

Journal of Air Law and Commerce

Volume 21 | Issue 2

Article 6

1954

Review of National Aviation Policy by the Air Coordinating Committee

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Review of National Aviation Policy by the Air Coordinating Committee, 21 J. AIR L. & COM. 212 (1954)
<https://scholar.smu.edu/jalc/vol21/iss2/6>

This International Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

FEDERAL REVIEW

REVIEW OF NATIONAL AVIATION POLICY BY THE AIR COORDINATING COMMITTEE¹

STATEMENT OF ACCEPTANCE BY PRESIDENT
DWIGHT D. EISENHOWER, MAY 26, 1954²

BECAUSE the last comprehensive review of United States Aviation policy was completed approximately six years ago,³ current guidance is critically needed by the aviation industry, by government and by the public.

On September 23, 1953, I requested that the Honorable Robert B. Murray, Jr., as Chairman of the Air Coordinating Committee, direct that committee to review and, for my consideration, make recommendations on United States aviation policy. The report was prepared with the help of appropriate representatives of the aviation industry, local governments and other groups directly concerned with aviation matters. The Committee has accomplished this task in a fashion that could make its report a milestone in the progress of American aviation.

The report has been presented to me, and reflects this Administration's central objective in this field — to strengthen American aviation. In order to carry out this broad policy, the Committee has made certain specific recommendations in such phases of aviation as air transport routes and subsidy, air cargo, airports and airways, aviation safety, mobilization planning, and some aspects of aircraft manufacturing. In each case, the Committee has been guided by the desire to promote the most effective government relationship with the civil aviation industry and to gain the greatest public benefit from every dollar of Government aid expended.

I shall use this report as a guide in the future consideration of questions related to the subject of civil aviation and in making appropriate recommendations to Congress. The review is released for general distribution and information.

INTRODUCTION

The unique advantages of aviation are particularly well adapted to the needs of our times. The capabilities of the airplane permit us to surmount our geographical barriers and to measure intercontinental distances by hours. The airplane has become an essential instrument not alone for our economic development, but also for our defense needs and our position of world leadership.

The role of aviation is dynamic. The versatility of the airplane is reflected

¹ Due to the length of the Review the only full texts set forth are the Introduction, the Sections on Air Transport and International Aviation and Federal-State-Local Relationships.

² White House Press Release, May 26, 1954.

³ Survival in the Air Age, Jan. 1, 1948, See JRL. OF AIR LAW & COM. 69 (1948) and National Aviation Policy, a Report of the Temporary Congressional Aviation Policy Board, March 1, 1948, See 15 JRL. OF AIR LAW & COM. 208 (1948).

in the many forms of activity which comprise our aviation industry. Commercial air transport services, personal flying, business and agricultural aviation — all have become essential parts of our modern, everyday way of life. The special importance of aviation for military purposes is known to all. However, this review does not include those aspects of aviation which are entirely military.

The public interest requires that the benefits of air transportation in all its forms be widely available at low cost. It also requires the progressive development of new aviation services, taking maximum advantage of the technological progress of the aeronautical sciences.

The American people have accepted the airplane as a primary means of travel. Within the space of one generation, aviation has become a major force in passenger transportation, and is rapidly developing a wholly new medium for the swift movement of cargo within our Nation and abroad. The phenomenal growth of public acceptance of aviation has built a major new industry to strengthen further our National economy.

This year our scheduled airlines are flying in excess of 30 million passengers within the United States and its Territories, and almost 3 million to and from foreign countries. To provide today's great scope and volume of services our airlines operate a fleet in excess of 1,400 modern transport planes. This is being expanded by the early delivery of more than 170 additional planes. The assets of our commercial airlines in aircraft and supporting facilities exceed \$1 billion. To fly and maintain this fleet, and to provide the needed services to the public, our airlines require the efforts of more than 105,000 highly skilled persons. United in labor and management, they receive wages and salaries which account for the largest single share of the industry's annual operating expense of more than \$1 billion.

Civilian air transportation is equally vital to our military capabilities. Its organization, its skilled personnel, its aircraft and supporting facilities all are ready to provide essential logistic support to our combat forces and to maintain the high speed transport required by a wartime industrial effort. More than 300 of its most efficient aircraft have been earmarked and modified for immediate world-wide military use if the need arises.

Abroad, our international routes not only have provided arteries for our world commerce but also the tangible evidence that Americans at work are people of constructive achievement and good will.

In determining policies appropriate to air transportation, it must be kept in mind that this is an industry affected with a public interest. The responsibility of the Government, however, is not to carve out some predetermined role for air transportation and then attempt to force the industry into such development. Rather, the Government must provide a general background of sound regulatory and promotional policies within which the industry itself will have the greatest possible opportunity for finding its own proper mission in competition with all other forms of transportation.

Past Federal assistance has accelerated the development of this industry. However, we are now at the point where the industry in large measure is self-sufficient. The goal of Federal policies should at this time be directed to the development of economically healthy carriers, capable of financing with private resources their own continuing growth.

If appropriately timed in relation to the industry's stage of economic development, the orderly withdrawal of Federal assistance can actually represent an important force, leading to the long term strengthening of the industry.

There is a large and important group of aircraft operators who live and provide air services in almost every community in the United States. This

group of more than a half million licensed pilots operates an active fleet of about 54,000 airplanes of all types and sizes. Equally important are the associated ground services and their personnel. This large segment of civil aviation is an essential part of our mobilization potential for civil and military defense. It has developed without direct financial assistance from the Federal Government.

Private flying for sport or pleasure was once the predominant activity in general aviation. Significantly, this has been surpassed in importance by increasing use of the airplane in connection with industry, agriculture, and general business.

The dynamic increase in business-owned and operated aircraft is an important post-war development. Today, approximately 6,000 business concerns in all fields of industry and commerce operate more than 11,000 aircraft.

Today, the manufacture of aircraft, including engines and equipment, ranks among the biggest industries of our Nation. It is so vast, complex, and diversified that its true magnitude is not easily shown by available statistics. While this industry is now engaged predominantly in the production of military aircraft, its healthy development and that of civil aviation are closely related.

The Government's basic policies related to civil aviation have been reviewed in the light of our National objectives. In some areas of interest, there is a need for further review. In stating these basic policies, detailed courses of action have not been emphasized. Many can be carried out within the framework of existing laws; in other cases, new legislation will be required.

Looking ahead, the past is prologue. Aviation must continue expanding our air services and their supporting base to keep pace with our economic growth and our responsibilities as a principal world Nation. It must maintain a hard-won leadership in the aeronautical sciences and assure a high level of productive capacity. For this great task, the resources and initiative of private enterprise are essential.

AIR TRANSPORT

Subsidy

When the present airline subsidy program was started in 1938, air transportation was an infant industry. Safety and regularity were relatively poor. The scope of operations was small. Competitive impact on other forms of transportation was minor. In 1938, domestic air passenger traffic was only about five percent of the level of rail pullman traffic. The fleet of all domestic scheduled airlines consisted of only 260 planes, of which more than half were smaller than the DC-3.

Moreover, the industry had recently gone through a period of considerable instability, and its financial position was weak. The units comprising the air transportation systems were not sufficiently strong, nor was the public acceptance of air transportation sufficiently developed, to attract the financial support necessary to permit the rate of growth needed in the public interest.

To meet this situation, Congress authorized a subsidy program of liberal concept. Under this program, subsidy could be provided to meet financial needs experienced by the carriers under "honest, economical and efficient management." In effect, the Government indicated that it stood prepared to take on a major part of the economic risks normally borne by private management.

Since 1938 the industry has made great technical and economic progress. Domestic air passenger traffic has expanded thirty-fold. From its original minor share of the first class travel market, it has now reached a level of about 85 percent in excess of rail pullman traffic. For some years, the largest airlines have outranked the largest railroads in gross passenger revenues. In view of this progress, it is appropriate to reconsider the subsidy concepts of 1938 in the light of the industry's present position and future outlook.

While air transportation is not yet fully developed, it surely can no longer be regarded as an "infant industry." It has by now reached a stage of economic maturity where an adequate future rate of development is no longer primarily dependent upon federal subsidy assistance. Federal subsidy support is, of course, still required to supplement private resources to assure the provision of some particular services. In formulating sound future subsidy policy, it is necessary to recognize the different position of domestic and international operations. Domestically, a major part of the trunkline industry has shown its capability to operate without subsidy. Furthermore, with suitable strengthening of the industry's route structure and organization, the basic economic potential now exists to permit a greater degree of self-sufficiency than has thus far been achieved. Internationally, special operational and other factors may require continued subsidy for some time to come.

While recognizing the continued need for subsidy of some existing and some possible future services, the Federal Government should, at this time, move as rapidly as possible to terminate eligibility for subsidy for any segments of the industry which are now, or can readily be made, self-sufficient.

Basic Principles for Future Subsidy Policy. The national interest in promoting air transportation must take account of the parallel national interest in the adequacy and economic soundness of all forms of transportation. This principle has assumed increasing importance as air transportation itself has grown in size and in competitive impact. In the long run, the public can best be assured of maximum economy and efficiency of the over-all transportation system if each form of transportation is required to compete with other forms on the basis of inherent service advantages and true economic costs.

1. AIRLINE SUBSIDY POLICY MUST BE PROPERLY RELATED TO OVER-ALL TRANSPORTATION OBJECTIVES.

Duration. Subsidy limited to a temporary, developmental period can yield important benefits for the public interest, without long-term distortion of competitive relationships with other forms of transportation. During a developmental period, there can be justification for artificially sustaining prices at competitive levels, provided that such levels are reasonably related to attainable future costs. With few exceptions, present air services were authorized initially in the expectation that their subsidy need would, in fact, be of temporary nature. Where actual experience demonstrates that a given operation has no reasonable prospect for economic self-sufficiency in the foreseeable future, the Government must withdraw its support unless there are compelling public interest considerations to the contrary.

In some cases (mainly in international operation) it may be necessary to continue subsidy for an indefinite period to preserve a service which is essential in the national interest, and which cannot be provided feasibly on a non-subsidized basis. However, in each case it must be very carefully considered, not only whether the service itself is sufficiently essential to justify indefinite federal support, but also whether the service can be rendered by other United States carriers with less or no subsidy.

2. IN KEEPING WITH OVER-ALL TRANSPORTATION OBJECTIVES, AIRLINE SUBSIDY SHOULD, SO FAR AS POSSIBLE, BE LIMITED TO STRICTLY TEMPORARY AID, DESIGNED TO DEVELOP NEEDED SERVICES WHICH COULD NOT PROGRESS AT AN ADEQUATE RATE WITHOUT FEDERAL SUPPORT.

Just as surface transportation played a major role in the internal development of this country, aviation now links the United States to its outlying territories to the major economic and political centers of the free world with a system of swift, dependable transportation. The timesaving advantages of aviation are relatively greatest in the long over-water distances of international transportation. The needs of commerce, foreign relations, the postal service, and defense attach a high degree of national interest to the development and maintenance of adequate United States flag services on extensive international routes.

The attainment of self-sufficiency will probably be retarded in international operations for many reasons beyond the control of the industry or the government. It is particularly important therefore to keep international subsidy requirements as low as possible through the development of the most economic route pattern and the avoidance, or elimination where it now exists, of uneconomic competition between United States flag services.

3. IT IS RECOGNIZED THAT FOREIGN COMPETITION AND OTHER SPECIAL FACTORS WILL PROBABLY PROLONG THE PERIOD DURING WHICH SUBSIDY WILL BE REQUIRED FOR INTERNATIONAL AIR TRANSPORTATION OPERATIONS.

Every form of transportation involves services which have varying degrees of economic strength. Normally, however, in forms of transportation where subsidy is not available, the carriers themselves support their unprofitable services through earnings derived on their profitable routes. This is consistent with the normal public utility concept in which the furnishing of needed, but unprofitable, service is part of the obligation assumed by a carrier in exchange for the franchise it receives on its more profitable routes.

The Government's main interest in subsidizing air transportation is to assure service adequate for the public and national interests rather than to preserve any individual carrier. Consequently, it would be unsound to provide subsidy indefinitely to support independent operations of uneconomical scope or character, if the service in question can be provided adequately, and without subsidy cost, as part of a stronger route system.

The construction of route systems which combine strong and weak segments will spread to the less matured areas of air transportation the benefits attained as the result of years of subsidy support in the more established markets. As a corollary to this policy, the economic strength of the more established markets must be preserved to help support less economical services, and must not be dissipated by the operation of excessive competitive service.

4. WHERE THE PUBLIC INTEREST REQUIRES THE CONTINUED MAINTENANCE OF UNECONOMICAL SERVICES, INCREASED EMPHASIS SHOULD BE PLACED UPON THE INCLUSION OF SUCH OPERATIONS WITHIN ROUTE SYSTEMS THAT ARE CAPABLE OF ABSORBING THEIR COST WITHOUT SUBSIDY.

Withdrawal of Subsidy Support. Under the Civil Aeronautics Act, a carrier remains potentially eligible for renewed subsidy even after it has achieved self-sufficiency, and has currently stopped receiving subsidy payments. There is no sound reason why air transportation, any more than any other industry in the nation's economy, should enjoy permanently the contingent protection against future loss that is afforded by this eligibility to seek resumed subsidy payment. Such protection is not conducive to maximum

vigor and economy of the industry's management and may, in fact, retard the long-term progress of the industry.

To ease the transition to a subsidy free status for air carriers, temporary financial relief including loans, loan guarantees, or other interim measures may be justified in lieu of outright subsidy grants to meet situations in which these carriers face temporary financial difficulties, and are unable to obtain private credit on reasonable terms.

5. WHEN ANY CARRIER OR GROUP OF CARRIERS ACHIEVE THE BASIC CAPABILITY FOR SUSTAINED SELF-SUFFICIENCY, IT SHOULD BE REMOVED FROM THE PROTECTION OF SUBSIDY ELIGIBILITY.

The Government must have sufficient flexibility to adjust its subsidy program to current conditions, and to withdraw subsidy support where it is no longer warranted in the national interest. The Government should not be obligated to furnish subsidy indefinitely merely because a route certificate remains in force.

A substantial part of the existing domestic route pattern was automatically certificated in 1938, under the Grandfather Clause, without review of its economic justification. Conditions affecting a given route may prove in actual experience to be vastly different than originally contemplated when the certificate was first issued. The public use of the service may be very much lower, and subsidy cost much higher, than initially anticipated. A given route structure may prove less suited economically to more modern equipment. In international operations, foreign flag competition has increased substantially. For these or other reasons, actual operations may generate a subsidy cost that is disproportionate to the benefits, even though the subsidy support of the route may have seemed justified when first authorized. Under such circumstances, continuance of subsidy support would not be in the national interest.

Equity to the carriers requires that this principle be applied in a reasonable and orderly manner. Subsidy support should not be withdrawn abruptly, or before a carrier has had a reasonable developmental period within which to demonstrate its ability to operate on a self-sufficient basis.

6. THE EXISTENCE OF A ROUTE CERTIFICATE SHOULD NOT IN ITSELF OBLIGATE THE GOVERNMENT TO CONTINUE SUBSIDIZING A SERVICE, IF IT IS DETERMINED THAT THE COST HAS BECOME DISPROPORTIONATE TO THE PUBLIC BENEFITS.

The problem described in the preceding paragraphs can be minimized in the future if the decision to authorize a route includes a limitation on the amount and duration of subsidy to be provided for such operation. It would thus be made clear that the route is considered justified, provided its cost to the Government does not exceed the specified amount. In the event that it becomes clearly impossible for the carrier to survive with that amount of subsidy, it would then be necessary to apply for reconsideration of the route certificate itself. That would provide the Government an opportunity to decide, on the basis of current conditions, whether the public interest in the route is sufficient to justify the higher level of subsidy cost.

7. IN THE FUTURE, THE GOVERNMENT'S MAXIMUM COMMITMENT FOR SUBSIDIZING ANY NEW OR RENEWED ROUTE SHOULD BE LIMITED, BOTH AS TO AMOUNT AND DURATION, AT THE TIME THE ROUTE AUTHORIZATION IS GRANTED. IF IT BECOMES IMPOSSIBLE FOR A CARRIER, WITHIN ITS AUTHORIZED SUBSIDY, TO PROVIDE THE SERVICE FOR WHICH IT WAS CERTIFICATED, IT WOULD THEN BE NECESSARY FOR SUCH CARRIER TO SEEK RECONSIDERATION OF ITS ROUTE CERTIFICATE.

Legislation should provide a basis for a more effective budgetary review of this program by the President and the Congress. Such review should consider only the general level and direction of the program, and should leave the Civil Aeronautics Board free to administer the authorized subsidy level in accordance with the quasi-judicial procedures of the Civil Aeronautics Act.

If such annual budgetary review were to result in year-to-year uncertainty regarding the subsidy available to each individual carrier, the consequent instability would adversely affect the carriers' opportunity to strengthen their operations. The techniques for reconciling effective budgetary control with a reasonable stability of subsidy support need to be carefully explored.

One possible method would be the administration of subsidies in the form of fixed-term contracts, in which the Board would specify the maximum amount of the Government's subsidy commitments. The President and the Congress, could then control, through the normal budgetary process, the total level of contractual authority to the Board.

8. LEGISLATION SHOULD PROVIDE A BASIS FOR THE MORE EFFECTIVE CONTROL BY THE PRESIDENT AND THE CONGRESS OF THE AGGREGATE LEVEL OF SUBSIDY, WHILE AT THE SAME TIME ASSURING INDIVIDUAL CARRIERS OF REASONABLE STABILITY OF SUBSIDY SUPPORT DURING THEIR PERIOD OF SUBSIDY ELIGIBILITY.

The present time is appropriate for the adoption of a positive program for the orderly transition of the domestic industry to a self-sufficient basis. There are a number of factors which support this conclusion. Reference has already been made to the phenomenal growth and economic development achieved by this industry under the promotional programs which have been in effect for the past 16 years. There has been a sufficient period of actual operating experience to point up the underlying economic characteristics of air transportation, and to determine the types of adjustments that are needed to secure the maximum economic strength in the system.

We believe that reduction of subsidy assistance at this time will provide the most effective stimulus for the type of industry adjustments and operating economies which are needed to strengthen the air transport system. Many of the actions which are required, such as mergers between carriers, must be accomplished by the carriers themselves. So long as subsidy protection is available to the industry, it will have a dampening effect on industry incentive to take needed corrective measures.

9. SCHEDULES SHOULD IMMEDIATELY BE ESTABLISHED FOR THE ORDERLY REDUCTION, AND WITHDRAWAL WHERE APPROPRIATE, OF DOMESTIC AIR CARRIER SUBSIDY SUPPORT.

Routes

When the Civil Aeronautics Act of 1938 was adopted the primary interest of both government and industry was to establish air transportation as an accepted part of the Nation's transportation system. In subsequent years the industry has grown in response to the public needs and developed the potential of air transportation markets. This development has been assisted by substantial subsidy support from the Government. Now that long-haul air traffic is capable of sustaining self-sufficient airline operations, it is appropriate to review the industry's present status and to adopt route policies consistent with its further development.

General Standards for the Development of Air Route Patterns: A carrier's route structure and the amount and type of competition it faces are important factors determining its economic health, potential growth, and

its hope for ultimate self-sufficiency. The most excellent of managements operating the most superior equipment cannot create revenues or development of traffic beyond the inherent capacities of the system certificated to it.

While progress has been made in bringing about stronger domestic route systems through the collective action of government and industry, further improvement is necessary. Under present air route patterns, it is clear that certain carriers cannot be expected to move further along the road to self-sufficiency, or aggressively to promote the development and expansion of air transportation in the markets they serve. Their handicap in terms of financial strength, the productivity of their routes, and the cost at which they can operate is too great.

In air transportation—granting efficient management—the volume of traffic, the average distance between stops, the length of the total trip, and the density of the traffic routes are the important factors affecting unit costs. Only an industry composed of reasonably strong systems can provide the benefits of effective competition.

1. IT SHOULD BE THE CONTINUING POLICY OF THE CIVIL AERONAUTICS BOARD TO ADJUST AND DEVELOP AIR ROUTES WITH THE OBJECTIVE OF ACHIEVING A SELF-SUFFICIENT AIR TRANSPORTATION SYSTEM MADE UP OF UNITS SUFFICIENT IN ECONOMIC STRENGTH TO MEET PRESENT NATIONAL NEEDS AND BE PREPARED FOR SOUND GROWTH AND MODERNIZATION.

Long-range, modern aircraft not only permit the extension of high speed, nonstop operations, connecting points increasingly distant, but their proper exploitation requires the support of terminals generating long-range high load factor operations. Consequently, the technological demands of the aircraft available at any given time are factors in shaping effective route patterns and may for some future period require adjustments of existing route authorizations to permit the maximum benefits to commerce, industry, and the national defense at the lowest practicable costs.

With primary reference to domestic operations, the facilitation of high speed, long-range nonstop operations must of course not be accomplished at the cost of neglect or substantial impairment of services to intermediate points. There is no one solution to the problem of how best to provide area air transportation service, no obvious or immediately applicable formula. The final system may require many separate steps for its accomplishment, including the development of appropriate aircraft for short-haul operations. It is recognized that the solution will in some circumstances require that long-haul trunkline carriers be assigned responsibility for providing services to additional intermediate points, and that they must be required to meet their responsibility for maintaining adequate service to all certificated points. In other cases, however, the solution may be service by self-sufficient area carriers. It is therefore necessary for the industry and the CAB to judiciously evolve the best means of assuring adequate service to small terminals and metropolitan centers.

2. AIR ROUTE PATTERN DEVELOPMENT MUST TAKE INTO CONSIDERATION THE ADVANTAGES REPRESENTED BY CONTINUED TECHNOLOGICAL PROGRESS IN THE FIELD OF AIRCRAFT DESIGN AND PERFORMANCE.

Domestic Trunk Airlines: At present, statistics of the CAB indicate that the bulk of the trunkline industry is operating without direct Federal subsidy. In 1953, direct subsidy was provided to only the three smallest trunklines, which accounted for less than 5 percent of total trunkline traffic. In terms of its inherent economic characteristics, air transportation of trunkline nature has at this time the basic economic strength to permit

sustained self-sufficiency. As now organized, however, the industry is not in a position to take full advantage of this inherent strength.

One of the main problems stems from the size and route patterns of the smallest trunklines, and some of the medium-sized lines. Efficient airline operation requires a route system of adequate size and traffic density to permit effective utilization of modern high-speed, high-capacity equipment. Significantly, the smaller trunklines have been dependent upon subsidy during their entire history of operation. Others, while presently operating on service rates, would have difficulty in sustaining such operations under adverse economic conditions without subsidy assistance. The most effective solution for these carriers can be found through their merger into larger and economically stronger systems.

The Civil Aeronautics Board should encourage the development of suitable combinations of such carriers which would result in a smaller number of systems, capable of self-sustained operations under adverse economic conditions. Even though the number of carriers were thus reduced, the greater strength resulting from merged operations would actually increase the keenness of competition within the industry.

3. PLANS SHOULD BE DEVELOPED FOR CONSOLIDATION OF TRUNKLINES INTO A MORE LIMITED NUMBER OF SYSTEMS, CAPABLE OF SELF-SUFFICIENT OPERATION WHILE CARRYING THEIR FAIR SHARE OF UNECONOMICAL AND DEVELOPMENTAL SERVICE.

The present trunkline route pattern is highly competitive. While it is important to have enough competition to assure the aggressive promotion of services needed by the public, there is a point of diminishing returns, beyond which competition can be self-defeating. Healthy, financially independent carriers can provide the public with better service—and more effective competition—than a larger number of marginal carriers.

For the long-term economic stability of the industry, efforts should be made by the carriers and the Government to determine and correct any clear cases of uneconomical duplication of service. In the consideration of new route applications, particular care should be taken to avoid further duplication of service in the absence of proven substantial public need.

4. THE OPERATION OF UNECONOMIC COMPETITIVE SERVICES SHOULD BE AVOIDED OR ELIMINATED.

Positive action, within the framework of sound route policies, can place the trunkline system in a position where further subsidy support should no longer be necessary. The Government should give all possible encouragement and assistance along these lines, while making it very clear that the industry itself has a primary responsibility for taking needed corrective action. In keeping with the general principles set forth previously, the Government should expedite the route adjustment program, in the light of the schedule to be established for the orderly withdrawal of subsidy eligibility from trunkline operations.

5. THE PROGRAM OF ROUTE ADJUSTMENTS AND MERGERS SHOULD BE EXPEDITED IN THE LIGHT OF THE SCHEDULE TO BE ESTABLISHED FOR THE ORDERLY WITHDRAWAL OF SUBSIDY FROM TRUNKLINES.

Local Service Airlines: The pattern of local air service was established on an experimental basis, principally in the period immediately following World War II. Almost all of the local services have now been in operation for four years or longer; one has been in operation for approximately eight years. During this period, approximately \$100 million in subsidy has already been provided for the support of these operations.

While there is considerable variation among individual local service carriers, and some have a significantly better record than the industry average, the economic experience of such operations has in general failed to live up to original expectations. Many of the feeder carriers have shown only limited progress toward self-sufficiency. For the feeder segment as a whole, subsidies in recent years have represented roughly half of total operating revenues.

The basic economic problem of local service operations stems from the underlying character of their routes, which generally have low traffic density, and involve short-haul operations, with high operating costs and a difficult competitive problem in relation to surface transportation. Various steps can be taken to improve the economic position of local service operations. In particular, routes should be promptly amended to eliminate points which have demonstrated an inadequate traffic potential to justify scheduled air service. There may also be some opportunities to develop improved route systems through mergers between local carriers, or between local and trunk carriers. The carriers and the Government should give immediate attention to corrective action along these lines.

With such adjustments, the carriers should be required to meet a definite schedule for an orderly, phased reduction and eventual elimination of subsidy support. In the absence of exceptional circumstances, if any local service carrier does not continue to make significant progress toward self-sufficiency, in accordance with such schedule, such carrier's operating authority should be terminated. In such case, provision should be made for the continuation of such portions of the service formerly provided by it as are clearly required to meet the public need, through transfer to another carrier capable of providing the service without cost or at substantially reduced cost to the Government. Increasing emphasis should be placed upon the responsibility of carriers possessing strong routes to provide needed service on weak routes.

Such termination of the certificate authorization of a carrier should be accomplished in an orderly manner, and with provision by the Government for the reasonable costs necessarily incident thereto under honest, economical and efficient management.

6. THE ROUTE STRUCTURES AND CERTIFICATES OF THE VARIOUS LOCAL SERVICE CARRIERS SHOULD BE ADJUSTED TO PROVIDE THE MAXIMUM OPPORTUNITY TO IMPROVE THEIR ECONOMIC POSITION, WITHIN THE GENERAL SCOPE OF THEIR INTENDED TYPE OF OPERATION. WHERE CONTINUED AND SIGNIFICANT PROGRESS TOWARDS SELF-SUFFICIENCY IS NOT DEMONSTRATED BY A LOCAL SERVICE CARRIER, ITS OPERATING AUTHORITY SHOULD BE TERMINATED IN AN ORDERLY FASHION. TO THE EXTENT THAT THE SERVICES FORMERLY PROVIDED BY IT ARE CLEARLY REQUIRED TO MEET A PUBLIC NEED, SUCH SERVICES SHOULD BE FURNISHED BY ANOTHER CARRIER CAPABLE OF PROVIDING THE SERVICE WITHOUT COST OR AT SUBSTANTIALLY REDUCED COST TO THE GOVERNMENT. THE PROGRAM OF ROUTE ADJUSTMENTS SHOULD BE EXPEDITED IN THE LIGHT OF THE SCHEDULE TO BE ESTABLISHED FOR AN ORDERLY PHASED REDUCTION AND EVENTUAL ELIMINATION OF SUBSIDY SUPPORT FOR THE LOCAL SERVICE CARRIERS.

Overseas and International Airlines: Services to and within the territories should be carefully reviewed to eliminate uneconomic duplicate service. This review should also determine whether the economics of territorial air transportation can be improved, and the service better adapted to the needs of the territories and Continental United States, by consolidation of individual units into stronger systems.

The President and the Civil Aeronautics Board have an opportunity to perform such a review in pending proceedings embracing service between the Continental United States and its territories and within such territories.

7. BECAUSE OF THE DISTANCES INVOLVED AND LACK OF ADEQUATE HIGH SPEED SURFACE TRANSPORTATION, UNITED STATES TERRITORIES ARE DEPENDENT UPON AIR TRANSPORTATION FOR RAPID COMMUNICATION, BUT IN MANY INSTANCES ARE UNABLE TO SUPPORT SELF-SUFFICIENT AIR TRANSPORT OPERATIONS. UNDER THESE CIRCUMSTANCES, UNECONOMIC DUPLICATION IN SERVICES MUST BE AVOIDED OR ELIMINATED.

The broad national interest aspects of United States policy in the establishment and extension of international routes of U.S. flag carriers necessarily influence route decisions in this area. Service by a U.S. flag carrier on a certain route may be justified on one or more of the various factors which constitute the national interest, and may not be self-supporting.

In large part, the present international route pattern was established in the early postwar period, at a time when there was relatively little experience with the economic characteristics of international air service. At that time, it was not generally expected that foreign flag operations would provide the degree of competition which has actually developed. It was therefore thought necessary to certificate competitive U.S. flag operations for the purpose of assuring adequate attention to the needs of the traveling public, and development of efficient and economical service.

Actual financial experience of international operations has proved to be considerably less favorable than was originally anticipated. In all areas, the intensity and effectiveness of competition has greatly increased. On some routes, traffic has not developed sufficiently to support economical frequency or load factors.

As a general policy, it is desirable in the public interest that competition between U.S. flag carriers be maintained in areas where traffic is sufficiently dense so that competition can be economically supported. However, where such is not the case, it is difficult to justify subsidy expenditure in terms of the public benefits to be derived. Under the present pattern of U.S. flag international operations, no general improvement in the dependence on subsidy support is anticipated in the foreseeable future. In view of this fact, and the continuing increase in the effectiveness of foreign competition, it is necessary at this time and continuously to review most critically the justification for maintaining the present pattern of competition between U. S. carriers on international routes.

8. NATIONAL INTEREST FACTORS THAT MANY INTERNATIONAL ROUTES BE MAINTAINED, DESPITE SUBSIDY REQUIREMENTS. ROUTE DECISIONS IN THIS AREA SHOULD RECOGNIZE THE NECESSITY OF AVOIDING OR ELIMINATING UNECONOMIC DUPLICATION OF SERVICE BETWEEN UNITED STATES CARRIERS.

Helicopter Services: At present, approximately \$2.5 million annually is being spent for the support of three experimental helicopter services. At the present stage of helicopter development, the subsidy cost is high in relation to the amount of service provided the Postal Service and the public. It is hoped that subsidy cost can be reduced in the future when new types of transport helicopters (now being developed for the military) become available for commercial operation.

It is desirable at this time to continue a limited experimental program of helicopter services. However, it would be premature and unnecessarily costly at this stage of helicopter development to expand helicopter services on a subsidized basis.

9. A LIMITED SUBSIDIZED EXPERIMENTAL PROGRAM FOR THE PURPOSE OF DEVELOPING OPERATIONAL EXPERIENCE IN THE PROVISION OF COMMERCIAL HELICOPTER SERVICES SHOULD BE CONTINUED. OTHER FUTURE TECHNOLOGICAL DEVELOPMENTS SIMILARLY MAY JUSTIFY A LIMITED SUBSIDY DEVELOPMENT PERIOD IN THE NATIONAL INTEREST.

Government Use of Air Services

The Federal Government is the nation's largest single user of transportation. Its agencies should be governed by sound principles of traffic and supply management including the acceptance and use of air transportation.

While some government agencies, particularly the Post Office and the military services are making extensive use of commercial air services, all agencies should take increased advantage of the benefits they afford. They should be responsive to better service when it is made available by the airlines and should purchase airlift as a routine matter when it is advantageous in the conduct of government business.

1. THE AGENCIES AND DEPARTMENTS OF THE FEDERAL GOVERNMENT SHOULD REVIEW CONTINUOUSLY THEIR PROCUREMENT, DISTRIBUTION AND TRANSPORTATION POLICIES AND PROCEDURES TO ENABLE THE GOVERNMENT TO OBTAIN THE ECONOMIC ADVANTAGES OF RELIABLE AIR TRANSPORTATION SERVICE AS IT IS MADE AVAILABLE. GOVERNMENT AGENCIES AND DEPARTMENTS SHOULD LEAD, NOT FOLLOW, IN THE GENERAL ACCEPTANCE OF AIR TRANSPORT AS A COMMON OR ROUTINE METHOD OF TRANSPORTATION.

2. WHEREVER POSSIBLE, GOVERNMENT TRAVEL ABROAD ON COMMERCIAL PLANES SHOULD BE ON UNITED STATES FLAG CARRIERS.

For long-range mobilization planning purposes, there is virtually an unlimited requirement for the expansion of transport air power. The programmed expansion of military air transport is, however, limited by appropriations, and over-all military plans for their expenditure. It is not in the public interest to buy and place in storage a huge fleet of military transport aircraft in anticipation of an emergency.

The Department of Defense can and should continue planning the extent to which its wartime requirements must be met by military air carriers and to what extent the remaining requirements will be met by commercial air carriers.

3. IN DETERMINING THE EXTENT TO WHICH CIVIL AIR TRANSPORTATION WILL BE USED IN MEETING MILITARY PEACETIME AND WARTIME AIRLIFT REQUIREMENTS, THE DEPARTMENT OF DEFENSE SHOULD CONTINUE ITS POLICY NOT TO ENGAGE IN COMPETITION WITH PRIVATE INDUSTRY, AND TO SUPPORT THE EXPANSION OF THE NATION'S CIVIL AIRLIFT CAPABILITY ON AN ECONOMICALLY SOUND BASIS.

We believe the government shipper should be governed generally by the same traffic management criteria that govern a commercial enterprise when selecting a commercial carrier, recognizing, of course, that a government agency must often base its decision on factors in addition to business economies. Other factors being equal, government traffic should be equitably distributed among these carriers who are willing, able and legally authorized to perform the service required. The Government should, to the greatest extent practicable, adjust its use of air transportation so as to use existing unutilized capacity of United States air carriers.

The Government, like the private shipper, is entitled to obtain from the transportation industry a recognition of the transportation cost economies that result from large volume shipments. But no large volume consumer of

transportation, private or Government, should be permitted to use its economic bargaining potential to generate unfair or destructive competitive practices within the transportation industry. Similarly, carriers should not be free to adjust their rates indiscriminately without regard for their operating costs or the public interest which they serve.

4. GOVERNMENT AGENCIES WILL NOT USE THEIR ECONOMIC POWER TO EXACT UNWARRANTED PRICE CONCESSIONS FROM COMMERCIAL AIR CARRIERS. IT IS MANDATORY THAT OUR REGULATORY AGENCIES EXERCISE THEIR ECONOMIC CONTROLS IN A MANNER NECESSARY TO SAFEGUARD THE INTEREST OF SHIPPERS, FAIR ECONOMIC TREATMENT OF THE CARRIERS, AND THE OVER-ALL NATIONAL INTEREST IN SOUND AIR TRANSPORT DEVELOPMENT.

*Non-Scheduled Airline Operations**

Section 416 of the Civil Aeronautics Act authorizes the CAB to exempt air carriers from economic provisions of the Act, including the requirement to obtain a certificate of public convenience and necessity. Such exemption may be established upon a finding by the Board that the enforcement of the Act's economic provisions would "be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers." Shortly after the Act took effect in 1938, the Board issued a general exemption order covering air transport services of a non-scheduled nature. When this order was first issued, the exempted transport services were "non-scheduled" in the literal sense of the word. They consisted mainly of occasional aerial taxi flights conducted by fixed base operators, using small aircraft.

Following World War II, there has been a drastic change in the scope and character of operations conducted under the "non-scheduled" exemption order. This change has come about mainly in connection with the development of the "large irregular" carriers — that is, those operating planes of transport size. Two principal types of service are provided by the large irregular carriers: (1) plane-load charter services in either contract or common carrier operations; and (2) air coach service, provided to the general public on an individual passenger basis. The air coach services have been operated mainly along a few principal routes, with varying degrees of regularity. The most controversial issues in connection with the exemption order have arisen in connection with this route-type operation.

Exempted from the normal requirement for specific route certificates, the irregular carriers' operations depart from the "controlled entry" principle of the Civil Aeronautics Act. A basic policy issue, therefore, is whether this principle of controlled entry remains sound for the air transportation industry at this time, and if so, how it should be applied to the type of operation conducted by the irregular carriers.

Regulatory Control over Entry into Air Transportation: The Civil Aeronautics Act was passed after a period of considerable instability within the air transport industry. One of its primary purposes was to establish a basis for the industry's orderly development, within a framework of Federal regulation. The affirmative intent of the Act was to establish a pattern of controlled entry in this field, with new services to be authorized only upon a finding by the CAB that they are required by the "public convenience and necessity."

The principle of controlled entry is widely applied in other forms of transportation, as well as in other types of public utilities. In all of these fields, as in air transportation, it has been found that the public interest requires a pattern of regulatory control, to assure the maintenance of sound

*The Civil Aeronautics Board abstained from participation in this paper because of direct applicability to cases now before it.

economic conditions, capable of supporting on a stable basis an adequate level of essential public service.

Like other forms of transportation, air transportation is characterized by a wide variation in the profitability of individual routes and stations. Some routes are capable of supporting profitable operations; other routes are marginal; and still others are inherently unprofitable. In keeping with the normal public utility concept, certificated carriers have a statutory obligation to maintain all authorized services needed by the public on both strong and weak routes. Carriers cannot abandon service without governmental approval, and they can be compelled to expand service where needed. If carriers are to provide the full scale of service needed by the public with minimum reliance on Federal subsidy, they must be able to earn sufficient profits on strong routes to offset losses on weak routes.

This basic obligation to maintain service can be meaningfully enforced only if entry into the business is controlled. It would be unrealistic to force a given carrier to continue serving all of its points (including the unprofitable ones) if at any time it could be subjected to competition by a new carrier entirely free to serve only profitable points. Under such circumstances carriers would naturally tend to concentrate their operations on profitable routes with a consequent decline in the quality and volume of service on more marginal routes. The broad national interest in having adequate air transport service, wherever needed, would inevitably suffer under such a situation.

For the above reasons, it would be unsound to have a completely unrestricted right of entry in air transportation; it would be both unsound and inequitable to maintain a dual regulatory standard, in which some carriers are required to adhere to certificated obligations, while others carriers are free to provide competitive service without such obligations.

Federal subsidy policies for the development of civil air transportation further emphasize the importance of controlling entry into the business. Only by maintaining sound economic conditions within the industry can the Government discharge its public obligation to minimize subsidy expenditures.

1. THE INTENT OF THE CIVIL AERONAUTICS ACT, TO ESTABLISH A PATTERN OF CONTROLLED ENTRY WITH REGARD TO COMMON CARRIER AIR TRANSPORTATION, IS STILL SOUND.

Exemption Authority: While the Civil Aeronautics Act provides in Section 416 a basis for exempting operations from certain provisions of the Act, it is clear from the language of this section itself that this exemption authority was intended to meet special situations, and not to serve as the basis for a large scale departure from the "controlled entry" principle. Thus, that section refers to situations of "limited extent" or "unusual circumstances" where an "undue burden" would result from the normal enforcement of the Act's economic provisions. This exemption authority should not be used to authorize non-certificated operations of significant scope, particularly where such operations are competitive in nature with services authorized under regular route certificates.

It is unnecessary to resort to the exemption authority merely because a given operation represents a new type of service, or one which is small or experimental. Such services can be adequately handled through the normal certification process, as evidenced by the temporary, experimental route authorizations actually granted by the Board for local service operations, all-cargo routes, a "packaged tour" operation, and helicopter services. It is significant to note, in this connection, that many of these certificated services are much smaller in scope than are some of the operations now being conducted on a non-certificated basis under the "non-scheduled" exemption order.

2. THE EXEMPTION AUTHORITY OF SECTION 416 OF THE CIVIL AERONAUTICS ACT SHOULD BE USED ONLY AS THE BASIS FOR ANY SIGNIFICANT DEPARTURE FROM THE CONTROLLED ENTRY PRINCIPLE.

The aerial taxi services originally covered by the 1938 exemption order were literally non-scheduled, and truly supplemental to the regularly certificated route system. The concept of "non-scheduled" lost its real significance, however, when it was applied after the war to large-plane operations, available to the general public on an individual passenger basis. The basic need in this general passenger market is for reliable service, operated on convenient schedules, and maintained at an adequate level in off-peak as well as peak periods. A non-scheduled service (entirely devoid of regularity) is not suited to the maximum convenience of the traveling public in the individual passenger market. Moreover, from the standpoint of the operator, a non-scheduled service in this market would involve economic difficulties, because of the problem of generating plane-loads of individual passengers at points served only sporadically.

Most of the route-type non-certificated carriers have come as close to a pattern of regularity as could be accomplished within the terms of the CAB's exemption order and some have gone beyond that point. The economic pressure to operate with some degree of regularity has, of course, given rise to serious regulatory difficulty in defining and enforcing a meaningful standard of non-scheduled service.

One further point should be noted. Even though an individual carrier were to rotate his operations among several routes so as to remain non-scheduled on any one of them, there could still be an overall pattern of regularity for the non-certificated group as a whole. In terms of the total impact on the air transport system, this cumulative pattern of regularity is at least as important as the question of whether the individual carriers are respectively staying within the regulatory definition of "non-scheduled."

In view of the above considerations, it appears that the concept of "non-scheduled" does not provide an appropriate basis for exempting from normal economic regulation the route-type operations of the large irregular carriers. Further attempts to de-limit the non-scheduled concept by tightening the standards of allowable frequency of service seem unlikely to solve the basic underlying problem. Instead, the Government should adopt a firm policy against any general exemption status for common carrier transportation provided to individually ticketed passengers on large transport planes.

3. THE CONCEPT OF NON-SCHEDULED SERVICES DOES NOT PROVIDE A MEANINGFUL BASIS FOR EXEMPTING ROUTE-TYPE PASSENGER SERVICES FROM THE NORMAL CERTIFICATION REQUIREMENT. IN THE FUTURE, THERE SHOULD BE NO GENERAL USE OF THE EXEMPTION AUTHORITY AS A BASIS FOR AUTHORIZING COMMON CARRIER TRANSPORTATION TO INDIVIDUALLY TICKETED PASSENGERS ON LARGE TRANSPORT PLANES.

Future Role of Irregular Carriers: Some operations of large irregular carriers, such as bona fide charter and contract operations, can and do provide services which are supplemental to those authorized by regular route certificates. This is a specialized market, the needs of which can best be met by a flexible type of service free to operate without reference to fixed routes or schedules.

There appears to be a valid role which the irregular carriers can fill in this specialized market. It is appropriate for the government to encourage the development of this specialized market not only to meet the normal peacetime needs for such service, but also because of the potential defense value which can be derived from such flexible supplemental airlift capacity not committed to any fixed services. It will be important to establish regulatory

standards which will assure that irregular operators remain in the area of operation where they can provide a service supplemental to that authorized under regular route certificates.

To encourage sound economic conditions within this segment of the industry it is desirable to establish some form of specific certification process covering the operations of the large irregular carriers. Such a certification procedure will provide an opportunity for the CAB to pass upon the fitness of prospective irregular operators in terms of their ability to provide safe and financially responsible operations, and to pass upon the public need and justification of their proposed services. Prospective irregular operators should be required to demonstrate adequate financing, the availability of suitable experienced personnel, and other characteristics normally reviewed by the CAB in determining "fitness, willingness and ability" of applicants.

The very nature of the specialized market for irregular type airlift requires that any certification arrangement in this field provide the greatest possible flexibility in terms of areas to be served. Accordingly it will be desirable to adopt a basically new type of certificate which would assure the carriers an essential degree of flexibility of geographical coverage.

In international, as in domestic operations, there is a valid role which can be filled by truly charter services. However, special problems will have to be explored in this field with regard to defining the scope and character of such services, and the manner in which international traffic rights covering such services should be exchanged. It must be recognized that any rights obtained for United States operators may have to be accompanied by the grant of reciprocal rights to foreign charter operators.

Under the present Act, the CAB has economic regulatory jurisdiction only with respect to common carrier services. Accordingly, contract carrier operations can now be conducted without any CAB regulation as to the extent or character of service, rates charged, or other economic aspects of operation.

In the charter field, the line of demarcation between common and contract carriage is not always clear-cut. For reasons stated above, it appears desirable to retain economic regulatory control over charter operations, and accordingly it is recommended that the Act be amended to extend the Board's economic authority so as to cover contract carriers.

4. THOSE OPERATIONS OF THE LARGE IRREGULAR CARRIERS WHICH REPRESENT A SUPPLEMENTARY TYPE OF SERVICE, SUCH AS BONA FIDE CHARTER AND CONTRACT OPERATIONS, SHOULD BE ENCOURAGED. A NEW TYPE OF CERTIFICATE SHOULD BE DEVELOPED FOR SUCH OPERATIONS, PROVIDING SUITABLE FLEXIBILITY IN TERMS OF AREAS TO BE SERVED.

5. IRREGULAR OPERATIONS NOW CONDUCTED WITH SMALL AIRCRAFT PRESENT NO SERIOUS REGULATORY PROBLEM UNDER THEIR PRESENT EXEMPTION STATUS AND THERE APPEARS TO BE NO NEED FOR CHANGING THIS STATUS.

Movement of Mail by Air

The United States has provided scheduled air mail service to the public for more than thirty-five years. It began with the Government operating its own equipment and was continued by the Post Office Department until civilian firms became convinced that it was sufficiently practical to warrant private investment and operation. Air mail was the foundation on which we built our basic commercial air transport system.

Domestic postage rates on air mail have been changed fourteen times with a view to making an attractive postage rate to the patrons of the service consistent with the facilities available and costs incurred.

The Post Office Department recently started an experimental program of transporting first-class surface mail by air in an effort to improve its service to the mailing public. This is done where there is prospect of improving efficiency of mail service without appreciable increase in transportation costs.

The United States has in general followed the practice of routing international mail on the most expeditious schedules available, including both schedules of United States air carriers and foreign air carriers of countries following the same policy. Foreign airlines are paid for the carriage of United States mail at rates established by the Universal Postal Union.

1. THE UNITED STATES SHOULD CONTINUE TO ENCOURAGE AND DEVELOP THE FULLEST POTENTIAL USE OF THE AIR MAIL SERVICE AND AIR PARCEL POST, BOTH DOMESTICALLY AND INTERNATIONALLY, WHEN MAIL CAN BE ADVANCED TO THE ULTIMATE PATRON BY AIR SERVICE WITHOUT UNDUE COST INCREASE. A BASIC OBJECTIVE IS TO MAKE MAXIMUM BENEFITS OF THIS EXPEDITED SERVICE AVAILABLE TO ALL POSTAL PATRONS.

2. THE UNITED STATES SHOULD FULLY IMPLEMENT THE INTENT OF REORGANIZATION PLAN NO. 10 TO ASSURE THE EXCLUSION OF ALL ELEMENTS OF SUBSIDY FROM COMPENSATION PAID TO AIR CARRIERS FOR THE TRANSPORTATION OF MAIL BY AIR. SERVICE MAIL RATES SHOULD BE ESTABLISHED ON PRINCIPLES OF FAIR AND REASONABLE COMPENSATION FOR THE SERVICES PERFORMED WHICH WILL TAKE ACCOUNT OF ALL PERTINENT FACTORS AND RECOGNIZING ANY DIFFERENCES IN COST OR CHARACTER OF SERVICE, WILL BEAR A PROPER RELATIONSHIP TO THE CHARGES EXISTING FOR OTHER FORMS OF TRAFFIC.

3. THE POST OFFICE DEPARTMENT SHOULD CONTINUE A PROGRAM FOR EXPERIMENTING WITH THE TRANSPORTATION OF FIRST CLASS MAIL BY AIR INSOFAR AS IT IS DETERMINED BY THE POST OFFICE DEPARTMENT TO BE ECONOMICALLY JUSTIFIED AT RATES PRESCRIBED BY THE CIVIL AERONAUTICS BOARD.

4. THE UNITED STATES POSTAL AUTHORITIES WILL CONTINUE THE EXISTING PRACTICE OF FORWARDING MAIL ON BOTH UNITED STATES AND FOREIGN AIRLINES.

5. PAYMENTS TO FOREIGN AIR CARRIERS FOR CARRIAGE OF U. S. MAIL ARE MADE AT UPU RATES. ANY DIFFERENCE BETWEEN THE UNIVERSAL POSTAL UNION RATE AND THE RATES PAID TO UNITED STATES CARRIERS SHOULD BE HANDLED AS AN INTERNAL MATTER WITHIN THE UNITED STATES GOVERNMENT IN ACCORDANCE WITH APPLICABLE LAWS AND REORGANIZATION PLAN NO. 10.

*Air Cargo**

The potential value of a healthy and expanding air cargo industry to our economy and national defense has become increasingly apparent. A quickened industrial pace combined with the national need to utilize our resources more efficiently, promises to make the movement of cargo by air as essential as the established need for air carriage of persons and mail.

Domestic and international air cargo services are being provided by the scheduled airlines (both on combination passenger-cargo aircraft and on all-cargo flights) by the scheduled all-cargo carriers and by large irregular carriers. While the advantages of combining passenger and cargo carriage in the same aircraft are many, important limitations to this practice also exist. Experience indicates that flights primarily timed to the needs of pas-

*The Civil Aeronautics Board abstained from participation in this paper because of direct applicability to cases now before it.

senger traffic are not always well adapted to the movement of cargo. Combination aircraft frequently are unable to accommodate preferred shipments because of weight or bulk. If the use of air cargo is to grow on a sound basis it appears necessary that increased airlift must be provided with aircraft designed specifically for cargo and operated on scheduled dictated specifically by the needs of cargo traffic. Proper growth of the air cargo industry will provide, in addition to economic benefits, a civil air cargo fleet forming a substantial security asset in event of national mobilization.

1. THE FURTHER DEVELOPMENT OF THE AIR CARGO INDUSTRY, WITH PARTICULAR EMPHASIS ON ALL-CARGO SERVICES, IS IN THE NATIONAL INTEREST AND SHOULD BE ENCOURAGED.

The use of commercial air cargo on a substantial scale is largely a post-war development. Early growth in traffic volume, starting from a very low level post-war, was extremely rapid. This led to early assumptions on continued growth rate which have since proved to be optimistic.

Air cargo volume has not increased as rapidly as hoped for. It has not been supported or stimulated by direct Federal subsidy. It has had to face such economic difficulties as: (a) reliance on obsolescent aircraft, ill-suited for cargo and, therefore, uneconomic, and (b) low volume with resulting high unit costs. The rates which could be offered with such aircraft have not been low enough to attract a substantial volume of business, and air cargo has been a marginal money maker at best.

Such hard facts of economics have forced scheduled and irregular carriers alike to subordinate commercial air cargo in varying degrees to more profitable ventures. For example, the higher rate of unit return on passengers than cargo has favored carriage of cargo as a by-product on combination aircraft or the assignment of aircraft to all-passenger coach services. In more recent years the Pacific airlift made necessary by the Korean emergency required transfer of aircraft from civil to military cargo operations.

The many and difficult economic and technical problems inherent in the development of a sound air cargo industry are not susceptible of early solution. An adequate and economic cargo aircraft, the essential tool of the industry, is still unavailable for domestic services although use of cargo versions of recent-production passenger transports gives promise of improving economics on long distance, intercontinental routes.

The greatest promise for an adequate and economical cargo aircraft for civil use appears to depend upon the development of cargo aircraft for the military services.

2. MILITARY AND CIVIL AGENCIES SHOULD COOPERATE EARLY IN THE DEVELOPMENT CYCLE OF ALL NEW ALL-CARGO AIRCRAFT, IN ORDER TO PRODUCE AIRCRAFT RESPONSIVE AS NEARLY AS POSSIBLE BOTH TO CIVIL AND MILITARY REQUIREMENTS. THE LOW TON-MILE COST AIRCRAFT SO DEVELOPED SHOULD BE MADE AVAILABLE BY THE MANUFACTURERS TO CIVIL OPERATORS AT THE EARLIEST POSSIBLE DATE CONSISTENT WITH MILITARY REQUIREMENTS. AS TO NEW MILITARY AIRCRAFT, THE COOPERATION RECOMMENDED HEREIN SHOULD BE LIMITED TO THE INCORPORATION OF DESIGN FEATURES, IN COMMERCIALLY ADAPTABLE AIRCRAFT, WHICH WOULD MAKE THEM ACCEPTABLE FOR CIVILIAN USE WITHOUT IMPAIRING THEIR MILITARY USEFULNESS. IT IS NOT INTENDED THAT SUCH COOPERATION WOULD EXTEND TO ANY AIRCRAFT DESIGNED SOLELY FOR MILITARY PURPOSES.

The Federal Government is in a position to improve the economic position of the commercial air cargo industry without subsidy by increased use of available services on a routine business basis. Many of the agencies of government are large shippers of cargo. While some agencies, particularly in the

military departments, have made limited use of the cargo services offered by the airlines, it is probable that a thorough study of government purchasing and distribution methods would disclose substantial advantages which can be realized by the government from increased use of commercial air cargo on a regular basis.

3. FEDERAL AGENCIES SHOULD, WITHIN THE FRAMEWORK OF SOUND PRINCIPLES OF SUPPLY MANAGEMENT, EXPAND THEIR USE OF CIVIL CARGO AIRLIFT AS IT BECOMES AVAILABLE FOR ROUTINE, NON-EMERGENCY USE.

The combined efforts of the combination passenger-cargo and the all-cargo airlines will be needed if we are to develop the type of air cargo industry required by the national interest. However, the economic justification for any given all-cargo airline must be considered on its own merits. This being the case, the instability of the domestic certificated cargo lines because of their temporary certificates, becomes a serious problem.

4. A GREATER DEGREE OF STABILITY SHOULD BE GIVEN ALL-CARGO CARRIERS WHEN CERTIFICATED BY THE CIVIL AERONAUTICS BOARD BY GRANTING THEM CERTIFICATES OF SUFFICIENT DURATION TO ENABLE THEM TO OBTAIN ADEQUATE FINANCING.

AIRWAYS

User Charges

Federal air navigation facilities and services used by domestic and international civil aviation are provided in great part by the civil agencies of the government. These include: the Federal Airways System (navigational aids, traffic control and communications) operated by the Civil Aeronautics Administration; the Aviation Weather Services of the Weather Bureau; and the aeronautical maps and charts services provided by the Coast and Geodetic Survey. However, the military services also make available to civil aviation throughout the world numerous aids and services to air navigation.

The only charges being assessed against civil users of these government aeronautical facilities and services are for maps and charts and certain CAA overseas communications services involving aviation business messages.

Certain communications and navigation services are provided by industry, private individuals, and state and local governments under authorization from the Federal Communications Commission.

In recent years the Bureau of the Budget and Congressional Appropriations Committees have expressed strong interest in charging the users of the Federal Airways System for the services provided. As a consequence, the Civil Aeronautics Administration has recently completed a comprehensive study of the many complex problems which must be considered and resolved in the establishment of a program of airway user charges.¹

The CAA study, among other important findings, concludes that domestic civil aviation has now reached a stage of economic maturity which permits it to make a reasonable payment toward meeting the costs of the domestic civil airways system. However, it recommends that charges for fringe use of domestic airway facilities and services by international, overseas aviation and charges for non-domestic facilities and services used by international, overseas and territorial aviation be initiated only after adequate experience has been accumulated with the domestic program.

The CAA user charge study, which provides the basis for our conclusions, was restricted to aviation facilities alone since the scope of the study did

¹ A program of charges for the use of the Federal Airways System U. S. Department of Commerce, 1953. See, page 182.

not include treatment of facilities furnished by the government to other forms of transportation. It must be recognized nevertheless, that the forms of transportation that are furnished government facilities or services without charge are being similarly subsidized and that air service, of all forms of transportation, is the newest and in the earliest stage of economic development. It appears only fair and reasonable that a policy of charging the users of facilities and services provided by the government for civil aviation should be considered part of a comprehensive policy applicable to all forms of transportation using facilities and services provided by the Federal Government.

1. SINCE A LARGE SEGMENT OF U. S. DOMESTIC CIVIL AVIATION HAS REACHED A LEVEL OF ECONOMIC MATURITY WHICH WOULD PERMIT IT TO MAKE A REASONABLE CONTRIBUTION TOWARD MEETING THE COSTS OF THE AIRWAYS SYSTEM, ACTIVE CONSIDERATION SHOULD BE GIVEN TO THE INAUGURATION OF A PROGRAM OF DOMESTIC AIRWAY USER CHARGES. HOWEVER, CHARGES FOR THE USE OF THE FEDERAL AIRWAYS SYSTEM AND OTHER FEDERALLY-PROVIDED FACILITIES AND SERVICES USED BY CIVIL AVIATION SHOULD BE TREATED AS PART OF A COMPREHENSIVE POLICY ON CHARGES FOR THE USE OF ALL FEDERALLY-PROVIDED TRANSPORTATION FACILITIES AND SERVICES, TAKING INTO ACCOUNT FEDERAL GRANTS-IN-AID PROGRAMS.

INTERNATIONAL AVIATION

Routes and Rights

In pursuing the basic aviation objective of encouraging the development of an air transport system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, the postal service, and the national defense, it has been necessary to obtain traffic and operating rights for United States air carriers to serve foreign countries from the foreign governments concerned.

The Bilateral System of Agreements. The ultimate objective of the United States has been and continues to be the achievement of a multilateral air transport agreement. In the absence of such an agreement, the negotiation of a bilateral system of agreements has been vigorously pursued as providing a practical basis for United States airline operations. These agreements now number approximately forty-five.

1. THE EXCHANGE OF AIR TRANSPORT RIGHTS WILL CONTINUE TO BE BY BILATERAL AIR TRANSPORT AGREEMENT UNTIL SUCH TIME AS IT IS POSSIBLE TO ACHIEVE A MULTILATERAL AGREEMENT WHICH CONTAINS PRINCIPLES GENERALLY IN ACCORD WITH THOSE OF EXISTING UNITED STATES BILATERAL AGREEMENTS.

Air Rights. The rights required for the development of scheduled international air services of United States airlines include the rights: To fly across the territory of a foreign country without landing (First Freedom); to land for nontraffic purposes (Second Freedom); to set down traffic coming from United States territory in a foreign country (Third Freedom); to pick up in a foreign country traffic destined for the United States (Fourth Freedom); to carry traffic from a point of origin in one foreign country to a point of destination in another foreign country (Fifth Freedom).

The United States has regarded the exchange of all of the above-enumerated rights as essential to the economic operation of international routes, the fullest development of air transport services and in the interest of the traveling public. Therefore, all bilateral air transport agreements negotiated by the United States since the latter part of 1944 have been based on the exchange of the Five Freedoms.

2. THE UNITED STATES WILL ADHERE TO THE POLICY OF NEGOTIATING FOR INTERNATIONAL AIR RIGHTS ON THE BASIS OF ALL FIVE FREEDOMS.

Capacity. Since the conclusion of the Air Transport Agreement with the United Kingdom at Bermuda in February 1946, the United States has adhered to the principles relative to capacity, subsequently known as the Bermuda principles, which were established in that agreement. These broad principles provide standards for relating capacity to traffic on an *ex post facto* basis, taking into consideration the public requirements for air service and the requirements of both trunkline operations and local or regional operations. They also include certain provisions, designed as safeguards to the airlines of both contracting parties, such as the declaration that capacity shall bear a close relationship to traffic demands, that the airlines of both countries shall have a fair and equal opportunity to operate the routes for which they are designated, and that the airlines of one country shall take into consideration the interests of the airlines of the other country so as not to affect unduly the other's services.

3. IN THE NEGOTIATION OF ITS AGREEMENTS FOR THE EXCHANGE OF INTERNATIONAL AIR RIGHTS, THE UNITED STATES WILL CONTINUE TO ADHERE TO THE BERMUDA PRINCIPLES AS THE MOST SATISFACTORY BASIS FOR RELATING CAPACITY TO TRAFFIC.

Routes. In determining the routes to be exchanged in bilateral air transport agreements, the United States has sought to establish, insofar as possible, an equitable exchange of economic benefits.

4. IN DETERMINING THE ROUTE TO BE INCLUDED IN BILATERAL AIR TRANSPORT AGREEMENTS, THE UNITED STATES WILL CONTINUE ITS OBJECTIVE OF ESTABLISHING, INSOFAR AS POSSIBLE, AN EQUITABLE EXCHANGE OF ECONOMIC BENEFITS.

Application and Interpretation of Agreements. Essentially, the network of bilateral air transport agreements has now expanded to the point at which worldwide services are possible, and the conclusion of additional agreements will serve to augment and regularize the system rather than to establish the basic requirements necessary to begin operations. Therefore, while new agreements may be concluded from time to time, it is expected that the most outstanding developments will consist in their application and interpretation in relation to operations under the agreement.

5. THE UNITED STATES WILL SEEK INTERPRETATION AND APPLICATION OF ITS AGREEMENTS IN A MANNER WHICH WILL ACCORD WITH THE OVER-ALL OBJECTIVES OF AN EFFECTIVE INTERNATIONAL AIR TRANSPORT SYSTEM.

Fares and Rates

The International Air Transport Association (IATA), an organization consisting of the principal international air carriers of the world, presently serves as the primary instrument for establishing and maintaining the highly complex structure of international fares and rates. In the field of international rate-making, it substitutes industry conferences for extensive multilateral negotiation between governments. Although IATA has proved an effective means of avoiding rate wars, reliance by the United States upon IATA should be supplemented by governmental authority to resolve rate problems resulting from the inadequate functioning or the absence of IATA machinery.

Currently the United States Government lacks effective statutory powers to fulfill properly its responsibilities in resolving international rate problems

involving its own and foreign air carriers for services between the United States and other nations. While the Civil Aeronautics Board may disapprove IATA agreements entered into by United States air carriers, it needs added, positive authority to disapprove or establish rates between the United States and other countries if required either by the failure of IATA to achieve agreement, by governmental disapproval of IATA agreements, or by rate actions of foreign governments, or air carriers not members of IATA.

Subsidy support of United States international air carriers by the United States Government also makes desirable that the Civil Aeronautics Board have the authority to exercise direct control over the rates of such carriers, inasmuch as a sound rate structure is essential to sound airline operations.

1. FULL UNITED STATES SUPPORT, CONSISTENT WITH THE CIVIL AERONAUTICS ACT, SHOULD BE GIVEN TO THE INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA) AS THE PRIMARY INSTRUMENT FOR ESTABLISHING AND MAINTAINING A SOUND FARE AND RATE STRUCTURE FOR INTERNATIONAL AIR SERVICES.

2. THE CIVIL AERONAUTICS BOARD SHOULD BE EMPOWERED BY CONGRESS, THROUGH AMENDMENT OF THE CIVIL AERONAUTICS ACT, (A) TO CONTROL THE FARES, RATES, RULES, AND PRACTICES OF UNITED STATES AIR CARRIERS, APPLICABLE TO TRANSPORTATION TO AND FROM THE UNITED STATES, TO THE SAME EXTENT AS THE BOARD NOW HAS POWER TO ACT WITH RESPECT TO DOMESTIC AIR TRANSPORTATION, AND (B) TO CONTROL THE FARES, RATES, RULES, AND PRACTICES OF FOREIGN AIR CARRIERS, APPLICABLE TO TRANSPORTATION TO AND FROM THE UNITED STATES, MORE EFFECTIVELY THAN IS NOW POSSIBLE UNDER THE CIVIL AERONAUTICS ACT.

United States Participation in ICAO

Foreseeing the need for world-wide cooperation among nations for the orderly advancement of post-war international civil aviation, the United States in 1944 was instrumental in drawing up the Convention on International Civil Aviation and has since then played a leading role in the International Civil Aviation Organization (ICAO) established under this Convention. The accomplishments of ICAO to date, particularly in promoting safety of international aviation and in facilitating international air commerce, have fully demonstrated the need for the continuance of cooperative efforts in fostering the development of international civil aviation.

The United States believes the basic objective of ICAO can be best attained by concentrating efforts on programs designed to assist and facilitate international civil aviation.

1. THE UNITED STATES CONTINUES TO SUPPORT THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), AND PROPOSES THAT ITS FUTURE ACTIVITIES BE CONSISTENT WITH THE FOLLOWING OBJECTIVES:

A. The development of additional international standards, recommended practices, procedures, and regional plans for facilities and services, when necessary for safe and efficient international air navigation. Emphasis should be placed on implementation of standards and regional plans by ICAO member nations.

B. The progressive development and implementation of ICAO's program for the facilitation of international civil aviation.

C. The collection and distribution of factual information in the field of air transport economics. Future deliberations in this field should be confined to matters suitable for multilateral consideration and expected to produce results of practical value within a reasonable period of time.

D. The adoption of conventions on international air law needed in connection with international air operations.

E. The administration of joint support projects for the international financing of essential international air navigation facilities and services.

2. THE UNITED STATES WILL CONTINUE TO SUPPORT REGULAR AND THOROUGH REVIEW BY ICAO OF ITS WORK PROGRAM FROM THE POINT OF VIEW OF THE PRACTICALITY AND URGENCY OF THE VARIOUS ACTIVITIES OF THE ORGANIZATION, AND WILL PROPOSE SUCH ORGANIZATIONAL ADJUSTMENT AS MAY FROM TIME TO TIME BE REQUIRED. AS AN IMMEDIATE OBJECTIVE, THE UNITED STATES PROPOSES THAT THE NUMBER AND DURATION OF MEETINGS OF THE ICAO COUNCIL AND ITS SUBORDINATE BODIES AND THE WORKLOAD OF THE ORGANIZATION BE REDUCED WITH CONSEQUENT BUDGETARY ECONOMIES.

Aids to Air Navigation

Safety and efficiency of operations over international air routes also require a system of aids to air navigation based on "common-system" concepts. The United States is a major operator of international air services and a well-equipped and operated system of aids to air navigation is a valuable national asset. The over-all interest of the United States in facilitating international air operations requires support of all practical policies and steps directed towards the establishment of a world-wide system of aids to air navigation. Accordingly, the United States will, to the extent practical, continue to:

1. PROVIDE IN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS AND AREAS UNDER ITS CONTROL, AIRPORTS, FACILITIES, AND RELATED SERVICES REQUIRED TO FACILITATE INTERNATIONAL AIR NAVIGATION, IN ACCORDANCE WITH THE ESTABLISHED STANDARDS AND RECOMMENDED PRACTICES AGREED TO IN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO).

2. CONFORM TO STANDARD SYSTEMS OF PROCEDURE, PRACTICES AND RULES ESTABLISHED OR RECOMMENDED FOR INTERNATIONAL OPERATIONS BY ICAO.

3. STRESS THE OBLIGATION OF MEMBER NATIONS UNDER ARTICLE 28(a) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION TO PROVIDE AIR NAVIGATION FACILITIES AND SERVICES NEEDED BY INTERNATIONAL AVIATION IN THEIR RESPECTIVE TERRITORIES, AND GIVE SUPPORT TO ALL PRACTICAL EFFORTS BY OTHER NATIONS TO PROVIDE SUCH FACILITIES AND SERVICES.

Facilitation of International Civil Aviation

The airplane's unique advantages of speed, convenience and flexibility in international traffic dictate that national regulations and procedures governing entry, transit and exit be simplified to the maximum extent consistent with national security. The United States has worked with other nations in the International Civil Aviation Organization to establish uniform standards and recommended practices governing border crossing formalities in order to expedite this traffic.

1. THE UNITED STATES FAVORS CONTINUED SUPPORT OF THE FACILITATION PROGRAM. IT IS THE POLICY OF THE EXECUTIVE BRANCH TO INCREASE AGENCY EFFORTS TO REALIZE THE MAJOR OBJECTIVES OF THIS PROGRAM AS RAPIDLY AS PRACTICAL BY:

A. Further simplification of documentation and procedures affecting international air traffic.

B. Increased joint efforts of government and industry to achieve program objectives through continued participation at the federal level

in the formulation of national policy, and establishment of local facilitation committees at airports of entry to monitor progress, resolve local problems and make recommendations for corrective measures to the air coordinating committee.

C. Continual review and reappraisal of legislative, regulatory and administrative measures requiring action to speed up clearance of international air traffic.

Technical and Economic Cooperation

The United States currently extends technical and economic cooperation to friendly nations for the improvement of safety and efficiency in civil air operations. We do this directly through programs of the executive agencies and indirectly through participation in the aviation technical assistance program of the United Nations, administered by the International Civil Aviation Organization (ICAO). Our advanced technical knowledge of civil aviation is thereby made available to friendly nations to advance their aviation development consistent with the over-all interest of the United States in its international relationships.

1. WITHIN THE LIMITS OF FUNDS AVAILABLE AND CONSISTENT WITH OUR INTERNATIONAL INTERESTS THE UNITED STATES SHALL CONTINUE TO EXTEND BOTH TECHNICAL AND ECONOMIC COOPERATION IN CIVIL AVIATION TO FRIENDLY NATIONS, BOTH DIRECTLY AND THROUGH SUPPORT OF TECHNICAL ASSISTANCE ACTIVITIES OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION.

2. THE UNITED STATES SHALL CONTINUE TO STRESS THE NEED FOR FULL COORDINATION BETWEEN THE TECHNICAL COOPERATION PROGRAMS IN CIVIL AVIATION CONDUCTED BY THE UNITED STATES AND THOSE OF ICAO SO THAT MAXIMUM BENEFITS AND ECONOMY CAN BE ACHIEVED WITH AVAILABLE SKILLS AND RESOURCES.

FEDERAL-STATE-LOCAL RELATIONSHIPS

State Action in Safety Regulation

The need for uniformity in flying regulations is almost universally recognized. Multiplicity of regulations is unacceptable from a safety standpoint. The Federal Government has assumed responsibility for air safety regulation, thus precluding conflicting regulations by other levels of government.

1. THE LEGISLATIVE ACTION BY THE U. S. CONGRESS, TOGETHER WITH THE IMPLEMENTING REGULATIONS OF THE RESPONSIBLE AGENCIES OF THE FEDERAL GOVERNMENT HAVE REGULATED AIR SAFETY TO SUCH AN EXTENT AS TO CONSTITUTE PREEMPTION OF THE FIELD. THEREFORE, UNDER THE PRESENT STATUTORY AND REGULATORY STRUCTURE, NEITHER THE STATES NOR THEIR POLITICAL SUBDIVISIONS MAY CONSTITUTIONALLY PROMULGATE AIR SAFETY REGULATIONS.

The need for state assistance in the enforcement of violations involving the operation of small private aircraft was recognized in 1951 by a Working Agreement between Federal Agencies and the National Association of State Aviation Officials. Under this Agreement, it was expected that the states would enforce the Federal Air Safety Regulations in such cases by utilizing their own personnel and under their own local laws. The Agreement originally provided, under certain circumstances, for the adoption of safety regulations by those states whose constitutions prevented direct enforcement of Federal Regulations. This aspect of the Agreement was modified in December, 1952, in the light of the Government's position in the *Cedarhurst* Case. There appears to be no good reason why a modified enforcement policy agree-

ment, which invites state participation in appropriate areas, should not be continued.

2. THE FEDERAL GOVERNMENT CONTINUES TO ENCOURAGE STATE SAFETY ENFORCEMENT ACTION IN THE AREA OF VIOLATIONS ARISING OUT OF THE ACTUAL PILOTING OR NAVIGATION OF SMALL PRIVATE AIRCRAFT WHERE QUICK LOCAL ACTION IS MOST EFFECTIVE. SUCH ENFORCEMENT ACTION SHOULD BE BASED ON LOCAL STATUTES PROHIBITING THE CARELESS AND RECKLESS OPERATION OF SUCH AIRCRAFT, AND DIRECTING THE COURTS TO CONSIDER THE FEDERAL REGULATIONS IN DETERMINING WHAT IS CARELESS AND RECKLESS OPERATION. STATE ASSISTANCE IN FEDERAL PROSECUTION OF VIOLATIONS IS ALSO ENCOURAGED.

State Action in Economic Regulation

The Civil Aeronautics Board has authority under the Civil Aeronautics Act of 1938, as amended, to regulate passenger and property rates charged by air carriers for interstate transportation by air. The Board does not have, however, direct power to fix such rates for carriage performed over intrastate segments by interstate carriers. Nor does the Board have express power to fix passenger and property rates charged by an intrastate carrier engaged in carrying the mails.

Fares and rates charged on such intrastate routes may have a direct effect on the subsidy needs of the carrier involved; in certain instances such rates could also result in a burden on interstate commerce. We believe that Federal funds should not be utilized to finance intrastate commerce by air and that interstate commerce should bear no more than its proportionate share of the combined costs of intrastate and interstate operations. We believe that additional legislation to vest power in the Board to control this situation is desirable.

1. INTRASTATE TRANSPORTATION OF PERSONS AND PROPERTY BY AIR WHOLLY WITHIN THE BOUNDARIES OF A SINGLE STATE AND NOT PART OF NOR CONNECTED WITH THE FLOW OF INTERSTATE OR FOREIGN COMMERCE IS PROPERLY SUBJECT TO THE ECONOMIC REGULATORY CONTROL OF THE STATE INVOLVED: PROVIDED THAT, WHERE SUCH INTRASTATE TRANSPORTATION IS PERFORMED BY AN AIR CARRIER AS DEFINED IN THE CIVIL AERONAUTICS ACT, THE RATES, FARES, CHARGES AND PRACTICES FOR SUCH TRANSPORTATION SHOULD BE SUBJECT TO THE EXCLUSIVE CONTROL OF THE FEDERAL GOVERNMENT.

Exercise of Control Over Airspace

The ever expanding extent in the United States of aeronautical activity, both civil and military, has brought into sharp focus the need for a greater understanding of the rights, duties, authority, and interests in the airspace. The problem is twofold. On the one hand it involves a question of state-federal relations under the Constitution with respect to the power and duty to control the airspace. On the other hand it involves the relationship between the users of the airspace for purposes of flight and the owners of surface interests below.

The United States as a nation has a strong national interest in the airspace for at least three reasons: it is a highway for interstate commerce; it is a zone vital to the defense of the country; it is necessary to the postal service. Congress as early as 1926 affirmed this paramount national interest and the definition of its nature and scope by adopting the Air Commerce Act of 1926. That Act, as amended by the Civil Aeronautics Act of 1938, provides that "the United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the airspace above the United

States . . ." (49 U.S.C. 176). Furthermore, the legislative history of the Air Commerce Act of 1926 shows that the Congress in enacting it relied on the commerce power, the war powers, and the postal power in combination.

The Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938 have thus formally recognized and asserted federal jurisdiction in the airspace for all purposes necessary to control, preserve, and protect air navigation in the broadest sense. Notwithstanding this plenary power for these purposes in the airspace above the several states, existing jurisdiction in the local governments for other purposes has not been affected.

1. THE FEDERAL GOVERNMENT SHOULD CONTINUE AS IT NOW DOES TO EXERCISE EXCLUSIVE CONTROL OF THE AIRSPACE OVER THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS, FOR THE PURPOSES OF CONTROLLING, PRESERVING, AND PROTECTING AIR NAVIGATION IN THE BROADEST SENSE. BEYOND THAT, EXISTING JURISDICTION OF THE STATES AND THEIR POLITICAL SUBDIVISIONS FOR OTHER PURPOSES IN THE AIRSPACE ABOVE THEIR TERRITORIES SHOULD CONTINUE.

The power of the federal government under the commerce clause of the United States Constitution extends not only to the instrumentalities of interstate commerce but to the medium through which they operate. Thus, the jurisdiction of the federal government extends to all airspace navigable in fact in which aircraft operate while engaged in or directly affecting interstate commerce. In the enactment of the Civil Aeronautics Act of 1938, the Congress expressly exercised its regulatory power in the airspace navigable in fact. Thus, the Civil Aeronautics Board was directed to adopt rules as to safe altitudes of flight, and rules for prevention of collisions between aircraft and between aircraft and land or water vehicles (601(a) (7)).

However, because the term "navigable airspace" in the Civil Aeronautics Act is defined as the airspace above the minimum altitudes of flight prescribed by regulations issued by the Board under the Act, and because of certain language used by the Board in these regulations, some confusion on this point has arisen. Doubt has been expressed as to whether the existing federal regulations are so phrased as to make this provision operative throughout the take-off and landing operations of aircraft. While this doubt is unjustified, resolution of the matter to remove all doubt as to the affirmative exercise of the jurisdiction of the federal government in the airspace navigable in fact is considered desirable.

2. EXISTING FEDERAL REGULATIONS RELATING TO MINIMUM ALTITUDES OF FLIGHT SHOULD BE RE-EXAMINED BY THE APPROPRIATE AGENCIES TO DETERMINE WHETHER REVISION OF SUCH REGULATIONS IS NECESSARY OR DESIRABLE IN ORDER TO DISPEL ANY POSSIBLE INFERENCE THAT THE FEDERAL GOVERNMENT HAS NOT EXERCISED ITS REGULATORY JURISDICTION OVER THE ENTIRE FLIGHT OF AN AIRCRAFT IN THE AIRSPACE ABOVE THE UNITED STATES NAVIGABLE IN FACT.

Instances may arise where flights over private land are so low, so frequent, and so injurious to the surface that, if performed by the federal government, they would amount to a taking of private property, against which protection is afforded under the Constitution. Such instances have been rare. Whether flights by private operators through the navigable airspace as expressed by Congress in the Civil Aeronautics Act, and otherwise in conformity with federal regulations, may create a valid claim in the landowner is a question the courts may still have to decide, in view of the fact that the airspace is a highway protected by the commerce clause of the Constitution.

It is recognized that low flight of aircraft may create a problem of noise and disturbance. This problem is primarily a social one to which the application of doctrines of real property law cannot afford an appropriate solution. The erection of a barrier to flight, unconnected with the safety of air operations, may aggravate the problem by causing air traffic to engage in additional maneuvers. For this reason local ordinances and legislative enactments, which are intended to protect communities against the noise and disturbance, are not valid or proper cures for this problem. The true solution lies in improved procedures around airports, taking into account all aspects of the problem and in the continuing technological improvement in aircraft performance.

3. THE FEDERAL GOVERNMENT SHOULD CONTINUE TO USE ITS BEST EFFORTS TO DEVISE MEANS, METHODS, AND IMPROVED PROCEDURES AND TECHNIQUES TO MINIMIZE NOISE AND DISTURBANCE CAUSED BY AIRCRAFT LANDING AND TAKING OFF. INDUSTRY SHOULD BE ENCOURAGED TO DO LIKEWISE. ADDITIONALLY, THE FEDERAL GOVERNMENT SHOULD CONTINUE TO WATCH CLOSELY ANY LITIGATION WHICH MAY ARISE IN THIS AREA AND WHERE NECESSARY PARTICIPATE THEREIN TO THE END THAT THE COURTS MAY BE FULLY ADVISED ON THE GOVERNMENTAL NATURE OF THIS PROBLEM.

Airspace in the vicinity of airports and airways must be protected against the erection of structures which would interfere with air navigation. The Congress has primary authority to prevent interference with air navigation, analogous in part to the authority it possesses to prevent obstructions in the navigable waters. An example of the exercise of this power is contained in the Communications Act of 1934, as amended, which includes the power of federal control over the erection of radio transmitter towers within the navigable airspace which interfere with its public use. However, the provisions of this Act are not adequate to cope with all hazards to air navigation.

4. THE POWER OF THE FEDERAL GOVERNMENT TO CONTROL THE ERECTION OF STRUCTURES WITHIN AIRSPACE FOR THE PURPOSE OF CONTROLLING AND PROTECTING AIR NAVIGATION SHOULD BE FURTHER STRENGTHENED BY LEGISLATION.