

1966

## Airline Service Abandonment and Consolidation - A Chapter in the Battle against Subsidization

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### Recommended Citation

Ronald D. Dockser, *Airline Service Abandonment and Consolidation - A Chapter in the Battle against Subsidization*, 32 J. AIR L. & COM. 496 (1966)  
<https://scholar.smu.edu/jalc/vol32/iss4/2>

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# AIRLINE SERVICE ABANDONMENT AND CONSOLIDATION — A CHAPTER IN THE BATTLE AGAINST SUBSIDIZATION†

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† Based on a Senior Studies Paper submitted to the Public Control Division of Yale Law School on 11 May 1966. The author wishes to thank Professor Ward Bowman of Yale Law School without whose guiding hand this work would not have been possible. In addition, the author wishes to thank Professor Charles A. Reich of Yale Law School whose course in Administrative Planning and Allocation provided the author with the necessary perspective for this article.

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### I. INTRODUCTION

THE CIVIL AERONAUTICS BOARD (CAB) has long been under political pressure to reduce the subsidization of the nation's air services.<sup>1</sup> This article examines the service abandonment aspects of the battle against subsidization of the airways. It is important to note that if fares accurately reflected the cost of each particular passenger, instead of being based largely on constant per mile charges for all distances, the question this article discusses might never have arisen.<sup>2</sup> The examination, of necessity, is a study of the conflict between straight economic cost-saving standards and the partisan pressure of political and social values. In performing its task of balancing these values, the statute only supplies the CAB with the standards of "public convenience and necessity"<sup>3</sup> and "public interest."<sup>4</sup> The Board's attempts to interpret these mandates in varying factual contexts have resulted in a wide disparity of decisions. The Board has said:

to argue that the decisions in . . . two cases should be the same because

<sup>1</sup> LOCKIN, *ECONOMICS OF TRANSPORTATION* 811 (6th ed. 1966) [hereinafter cited as LOCKLIN].

<sup>2</sup> *CAB Zooms In On Thriving Airlines*, Bus. Week, 26 Feb. 1966, p. 140, 142.

<sup>3</sup> Federal Aviation Act of 1958, § 401(g), 72 Stat. 754, 49 U.S.C. § 1371(g) (1964):

The Board upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the *public convenience and necessity* so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: Provided, that no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate. (Emphasis added.)

<sup>4</sup> Federal Aviation Act of 1958, § 401(j), 72 Stat. 754, 49 U.S.C. § 1371(j) (1964):

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 to be in the *public interest*. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest. (Emphasis added.)

certain factual circumstances in the two are similar is to assume that the circumstances selected for comparison are the sole basis for decision. This is manifestly not the case.<sup>5</sup>

Despite these disparities and the CAB's open disregard of its own precedents, a general pattern of reducing subsidization has emerged. This has taken primarily three forms.

*Trunklines*—Since the early 1950's, when the trunklines went off subsidies, the trunks have attempted to eliminate losing stops and routes. Passengers, not the government, were paying the cost of supporting loss services. Such support created an "internal subsidy." The CAB weighed community convenience and development against internal subsidization, as well as encouraging equipment development and making way for the growing local carriers. The internal subsidy and local carrier problem usually carried the day. As a result, most trunks have shed their losing routes, and local carriers have replaced them wherever possible.

*Locals*—The local carriers, as well as the CAB, have also found that they wish to shed stops and routes where subsidies are excessive and still do not cover costs of operation. The local carrier abandonment cases now center about the use-it-or-lose-it standard. This standard requires a stop to produce at least five passengers per day, as well as provide the airline with a minimum of five passengers per flight over any route segment. This standard is subject to a multitude of exceptions broadly labeled as "unusual and compelling circumstances." All these exceptions are subject to the general goal of subsidy reduction, but often outweigh subsidy considerations. Therefore, the use-it-or-lose-it standard, while concrete on its face, has proved far more difficult in administration.

*Consolidation*—In 1961 the CAB, along with the FAA, announced the beginning of an airport consolidation program. This program was designed to decrease carrier costs and encourage the introduction of new, larger equipment, all with a minimum of passenger inconvenience. The Board hoped that such a program would lower traveling costs in general and help usher in fare and subsidy reductions.

The basic evaluation of these programs centers about the issue of subsidization. Since subsidy reduction, both internal and direct, is subject to hard-to-define political considerations, the total effect of subsidy and its future must be examined first. Once subsidy elimination is accepted as a goal in and of itself, then the full details of route abandonment and airport consolidation programs can be seen in their true light.

## II. THE CASE FOR ELIMINATING SUBSIDY

The essential difference between trunk abandonment and local abandonment arises out of the use of subsidy. While continued losses on the part of a trunk carrier may well be determinative of its case, subsidization of local carriers transfers the loss to the public treasury, not to the carrier.

<sup>5</sup> Eastern N. C. Area Airline Serv. Airport Investigation, CAB Docket No. 13728, CAB Order No. E-21328 (25 Sept. 1964) (supplemental opinion and order on reconsideration).

Any evaluation of the modern use-it-or-lose-it standard must revolve around the assumptions surrounding the subsidy concept. This concept indicates the willingness of the CAB to have the public treasury absorb operational losses.

#### A. Subsidy Cost

Subsidy to air carriers takes three forms. First, since FAA operated airways are used by all flying operations—military, commercial, and general—the cost of such airways attributable to commercial operations cannot be determined. The result is free use of these FAA controlled and financed airways. Second, air carriers are permitted to make inadequate payments for airport facilities used partly because the overall cost of airport development is difficult to determine since federal, municipal, and state funds have all entered into such development. The magnitude of development cost may be demonstrated by the fact that under the Federal Airport Act of 1946, 800 million dollars has been allocated to airport construction during the period 1947-1963.<sup>6</sup> Payments have continued since 1963 at the rate of 75 million dollars per year.<sup>7</sup> Third, the direct subsidy through mail payments matches the airport payments at a rate of 67 million dollars per year paid to local-service carriers.<sup>8</sup> While some portion of the payments may be attributed to actual mail service rendered, the bulk is for direct subsidy.<sup>9</sup>

#### B. Misallocation Results Of Subsidy

Subsidization of local-service carriers has undoubtedly resulted in a national misallocation of resources. From an economist's viewpoint, "transport services and the means of supplying them are economic goods and are therefore scarce. They have to be rationed like all other economic goods."<sup>10</sup> Subsidization prevents the efficient allocation of such goods by means of the price system. In its place, there is a rationing by administrative standards. All too often these administrative standards permit communities to seek air service which may appear cheap to the community, while concealing the economic cost to the nation.

Under such circumstances, cheap transport for the individual may actually be very expensive for the country. Whether this is so will depend upon whether the service that is being supplied is worth the total costs that are being incurred. Modern transport presents some very severe obstacles to ascertaining the full cost and even severer ones to gauging whether they are worth while.<sup>11</sup>

The difficulty in valuing subsidization policies stems from the fact that the subsidy is not only a payment to the traveler at large, but also an indirect subsidy to the economy of individual communities.<sup>12</sup> Such benefits

<sup>6</sup> LOCKLIN 767.

<sup>7</sup> *FAA Allocates \$84.5 Million for Airports*, Aviation Week & Space Technology, 13 Sept. 1965, p. 40.

<sup>8</sup> LOCKLIN 787.

<sup>9</sup> *Id.* at 785.

<sup>10</sup> PEGRUM, *TRANSPORTATION: ECONOMICS AND PUBLIC POLICY* 5 (1963).

<sup>11</sup> *Id.* at 19.

<sup>12</sup> Barnes, *Airline Subsidies—Purpose, Cause, and Control*, 26 J. AIR L. & COM. 311, 313 (1959).

are impossible to measure. Yet, the CAB is forced to attempt such a measurement every time it decides a subsidy case. Without an accurate measuring technique, some misallocation will necessarily result. If the communities themselves paid the subsidy, they would not pay any more than they felt the service was worth. If the government pays the subsidy bill, the community may disregard the true value in its desire for air service.

One economist has demonstrated the result of this misallocation by examining the relationship of competing modes of transport.

Under existing conditions, there is evidently overinvestment in transportation. The railroads as a whole are unable to secure adequate revenues for their operations, while motor, air, and water transport do not cover the full economic costs attributable to their activities. If public policy were to require each of the modes to cover its full costs, there would undoubtedly be a considerable reduction in air and water transport, and probably in motor trucking.<sup>13</sup>

### C. CAB Present And Future Subsidy Goals

In its attempt to minimize the cost of subsidizing local service, the CAB has set up the use-it-or-lose-it standard as justification for the large outlay of federal funds.<sup>14</sup> The underlying policy of this standard is to attract air transport users to the subsidized services, and to encourage their growth.<sup>15</sup> This "infant industry" argument has been particularly effective in cases involving rapidly growing areas which will benefit from such service and which the Board hopes will eventually grow to a size capable of supporting air service without subsidy.<sup>16</sup> The policy has been criticized, however, in areas where "commercial revenue potential cannot possibly be sufficient to meet the cost of performing the service. . . ."<sup>17</sup> Lack of potential may well explain why the carriers themselves are unwilling to make a large investment in loss routes. One industry journalist criticized a new route covering sparsely settled country as follows:

Is this new service really worth the anticipated \$168,000-\$232,000 annual subsidy bill when other activities such as the helicopter routes are in dire need? What measures of reasoning did . . . [the CAB] apply to justify the unnecessary bill to the taxpayer? Is this a suitable means of encouraging and developing air transportation when the prospect of making such a route pay off is virtually nil? Is there no end to an outpouring of federal money? We think the CAB failed in its responsibility to the country in this case.<sup>18</sup>

Such commenators realize that in many cases the stated "infant industry"

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<sup>13</sup> PEGRUM, *op. cit.* *supra* note 10, at 463.

<sup>14</sup> Kansas-Okla. Local-Serv. Case, 32 C.A.B. 557 (1960). In *Continental Air Lines, Inc., Certificate Renewal Case*, 18 C.A.B. 844, 845-46 (1954), the Board held under pre use-it-or-lose-it standards that where cost justification is not attained and no "unusual or compelling circumstances" are present that, "public benefits flowing from the service are too limited to justify the cost to the government of a further experimental period."

<sup>15</sup> Seven States Area Investigation, 28 C.A.B. 680 (1958).

<sup>16</sup> Service To Phoenix Case, 25 C.A.B. 647 (1957); Service To Liberal Case, 23 C.A.B. 898 (1956).

<sup>17</sup> Barnes, *supra* note 12, at 312.

<sup>18</sup> Parrish, *Personal View*, *American Aviation*, Dec., 1964, p. 41.

reasons may only conceal straight community subsidization based on political, not economic grounds.

The future expectations of the CAB are clear. The Board has continually spelled out a general policy of moving toward the elimination of subsidy. The entire series of route transfers from trunklines to local carriers contained this goal as one of the controlling standards.<sup>19</sup> In fact, the CAB has been known to refuse to relieve a trunkline from a loss operation solely because the transfer to a local-service carrier would result in a large increase in subsidy payments.<sup>20</sup>

### III. PROPOSALS FOR FURTHER SUBSIDY REDUCTION

#### A. *Federal Transportation Bill*

Reassessment of its annual investment of over five billion dollars in various means of transportation through an uncoordinated system convinced the federal government, in the interest of economy, to seek to coordinate its programs. President Johnson, in his message to Congress on transportation, sought the development of a single Department of Transportation. He recommended leaving the CAB intact to handle its function of allocating subsidy. The new Secretary of Transportation, however, "will develop principles and criteria which the board will take into consideration in its proceedings. In this way the subsidy program will be coordinated with the overall national transportation policy."<sup>21</sup> While not directly urging a cutback in subsidy, the message seeks to, "fulfill the right of our taxpayers to maximum efficiency and frugality in government operations."<sup>22</sup> Such "efficiency and frugality" may well be received as an invitation to severely curtail current subsidy practices. Since the message does not call for the elimination of subsidy practices, misallocations will result, but perhaps on a smaller scale. However, only through an actual service allocation system, based on the actual cost of service which the price system can achieve, will the most efficient transportation system be realized.<sup>23</sup>

#### B. *The Locals' Proposal*

The local-service carriers themselves have long sought to end the need for federal subsidy through their own version of internal subsidy, a concept long rejected by the CAB. Local-service spokesmen have recommended that the CAB relieve local carriers of intermediate stop restrictions after providing minimal service to those intermediate points.<sup>24</sup> With the advent of new short-haul jet equipment, the locals feel that they could adequately compete with the trunklines and accordingly have requested entry into the nation's densest short-haul markets. The profits from such new markets would go a long ways toward reducing direct subsidy pay-

<sup>19</sup> *Ozark Airlines and Am. Airlines, Serv. at Peoria and Springfield, Ill.*, 36 C.A.B. 201 (1962).

<sup>20</sup> *Pacific Northwest Local-Serv. Case*, 29 C.A.B. 660 (1959) (supplemental opinion).

<sup>21</sup> *N. Y. Times*, 3 March 1966, p. 20 (text of Presidential transportation message to Congress).

<sup>22</sup> *Ibid.*

<sup>23</sup> *PEGNUM, op. cit. supra* note 10, at 436.

<sup>24</sup> *Barnes, Airline Subsidies—Purpose, Cause, and Control*, 27 J. AIR L. & COM. 29, 32 (1960).

ments.<sup>25</sup> If such a request were granted, accompanied by the elimination of subsidy payments, the day of the internal subsidy would return. The local carriers would only be taxing their dense market passengers to help pay for the marginal stop passengers. Current low use-it-or-lose-it standards would cause misallocation to continue. The subsidy would remain; only the pocket from which it came would be altered.

The Association of Local Transport Airlines (ALTA) has, however, made a commendable suggestion in proposing higher use-it-or-lose-it standards coupled with a review of cost versus benefits standards.<sup>26</sup> Since the CAB has indicated that it would be interested in allowing local carriers to compete in denser markets<sup>27</sup> if it were to also raise the use-it-or-lose-it standard, direct subsidy free operation might well be achieved. The internal subsidy, however, would still be a fact and social misallocation would continue, but on a smaller scale.

Such liberalization of local carrier operations would reflect a conscious choice of the CAB to radically change the nature of today's local-service carrier. Locals might well soon become indistinguishable from trunk operators.<sup>28</sup> One local-service carrier has already been permitted to fly a non-stop short trunk route with its new jet equipment.<sup>29</sup> If this pattern continues, the local carriers will have achieved their longer-haul goals. Former CAB member Chan Gurney has stated, however, "it must be clearly understood that the primary responsibility of these carriers is to serve these smaller cities and it is the responsibility of the Board to see that adequate service is provided."<sup>30</sup> Whether the CAB will heed this admonition remains to be seen.

### C. *The Competitive Solution*

Competitive solutions to the local-service problem continually spring up and seem to center around the use of lighter and more economical aircraft, as well as surface transportation.

#### 1. *Third Level Carriers*

Third level carriers consist of scheduled and nonscheduled air taxi services, commuter airlines, and helicopter service. In one instance of feeder carrier withdrawal from a losing point where it operated without subsidy, the CAB recognized the existence and high level of service rendered by a third level carrier.<sup>31</sup> Third level carriers, such as Commuter Air Lines,

<sup>25</sup> Wright, *Locals Ask Densest Short-Haul Markets*, Aviation Week & Space Technology, 7 Feb. 1966, p. 35.

<sup>26</sup> *Ibid.*

<sup>27</sup> CAB Zooms In On Thriving Airlines, Bus. Week, 26 Feb. 1966, p. 140, 142.

<sup>28</sup> Comment, *Adequacy of Domestic Airline Service: The Community's Role In A Changing Industry*, 68 YALE L.J. 1199, 1213 (1959).

<sup>29</sup> Official Airline Guide, March, 1966, p. 195 (Mohawk Airlines now serves the Buffalo-Detroit market with non-stop jet service, whereas prior service with piston equipment required at least one intermediate stop. The new service will be highly competitive with American Airlines.)

<sup>30</sup> Gurney, *The Development and Progress Of The Local Service Airline Industry*, 6 S.D.L. REV. 79, 95 (1961).

<sup>31</sup> Mohawk Airlines, Inc., Serv. to Poughkeepsie, N.Y., CAB Docket No. 15090, CAB Order No. E-22957 (2 Dec. 1965). (The case directly discusses the commuter service to New York City provided by Mid-Hudson.)



have sprung up throughout the country<sup>32</sup> and provide scheduled light aircraft service between smaller cities and major terminal points.<sup>33</sup>

Taking a clue from the third level carriers, the FAA has sought the development of a smaller aircraft with a capacity of fourteen to twenty people for local carrier use.<sup>34</sup> (The light-twins now in use by the third level carriers seat up to nine passengers.)<sup>35</sup> The plane most closely approximating the FAA requirement is the twenty-nine passenger French Nord 262, currently in use on Lake Central Airlines.<sup>36</sup>

If such an ideal short-haul transport is developed, who will fly it—the present local-service carriers or the new third level carriers? The locals are already speaking of initiating operations with existing light planes on their less dense routes.<sup>37</sup> While private operators would tend to be far more aggressive, and perhaps benefit the public in terms of service, existing local carriers might prove to be ultimately more efficient due to their established reservation and ground service organizations. Whoever ultimately dominates this phase of air transport, the cost to the public will be far less than that now borne for feeder operations. Even if third level carriers receive subsidy, as currently proposed, the subsidy payments promise to be less than those paid for similar services with larger planes.<sup>38</sup> If an area is at all capable of supporting an air transportation service, and its present local-service carrier is removed, a third level carrier will probably make its services available. Since the cost of third level service is less than a large feeder operation, the community might find itself willing to subsidize its own local carrier in the interest of the local economy. A CAB decision to provide general subsidy to these new carriers would only perpetuate the evils of over-investment which have arisen out of the local carrier subsidy program.

While helicopter service and technology is in its infancy, its potential for the future may be boundless. Far-sighted helicopter operators foresee the inauguration of regional service comparable to that now offered by local carriers. The helicopter's ability to go directly to the center of a city could well deal the telling blow to local carriers in the future.<sup>39</sup>

High speed train service, such as that now proposed for the Northeast Corridor, could also displace local carriers in the years to come.<sup>40</sup> The high speed train, like the helicopter, is an element of the future, and need not enter into present consideration. Capital investment in air transporta-

<sup>32</sup> Aviation Week & Space Technology, 12 Dec. 1965, p. 37.

<sup>33</sup> Elliott, *Development of Third Level Air Transportation*, 29 J. AIR L. & COM. 182, 183 (1963). One highly successful large scale third level air system today is Metro Air Service, an informal association of air-taxi operators in New York City under the guiding hand of American Airlines. This service carries nearly 8,000 passengers per month. Wright, *American Adds to New York Taxi Links*, Aviation Week & Space Technology, 28 March 1966, p. 50.

<sup>34</sup> *The Short Haul Transport*, American Aviation, Sept. 1964, p. 30. (This project appears to have sunk into oblivion.)

<sup>35</sup> Aviation Week & Space Technology, 12 Dec. 1965, p. 37.

<sup>36</sup> American Aviation, April 1965, p. 4.

<sup>37</sup> American Aviation, Feb. 1965, p. 49 (West Coast Airlines contemplating use of smaller aircraft).

<sup>38</sup> Elliott, *supra* note 33, at 182.

<sup>39</sup> *Taxis Aloft*, Boston, Feb. 1966, p. 41.

<sup>40</sup> *Casey Jones' Promised Land*, Boston, Feb. 1966, p. 57.

tion is not prohibitive, and the chance of that small investment losing its value in the future should not inhibit present decisions.

The one competitive solution to the local-service problem which is universally overlooked in CAB cases is general aviation. Due in part to the inability of local carriers to meet the actual demand of United States industry, 34,000 business aircraft are currently in use in the United States, 19,000 of which are company-owned and flown by professional pilots.<sup>41</sup> Any town with an airport which pleads that it will be passed over if it loses its scheduled air service can be proven partially incorrect in the face of the present business-flying system. Local airlines serving marginal points are only carrying pleasure passengers and corporate representatives with limited travel needs. Any point sufficiently important for commercial attention will receive it from the private-fleet that is willing to spend the extra money to visit that town. The failure of the CAB decisions to recognize this point often results in a wholly unrealistic appraisal of a community's economic future without scheduled commercial air service.

In many other cases, limousine services have grown up where inadequate air connections to central terminals have existed.<sup>42</sup> The center-to-center convenience of such service, combined with more frequent schedules, have often made them far preferable to skeleton local air service.

#### D. Summary Of Proposals

While local-service carrier subsidization produces a misallocation of resources, neither the federal plan for coordination nor the local's solution based on internal subsidy will properly correct that mistake. The competitive solution, based on fitting actual service to actual demand, either through third level carriers or private aviation, offers far more guidance for the future. The passenger will only pay the higher fares attendant to these new modes of air transport if the service will return an equal or better value to him. In so doing, the service will return its true value to society.

Attention is now diverted to a consideration of the nature and success of the three main subsidy reduction programs.

### IV. TRUNKLINE ROUTE ABANDONMENT

By the early 1950's domestic trunklines no longer received subsidies from the federal treasury.<sup>43</sup> Realizing that their profits depended solely on operational revenues less operational costs, they attempted to shed any portion of their route structure not carrying its own financial weight. This shedding process created a wealth of cases for the CAB to decide. Realizing that no two cases were exactly alike, the CAB merely formulated areas of inquiry rather than create hard and fast rules. The weight attached

<sup>41</sup> Stanfield, *Skyways*, *American Aviation*, Dec. 1964, p. 29. The United States business corporations' thirst for speed has resulted in the ordering of 800 twin engine executive jets. *Executive Jets Head Hopefully for Wider Sky*, *Bus. Week*, 26 March 1966, p. 116.

<sup>42</sup> Mohawk Airlines, *Serv. to Poughkeepsie*, N.Y., CAB Docket No. 15090, CAB Order No. E-22957 (2 Dec. 1965).

<sup>43</sup> *CAVES, AIR TRANSPORT AND ITS REGULATORS* 329 (1962).

to the results of each particular inquiry remained within the Board's discretion. Nevertheless, the general inquiry revolved about an attempt to balance passenger convenience and partisan community goals against eliminating losses at particular points, encouraging equipment modernization programs, and measuring the effect of each decision on the then-budding local carriers.

#### A. Passenger Convenience And Community Welfare

In their attempt to abandon their weaker points, the trunklines cut these locales back to a minimal level of service.<sup>44</sup> Thereafter, if the point or route generated a loss, the airline would usually petition the CAB for permission to abandon it. In the proceedings which followed, most communities argued that such minimal service failed to tap the air travel potential of the area.<sup>45</sup> Many communities feared that the loss of a major trunkline would adversely affect the business welfare of the entire community and make them victims of "second-class air service."<sup>46</sup> The CAB has generally demonstrated two opposite reactions to such supplications. Until recently the usual Board reaction had been to allow the trunkline to abandon the stop, and then to immediately replace it with a local-service carrier. The Board visualized increased convenience as a result of trunkline abandonment. In *Seven States Area Investigation*, the Board stated:

As to the trunkline points to be transferred to a local carrier, there is considerable evidence in the record indicating that the limited pattern of service which Braniff has offered the Dakota communities—Minot, Bismark, Aberdeen, Watertown, and Huron—has not been adequate in terms of frequency and timing, to meet the transportation requirements nor to fully develop the traffic potential of this area. We are satisfied that the overall public interest will best be served by transfer of the points involved to a local carrier which is more willing and better suited to provide more frequent and better-timed schedules designed to accommodate the short haul and commuter needs of the area cities and convenience a great volume of airline passengers.<sup>47</sup>

The basis for this greater willingness to serve such points with improved schedules stems from the fact that locals specialize and depend on a great network of lesser points for their survival.<sup>48</sup>

Several industry commentators have praised the success of these programs.

Such points, many carriers believe, would receive better service and their loss would not harm the trunks. According to a CAB study, air flights increased at 144 points where local service carriers replaced trunks between 1949 and the end of 1964. The number of flights at nearly 100 of these points increased by more than 50% over that offered by the trunks. Flights

<sup>44</sup> *Id.* at 328.

<sup>45</sup> Eastern Air Lines, Inc., Redesignation of Philadelphia, Pa.—Wilmington, Del. (Hereinafter *Wilmington*), CAB Docket No. 14493, CAB Order No. E-22981 (8 Dec. 1965).

<sup>46</sup> Elliott, *supra* note 33, at 182.

<sup>47</sup> *Seven States Area Investigation*, 28 C.A.B. 680, 714 (1958).

<sup>48</sup> Route No. 106 Renewal Case and Ozark Certificate Renewal Case, 21 C.A.B. 86, 88 (1955) (supplemental opinion).

decreased at 16 points, the report said. Passenger traffic rose at 132 of the 144 points and increased 50% at 100 of the points during the 16 year period.<sup>49</sup>

The president of Allegheny Airlines, Leslie O'Barnes, has stated:

In almost every case, the replacement has been followed by modest to tremendous increases in the number of persons using the scheduled airline services and the amounts of goods shipped by air to and from these cities.<sup>50</sup>

Despite such optimistic appraisals of feeder airline service, the Board has allowed exceptions to the policy set forth in the *Seven States Area Investigation*. These exceptions center around the inconvenience of using connecting service rather than a direct through flight and, in some cases, this has constituted the major consideration in refusing to relieve a trunk-line from serving a minor city.<sup>51</sup> Other times, however, the CAB has praised the use of connecting service at major cities as an assurance of a greater number of available ultimate destinations to the citizens of smaller communities.<sup>52</sup> Undoubtedly, the importance of the through-service factor will vary with the geographical location of the city in question. The Board recently considered such service to be of paramount importance in the *Eastern Air Lines, Inc., Redesignation of Philadelphia, Pa.-Wilmington, Del.* case.<sup>53</sup>

The *Wilmington* case seems to go beyond merely emphasizing through-service, and may well constitute a revival of a "passengers' rights" doctrine. Eastern had been serving the Wilmington airport with "an abbreviated Convair service pattern limited to an operation between Washington, Wilmington, and Newark."<sup>54</sup> While the Wilmington airport is only twenty-seven flight miles from Philadelphia, the CAB declared:

Wilmington, is, on this record, entitled to a further test of its traffic potential as herein provided, and the proximity of the Philadelphia airport in itself is not a sound basis for granting Eastern relief from its certificate obligations at Wilmington before such a test has been conducted and its results have been evaluated.<sup>55</sup>

The decision proceeds even further by suggesting that the Board might remove the feeder airline and hand the entire responsibility back to Eastern.<sup>56</sup> While this case may not be the "wave of the future," it is certainly indicative of a changing attitude of the CAB. The Board seems to be turning toward greater passenger convenience through increased trunk-line service despite financial losses, aid to local carriers, and equipment modernization programs.

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<sup>49</sup> Wright, *Local Service Revenue To Double by 1970*, Aviation Week & Space Technology, 7 March 1966, p. 185, 187.

<sup>50</sup> Barnes, *supra* note 12, at 319.

<sup>51</sup> Southwest Area Local-Serv. Case, 37 C.A.B. 469 (1963) (Delta air service at Beaumont-Port Arthur).

<sup>52</sup> Ozark Air Lines and Am. Airlines, Serv. at Peoria & Springfield, Ill., 36 C.A.B. 201 (1962).

<sup>53</sup> Eastern Air Lines, Inc., Redesignation of Philadelphia, Pa.—Wilmington, Del., CAB Docket No. 14493, CAB Order No. E-22981 (8 Dec. 1965).

<sup>54</sup> *Id.* at 8.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> *Ibid.*

### B. Elimination Of Losses

One of the major avowed purposes for relieving the unsubsidized trunks from serving low traffic points is the prevention of continued large operating losses. One transportation economist has explained that if entry and exit into airline routes were unregulated, many cities now served by only a few carriers would be deluged by competing carriers, while unprofitable routes would be neglected and ultimately eliminated. From a purely economic point of view, the profitable carrier should not be burdened with such routes; to do so would result in internal subsidy. But, he further explains,

The fact remains, however, that the carrying of some unprofitable services by the more profitable has long been a characteristic of public utilities and of transport agencies and is an almost inevitable consequence of requiring reasonably acceptable public utility and transport services.<sup>57</sup>

The CAB approach toward requiring trunk carriers to carry loss points has fluxuated between purely economic criterion and traditional public utility standards.

In one line of cases, the CAB has attempted to prevent the impairment of a carrier's financial position by permitting the deletion of loss-creating route segments.<sup>58</sup> Here the Board has acknowledged that the use of internal funds to finance losing operations often acts as a tax on the long-range passengers who pay a higher fare. In the *Nogales, Arizona, Investigation*, the Board allowed American to eliminate its Nogales loss service. The examiner, whose decision the Board affirmed, stated:

It may be argued that there is a distinction when the cost of the service would not be borne directly by the taxpayers through subsidy for a carrier in this case but by American, a subsidy-free carrier. But where a common carrier's rates are regulated it can be said its rates are a tax for the service. Losses affect the public, at least that portion which utilizes air service, whether the subsidy for loss comes out of the public treasury or the carrier's treasury.<sup>59</sup>

However, there is another line of cases which adopts the public utility tradition of assuming the burden of loss service. The *Pacific Northwest Local Air Serv. Case* illustrates the "logic" of the internal subsidy.<sup>60</sup> A portion of this case dealt with the question of whether United should continue to serve the cities of Ely and Elko, Nevada, at an estimated loss of \$212,316 per year. The Board found that the two stops were part of a route between Reno, Nevada, and Salt Lake City, Utah. Since United would continue to serve the two larger stops, the Board used the total revenues and total costs for the entire Reno-Elko-Ely-Salt Lake City service. By that accounting procedure, United showed a profit of \$22,863 per year for its service.<sup>61</sup> In effect, the Reno to Salt Lake City through

<sup>57</sup> LOCKLIN 828.

<sup>58</sup> *Service To Terre Haute, Ind.*, CAB Docket No. 13256, CAB Order No. E-22029 (13 April 1965).

<sup>59</sup> *Nogales, Ariz. Investigation*, 18 C.A.B. 366, 372 (1954).

<sup>60</sup> *Pacific Northwest Local-Serv. Case*, 29 C.A.B. 660 (1959).

<sup>61</sup> *Id.* at 682-83.

passengers, who had to suffer the inconvenience of two stops, were helping to purchase the tickets of the local loss traffic. Fares are based on distance traveled, not on reservation, station, take-off and landing, and stopover expenses. Such a system creates a disparity between service received, and service paid for.<sup>62</sup>

While the mainstream of cases seems to adopt the purely economic approach to loss operations, the recent *Wilmington* decision demonstrates that the economic approach is not a guaranteed right of a long-haul carrier. In that case the Board stated that, "the fact that a service entails an operating loss does not *ipso facto* justify relieving the carrier of its obligation to serve the loss point."<sup>63</sup>

### C. Equipment Modernization Program

The CAB often cites its practice of encouraging modernization of trunk airline fleets as a separate reason for allowing a trunk to delete service at a weak point. With the advent of four-engine jets, the trunk carriers initiated long-range equipment modernization programs, eventually aiming for all-turbine fleets. The first casualty to succumb to these modernization programs were the two-engine, short to medium range planes which formed the backbone of the short-haul operations.<sup>64</sup> Neither the large piston planes nor the large jets remaining were suitable for short-haul operations. Rather than force the trunklines to augment their fleets with modern short-haul planes which would not be available for nearly six years, the Board made a conscious choice to encourage the development of pure medium to long-range fleets. Its decision was designed to "expedite the completion of this reequipment program"<sup>65</sup> by allowing trunk carriers to continue deletion of weaker points.

The reequipment programs are actually a secondary effect of the CAB's total program of creating a separate role for long-haul carriers. The Board was free to compel the carriers to maintain short-haul equipment by merely forcing them to fly the short-haul routes. Equipment development, as a separate argument, carries very little weight. Only a very short-sighted Board would not realize that new short-haul aircraft would be developed. The Board recognized the changing aircraft picture in *Wilmington* where it stated:

Moreover, there is no apparent inconsistency between Eastern's reinauguration of an improved pattern of service at Wilmington and the carrier's equipment modernization program and route aspirations.<sup>66</sup>

While it might be argued that the equipment situation should no longer

<sup>62</sup> Bus. Week, *supra* note 2, at 140.

<sup>63</sup> Eastern Air Lines, Inc., Redesignation of Philadelphia, Pa.—Wilmington, Del., CAB Docket No. 14493, CAB Order No. E-22981 (8 Dec. 1965), at pp. 8-9. There is one notable aberration in the trunkline flight from internal subsidization, and that is Northeast Airlines. Northeast was awarded a long-haul route to Florida for the express purpose of subsidizing its local operations. Hearings are currently being held on the line's continued right to operate over the long-haul route. N. Y. Times, 14 April 1966, p. 66, col. 5.

<sup>64</sup> Trans World Airlines, Inc., Serv. at Reading, Pa., 37 C.A.B. 227 (1962).

<sup>65</sup> Ozark Air Lines and Am. Airlines, Serv. at Peoria & Springfield, Ill., 36 C.A.B. 201 (1962).

<sup>66</sup> Eastern Air Lines, Inc., Redesignation of Philadelphia, Pa.—Wilmington, Del., CAB Docket No. 14493, CAB Order No. E-22981 (8 Dec. 1965), at p. 9.

pose an *ipso facto* problem with the arrival of short-haul jets, such an absolute argument would fail to appreciate the nature of these jets. While the shortest field needed for a four-engine jet is 6,350 feet,<sup>67</sup> the Douglas DC-9 two-engine jet theoretically still needs 5,320 feet.<sup>68</sup> While many short-haul fields could squeeze in specially equipped short-haul jets, it must be realized that they are designed to carry seventy-five to one hundred people.<sup>69</sup> Consequently, the two-engine jets are far more fitting replacements for four-engine piston planes than the classic DC-3. No domestic airline has ordered a pure jet DC-3 replacement. So as long as the CAB encourages a pure jet fleet for the trunks, they may have to allow them to delete very low density, short-haul stops.

Despite their limitations, the new twin-jets have heralded a period of introspection for the trunk carriers. The trunks are becoming more cautious in their analysis of marginal routes. No longer are they quick to condemn a route as marginal which is ripe for a local to take over. The trunks are calling a definite halt in their march away from small and intermediate cities<sup>70</sup> because newer local-service jets have made these once marginal routes profitable. Since the local carriers have purchased these same short-haul jets, many short to medium routes could fall within the capabilities of both carrier types. The CAB has begun to find itself in the position of arbitrator between the incumbent trunks and ambitious, capable locals. Having allowed both carrier types to purchase the equipment in question, the Board will have to turn to criteria other than equipment to decide whether a route should be served by a local or by a trunk.

#### D. Effect On Competing Carriers

Ever since the certification of the local-service carriers following World War II,<sup>71</sup> the CAB has nursed these carriers by means of subsidies. Faced with rising subsidies, the CAB employed almost any means available to reduce these payments. Accordingly, trunklines soon found that an appeal to the Board's affection for the local-service carrier went a long way toward winning a route abandonment proceeding. If a local's subsidy was potentially reduced by the elimination of a trunkline, the trunkline scored a point in its favor.<sup>72</sup> The Board believed that potential reductions would be realized when the local carrier increased its revenue by absorbing the predecessor trunkline's business with more efficient local-service operations.

In addition to reducing subsidy, the CAB developed a philosophy of a separate air transportation role for each type of carrier.<sup>73</sup> The reduction of subsidy helped the local carriers stabilize their financial situation, and

<sup>67</sup> *Commercial Transport Aircraft*, American Aviation, Oct., 1964 (minimum landing distance for Boeing 720B).

<sup>68</sup> *Ibid.* (take-off distance for Douglas DC-9).

<sup>69</sup> American Aviation, April, 1965, p. 73 (Boeing 737).

<sup>70</sup> *Local Hearings May Speed Route Cases*, Aviation Week & Space Technology, 21 March 1966, p. 51, 52.

<sup>71</sup> RICHMOND, REGULATION AND COMPETITION IN AIR TRANSPORTATION 195 (1st ed. 1961).

<sup>72</sup> Wiggins Renewal Investigation, 16 C.A.B. 483, 492 (1952) (replacement of TWA at Worcester, Mass. by Mohawk Airlines).

<sup>73</sup> Trans World Airlines, Inc., Peoria Deletion, CAB Docket No. 15187, CAB Order No. E-22469 (24 June 1965).

such stabilization helped carry out their individual role.<sup>74</sup> In order to prove its case, a trunkline would have to show that the trunk and the local were currently competing and that the elimination of the trunk would be profitable to the local. However, if the trunk sought to delete a route in favor of a local inaugurating loss service on that route, in effect a complete subsidy application would be involved. The Board has had a guarded reaction to such requests. In the *Pacific Northwest* case, the Board preferred the continued absorption of a \$212,316 per year loss on the part of United, rather than supplying \$127,281 in subsidy for replacement at Elko and Ely, Nevada, by a local carrier.<sup>75</sup> But the mere fact that a feeder replacing a trunk will need subsidy support on a particular route often will not necessarily prove fatal to an abandonment proceeding. As long as the parties to the proceeding join the local's application for that route with an application for a subsidy, the CAB will treat the trunk as requesting deletion on the grounds of continued losses, not on the grounds of aiding a local carrier. The subsidy question is then treated separately.

In another series of abandonment cases, the trunklines have complained that the local carrier's competition has been so vigorous as to cause losses to the trunk.<sup>76</sup> Here the Board allowed the trunk to delete service in the interest of its own health, not the local's. Yet there is no question that the trunk could have competed more vigorously to the detriment of the local. Weighing the positive effect on competing carriers only makes sense from a subsidy reduction point of view in a market where only one carrier can operate at a profit. Since the local carrier is considered better equipped to turn a profit in a marginal market, it is usually the logical choice over the more expensive trunk operation. However, as manufacturers develop better smaller equipment for marginal markets, and if the trunks continue their purchase of this equipment, the trunks may only yield sub-marginal markets to the local carriers. Such sub-marginal markets will, at least in view of today's limited short-haul air technology, only produce further losses. Trunk abandonment will soon make little sense from a subsidy reduction point of view.

While there are many other factors which enter into a trunk carrier's abandonment case, the CAB has considered only two such factors frequently enough to mention. First, since most local service by trunklines comes as a result of a small city's position along a long-haul route, sometimes there are passengers flying between distant points who are inconvenienced by intermediate stops.<sup>77</sup> Thus, convenience to through passengers is sometimes considered by the Board. Second, although inadequate airport facilities for new equipment is the obverse of the Equipment Modernization Program, it has often been treated as a separate consideration.<sup>78</sup>

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<sup>74</sup> *Ibid.*

<sup>75</sup> *Pacific Northwest Local Air Serv. Case*, 29 C.A.B. 660 (1959).

<sup>76</sup> *Braniff Airways Serv. To Chattanooga, Tenn.*, CAB Docket No. 13041, CAB Order No. E-18863 (6 Sept. 1962).

<sup>77</sup> *American Airlines' Serv. To Akron Case*, 37 C.A.B. 606 (1963). Elimination of one stop was found to constitute a 25% time savings to through passengers.

<sup>78</sup> *Northeast Airlines Inc., Suspension of Serv. at Provincetown, Mass.*, 18 C.A.B. 679 (1954).



### E. *Transfer Of Certificate Approach*

Subject to CAB approval, a trunkline may transfer its route certificates to a local-service carrier. The statutes merely requires that the transfer be "consistent with the public interest."<sup>79</sup> In administering this mandate the CAB has remained faithful to the same standards which it applies in area proceedings involving trunk abandonment and feeder service inauguration.<sup>80</sup> The only major difference is this approach lies in the fact that the carriers first agree among themselves as to who will be the trunkline's successor. The Board in abandonment proceedings, on the other hand, may approve abandonment, while choosing a far different successor than the trunkline intended. However, in most instances, since local-service carriers tend to each have their own area of the country to serve, the same local carrier would succeed to the trunk under either a predesignated transfer, or a general abandonment proceeding. The transfer proceeding may on occasion be used where a cash or other incentive is required to induce one of the carriers to enter the proceeding.<sup>81</sup> Without such an incentive, the losing carrier might object at an abandonment proceeding, and prevent the trunkline from achieving its objectives. In short, a certificate transfer is a private ordering of a usually public matter, employing private economic standards at its inception. The carriers themselves prefer such an approach.<sup>82</sup> The expansion of this procedure would invite carriers to make their decisions on economic, not political grounds. Such an event would be welcome.

### F. *Evaluation Of Trunkline Abandonment*

In its effort to eliminate the internal subsidization of trunkline routes, the CAB has taken a necessary step in the general program of reducing all forms of subsidies. Only when the CAB pays the subsidies out of the treasury will the total amount be publicly known. Only then can the public properly discuss the subsidy question. Considerations of passenger inconvenience are no longer proper arguments against trunk abandonment in view of the modern equipment entering local carrier service. To prohibit trunk abandonment results in the transfer of the loss payments from the pockets of the private traveling public to the general traveling public. If local communities were forced to pay the subsidies directly, no doubt much of the currently misallocated trunkline service would be eliminated. Since route abandonment encourages discussion which may lead to the total elimination, or at least, localization of subsidy, the current program has a healthy effect.

As aviation technology progresses, routes of almost any nature will

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<sup>79</sup> Federal Aviation Act of 1958, § 401(h), 72 Stat. 754, 49 U.S.C. § 1371(h) (1964):  
No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

<sup>80</sup> TWA/Allegheny/Mohawk Transfer, CAB Docket No. 13527, CAB Order No. E-20661 (7 April 1964).

<sup>81</sup> Acquisition of Mayflower Airlines, Inc., by Northeast Airlines Inc., 4 C.A.B. 680, 684 (1944).

<sup>82</sup> Bramley, *Mohawk's Progress Paints New Image For Local Service Industry*, American Aviation, Aug., 1964, p. 56 (statement by President of Mohawk Airlines).

become profitable. As the present carriers on marginal trunk routes take advantage of this technology, trunkline abandonment proceedings may almost disappear. The trunklines may well turn their energy to defending their marginal routes from the eagerly-expanding local-service carriers. The locals will try to force the trunk carriers into a purely trunk role, and the trunks will have to resist by citing factors of convenience and community welfare. The arguments may remain the same, but the parties making them may well change.

## V. LOCAL AIRLINE ROUTE ABANDONMENT

### A. *Use-It-Or-Lose-It*

The focal point of local-service airline route abandonment is the use-it-or-lose-it policy enunciated in the *Seven States Area Investigation*.<sup>83</sup> This policy establishes certain service danger signals based on usage standards. Communities or routes which fail to meet these standards face the loss of their local air service.

The standards which continually confront a community are:

Unless a city enplanes an average of at least five passengers daily for the 12 months following the initial six months of service, we will, in the absence of unusual or compelling circumstances, institute a formal investigation to determine whether that city should lose its air service for lack of use.<sup>84</sup>

The standards which a new route segment must meet are:

If the passenger load on each flight serving a segment in question averages less than five passengers, we will begin appropriate proceedings to determine whether to suspend or delete the route segment. In addition, for those route segments whose average passenger load per flight ranges between five and seven passengers, formal proceedings for termination of the service will be instituted, except where unusual circumstances such as extreme isolation or national defense needs dictate to the contrary.<sup>85</sup>

The use-it-or-lose-it standard was originally designed for application to new route certifications in order to achieve "an early and critical reassessment of the traffic results of the new authorizations to see whether the cities are making sufficient use of the air service they requested or should lose-it."<sup>86</sup> The CAB has applied the standard to communities with air service established prior to the new policy,<sup>87</sup> and has even used it as part of its reasoning in trunkline cases.<sup>88</sup> Some communities have successfully pled that the CAB should apply the standard only to renewed service, and that the standard in fact guaranteed them a brief renewal of service to attempt to meet those standards.<sup>89</sup> Communities derived such a

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<sup>83</sup> *Seven States Area Investigation*, 28 C.A.B. 680, 755 (1958).

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Service To Glens Falls, N.Y.*, CAB Docket No. 15432, CAB Order No. E-22419 (8 July 1965).

<sup>88</sup> *Suspension of Serv. at Marianna, Fla.*, 34 C.A.B. 336 (1961).

<sup>89</sup> *Renewal Of Trans-Texas Airways' Temporary Intermediate Points*, 30 C.A.B. 484, 497 (1960).

guarantee of renewal rights from the overall policy of the use-it-or-lose-it pronouncement. In later cases the CAB de-emphasized the five-a-day portion of the decision, and emphasized the idea that *Seven States* showed "a willingness of the Board to take a more generous view towards communities seeking *initial* Certification."<sup>90</sup> A community with previously certified service must rely on that "more generous view" in requesting one additional testing period. If the Board grants such a new experimental period, the service is definitely subject to the use-it-or-lose-it standard.<sup>91</sup>

While the numerical standards possess a pleasing symmetry, administration has proved difficult due to the maze of exceptions which have arisen. At the outset it should be noted that the responsibility of meeting the use-it-or-lose-it standard rests upon the community.<sup>92</sup> The community is usually the leading non-industry participant in a route application, and this policy forces it to make good on its promise of service use.<sup>93</sup> While the CAB is not asking the community to pay for the service, it is insisting that the community encourage use of the service. The policy exceptions which follow may best be understood in this light.

### 1. *Unusual and Compelling Circumstances*

Exceptions to the use-it-or-lose-it rule center around the criteria of "unusual or compelling circumstances" and include:

a. *Isolation and Poor Surface Transportation*—The great advantage of the airplane is its ability to reach remote and inaccessible places which other forms of transport cannot do as well.<sup>94</sup> Such considerations were found to apply to Keene, New Hampshire, when Mohawk Airlines attempted to delete the city from its routes.<sup>95</sup>

b. *Growing Economic Potential of the Community*—Where a community fails to meet its service requirement, but shows a potential for future growth, the CAB assumes that traffic will grow in the future<sup>96</sup> and that the presence of air service will aid the community in its growth. The effect of air service on community growth is questionable. If a community eventually may grow to a size worthy of scheduled air service, carriers will volunteer the service once the city deserves it.

c. *Improved Equipment Will Soon Attract More Traffic*—As local airlines continue to retire their DC-3s in favor of modern equipment, air travel will become more attractive to short-haul travelers.<sup>97</sup> Such an argument is usually a delay technique in hopeless cases. While some passengers will be affected by the type of equipment available, most will not.

d. *Carrier Profits Despite Low Usage*—Perhaps, due to length of haul or freight traffic development, it has been possible for local airlines to

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Intermediate Points on Ozark, 34 C.A.B. 550 (1961).

<sup>93</sup> Seven States Area Investigation, 28 C.A.B. 680, 756 (1958).

<sup>94</sup> LOCKLIN 774.

<sup>95</sup> Mohawk Temporary Intermediate Points Renewal Proceeding, 32 C.A.B. 489 (1960).

<sup>96</sup> Bonanza Airlines, Inc., Temporary Points Case, 31 C.A.B. 285 (1960).

<sup>97</sup> Service To Hazelton, Pa., 24 C.A.B. 611 (1957).

enjoy profitable operations at points generating less than the required five passengers per day. Under these conditions, the CAB views the service as under unusual and compelling circumstances.<sup>98</sup> A local carrier would only wish to abandon such points if it felt its service was duplicated at another nearby station in its own system. Elimination of one of two nearby profitable stations can mean even greater profits to a local carrier.

e. *Failure to Develop Traffic Due to Service Deficiency*—While the emphasis of the use-it-or-lose-it policy may lie in community responsibility, the carrier must still meet certain service standards. Compliance may usually be achieved by providing at least two round-trips a day to a major traffic point. The CAB theory of adequate service centers around the concept of the businessman's needs.

Normally, local air traffic will not be fully developed unless the passenger has the means of beginning his journey in the morning, spending a substantial part of the business day at his destination, and returning in the afternoon or evening of the same day.<sup>99</sup>

Its ideal, then, is a commuter type service geared to the needs of the business community. But as previously noted, large portions of the business community generally need a far more flexible air system, and have usually provided such a system itself through private flying.

f. *Length of Time a Point Has Been Served and Its Progress in Developing Traffic*—This circumstance has been set forth in words, but its definition still remains undeveloped.<sup>100</sup> It seems to indicate some type of "grandfather" privilege which survives the need for service. Without an accurate definition, this "unusual and compelling circumstance" is a blatant emotional appeal.

g. *National Defense*—Local-service carriers often find themselves serving military installation areas and areas containing defense plants. Since any losses incurred in serving military establishments are paid for by the Government, and since the Government benefits by such service, the accounts seem to wash out.<sup>101</sup> As previously mentioned, however, often the service could be provided at less expense by a third level carrier than by a local. If the Government acts like a private corporation, as it often does, it could find a far more efficient way to handle its internal transportation problem in these areas.

h. *Postal Requirements*—While this circumstance is often mentioned, it has never been of great weight in a use-it-or-lose-it proceeding.<sup>102</sup>

## 2. Overriding Considerations

Cities which manage to meet the bare minimum standards of the use-it-or-lose-it requirement cannot assume that their service is guaranteed.<sup>103</sup>

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<sup>98</sup> Bonanza Airlines, Inc., Temporary Points Case, 31 C.A.B. 285 (1960).

<sup>99</sup> Mohawk Temporary Intermediate Points Renewal Proceeding, 32 C.A.B. 489, 493 (1960).

<sup>100</sup> Renewal of Trans-Texas Airways' Temporary Intermediate Points, 30 C.A.B. 484 (1960).

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Seven States Area Investigation, 28 C.A.B. 680, 756 (1958).

On the contrary, three considerations may often override compliance with service standards.

a. *Coterminous Service of Another Local Airline*—If another local airline is present on a route, and both lines are operating under subsidy, the CAB believes that total subsidy outlay will be reduced by allowing only one local carrier to continue on the route despite compliance with usage standards by both carriers.<sup>104</sup>

b. *Proximity of Other Airports*—When equally as good, if not better, service is available at a large metropolitan airport near the point of present local service, the Board's desire to reduce subsidy will override passenger enplanement standards. This consideration is similar to the airport consolidation program to be discussed later.

c. *General Subsidy Reduction*—While the CAB realizes that "five daily passengers . . . does not begin to pay the cost of the service being provided,"<sup>105</sup> it is willing to absorb the expense in favor of developing future traffic. Such experimentation, however, is subject to the general provisions and long-range objectives of the Federal Aviation Act. One such objective is progress towards self-sufficiency. In the interest of that objective, the CAB will often bow to any means of reducing subsidy available.<sup>106</sup> Such general considerations may appear during any use-it-or-lose-it investigation.

While the use-it-or-lose-it standard seemed like simplicity itself at the time of its inception, the CAB has treated it in a highly flexible manner. Undoubtedly, it lays down a more concrete value system than "the public interest;" how much more concrete is hard to say.<sup>107</sup>

## VI. AIRPORT CONSOLIDATION

Another aspect of the airline route abandonment problem may be found in airport consolidation proceedings which have centered around the availability of air service in proximate metropolitan areas.<sup>108</sup> The CAB makes a fine distinction between the elimination of an airline stop through consolidation into "regional airports" and the usual route abandonment approach. This distinction has occasioned the growth of a separate body of law and practice.

### A. CAB Policy

The key pronouncement in this field came in the form of a joint CAB and FAA press release made on 2 May 1961.<sup>109</sup> While only a press release, the policy announced therein has been held to be a legitimate policy

<sup>104</sup> Ozark Air Lines, Inc., Suspension of Serv. at St. Joseph, Mo., 31 C.A.B. 974, 975 (1960).

<sup>105</sup> Renewal of Trans-Texas Airways' Temporary Intermediate Points, 30 C.A.B. 484, 488 (1960).

<sup>106</sup> Ozark Air Lines, Inc., Suspension of Serv. at St. Joseph, Mo., 31 C.A.B. 974 (1960).

<sup>107</sup> While congressional interference isn't articulated as a specific standard, one author has assumed that it is of great weight. CAVES, *op. cit. supra* note 43, at 288.

<sup>108</sup> Service To Glens Falls, N.Y., CAB Docket No. 15432, CAB Order No. E-22419 (8 July 1965).

<sup>109</sup> Joint Press Release: CAB Press Release No. 61-17, FAA Press Release No. 52, 2 May 1961.

statement which may be employed in adjudication of consolidation cases.<sup>110</sup> The press release disclosed that where cities were sufficiently close to be served through one airport, and where the use of two airports in one area would tend to diminish the service to each airport, as well as raise the cost of air travel, a concentration of services would tend to improve service and reduce both subsidy and airport development costs for the CAB and the FAA.<sup>111</sup>

### B. Trunkline Consolidation Standards

Shortly after the press release, the Board decided the *Greensboro/High Point/Winston-Salem Serv. Through A Single Airport Case*<sup>112</sup> which spelled out the approach to be used in a trunk consolidation case. The CAB announced that it would weigh the interests of the carriers against the interest of the communities involved, in the light of the national interest. Faced with the problem of applying such a complex system of values, and of still reaching a rational result, the Board attempted to articulate what factors should be considered in weighing each interest. The trunk's interest would center around its decrease in operating expense, as well as its ability to introduce long-range jets into a practical operation. The community interest would focus on possible increased ground travel, as well as loss of investment in existing terminal facilities at the abandoned airport. The national interest would center about the improvement of a pattern of connecting services through one airport, a reduction of elapsed travel time for through passengers who would have to endure one less stop, and a general improvement in overall airline profits which would be passed on to the public through regulated "fair return" fare pricing.<sup>113</sup> In deciding what weight was to be attached to each interest the Board said:

Carrier self-interest and the desires of particular communities are, of course, relevant to a resolution of such questions, but neither factor is alone determinative. Whatever the context in which the question arises, the ultimate criterion for decision is the predominant national interest in the development of a sound air transportation system, which involves a weighing of all the pertinent considerations involved.<sup>114</sup>

Applying the above mental gymnastics to the facts in *Greensboro*, the Board selected the Friendship Airport which lies within a triangle outlined by the three cities—ten miles from Greensboro, nineteen from Winston-Salem, and thirteen from High Point.<sup>115</sup> The losing community appealed on the basis of a failure to properly evaluate the interests involved. Realizing that the CAB lacked a guide for deciding which of two nearly equally qualified cities should provide the facility, the appellate court refused to engage in a detailed analysis of the voluminous record. Instead, the court

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<sup>110</sup> *Airport Comm'n v. CAB*, 300 F.2d 185, 187, 188 (4th Cir. 1962).

<sup>111</sup> Joint Press Release, *supra* note 109.

<sup>112</sup> *Greensboro/High Point/Winston-Salem Serv. Through A Single Airport*, 34 C.A.B. 227 (1961).

<sup>113</sup> *Ibid.*

<sup>114</sup> *Id.* at 228.

<sup>115</sup> *Airport Comm'n v. CAB*, 300 F.2d 185, 186 (4th Cir. 1962).

satisfied itself that, "there is substantial evidence from which the Board was justified"<sup>116</sup> in making its decision.

While it would seem that the Board's logic in *Greensboro* would carry over into the area of satellite cities, the proximity of the Philadelphia airport to the lesser city of Wilmington was found to be "in itself . . . not a sound basis for granting Eastern relief from its certificate obligations at Wilmington. . . ."<sup>117</sup> The regional airport criteria, like all other CAB criteria, are subject to *ad hoc* readjustment of their respective weights.

### C. Local Carrier Consolidation Standards

The CAB airport consolidation drive, coupled with efforts to reduce subsidy, has brought about a flurry of local carrier station consolidation requests. These requests have fallen into two distinct categories. On one hand the trunk carriers have attempted to thrust consolidation upon the locals, and on the other hand the locals themselves have sought consolidation. The treatment of these respective categories usually depends on the identity of the complainant.

#### 1. Trunk Attempts to Force Consolidation upon the Locals

Whenever a trunk carrier seeking consolidation of its own operation also attempts to force consolidation of a local at the same points, the CAB has usually refused to grant the trunkline's requested consolidation of the local.<sup>118</sup> Both the local carrier and the Board greet trunkline consolidation as another chance to increase local carrier revenues. If the CAB forced a local carrier to compete with trunks at a central point, the Board could reasonably expect a near fatal diversion of revenues to occur.<sup>119</sup> But if a trunk alone withdraws from a stop in order to serve a more central regional airport, the local will have a monopoly on local to medium haul traffic emanating from that stop which is unwilling to travel by means other than air to the regional airport. By offering more convenient service than the trunk carriers, the local will theoretically enjoy traffic which might not have flown at all had the traffic been confronted with the sole alternative of surface travel to a regional airport.<sup>120</sup> In this way, the locals acquire sufficient revenue to reduce subsidies, while the trunk carriers in theory suffer only a minimum of diversion. The arguments in these cases often indicate a mutual mistrust between local and trunk statisticians whose diversion figures differ greatly.<sup>121</sup>

#### 2. Local Carrier Attempts to Introduce Consolidations

Whenever local carriers are the complaining parties, the shadow of

<sup>116</sup> *Id.* at 187.

<sup>117</sup> Service To Fayetteville, Ark., 19 C.A.B. 25 (1954).

<sup>118</sup> Greensboro/High Point/Winston-Salem Serv. Through A Single Airport, 34 C.A.B. 227, 231 (1961).

<sup>119</sup> Lower Rio Grande Valley Area Airport Investigation, CAB Docket No. 14303, CAB Order No. E-22732 (5 Oct. 1965).

<sup>120</sup> Greensboro/High Point/Winston-Salem Serv. Through A Single Airport, 34 C.A.B. 227 (1961).

<sup>121</sup> *Ibid.*

the competing trunk carrier seems to be absent. Instead, the cases usually involve more sparsely settled areas where some of the stops in question have already become marginal.<sup>122</sup> The focal point remains subsidy reduction, but the chosen means become consolidation programs, not continued fragmentation of station areas. The resistance forces are no longer the locals themselves, but rather a plethora of civic groups. The usual fears of "second class air service" are voiced,<sup>123</sup> and cries of discrimination arise from the losing parties.<sup>124</sup> In some instances the CAB has treated the choice of an airport to serve an entire area as a purely managerial decision, and left the decision up to the carrier involved.<sup>125</sup> This approach can be supported by the fact that none of the towns involved are actually losing their air service, and only questions of civic pride stand in the way of an orderly proceeding. Since questions of civic pride are almost impossible to resolve, a managerial decision based on management's own economic judgment could easily relieve the CAB from a purely political headache. Unfortunately, where larger cities are involved and political pressure is greater, the headache continues.

#### *D. Evaluation Of Consolidation Programs*

Some industry journalists have criticized regional airports as the result of a decision made by "armchair planners" who think that, "it would be no hardship for folks to drive 50 or 75 miles to a regional airport to take flights."<sup>126</sup> Such criticism seems hardly merited when the nature of air transportation is examined. An airplane's tremendous speed is fully utilized only when that plane is in flight. Excessive intermediate stops which involve time losses in landing, loading, and takeoff reduce the time advantage of the airplane. The time saved by having an airplane stop in a small town, instead of driving to a regional airport, may well be lost in the time necessary for the stop in the next town. The passenger boarding in the first of two local towns will enjoy little or no additional time savings, and the through passenger will have been doubly inconvenienced.<sup>127</sup> The airplane is not the solution to the urban transit problem, and should not be treated as such. The regional airport program should result in subsidy reductions, with little or no true actual time inconvenience to passengers. Seen in that light, it is highly commendable.

### VII. NEW HAVEN, CONNECTICUT AIR SERVICE—A STUDY IN ADMINISTRATIVE FRUSTRATION

The New Haven Airport Case, which involves both a trunkline deletion as well as an airport consolidation, demonstrates that the Board's good intentions can be frustrated by community pride and judicial inter-

<sup>122</sup> North Cent. Area Airline Serv. Airport Investigation, CAB Docket No. 13743, CAB Order No. E-21534 (24 Nov. 1964).

<sup>123</sup> Comment, 68 Yale L.J. 1199 (1959).

<sup>124</sup> *Id.* at 1233.

<sup>125</sup> Pacific-Southwest Local Serv. Case, 35 C.A.B. 50 (1962).

<sup>126</sup> Parris, *Personal View*, American Aviation, Oct., 1964, p. 39.

<sup>127</sup> LOCKLIN 773.



meddling. A detailed examination of the recent and continuing bout between New Haven and the CAB presents a classic example of an aggravated administrative proceeding. This case demonstrates that such aggravation is a direct result of an attempt to substitute emotionally-charged political and social values into a purely economic decision. The machinations which surround this proceeding could well have been avoided, or at least alleviated, by allowing a further play of economic standards.

The CAB established the current airline pattern at Tweed-New Haven Airport by the *Northeastern States Area Investigation* in December, 1959.<sup>128</sup> The present service consists of two flights daily on Eastern and four flights on Allegheny. Eastern's flights consist of one round trip from Kennedy International Airport to Providence, Rhode Island, by way of New Haven. The Allegheny flights consist of two round trips daily between Washington, D.C., and Boston, Massachusetts, by way of Islip, Long Island; Bridgeport, Connecticut; and New Haven, Connecticut.

On 23 March 1962 the CAB launched the *New England Regional Airport Investigation*.<sup>129</sup> The Board sought evidence on the questions of (1) abandoning Eastern's service at New Haven, and (2) consolidating Allegheny Airlines' Southern Connecticut operation at the Bridgeport Municipal Airport. Eastern introduced evidence that it was enplaning only 2.5 passengers per flight on an average of 1.5 flights per day,<sup>130</sup> and established that continued service into New Haven would result in a loss of \$127,541 per year.<sup>131</sup> The investigation also established that a sizeable preference existed amongst New Haven travelers for the service of the three New York airports. A survey of four travel agencies in New Haven revealed that 87.6 percent of New Haven air travelers board their flights in New York City, while only 3.8 percent board their flights in New Haven, and 1.5 percent in Bridgeport.<sup>132</sup> The preference for New York is pointed up by the fact that a limousine service carried approximately 12,000 passengers from New Haven to various New York airports in 1961.<sup>133</sup> This number is more than twice the number of passengers which used New Haven air service in 1961.<sup>134</sup>

On the question of airport consolidation, the investigation revealed that New Haven was boarding an average of 4.1 passengers per flight on an average of 4.7 flights per day, and that Bridgeport was boarding 6.7 passengers per flight on an average of 5.1 flights per day, both well beyond the minimal use-it-or-lose-it test.<sup>135</sup> While New Haven was operating with an older and smaller terminal facility, Bridgeport had constructed a new terminal complex. This newer facility had an FAA control tower,

<sup>128</sup> *Northeastern States Area Investigation*, 30 C.A.B. 606 (1959).

<sup>129</sup> *New England Regional Airport Investigation*, CAB Docket No. 13494, CAB Order No. E-20901 (5 June 1964).

<sup>130</sup> Joint Appendix In The United States Court Of Appeals For The First Circuit 912 (hereinafter *First Circuit Appendix*), *City of Lawrence v. CAB*, 343 F.2d 583 (1st Cir. 1965).

<sup>131</sup> *First Circuit Appendix* 721.

<sup>132</sup> *Id.* at 335.

<sup>133</sup> *Id.* at 748 (figures derived from).

<sup>134</sup> *Id.* at 454.

<sup>135</sup> *Id.* at 328.

while New Haven did not. In addition, New Haven was not capable of night operations, while Bridgeport was.<sup>136</sup> Neither airport has an instrument landing system (ILS). As far as increased driving time for New Haven passengers who would have to use the Bridgeport airport, they would be required to drive an additional fifteen minutes.<sup>137</sup>

Since the FAA joined in the original regional airport movement in order to better allocate its funds, questions of cost necessary for bringing the current facilities up to trunkline standards were introduced. The investigation established that an additional \$1,875,000 would be needed for New Haven over and above what would have to be spent on Bridgeport to establish a similar facility.<sup>138</sup>

At the end of the investigation the Examiner approved deletion of Eastern's service and consolidation of Allegheny's service at Bridgeport. The examiner placed particular emphasis on the traffic drain of New York City, which handled most New Haven passengers, as establishing that the large revenues saved by his decision would outweigh the very little actual inconvenience to the few New Haven passengers who were affected.<sup>139</sup>

The Board adopted the Examiner's findings and conclusions. It agreed that, "the services in question involve a relatively small proportion of the total air traffic generated by the area. . . ."<sup>140</sup> While they could appreciate the City of New Haven's strong opposition, and realized that no immediate improvement would arise, the Board stated:

But we are convinced that the only real hope for improved local air service in the long run lies in consolidation, and that the present situation whereby Allegheny must split service at two neighboring airports only 15 miles apart is an anachronism which offers no future prospect of improved air service to the communities, but inhibits development of the area's potential for air service.<sup>141</sup>

One complicating factor in the case was the fact that Stratford, Connecticut, wherein lies the Bridgeport Municipal Airport, was then in the process of bringing court action under its zoning power<sup>142</sup> to prevent the expansion of Bridgeport's runways to ILS proportions. The Board dismissed this problem on the grounds that an ILS system was not vital to a regional airport.<sup>143</sup>

While the Board was unanimous on the question of Eastern's abandonment, Vice-Chairman Murphy and Member Minetti voiced a strong dissent on the regional airport issue. They based their dissent on the evidence introduced which showed that with Eastern out of New Haven, the Allegheny operation there might well turn a profit. They felt that until

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<sup>136</sup> *City of Lawrence v. CAB*, 343 F.2d 583, 587 (1st Cir. 1965). (Airport condition comments based on personal tour of both New Haven and Bridgeport facilities by the author on 20 Feb. 1966).

<sup>137</sup> First Circuit Appendix 606.

<sup>138</sup> *Id.* at 407.

<sup>139</sup> *Id.* at 792-93.

<sup>140</sup> New Haven Regional Airport Investigation, CAB Docket No. 13494, CAB Order No. E-20901 (5 June 1964).

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> *City of Lawrence v. CAB*, 343 F.2d 583, 587 (1st Cir. 1965).

the Stratford opposition to Bridgeport's development of an ILS system was removed, the regional airport possibilities were stifled. Since Bridgeport, in their estimation, would not be a true regional airport, the case had actually become just another use-it-or-lose-it proceeding, and there was no reason for New Haven to lose-it.<sup>144</sup>

In reviewing the decision, the First Circuit not only adopted the CAB dissent, but also reinstated Eastern's service to New Haven.<sup>145</sup> The First Circuit pinned its decision on a failure of the Board to develop standards for deciding such cases and on the confusion created by its failure to properly articulate the reasons employed in its decision. The court also denounced the CAB's inconsistency with some of its prior decisions.<sup>146</sup> The court summed up its position thusly:

We do not, by our action, intend any criticism of the policy upon which the Board's decision is based, only its application, without elaboration, in a different factual context from the ones in which it was formulated.<sup>147</sup>

The dissent pointed out the folly of the court's pursuit. He emphasized that the CAB is attempting to answer economic questions which are difficult enough to decide by an educated guess, without the criticism of an equally educated guesser.

The complexities, the interrelationships, and the very number of factors not only engender differences of opinion, but lead readily to the conclusion that the agency's omission, or de-emphasis, that it has not adequately considered the case, or explained its position.<sup>148</sup>

Instead of seeking further review of the case, the CAB decided to reopen the proceedings and hold further hearings. The Board is inviting not only evidence on "matters which were of concern to the court,"<sup>149</sup> but also is permitting the parties to "submit additional evidence including more current data, which they deem necessary to support their respective positions."<sup>150</sup> In short, the Board is starting from scratch.

One interesting result arose from this case. Perhaps due to the frustrations involved, Eastern Airlines, New Haven, and its Chamber of Commerce proposed a solution. They agreed to investigate on their own a signed agreement whereby Eastern would increase its current service with accompanying fanfare for a test period of one year. If that service proved unsuccessful according to standards posed by the parties themselves, then Eastern would apply for deletion of its New Haven service, and the city would not oppose it. Without such opposition, deletion is probable. In the words of Mayor Richard C. Lee of New Haven:

I am confident that New Haven can generate significant volumes of traffic

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<sup>144</sup> First Circuit Appendix 944-48.

<sup>145</sup> *City of Lawrence v. CAB*, 343 F.2d 583 (1st Cir. 1965).

<sup>146</sup> *Id.* at 588.

<sup>147</sup> *Id.* at 589.

<sup>148</sup> *Ibid.*

<sup>149</sup> New England Regional Airport Investigation, CAB Docket No. 13494, CAB Order No. E-22339 (22 June 1965).

<sup>150</sup> *Ibid.*

if given proper schedules. We have agreed, therefore, to take a calculated "management risk"—to borrow a phrase from the air transportation industry—"use-it-or-lose-it."<sup>151</sup>

Subsequent to the Eastern-New Haven agreement, the two parties petitioned for a complete dismissal of the investigation, and such dismissal was granted.<sup>152</sup> In granting the dismissal of the investigation in its entirety, the CAB heartily approved the individual parties' action:

We would be hesitant under these circumstances to take any action which might hinder the parties in their efforts to resolve their service problems in such manner without engaging in expensive and protracted litigation or to require them to conduct their tests of New Haven's traffic generating ability under the inhibiting influence of the instant investigation.<sup>153</sup>

If there is one element of the New Haven case which the public may depend upon, however, it is the fact that it is never ending. On 15 August 1966 the City of Bridgeport petitioned for a reconsideration of the dismissal, and on 7 September 1966 both Eastern and New Haven submitted answers.<sup>154</sup> The CAB has subsequently denied the petition for a reconsideration and thus ended this phase of the case.<sup>155</sup>

The parties' private agreement is an indictment of the breakdown of the administrative process in this case. Eastern may have turned to a private ordering to avoid the forced service result it suffered in the *Wilmington* case. While such increased service may entail a great expense for Eastern, and while the results may be disappointing, the saving in legal fees alone may pay for the experiment.

The CAB once stated that if they confined themselves to "the role of an umpire between two cities . . . [it] would reflect a narrow and incorrect view of [their] statutory function, disregarding that part of the national public interest which these rival parties may not represent."<sup>156</sup> To play the role of an umpire between two cities is to enter the political arena where non-economic questions may best be answered. The fact that the CAB had its hands burned in the New Haven case will only further increase its wariness of the umpire role. The court in *City of Lawrence* failed to realize that the economic decision was the original consolidation decision, and that the political decision was determining which of two nearly equally qualified airports would enjoy the role of regional airport. This failure has tied the hands of the CAB in the present case. Further wasteful hearings will only create a cost burden to the parties, and fear of a judicial reprisal may well lead to an economically wasteful decision. The

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<sup>151</sup> Statement of Mayor (of New Haven) Richard C. Lee, 27 Feb. 1966, p. 2; Statement of Dwight D. Taylor (Vice President of Public Affairs, Eastern Airlines), 27 Feb. 1966, p. 1 (press releases).

<sup>152</sup> Reopened New England Regional Airport Investigation (New Haven-Bridgeport Phase), CAB Docket No. 13494 *et al.*, CAB Order No. E-24009 (25 July 1966).

<sup>153</sup> *Id.* at 4.

<sup>154</sup> Letter from Warren L. Sharfman, Associate General Counsel, Litigation and Legislation, CAB, to Leading Articles Editor, *Journal of Air Law and Commerce*, 3 Oct. 1966.

<sup>155</sup> Reopened New England Regional Airport Investigation (New Haven-Bridgeport Phase), CAB Docket No. 13494 *et al.*, CAB Order No. E-24291 (14 Oct. 1966).

<sup>156</sup> Reopened Charleston-Columbus Case, 26 C.A.B. 300, 312 (1958).

private agreement between Eastern and New Haven may well settle their differences, but the Allegheny question is still in the hands of the Board at this date. If the CAB decision at the conclusion of the reopened investigation abandons the regional airport approach, it would only reflect fear of the courts, not economic wisdom.

The facts of the Bridgeport/New Haven case indicate that the area was ripe for a consolidation of Allegheny's operations. Allegheny has been offering the New Haven traveler little more than an air taxi service on a large aircraft at no extra charge. Center to airport driving time to Bridgeport is only fifteen minutes more than to the New Haven airport. Yet all flights serving New Haven also serve Bridgeport, and on a Southern flight the Bridgeport to New Haven leg of the flight takes twelve minutes, and another six minutes or more is spent on the ground before continuing on, for a total of eighteen minutes.<sup>157</sup> In terms of actual time saving, the New Haven traveler has nothing to gain. The New Haven traveler would only suffer a fifteen minute backhaul on a Northern flight. If the regional airport were placed in New Haven, the situation would be reversed and the air taxi principle would apply to the Bridgeport traveler. The traffic levels in both cities were well above use-it-or-lose-it levels, but were only producing marginal profits under current fare structures. Consolidation would result in operational savings for the air carrier which could be passed on to the public in the form of lower fares or improved service. The inconvenience to travelers from the town losing air service would be minimal. The decision to consolidate, then, was a wise one for the CAB to make.

As for the question of which city to choose, in the long run either choice would have been adequate. The CAB had to determine which was the better of two near equals, and such a choice is manifestly impossible of being decided on a reasonable basis. No amount of data could settle such a question. In short, this is a political, not an economic or even "managerial" question. The CAB could only look to the short run—where Bridgeport had the far superior facility, and tended to generate more traffic than New Haven. If the CAB wanted to stick to their economic decision to consolidate, they had to hang their political decision on short run standards. Since those standards were the only ones available for determining the question, the court's refusal to accept the Board's reasoning can only prolong the implementation of the Board's carefully considered consolidation program.

Such prolonging prevents the reaping of the fruits of consolidation. Not only would Allegheny experience cost savings, which could ultimately benefit the public, but the regional airport program proposed for the area has already borne further fruit. Mohawk Airlines has applied to serve the new regional airport on a route to upstate New York.<sup>158</sup> The proposed service would round out the local-service pattern for the Southern Con-

<sup>157</sup> Official Airline Guide, March, 1966, p. 30.

<sup>158</sup> Reopened New England Regional Airport Investigation (New Haven-Bridgeport Phase), CAB Docket No. 13494, CAB Order No. E-23015 (20 Dec. 1965), at pp. 1-2.

necticut area. The CAB, however, has deferred the question of new service until final settlement of the regional airport issue, and has refused to make the application for such service part of the present proceeding.<sup>159</sup> They are apparently unwilling to force Mohawk to serve both New Haven and Bridgeport at a loss under the airport system's existing uneconomic structure. Failure to fulfill consolidation expectations in the area could definitely result in a denial of a vital new service.

### VIII. CONCLUSION

Route abandonment and airport consolidation have been the key factors in the CAB's retreat from subsidization. The Board's program of trunk abandonment of losing stops has brought an end to flagrant internal subsidization. The use-it-or-lose-it program for the locals is the first step in eliminating wasteful local-service operations. Finally, the regional airport program promises to favorably affect carrier economies with a minimum of inconvenience to passengers who take advantage of our vastly improved highway system.

Use-it-or-lose-it and regional airports are the first steps toward a more reasonable allocation of resources. As long as the CAB persists in these programs, the public will gradually begin to politically accept them. But by themselves, these programs still leave a large misallocation of public funds currently paid out in subsidies to marginal areas. Such areas meet the use-it-or-lose-it standards, yet still result in carrier losses which must be reimbursed from the public treasury. In view of the air service to marginal areas now provided by private and corporate flying, the benefit to the public and to particular communities due to the retention of these subsidy programs is doubtful. Wherever air travel to a community holds promise of large economic return to a business traveler, costly private flying has not proven to be a barrier. Only when the promise of return is smaller must the government "sweeten" the bargain by subsidizing the traveler. Without such "sweetening," businessmen would seek out only the larger returns, and a better allocation of resources would result.

Evidence of a further misallocation may be found in the fact that where local carrier service is not available, third level carriers with lower operational costs have filled the breach. While their fares may be higher than normal fares, a normal fare plus the subsidy attached to that fare may well exceed the third level carrier's fare. Since the third level fare is based on actual costs, society has paid only for the true value of the service received. A subsidized local carrier may well be socially wasteful, whereas a third level carrier is not.

Once the public has accepted the present use-it-or-lose-it and regional airport policies, the CAB should not be content to stop at that point in view of the misallocation that still exists. Rather, use-it-or-lose-it levels should be raised. Furthermore, administration of such standards should

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<sup>159</sup> *Ibid.*

become less subject to "unusual and compelling circumstances" which may only be concealing congressional influence. Recognition of the willingness of third level carriers to fill the breach left by deleted local service should enter into the decisions. The public as a whole will benefit from an opportunity to make better use of its funds. The traveling public will probably suffer very little inconvenience in the face of new carriers who will utilize equipment tailored to the particular needs of each community. Questions of civic pride will continue to hamper such progress as long as it continues to occupy its current role. The New Haven case is an excellent example of the wanton destruction of economic standards in the face of political pressure. The Board strives for an articulate economic policy, but political factors prevent them from employing it.

Civic pride may be a useful force in some spheres, but if the CAB forced communities to back up their pride with dollars, the communities' estimate of the value of their local air service might be surprisingly low. Such a program would achieve a more rational economic allocation of social resources, and for that reason, might well be a self-executing solution to the entire abandonment problem. In the absence of such a program the CAB will need courage to continue its difficult and, as in the New Haven case, often futile assignment.