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S. 2551: In the Senate of the United States

Ed. note: On October 22, 1975, Senators Warren G. Magnuson (D. Wash.) and James B. Pearson (R. Kan.) introduced Senate Bill 2551, also known as the "Aviation Act of 1975." Many of the articles contained in this issue of the *Journal of Air Law and Commerce* refer to the bill, suggesting that a current examination of airline deregulation would be incomplete without including a copy of the bill. The Board of Editors hope that the inclusion of the bill in this issue will serve as a useful aid to our readers.

94TH CONGRESS
1ST SESSION

S. 2551

IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 1975

Mr. Magnuson (for himself and Mr. Pearson) (by request) introduced the following bill, which was read twice and referred to the Committe on Commerce

A BILL

Entitled the "Aviation Act of 1975."

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 1975."

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 as amended, is further amended by renumbering paragraphs (2) through (19) as paragraphs (3) through (20) and by inserting therein the following new paragraph:

"(2) 'Advance-purchase charter trip' means a charter trip ar-

ranged pursuant to a contract between an air carrier or foreign air carrier and a person authorized by the Board to act as a charter organizer, and sold by such charter organizer to members of the general public on an advance purchase basis in accordance with regulations prescribed by the Board. Such regulations may not require that participants purchase the transportation or pay any deposit more than thirty days prior to departure, prohibit the charter organizer from selling up to 25 per centum of the seats at any time prior to the departure date, require a prorated price, prevent the organizer from assuming the commercial risk of the venture, require that the trip exceed three days in the Western Hemisphere or seven days in other areas, or otherwise unduly restrict the availability of such charters."

(b) Section 101 is further amended by renumbering paragraph (20) as that paragraph was numbered prior to the enactment of this section as paragraph (22) and paragraphs (21) through (36) as paragraphs (23) through (38), and by inserting therein the following new paragraph:

"(21) 'Inclusive tour charter trip' means a charter trip which combines air transportation, pursuant to a contract between an air carrier or foreign air carrier and a person authorized by the Board to sell inclusive tours, and land arrangements at one or more points of destination, sold to members of the public at a price which is not unjust or unreasonable for the charter air transportation plus a charge for land arrangements and subject to such other requirements not inconsistent herewith as the Board shall by regulation prescribe to assure that such charter trips do not substantially impair essential scheduled service."

(c) Paragraph 34 of section 101 as that section was numbered prior to the enactment of this section is amended as follows:

"(36) 'Supplemental air transportation' means charter trips, including advance-purchase charter trips, inclusive tour charter trips, and other types of charter trips in air transportation, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401 (d) (3) of this Act. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public,

but a supplemental air carrier may control or be under the control of a person authorized by the Board to make such sales, if such control has been approved by the Board pursuant to sections 408 and 409 of this Act."

DECLARATION OF POLICY

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

"DECLARATION OF POLICY: THE BOARD

"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 unjust discriminations, undue preferences or advantages, or unfair or deceptive practices; and the need to improve relations among and coordinate transportation by air carriers;

"(c) Maximum reliance on competitive market forces and on actual and potential competition to provide the needed air transportation system;

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

"(e) The importance of this highest degree of safety in air commerce."

PROCEDURAL EXPEDITION

SEC. 5. Section 401 (c) is amended 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 protest or memorandum of opposition to or in support of the issuance of a certifi-

cate. 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 sixty 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 of this Act. Mutually exclusive applications shall be heard at the same time. If an application regarding interstate and overseas transportation is set for public hearing, final disposition of such application must be made within ten months of the date such application was filed, except where the Board finds that the application raises an issue of major air transportation significance, in which case the decision must be made within twelve months of the date the application was filed. In addition, by order in extraordinary circumstances, the Board may delay decision for up to thirty days beyond the applicable date for decision.

"(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 twelve months of such enactment. Applications pending on the date of such enactment must be disposed of within eighteen months of the date of such enactment. Applications filed within twelve months of the date of enactment must be disposed of within eighteen months of the date of application.

"(3) If the Board does not act within the time specified in paragraphs (1) and (2), the certificate authority requested in the application shall become effective, and the Board shall issue the certificate as requested without further proceedings."

ENTRY

SEC. 6. (a) Section 401 (d) (3) is amended as follows:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board shall issue a certificate, as may be required by the public convenience and necessity, authorizing the whole or any part thereof and for such periods as the Board may specify, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the appli-

cation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

(b) Section 401 (d) is amended by adding the following paragraphs:

"(4) The Board shall issue a certificate for interstate air transportation between any two cities not receiving nonstop scheduled air transportation by an air carrier holding a certificate of public convenience and necessity to an applicant if it finds the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

"(5) Any air carrier that engages in interstate air transportation solely with aircraft having a capacity of less than fifty-six passengers or sixteen thousand pounds of property shall not be required to obtain a certificate of public convenience and necessity 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 section 403, 404, 405 (b), (c), and (d), 408, 409, or 412, except for the provisions regarding joint fares and through rates."

(c) Section 401 (c) (1) is amended to add at the end: "The Board shall not, however, impose closed-door, single-plane service, mandatory stop, long-haul restrictions, or similar restrictions, on any new certificate or amendment to any existing certificate. By January 1, 1981, the Board shall reissue all certificates for interstate air transportation in the form of an unduplicated list of city pairs that each certificated air carrier is authorized to serve pursuant to the terms of sub-section (0) (1) or as otherwise provided by this section. Subsequent to January 1, 1981, each amendment to a certificate authorizing interstate air transportation shall take the form of additions to, or deletions from, such listing."

ROUTE TRANSFERS

SEC. 7. Section 401 (h) is amended to read as follows:

"(h) (1) By January 1, 1978, the Board shall prepare an unduplicated list of city pairs that each interstate certificated air carrier will be authorized to serve on January 1, 1981, pursuant to the terms of subsection (0) (1). This list shall be the basis for determining whether a city pair route is eligible for transfer, sale, or lease pursuant to the provisions of subsection (h) (2).

"(2) On or after January 1, 1978, each air carrier engaged in interstate scheduled air transportation may transfer, sell, or lease any of its authority to engage in scheduled interstate air transportation or the authority conferred by section 401 (0) (1) to engage in interstate scheduled air transportation to any air carrier the Board finds is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board thereunder.

"(3) In the case of an application for transfer, sale, or lease of a route pursuant to section 401 (h) (2) to an air carrier which the Board has found fit, willing, and able to engage in air transportation, and to conform to the provisions of the Act and the rules, regulations, and requirements thereunder, the Board shall approve the transaction unless the transaction fails to meet the standards in section 408. If the transferee of the route does not hold certificate authority from the Board, the Board shall determine whether the applicant meets the requirements of section 401 (h) (2) within six months of the date the request is filed.

"(4) Prior to January 1, 1978, a certificate may not be transferred unless such transfer is approved by the Board as being consistent with the public interest."

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ABANDONMENTS

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

"(j) (1) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment meets the standards set forth

in this subsection or is otherwise found to be in the public interest. Except as provided in paragraph (3), any carrier shall be permitted to abandon any route or part thereof for which a certificate has been issued:

"(A) if that carrier has operated the route or part thereof below fully allocated cost (including a reasonable return on investment) considering subsidy payments pursuant to section 406, for a period immediately preceding the abandonment petition of at least one year, except the Board may require continuation of service for one additional year if the public interest requires; or

"(B) if a carrier can demonstrate its operations for the route under consideration have been conducted below the direct cost for that route for a period of at least three months immediately preceding the abandonment petition; or

"(C) upon ninety days notice to the Board if the carrier can demonstrate that service will be provided by another air carrier.

"(2) Any interested person may file with the Board a protest or memorandum of opposition to or in support of any abandonment petition. The Board may require any air carrier abandoning a route or part thereof to establish reasonable, cooperative working relationships with any air carrier providing replacement services.

"(3) The Board may require continuation of service to a point if the local community or State or other public body agrees to provide sufficient support to assure that the carrier's total revenues, including any subsidy payments pursuant to section 406, for the route or part thereof, cover fully allocated costs (including reasonable return on investment) for the specific service at issue.

"(4) Any carrier may temporarily suspend service on any route or part thereof upon reasonable notice to the Board if service is provided by another air carrier. In the absence of such service temporary suspension shall be authorized if the suspension meets the standards set forth in subsection (j) (1) for abandonments or is otherwise found to be in the public interest."

ROUTE EXPANSION

SEC. 9. Section 401 is amended by adding the following new subsections:

REMOVAL OF RESTRICTIONS

"(o) (1) On or after January 1, 1981, each carrier engaged in interstate scheduled air transportation may engage in nonstop scheduled air transportation without regard to any certificate limitations or other restrictions between any points in the United States named in its certificate or certificates on January 1, 1975. Within sixty days of the enactment of this paragraph, the Board shall undertake a proceeding to phase out all existing restrictions in such certificates authorizing interstate air transportation. In exercising this authority, the Board shall proceed equitably, giving due consideration to the effects of elimination of restrictions on each air carrier. The Board shall proceed expeditiously and report its progress to Congress annually.

"(2) On or after January 1, 1981, each air carrier engaged in foreign air transportation may engage in nonstop scheduled air transportation between any United States points named in its certificate or certificates and served by that air carrier on January 1, 1975. Sixty days from enactment, the Board shall undertake a proceeding to eliminate any requirements which preclude such nonstop service.

DISCRETIONARY SCHEDULED OPERATIONS

"(p) (1) The authority granted in this paragraph shall become effective on January 1, 1981.

"(2) On or before March 31 of any year in which this paragraph is effective, the Board shall—

"(A) determine and publish the number of available seat miles operated in interstate passenger scheduled air transportation by certificated air carriers and the number of available seat-miles operated in intrastate passenger scheduled air transportation by air carriers certificated by a State regulatory authority during the preceding calendar year;

"(B) determine and publish the number of available ton-miles operated by certificated all-cargo air carriers in interstate scheduled air transportation during the preceding calendar year;

"(C) establish classes of scheduled passenger air carriers, as follows: in class I, those air carriers which operated in excess of

five billion available seat-miles in interstate scheduled air transportation during the preceding calendar year, or which operated in excess of one billion available seat-miles in interstate and intrastate scheduled air transportation during the preceding calendar year and did not receive subsidy payments pursuant to section 406; in class II, those carriers which operated in excess of one billion available seat-miles in interstate and intrastate scheduled air transportation during the preceding calendar year but less than five billion available seat-miles in interstate and intrastate scheduled air transportation during the preceding year and which are not in class I; and in class III, those carriers which operated less than one billion available seat-miles in interstate and intrastate scheduled air transportation during the preceding calendar year, except those carriers certificated by State authorities and which did not operate at least 100 million available seat-miles in interstate scheduled air transportation shall not be in this class and

"(D) determine and publish the average number of available seat-miles in scheduled air transportation for each of the three classes of air carriers in (C) and of available ton-miles for those carriers referred to in (B).

"(3) Notwithstanding any other provision of this section, each air carrier holding a certificate of public convenience and necessity for scheduled air transportation and each air carrier engaged in intrastate schedued air transportation pursuant to a certificate issued by a State regulatory authority and which reports its available seat-miles in passenger scheduled air transportation to the Board may engage in interstate scheduled air transportation in any and all markets of its choosing in addition to that transportation otherwise authorized, subject to the following limitations on the level of such additional operations—

"(A) a carrier in class I will be limited to each calendar year to a level of additional operations which does not exceed 5 per centum of the average number of available seat-miles in interstate and intrastate scheduled air transportation operated by carriers in its class during the preceding calendar year; and

"(B) a carrier in class II or class III shall be limited in each calendar year to a level of additional operations which does not

exceed 10 per centum of the average number of available seat-miles in interstate and intrastate scheduled air transportation operated by carriers in its class during the preceding calendar year or which does not exceed 10 per centum of the available seat-miles operated by the individual carrier in interstate and intrastate scheduled air transportation, whichever is greater; and

"(C) all-cargo carriers shall be limited in each calendar year to a level of additional operations which does not exceed 10 per centum of the average number of available ton-miles operated in sceduled air transportation by carriers in its class during the preceding calendar year.

"(4) Carriers in class I through III shall be permitted to carry mail and cargo on any flights conducted pursuant to this paragraph.

"(5) Operations conducted pursuant to this paragraph may be combined with any other authority held by the carrier to permit single-plane and single-carrier services using combinations of the carrier's existing authority and the new authority.

"ADDITIONAL AUTHORITY

"(q) Any carrier engaging continuously for twelve consecutive months in nonstop scheduled air transportation pursuant to the authority conferred by subsection (p) of this section may apply to the Board for a certificate of public convenience and necessity authorizing unrestricted nonstop scheduled air transportation in such market. Within thirty days of the date of application, the Board shall grant such application and issue the certificate as requested unless the Board determines that the applicant has not conformed to the provisions of this Act with respect to the service in question. Breaks in service occasioned by labor disputes or by factors beyond the control of the air carrier shall not destroy the continuity of services rendered before and after the break in service, but such periods of time shall be counted toward meeting the requirement that service be offered for twelve months.

"SCHEDULED AIR TRANSPORTATION DEFINED

"(r) For the purposes of paragraphs (d) (4), (o), (p), and (q) 'scheduled air transportation' means interstate air transporta-

tion performed by a carrier between two or more points, with a minimum of five round trips per week, pursuant to published flight schedules which specify the times, days of the week and places between which such flights are performed."

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 changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect to 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. No change shall be made in any schedules designated except upon ten days' notice thereof as herein provided. No air carrier shall 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. (a) The first sentence of section 408 (b) is amended by inserting after the first reference to the word "Board" the following: "and, at the same time, a copy to the Attorney General and the Secretary of Transportation."

(b) The first proviso of section 408 (b) is amended by adding after the first "That" the words "(i) with respect to an application filed within thirty months from enactment of the Aviation Act of 1975," and by adding after the last word of that proviso (and before the colon there following) "; and (ii) with respect to an application filed more than thirty months after enactment of the Aviation Act of 1975, the Board shall not approve such a transaction—

"(1) if it would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to at-

tempt to monopolize the business of air transportation in any part of the United States, or

"(2) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are out-weighed in the public interest by the probable effect of the transaction in meeting the transportation convenience and needs of the community or communities to be served, and unless it finds that such transportation convenience and needs may not be satisfied by any less anticompetitive alternative. The party challenging the transaction shall bear the burden of proving the anticompetitive effects, and the proponents of the transaction shall bear the burden of proving that it meets the transportation convenience and needs of the community or communities to be served and that such convenience and needs may not be satisfied by any less anticompetitive alternatives."

(c) Section 408 is further amended by adding the following new subsection:

"(g) (1) Any transaction specified in subsection (a), regarding which an application is filed more than thirty months following enactment of this paragraph, may not be consummated before the ninetieth calendar day after the date on which the application therefore was presented to the Board, and the Attorney General. The Attorney General may bring an action under the antitrust laws arising out of such a transaction in the United States District Court for the District of Columbia or in any other appropriate district court within such ninety-day period. At least ten days before filing such an action the Attorney General shall publicly notify the Secretary of Transportation that he is considering such an action. No transaction specified in subsection (a) shall be consummated until the antitrust action, and all appeals from such action, which shall be taken pursuant to Expediting Act, as amended (15 U.S.C. 28-29), have been concluded. After the filing of such an antitrust action, all proceedings thereunder shall be stayed until the termination of the Board proceeding under subsection (b) and the termination of all judicial proceedings, if any, brought under section 1006 with respect to a Board order issued pursuant to subsection (b). The

Attorney General may not however seek judicial review under section 1006 of a Board order regarding a transaction as to which the Attorney General has a pending antitrust action pursuant to this subsection.

"(2) In any action brought by the Attorney General under this subsection, the standards applied by the court shall be identical with those that the Board is directed to apply under section 408 (b) (ii), and the court shall review de novo the issues presented.

"(3) The Board may appear as a party of its own motion and as of right and be represented by its counsel in any action brought by the Attorney General pursuant to this subsection, and in any such action the Secretary of Transportation shall 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.

"(4) Upon the consummation of a transaction approved under 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 no such litigation is 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 laws other than section 2 of the Sherman Act (15 U.S.C. 2), but nothing in this chapter 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 purposes of this section, the term 'antitrust laws' means the antitrust laws as defined in section 1 of the Clayton Act as amended (15 U.S.C. 12).

"(5) All transactions approved by the Board pursuant 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."

(d) Section 408 is further amended by adding the following new subsection:

"(h) The Board must issue a final order with respect to any application filed pursuant to section 408 within one calendar year after such filing."

AGREEMENTS

SEC. 12. Section 412 is amended by striking subsection (b) and adding immediately after subsection (a) the following new subsections:

"(b) After each agreement is filed, the Board shall give notice of the agreement to the Attorney General and the Secretary of Transportation within ten days of receipt of the agreement. The Attorney General or the Secretary of Transportation may request the Board to hold a hearing in accordance with section 556 of title 5, United States Code, to determine if the agreement is consistent with the provisions of this Act, and if so requested, the Board shall hold such a hearing. If the Attorney General or the Secretary of Transportation believes that because of changed circumstances any agreement which has been previously approved by the Board has anticompetitive implications or no longer serves a transportation need, the Attorney General or the Secretary of Transportation may request the Board to hold a hearing in accordance with section 556 of title 5, United States Code, to determine whether the agreement remains consistent with the provisions of this Act. If so requested, the Board shall hold such a hearing, and may after such hearing disapprove the agreement.

"(c) The Board may not approve any contract or agreement in interstate or overseas air transportation (1) which controls levels of capacity, equipment, or schedules, (2) which relates to pooling or apportioning earnings (except for mutual aid pact agreements among air carriers), losses, traffic, or service, (3) which fixes rates, fares, or charges (except for joint rates, fares, or charges), or (4) which fixes prices, commissions, rates, or other forms of contract for goods or services provided to or for air carriers by persons other than air carriers. For the purposes of this section, agreements among carriers allocating operations at high traffic airports as identified by the Secretary of Transportation shall not be deemed pooling or capacity agreements. In addition, the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

"(d) The Board may approve any such contract or agreement, whether or not previously approved by it, which it finds not adverse to the public interest, and not in violation of this Act, except that the Board shall not approve any such contract or agreement which it finds would reduce or eliminate competition, unless there is clear and convincing evidence the contract or agreement is necessary to meet a serious transportation need or to secure important public benefits, and no less anticompetitive alternative is available to reach the same result.

"(e) With respect to foreign air transportation the Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of the Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act."

ANTITRUST IMMUNITY

SEC. 13. Section 414 is amended by adding the words "in air transportation" before the word "authorized."

RATES

SEC. 14. Section 1002 is amended by:

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

"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 any air carrier for interstate or overseas air transportation, or any classfication, 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 a rate above direct costs may not be found to be unjust or unreasonable 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 air carrier's direct costs for the service at issue."

(b) Amending paragraph (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 paragraph (g) so as to read:

"(g) Whenever any carrier shall file with the Board a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon the Board, by filing with such tariff, and delivering to such air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate,

fare, or charge, or such classification, rule, regulation, or practice for a period of no longer than ninety days if—

"(a) with respect to any proposed increase the proposed tariff would be more than 10 per centum higher than the tariff in effect one year prior to the filing of the proposed tariff; or

"(b) with respect to any proposed decrease, there is clear and convincing reason to believe that the proposed tariff will be below the direct costs of the service at issue; or

"(c) with respect to any decrease filed within one year following the enactment of this paragraph, the proposed tariff would be more than 20 per centum lower than the tariff in effect on the day of the enactment of this paragraph and the Board believes the tariff will be found to be unlawful; or

"(d) with respect to any decrease filed in the period commencing one year from the enactment of this paragraph and ending two years from such enactment, that the proposed tariff would be more than 40 per centum lower than the tariff in effect on the day of enactment of this paragraph and the Board believes the tariff will be found to be unlawful.

If the proceeding has not been concluded and a final order made within the initial period of suspension, the Board may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect. After hearing, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. Any proceeding pursuant to this subsection shall be completed and a final order issued within one hundred and eighty days of the time when such tariff would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule regulation, or practice shall go into effect at the end of such period: *Provided*, That this subsection shall not apply to any initial tariff filed by any air carrier: *Provided further*, That the fact that a tariff may be suspended pursuant to this paragraph shall not create a presumption with respect to its ultimate lawfulness."

(d) Amending paragraph (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 classifications, rules, regulations, or practices affecting such rates, fares or charges, and the terms and conditions under which such through service shall be operated."

(e) Adding a new paragraph (k) to read as follows:

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

POSTAL SERVICE CONTRACT AUTHORITY

SEC. 15. 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 no certificated air carrier so authorized is willing so to contract, or between points which no certificated air carrier is authorized by the Civil Aeronautics Board to engage in such transportation; or

"(3) with any other air carrier, if no certificated air carrier is willing so to contract."

LOCAL SERVICE SUBSIDY STUDY

SEC. 16. The Secretary of Transportation shall undertake a study of the local service air carrier subsidy program and make

recommendations to Congress for any necessary changes in the subsidy system within one year of the date of enactment of this section. The Secretary shall consult with community leaders in the cities now receiving subsidized air service, the local service air carriers, the Chairman of the Civil Aeronautics Board, and the relevant committees of Congress. As part of this study, the Secretary shall identify the cost of local service subsidy involved in providing service at each city.