

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Aviation Act of 1977."

SEC. 2. Except as otherwise specified, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958, as amended.

Definitions

SEC. 3. Section 101 is amended:

- (a) by striking out paragraphs (35) and (36);
- (b) by redesignating paragraphs (13) through (32), (33) and (34) and (37) and (38) as paragraphs (15) through (34), (36) and (37), and (38) and (39), respectively; and

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

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

"(14) 'Charter trip' means air transportation performed under regulations prescribed by the Board in which the entire capacity or a substantial portion of the capacity of an aircraft has been engaged for the movement of persons, property, or mail by one or more persons, each of whom has engaged at least 20 seats or an equivalent portion of the capacity other than seats on such aircraft."

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

Declaration of Policy

SEC. 4. Section 102 is amended to read as follows:

"SEC. 102. In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest and in accordance with the public convenience and necessity:

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

"(b) The provision of a variety of adequate, economic, efficient and low-cost services by air carriers without unfair or deceptive practices, and a climate in which an efficient and well-managed carrier will be able to earn adequate profits and attract capital;

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

"(d) Maximum reliance on competitive market forces and on actual and potential competition;

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

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

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

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

Procedural Expedition

SEC. 5. Section 401(c) is amended to read as follows:

"(c)(1) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the Secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a memorandum protesting or supporting the issuance of a certificate. Unless the Board issues an order finding that the public interest requires that the application be dismissed on the merits, or the application requests authority to engage in foreign air transportation, the application shall be set for a public hearing within 60 days from the date the application is filed with the Board. Any order of dismissal issued by the Board shall be deemed a final order subject to judicial review as prescribed in section 1006. Mutually exclusive applications shall be heard at the same time. If an application regarding interstate or overseas transportation is set for public hearing, final disposition of such application must be made within nine months of the date such application was filed.

"(2) The dates specified in paragraph (1) do not apply to applications pending on the date of enactment of this paragraph or to applications filed within six months of such enactment. An application pending on the date of such enactment must be disposed of within 12 months of the date of such enactment. An application filed within six months of the date of enactment must be disposed of within 12 months of the date of

being filed.

"(3) If the Board finds that it is not able to render a decision within the times prescribed in paragraphs (1) and (2) because the applicant has failed to meet the procedural schedule adopted by the Board in that particular proceeding, the prescribed period may be extended for a period equal to the delay caused by the applicant. In addition, by order in extraordinary circumstances, the Board may delay decision for up to 90 days beyond the applicable date for decision.

"(4) If the Board does not act within the time prescribed in paragraphs (1) and (2), as extended when necessary by paragraph (3), the certificate authority requested in the application shall become effective and the Board shall issue the certificate as requested without further proceedings."

#### Restriction Removal

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

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

(c) Section 401(e) is amended by adding at the end thereof the following new paragraphs:

"(7) On flights operated in scheduled foreign air transportation, an air carrier may engage in scheduled interstate air transportation between any United States co-terminal points named in its certificate for such foreign air transportation.

"(8) Prior to January 1, 1980, upon application of any air carrier seeking removal of any term, condition, or limitation attached to its certificates to engage in scheduled interstate or overseas air transportation, or upon its own initiative, the Board within 90 days of any such application or initiative shall eliminate any such term, condition, or limitation which is obsolete or inconsistent with the criteria set forth in section 102 of this Act.

"(9) Any air carrier which provides scheduled interstate or overseas air transportation between pairs of points, with intermediate stops required because the points are named in separate route certificates, may file an application under section 401(c) for authority to serve the pairs of points without intermediate stops. The Board shall grant the authority unless it finds that the carrier does not provide a substantial amount of air transportation between the points.

"(10) By January 1, 1980, the Board shall reissue all certificates for scheduled interstate or overseas air transportation in the form of a list of pairs of points between which each certificated air carrier is authorized to provide nonstop air transportation pursuant to this section. Subsequently, each amendment to a certificate authorizing scheduled interstate or overseas air transportation shall take the form of additions to, or deletions from, such listing.

"(11) After December 31, 1979, any term, condition, or limitation of a certificate to engage in interstate or overseas air transportation which prevents nonstop scheduled air transportation between any two points named in such certificate shall be null and void."

Entry

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

"Issuance of Certificate"

"Interstate and Overseas"

"(d)(1) In the case of an application for a certificate to engage in scheduled or charter interstate or overseas air transportation the Board shall issue a certificate authorizing the whole or any part thereof (or, in the case of an application for a temporary certificate, for such period or periods as the Board may specify) if it finds that the applicant is fit, willing, and able properly to perform such transportation, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, unless a complainant establishes and the Board finds (1) that the complainant is providing air transportation between points which the applicant proposes to serve; (2) that performance of the proposed transportation is not consistent with the public convenience and necessity as defined by section 102; and (3) that the performance of the proposed transportation will cause substantial injury to the complainant.

A carrier may hold simultaneously both scheduled and charter certificates to engage in interstate or overseas air transportation.

"Dormant Authority"

"(2)(A) Beginning on January 1, 1980, if an air carrier during the immediately preceding 12-month period has held unrestricted non-stop authority to engage in scheduled interstate or overseas air transportation between any two points listed on its certificate but has failed to exercise that authority by providing such transportation pursuant to published

flight schedules for a minimum of five round trips per week for at least 180 days during such 12-month period, unless such failure is the result of extraordinary circumstances beyond the control of the carrier, upon application the Board shall issue a certificate without restrictions authorizing such transportation to any applicant that is fit, willing, and able properly to perform such transportation, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. The number of certificates issued pursuant to this paragraph for any pair of points shall not exceed the number of certificates issued for such pair of points pursuant to other paragraphs of this subsection that are not being used as provided in the first sentence of this paragraph.

"(B) Upon the filing of any such application, the Board shall promptly give notice thereof to the public by posting a notice of such application in the office of the Secretary of the Board and to such other persons as the Board may by regulation determine. Any person seeking the same authority pursuant to this paragraph shall file an application for such authority within 30 days of the date on which notice of the initial application was posted. If an additional application is not filed within the 30-day period, and if the only applicant holds a certificate under this subsection, the Board shall issue its final order granting the authority within 60 days of the date on which notice of the application is posted. If more than one application is filed for the same authority, or if any applicant does not hold a certificate under this subsection, the Board shall issue its final order granting the authority to a fit, willing, and able applicant within 180 days of the date on which the

first or only application for the authority was posted and shall make its selection between or among applicants in conformity with section 102.

"Discretionary Authority"

"(3) Beginning on January 1, 1982, and annually thereafter any person may apply to the Board during the month of January under this paragraph for a route certificate to serve additional pairs of points not then included in such person's certificate or certificates, if any. Upon the filing of any such application, the Board shall promptly give notice thereof to the public by posting a notice of such application in the office of the Secretary of the Board and to such other persons as the Board may by regulation determine. Unless the Board shall find the applicant is not fit, willing, and able properly to perform such transportation or to conform to the provisions of this Act and the rules, regulations and requirements of the Board hereunder, the Board within 60 days of such application shall issue a certificate authorizing the applicant to engage in nonstop scheduled air transportation between not more than four additional pairs of points except as follows:

"(A) For any air carrier certificated by the Board under any section of this Act which has operated pursuant to that authority for at least one year, and for any intrastate air carrier engaging in intrastate air transportation which is certificated or licensed by a State regulatory authority, which certificated or intrastate air carrier operated in excess of one hundred million available seatmiles in scheduled passenger air commerce in the previous calendar year, the cumulative air miles between all the points chosen by any applicant in each year may not exceed 4,000 statute miles;



"(B) For any other applicant, the cumulative air miles between all the points chosen by the applicant in each year may not exceed 2,500 statute miles;

"(C) In the event that the Board receives more than one application for a certificate to serve a pair of points pursuant to this paragraph, the Board shall select only one applicant to serve such pair and it shall make its selection in conformity with section 102 within 180 days of the last day of January of that year;

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

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

#### "Charter Air Transportation"

"(4) Regulations for charter air transportation shall not be unduly restrictive. The Board shall not adopt a regulation more restrictive in terms of availability or flexibility of charter air transportation than the regulations in effect on January 1, 1977, unless it finds on the record after notice and hearing that the public interest requires the more restrictive regulation.

#### "Foreign Air Transportation"

"(5) In the case of an application for a certificate to engage in scheduled or charter foreign air transportation the Board shall issue

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

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

"The Board shall not, however, impose closed-door, single-plane service, mandatory stop, long-haul or similar restrictions on any new certificates or amendment to any existing certificate."

#### Abandonments

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

#### "Termination or Suspension of Service"

"(j)(1) An air carrier may not terminate any interstate or overseas air transportation service required by its certificate of public convenience and necessity except upon a minimum of 90 days notice filed with the Board and served upon each community directly affected by such termination. If the Board, within the 90 day notice period, in accordance with its regulations after complaint or upon its own initiative determines that a termination will involve the loss of essential air service, the Board may suspend such termination for a period not to exceed 180 days to allow arrangements to be made for alternative service. The Board may, by

regulation or otherwise, authorize such temporary suspension of service as may be in the public interest.

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

#### Federal Preemption

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

#### "Federal Preemption"

"SEC. 105. A State or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States, may not enact any law, regulation, or standard relating to rates, routes, or services in interstate, overseas, or foreign air transportation or the transportation of mail by aircraft."

#### Transportation of Mail

SEC. 10. Section 405(b) is amended to read as follows:

"(b) Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules and all charges therein of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure

at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail. A change shall not be made in any schedules designated except upon ten days notice to the Postmaster General. An air carrier shall not transport mail in accordance with any schedule other than a schedule designated under this subsection for the transportation of mail."

Consolidation, Merger and Acquisition of Control

SEC. 11. Effective January 1, 1982, Section 408 is amended to read as follows:

"Filing Required"

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

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

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

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

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

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

"Power of the Attorney General"

"(b)(1) If the Attorney General reasonably believes that a transaction which is the subject of a notification filed pursuant to subsection (a) may violate the antitrust laws, he shall notify the Board, the parties to the transaction, and other interested persons of that fact within 30 days. If such notice is given the transaction shall be stayed for 60 days following such notice or until the final disposition of any proceedings brought by the Attorney General. Within 60 days following notice by the Attorney General he may institute an action for relief under the antitrust laws in an appropriate district court including the United States District Court for the District of Columbia.

"Power of the Board"

"(b)(2) If the Board reasonably believes that a transaction which is the subject of a notification filed pursuant to subsection (a) is so

inconsistent with the public interest standards in section 102 as to cause substantial injury to the national transportation system, the Board shall notify the parties to the transaction and other interested persons of that fact within 30 days. Within 150 days after giving such notice the Board may disapprove the transaction if it finds that the transaction is so inconsistent with the public interest standards in section 102 as to cause substantial injury to the national transportation system: Provided, That the Board may not disapprove a transaction on the ground that it violates the antitrust laws.

#### Procedure

"(c)(1) In a suit brought by the Attorney General pursuant to paragraph (b)(1) it shall be a defense that the anticompetitive effect of a transaction which would otherwise violate Section 1 of the Act of July 2, 1890, as amended (Sherman Act), 15 U.S.C. § 1, or Section 7 of the Act of October 15, 1914, as amended (Clayton Act), 15 U.S.C. § 18, are outweighed by the probable effect of the transaction in meeting the transportation convenience and needs of the community or communities or regions or areas to be served, considering all aspects of the transaction and related transactions, and that such transportation convenience and needs probably would not be satisfied by any less anticompetitive alternative. In determining the line or lines of commerce affected by the transaction, the anticompetitive effect of the transaction, and the transportation convenience and needs of the community or communities or regions or areas to be served, substantially equivalent forms of existing or potential air or other transportation in the geographic market shall be given appropriate

weight. The Attorney General shall bear the burden of proving the anti-competitive effect of the transaction, and the proponents of the transaction shall bear the burden of proving the probable effect of the transaction in meeting the transportation convenience and needs of the community or communities or regions or areas to be served and that such convenience and needs probably would not be satisfied by any less anticompetitive alternatives.

"(2) In any action brought by the Attorney General pursuant to this subsection, the Board may appear as a party on its own motion and as of right and be represented by its counsel and the Secretary of Transportation may file with the District Court a statement setting forth his views on the challenged transaction and the implications of the challenged transaction upon national transportation policy.

"(3) Upon the consummation of a transaction subject to this section and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if such litigation is not commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constitutes a violation of any antitrust law other than section 2 of the Sherman Act (15 U.S.C. 2), but nothing in this section shall exempt any person involved in or affected by such a transaction from complying with the antitrust laws after the consummation of such transaction. For the purpose of this section, the term 'antitrust law' means the 'antitrust laws' as defined in section 1 of the Clayton Act as amended (15 U.S.C. 12).

"(4) All transactions subject to this section may be challenged by the Attorney General in an action brought to enforce section 2 of the Sherman Act (15 U.S.C. 2), notwithstanding any other provision of this section or section 414.

" Certificates "

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

" Exemptions "

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

"(f) The Attorney General may, in individual cases, terminate the waiting period specified in paragraph (b)(1) and promptly shall cause to be published in the Federal Register a notice that he does not intend to take any action within such period with respect to such transaction."

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

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

(b) Deleting the words "in the Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938", where they appear in Section 11(a), 15 U.S.C. § 21(a).



### Agreements

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

"Pooling and Other Agreements in Foreign Air Transportation  
Filing of Agreements in Foreign Air Transportation Required";

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

(c) Section 414 is amended by striking "Sections 408, 409 or 412" and inserting "Sections 412 and 413" in lieu thereof.

### Capacity Agreements in National Emergencies

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

#### "Capacity Agreements in National Emergencies"

"SEC. 413. Air carriers may apply to the Board for the approval of an interstate or overseas capacity agreement. The Board may approve such an agreement only if, after notice and hearing and on the record, it finds that (1) the agreement is needed to avert or ameliorate a major nationwide disruption of scheduled air carrier service; (2) such disruption is or will be produced by drastic, sudden and unforeseen changes affecting the industry as a whole; and (3) the agreement is the least anticompetitive way to achieve the desired objective. Such an agreement shall be limited to a period of not more than one year and may be extended by the Board for periods of not more than six months if the Board, after notice and hearing and on the record on each extension, finds that the agreement continues to meet all of the requirements in the preceding sentence."

Repeal of Section 409

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

Rates

SEC. 16. Section 1002 is amended by:

(a) Amending subsection (d) so as to read:

"(d)(1) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by an air carrier for interstate or overseas air transportation, or any classification, rule, regulation or practice affecting such rate, fare, or charge, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the maximum or minimum lawful rate, fare, or charge thereafter to be demanded, charged, collected or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: Provided however, That (i) except in a city pair market where only one carrier is certificated to provide service, the Board may not find any rate, fare, or charge in interstate or overseas air transportation to be unjust or unreasonable on the basis that it is too high unless the rate, fare, or charge is with respect to determinations before January 1, 1982, more than 10 percent higher, or after December 31, 1981, more than 20 percent higher than the rate, fare, or charge in effect for the service at issue one year prior to the filing of the rate, fare or charge; (ii) a rate above direct costs may not be found to be unlawful on the basis that it is too low, and the Board may not require an air carrier to charge, demand, collect, or receive compensation in excess of that carrier's direct costs for the service

at issue. 'Direct Costs' means the direct operating costs of providing service to which a rate, fare, or charge applies, and shall not include such items as general and administrative expenses; depreciation; interest payments; amortization; capital expenses; costs associated with the development of a new route or service; and other costs which do not vary immediately and directly as a result of the service at issue."

"(d)(2) The Board may institute an investigation if it is of the opinion that an air carrier is earning a long term return on investment on its system which is substantially in excess of that required to attract adequate capital. If the Board finds the return on investment is clearly excessive, is detrimental to consumers and is not due to superior efficiency, the Board may order such reductions in the carrier's rates, fares, or charges as are appropriate under the circumstances, or such other actions as may be authorized by this Act."

(b) Amending subsection (e) so as to read:

"(e) In exercising and performing its powers and duties with respect to the determination of maximum rates for the carriage of persons or property, the Board shall take into consideration, among other factors:

"(1) the effect of such rates upon the movement of traffic;

"(2) the need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

"(3) the quality and type of service required by the public in each market;

"(4) the need for price competition to promote a healthy air transportation industry which provides maximum benefits to consumers;

"(5) the need of each carrier for revenue sufficient to enable such air carrier, under honest, economical and efficient management, to provide adequate and efficient air carrier service; and

"(6) the desirability of a variety of price and service options such as peak and off-peak pricing to improve economic efficiency."

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

(d) Amending subsection (i) so as to read:

"(i) The Board shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and the maximum joint rates, fares, or charges for interstate or overseas air transportation, or the classification, rules, regulations, or practices affecting such rates, fares, or charges, and the terms and conditions under which such through service shall be operated."

#### Postal Service Contract Authority

SEC. 17. Section 5402(a) of Title 39, United States Code, is amended to read as follows:

"(a) If the Postal Service determines that service by certificated air carriers between any pair or pairs of points is not adequate for its purposes, it may contract for the transportation of mail by air in such manner and under such terms and conditions as it deems appropriate:

"(1) with any certificated air carrier between any of the points between which the carrier is authorized by the Civil Aeronautics Board to engage in the transportation of mail;

"(2) with any other certificated air carrier, if a certificated air carrier so authorized is not willing so to contract, or between points between which a certificated air carrier is not authorized by the Civil Aeronautics Board to engage in such transportation; or

"(3) with any other air carrier, if a certificated air carrier is not willing so to contract."

#### Local Service Subsidy

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

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

(b) Section 401(j) is amended to insert the following as 401(j)(3):

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

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

"(2) Any community referred to in this paragraph may apply to the Board for assistance if that community believes it will not receive essential air transportation without assistance pursuant to this paragraph. Within a reasonable time of application the Board shall determine what is essential air transportation for the purpose of this paragraph for the applicant, after considering the general definition of essential air transportation, the needs of the community, the availability and practicality of alternative means of transportation to the community, the frequency of service and type of equipment economically appropriate to the routes, the cost of such service, and the integration of such service with the air transportation system. In determining essential air transportation the Board shall consult with the community, the Governor of the State and the Secretary of Transportation.

"(3) If the Board determines that an applicant will not receive essential air transportation the Board shall enter into a service agreement for a period not longer than three years with an air carrier to provide essential service pursuant to this paragraph. In any negotiation pursuant to this section a preference shall not be given to a carrier because of prior service under this paragraph.

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

"(5) Agreements entered into pursuant to this paragraph shall be in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and the

regulations thereunder except those provisions of such Act which the Board determines are not consistent with the purpose of this paragraph. An increase in an agreement price may not be made for the benefit of an air carrier, except for increases in costs attributable to Federal governmental action. The Board shall require in each agreement reasonable assurance of reimbursement for the cost of obtaining another air carrier to provide the air service which the defaulting carrier undertook to provide.

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

"(7) Not less than annually the Board shall determine the average daily enplanements of points receiving assistance pursuant to this paragraph. If the Board determines that any point has not enplaned on average more than five passengers per day during any year while receiving assistance pursuant to this paragraph, the Board may not, after one year from the date of such determination, pay more than 50 percent of the agreement cost of providing service pursuant to this paragraph. If the Board does not receive sufficient assurance within 90 days of the notification to the affected parties that the remaining agreement costs will be supplied by any person (including State or local governments) other than the Board, the Board's obligation to provide service under this paragraph shall cease.

"(8) Air transportation provided pursuant to this paragraph shall be subsidized only as provided in this paragraph, and shall not be eligible for mail subsidy payments pursuant to section 406(b), clause (3).

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

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

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

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

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



Off-Route Charters

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

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

Exemption Authority

SEC. 20. (a) Section 416(b)(1) is amended to read as follows:

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

(b) Section 416(b) is amended by adding at the end thereof the following new paragraph:

"Commuter Air Transportation"

"(3) Any air carrier that engages in interstate or overseas air transportation solely with aircraft having a capacity of less than fifty-six passengers or 18,000 pounds of property shall not be required to obtain a certificate if that carrier conforms to such financial responsibility requirements as the Board may by regulation impose. The Board shall by regulation increase the passenger or property capacities specified in this paragraph when the public interest so requires. Air transportation pursuant to this paragraph is not subject to sections 403, 404, 405(b), (c) and (d), or 412, except for the provisions regarding joint fares and through rates."

SECTION-BY-SECTION ANALYSIS OF

AVIATION ACT OF 1977

Sec. 1 -- The Act may be cited as "Aviation Act of 1977".

Sec. 2 -- Technical amendment that provides that, except where specified otherwise, all references in bill refer to the Federal Aviation Act of 1958, the basic statute for the economic regulation of the airlines.

Sec. 3 -- This section amends section 101 of the 1958 Act, the definitions section. This amendment creates new definitions of "charter air transportation" and "charter trip". These definitions statutorily recognize one-stop inclusive tour charters, and part and split charters (charters which combine scheduled and charter service on one plane and charters which are established by more than one person.) A definition of "scheduled" service is also inserted.

This amendment also strikes the present definitions of "supplemental air carrier" and "supplemental air transportation", not needed now because of the new definition of charter air transportation.

Sec. 4 -- This amends section 102, the policy declaration which governs all actions of the Board. The present declaration is ambiguous and has been interpreted to emphasize the need to protect the existing carriers.

This amendment refocuses the declaration to stress innovation and competition and to delete past references to promotion of the industry. The last sentence of the new declaration recognizes that there may be different factors which have to be considered in cases dealing with foreign air transportation.

Sec. 5 -- Much criticism has been made of the Board's inability to reach timely decisions in entry cases. This section amends section 401 to provide a nine-month limitation on the time within which the Board must act on domestic entry cases. Provision for a 90 day extension is made for cases involving "extraordinary circumstances." A 12 month limit is imposed for cases filed before the enactment or within six months of enactment of the bill. The Board could also dismiss an application pursuant to this section because of procedural deficiencies.

Such a dismissal would be considered "on the merits" and subject to the review provided in this section. If the Board fails to meet the established deadlines, the amendment provides that the authority requested becomes effective without further proceedings.

Sec. 6 -- Under section 401(e), the Board has wide discretion to attach certain conditions and restrictions to a carrier's certificate, such as forbidding a carrier to pick up or discharge passengers at certain points or requiring it to stop at intermediate points along a particular route. These restrictions cause great inefficiency. Subsections (a) and (b) of this amendment provide technical changes. Subsection (c) provides a two part program of restriction removal. First, upon enactment, U.S. carriers engaged in foreign air transportation are granted "fill-up" rights which will permit them to carry domestic passengers between U.S. cities, including those within a single state, that are served on a foreign originated or destined flight.

The second part of this amendment sets up a phased program of general restriction removal. Upon enactment

carriers have the authority to apply to the Board for restriction removal. The Board has some discretion in removing restrictions, but its actions will be governed by the policy set forth in the new section 102. After January 1, 1980, all restrictions on domestic route certificates which prevent non-stop service between cities contained in that certificate will be void.

In addition, carriers may apply to the Board to have another type of intermediate stop requirement removed. Several domestic carriers' route systems are based on multiple certificates which they can "tack" together. This tacking is allowed by the Board, but it requires carriers when flying from a point in one certificate to a point in another certificate to stop at the point where the certificates join or are tacked. Other carriers do not have this form of intermediate stop requirement because they have had their authority reformed into one certificate, albeit sometimes with restrictions. The amendment would delete this intermediate stop requirement

if the carriers were providing "substantial traffic" between the points, a term to be defined by the Board.

Finally, by January 1, 1980, the Board is required to reissue airline certificates in a simplified form which lists the points between which nonstop service is authorized.

Sec. 7 -- Under the present section 401 the Board has wide discretion in allowing new entrants into the airline industry and in allowing existing certificated carriers onto new routes. The Board has used this discretion, however, to frustrate new entry. This amendment, in a carefully phased manner, would liberalize entry into the air carrier industry substantially. First, starting immediately after enactment, the first part of the amendment would shift the burden of proof to the complainant to prove that a prospective applicant's proposal is not consistent with the public convenience and necessity. The complainant would also have to show that it is performing the same service as proposed by the applicant and that the performance of the proposed service would cause

substantial injury to the complainant.

Secondly, beginning in 1980 any person whether a certificated carrier or not can apply for a route for which an existing carrier holds authority but has not provided non-stop service for at least six months during the preceeding year. The Board must award the route to the applicant if the applicant is fit, willing, and able. The number of new certificates issued pursuant to this section may not exceed the number of dormant ones. Since the only questions are fitness or selection of a carrier, a shortened time limit is provided. If the existing carrier has not provided nonstop service because of extraordinary circumstances beyond its control, such as, for example, a lengthy strike, the authority would not be available to other carriers.

Thirdly, beginning in 1982 any person can apply for authority between any four pairs of points each year, and the Board must award that new authority if the applicant is fit, willing, and able, subject to the following restriction. For most CAB certificated

carriers and for the larger state certificated carriers, the statute miles between the points selected may not exceed 4,000 miles a year. For all others, the limit is 2,500 miles. Provision is made in the amendment to avoid more than one carrier selecting the same point. In such an event the Board must choose the appropriate operator in light of the revised section 102.

These three changes in entry do not affect foreign air transportation, for which the present section 401 entry standard is retained.

It should also be noted that by rewriting section 401, the present section 401(d)(3) is deleted. This means that supplemental carriers, or charter carriers as they are referred to in this bill, will be subject to the same entry standard as other carriers and can participate in the discretionary entry and dormant authority provisions. In addition, any question whether a charter carrier can also hold domestic scheduled authority is removed by specifically providing that charter and



scheduled certificates can be held simultaneously by the same carrier.

Finally, the amendment provides that domestic and foreign charter regulations must not be unduly restrictive and specifically requires the Board not to adopt a more restrictive regulation than exists presently unless it finds after hearing that the public interest so requires.

In addition to the changes proposed in this particular section regarding entry, the amendments to the Board's policy statement, the procedural time limits, and the restriction removal provisions will also significantly open the industry to new competition both within the existing community of carriers and from new entrants.

Sec. 8 -- The Board has considerable discretion in granting or denying applications to abandon service. Through the years the Board has used this discretion to allow a considerable amount of exit from unprofitable points. The amendment in this section would statutorily

incorporate a liberal exit policy.

Under the amendment, air carriers could terminate service with 90 days notice. If the Board determined that a termination would involve the loss of essential air service, it could suspend the termination for six months to allow arrangements to be made for substitute service. This procedure does not apply to foreign air transportation, where the existing procedures would be maintained.

Sec. 9 -- This amendment specifically prohibits the states and localities from regulating rates, routes and services in interstate, overseas, or foreign air transportation. It is not intended to affect the existing federal-state relationship with respect to such matters as environment, noise and the like.

Sec. 10 -- Section 405(b) now authorizes the Postmaster General to require carriers to establish additional routes and disapprove changes in routes. This authority has only been used a few times. Other sections of this bill broaden the authority of the Postmaster General to

contract for mail services. In light of this broadened authority, and consistent with the philosophy of this bill to lessen regulation, this amendment deletes the authority of the Postmaster General to order new routes or disapprove of route changes.

Sec. 11 -- Section 408 now gives the Board the power to approve airline consolidations. Once approved, such transactions are exempt from the antitrust laws that apply to other industries. This amendment removes the power of the Board to so immunize airline mergers. Such transactions would be subject to the antitrust laws, but there would be a special transportation defense available: that the anticompetitive effects of the transaction are outweighed by the probable effect of the transaction in meeting the transportation convenience and needs of the communities or regions affected. In making this balancing, the court must look at the whole transaction and related transactions and give appropriate weight to the availability of transportation from alternative modes of transportation. Under this amendment the Board would retain power to disapprove a merger

if it determined that the transaction was so inconsistent with the public interest standards of section 102 as to cause substantial injury to the national transportation system, but this action would not affect the status of the transaction under the antitrust laws. This amendment would not go into effect until January 1, 1982.

Sec. 12 -- This amendment, effective January 1, 1982, amends the Clayton Act to remove the special exception relating to air carriers and the Board.

Sec. 13 -- At present the Board can approve certain inter-carrier agreements. Such agreements may be anticompetitive and approval by the Board protects them from attack under the antitrust laws. This amendment removes the authority of the Board to approve agreements relating to interstate and overseas commerce. The Board would retain its present authority, however, with respect to foreign air transportation. It should also be noted that many carrier agreements are not anticompetitive and even without Board approval would not be contrary to the antitrust laws.

Sec. 14 -- This amendment creates a special authority of the Board to approve capacity agreements among air carriers in emergency conditions. The authority is very narrow and may be used only to avert or ameliorate a major nationwide disruption of air service which is or will be produced by sudden and drastic changes affecting the industry as a whole. An internal financial crisis of a carrier or group of carriers would not be grounds for the use of this power. In addition, the capacity agreement must be the least anti-competitive way to achieve the desired goal and may not exceed one year, except that it may be extended for a period or successive periods of not more than six months if after notice and hearing for each extension the Board finds that the agreement still meets all the original conditions that make such an agreement necessary.

Sec. 15 -- At present section 409 provides the Board with authority to approve certain interlocking relationships for air carriers. It has not proved to be an effective mechanism. In addition, with the removal of the special Board antitrust

powers for air carriers in Section 408 it would be inconsistent to retain Section 409. This amendment strikes Section 409.

Sec. 16 -- The Board has wide discretion to approve rates.

Historically this power has been used to frustrate carrier innovations. This amendment, in two phases, limits both the suspension power of the Board and the Board's ultimate authority to declare a rate unlawful. Except in monopoly markets, the Board's maximum ratemaking authority is limited by this amendment. Until January 1, 1982, the Board may not find a rate increase unlawful if the rate increase would result in a rate not more than 10 percent higher than the rate in effect one year prior. After January 1, 1982, this percentage is increased to 20 percent, consistent with the increasing ease of entry into the industry which will act as a natural regulator of rate increases. For rate decreases, immediately after enactment carriers may lower their rates to whatever level they desire as long as the rate is not "predatory",

defined to mean a rate above "direct costs" which is also defined in the amendment. This amendment also reforms the general criteria for ratemaking to stress the need for competition. In addition, these amended criteria would now only be relevant to rate increases, and only to those within the now limited authority of the Board regarding rates.

The second part of this amendment provides a narrow exception to the newly established pricing freedom zone. If the Board determines that an air carrier is earning a long term return on investment which is substantially in excess of that required to attract capital and is not due to superior performance, it may order reductions in fares or other appropriate actions, such as allowing new entry. In light of the liberal entry provisions of this bill, this provision is seen as a safeguard for exceptional circumstances only.

For suspensions, this amendment removes the Board's power wherever it does not have the power to declare a rate unlawful. This amendment also limits the Board's

authority to require joint rates, a need that is minimized as carriers receive increasing authority to expand their routes by themselves.

Sec. 17 -- This section amends the Postal Reorganization Act to broaden the authority of the U. S. Postal Service to enter into contracts with certificated and noncertificated air carriers.

Sec. 18 -- The Board presently administers a local service subsidy program under section 406. This program has been costly and inefficient. This amendment provides for an additional subsidy program.

The amendment provides that the Board shall ensure that any community receiving certificated service on January 1, 1977, shall continue to receive essential air service, a term to be defined by the Board, for ten years subject to certain conditions. In essence, the provision provides that the Board will enter into a contract with a carrier, certificated or noncertificated, to provide the service.

The Board will pay the costs of the contract except when the daily enplanements for any year average five passengers or less. At these points with minimal



enplanements the Board is obligated to provide only 50 percent of the cost of the contract, with the remainder being paid for by state or local parties.

The amendment also states that an objective of this program is to phase out the old 406 program by 1987.

Sec. 19 -- At present certificated scheduled carriers may engage in a very limited number of off-route charters. This amendment removes the authority of the Board to limit the mileage of charters.

Sec. 20 -- This amendment broadens the general authority of the Board to grant exemptions. There has been some question as to the present scope of the Board's exemption authority. In addition this amendment specifically broadens the present administratively determined commuter exemption to planes of a capacity of less than 56 passengers or 18,000 pounds of property.