The original documents are located in Box 3, folder "Airline Regulatory Reform" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

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Rec. 2:30 pm
10/6/75

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.

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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

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THE WHITE HOUSE

WASHINGTON

October 8, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR

SUBJECT: Airline Regulatory Reform Legislation

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

"Agree to submit legislation"

Please follow-up with appropriate action.

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cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

October 6, 1975

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Attachments

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 _____

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.

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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.

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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.

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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 556if 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.

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."

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(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."

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

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

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

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

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

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

Route Transfers

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

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

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

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

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

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

Abandonments

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

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

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

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

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

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

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

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

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

Route Expansion

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

"Removal of Restrictions"

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

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

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

"Discretionary Scheduled Operations"

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

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

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

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

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"(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.

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"(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

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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.

E

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.

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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 556if 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.

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EMBARGOED FOR RELEASE
UNTIL 2:00 P.M. EDT

October 8, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

AVIATION ACT OF 1975

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

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

Principal Objectives of the Legislation

1. To introduce and foster price competition in the industry. As a result of economic regulation there is little price competition in the airline industry. Generally, all interstate airlines providing scheduled service between two cities charge the same fares even though some airlines may be more efficient and could provide the same services at a lower price. The effect has been that consumers are paying more than they should for air travel. The bill would eliminate this problem by gradually introducing pricing flexibility that allows airlines to adjust fares within specified limits to accommodate changing market conditions. This will make airline services more responsive to consumer demands and will provide low-cost service.

2. To better meet consumer needs by permitting existing airlines to serve new markets and new carriers to enter the industry. Since its creation, the Civil Aeronautics Board has restrained competition by restricting the entry of new firms into the industry and controlling which cities existing airlines are allowed to serve. This legislation will remove these artificial barriers to entry and provide consumers the benefits of increased competition, including new and better service at lower costs. Qualified firms will be encouraged to enter new markets and offer air transportation services which the travelling public desires.

more

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

4. To ensure that the regulatory system protects consumer interests rather than the interests of the airline industry. In addition to its regulatory responsibilities, the CAB, since its creation, has been charged with promoting the aviation industry. In promoting the industry the Board has limited competition and protected the industry rather than the public. The air transportation industry no longer needs government protection. Therefore, this legislation will diminish the Board's promotional responsibility and emphasize protection of the public interest through maximum reliance on competition.

Section-by-Section Analysis

1. Definition of Charter and Supplemental Air Services. To spur competition and provide consumers with a greater variety of air transportation services, this section removes rigid CAB restrictions on charter and supplemental services. In the future more airlines will be able to offer these services. (Section 3)

2. Policy Statement. The Act revises the CAB's declaration of policy to stress the desirability of competition and de-emphasize its promotional responsibilities. This change is a major step in focusing the Board's attention on protecting consumer interests rather than industry interests. (Section 4)

3. Procedural Improvements. In the past, slow and cumbersome regulatory procedures have tended to protect existing carriers from new competition by restricting entry. The bill proposes procedural changes which will require cases to be heard and decided expeditiously. (Section 5)

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4. Entry. The bill contains several provisions designed to gradually but substantially increase entry. It permits qualified applicants to provide nonstop service between points not already receiving such service from existing carriers. It requires the CAB to eliminate artificial route restrictions on operating certificates thereby permitting carriers to provide better more efficient service. New carriers which meet strict safety and financial standards may also gain entry by acquiring route authority from an existing carrier. Finally, the bill will permit existing carriers some discretion to expand their operations into new markets by between 5-10 percent each year, beginning in 1981. These provisions facilitate a gradual move toward a more competitive marketplace. (Sections 6,7, and 9)

5. Abandonment. The bill makes it easier for carriers to abandon uneconomic routes. Where continuation of air transportation service is in the public interest, Federal, State or local governments may subsidize the service. (Section 8)

6. Transportation of Mail. To facilitate transportation of the mails, airlines are required to publish schedules from which the Postmaster General designates mail flights. Where scheduled service is not available, the Postal Service is authorized to contract for the necessary air transportation services. (Sections 10 and 15)

7. Mergers. The bill provides a new merger standard and set of procedures similar to those applicable to the banking industry. This standard provides for the careful weighing of transportation needs against the anticompetitive effects of a proposed airline merger. (Section 11)

8. Intercarrier Agreements. The bill eliminates antitrust immunity currently granted to anticompetitive air carrier agreements but permits CAB approval of other agreements which facilitate air transportation. (Sections 12 and 13)

9. Ratemaking. Under provisions of this bill, airlines would be free to raise or lower fares within specified percentage bands. Maximum prices would continue to be subject to CAB review, and the Board would be responsible for preventing predatory, discriminatory, and preferential pricing by the airlines. (Section 14)

10. Subsidy. The bill authorizes a study of the local service subsidy program. Recommendations for improving the current system will be sent to Congress within one year after enactment of the bill. (Section 16)

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file

Aviation
Reg. Reform

THE WHITE HOUSE

WASHINGTON

December 2, 1976

Dear Bill:

As you know the President is committed to having his Aviation Regulatory Reform bill introduced in Congress on the first day that it returns, January 4, 1977.

I understand that John Barnum and his Task Force have almost completed their revision and updating of the President's Aviation Act and that it needs only your approval.

Since we must have the President's approval on this bill before he leaves in mid-December, it is essential that I have the revised bill here by close of business Tuesday, December 7. Hopefully, when you send the bill, all issues will have been resolved. However, if there are unresolved issues at that time, the differences should be set forth and alternative draft legislative language provided for each option.

While I know that this is a tight schedule, I am confident that you will be able to meet it.

Sincerely,

James M. Cannon
Assistant to the President
for Domestic Affairs

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The Honorable William T. Coleman
Secretary of Transportation
Department of Transportation
Washington, D.C.

ACTION

DOMESTIC COUNCIL

FROM:

John Barnum

SUBJECT:

Draft of new aviation reform bill

Date: 12/7 [1976]

COMMENTS:

Leach informs me that he has a copy of the bill and is working with OMB and Schmults on "technical" review. He hopes to achieve consensus on the bill's contents internally before circulating it.

Therefore, he would like you to hold onto it for a day or two before doing anything with it.

O.K.?

A.

Verbal OK
12/8

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ACTION:

Date:

THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

Transportation

DEC 7 1976

Mr. James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D. C.

Dear Jim:

I am enclosing a draft of a new aviation reform bill. This bill is a product of the Task Force's efforts to date. There are still a few items in the bill that need further discussion within the Task Force. In addition, we are considering adding a provision to allow carriers by a date certain to fly nonstop between all points listed in their certificates. A copy of this provision is also enclosed.

Sincerely,

John

John W. Barnum

Enclosures

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12079

THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

DEC 7 1976

Mr. James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D. C.

Dear Jim:

I am enclosing a draft of a new aviation reform bill. This bill is a product of the Task Force's efforts to date. There are still a few items in the bill that need further discussion within the Task Force. In addition, we are considering adding a provision to allow carriers by a date certain to fly nonstop between all points listed in their certificates. A copy of this provision is also enclosed.

Sincerely,

/S/ JOHN W. BARNUM

John W. Barnum

Enclosures

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Brief Summary of Major Provisions of
Aviation Act of 1977

Entry Changes

1. Those taking effect upon enactment:

   a. Policy Declaration - emphasizes competition
   b. Procedural Expedition - entry cases must be decided within months
   c. Restriction Removal - CAB must remove all restrictions by the end of 1979; removal discretionary until then
   d. Burden of Proof - burden is reversed and public convenience and necessity defined
   e. Commuter Exemption - raised

2. Taking effect January 1, 1980:

   a. Dormant Authority - person can apply for dormant routes

3. Taking effect January 1, 1982:

   a. Discretionary Authority - any person can choose four additional pairs of points not awarded in last two years, with 4,000 mile maximum total for certificated carrier, 2,500 miles for others.

Rate Changes

1. Immediately, carriers may raise rates 10 percent; lower rates as long as not predatory (i.e., below "direct costs").

2. After January 1, 1982, carriers can raise rates 20 percent a year; lower rates as long as not predatory.

Mergers

1. After January 1, 1982, Board loses jurisdiction and Attorney General applies balancing test.

Capacity Agreements

1. Board, for domestic air transportation, may approve capacity agreements but only in national emergency conditions.

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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 1977."

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 of such Act is amended --

(a) by striking out paragraphs (35) and (36);

(b) by redesignating paragraphs (13) through (32), (33) and (34) and (37) and (38) as paragraphs (15) through (34), (36) and (37), and (38) and (39), respectively; and

(c) by inserting in the appropriate places the following new paragraphs:

"(13) 'Charter air transportation' means charter trips, including inclusive tour trips of one or more stops in air transportation."

"(14) 'Charter trip' means air transportation performed under regulations prescribed by the Board in which the entire capacity or a substantial portion of the capacity of an aircraft has been engaged for the movement of persons, property, or mail by one or more persons,

each of whom has engaged at least 20 seats or an equivalent portion of the capacity other than seats on such aircraft. Such regulations shall not be unduly restrictive and shall not be more restrictive in terms of accessibility or flexibility than the regulations regarding charter transportation in effect on January 1, 1977."

"(35) 'Scheduled air transportation' means flights in regular route service which are not charter trips."

Declaration of Policy

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 unfair or

deceptive practices;

"(c) The need to coordinate transportation by air carriers;

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

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

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

"Injury to a competitor is not inconsistent with the public interest or public convenience and necessity unless the Board also finds that its effect would frustrate one or more of the foregoing objectives."

"In applying these policies to foreign air transportation, the Board shall take into account any special factors or circumstances that it finds affect such transportation."

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 memorandum protesting or supporting 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 nine months of the date such 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 six months of such enactment. Applications filed within six months of the date of enactment must be disposed of within twelve months of the date of applications.

"(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."

Restriction Removal

SEC. 6. (a) Paragraph 401(e)(3) of such Act is amended by striking the term "supplemental" and inserting in lieu thereof the term "charter".

(b) Paragraph 401(e)(4) is amended by striking "; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section".

(c) Subsection 401(e) of such Act is amended by adding at the end thereof the following new paragraph:

"(7) After the effective date of this paragraph, and prior to January 1, 1980, upon application of any air carrier seeking removal of any term, condition, or limitation attached to its certificates to engage in interstate or overseas air transportation or upon its own initiative, the Board within 90 days of any such application or initiative shall eliminate any such term, condition, and limitation which is obsolete or inconsistent with the criteria set forth in subsection 102 of this Act . On flights operated in foreign

air transportation, an air carrier may engage in interstate transportation between any United States co-terminal points named in its certificate for such foreign air transportation.

"(8) After December 31, 1979, any term, condition or limitation attached to a certificate to engage in interstate or overseas air transportation shall be null and void."

Entry

SEC. 7. (a) Section 401(d) is amended as follows:

"Issuance of Certificate"

"Interstate and Overseas

"(d)(1) In the case of an application for a certificate to engage in scheduled or charter interstate or overseas air transportation the Board shall issue a certificate authorizing the whole or any part thereof (or, in the case of an application for a temporary certificate, for such period or periods as the Board may specify) if it finds that the applicant is fit, willing, and able properly to perform such transportation, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, unless a complainant establishes and the Board finds (1) that the complainant is providing air transportation between points which the applicant proposes to serve; (2) that performance of the proposed transportation

is not consistent with the public convenience and necessity as defined by section 102; and (3) that the performance of the proposed transportation will cause substantial injury to the complainant.

"Dormant Authority"

"(2)(A) Beginning on January 1, 1980, if an air carrier has held unrestricted nonstop authority to engage in scheduled interstate or overseas air transportation between any two points listed on its certificate and exercised that authority by providing such transportation pursuant to published flight schedules for a minimum of five round trips per week for at least 180 days during the immediately preceding 12-month period, upon application the Board shall issue a certificate without restrictions authorizing such transportation to any applicant, that is fit, willing, and able properly to perform such transportation, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Pursuant to this paragraph, for any pair of points the Board may not issue certificates in excess of the number of certificates than have been issued pursuant to other paragraphs of this subsection and which are not being used as provided in the first sentence of this paragraph.

"(B) Upon the filing of any such application, the Board shall promptly give 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 person seeking the same authority pursuant to this paragraph shall file an application for such authority within 30 days of the date on which notice of the initial application was published. If an additional application is not received within the 30-day period, and if the initial applicant holds a certificate under this subsection, the Board shall issue its final order granting the authority within 60 days of the date on which notice of the application is published. If more than one application has been filed for the same authority, or if any applicant does not hold a certificate under this subsection, the Board shall issue its final order in accordance with the procedures and dealines set forth in section 401(c).

"Discretionary Authority"

"(3) Beginning on January 1, 1982, any person may apply in each calendar year to the Board under this paragraph. Upon the filing of any such application, the Board shall promptly give 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 and unless the Board shall find the applicant is not fit, willing, and able, the Board within sixty days of

such application shall issue a certificate to engage in nonstop scheduled air transportation between any four pairs of points by the applicant except as follows:

"(A) For any air carrier certificated by the Board under any section of this Act which has operated pursuant to that authority for at least one year and any intrastate air carrier engaging in intrastate air transportation which is certificated or licensed by a State regulatory authority which operated in excess of one hundred million available seat-miles in scheduled passenger air commerce in the previous calendar year, the cumulative air miles between all the points chosen by any applicant during any one calendar year may not exceed four thousand statute miles.

"(B) For all others, the cumulative air miles between all the points chosen by any applicant during any one calendar year may not exceed 2,500 statute miles.

"(C) In the event that in any one calendar year, the Board receives within thirty days of an initial application for a pair of points other applications for that pair pursuant to this paragraph, the Board shall select only one applicant to serve such pair and it shall make its selection in conformity with section 102 within 120 days of the first such application received in that calendar year.

"(D) An applicant pursuant to this paragraph may not apply for any pair of points for which a certificate has been granted within the preceding two calendar years; and

"(E) An applicant under this paragraph may specify alternative choices which the Board must consider should the applicant's original choices not be granted."

"Foreign Air Transportation"

"(4) In the case of an application for a certificate to engage in foreign air transportation the Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application (or, in the case of an application for a temporary certificate, for such periods as the Board may specify) if the applicant establishes and the Board finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity.

"Commuter Air Transportation"

"(5) Any air carrier that engages in interstate air transportation solely with aircraft having a capacity of less than fifty-six passengers or 18,000 pounds of property shall not be required to obtain a certificate 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), and (d), or 412, except for the provisions regarding joint fares and through rates."

(b) 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 or similar restrictions on any new certificates or amendment to any existing certificate.

Abandonments

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

"Termination or Suspension of Service

"(j)(1) An air carrier may not terminate any interstate or overseas air transportation service required by its certificate of public convenience and necessity except upon a minimum of 90 days notice filed with the Board and served upon each community directly affected by such termination. If the Board in accordance with its regulations after complaint or upon its own initiative determines that a termination will involve the loss of essential air service, the Board may suspend such termination for a period not to exceed 360 days after notice is filed with the Board to allow arrangements to be made

for alternative service. The Board may, by regulation or otherwise, authorize such temporary suspension of service as may be in the public interest. Any air carrier that provides service pursuant to the Board's authority to suspend termination shall be reimbursed by the Board for any losses incurred by the carrier by reason of such suspension. The loss shall be the fully allocated costs incurred by the carrier in providing the service (including a reasonable return on investment) less the revenues received by the carrier in providing the service.

"(2) An air carrier may not abandon any route, or part thereof, for which a certificate to engage in foreign air transportation has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest.

Federal Preemption

SEC. 9. Title I of such Act is amended by adding at the end thereof the following new section:

"Federal Preemption

"SEC. 105. No State or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States, shall enact any law,

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regulations, or standard relating to rates, routes, or services in interstate, overseas, or foreign air transportation or the transportation of mail by aircraft."

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 suchedules, and all charges 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. Effective January 1, 1982, Section 408 is amended to read as follows:

"Filing Required

"(a) Every person desiring to engage in the following transactions shall file a notification of such transaction with the Attorney General, containing such information as the Attorney General by regulation may require, at least 30 days prior to the effective date of such transaction:

(1) The consolidation or merger, of the properties, or any part thereof, of two or more air carriers, or of any air carrier and any other common carrier or any other person engaged in any other phase of aeronautics, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) The purchase, lease, or contracting to operate the properties, or any substantial part thereof, or any air carrier, by any other air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any phase of aeronautics;

(3) The purchase, lease, or contracting to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics, by any air carrier or person controlling an air carrier;

(4) the acquisition of control of any air carrier in any manner whatsoever, by any other air carrier or any person controlling an air carrier, any other common carrier, any person engaged in any phase of aeronautics, or any other persons; or

(5) The acquisition of control of any person engaged in any phase of aeronautics otherwise than as an air carrier, by an air carrier or person controlling an air carrier.

Power of the Attorney General

(b) If the Attorney General reasonably believes that a transaction which is the subject of a notification filed pursuant to subsection (a) may violate the antitrust laws, he shall notify the Board, the parties to the transaction, and other interested persons of this fact within 30 days. If such notice is given the transaction shall be stayed for 60 days or until the disposition of any proceedings brought by the Attorney General. Within 60 days following notice by the Attorney General he may institute a suit for relief under the antitrust laws in an appropriate district court.

Procedure

(c)(1) In a suit brought by the Attorney General pursuant to subsection (b), it shall be a defense that the anticompetitive effects of a transaction which would otherwise violate Section 1 of the Act of

July 2, , 1890, as amended (Sherman Act), 15 U.S.C. § 1, or Section 7 of the Act of October 15, 1914, as amended (Clayton Act), 15 U.S.C. § 18, are outweighed by the probable effect of the transaction in meeting the transportation convenience and needs of the communities or regions or areas to be served, considering all aspects of the transaction and related transactions, and that such transportation conveniences and needs probably would not be satisfied by any less anticompetitive alternative. In determining the line or lines of commerce affected by the transaction, the anticompetitive effect of the transaction, and the transportation convenience and needs of the community or communities to be served, substantially equivalent forms of existing or potential air or other transportation in the geographical market shall be given appropriate weight. The Attorney General shall bear the burden of proving the anticompetitive effects of the transaction, and the proponents of the transaction shall bear the burden of proving that the transaction meets the transportation convenience and needs of the community or communities to be served and that such convenience and needs probably would not be satisfied by any less anticompetitive alternatives.

(2) In any action brought by the Attorney General pursuant to this subsection, the Board may appear as a party of its own motion and

as of right and be represented by its counsel and the Secretary of Transportation may 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.

(3) 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).

(4) 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.

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Certificates

(d) If any transaction specified in subsection (a) goes into effect, the Board shall issue as a matter of course any certificates required by section 401. Nothing in this section, however, shall be construed to limit the authority of the President granted by section 801 with respect to certificates for foreign air transportation.

Exemptions

(e) The Attorney General may by regulation determine that a class of transactions specified in subsection (a) does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoliy and does not tend to restrain competition. Such a class of transactions shall be exempt from the premerger notification provision of paragraph (a).

(f) The Attorney General may, in individual cases, terminate the waiting period specified in paragraph (b) and allow any person to proceed with any transaction subject to this section, and promptly shall cause to be published in the Federal Register a notice that he does not intend to take any action within such period with respect to such acquisition.

SEC. 12. Effective January 1, 1982, the Act of October 15, 1914, as amended, commonly known as the Clayton Act, is amended by

(a) Deleting the words "Civil Aeronautics Board where they appear in the sixth full paragraph of Section 27, 15 U.S.C. § 18; and

(b) By deleting the words "in the Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938"; where they appear in Section 11(a), 15 U.S.C. § 22(a).

Agreements

SEC. 13. Section 412 is amended by striking the heading and inserting the following:

"Pooling and Other Agreements in Foreign Air Transportation

"Filing of Agreements in Foreign Air Transportation Required";

(b) Section 412(a) is amended by inserting the term "foreign" between the terms "affecting" and "air transportation";

(c) Section 414 of such Act is amended by striking "Sections 408, 409 or 412" and inserting "Section 412" in lieu thereof.

Capacity Agreements in National Emergencies

SEC. 14. The Act is amended to add the following new section and to renumber the subsequent sections accordingly:

"Capacity Agreements in National Emergencies"

"SEC. 413. Air carriers may apply to the Board for the approval of capacity agreements. The Board may approve such an agreement only if (1) it is needed to avert or ameliorate a major nationwide disruption of scheduled air carrier service; (2) such disruption is or will be produced by drastic, sudden and unforeseen changes affecting the industry as a whole but not originating within the industry; (3) the

capacity agreement is the least-anticompetitive way to achieve the desired object; and (4) the agreement is limited to a period of not more than one year and is not renewable. Any agreement approved by the Board pursuant to this section shall be exempt from the antitrust laws.

Repeal of Section 409

SEC. 15. Section 409 is stricken in its entirety.

Rates

SEC. 16. Section 1002 is amended by:

(a) Amending paragraph (d) to add the following new proviso: "Provided, That (i) except in monopoly markets the Board may not find any rate, fare, or charge to be unjust or unreasonable on the basis that it is too high unless the rate, fare, or charge is, with respect to determinations before January 1, 1982, more than ten percent higher or, after that date, more than twenty percent higher than the rate, fare, or charge in effect for the service at issue 1 year prior to the filing of the rate, fare, or charge; and (ii) the Board may not find any rate, fare, or charge to be unjust or unreasonable on the basis that it is too low unless, for the service at issue, the rate, fare, or charge is predatory. A rate above the direct costs of the service in issue may not be found predatory. 'Direct Costs' means the direct operating costs of providing service

to which a rate, fare, or charge applies, and shall not include such items as general and administrative expenses; depreciation; interest payments; 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."

(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."

(d) Amending paragraph (g) by striking the last period and inserting the following provision: "Provided further, That the Board may not suspend any proposed tariff because of the proposed rate, fare, or charge stated therein unless the Board is empowered to find such proposed rate, fare, or charge unlawful."

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

"(i) Until January 1, 1985, 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, or charges for interstate or overseas air transportation, or the classification, rules, regulations, or practices affecting such rates, fares or charges, and the terms and conditions under which such through service shall be operated."

Postal Service Contract Authority

SEC. 17. 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 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

SEC. 18. (a) Section 406(c) is amended to add the following paragraph:

(2) An air carrier is not eligible to receive payments pursuant to clause (3) of subsection (b) of this section unless that carrier was actually receiving payments pursuant to that clause on January 1, 1977.

(b) Amend section 401(j) to insert the following as 401(j)(3):

"3(a) The Board shall ensure that each point receiving interstate scheduled air transportation on January 1, 1977, by an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d)(1) of the Act and named in such certificate shall receive essential air transportation until January 1, 1987, in accordance with the following conditions:

1. Within 280 days of the enactment of this paragraph, the Board shall determine by rulemaking general definitions of essential service, including levels of such service and procedures to be used with respect to this paragraph.

2. Any community referred to in this paragraph may apply to the Board for assistance if that community believes it will not receive essential air transportation without assistance pursuant to this paragraph. Within a reasonable time of application the Board shall determine what is essential air transportation for the purpose of this paragraph for the applicant, after considering the general definition of essential air transportation, the needs of the community, the availability and practicality of alternative means of transportation to the community, the frequency of service and type of equipment economically appropriate

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to the routes, the cost of such service, and the integration of such service with air transportation system. In determining essential air transportation the Board shall consult with the community, the Governor of the State and the Secretary of Transportation.

3. If the Board determines that an applicant will not receive essential air transportation the Board shall enter into a service agreement for a period no longer than three years with an air carrier to provide essential service pursuant to this paragraph. In any negotiation pursuant to this section no preference shall be given to a carrier because of prior service under this paragraph.

4. The service agreement shall specify the maximum rates, minimum service, frequency, schedules and equipment to be used in providing the service.

5. Agreements entered into pursuant to this paragraph shall be in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and the regulations thereunder except those provisions of such Act the Board determines are not consistent with the purposes of this paragraph. No increase in an agreement price may be made for the benefit of an air carrier, except for increases in costs attributable to Federal governmental action. The

Board shall require in each agreement reasonable assurance of reimbursement for the cost of obtaining another air carrier to provide the air servich which the defaulting carrier undertook to provide.

6. The Board shall pay the costs of the agreements entered into pursuant to this paragraph except as indicated in clause (7) below.

7. No less than annually, the Board shall determine the average daily enplanements of points receiving assistance pursuant to this paragraph. If the Board determines that any point has not enplaned on average more than five passengers per day during any year while receiving assistance pursuant to this paragraph, the Board may not, after one year from the date of such determination, pay more than 50 percent of the agreement cost of providing service pursuant to this paragraph. If the Board does not receive sufficient assurance within 90 days of the notification to the affected parties that the remaining agreement costs will be supplied by any person (including State or local governments) other than the Board, the Board's obligation to provide service under this paragraph shall cease.

8. Air transportation provided pursuant to this paragraph shall be subsidized only as provided in this paragraph, and

shall not be eligible for mail subsidy payments pursuant to section 406(b), clause (3).

"(b) The Board may provide air service required by this paragraph with any air carrier the Board finds to be fit, willing, and able to perform the service. The Board may not require such carrier to obtain a certificate of public convenience and necessity from the Board as a condition of providing such service.

"(c) The Board shall not inhibit the provision of non-subsidized services nor shall the Board extend, negotiate or renew contracts for service to communities where essential air transportation will otherwise be available.

"(d) Scheduled air service provided pursuant to this paragraph may be discontinued by the Board prior to 1987 only in exceptional circumstances if continued operation is not practical or the need for the service has declined to the point that continued operation is not in the public interest.

"(e) It is the objective of this paragraph to phase out all payments pursuant to clause (3) of subsection (b) of section 406 by January 1, 1987. By December 31, 1981, the Board shall report to Congress on the progress in meeting this objective, with recommendations for appropriate legislative action if needed.

"(f) The Board is empowered to promulgate regulations and orders necessary to carry out this paragraph."

Off-Route Charters

SEC. 19. Section 401(e)(6) is amended to read as follows:

"(6) Any air carrier may perform charter trips without regard to the points named in its certificate, pursuant to regulations prescribed by the Board except the Board may not in any way limit the number of miles operated under this paragraph."

Exemption Authority

SEC. 20. Paragraph 416(b)(1) of such Act is amended to read as follows:

"(b)(1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any person or class of persons if it finds that the exemption is not inconsistent with the public interest."

Additional Provision

"On or after January 1, 1981, an air carrier engaged in interstate scheduled air transportation may engage in nonstop scheduled air transportation without regard to any certificate limitations or other restrictions or limitations between any points in the United States named in its certificate or certificates on January 1, 1977."

[This provision would be inserted after Section 6.]

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