consideration.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Lindy (Mrs. Hale) Boggs
House of Representatives
Washington, D.C. 20515

DC:ns

Incoming sent to Mr. Buchen

RS. HALE) BOGGS, M.C.
DISTRICT, LOUISIANA
COMMITTEES:
BANKING, CURRENCY AND HOUSING
HOUSE ADMINISTRATION
ARBA BOARD

6-30

WASHINGTON OFFICE:
1519 LONGWORTH BUILDING
WASHINGTON, D.C. 20515

BARBARA RATHE
ADMINISTRATIVE ASSISTANT

New Orleans
co-Terminal
Transatlantic route

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 25, 1975

Honorable Gerald R. Ford
The President
Executive Office
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

MF

Dear Mr. President:

I understand the Civil Aeronautics Board will shortly forward to you its recommendations on the Transatlantic Route Proceeding - Docket No. 25908.

In view of its population, world trade activities, ocean freight traffic, offshore oil and gas expertise and foreign tourist industry, among other things, the City of New Orleans should be designated as a co-terminal on the route of a transatlantic airline authorized to operate non-stop between New Orleans and Europe, and I am advised that the Law Judge who heard the case has so recommended.

I fully support the City's position in this matter, Mr. President, and would like to take this opportunity to urge your favorable consideration of New Orleans' request to be designated as a co-terminal on the transatlantic route under review.

My warmest and best personal regards.

Sincerely,

Lindy

Lindy (Mrs. Hale) Boggs, M. C.

LB:mpk

No action needed. Sudley

SEP 20 1975

Republican Party of Hawaii

September 15, 1975

The Honorable John Marsh
Counsel to the President
White House
Washington, D. C. 20500

Dear Mr. Marsh:

This letter is being written to you on behalf of Hawaiian Airlines and its recent application to the Civil Aeronautics Board for the certificated scheduled airline route authority between Vancouver, British Columbia, Canada and Honolulu, Hawaii. Recently I have read in the newspaper that the administrative judge to the CAB, Mr. Ross Neumann, has recommended to the CAB that Western Airlines be certificated for the scheduled airline route between Vancouver, British Columbia and Honolulu, Hawaii. The purpose of my letter is to urge you to reconsider the application of Hawaiian Airlines as the most logical recipient of that certificated scheduled air route between Vancouver and Honolulu.

It is my understanding that Hawaiian Airlines proposes the highest service frequency to the islands from Vancouver of all proposals that are now before the CAB. Frequency proposed in its application as I understand it is twice a day. This high service frequency would only lead to increased employment in the islands for local people in the airline industry. I have been advised that the initial estimate by Hawaiian Airlines is that 182 new airline jobs would be provided of which a majority would be here in Hawaii. Hawaiian Airlines has had a long history in aviation to the citizens of Hawaii and certainly would be identified as the "Hawaiian" carrier to Hawaii from Canada. This identification is a most valuable asset in todays very competitive market place. In addition to Hawaiian Airlines being an identified carrier

from Hawaii to Canada, it proposes to promote and develop freight service flights from all of the islands to Canada, assisting the State of Hawaii in its agricultural development and small business growth, particularly as it is applied to our neighbor islands.

In my discussion with the executives of Hawaiian Airlines concerning its ability to provide the equipment and crews to effectively handle this route I have been assured by Hawaiian Airlines that they are presently maintaining and providing complete maintenance service for many of the international carriers who come to Hawaii and that they have available crews for the aircraft which would be flying between the islands, although these crews would have to be upgraded. I have also been advised that Hawaiian Airlines has available the aircraft to meet the needs for providing the best service between Vancouver and Hawaii to the general public.

As a lifelong resident in the State of Hawaii I am vitally concerned with providing our Hawaiian businesses the opportunity of competing on a scale much larger than just within the State of Hawaii. Hawaiian Airlines is asking for that opportunity and I am asking you, as counsel to the President, to please assist us in seeing what can be done about obtaining for our local airline, Hawaiian Airlines, the opportunity of providing scheduled airline service between Vancouver, British Columbia, Canada and the State of Hawaii. It is my understanding that the CAB will now review the recommendation of Judge Neumann and would then make a recommendation to the President for final selectio of the carrier for this scheduled airline route. I would ask that you keep our airline, Hawaiian Airlines, in mind should you have the opportunity of making a recommendation either to the CAB or to the President relative to the airline route award for Vancouver to Honolulu.

Very truly yours,

George A. Henrickson

George A. Henrickson
State Chairman
Republican Party of Hawaii

THE WHITE HOUSE

WASHINGTON

Regulatory

September 25, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: MAX FRIEDERSDORF M.C.

SUBJECT: Joint Letter from Senators Mansfield, Hatfield & Packwood

Pursuant to our instructions concerning contacts to regulatory agencies, I am referring the attached letter to you for direct handling.

It has not been acknowledged.

Please note their deadline request.

.4

9-25

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

September 24, 1975

The Honorable Gerald R. Ford
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Ford:

For the past 18 months, Evergreen Helicopters of McMinnville, Oregon has had pending before CAB a proposal to acquire Johnson Flying Service of Missoula, Montana. The CAB has informed us that their approval of the acquisition is imminent.

Since final approval must come from the White House, we are taking this opportunity to urge you to expedite this matter with all possible haste. We understand that CAB is fully supportive of the proposed merger so that there appears to be no reason to delay the matter further.

If final approval cannot be issued by October 6, 1975, would you please notify us immediately.

Cordially,

Mike Mansfield
MIKE MANSFIELD

Mark Hatfield
MARK HATFIELD

Bob Packwood
BOB PACKWOOD

BP:kbs
cc:CAB

[Oct. 1975?]

[redacted]

Eva,

Mr. Buchen talked to Walter Hickel. ~~Mr. Hickel was calling re Section 801.~~ He wants Mr. B to check on, I believe (I listened in in the end):

Western Airlines from:
(1) Anchorage, Alaska - San Francisco
(2) Los Angeles - Miami
- Way down line in decision making

Ripe for Decision

3 related answers vs Hopsed
Bur. of Operating Rights has under review
Bd.

Mr. Buchen is to check with CAB tomorrow. Please remind.

He should call Mr. Hickel on Saturday at the Brown Palace Hotel in Denver. I D I D NOT GET A NUMBER.

Thanks.

******

James Schultz ~~Thomas Heye~~ — 393-3111
Gen'l Counsel
CAB

Called Hickel on 10/25/75
P.

THE WHITE HOUSE

WASHINGTON

CAB

October 2, 1975

Dear Senator Mansfield:

This will acknowledge your letter of September 24, 1975, concerning the CAB approval of the merger between Evergreen Helicopters and Johnson Flying Service.

The case was still pending at the CAB when we received your letter and the Board has complied with our request for expedited treatment. Interested Executive agencies received copies of the Board's decision today and are treating it on an expedited basis.

I am confident that final action can be taken by October 6, 1975, as you requested.

With kind regards,

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Honorable Mike Mansfield
United States Senate
Washington, D. C. 20510

cc: Senator Mark Hatfield
Senator Bob Packwood

Dudley said he
has talked with Mr. Hills
+ agree that
they won't be calling
them —

just stay with
Northwest

Thursday10/2/75

9:05 Mr. Buchen would like you and Dudley to handle these two items.

Mr. Buchen said Charles Goodell's partner is representing _____ if you need to call them.
He doesn't know who represents Pan Am

Wednesday 10/1/75

Meeting
10/2/75
3:30 p.m.

12:05 Mel Laird will be chairing an energy project Thursday and Friday -- so he won't be able to attend the meeting at 3:30 p.m. Thursday 10/2 with Don Nyrob.

cc: Mr. Hills

Monday 9/29/75

Meeting
10/1/75
3 p.m.

4:10 Mr. Buchen has scheduled a meeting for 3 p.m. on Wednesday 10/1 to meet with Mel Laird and Don Nyrop of Northwestern -- along with Mr. Hills.

cc: Mr. Hills

DRAFT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ACTION

MEMORANDUM FOR THE PRESIDENT

Subject: Civil Aeronautics Board Decision: Service to Saipan, Docket 24421

The Civil Aeronautics Board has found it in the public interest to award new route authority to Continental/Air Micronesia to provide service between points in Japan and Saipan, Mariana Islands, Trust Territory of the Pacific Islands. The Board's decision contains conditions designed to focus attention on the development of Saipan as the gateway to the Trust Territory and to reduce revenue diversion claimed by Pan American on its existing Guam-Japan operations.

Department of Commerce recommends that you return the case to the Board, with a request that the Board act within 30 days to submit a new order and that the new order award authority to a carrier already serving Japan (i.e., Pan American or Northwest). The position of Commerce is based upon the belief that the introduction of Continental into Japan would cause an opening of the U.S.-Japan bilateral agreement and result in the U.S. having to make major concessions to JAL regarding service to more U.S. points and U.S.-beyond rights, that Continental potentially may not be able to serve the Japan-Saipan market well and thus be a detriment to the development of Micronesian tourism, and that the U.S. obligation under U.N. trusteeship to develop the Micronesian economy will not be carried out if Contential receives the route award. Of the two carriers currently serving Japan, Commerce favors Pan American for Saipan-Japan authority.

National Security Council recommends that you return the case to the Board, with a request that the Board act within 30 days to submit a new order and that the new order award authority to a carrier already serving Japan. The position of National Security Council is based upon the belief that the introduction of Continental into Japan may cause the reopening of the U.S.-Japan bilateral agreement and a Japanese request for rights for JAL to U.S. beyond gateway cities which the U.S. would not want to grant, that Continental could not compete effectively against Japan Air Lines, that a decision favoring Continental over Pan American would have an adverse impact upon Pan American's efforts

to secure financial credit, and that returning the order to the Board will eliminate the potential for complicating the consideration of aviation issues which may arise during Emperor Hirohito's visit. National Security Council favors Pan American for the route award.

Council on International Economic Policy recommends that the Board's decision be modified to designate Pan American as the most appropriate carrier. The basis for CIEP's recommendation is the belief that selection of a carrier other than Pan American will give rise to serious bilateral difficulties with Japan which would require the U.S. to allow JAL service to more interior U.S. cities and to U.S. beyond cities (e.g., New York to Buenos Aires), that an award to Pan American would serve the goal of fuel conservation as the carrier already flies over Saipan daily on the route from Guam to Japan, that selection of a carrier other than Pan American would serve as a negative signal to its financial backers both current and potential, that the addition of Continental into the Micronesia-Japan market would result in intense competition which could well lead to over-capacity and uneconomic returns for JAL, Pan American, and Continental. Representatives of the Japanese Aviation Commission have indicated to CIEP that designation of Pan American would raise the fewest logistical and policy problems for the Japanese.

The Department of Transportation recommends that the Board's order be approved for a three-year period. The Departments of Interior, State, Defense, and Justice, the Council on Wage and Price Stability and [the Office of the Council to the President] have no objection to the Board's proposed order. Copies of the agency viewpoints are attached for your consideration.

It is the understanding of the Office of Management and Budget that all executive agencies which participated in the review of this case were aware of the full range of primary arguments for and against the selection of Continental rather than Pan American or Northwest. We believe that a Presidential decision to overturn the Board's proposed order to award new route authority should be based upon compelling reasons which would support such action. After a thorough review of the record plus the comments of each reviewing executive agency, the Office of Management and Budget recommends you approve the Board's decision by signing the order where indicated.

Calvin J. Collier
Associate Director for
Economics and Government

Attachments:
CAB letter of transmittal
CAB order

Option and Implementation Actions

1) Approve the Board's decision and order. ☐
Sign the order where indicated.

2) Return the case to the Board and request a new order be submitted within 30 days and that the new order award authority to a carrier already serving Japan. ☐
Staff to prepare letter to the Chairman.

3) Direct the Board to award the new route authority to Pan American. ☐
Staff to prepare letter to the Chairman.

4) Approve the Board's order for a three-year period. ☐
Staff to prepare letter to the Chairman.

5) See me. ☐

THE WHITE HOUSE

WASHINGTON

September 25, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: MAX FRIEDERSDORF M.F.

SUBJECT: Joint Letter from Senators Mansfield, Hatfield & Packwood

Pursuant to our instructions concerning contacts to regulatory agencies, I am referring the attached letter to you for direct handling.

It has not been acknowledged.

Please note their deadline request.

9-25

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

September 24, 1975

The Honorable Gerald R. Ford
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Ford:

For the past 18 months, Evergreen Helicopters of McMinnville, Oregon has had pending before CAB a proposal to acquire Johnson Flying Service of Missoula, Montana. The CAB has informed us that their approval of the acquisition is imminent.

Since final approval must come from the White House, we are taking this opportunity to urge you to expedite this matter with all possible haste. We understand that CAB is fully supportive of the proposed merger so that there appears to be no reason to delay the matter further.

If final approval cannot be issued by October 6, 1975, would you please notify us immediately.

Cordially,

Mike Mansfield
MIKE MANSFIELD

Mark Hatfield
MARK HATFIELD

Bob Packwood
BOB PACKWOOD

BP:kbs
cc:CAB

Saturday 10/4/75

12:55 John Robson would appreciate a call. 363-3662
He's at home and we can reach him there.
Will take just a couple of minutes.

(The attached letter came in today.)

Airlines

THE WHITE HOUSE

WASHINGTON

October 6, 1975

Dear Senator Mansfield:

This is in further response to your letter of September 24, 1975, requesting expedited treatment of the merger between Evergreen Helicopters and Johnson Flying Service.

I have just learned that the President has approved the Board's Order approving the merger, in time to meet your deadline of October 6, 1975.

With kind regards,

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Mike Mansfield
United States Senate
Washington, D.C. 20510

cc: Senator Mark Hatfield
Senator Bob Packwood

THE WHITE HOUSE

WASHINGTON

Packwood
Sen.

September 25, 1975

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Cordially,

Mike Mansfield
MIKE MANSFIELD

Mark Hatfield
MARK HATFIELD

Bob Packwood
BOB PACKWOOD

BP:kbs
cc:CAB

THE WHITE HOUSE

WASHINGTON

October 6, 1975

MEMORANDUM FOR: PHIL BUCHEN ✓
ROBERT T. HARTMANN
JACK MARSH
BILL SEIDMAN
ALAN GREENSPAN
MAX FRIEDERSDORF

FROM: JIM CANNON

SUBJECT: Airline Regulatory Reform Legislation

I would appreciate your review and clearance of 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.

I would appreciate your comments by close of business Wednesday, October 8. The bill has been cleared by Secretary Coleman, Attorney General Levi, OMB (Collier), and the Counsel's Office (Lazarus).

Attached for your review are OMB's Memorandum for the President (Tab A), a Summary of the Aviation Act of 1975 (Tab B), the Draft Presidential Message (Tab C) and the Bill itself (Tab D).

Attachments


FORD LIBRARY

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 _____

B

AVIATION ACT OF 1975

SUMMARY OF PROVISIONS/ANALYSIS OF NEED

ENTRY

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 air carriage and controls the expansion of existing firms into new markets. The Board has interpreted this requirement so restrictively that no new trunk carrier has ever been "certificated" 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 last five years, Board maintained an unannounced route moratorium during which it refused to even consider any major applications for new service.

The effect of overly restricting entry 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 even set World's application for 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 ease the burdens on qualified firms who wish to enter into air transportation, or to expand into new markets, or to 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 37 years ago was framed in the context of an infant industry in need of protection rather than a mature and healthy industry capable of operating in a competitive environment. Since the Board has relied in its declaration of policy to limit competition, 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, to render decisions within a reasonable period of time, and often 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 the applicant having 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. The Board has generally placed such severe limitations on charter services that its 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) a minimum of seven days must elapse between departure and return; (2) the land portion of the tour must provide 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) the charge to the passengers for the tour shall be not less than 110 percent of any available scheduled fare. As can be judged from the last condition, 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 the present law, a Board finding of public convenience and necessity is required even when the applicant is otherwise fit, willing and able to serve and when no service is currently 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 where such service is not being provided by certificated carriers.

Sixth: Liberalized Exemptions. In the Board's early years erators 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 chose 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. Since the Nation's smallest certificated air carriers are now completing their conversion to all jet aircraft (with 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 the larger turbo-prop pressurized aircraft once utilized by local service carriers and should materially expand the scope of operations for commuter carriers. This provision will be most significant for small points not attractive to certificated carriers who have switched to large aircraft. At the same time, since this equipment is not used by certificated carriers, the intrusion of commuter carriers into the markets of those carriers will be limited.

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 limited 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.

First: 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. By and large, these restrictions were 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 simply protect the markets of established carriers by preventing other air carriers from providing 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 gradually eliminate all existing certificate restrictions within a five year period and prohibit the Board from imposing such restrictions in the future. In doing so, the Board would be directed to proceed carefully with an eye toward the effects on various carriers. 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.

Second: Discretionary Mileage. 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. The program has offered carriers a means of moving into new markets without the requirement for expensive and burdensome legal proceedings.

The aviation Act of 1975 provides that, following the completion of the certificate restriction removal program, each air carrier would

be allowed 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 authority created each year would be only 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 automatically added to the carrier's certificate of public convenience and necessity 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 equipment, they withdrew from smaller points and were replaced in most instances by local service carriers. As local service carriers progressed to larger equipment, they too have withdrawn from a number of points, 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 totally unregulated abandonment, and this would be a maximum estimate since several of these points might be expected to continue to receive service from commuter carriers. 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 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, 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 shorter flights. 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 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 find-

ing, 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 antitrust laws. Most of the agreements filed with the Board are undisputably innocuous and do not raise serious antitrust considerations. Nevertheless, some agreements, and particular agreements among carriers to restrict capacity, do have serious anticompetitive effects.

While broad and special exemptions from the antitrust laws may have had some validity during the years when Congress was seeking to nurture and foster an infant industry, the rationale for such special exemptions has long since passed. The Aviation Act of 1975 provides both procedural and substantive remedies.

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 to hold a hearing in accordance with 5 USC 556 if requested. 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 the Board could approve such agreements, they would have to find that the agreements meet two stringent tests. First, the agreement must meet a serious transportation need. Second, other reasonable, less anticompetitive alternatives must not be available. The improvements which will be provided by the enactment of the proposed bill will improve procedural fairness, eliminate antitrust abuses, and place airlines more nearly on a par with other sectors of our economy.

MERGERS

To allow appropriate restructuring to occur within the industry and in accordance with the general policy of substituting antitrust law for regulation wherever possible, the bill includes a new merger provision. Effective 30 months after enactment of the legislation, a Bank Merger Act type standard would be applied to mergers in the airline industry. This standard would permit approval of mergers otherwise violating the Clayton Act if the anticompetitive effects are outweighed by the benefits to be gained in meeting the transportation needs of the community and if no less anticompetitive alternative is available. Merger proposals would be filed with the CAB. The Attorney General

would have 60 days in which to file an antitrust suit in the district court. Court action would be stayed until completion of CAB proceedings. Upon an affirmative CAB finding, the court would consider the issues de novo, using the same standard as the CAB. The CAB would appear as a party of interest and the Department of Transportation would provide its views on the implication of the transaction on public transportation needs.

Until such a provision takes affect, the bill provides for all mergers filed with the CAB to be considered under existing standards and procedures.

C

Draft Presidential Message

DRAFT

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 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 be forwarding 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 connection with their jobs and leisure activities. But for many Americans, air travel has become a luxury too expensive to afford. In part, today's high costs of air transportation are attributable to inflation and the rising cost of fuel and labor. But they are also the result of long years of excessive economic regulation.

- 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 in order to promote its growth and development. Entry into the industry was strictly controlled. Even those airlines who were allowed entry into the industry were rigorously controlled with respect to what markets they could serve and fares were regulated. 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. A number of studies have indicated that 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 providing the American public with 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 set out by 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 set rigid safety and financial standards for the airlines. But the focus of the new regulatory scheme 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 that the over 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.

D

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 standards 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"

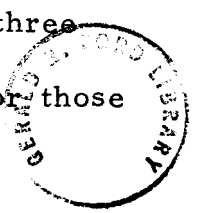
"(p)(1) The authority granted in this paragraph shall become effective on January 1, 1981.

"(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 available 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.