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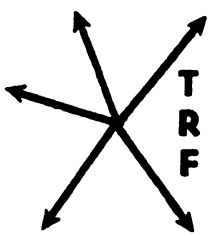

TRANSPORTATION RESEARCH FORUM

Deregulation of Air Transportation: Past Regulatory Controls and the Transition to a Deregulated System

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I. HISTORICAL PERSPECTIVE

RECENT ISSUES regarding economic regulatory controls in interstate air transportation[1] reflect and are the result of over fifty years of growing regulatory activity by the Federal Government. Most authorities are in accord that prior to 1926 airline operators, who were principally those engaged in contract flights for the Post Office Department, performed virtually free of any regulatory controls. The Air Commerce Act of 1926 pre-empted the relatively unregulated activities of airlines and made it incumbent upon the Secretary of Commerce to foster air commerce[2] through encouraging the establishment of airports and navigation facilities, providing for the issuance and revocation of aircraft registration and pilot certification, and promulgation of air traffic rules of navigation.[3]

The Air Commerce Act of 1926 "regulated" the airline industry primarily in the areas of operational procedures and safety. The next generation of regulatory controls — the economic regulatory scheme — was conceived in 1935 when a Presidential Commission (Federal Aviation Commission), appointed pursuant to the Air Mail Act of 1934[4], recommended that an independent regulatory authority be vested with power to control entry, rates, service, consolidations and government support of domestic civil aviation. Subsequently, Senator McCarran and Congressman Lea authored legislation providing broad discretionary powers to a new Federal regulatory agency, and in 1938 the ideas and recommendations of the Federal Aviation Commission were born when President Roosevelt signed the Civil Aeronautics Act.[5]

The Civil Aeronautics Act established the Civil Aeronautics Authority, consisting of five (5) members appointed by the President, and the Office of the Administrator for Civil Aeronautics. The latter was empowered and directed to encourage and foster the development of civil aeronautics and air commerce, and the establishment of civil airways, landing areas and navigation facilities.[6]

The authority's duties and powers were broadly defined by way of Congress' Declaration of Policy (Section 402 of the Act),[7] and may be summarized as giving the Authority powers of economic regulation over air carriers engaged in transporting mail, persons or property in interstate commerce as common carriers by:[8]

1. Controlling entry through issuance of certificates of public convenience and necessity.[9]
2. Fixing compensation for the transportation of mail, taking into consideration, in addition to the normal ratemaking criteria, "the need of each such carrier for compensation" which together with its other revenue would "enable such carrier under honest, economical and efficient management, to maintain and continue the development of air transportation . . ."[10]
3. Controlling rates (maximum and minimum), accounts, service, consolidations, interlocking directorates, agreements among carriers and unfair competitive practices.[11]
4. Granting exemptions from any or all requirements of the Act.[12]

Reorganization Plan No. IV of 1940, effective June 30, 1940, transferred to the Department of Commerce the Civil Aeronautics Authority and its functions, the Office of the Administrator of Civil Aeronautics and its functions, and the responsibilities of the Air Safety Board.[13] Pursuant to this reorganization, the functions of the Air Safety Board were consolidated with those of the Civil Aeronautics Authority, which was re-designated the Civil Aeronautics Board (CAB). Section 7(c) of Reorganization Plan IV provided that the CAB shall report to Congress and the President and shall exercise its functions of rule-making, adjudication and investi-

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gation independently of the Secretary of Commerce.[14]

In 1958, Public Law 85-726 (Federal Aviation Act of 1958) repealed the Air Commerce Act of 1926 as amended, the Civil Aeronautics Act of 1938 as amended, and the 1940 Reorganization Plan.[15] Title IV of the Federal Aviation Act, however, reenacted those provisions of the 1938 Civil Aeronautics Act pertaining to economic regulation of air carriers. The House Report on the 1958 Act characterized it as "a reenactment virtually without substantive change of the existing law contained in Title IV of the Civil Aeronautics Act of 1938 as amended.[16]

Further insight into the purpose and effect of the Federal Aviation Act on airline economic regulation may be gained from the Conference Report summary.[17]

> "The committee of conference wishes to make it clear that it endorses, as expressing the intention of the managers on the part of the Senate and the managers on the part of the House, the statements in the House debate, and the House committee report to the effect that the Congress does not intend that this reenactment of portions of the Civil Aeronautics Act of 1938 shall constitute legislative adoption of administrative interpretations and practices or of judicial decisions under that act. It is important that there be no doubt on this point, particularly in view of the many legal controversies over the interpretation of the provisions of Title IV. The reason for reenactment of the statute, instead of using section-by-section amendments, as the legislative method of creating the Federal Aviation Agency (the main purpose of this legislation), was primarily the difficulty posed by the many amendments which the latter method would have necessitated and the risk of error inherent in that process.
>
> As stated in the report of the House committee on this legislation, therefore, the reenactment of provisions now in effect is to be regarded as a completely neutral factor in any question arising hereafter as to the interpretation of the present law or of this new legislation." (emphasis added)

The Federal Aviation Act's principal purpose was, therefore, creation of the Federal Aviation Agency to provide for greater regulation of safety and operations, promotion of civil aviation and to provide for the safe and efficient use of airspace.[18] Thus, the 1958 Act had little if any direct or indirect effect upon economic regulatory concepts that had been inherent in anh evolved from the 1938 Civil Aeronautics Act.

Although regulatory activity affecting civil aviation and air carriers further increased subsequent to the 1958 Federal Aviation Act, the focus of regulatory action was on flight safety, environmental issues, operational procedures, technological research and development. Not until the mid 1970's, when the Report of the CAB Special Staff on Regulatory Reform was completed, did the issue of economic regulation of air transportation regain national attention. The principal recommendation of the Special Staff Report (Executive Summary) was that:[19]

> "protective entry, exit and public utility-type price controls in domestic air transportation be eliminated within three to five years by statutory amendment to the Federal Aviation Act."

The CAB Special Staff Report concluded that:

- protective entry/exit controls and utility-type price regulations under the Federal Aviation Act are not justified by the underlying cost and demand characteristics of commercial air transportation.
- The (airline) industry is naturally competitive, not monopolistic,
- In the absence of economic regulation, monopoly abuses would not occur,
- the present system of regulation causes higher than necessary costs and prices which in turn suppress demand.

Concurrent with the CAB's Special Study, other interests in economic regulation of air transportation were evolving. The Senate Subcommittee on Administrative Practice and Procedure completed in 1975 its 18-month investigation of the CAB. After conducting numerous hearings and exhaustive staff study, the Subcommittee "reached five general conclusions concerning the CAB's practices and procedures during the past few years:

1. The Board's practices, while effective in promoting industry growth, technological improvement, and reasonable industry profits, have not been effective in maintaining low prices. It is economically and technologically possible to provide present air service at significantly lower prices, bringing air travel

within the reach of the average American citizen

2. Several of the procedures that the Board follows in setting major Board policies—in particular, route and enforcement policies — have lacked the openness, intelligibility, and impartiality required by elementary notions of procedural fairness.
3. The CAB should shift the focus of its attention from the problem of promoting the growth of the aviation industry — a goal that is consistent with a large number of aircraft, frequently scheduled service, and comparatively empty airplanes —to the problem of making the service economically available to more of the American public — a goal that is consistent with fuller planes, reasonably frequent service, and significantly lower fares. The Board's present ratemaking procedures are ill suited to this goal. Instead, it will be necessary for the Board to encourage price competition, to adopt a more liberal entry policy, and to use more sparingly its power to grant immunity from the antitrust laws.
4. To secure the adoption of these policies, Congress should enact legislation to limit the CAB's powers to control prices, restrict entry, and confer antitrust immunity.
5. The shift towards a policy that relies heavily upon competition must take place gradually, allowing a reasonable transition period for the industry to adjust.

The following few pages will summarize the report's argument supporting these general conclusions and the more specific recommendations it contains. The facts and figures contained in this report are based upon the state of the industry, the economy, and regulation as the subcommittee found them in the spring of 1975, and, unless otherwise noted, do not reflect those changes in regulation that may have taken place since, or in response to, criticisms voiced at the hearings.[70]

Evolving from this re-newed interest in economic regulation of air transportation was the so-called "regulatory reform movement." Although initially fragmented and uncertain, the movement's ambitions were crystalized and carried as numerous legislative proposals. After several legislative proposals (S. 2551 — the Aviation Act of 1975 (Magnuson), S. 3364 — the Air Transportation Act of 1976 (Kennedy), H.R 8813 — the Air Service Improvement Act of 1977 (Anderson), H.R. 9297 — the National Air Transportation Act of 1978 (Levitas)) aimed at reforming the air transportation regulatory structure were defeated, the Airline Deregulation Act of 1978 (P.L. 95-504) was enacted on October 24, 1978.

II. CRACKS IN THE PRE-1978 REGULATORY FRAMEWORK

The policy Declaration[21] of pre-deregulation law (Federal Aviation Act) was essentially drafted in 1938 and re-enacted without change in 1958. As such, the CAB's policy was framed in the context of an infant industry in need of government protection and encouragement.[22]

Deregulation proponents argued that the Board had construed its 1938 Congressional mandate restrictively and, more often than not, had found the protection and maintenance of existing air carriers to be in accordance with the public convenience and necessity, while limiting or de-emphasizing the desirability of competition.

At its roots, the debate between deregulation proponents and those favoring the status quo could be reduced to the policy issue of what kind of commercial air transportation system was in the best national interest:

- An essentially unregulated or deregulated system, which might operate in ways that could produce greater competition and different fares and service levels in different parts of the system;

or,

- A regulated system in which competition and fare levels are controlled. and uniform service is available to all areas of the nation.

Deregulators maintained that the primary goal of the air transportation industry should be maximum economic efficiency (40 Fed. Reg. 28726). Critics of regulatory controls argued that the Board's goal during its forty-year history had been to maximize the number of city pair markets that receive air service, while ensuring that public subsidy was kept to a minimum and that carriers earned an acceptable profit. These objectives critics argued, resulted in:

- Restricted competition leading to excessively high costs and inadequate choice of service in many cases,
- Excess capacity,
- Exploitation of profitable markets to subsidize unprofitable markets,
- Excessive investment in equipment and other resources by the carriers,

and an uneconomical rate of new product development by aircraft manfacturers.

A second issue raised by proponents of deregulation was the Board's failure to certificate any new large trunk carriers in the Board's forty-year history and its resistance to the expansion of existing carriers into new markets (route moratorium). This resistance or impedence to entry was alleged to have resulted from the Board's artificially high standards, owing to its interpretation of the "public convenience and necessity" provisions of the Federal Aviation Act.[23]

Proponents of deregulation argued that limited accessibility into the air transportation system resulting from the Board's control of entry and exit had:

- Eliminated normal economic pressure to reduce costs,
- Protected inefficient firms and denied access to potentially more efficient carriers,
- Permitted and encouraged inefficient route structures and the inefficient utilization of equipment,
- Raised the costs of air travel.

A third issue receiving considerable attention and debate was the process for establishing fares to be collected by CAB certificated carriers. Reformers maintained that CAB restrictions on pricing flexibility had eliminated effective competition and caused the carriers to compete largely on the basis of scheduling frequency, thereby resulting in:[24]

- Overcapacity, leading to low load-factors and high rigid price levels,
- An inadequate variety of services,
- Discrimination among classes of travelers.

III. ERECTING A NEW STRUCTURE-REFORM MEASURES

The Airline Deregulation Act of 1978, which became law on Oct. 24, 1978[25] amended the Federal Aviation Act of 1958 and made substantial changes in policy and procedure. A comparison of the two Acts in selected areas provides a basis for understanding the substance of the Deregulation Act and its application. Of special importance is the Act's Declaration of Policy, its treatment of entry and exit standards and pricing criteria.

The words and phrases which collectively make up the Airline Deregulation Act's Declaration of Policy identify several "objectives" (safety, availability of service, reliance on competition, regulatory responsiveness, urban satellite airports, fair competitive practices, small community service, encouragement of entry) which are to be considered by the Board as in the public interest and in accordance with the public convenience and necessity. The dominating word or phrase in the new Declaration of Policy, Section 102 (a), is **competition**. Competition is to be both an objective in itself and a process for obtaining other goals such as efficiency, innovation, low fares, price and service options and air carrier growth.

The over-all effect of the revised policy declaration is to change the standard or test employed for determining public convenience and necessity from one based on "protective airline development" to "competitive airline development." In short, the new policy expressly declares the placement of maximum reliance on competitive market forces as being in the public interest and in accordance with the public convenience and necessity.[26]

Safety in air commerce has been separately identified in the new Declaration of Policy and stated as the first policy objective to be pursued by the Board in exercising its powers and duties under the new Act. Safety is to be the highest priority in Air commerce.[27] Further, the Secretary of Transportation is to prepare recommendations on the safety implications of new service and these recommendations are to be fully evaluated prior to the authorization of new air transportation services.

"Threshold standards" for CAB decision making in regulating entry into air transportation have been significantly altered by the Deregulation Act. The former Section 402(d) of the Federal Aviation Act of 1958 prescribed a two-part test, requiring that the applicant for new service be fit, willing and able and that the transportation in question be required by the public convenience and necessity. (Former Section 401 (d) (1), (d) (2), and (d) (3)) Section 401 (d), as revised, has resulted in significantly easier entry into new and existing markets. Although there is no change in the fit-willing and able standard, the second part of the test is greatly liberalized to require the issuance of a certificate awarding authority whenever the transportation in question is consistent with the public convenience and necessity. (92 Stat. 1712, Section 401 (d) (1) (A), (d) (2), (A), and (d) (3) (A))

As a further expression of Congress' determination to remedy the mischief of former Section 401 (d), any application for a certificate pursuant to Section 401 (d) (1) (A), (d) (2) (A) or (d) (3)

(A) shall be deemed to be consistent with the public convenience and necessity unless the Board finds by a preponderance of the evidence that such transportation is not consistent with the public convenience and necessity. (92 Stat. 1719, Section 401 (d) (9) (C)) Moreover, the burden of proof is shifted in the new Section 401 (d) from the applicant to opponents of the new application to prove inconsistency with the public convenience and necessity. (92 Stat. 1719, Section 401 (d) (9) (B).

The above changes, taken in context with the new Declaration of Policy's emphasis on competition and the encouragement of entry as being in accordance with the public convenience and necessity, indicate the purpose in amending Section 401 (d) was to statutorily create a more liberal environment for considering certificate applications than previously existed under the former Section 401 (d).

A second method for entry is the "Automatic Market Entry" provisions of Section 401. The automatic entry provision allows Board-certificated passenger carriers to select route segments between any one pair of points to provide scheduled non-stop air transportation. Beginning in January 1979 and continuing through 1981, designated air carriers may enter one market per year without obtaining CAB approval. If the applicant is found to be fit-willing-and-able, the Board must issue a certificate within 60 days. There is no public convenience and necessity test required as part of the "automatic entry" provision.

A third avenue of entry into an existing route is where dormant authority exists on a certificate issued to another carrier. If an air carrier which has authority to provide service on a particular route fails to provide service of at least 5 round trips a week for at least 13 weeks during a 26-week period, that authority becomes dormant and the Board shall award authority to any carrier holding a certificate under Section 401, if such service is consistent with the public convenience and necessity. There exists a rebuttable assumption that any application to replace a dormant carrier is consistent with the public convenience and necessity. (Section 401 (d) (5) (F))

Freedom to exit an existing market is the "flip side" of the "freedom to enter" coin. Previously, a certificated carrier could not abandon a route absent Board permission, notice and a hearing. (Former Section 401 (d) (8) Subsequent to October 1978, a carrier's exit from a community or route is automatic, pending notice of the carriers intent to do so. (Section 401 (j)) A sixty-day notice is required prior to discontinuing nonstop or single plane service, whereas a ninety day notice is required prior to stopping all service or reduction of service below what the Board considers essential. (Section 401 (j) (2) and (j) (1))

Under the former Act, fares collected by CAB certificated carriers represented a uniform nationwide pricing system based on average industry costs and mileage. The CAB imposed its ratemaking policies on certificated carriers by it's power to suspend a fare after finding the fare unjust or unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial. Former Section 1002 (d)) Once a fare was determined unlawful or suspended, the Board could then prescribe a lawful fare.

The Deregulation Act establishes a standard fare level based on the coach fare formula used by the Board in evaluating general fare increases. The standard industry fare establishes a benchmark for the "zone of reasonableness" where a fare may vary from 5 percent higher to 50 percent lower than the industry level. (Section 1002 (d) (4) (B)) A fare within this one may not be subject to suspension on the basis that the fare is too low or too high, however, fares within the zone are still subject to replacement after notice and hearing if they are unjustly discriminatory, unduly preferential, or unduly prejudicial. In any proceeding to determine the lawfulness of the fare, the party opposing a fare has the burden of showing substantial and irreparable harm to competition.

As a result of the Deregulation Act, the CAB has modified its passenger fare policies to allow air carriers the flexibility to engage in price competition. Under the new rules, carriers will no longer be required to file identical fares for all markets of equal distance; instead they will be able to experiment with fares tailored to their individual costs and markets. Likewise, carriers will no longer be required to submit economic justifications with their fare filing. Finally, the carriers will no longer be required to maintain a minimum first-class fare. (Aviation Law Reports Number 671, Sept. 21, 1978 p. 1)

IV. COMMENTS AND CONCLUSIONS

Preliminary data compiled by the Civil Aeronautics Board[28] indicates that medium hub communities[29] have experienced the greatest changes in weekly aircraft departures subsequent to Deregulation. Table IV-I compares sched-

uled aircraft departures during the week of March 1, 1979 with those during the week of March 1, 1978.[30]

Although medium hubs experienced the greatest percentage increase in weekly aircraft departures during the twelve-month period, large hubs accounted for the greatest increase in the number of weekly aircraft departures and correspondingly captured over 50% of the 9,702 additional departures occuring at all 677 hub and non-hub communities.

Table IV-2 further represents the initial impact of derugulation upon the nation's hub communities. Of the 24 large hubs, all but one (1) experienced an increase in airline departures. Eight (8) of the thirty-three (33) medium hubs experienced a loss of airline service while twenty-five (25) medium hubs increased in airline departure.

This unprecedented increase in airline departures at large and medium hubs was not unforeseen, although the response of local government and some airport operators was not anticipated. Contrasted against normal airline departure growth rates of 2 - 4%, the increases of 8.7% and 11.00% for large and medium hubs respectively, has caused some concern among airport operators as to the desirability of additional airline service.

At least four (4) major issues have appeared on the horizon involving airport operators and the accelerated growth rates spawned by deregulation. Commonly referred to as issues in AIRPORT ACCESSIBILITY, the range of airport-related issues affecting new entrants was summarized by Richard B. Hirst[32] of the Civil Aeronautics Board staff, and are characterized as:

- the scope and degree of processing required by an airport operator of an entering carrier prior to commencement of service at the new airport.
- the application of environmental controls to new carriers.
- the allocation of peak-hour slots at airports experiencing airside congestion.
- the distribution and use of existing groundside facilities (gates, ticket counters, holding areas, etc.) among existing carriers and new entrants.

One or more of these airport access issues will be of concern to many large and medium hubs. Although resolution remains a future task, it is clear that many airports face a serious dilemma if forced to accept uncontrolled and unlimited airline entry, given local mandates to abate aircraft noise and the obligations of contractual agreements with existing carriers that fully distribute available groundside facilities.

More easily dispelled as no longer persuasive are the traditional arguments made for economic regulation of air transportation[33] which resulted in the Civil Aeronautics Act (1938) and subsequently, the Federal Aviation Act (1958).

If a relationship between economic stability and air safety existed in the early days of civil aviation, this link would appear to be distant today. During the last forty years, the maintenance and advancement of flight safety has been accomplished apart from economic regulatory bodies. The Federal Aviation Administration (FAA) is by statute[34] required to establish and enforce standards governing the design, construction, performance, operation and inspection of civil aircraft, and is further empowered to certificate airmen, carriers and related facilities (airports, navigational aids, security, etc.).

There is little direct evidence to substantiate the link between economic

TABLE IV-1

AIRCRAFT DEPARTURES BY HUB SIZE[31]
(48 States)
March 1, 1979 vs March 1, 1978

Hub Class	No. of Communities	Departures Per Week* 3/1/78	3/1/79	Increase or Decrease	Percent Change
Large	24	61,711	67,161	5,390	+ 8.7
Medium	33	20,158	22,385	2,227	+11.0
Small	86	16,992	17,908	916	+ 5.3
Nonhub	534	25,274	26,443	1,169	+ 4.6
Total	677	124,195	133,897	9,702	+ 7.8

* Includes departures to all destinations by all carriers, including foreign flag.

Source: *Official Airline Guide*, March 1, 1979 and March 1, 1979.

TABLE IV-2

DISTRIBUTION OF DEPARTURE CHANGES BY HUB SIZE

Change	Number of Hubs				
	Large	Medium	Small	Nonhub	Total
Increase	23	25	50	225	323
Decrease	1	8	35	207	251
No Change	0	0	1	102	103
Passenger Enplanements (millions)**	157.8	42.4	24.0	5.2	229.3

**Airport Activity Statistics, year ended December 31, 1977. Enplanements at certificated points only.

regulation and its effect on air safety. The CAB has never withdrawn or suspended the certificate of a trunk carrier on grounds that its operations were unsafe, and its constraints on entry have seldom, if ever, revolved around issues of safety.[35]

At the very least, serious doubt exists as to whether the airline industry is a natural monopoly and thus requires public - utility type regulation. Incremental costs associated with greater levels of production do not necessarily decline throughout expanded production levels.[36] Product differentiation is possible as witnessed in the late 1960's and 1970's, when non-uniform services were marketed by non-scheduled and scheduled carriers. Differences in schedules, aircraft, amenities, terminal facilities and passenger processing all suggest that airline services are not, and need not be, uniform as are true public-utility services.

"Cut-throat competition" once argued as justifying economic regulation is likewise subject to skepticism. Claims of rampant "cut-throat competition" as argued in 1938 are likewise no longer credible in light of modern economic theory. Cut-throat competition occurs when members of the industry are attempting to minimize their losses by recouping as much of their fixed costs as possible. More directly, due to the high fixed costs, producers deem it better to sell at a substantial loss than not to sell at all.

The airline industry is not characterized by high or excessive fixed costs which would allow or tolerate "cut-throat competition." Rather, the airline industry is characterized by high variable costs (fuel, labor, advertising, maintenance, etc.) which fluctuate directly with the rate of output.[37] Viewing the experience of intrastate carriers in California and Texas, and the unregulated commuter carriers, there is no evidence that a competitive environment will lead to economic chaos or cut-throat competition.

Assuming that public policy favors the development and maintenance of a comprehensive national air system, the 1938 argument of forging such a system based upon internal cross-subsidies is also very questionable. The inequities of internal subsidies arise from requiring an air traveler on a heavy route to pay for part of the ticket of a traveler on a light route. Where subsidies are needed to provide essential air service, a direct and open subsidy is more likely to serve the small community's long-term interests and concurrently establish equilibrium between the services needed and those provided.

FOOTNOTES

1 The 1958 Federal Aviation Act defined "interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, to mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation (28 Federal Aviation Act of 1958 Title 49, Section 1301).

2 The Air Commerce Act of 1926, defines "air commerce" to mean "transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of a business." 49 U.S.C.S. Section 171 (1926).

3 Air Commerce Act of 1926, 44 Statutes at Large 569 Sections 2, 3, 4, and 5.

4 Air Mail Act of 1935, 48 Statutes at Large 938, Section 20.

5 Jones, **Regulated Industries** (1976) pp. 732-40.

6 Federal Aviation Act of 1958, 49 U.S.C.S. Section 451.

7 Declaration of Policy—In the exercise and performance of its powers and duties under this Act the Authority shall consider the following, among other things as being in the public interest, and in accordance with the public convenience and necessity—

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) The promotion of safety in air commerce; and

(e) The promotion, encouragement, and development of civil aeronautics. (Federal Aviation Act of 1958, 49 U.S.C.S. Section 402).

8 Lowenfeld, Aviation Law—Cases and Materials, (1972).

9 Federal Aviation Act of 1958, 49 U.S.C.S. Section 481.

10 Federal Aviation Act of 1958, U.S.C.S. Section 486.

11 Federal Aviation Act of 1958, 49 U.S.C.S. Sections 484-642.

12 Federal Aviation Act of 1958, 49 U.S.C.S. Sections 496.

13 Reorganization Plan of 1940, No. IV Section 7. Transfer of Civil Aeronautics Authority. — (c) The Administrator of Civil Aeronautics, whose functions shall be administered under the direction and supervision of the Secretary of Commerce, and the Civil Aeronautics Board, which shall report to Congress and the President through the Secretary of Commerce, shall constitute the Civil Aeronautics Authority within the Department of Commerce: Provided. That the Civil Aeronautics Board shall exercise its functions of rule-making (including the prescription of rules, regulations, and standards), adjudication, and investigation independently of the Secretary of Commerce: Provided further. That the budgeting, accounting, personnel, procurement, and related routine management functions of the Civil Aeronautics Board shall be performed under the direction and supervision of the Secretary of Commerce through such facilities as he shall designate or establish.

14 Id.

15 Federal Aviation Act of 1958 (Pub. L. No. 85-726, 72 Stat. 806).

16 H.R. Rep. No. 2360, 85th Cong., 2nd Sess., (1958).

17 H.R. Rep. No. 2556, 85th Cong., 2nd Sess., p. 90, (1958).

18 Federal Aviation Act of 1958 (Pub. L. No. 85-726, 72 Stat. 731).

19 41 J. Air L. & Com. 602 (1975).

20 Airline Regulation by the Civil Aeronautics Board, Summary of Report of the Senate Subcommittee on Administrative Practices and Procedures, 41 J. Air L. & Com. 607 (1975).

21 Id.

22 Snow, Aviation Regulation: A Time For change, 41 J. Air L. & Comm. 649 (1975).

23 Prior to October 1978, the Civil Aeronautics Board had adhered to the "Required by the Public Convenience and Necessity" standard for awarding new authority.

24 Evaluation of Economic Behavior and Other Consequences of Civil Aviation System Operating with Limited or no Regulatory Constraints, 40 Fed. Reg. Section 131.

25 Pub. Law 95-504, October 24, 1978, 49 U.S.C.A. 1300.

26 Pub. Law 95-504, & 102(a)(4).

27 Pub Law 95-504, & 102(a)(1).

28 Report on Airline Service — A Staff Study, April 1, 1979, Civil Aeronautics Board, Washington, D.C.

29 Air traffic hubs are not airports: they are the cities and SMSA's requiring aviation services. Individual communities fall into four hub classifications as determined by each community's percentage of the total enplaned revenue passenger within the 50 states.

30 Report of Airline Service, op. cit., p. 18.

31 Data includes departures of all carriers listed in the Official Airline Guide (certificated carriers, commuter carriers, intrastate carriers, and foreign flag carriers).

32 Richard B. Hirst, "Issues in Airport Access After Deregulation: A CAB Staff View," AOCI Economic Specialty Conference, March 14, 1979, San Antonio, Texas.

33 "the ATA presented four major arguments: that regulation was needed to bring the economic stability that was essential for safety in air travel; that regulation was needed to end the chaotic conditions produced by 'cutthroat competition'; that the airlines were a natural monopoly, making regulation essential; and that regulation was necessary for development of a national air system that served as many communities as possible." Keplinger, An Examination of Traditional Arguments on Regulation of Domestic Air Transport, 42 J. Air L. & Com. 190 (1976).

34 Federal Aviation Act of 1958, Section 601.

35 Miller, A Perspective on Airline Regulatory Reform, 41 J. Air L. & Com. 693 (1975).

36 Caves, Air Transport and its Regulators, 56-60 and 84-85 (1962).

37 Id.