

TO THE BOARD OF DIRECTORS OF
AMERICAN AIRLINES, INC.:

I am attaching copy of the summary of the provisions of the new Civil Aeronautics Act which Mr. Hale and I have prepared.

R. S. Pruitt

August 5, 1938.

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RESUME OF THE ACT CREATING THE
CIVIL AERONAUTICS AUTHORITY

INTRODUCTION

On June 23, 1938, President Roosevelt signed the McCarran-Lea Bill, which creates a Civil Aeronautics Authority for the regulation of civil aviation in the United States. With the exception of provisions relating to the organization of the Authority, the authorization of Government travel, and the consolidation and merger of air carriers, etc., which provisions became effective upon the date of the enactment, and the provisions prohibiting interlocking relationships of officers and directors which become effective after 180 days, the majority of the provisions of the Act become effective at the end of 60 days. The Authority, however, has the power to extend the effective date of certain provisions, but not beyond 180 days from the date of enactment.

On July 7, 1938, President Roosevelt appointed Edward J. Noble of Connecticut as Chairman of the Civil Aeronautics Authority, Harllee E. Branch of Georgia as Vice Chairman, and G. Grant Mason of Washington, D. C., Robert Hinckley of Utah, and Oswald Ryan of Indiana as members. At the same time he appointed Clinton M. Hester of Montana as Administrator. Mr. Noble was Chairman of the Board of Life Savers Corporation and a Director of several other companies not connected with aviation, and is a member of the Industrial Advisory Committee of the Federal Reserve Bank of New York; Mr. Branch is a former newspaper man who, during the present administration, has been Second Assistant Postmaster General in charge of Air Mail; Mr. Mason has been a Vice President of Pan American Airways, Inc. and President and General Manager of the Cuban affiliate of Pan American Airways, Inc.; Mr. Hinckley was a W.P.A. Administrator; Mr. Ryan has been General Counsel of the Federal Power Commission; and Mr. Hester, who has been appointed to the important position of Administrator, has been Assistant General Counsel of the Treasury Department.

Generally speaking, it may be said that the new law is constructive. Fairly administered, it should promote the upbuilding and development of the air transport industry. The general policy of the Government in the enactment of this legislation is set forth in Section 2 of the Act as follows:

DECLARATION OF POLICY

SEC. 2. 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) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics.

These policies, if carried out, should prove most beneficial to American Airlines, Inc. and other air carriers.

The Act applies to the air transport industry as complete a Federal regulatory system as is now applied to rail and motor carriers. The major provisions of the Air Mail Acts, both domestic and foreign, and those of the Air Commerce Act of 1926 are, with exceptions unimportant to discuss here, repealed by the new Act and complete regulatory power vested in the new Authority. Basically, the Act divides its system of regulation into two parts, namely, economic and safety regulation. Operation of all civil aircraft within the domestic United States and between the United States and foreign countries will be subject to the Act.

ORGANIZATION OF AUTHORITY

The Act provides for the appointment by the President, with the consent of the Senate, of five members of the Authority, an Administrator, and an Air Safety Board to be composed of three persons.

The five members of the Authority, who are the real "Commissioners" as that title is employed in the more familiar Interstate Commerce Act, are to

hold office for terms of six years, with one member's term expiring each year. They are to receive salaries of \$12,000.00 per year. No more than three of the members are to be selected from one political party, and they will be removable by the President only for cause, which is specified to be either inefficiency, neglect of duty, or malfeasance in office. Hereafter where reference is made to the Authority, it may be assumed that we are speaking of this five-man Board.

The office of the Administrator has been aptly referred to as that of a "general traffic manager" for the Authority (New York Times June 9, 1938). The article states in part:

"Accepting government by commission as the modern form of regulation of certain national activities--railroads, securities markets, etc.--those who drew this bill determined to profit by experience. They recalled that quasi-judicial and quasi-legislative commissioners are often bogged down by detail, hampering and delaying their broader functions. So, having set up an Authority of five members to deal with all the problems and activities of commercial aviation, they created an Administrator to look after certain details. This is a novelty in the Federal American Government."

Broadly speaking, it would appear that the office of the Administrator (for which an annual salary of \$7,500.00 is provided) is designed primarily as an instrumentality to insure the orderly establishment, development and use of the airways, landing areas, and other navigational facilities. Outside of this function the Act provides that the Administrator shall exercise only such additional powers and duties as may from time to time be assigned to him by the Authority.

The Air Safety Board, as the title indicates, is accorded the authority to investigate accidents, recommend rules, regulations and practices to avert the recurrence of accidents, and to promote safety in general. Each member of this Board is to receive \$7,500.00 per year, and the Act requires that one of the members be an active airline pilot having flown not less than 3,000 hours in scheduled air transportation.

With certain exceptions for specialized services, the civil service laws will be applicable to all employees of the Authority, and no member of the Authority, the Air Safety Board, or the Administrator is permitted to have any pecuniary interest in, or own any stock or bonds of, any civil aeronautics enterprise.

AIR CARRIER ECONOMIC REGULATION

After the Act becomes effective, no air carrier will be permitted to operate either within the United States or between the United States and foreign countries without having obtained from the Authority a certificate of convenience and necessity authorizing such operation over the particular route. In the case of foreign airlines desiring to serve this country, it will be necessary for them to obtain from the Authority what is to be known as a "permit", the issuance of which requires the approval of the President and may be of limited duration. The certificates of convenience and necessity to be issued to air carriers will be similar in nearly all respects to those which have been employed in other forms of public utility regulation. They will authorize the holders to engage in the transportation by aircraft of mail, passengers and express between designated points for an indefinite period. No longer will an air carrier desiring to extend its services be met with a prohibition against "off-line flying" as in the past. The granting of certificates will be dependent upon the applicant showing that present or future public convenience and necessity requires the inauguration of the new service and that the applicant has the ability to perform the same.

As in other cases where regulatory measures have been enacted, the new Act recognizes the existence of the pioneer rights of existing air carriers, and they, upon application within 120 days from the date of enactment, will receive certificates without proof of convenience and necessity if they were operating satisfactorily on May 14, 1938, and continuously thereafter. The certificates which the existing air carriers will receive will be limited according to whether they were transporting mail, passengers and property or only passengers and property on the date of enactment.

INAUGURATION OF ADDITIONAL AIR MAIL SERVICES

Since the system of carrying air mail under contracts with the Post Office Department will be abolished and all outstanding air mail contracts cancelled, a new provision for the inauguration of additional mail service is provided. Additional air mail service may be inaugurated by the Postmaster General upon his certifying to the Authority the necessity therefor. Upon such certification the Authority is required to post the same, together with a state-

ment of the additional service required, in the office of the Secretary of the Authority. In the event no air carrier is operating between the points to be served with the new air mail service, the Authority is authorized to issue a certificate of convenience and necessity permitting the carriage of mail, passengers and express to any applicant showing his ability to perform the service, and that the same is otherwise required in the interest of public convenience and necessity. If an air carrier is already operating between such points under a certificate which does not authorize the carriage of air mail, the Authority is given the power to amend the certificate authorizing the carriage of such mail cargo. From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General is directed to tender air mail to the holder thereof to the extent required by the Postal Service.

TARIFFS--RATES FOR CARRIAGE OF
PERSONS AND PROPERTY

As in the case of other carriers, the air carrier will be required to file with the Authority tariffs showing all rates, fares and charges for air transportation between the points which it serves and will be prohibited from charging or demanding any additional or different compensation from that set forth in the tariff. The issuance or interchanging of tickets or passes for free air reduced rate transportation is limited to the directors, officers and employees of the air carriers and their immediate families; witnesses and attorneys attending any legal investigation in which the air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; and to any person or property with the object of providing relief in cases of general epidemic, pestilence, etc.

The air carriers are required to furnish reasonable through service and establish just and reasonable individual and joint rates, fares and charges, and are prohibited from discriminating in any manner whatsoever. In the event of the air carriers failing to comply with the foregoing, the Authority may prescribe such rate, fare or other charge, or the maximum or minimum thereof. In fixing rates, the Authority is directed to take into consideration the advantages of air travel, the effect of travel on the flow of traffic, and the need of the air carriers for sufficient revenue to permit the performance of their authorized service. This last element in effect is the "fair return" clause now

employed in the Interstate Commerce Act as to rail and motor carriers.

TRANSPORTATION OF MAIL--RATES

The present air mail contracts, both foreign and domestic, are to be cancelled under the Act and the bonds terminated. This cancellation is not to take place, however, until the existing air carriers receive their certificates. While the rates for the transportation of air mail as established by the Interstate Commerce Commission are continued in effect, the Authority may, upon its own initiative, or upon application by the air carrier, revise such rates and make its revised rates effective from such date as it shall determine to be proper. Limitation as to air mail rates, either foreign or domestic, no longer exists--the Act sets no limit as to the rate of compensation which the Authority may establish. Further, the Act is extremely liberal in setting forth the elements which the Authority may take into consideration in fixing the rates. It provides that the Authority shall take into consideration, among other factors, the fact that the air carriers hold certificates authorizing the carriage of mail only by providing necessary and adequate facilities therefor ("stand-by" costs, etc.), to the need of the air carriers for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenues of the air carrier, to enable it under honest, economical and efficient management to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service and the national defense. It seems unnecessary to observe that this direction of Congress to the Authority adopts the air mail rate-making power of the Authority as a vehicle for encouraging air transportation and, in effect, authorizes the payment of sufficient compensation for for the transportation of the air mail to permit the air carriers to continue in the air carrier business.

CONSOLIDATION, MERGER, ACQUISITION OF CONTROL--INTERLOCKING DIRECTORATES

Consolidations, mergers, acquisitions of control and interlocking directorates are not absolutely prohibited as under the prior law, but are made unlawful if the Authority does not approve the same upon application and

finding that the public interest will be adversely affected thereby. It will be necessary to make such applications to the Civil Aeronautics Authority for approval in the following cases:

1. If an air carrier desires to retain as an officer or director any person who is an officer or director or controlling stockholder in any common carrier or other person engaged in any phase of aeronautics;

2. If an air carrier desires to retain as an officer or director any person who is an officer or director or controlling stockholder in any other corporation whose principal business, in purpose or in fact, is the holding of stock in or control of any other corporation engaged in any phase of aeronautics.

(It should be noted that the Act makes a prohibited relationship illegal as to the air carrier and the person involved.)

The prohibited relationships are made illegal if accomplished through nominees or controlled persons, as well as when accomplished directly, and will apparently make it necessary for The Aviation Corporation to secure approval of the Civil Aeronautics Authority in order to elect a representative of The Aviation Corporation on the Board of any airline.

Unless approved by the Authority, it is also unlawful for two or more air carriers to merge or consolidate; or for an air carrier to merge or consolidate its properties with any other common carrier; or for any such common carrier to contract to lease or operate the properties of any other air carrier; or for an air carrier to purchase, lease or contract to operate the properties of any person engaged in any other phase of aeronautics; or for a foreign air carrier to acquire control of any citizen of the United States engaged in any phase of aeronautics; or for an air carrier or other common carrier or corporation engaged in any other phase of aeronautics to acquire control of an air carrier in any manner whatsoever; or for an air carrier to acquire control of any person engaged in any other phase of aeronautics. Maintenance of relations established in violation of any of these prohibitions is likewise prohibited, and persons controlling an air carrier are subject to the same restrictions as the air carriers themselves.

EXEMPTION FROM ANTI-TRUST LAWS

Every air carrier is required to file with the Authority copies of its written or oral agreements affecting air transportation with other carriers where the subject matter thereof is a pooling or apportioning of earnings or is otherwise in the nature of a cooperative working arrangement. The Authority is required to disapprove such filed agreement if it is found not to be in the public interest. Any approval by the Authority of such agreements, or of mergers, consolidations, interlocking directorates, etc., relieve the air carriers from all the provisions of the anti-trust laws and the Federal Trade Commission Act.

INQUIRY INTO AIR CARRIER MANAGEMENT

The Authority is accorded very broad powers to inquire into the management of the business of the air carriers, prescribe the forms of its accounts, etc., and to the extent reasonably necessary for any such inquiry to obtain from the air carrier (and from any person controlling or controlled by such air carrier) full and complete reports and information.

In this connection it should be noted that the air carrier is required to submit, at least annually, a list showing the names of each of its stockholders holding more than 5% of its capital stock; also that each officer and director is required, at least annually, to transmit to the Authority a report describing the shares of stock or other interest held by him in any air carrier, or any person engaged in any phase of aeronautics, or any common carrier, and in any person whose principal business is the holding of stock in, or control of air carriers, other persons engaged in any phase of aeronautics or common carriers. Officers and directors of the air carrier are also prohibited from receiving for their own benefit any money or thing of value through the negotiation, hypothecation, or sale of any securities issued by the air carrier.

REGISTRY OF AIRCRAFT

A complete procedure is provided in the Act for the registering of aircraft as to nationality, ownership, liens, etc.

SAFETY REGULATION

The Authority's jurisdiction over the safety of aircraft operation is nearly identical with that previously performed by the Bureau of Air Com-

merce under the Air Commerce Act of 1926. A procedure is established for the issuance of airmen's certificates to persons in charge of the navigation of aircraft or in direct charge of the overhaul and maintenance of the same. The Act also provides for the issuance of the following certificates on the aircraft itself: type, production, and airworthiness certificates, the title of the same being descriptive of their respective purposes.

THE PRESIDENT OF THE UNITED STATES

Air carriers who in the future desire to engage in foreign air transportation not only will be required to apply to the Authority for certificates of convenience and necessity, but the issuance of the same will require the approval of the President. As previously indicated, air carriers now engaged in such air transportation will receive their certificates without the necessity of meeting this latter requirement.

LABOR PROVISIONS

Air carriers are required to conform to the terms of Decision No. 83 of the National Labor Board which established, several years ago, a scale of wages and hours of employment for pilots and co-pilots. It is made a condition to the holding of any certificate of convenience and necessity that the holder thereof comply with Title II of the Railway Labor Act which presently governs the rates of compensation and other working conditions for all air carrier employees.

PROCEDURE

The Authority is given broad powers to investigate on its own initiative and to hear complaints with respect to unfair or deceptive practices, unfair methods of competition in air transportation, and in general any violation of the terms and conditions of the air carriers' certificates of convenience and necessity.

Appeals from orders of the Authority lie directly to the U. S. Circuit Court of Appeals, avoiding the necessity of going through the U. S. District Court. This is of considerable importance in expediting a review of the decisions of this administrative body.

In conducting its proceedings the Authority is accorded the usual powers of administrative agencies with respect to the issuance of subpoenas, compelling testimony, etc.

MISCELLANEOUS

1. The Authority is empowered to approve or disapprove all applications by air carriers for loans or other financial aid from the United States, and no such loan or financial aid may be made without the proper approval of the Authority.

2. Air travel for all Government employees is authorized (upon approval of the department head), irrespective of the difference in cost between such travel and that by other means of transportation.

3. Existing orders, determinations, rules and regulations issued by the I. C. C., Department of Commerce, or the Postmaster General are continued in effect until superseded by action of the Authority. This, of course, protects the present mail rates of the air carriers as adjudicated in former proceedings before the I. C. C. until such time as the Authority has taken jurisdiction and made changes and revisions therein.

CONCLUSIONS

The certificates of convenience and necessity should protect the present air carriers from ruinous competition on the part of new operators who may desire at any future time to engage in this business. The removal of all restrictions upon the rates which may be paid by the Postmaster General for the transportation of the air mail will make it possible for the Authority to establish reasonable and proper rates of compensation for the ever increasing loads of mail which airplanes in the future will carry. Other provisions removing the absolute restrictions upon investments in air mail securities by investment trusts and holding companies will make the great capital markets available for the sale of air mail stocks as additional capital is required to finance this growing and developing industry. As previously stated, a fair and liberal construction of this Act, with the objective of putting into effect the policies so clearly set forth therein by the Congress, should assure an orderly expansion and development of the air transport industry.