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## Additional Air Service for the Southeast

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## ADDITIONAL AIR SERVICE FOR THE SOUTHEAST

By FRANK L. BARTON\*

Certificates of public convenience and necessity granted by the Civil Aeronautics Board<sup>1</sup> in Dockets 162 and related dockets<sup>2</sup> under Section 401 of the Civil Aeronautics Act of 1938, as amended, authorizing air transportation of persons, property, and mail, have allowed a substantial increase in air service for the southeastern portion of the United States. The location of these new routes may be seen on Chart I.

Three features of the consolidated proceeding before the Civil Aeronautics Board merit examinations: the strong contrast between the recommendations of the examiners conducting the hearings and the findings of the Civil Aeronautics Board; although several applied, no new companies were allowed to enter the field; and the promulgation of a new policy by the Civil Aeronautics Board in announcing decisions. The scope of this paper is a discussion of these points in connection with the routes granted.

While there are often substantial differences between proposed reports of examiners and the final decisions of Federal boards and commissions, it is unusually interesting in this proceeding to compare the reasoning of the examiners and that of the Board in arriving at far different conclusions.

Possibly part of the difficulty is accounted for by the subjective element necessarily present in determining the meaning of the phrase "public convenience and necessity." An abstract determination of the exact meaning of the term is extremely difficult, for its limitations appear when applied to a specific situation that involves the determination of facts pertaining to such public convenience and necessity.<sup>3</sup> Except for the provisions in Section 401(d) of the Act, requiring that the applicant be fit, willing, and able to perform the

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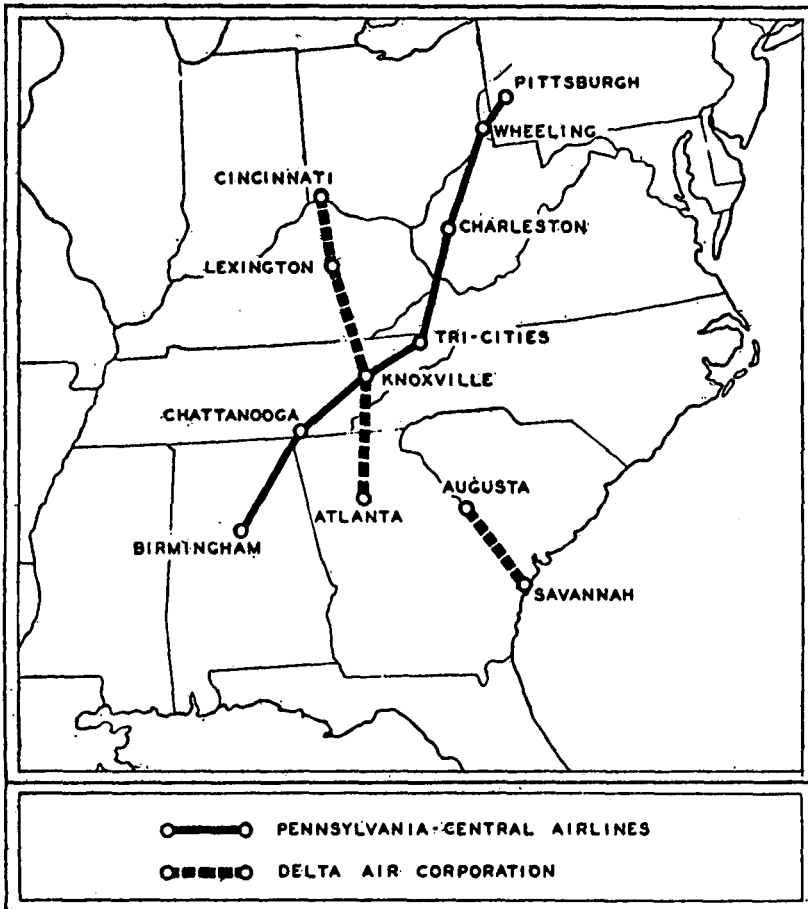
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1. Designated as the Civil Aeronautics Authority prior to July 1, 1940.

2. Dockets Numbers 224, 244, 245, 267, 271, 272, 313, 386, and 387. The opinion was dated January 30, 1941, Orders Serial Number 869. Branch, Chairman, Ryan and Mason, members, concurred. Warner and Baker, members, concurred and dissented.

3. See *Abbott v. Commission*, 136 Alt. 490 (R.I.); *Fornarotto v. Board*, 143 Alt. 450 (N.J.); *Application of Calhoun*, 68 Pac. (2d) 591, 596 (Cal.); and *San Diego Company v. Commission*, 292 Pac. 640.

CHART I  
*New Routes Awarded by the Civil Aeronautics Board  
 in Dockets 162 et al*



transportation properly, public convenience and necessity is the test which determines the authorization of the proposed service under the provisions of Section 401.

The Civil Aeronautics Board, in a number of opinions pertaining to applications for new routes and the extension of existing ones, has discussed "public convenience and necessity" and the considerations which govern the disposition of such applications have been outlined.<sup>4</sup> The opinions indicate that the primary questions to be

4. *Houston-Memphis-Louisville Route*, CAB Docket Number 1-401-B-1, et al, decided December 6, 1940; *Daytona Beach-Jacksonville Operation*, CAA Docket Number 5-401-B-1, et al, decided March 21, 1940; *Roswell-Hobbs-Carlsbad Operation*, CAA Docket Number 265, et al, decided March 8, 1940; *Duluth-Twin Cities Operation*, CAA Docket Number 131, et al, decided March 6, 1940.

considered are: (1) whether the new service will serve a useful public purpose; (2) whether the proposed service can and will be served adequately by existing routes or air carriers; (3) whether the route can be operated by the applicant without impairing the operations of existing carriers contrary to the public interest; and (4) whether cost of the proposed service to the Federal Government will be outweighed by the benefit which will accrue to the public from the service. In considering whether the inauguration of air service is in the public interest in this group of dockets the above principles are used as standards.<sup>5</sup>

*Atlanta-Knoxville-Lexington-Cincinnati Route*

The original applicant for this route, a distance of 399 miles, was Delta Air Corporation.<sup>6</sup> Pennsylvania-Central Airlines Corporation also proposed to furnish the service as parts of two other lines: Pittsburgh-Knoxville-Birmingham, and from Knoxville to Brunswick, Georgia, via Atlanta and Savannah, Georgia.<sup>7</sup> The second line proposed by Pennsylvania-Central of which this service is a portion was from Norfolk to Cincinnati through Knoxville.<sup>8</sup> Southern Air Lines, Inc., expressed willingness to render the service, as one of a number of proposed air lines radiating from Atlanta.<sup>9</sup>

Eastern Air Lines contended that the proposed route would, by connections with American Airlines at Cincinnati, divert traffic from its route extending from northern cities to Florida points, but no data were submitted as to the extent to which the competition would jeopardize Eastern. Service was shown to be available, with considerable layover, between Atlanta and Cincinnati by connections between Eastern and American in either Nashville or Louisville, while connections between these two lines at Nashville furnish Atlanta-Knoxville service. Between Cincinnati and Knoxville service is available by the junction of two American routes in Nashville. Lexington has no air service. The following tabulation shows the savings claimed in both time and miles by the proposed Atlanta-Cincinnati route.

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5. *In the Matter of the Applications of Delta Air Corporation, et al*, CAB Docket 162, et al, decided January 30, 1941.

6. Docket Number 162.

7. Docket Number 244.

8. Docket Number 245. Counsel for Pennsylvania-Central during hearings on Dockets 162, et al, presented a motion to consolidate 245 (already assigned a hearing date) with 162, et al. The motion was referred by the examiners to the CAA. See Transcript of Testimony, CAB Docket 162, et al, pp. 161-164. On September 17, 1940, the CAB awarded the Norfolk-Knoxville segment of the line to Pennsylvania-Central, but considered the Knoxville-Cincinnati portion with Dockets 162, et al.

9. Docket Number 272. Southern's proposal was unique in that no authority was sought to carry mail, only persons and property.

TABLE I  
Possible Savings on Proposed Atlanta-Cincinnati Route

	Present		Proposed		Saving	
	Miles	Elapsed Time	Miles	Elapsed Time	Miles	Time
Atlanta to Cincinnati	469	5:10	399	2:50	70	2:20
Atlanta to Knoxville	361	2:35	168	1:10	193	1:25
Knoxville to Cincinnati	401	3:06	231	1:33	170	1:33

Source: *In the Matter of the Applications of Delta Air Corporation, et al*, CAB Docket Number 162, et al, p. 14.

Considerable economic evidence was put in the record by witnesses appearing as interested parties from cities along the route and for the applicant air lines to show the community of interest between the cities on the proposed line.<sup>10</sup> Postal receipts; hotel registrations; number of long distance telephone calls; freight traffic; flow of passenger traffic by rail, bus,<sup>11</sup> and air were included. Under existing schedules it was disclosed that next-morning delivery of mail is possible at Atlanta for mail posted in Cincinnati the preceding evening. Mail posted in the evening in Atlanta is delivered the next afternoon in Cincinnati. Data on mail for cities on the route are shown in Table II.

TABLE II  
Daily Average Figures for Mail for Cities  
on Proposed Atlanta-Cincinnati Route  
(Seven-day count in August 1939)

	Air Mail				First-Class Mail	
	Dispatched		Received		Dispatched	
	Pieces	Pounds	Pieces	Pounds	Pieces	Pounds
Atlanta	11,994	372	7,903	266	176,955	6,136
Knoxville	1,185	53	459	18	40,434	1,232
Lexington	310	8	299	7	19,832	588
Cincinnati	8,223	294	8,111	314	213,960	5,917

Source: *In the Matter of the Applications of Delta Air Corporation, et al*, CAB Docket Number 162, et al, p. 15.

10. In the opinion of the Board (p. 8) it was stated that Atlanta manufacturers, by reason of the railroad freight-rate pattern, could compete in the Ohio market with northern manufacturers on fairly comparable terms. In contradistinction to the impression created here, freight rates on manufactured goods in the area south of the Ohio River are generally on higher levels than in the region north of the Ohio River.

11. Most of the data on traffic flow except for air travel were for 1933 from the reports of the Federal Coordinator of Transportation, the only available compilation of such information.

The CAB admitted it was inappropriate in this proceeding to attempt to forecast what the mail rate would be on the proposed route, but stated that it was important to attempt to ascertain the cost of the proposed operation in the form of mail compensation. At a rate of 29 cents per mile, suggested by Delta as fair and reasonable, the cost to the Federal Government would be about \$160,000 on the basis of 95 percent completion of schedules; so the Board found.

With the exception of radio facilities at points serving existing air lines, there was no air navigation equipment for use in the proposed route. Service would have to be restricted to daylight contact operations until facilities could be installed. The examiners and the Board did not agree on an interpretation of cost figures offered in evidence for providing the facilities.<sup>12</sup> The examiners found that a fully equipped airway between Atlanta and Cincinnati via Knoxville and Lexington would require expenditure of \$265,100 in Federal funds, of which \$146,100 is for radio and communication facilities and \$119,000 for field and lighting facilities; the total annual maintenance cost was estimated at nearly \$60,000.<sup>13</sup> The CAB stated that "under the present policy of the Federal Airways Service" the cost of establishing radio and communication facilities is \$40,000, with annual maintenance cost of \$25,555. The construction of lighted fields and airports was estimated to cost \$68,000 with annual maintenance cost of \$7,315. "If" (so stated the Board) "beacon lights are required," the estimated cost is \$51,500 additional with maintenance of \$8,660.<sup>14</sup>

It was agreed that the cost of the facilities cannot be charged entirely to the inauguration of the Atlanta-Cincinnati route because military and other air operations derive benefit from the facilities, but such cost must be considered in determining the requirements of public convenience and necessity.<sup>15</sup>

The examiners stated that the question presented is not one of providing air service where none exists but whether additional service is necessary in the form of a direct route between Atlanta and Cincinnati.<sup>16</sup> It was called to attention that only 70 miles would be saved by the new route which requires the authorization of 399 miles of new line and large outlays for mail compensation and navigation aids. Readjustment of existing schedules to reduce lay-overs was

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12. Transcript of Testimony, CAB Docket 162, et al, pp. 783-791.

13. Examiners' Report, CAB Docket 162, et al, p. 17.

14. *In the Matter of Applications of Delta Air Corporation*, supra, p. 17.

15. *Twin Cities-Des Moines-Kansas City-St. Louis Operation*, CAB Docket Number 3-401-B-1, et al, decided July 18, 1940.

16. To be strictly accurate Lexington should be noted as having no air service.

offered as a solution to meet the two hours' saving in time claimed for the proposed service. See Table I. The entire absence of air service at Lexington was justified on the ground that the only strong community of interest shown for Lexington is with Cincinnati and "Lexington residents desiring to travel by air east or west from Cincinnati would probably continue to travel by surface facilities to Cincinnati in order to avail themselves of the more convenient schedules from that point."<sup>17</sup>

It was admitted that the proposed service would result in a substantial saving in mileage and time over the present service for Knoxville, but the need was held not sufficient to justify the establishment of the new route. Upon consideration of the evidence the examiners concluded that the proposed Atlanta-Cincinnati route was: 1) a duplication of existing service; 2) would afford small savings in mileage, 3) that the present service is not inadequate.<sup>18</sup>

In direct contrast to the examiners' findings the CAB states that there is a strong community of interest and flow of traffic between Atlanta and Cincinnati. Industrial and other developments in the area point toward a substantial increase in travel, it was observed. In regard to Lexington, the Board held that because Lexington was without air service at present, inauguration of the proposed service would result in generation of a substantial volume of traffic because of connections provided at Cincinnati, Atlanta, and Knoxville. Further, it was held that although American and Eastern had inaugurated additional schedules since the time of the hearings on the existing route between Atlanta and Cincinnati, no improvement was effected in the present connections between those cities. Two hours and 70 miles saved on a route only 399 miles in length were given considerable importance by the CAB. Of greater importance, it was held, is the direct service between Atlanta and Knoxville and between Knoxville and Cincinnati, and the furnishing of air service to Lexington. Viewing all the considerations, the Board concluded that the public convenience and necessity require air transportation of persons, property, and mail between Atlanta and Cincinnati, with stops at Knoxville and Lexington.<sup>19</sup> Thus, the examiners' findings were completely reversed.

Delta was awarded the route because it could be operated as an 'integral part of the Delta system,'<sup>20</sup> providing a through route between

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17. Examiners' Report, *supra*, p. 31-32.

18. Examiners' Report, *supra*, p. 35.

19. Lexington will receive the service upon its completion of suitable airport facilities.

20. Extending from Forth Worth, Texas, to Charleston, South Carolina, via Atlanta.

Cincinnati and the remaining points on the line and allowing a more efficient use of equipment. PCA was eliminated, apparently because it did not propose through operation of the line, and Southern was found unsuitable for rendering the service.<sup>21</sup>

### *The Pittsburgh-Birmingham Line*

A second air line granted in the group of dockets under discussion is that from Pittsburgh to Birmingham with intermediate stops at Wheeling and Charleston, West Virginia; Knoxville and Chattanooga, Tennessee.<sup>22</sup>

Pennsylvania-Central proposed to serve the 637-mile route between Pittsburgh and Birmingham via Charleston, Knoxville, and Chattanooga; a line between Knoxville and Atlanta was also part of this proposed route.<sup>23</sup> The Dixie Airline's proposal designated a route between Atlanta and Pittsburgh, with Knoxville, Charleston, and Wheeling being the intermediate points; from Knoxville the proposed line extended to Birmingham with stops at Chattanooga.<sup>24</sup>

Ample evidence was presented at the hearings to show that each of the cities on the proposed route possessed substantial industrial development. A particularly strong community of interest was shown to exist between Pittsburgh and Birmingham because of the location at each of large units of the steel industry.

It was also demonstrated that the development of transportation in general in the area for which the service was proposed has been mainly east and west—due both to the natural westward movement and to the natural barrier of mountains. Although all the cities on the proposed line, except Wheeling, have regular air service, there is no direct air or rail service between Charleston and Pittsburgh, or from these cities to Knoxville, Chattanooga, and Birmingham. All

21. In dissenting, Warner and Baker stated such a service would not be justified under existing conditions in view of present stringency in equipment and personnel for air transport operations. New schedules were recommended for improving connections at Louisville and Nashville for the Atlanta-Cincinnati service in lieu of the proposed line granted by the majority.

22. The examiners recommended that the McKellar Tri-Cities Airport serving Bristol, Tennessee-Virginia, Johnson City and Kingsport, Tennessee, be included as an intermediate stop on the route. The airport is named for Senator Kenneth McKellar, senior Senator from Tennessee and chairman of the Senate Committee on Post Offices and Post Roads.

The CAB found, however, that no formal application for such a stop had been before them at the time of the hearing, and additional service cannot be authorized without compliance with the statutory requirement of notice and public hearing, although a witness testified on behalf of the Tri-Cities. (See Transcript of Testimony, *supra*, pp. 193-200.) Consequently, the opinion in Docket 162, et al, omitted the Tri-Cities as a stop, but Orders Serial Number 870 was issued by the Board instituting a proceeding to determine whether the public convenience and necessity would be served by a stop at the McKellar Tri-Cities Airport. On March 5, 1941, PCA was awarded the Tri-Cities stop plus permission to serve Clarksburg, West Virginia, until the Wheeling airport is completed.

23. Docket Number 244.

24. Docket Number 313.



movements are through either Washington or Cincinnati.

Under these conditions substantial savings both in amounts of fares and in miles were claimed for the proposed service when compared with service available. These savings are shown in Table III.

TABLE III

*Possible Savings on Proposed Pittsburgh-Birmingham Route*

	Present		Proposed		Saving	
	Miles	Fare	Miles	Fare	Miles	Fare
Pittsburgh-Charleston	444	\$29.45	177	\$13.25	274	\$16.20
" Knoxville	590	41.35	387	27.15	203	14.20
" Chattanooga	717	42.20	474	28.70	243	13.50
" Birmingham	738	44.85	609	34.50	129	10.35
Charleston-Knoxville	557	35.15	217	18.80	340	16.35
" Chattanooga	501	32.30	304	21.90	197	10.40
" Birmingham	606	38.70	439	28.05	167	10.65
Knoxville - Chattanooga	254	14.75	87	6.25	167	8.50
" Birmingham	358	21.15	222	11.90	136	9.25
Chattanooga-Birmingham	245	13.05	135	7.40	110	5.65

Source: *In the Matter of the Applications of Delta Air Corporation, et al*, Docket 162, et al, p. 41.

Air mail posted in Birmingham in the evening is delivered in Pittsburgh the following afternoon. In the reverse direction "second carrier" delivery is possible for mail posted in Pittsburgh the preceding evening. No specific estimates were given concerning the effect on volume of air mail of inaugurating the proposed service, but it was the consensus that it would increase appreciably between terminal and intermediate points. Daily average figures for air mail dispatched and received and first-class mail dispatched for cities on the route are given in Table IV.

The Board prognosticated that direct service between the points on the line would likely result in a substantial increase in use of air mail, particularly at Charleston and Wheeling where the ratio between pounds of air mail dispatched and first-class mail dispatched is 1 to 132 and 1 to 45, respectively, as shown in Table IV.

Cost figures for PCA for the first year of operation given at the hearing were based on the use of Boeing equipment already fully depreciated on the company's books; the examiners found on this basis that the cost to the Federal Government would be \$139,000 in mail pay. At oral argument before the Board counsel for Pennsylvania-Central stated that DC-3 equipment would be used on the new

TABLE IV  
*Daily Average Figures for Mail for Cities on Proposed  
 Pittsburgh-Birmingham Route*  
 (Seven-day count in October 1939)

	Air Mail				First-Class Mail	
	Dispatched		Received		Dispatched	
	Pieces	Pounds	Pieces	Pounds	Pieces	Pounds
Pittsburgh	31,383	1,055	6,880	253	232,909	6,905
Wheeling	255	19	317	14	29,204	867
Charleston	356	10	473	15	63,561	1,324
Knoxville	1,172	52	459	18	40,434	1,232
Chattanooga	2,350	52	1,061	22	55,308	1,230
Birmingham	3,302	128	2,308	95	75,783	1,728

Source: *In the Matter of the Applications of Delta Air Corporation, et al*, CAB Docket Number 162, et al, p. 42.

route,<sup>25</sup> with a first-year deficit, not including mail pay, of \$117,000. The Board found this estimate too low and estimated the cost to the government to be about \$217,000 for air mail compensation. Dixie's costs were based on estimates furnished by Lockheed, the producer of Lodestar equipment, which had not been operated in air transport service prior to the hearings. The loss without mail pay for Dixie was shown to be nearly \$247,000.

Separate cost figures for a fully-equipped airway on the Pittsburgh-Birmingham route were not cited by either the examiners or the Board, but the examiners estimated that between Knoxville, Chattanooga, and Birmingham additional facilities for a fully-equipped airway would cost \$78,500. The Board found the cost to be \$52,000, but added that if beacon lights are required, the cost would be increased about \$27,000.

In one of the few major findings in the entire group of dockets on which there was agreement between the examiners and the Civil Aeronautics Board, it was found that the Pittsburgh-Birmingham route was in the public interest.<sup>26</sup> The examiners justified it chiefly because existing transportation facilities on the line were slow and inadequate; because of the saving of 311 miles in flight mileage between

25. Apparently Douglas equipment is not being used entirely because on April 16, 1941, near Charleston, West Virginia, a Boeing plane on the PCA route from Pittsburgh to Birmingham crashed without fatal injuries to either passengers or crew.

26. In previous portions of the examiners' recommendations figures for 1933 from the report of the Federal Coordinator of Transportation were taken as "indicative of the direction in which passengers move and the comparative volume." Examiners' Report, *supra*, p. 13. Concerning the Pittsburgh-Birmingham route, on which the coordinator's report showed light traffic, the examiners apparently rationalized by stating the lack of traffic was caused by inadequate rail facilities and adverse economic conditions in 1933. *Ibid.*, p. 48. The Board followed approximately the same line of reasoning.

the important industrial areas at the termini; because it would give north-south service to Charleston, Knoxville, and Chattanooga;<sup>27</sup> because the route would develop new passengers rather than divert them from existing lines; because the present air service for local traffic on the line is practically non-existent; and because the line would make Knoxville-Atlanta service via Chattanooga possible. The Board's reasoning in awarding the line was similar, but the route was discussed more in detail by segments.

In the choice of a carrier to render the service the examiners' report and the opinion of the Board fell again into conflict. The examiners noted that PCA is an operating company while Dixie is a newly-organized one seeking to enter the field. It was pointed out that it becomes necessary for the CAB to determine which of the two could best serve the public interest, which is not the local interest of the cities receiving the service but the national interest in developing an air transport system to meet the needs of the Nation.<sup>28</sup>

In awarding the line to Dixie the examiners stated that it was not the intent of the Congress that the air transportation system should become fixed in its present pattern either as to operating companies or routes. It was held that in a new industry it is desirable that widest latitude be allowed for attracting new capital and developing new ideas, and that this route presents an opportunity for a new organization because the line is in a territory having relatively little competition from existing carriers.

The Board in reversing the examiners found that PCA is an experienced company operating routes over terrain similar to that on the Pittsburgh-Birmingham route; that the route would form an integrated part of PCA's system with connections at Knoxville for Norfolk and intermediate points, and at Pittsburgh for northern industrial centers. It was further stated that the difficulties of maintaining convenient connecting service between independent carriers would be aggravated by awarding the line to Dixie. The Board found that the number of air carriers now operating appears sufficient to insure against monopoly, and that there is no indication that operation of the route by Pennsylvania-Central creates a monopolistic condition inimical to the public interest.<sup>29</sup>

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27. The examiners' directions are not exactly correct in designating this as north-south service.

28. *Duluth-Twin Cities Operation, supra.*

29. In dissenting, the minority stated that by no test appropriate in ordinary times would the inauguration of the service be justified, but in view of the unique conditions now existing, the route should be inaugurated on a trial basis and under a temporary certificate. The minority concurred in the choice of carrier selected.

Action taken by Dixie following the issuance of the Board's opinion will be discussed subsequently.

*New Service between Augusta and Savannah*

On a second point of importance on which the examiners and the Board agreed, service was authorized between Augusta and Savannah, Georgia. Delta and Pennsylvania-Central both sought certificates for service between Atlanta, Augusta, and Savannah, Georgia. Delta proposed to provide the service by extension of its route 24 (Fort Worth-Charleston) from Augusta to Savannah and Brunswick;<sup>30</sup> PCA's application was part of a new route, previously mentioned, between Atlanta and Savannah and Brunswick.<sup>31</sup> Suffice it to say that Delta was allowed to render the service between Augusta and Savannah as an extension of its Fort Worth-Charleston line under Section 401(h) of the Civil Aeronautics Act.

Additional service granted in addition to that discussed above included an amendment to the certificate of Eastern Air Lines to include Birmingham as an intermediate point on its route 5 between New York and New Orleans.<sup>32</sup> After the examiners had recommended the application be denied, the CAB granted it with the restrictions that service shall be rendered by flight originating and terminating at New Orleans or south thereof or at Washington, D. C., or points north of that city on route 5.<sup>33</sup>

In dockets considered by an examiner other than those hearing Docket 162, et al, Eastern was denied permission by the Board to include Savannah as an intermediate point on its route 10 extending from Chicago to Jacksonville, Florida,<sup>34</sup> but was granted permission to include Brunswick, Georgia, as a stop on the line between the co-terminal points New York and Newark, New Jersey, and the terminal Miami, Florida.<sup>35</sup> The minority of the Board concurred in granting the Augusta-Savannah extension and in naming the new stops on existing routes.

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30. Docket Number 271.

31. Docket Number 244.

32. Docket Number 267.

33. Eastern filed on February 25, 1941, a petition for rehearing, modification, and clarification of opinion and order of the CAB insofar as it authorized Eastern to stop at Birmingham. The Board granted the petition by reopening Docket 162, et al, for the sole purpose of reargument and reconsideration of the opinion and order. Orders Serial Number 908. Chicago and Southern was allowed to intervene. Orders Serial Number 909. The Board reaffirmed its original decision concerning Eastern's stop at Birmingham, Orders Serial Number 997.

34. Docket Number 386.

35. Docket Number 387. Prior to the hearings in Docket 162, et al, Eastern applied to include Savannah and Brunswick as intermediate points. A public hearing was held, but an examiner's report was waived by all parties. The points involved were disposed of in the opinion for Docket 162, et al.

*The Application of New Companies*

Two companies submitting applications in this proceeding were new ones: Southern Air Lines and Dixie Airlines. Both were so-called paper concerns with no air line routes in operation.<sup>36</sup> Southern proposed to operate without air mail compensation a system radiating from Atlanta in four directions: to Savannah, to Cincinnati, to Memphis, and to Pensacola. The application was denied in all respects. The Board concluded that a review of the evidence shows that the applicant had no realization of the risks involved in the operations proposed and that it is not fit, willing, and able to perform the service for which it applied. Up until the present time Southern has taken no reported action to contest the decision of the Civil Aeronautics Board.

In the case of the refusal of Dixie's application the result has not been so simple. The Board overruled the examiners, who recommended Dixie, and awarded the Pittsburgh-Birmingham route to Pennsylvania-Central, as was recounted previously. The Board held that it is undesirable to increase the number of instances in which additional connections would be necessary by the authorization of new carriers when it appears the service could be performed as well by an existing carrier. The Board went further to say that the considerations which lead to this determination "would be equally applicable in any case in which an existing air carrier is competing with a company without operating experience for a new route or service."<sup>37</sup> In the absence of particular circumstances presenting an affirmative reason for a new carrier there appears to be no inherent desirability of increasing the present number of carriers merely for the purpose of enlarging the number in the industry; so held the CAB.<sup>38</sup> What constitutes "particular circumstances" the Board did not define.

One might suspect that the Civil Aeronautics Board leans toward the idea that the number of carriers in the field is sufficient at present and believes that new carriers will be awarded routes only under unusual circumstances. Whether this is the policy of the Board may be ascertained from future decisions, but on the face of it the prospects are not bright for new air lines wishing to enter the field.<sup>39</sup>

36. Kenneth Frank testified that he was president of Dixie Airlines, Inc., and that his residence was in Atlanta, Georgia. (Transcript of Testimony, *supra*, p. 1855). A letter addressed to him in April 1940 as president of Dixie Airlines, Atlanta, Georgia, was returned unclaimed to the writer.

37. *In the Matter of the Applications of Delta Air Corporation, et al, supra*, p. 51.

38. *Ibid*, p. 52.

39. For a brief discussion of this point, see *American Aviation*, March 1, 1941, p. 16.

Following the decision Dixie filed a petition with the CAB requesting that the order of the Board in Docket 162, et al, be stayed insofar as it authorizes the issuance of a certificate to PCA to operate the Pittsburgh-Birmingham route until Dixie files a petition for rehearing, reargument, and reconsideration of the order, and action can be had on the petition. The Board found that sufficient reasons for justifying the granting of the petition had not been shown, and Dixie's petition was denied.<sup>40</sup> Later Dixie filed a petition for reargument and reconsideration on the opinion and order, but this was denied by Board upon finding that matters of error alleged in the petition are not sustained by law or evidence in the record.<sup>41</sup>

Dixie showed persistence, however, by asking the U. S. Court of Appeals for the District of Columbia to set aside the CAB order granting Pennsylvania-Central a certificate of convenience and necessity for a Pittsburgh-Birmingham route. In Dixie's petition it was claimed that the Board's conclusion will "freeze" the domestic air transportation system in the hands of existing carriers. Quotations are given in Dixie's petition from Congressional hearings preceding enactment of the Civil Aeronautics Act of 1938 which Dixie claims proves that it was not the purpose of Congress that the carriers existing at the time of the passage of the Act should have a monopoly of traffic in their own areas or in the expansion of new routes.

As yet no ruling has been handed down by the court. PCA is already operating the route; so a staying of the CAB order would bring on extremely interesting developments pending a review. One might hazard a guess, however, that Dixie's chances of obtaining a stay are rather poor. In addition, their chances of being awarded a certificate for operation of a route with terminals at Pittsburgh and Birmingham are probably more remote.

#### *Announcement of New Policy*

In announcing the decision in this consolidated proceeding the Civil Aeronautics Board stated that it had adopted a policy permitting an announcement of decision in pending proceedings in advance of the issuance of its opinion thereon "in exceptional cases where some paramount reason requires the decision be made public at the earliest possible moment."<sup>42</sup> The opinion was made available several days later. Dixie called this an "unprecedented proceeding," stating that the announcement of the decision in advance of the issuance

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40. Orders Serial Number 884.

41. Orders Serial Number 907.

42. Civil Aeronautics Board release for January 31, 1941.

of the opinion conveys the implication that the decision had been reached arbitrarily and that findings of fact or conclusions of law to fit the order and decision would be issued when prepared.

While the Board may have a new policy that departs from the customary procedure in the issuance of decisions and opinions, one feature of its policy in announcing decisions is apparently like that of some other regulatory bodies: the risk of making a hasty decision is not incurred. Deliberateness is apparent when it is recalled that the first application in the proceeding was filed February 10, 1939; the hearings ran from October 26, 1939, to November 14, 1939; and the examiners' recommendations were rendered September 7, 1940.

The Board indicated that because of the acute situation in regard to aircraft equipment the early announcement of its decision in this proceeding was deemed desirable. The number of carriers involved, the size of the proposed operations, and the fact that the Priorities Committee of the National Defense Commission was confronted with priorities questions which the prompt announcement of the Board's decision in this proceeding would aid in solving were factors in the announcement.

Regardless of new policies in announcing decisions, federal court action, or priorities questions, the Southeast possesses new air lines connecting several of its important industrial and commercial centers with similar areas in the Northeast. The difficulty of transportation on north-south routes has been appreciably diminished.