

1939

## Federal Regulation

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# FEDERAL

Department Editors ..... {STUART G. TIPTON  
FRED M. GLASS

THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held in Washington, D. C., on the 14th  
day of April, 1939

In the Matter of the Petition of

MID-CONTINENT AIRLINES, INC.,

For an order fixing and determining the fair and  
reasonable rates of compensation for the trans-  
portation of mail by aircraft, the facilities used  
and useful therefor, and the services connected  
therewith, over route No. 26, pursuant to section  
406 of the Civil Aeronautics Act of 1938.

Docket No. 3-406-(A)-1

## Order Fixing and Determining Fair and Reasonable Rates of Compensation for the Transportation of Mail by Aircraft Over Route No. 26

Mid-Continent Airlines, Inc., having filed petition for an order fixing and determining the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over route No. 26, pursuant to section 406 of the Civil Aeronautics Act of 1938, and a full hearing thereon having been held before the Authority, and the Authority, upon consideration of the record of such proceedings, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

It Is ORDERED that the fair and reasonable rate of compensation to be paid to the petitioner for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the points between which petitioner is authorized in the certificate of public convenience and necessity which it holds for route No. 26 to transport mail, shall be a base rate of 38 cents per airplane mile for the first 300 pounds of mail, or fraction thereof, plus 2.5 per cent of such rate per airplane mile for each additional 25 pounds of mail, or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried per mile over the route during such month, such rate to be applied to the direct airport-to-airport mileage between points served on each trip flown, and to be applied without reference to any base mileage for the route.

IT IS FURTHER ORDERED that such rate shall take effect on and after October 22, 1938, the date of the filing of the petition herein, and shall remain in effect until further order of the Authority.

By the Authority.

(SEAL)

PAUL J. FRIZZELL,  
Secretary.

**CIVIL AERONAUTICS AUTHORITY: DOCKET NO. 3-406-(A)-1**

**Mid-Continent Airlines, Inc.**

**Petition for Order Fixing and Determining Fair and Reasonable Rates of Compensation for the Transportation of Mail by Aircraft Over Route No. 26.**

*Decided April 14, 1939*

Fair and reasonable rates of compensation for the transportation of mail by aircraft fixed and determined.

*John S. Wynne*, for petitioner.

*L. W. Pogue* and *S. G. Tipton*, for Civil Aeronautics Authority.

**Opinion**

**BY THE AUTHORITY:**

This proceeding was instituted on petition filed October 22, 1938, by Mid-Continent Airlines, Inc., herein referred to as the petitioner, for an order fixing and determining the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over route No. 26. A hearing on said petition was held before the Authority on December 28, and December 29, 1938.

Section 406(a) of the Civil Aeronautics Act of 1938 empowers and directs the Authority, upon petition of an air carrier after notice and hearing, to fix and determine the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper. Under section 405(a) of the Act, until the Authority fixes rates under section 406, airmail compensation is to be paid either at the previously existing contract rates, or, where rates have been fixed by orders of the Interstate Commerce Commission, compensation is to be paid in accordance with such orders.

The petitioner is the holder of a certificate of public convenience and necessity issued by the Authority on March 7, 1939,<sup>1</sup> authorizing it to engage in the transportation of mail, persons, and property between the terminal points Minneapolis, Minn., Tulsa, Okla., and Bismarck-Mandan, N. D. (herein called Bismarck), via intermediate points. Its present base rate of compensation is 33⅓ cents per airplane mile for transporting a mail load not exceeding 300 pounds or any fraction thereof, plus one-tenth of such base rate for each additional 100 pounds of mail or fraction thereof, computed at the end of each calendar month on the basis of the average mail load

1. *Mid-Continent Airlines, Inc., Certificate of Public Convenience and Necessity*, Docket No. 3-401-E-1, decided March 7, 1939.

carried per mile over the route during such month, with a base mileage of 67,000, as fixed by the Interstate Commerce Commission in *Air Mail Rates for Route No. 26*, 229 I. C. C. 373. Petitioner seeks a rate of 40 cents with a base mileage of 67,000, such rate to be retroactive to the date of filing of the petition.

*Summary of Previous Air Mail Rate Proceedings Relative to Route No. 26*

Operation of route No. 26 was begun on July 2, 1934, by petitioner's predecessor, Hanford's Tri-State Airlines, Inc., under a temporary contract for the transportation of air mail, which contract was later extended and then indefinitely continued, until canceled pursuant to section 405(a) of the Act by the issuance of petitioner's certificate of public convenience and necessity. Effective July 1, 1936, the contract was transferred with the approval of the Postmaster General to petitioner under its then corporate name of Hanford Airlines, Inc. The change of name to Mid-Continent Airlines, Inc., was made on August 2, 1938.

The contract was the result of competitive bidding, petitioner's predecessor having been awarded the contract on a bid rate of 18.9 cents per airplane mile for a space unit of 15 cubic feet, the rate of pay being based on definite weight space per airplane mile, with each cubic foot computed as equivalent to 9 pounds of air mail. As a result of its initial investigation under section 6(a) of the Air Mail Act of 1934, the Interstate Commerce Commission fixed a rate of 32 cents with a base mileage of 50,000, subject to a certain increase or decrease in relation to decrease or increase in the monthly mileage flown. *Air Mail Compensation*, 206 I. C. C. 675. Under the Air Mail Act of 1934, as amended, this rate became effective as of March 1, 1935, and was made applicable to mail loads averaging 300 pounds or less, with certain increases for loads in excess of 300 pounds, as indicated above, without reference to the space unit provided by the contract.

In a subsequent proceeding before the Commission, petitioner sought and obtained an increase in its rate of compensation for the transportation of air mail to the basis of 33½ cents per airplane mile, the maximum permitted under the Air Mail Act of 1934, with a base mileage of 67,000 miles, such rate to be applied retroactively to the date of the filing of the petition, November 22, 1937. *Air Mail Rates for Route No. 26, supra*.

*Transportation of Mail Over Route No. 26, the Facilities Used and Useful Therefor, and the Services Connected Therewith*

Route No. 26 extends between Minneapolis, Minn., and Tulsa, Okla., via Watertown, Huron, and Sioux Falls, S. Dak.,<sup>2</sup> Sioux City, Iowa; Omaha, Neb.; and St. Joseph and Kansas City, Mo. A lateral line extends between Huron, S. Dak., and Bismarck, N. Dak., via Aberdeen, S. Dak., thus giving operations over the route a "Y"-shape with the northwest terminus at Bismarck, the northeast terminus at Minneapolis, the intersection at Huron, (or on certain schedules at Sioux City), and the southern terminus at Tulsa. Connection is made with Northwest Airlines, Inc., at Minneapolis and Bismarck; with Inland Airlines, Inc., at Huron; with United Air Lines Trans-

2. Due to the condition of airport, no stop has been made at Sioux Falls since January 1, 1937.

port Corporation at Omaha; with Transcontinental & Western Air, Inc., and Braniff Airways, Inc., at Kansas City; and with American Airlines, Inc., at Tulsa. Petitioner maintains mail-passenger-express schedules, with no exclusive passenger service, equivalent to one round-trip daily over the entire route, except that there is no Sunday service between Sioux City and Huron and that there is an additional round-trip between Kansas City and Sioux City which operates daily between Kansas City and Omaha and daily except Sunday between Omaha and Sioux City. The schedules are so arranged that two round-trips daily originate from Minneapolis, one flying to Kansas City via Sioux City and one to Bismarck via Huron. The total scheduled mileage per month based on the airport-to-airport distance is 95,297 miles. The variance between the direct, or airport-to-airport, mileage, and the mileage for the entire length of the route over the airways authorized to be flown and heretofore used for computing air mail compensation payable, is 9 miles.<sup>3</sup> This variance has been taken into consideration in fixing the rate of air mail compensation to be paid to the petitioner.

The terrain over which petitioner operates is generally favorable, but severe weather on the extreme northern end of the route hampers operations during the winter months of the year. Petitioner's operations also suffer from the fact that airport conditions at certain periods of the year are such that some airports are not usable. Airport improvements are being made at Huron and St. Joseph and are also needed at Aberdeen and Bismarck. Municipal airports are now under construction at Sioux City and at Sioux Falls.

Petitioner maintains a two-way communication system at all the cities on its route, but, except between Kansas City and Omaha, the route is not at present fully equipped with standard airway aids. However, under proposed governmental expenditures for the 1940 fiscal year, many improvements will be effected, so that it is expected by December 31, 1939, the route will be fully lighted and equipped with radio-range service, emergency landing fields, and teletype weather-reporting stations.

The petitioner's equipment consists of four Lockheed Electras, with a capacity of ten passengers each, two Lockheed Vegas with a capacity of four passengers each, and a Waco which is used only in pilot testing and training. The Vegas are operated on the Huron-Bismarck section of the route, and the Lockheed Electras over the remainder of the route. It appears that, on the basis of the service life assigned by petitioner, the Electras were or will be fully depreciated on the following dates: July, 1938; November, 1939; July, 1940; April, 1941; and that the two Vegas were fully depreciated in July, 1938, and the Waco in August, 1938.

#### *Need of the Carrier*

The evidence indicates that the carrier has continuously operated at such annual deficits as to hamper its operations and the maintenance and development of its service. For the first year of its operations from July 1, 1936,

3. The airport-to-airport mileages are as follows: Tulsa and Kansas City, 214; Kansas City and St. Joseph, 48; St. Joseph and Omaha, 118; Omaha and Sioux City, 93; Sioux City and Sioux Falls, 73; Sioux Falls and Huron, 91; Huron and Aberdeen, 75; Aberdeen and Bismarck, 145; Huron and Watertown, 64; Watertown and Minneapolis, 193; and Sioux City and Minneapolis, 230. The airway mileages are the same as the airport-to-airport mileages, except that between Tulsa and Kansas City the airway mileage is 220 instead of an airport-to-airport mileage of 214, and between Sioux City and Minneapolis the airway mileage is 233 instead of an airport-to-airport mileage of 230.

to June 30, 1937, petitioner suffered an operating loss of \$107,020.24, although such loss would have been reduced to \$57,020.24 if the cost of \$50,000 of pioneering the Tulsa extension were regarded as being in the nature of capital expenditures rather than operating expense as claimed by the petitioner. For the year ending June 30, 1938, an operating loss of \$93,163.90 was incurred, and for the six months ending December 31, 1938, there was an operating loss of \$16,783.15.

As of December 31, 1938, a total of \$503,136.45 in cash and tangible assets had been invested in the stock of petitioner since its incorporation on May 6, 1936. On December 31, 1938, the total operating loss shown by the petitioner to have been accumulated amounted to \$216,967.29, or 43.1 per cent of the cash and tangible assets invested in the petitioner since its incorporation. It is clear that the existence of petitioner has depended upon frequent additional contributions of capital.

The need of the petitioner for greater revenues is apparent; but in fixing the rate of air mail compensation, in the light of the carrier's "need" as defined in the statute, certain general factors must also be considered. The air mail rate in each case is to be gauged in terms of compensation which will be "sufficient to insure the performance" of the mail service "and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense." It is thus in the light of honest, economical and efficient management, broad public interest in the security and commercial welfare of the nation, and the requirements of the Postal Service that the development of air transportation is to be fostered through the medium of air mail rates which take into consideration the "need" of the carrier.

#### *Honest, Economical and Efficient Management*

Although the provisions of section 406(b) quoted above, as well as other provisions of the Act, especially those of Title IV, "Air Carrier Economic Regulation," and section 2, "Declaration of Policy," leave no doubt of the intent of Congress to recognize a public interest in air transportation beyond that reflected in the Postal Service, and to provide compensation therefor to the air carriers performing the service, there also is no doubt that Congress intended that such compensation should not cover costs resulting from mismanagement. Not only does the Act contain the more or less standardized provisions for the regulation of transportation; it contains numerous provisions clearly evidencing the intent of Congress that the management of the air carriers should be subjected to thorough scrutiny by the Authority. Thus, in addition to the provisions of section 406(b) previously quoted, the rule of rate-making contained in section 1002(e) specified that honesty, economy, and efficiency of management are factors which the Authority must take into consideration in the determination of lawful rates for the carriage of persons or property. Section 415 empowers the Authority to inquire into the management of the business of air carriers in exercising and performing its powers and duties under the Act. Section 411 empowers the Authority also to inquire into unfair or deceptive practices or unfair methods of competition in air transportation, and section 412 requires the Authority to approve or

disapprove, under prescribed standards, any contract or agreement relating to certain practices of the air carriers. There is no intent expressed in the Act, or desire upon the part of the Authority in the administration of the Act, to superimpose governmental management upon the management of the air carriers. There is, however, a clear intent that managerial policies be so guided, either by the air carriers themselves or through such reasonable control as the Authority may lawfully undertake, that the public expenditures in respect of air transportation may yield the greatest possible results for the public interest as declared in the Act.

Inquiry into the nature of the petitioner's management necessarily involves consideration of its capital structure, its methods of financing, the results of its operations, its particular operating problems, and the efforts of the management toward their solution.

Stock was issued at the following times for the following consideration:

#### *Common Stock*

##### *July 1, 1936 (original stock issue)*

For tangible assets, 68,137 shares at \$1 per share.....	\$ 68,137.00
For going concern value, including the mail contract on route No. 26, 100,000 shares at \$1 per share.....	100,000.00
For cash, 175,000 shares at \$1 per share.....	175,000.00
	<hr/>

##### *February, 1937*

For cash, 50,000 shares at \$1 per share.....	50,000.00
	<hr/>
	393,137.00

##### *November, 1937 (after reduction of par value of stock to 35 cents per share)*

For cash, 375,427 shares at 35 cents per share.....	129,999.45
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	\$523,136.45

#### *Preferred Stock*

##### *August, 1938, and subsequently*

For cash, 40,000 shares at \$2.50 per share, of which \$2 was net to the company, <sup>4</sup> and <sup>5</sup> .....	80,000.00
	<hr/>
	\$603,136.45

The primary cause of the large operating losses which the petitioner has sustained in the past, and the main problem with which its management is still faced, is the deficiency of revenue.

4. The preferred stock is callable at \$2.75 per share and convertible into common stock on a share-for-share basis. It is entitled to dividends of 25 cents per share per annum, cumulative to the extent that such dividends are earned.

5. The underwriters' commission for agreeing to use their best efforts to find purchasers for 40,000 shares of the preferred stock, but without firm commitment for the purchase of any shares, was 50 cents per share.

The relation of mail to non-mail revenue appears from the following tabulation:

	12 Months Ended		Six Months Ended
	June 30, 1937	June 30, 1938	Dec. 31, 1938
Total Revenue .....	\$308,310.68	\$423,865.52	\$260,705.26
Total Rev., per Rev. Mile.....	cts. 35.30	cts. 42.94	cts. 47.74
Passenger Revenue .....	80,867.64	103,173.58	74,289.11
Pass. Rev., per Rev. Mile.....	cts. 9.26	cts. 10.45	cts. 13.60
Other Non-Mail Revenue.....	7,304.04	9,670.00	5,279.16
Other Non-Mail Rev., per Rev. Mile	cts. .84	cts. .98	cts. .97
Mail Revenue .....	220,139.00	311,021.94	181,136.99
Mail Rev., per Rev. Mile.....	cts. 25.20 <sup>6</sup>	cts. 31.51 <sup>7</sup>	cts. 33.17

Receipts from passenger traffic originating at Kansas City in the 1938 fiscal year amounted to \$28,595.49; at Omaha, \$25,626.38; at Minneapolis, \$19,385.70; at Tulsa, \$12,268.19; and at Huron, \$6,001.89. At all other points, passenger revenues were less than \$5,000. The passenger operations of petitioner for the 1937 and 1938 fiscal years and for the six-months' period ended December 31, 1938, are shown by the following table:

	Fiscal Year		Six Months Ended
	1937	1938	Dec. 31, 1938
Number of revenue passengers.....	6,704	10,713	7,542
Revenue passenger miles.....	1,631,929	2,612,405	1,808,222
Revenue load factors.....	21.3%	27.9%	36.9%
Revenue per passenger.....	\$12.06	\$9.63	\$9.85
Revenue per passenger mile.....	cts. 4.96	cts. 3.95	cts. 4.11
Traffic density (passengers per mile) ..	1.88	2.65	3.33
Average distance per passenger (miles)	243.42	243.85	239.75

Petitioner's policy in respect to traffic promotion has resulted in its accounts showing large expenditures for traffic and advertising. The ratio of total expenses for traffic and advertising to total passenger revenue was 54.8 per cent for the 1937 fiscal year, 58.7 per cent for the 1938 fiscal year, and 45.43 per cent for the six months ended December 31, 1938. It may well be that expenditures in the past for advertising, publicity, solicitations, and the like, were proper as a development program, but a continuance of the

6. Petitioner's rate of mail compensation at this time was based on the rate of 32 cents fixed for its predecessor by the Interstate Commerce Commission in *Air Mail Compensation*, *supra*. However, during this period petitioner flew weight credit mileage, which is reflected in the low revenue shown per mile. Under the Air Mail Act of 1934, as construed by Division 3 of the Interstate Commerce Commission in *Air Mail Rates for Route No. 24*, 222 I. C. C. 749, such schedules were considered as mail schedules, although no pay was received for the mail carried thereon.

7. Revenue figures are adjusted to allow for additional mail pay under decision of the Interstate Commerce Commission in *Air Mail Rates for Route No. 26*, *supra*.



expenditures should be made only in the light of what past experience has indicated may provide a profitable return.

Petitioner's cost of operations has increased from \$415,330.92, including taxes assignable to operations and uncollectible revenue, or 47.56 cents per revenue mile, for the 1937 fiscal year to \$517,029.42, or 52.38 cents per revenue mile, for the 1938 fiscal year, and to \$277,488.41, or 50.81 cents per revenue mile, for the six-months' period ended December 31, 1938. Operating losses in cents per revenue mile for the fiscal years 1937 and 1938 and the six-months' period ended December 31, 1938, were 12.25, 9.44 and 3.07, respectively. Because of rising costs, the increased mileage which was flown by petitioner in 1938 is not reflected in a lower cost per revenue mile. Higher costs are stated to have resulted particularly from the use of more modern and expensive equipment, reflected in maintenance, depreciation, operations, and insurance costs; progressive increases in wage scales both of pilots and co-pilots on the basis fixed by the National Labor Board in decision No. 83, to which petitioner is subject under specific provisions of the Civil Aeronautics Act of 1938; and wage increases under agreements with mechanics and dispatchers. An increase in cost is also shown for gasoline, which is purchased through contracts under competitive bidding. Cost of gasoline per revenue mile flown for the fiscal years 1937 and 1938 and for the three-months' period ended September 30, 1938, was 4.76, 5.21, and 5.36 cents, respectively. Total gasoline taxes for the same periods were \$5,825.01, \$8,053.22 and \$2,120.83.

Petitioner shows a high proportion of non-revenue miles to total mileage flown, which it explains as due to the intensive training given to its pilots and co-pilots. The safety record of petitioner has been good. It is pertinent to note that for the six-months' period ended December 31, 1938, there was a substantial reduction in the proportion of non-revenue miles flown.

Analysis of the petitioner's data shows that it has been possible to keep the petitioner's aircraft in service for longer periods than were anticipated in the initial establishment of depreciation rates. The initial estimates of life were: on new Lockheed Electra aircraft, 4 years with residual value of \$1,000; on used Lockheed Electra aircraft, 2 years with residual value of \$1,000; on used Lockheed Vega aircraft, 2 years with residual value of \$200; and on the Waco aircraft, 21 months with residual value of \$100. At December 31, 1938, two of the four Lockheed Electra aircraft owned had been in service of petitioner and their former owner over four years and one of these two will have been in service five years on February 24, 1939. Two of the three Lockheed Vega aircraft owned at the beginning of the 1938 calendar year became fully depreciated on July 1, 1938, and were still in service on December 31, 1938. The third Lockheed Vega aircraft was sold on March 25, 1938, for \$3000, at which time its book value was \$844.55. The one Waco aircraft owned at the beginning of the calendar year 1938 became fully depreciated on August 1, 1938, and was still in service on December 31, 1938.

Analysis of the petitioner's data shows that it has been possible to keep Pratt and Whitney Wasp Junior engines in service for longer periods than were anticipated in the initial establishment of depreciation rates. The initial estimate of life on such engines was 4,000 hours, with residual value of \$200. Three of the twelve Wasp Junior engines shown to have been owned at the beginning of the calendar year 1938 became fully depreciated during the calendar year. Two of these were retired, one on June 30, with a life of

4,049 hours, and one on November 30, with a life of 5,196 hours. The third was still in service on December 31, 1938, as were the other nine which were owned at the beginning of the year. Two second-hand Wasp Junior engines were acquired during the year and were in service on December 31.

Petitioner's method of overhaul is that described as "continuous overhaul" under which the equipment is maintained in a state of continuous airworthiness rather than being periodically taken out of service for complete disassembly and overhaul. Under present conditions, much of the maintenance work must be done at night, and it is necessary to have emergency maintenance labor at various points, thus adding to the maintenance costs.

Petitioner has four corporate officers, only two of whom have received regular salaries. The executive vice-president has also been paid a salary for a portion of the time, and the other, who does not actively participate in the management, has never received a salary. The highest salary which has been paid is at the rate of \$6,000 per annum. Salaries of general officers for the 1937 fiscal year were \$14,150, an average of \$4,716.67 per person, as compared with \$10,585 for the 1938 fiscal year, an average of \$4,704.44 per person. It is petitioner's desire to pay a regular salary to its executive vice-president.

The only portion of the route which produces passenger traffic sufficient to utilize efficiently the ten-passenger Electras is between Kansas City and Omaha. However, no other type of equipment generally used in scheduled air transportation which was better suited to its operating needs appears to have been available to the petitioner at the time of purchasing the Electras. Projected expenditures for airways and navigational aids should do much to facilitate a more efficient operation, produce greater revenues and reduce expenses. The proposed lighting of the northern route will enable petitioner to do its maintenance work at Kansas City in daylight with greater efficiency, and will also permit of a freer use of the equipment. Lighted airways will enable it to operate night service out of Minneapolis, and also to fly under weather conditions that now interfere with operations requiring contact flying. Improvement of various airports will also permit of more efficient service.

Petitioner expects to purchase within the next year another Electra plane, at a cost approximating \$55,000, and a new type twin engine Vega, at a cost of approximately \$30,000. Additional engines for the Electra will cost around \$10,000, and certain replacements will be necessary for the aircraft communication equipment, at an estimated cost of \$20,000, with an additional \$5,000 for airway communication equipment which is now being installed. There is thus a prospective expenditure in the aggregate around \$120,000. Financing of the equipment is to be made, in part, through proceeds from the sale of the preferred stock.

#### *Fair and Reasonable Rates of Air Mail Compensation*

In fixing and determining fair and reasonable rates of air mail compensation, section 406(b) of the Act directs that the Authority shall take into consideration, among other factors, the condition that a holder of a certificate authorizing the carriage of mail by aircraft must provide necessary and adequate facilities and service for such transportation, and must maintain such standards of service as may be prescribed, and shall further take into

consideration the need of such air carrier for mail compensation "sufficient to insure the performance of such service and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense."

The above factors which the Authority is directed to take into consideration in fixing and determining fair and reasonable rates under the Act, differ from the tests which, under the influence of judicial decision during the past forty years, have been set up for the guidance of public regulatory bodies in fixing rates for public utilities and common carriers. The fixing of "fair and reasonable rates of compensation for the transportation of mail by aircraft" under section 406(a) and (b) of the Act involves the delegation of a broad discretionary power which must be exercised in the light of certain considerations which Congress has specifically prescribed. Those considerations were laid down by Congress in recognition of the vital relation which civil aviation bears to the domestic and foreign commerce of the United States, the Postal Service and the national defense, and of the state of the industry as its economic and technical progress continues. Sections 2<sup>a</sup> and 406, as well as other sections of the Civil Aeronautics Act, disclose the clear intent of Congress that the problems of civil aviation require special treatment.

The development and encouragement of air transportation through an air mail rate which takes into consideration the general factors of the public interest, as set forth in the Act, require that the rate-making provisions of the Act shall be administered in such a manner as to expedite and not retard the attainment for air carriers of an economically sound and stable condition. As this objective is approached, there will naturally be an accompanying reduction of the dependence of air carriers upon air mail revenue and a progressive decrease in the rate of air mail compensation to be paid by the Government. Such an administration of the Act must, of necessity, involve a policy of rate determination which will serve to recognize managerial efficiency and to permit benefit therefrom to redound to the carriers, thus providing an incentive to management for further development.

The increasing benefit derived by the Post Office Department from the air mail service rendered by petitioner is indicated by the increasing average mail load shown by the following table:

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8. Section 2, entitled "Declaration of Policy," provides as follows:

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

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

"(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

"(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive practices;

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

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

"(f) The encouragement and development of civil aeronautics."

<i>Fiscal Year Ending June 30</i>	<i>Pounds of Mail Carried</i>	<i>Pound Miles</i>	<i>Average Mail Load (Pounds)</i>
1935	117,889	28,697,066	44.04
1936	150,970	30,092,190	42.84
1937	228,538	44,918,402	63.85
1938	288,227	56,649,154	59.78
July-Dec., 1938	163,134	33,377,690	61.42

Statement of the Postmaster General as to the mail requirements on route No. 26 indicates that there is no reason to anticipate that the average mail load will be increased over 300 pounds, although there should be an appreciable increase in the mail poundage when airway lighting is completed. With the lighting of the route, extensive changes in schedules will be made, but what the schedules will be, will largely depend upon those of routes which connect with route No. 26. The Postmaster General further states that it would be desirable to have available a schedule leaving Minneapolis after the close of the business day, although "certain connections on other routes might, under certain circumstances, be more important than this departure time."

In support of the base mail rate of 40 cents per mile which it seeks, petitioner estimates it will schedule for operation 1,143,564 miles of which it will actually operate 92 per cent, or 1,052,078 miles. It forecasts that it will operate 9,638,300 available seat miles, of which 34 per cent will be occupied by revenue passengers at an average of 4.1 cents per passenger mile. Total revenue, including mail revenue on the basis of estimated mileage operated and a rate of 40 cents, would amount to \$565,189.10; and total operating expenses on the basis of 52.5 cents plus 0.5 cent per estimated revenue mile would be \$557,601.34. The 52.5 cents is based on operating results for the fiscal year ended June 30, 1938, and the additional 0.5 cent is estimated to cover additional costs. This forecast produces a margin of operating revenues over operating expenses of \$7,587.76.

Petitioner's estimate that only 92 per cent of its scheduled mail pay mileage will be operated is less than the 94.12 per cent of scheduled mail pay miles operated for the 1938 fiscal year and the 92.69 per cent operated for the 1938 calendar year. With respect to the estimated passenger load factor for the year 1939, the trends of passenger volume, percentages of seat miles occupied, and average pay passenger loads indicate that in estimating the percentage of available seat miles to be occupied during the calendar year 1939 at only 34 per cent the petitioner has been too conservative. The percentage of available seat miles occupied during the fiscal year ended June 30, 1938, was 27.94. Despite the fact that the calendar year of 1938 was inclusive of six months of such fiscal year, the percentage of available seat miles occupied for the calendar year rose to 33.84 per cent, and during the final six months of the 1938 calendar year, such percentage was 36.88, representing an increase of 11.79 over the percentage of 25.19 for the corresponding six months' period of the calendar year 1937. Even making allowance for the unreliability of a percentage based on only six months of traffic, it would appear that the petitioner's estimate of a 34 per cent load factor is too low.

Petitioner forecasts total operating expenses for the calendar year 1939, at 53 cents per mile, which amount to \$557,601.34 on 1,052,078 miles to be operated. In support thereof, it states that the estimates are based on the cost per revenue mile for the 1938 fiscal year at 52.5 cents, and 0.5 cent per mile for additional operating expenses, during the 1939 calendar year. The fact that the basis which has been used by petitioner results in a sharp reversal of the expense per revenue mile trend for the past eighteen months, is indicated by the following comparison:

	<u>Actual</u>	<u>Petitioner's</u>
	<i>Fiscal Year</i>	<i>Calendar</i>
	<i>Ended</i>	<i>Year Ended</i>
	<i>6-30-38</i>	<i>12-31-38</i>
Total Revenue Miles.....	986,999	1,048,703
Percentage Trend .....	100	106.25
Total Operating Expense..	\$517,029.42	\$539,214.34
Percentage Trend .....	100	104.29
Cents per Rev. Mile.....	52.38	51.42
Percentage Trend .....	100	98.17

It would seem from the above tabulation that the petitioner's estimate of 53 cents per revenue mile is contrary to pertinent trends. A comparison of cost per revenue mile for the 1938 fiscal year as against such cost for the 1938 calendar year, indicates the unsoundness of adopting the former accounting period as the sole basis for expense projection for the 1939 calendar year:

	<u>12 Months Ended</u>	
	<u>June 30, 1938</u>	<u>Dec. 31, 1938</u>
	<i>Amount</i>	<i>Amount</i>
	<i>Cents Per</i>	<i>Cents Per</i>
	<i>Rev. Mile</i>	<i>Rev. Mile</i>
General & Administration..	\$ 49,965.50	\$ 50,714.46
Traffic & Advertising.....	60,581.20	66,319.07
Indirect Flying .....	128,762.01	137,047.73
Direct Flying .....	277,720.71	285,133.08
Engine Depreciation ...	16,305.09	14,686.37
Aircraft Depreciation ..	44,846.78	40,793.58
Other Direct Flying....	216,568.84	229,653.13
Total Expenses ...	\$517,029.42	\$539,214.34

The above tabulation indicates that petitioner's estimate of total expenses of \$557,601.34 for the 1939 calendar year, based on 53 cents per mile for 1,052,078 miles, is too high.

We find that, upon consideration of the record in this proceeding and after taking into consideration the elements as provided by the Act, particularly section 406 thereof, the fair and reasonable rate of compensation to be paid to the petitioner for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith,

over route No. 26, from and after October 22, 1938, the date of the filing of the petition herein, is a base rate of 38 cents per airplane mile for the first 300 pounds of mail, or fraction thereof, plus 2.5 per cent of such rate per airplane mile for each additional 25 pounds of mail, or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried per mile over the route during such month, such rate to be applied to the direct airport-to-airport mileage between points served on each trip flown, and to be applied without reference to any base mileage for the route.

An appropriate order will be entered.

The following Members of the Authority concurred in this opinion: Hinckley, Branch, Ryan, Mason. The fifth membership of the Authority is vacant.

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THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held at its office in Washington, D. C.,  
on the 25th day of April, 1939

In the Matter of

CHARLES B. STEAD,

Holder of Airline Pilot Certificate  
of Competency No. 2072

} Docket No. 197

**Order Revoking Airman Certificate**

A full hearing having been held in the above-entitled matter and the Authority, upon consideration of the record of such proceedings, having issued its opinion containing its findings of fact, conclusions, and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

IT IS ORDERED That such airman certificate is revoked and any rights the holder of such certificate may have under the provisions of the Civil Air Regulations for renewal of such certificate are terminated.

By the Authority.

(SEAL)

PAUL J. FRIZZELL,  
Secretary.

THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held at its office in Washington, D. C.,  
on the 25th day of April, 1939

In the Matter of

THOMAS P. VAN SCIEVER,

Holder of Air Carrier Dispatcher  
Certificate of Competency No. 258

} Docket No. 200

**Order Removing Suspension of Air Carrier Dispatcher Certificate**

A full hearing having been held in the above-entitled matter and the Authority, upon consideration of the record of such proceedings, having issued its opinion containing its findings of fact, conclusions, and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

It Is ORDERED That such suspension be removed.

By the Authority.

PAUL J. FRIZZELL,  
Secretary.

(SEAL)

THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held at its office in Washington, D. C.,  
on the 25th day of April, 1939

In the Matter of

PHILIP S. SHOWALTER,

Holder of Air Carrier Dispatcher  
Certificate of Competency No. 267

} Docket No. 201

**Order Removing Suspension of Air Carrier Dispatcher Certificate**

A full hearing having been held in the above-entitled matter and the Authority, upon consideration of the record of such proceedings, having issued its opinion containing its findings of fact, conclusions, and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

It Is ORDERED That such suspension be removed.

By the Authority.

PAUL J. FRIZZELL,  
Secretary.

(SEAL)

**CIVIL AERONAUTICS AUTHORITY: DOCKET NOS. 197, 200, 201**  
**Airman Certificates**

In the matter of Charles B. Stead, holder of Airline Pilot Certificate of Competency No. 2072.

In the matter of Thomas P. Van Sciever, holder of Air Carrier Dispatcher Certificate of Competency No. 258.

In the matter of Philip S. Showalter, holder of Air Carrier Dispatcher Certificate of Competency No. 267.

*Decided April 25, 1939*

*Lillick, Olson, Levy and Geary, Theodore M. Levy and Gilbert C. Wheat, of counsel, for Charles B. Stead.*

*Pillsbury, Madison, and Sutra, Eugene D. Bennett and Felix T. Smith, of counsel, for Thomas P. Van Sciever and Philip S. Showalter.*

*George C. Neal, for the Regulation and Enforcement Division, Civil Aeronautics Authority.*

### Opinion

#### BY THE AUTHORITY:

On November 29, 1938, an aircraft accident occurred off Point Reyes, California, involving United Air Lines Transport Corporation aircraft NC-16066 being flown as United Air Lines Trip 6. Thereafter the Air Safety Board, created by the Civil Aeronautics Act of 1938, conducted an investigation, pursuant to section 609 of the Act, for the purpose of determining the probable cause of said accident. On February 18, 1939, the Air Safety Board submitted to the Civil Aeronautics Authority its report and findings regarding said investigation and recommended that the airman certificates of Charles B. Stead, Thomas P. Van Sciever, and Philip S. Showalter be revoked.

Upon consideration of the report of the Air Safety Board and after investigation, the Authority, acting under Section 609 of the Civil Aeronautics Act of 1938, directed to Charles B. Stead, Thomas P. Van Sciever, and Philip S. Showalter, orders to show cause why their certificates of competency should not be suspended or revoked. The Authority, finding an emergency to exist, suspended such certificates of competency, pending the completion of the proceedings under the orders to show cause, for 30 days beginning February 25, 1939, and at the conclusion of the 30-day period, further suspended such certificates for an additional period of 30 days.

By Order No. 609-4, dated February 25, 1939, the Authority consolidated the said proceedings for hearing and by order dated March 1, 1939, set the proceedings down for hearing at San Francisco on March 20, 1939, before the Honorable Harllee Branch, Vice Chairman of the Authority and on March 20, 21, 22, and 23, a hearing was held on the issues raised in said proceedings. On April 5, 1939, Vice Chairman Branch filed with the Authority his report containing his findings and recommending that the airline pilot certificate of competency of Charles B. Stead be revoked and that the temporary suspension of the air carrier dispatcher certificates of Thomas P. Van Sciever and Philip S. Showalter be removed and that no further suspension or revocation of such certificates be ordered. Subsequently, respondent Stead filed exceptions to the report of the Vice Chairman and a brief in support thereof.

As shown by the record, the events which transpired prior to the landing of United Air Lines Trip 6 in the Pacific off Point Reyes on November 29, 1938, which accident gave rise to these proceedings, are stated by the Vice Chairman as follows:

"It appears from the evidence introduced at the hearing that United Air Lines Transport Corporation Trip 6 was scheduled to depart from Seattle, Washington, at 8:30 p. m. on the night of November 28th with scheduled stops at Portland and Medford, Oregon, and Sacramento, Oakland, San Francisco, Fresno, Bakersfield, Los Angeles, and San Diego, California. Trip 6



departed from Seattle on that night at 8:30 p. m., the plane (NC-16066) having on board on the departure from Seattle 620 gallons of gasoline, four passengers, and quantities of express and mail. The pilot of the plane was Captain Charles B. Stead. The plane was cleared from Seattle to Portland by the United Air Lines' Seattle dispatcher and arrived at Portland at 9:30 p. m. The plane was refueled at Portland and departed at 9:46 p. m., having on board 620 gallons of gasoline and the same load of passengers and cargo as upon its arrival. The plane arrived at Medford at 11:35 p. m. being scheduled to arrive at 11:24 p. m. The flight from Seattle to Medford was without unusual incident.

"Prior to the arrival of the plane at Medford, the Oakland dispatcher, Thomas P. Van Sciever, charged with the responsibility of dispatching the plane south of Medford, radioed Medford to hold the plane due to weather conditions. At approximately 11:41 p. m., after the plane had landed at Medford, the United Air Lines' station manager at Medford, Mr. Henne, called Van Sciever by telephone at the request of the pilot, Captain Stead. After consideration of the available information regarding weather conditions over the airway south of Medford, Van Sciever, Stead, and Henne agreed in the course of this telephone conversation that the plane be cleared from Medford to Sacramento, with Medford, Oakland, and Livermore designated as alternate airports for the flight. The plane departed from the blocks at Medford at 12:03 a. m. and left the field at 12:07 a. m. The plane took off toward the south, and while climbing to cruising altitude made a 180° turn to the north, flying back over Medford, and then made a second 180° turn to the south, reaching an altitude of 12,000 feet at 12:24 a. m. while passing over Medford headed south.

"The trip continued southbound after reaching cruising altitude following the on course of the south leg of the Medford radio range and the north leg of the Ft. Jones radio range and passed over the cone of silence of the Ft. Jones range. Between Ft. Jones and the point where the west leg of the Mt. Shasta radio range and the south leg of the Ft. Jones range intersect, the plane ran into static and icing conditions which necessitated a change of flight plan resulting in climbing to 14,000 feet in a slow 360° turn. After passing the west leg of the Mt. Shasta radio range, static and light icing conditions were again encountered which resulted in the plane climbing to 15,000 feet. At 1:34 a. m. the plane reported by radio its estimated crossing of the west leg of the Mt. Shasta range at approximately 1:15 a. m., that it was flying the on course of the south leg of the Ft. Jones radio range, and estimated that it would arrive over Red Bluff at 1:50 a. m. No report was subsequently received from the plane that it had passed over Red Bluff and ground observers at that point did not see or hear the plane pass over. The plane followed the south leg of the Ft. Jones range until approximately 1:51 a. m. when the plane was in the vicinity of Red Bluff. An attempt was then made by its crew to tune in the Williams radio range. The plane failed to receive usable signals from the Williams range due to interference with radio reception and Captain Stead in a radio message at 1:55 a. m. requested information as to the operating condition of that range. He was advised by Oakland by a radio message at 2:08 a. m. that monitoring of the Williams range by Oakland and Blue Canyon indicated that it was operating in a satisfactory manner with no interference. However, the plane failed to receive usable signals from the Williams range during the entire flight, and continued southward from Red Bluff flying a compass heading of 150° (magnetic).

"During the part of the flight from Medford to the vicinity of Red Bluff the crew of the plane was able to see the ground from time to time. Captain Stead noticed the lights of the town of Etna in the vicinity of Ft. Jones, and also noticed the beacon lights located on the airway between Ft. Jones and Red Bluff. Other than the identification of the town of Etna, these ground contacts were not such as to enable Captain Stead to definitely fix the position of the plane.

"During the part of the flight south of Red Bluff, no radio messages were received by ground stations from the plane, nor did ground observers see or hear the plane between 2:09 a. m. and 3:03 a. m.

"At 3:03 a. m., after having been unreported for 54 minutes, Captain Stead in a radio message estimated the plane's position as between Williams

and Protrero, in the 'A' twilight zone of the Fresno radio range, and reported that he had been flying a compass course of 150° and that the Oakland range was 'building up.' At this time the plane was receiving the 'N' signal of the Oakland radio range. The fact that the plane was receiving a twilight 'A' signal from the Fresno range and an 'N' signal from the Oakland range fixes its position at this time at a point west of the northwest leg of the Fresno range and north of the airway between Oakland and Sacramento.

"From its position at 3:03 a. m., the plane continued a compass course of 150° and just prior to 3:17 a. m. crossed what Captain Stead believed to be the on course of the northeast leg of the Oakland radio range. At this point the partial execution of a 180° procedure turn convinced Captain Stead that the plane was on the northeast leg of the Oakland range, and at 3:17 a. m. he reported having located his position as being definitely on the on course of the northeast leg of the Oakland range. The plane was turned into the on course signal and proceeded for a time by turning to the left and then to the right until a steady on course signal was received. A compass heading of 225° was then followed. At 3:20 a. m. dispatcher Showalter cleared the plane to Oakland. In the flight between Red Bluff and the point of crossing the Oakland range, the crew was at no time able to fix the position of the plane through visual contact with the ground.

"Shortly after reporting on the on course of the northeast leg of the Oakland range Captain Stead sighted a beacon light ahead and to the left of the plane and the plane proceeded to fly over this light and Captain Stead was able to see lights from houses and the beacon reflecting against the overcast as the plane passed over. It was thought by him at the time to be one of the beacon lights along the airway between Sacramento and Oakland. At 3:49 a. m. Captain Stead again reported that the plane was still on the northeast leg of the Oakland radio range and proceeding towards Oakland and it was necessary to correct the plane's compass heading 20° to 25° to the right in order to keep the plane on the leg of the range. At 3:54 a. m. the plane reported that it was necessary to fly a 225° compass course to stay on the on course signal and that a north wind was being encountered. At 4:03 a. m. and 4:06 a. m. attempts were made to broadcast to the plane the information that Captain Williams, a United Air Lines pilot, had encountered a 20° to 25° drift to the right of the northeast leg of the Sacramento range in his flight from Donner Summit to Sacramento after midnight. The record does not show that this information was received by Trip 6.

"At approximately 4:08 a. m. Trip 6 asked when it had first reported as being on the northeast leg of the Oakland radio range and was given the information by Oakland that it had first reported to that effect at 3:17 a. m. The plane then reported that it had been fifty minutes since then and something must be wrong with the range, that it had sixty gallons of fuel and was dropping down slowly. In descending the plane executed a 180° turn and proceeded in an easterly direction. The descent was continued to an altitude of 300 feet and when water was seen below the plane climbed back to 1800 feet. At 4:16 a. m. co-pilot Jones reported that the plane was west of Oakland on the northwest leg of the Oakland range and asked for information as to the best manifold pressure. This information was given by Oakland at 4:18 a. m. The plane continued along an easterly course on the on course of the northwest leg of the Oakland range until in the vicinity of Point Reyes where it landed on the water at approximately 5:25 a. m."

*Thomas P. Van Sciever*

The Authority's order to show cause directed to Thomas P. Van Sciever recites that there is probable cause to believe that the respondent is incompetent to perform his duties as an air carrier dispatcher, because the respondent cleared United Air Lines Trip 6 of November 28, from Medford, Ore., to Sacramento, Calif., without giving proper consideration to the fuel supply on board the aircraft and failed to determine the amount of fuel that might be required for the trip, in view of adverse weather and wind conditions

forecast over the course to be flown. Respondent Van Sciever was on duty as United Air Lines' air carrier dispatcher at Oakland, Calif., from 4:00 p. m. until midnight on November 28, 1938, and it was his responsibility to clear Trip 6 from Medford to Oakland.

With respect to respondent Van Sciever, the Vice Chairman found:

"Van Sciever did not fail to perform his duties in the particulars specified in order No. 609-2 for the following reasons:

"(1) Prior to clearance from Medford, he determined that the plane had sufficient fuel on board to comply with the requirements of Section 61.7021 of the Civil Air Regulations under the weather and wind conditions he expected the plane to encounter between Medford and Sacramento; and

"(2) The plane had sufficient fuel on board at Medford to comply with the requirements of Section 61.7021 of the Civil Air Regulations under the weather and wind conditions actually encountered by the plane and those which reasonably should have been anticipated by Van Sciever in view of the fact that:

"(a) The ceiling at Sacramento, the point cleared to, was forecast to, and did remain above the minimum for landing at all times during the time the flight was in progress;

"(b) The fuel supply on board the plane at Medford was sufficient to comply with the requirements of Section 61.7021 of the Civil Air Regulations with winds equivalent to average head winds up to 78 m. p. h. over the entire course of the flight between Medford and Sacramento;

"(c) In its flight between Medford and approximately the point at which the Oakland range was intersected, the plane actually encountered winds equivalent to an approximate average head wind of 70 m. p. h.; and

"(d) No current observations as to the direction and velocity of the winds aloft were available to Van Sciever at the time the plane was cleared from Medford. From the weather forecasts and information available to Van Sciever at the time of the clearance, he could reasonably anticipate that the flight would not encounter winds stronger than winds equivalent to an average head wind of 78 m. p. h. over the course of the flight between Medford and Sacramento, in view of the fact that the U. S. Weather Bureau maps indicated that the frontal condition was approaching the coast more rapidly in the vicinity of the San Francisco Bay region than to the north, consequently the plane would be flying in the front only in the southern part of the flight; the U. S. Weather Bureau advised that the front would not be as severe in the vicinity of Sacramento as it would be at Oakland; the forecast of the United Air Lines meteorologist, which was part of the flight plan of Trip 6, estimated that at nominal cruising levels winds of 75 m. p. h. from 200° would be encountered between Medford and Red Bluff and 65 m.p.h. from 190° between Red Bluff and Sacramento; Captain Stead reported that Trip 6 encountered winds of 35 m. p. h. north of Medford; and frontal conditions of the kind approaching the coast at the time of the clearance are of varying intensities and are not in all cases necessarily accompanied by high wind velocities."

After consideration of the record these findings appear to be amply supported by the evidence and, accordingly, the Authority concurs therein.

*Philip S. Showalter*

The Authority's order to show cause directed to Philip S. Showalter recites that there is probable cause to believe that the respondent is not competent to perform the duties of an air carrier dispatcher in that he failed to perform his duties in connection with United Air Lines Trip 6 of November 28, in the following particulars:

"(1) After the passage of a period of time in excess of that required for said aircraft to reach Oakland from the previously estimated position

of said aircraft on the northeast leg of the Oakland radio range as given by the pilot thereof, respondent failed to advise the pilot to establish his position by working standard orientation procedures, and to conserve fuel by reducing power;

"(2) Respondent failed to notify the superintendent of flight operations of the western division of United Air Lines Transport Corporation of the status of the trip within a reasonable period of time after radio communications with said aircraft had failed, and also within a reasonable period of time after said aircraft was reported as being on the northeast leg of the Oakland radio range; and

"(3) Respondent failed to utilize promptly such emergency facilities as were available and failed to demonstrate a reasonable degree of initiative and judgment in attempting to cope with the obvious emergency in which said aircraft was involved."

Respondent Showalter relieved Van Sciever at midnight on November 28, and was on duty at Oakland as Air Carrier Dispatcher from the time Trip 6 took off from Medford until it landed in the sea at Point Reyes.

With respect to respondent Showalter, the Vice Chairman in his report found:

"Showalter did not fail to perform his duties in the particulars specified in order No. 609-3 to an extent which would justify the revocation of his air carrier dispatcher's certificate, for the following reasons:

"(1) While Showalter did not advise Captain Stead after 3:17 a. m. to fix his position by working an orientation procedure and to conserve fuel by reducing power, it does not appear that Showalter can reasonably be held to have failed to perform properly his duties to an extent which would justify revoking or suspending his dispatcher's certificate, in view of the fact that:

"(a) Showalter, on the ground, could make only an estimate as to when the plane should arrive over Oakland;

"(b) Captain Stead reported approximately five minutes after the plane should have been over Oakland, according to Showalter's estimate, that it was still on the northeast leg of the Oakland range and proceeding towards Oakland;

"(c) To the best of Showalter's knowledge, Captain Stead had definite indications that the plane was still on the northeast leg and proceeding towards Oakland; and

"(d) In Showalter's estimate of the plane's arrival over Oakland, it would have had sufficient fuel on board for over one hour's flight.

"(2) Showalter called the superintendent of flight operations of the Western division of United Air Lines when the plane had been unreported for 51 minutes, at which time it was 10 minutes overdue at Sacramento according to Showalter's estimates. Looking at these facts in retrospect, it can be said that Showalter permitted a somewhat excessive time to elapse before he contacted his superiors in the company. However, it does not appear that he can reasonably be held to have failed to perform properly his duties to an extent which would justify revoking or suspending his dispatcher's certificate, in view of the fact that:

"(a) He called Richerson, assistant to the flight superintendent and Showalter's immediate superior, in approximately 2 to 5 minutes after the plane was estimated to be due to arrive at Sacramento.

"(b) During the period the plane was unreported, he took numerous steps to contact the plane and obtain its position;

"(c) When the plane had been unreported for 48 minutes, at which time it was also unreported for 35 minutes from its estimated time of arrival over the last point over which it was due to report and was an estimated 7 minutes overdue at Oakland, he directed that all communications traffic be suspended; and

"(d) He knew at the time that it was not unusual, due to conditions adversely affecting radio reception, for ground stations to be unable to receive messages from planes flying between Red Bluff and Sacramento and

not unusual for planes flying in that area to be unable to receive messages from ground stations.

"(3) Showalter called the superintendent of flight operations of the Western division of United Air Lines within 48 minutes after the plane first reported on the northeast leg of the Oakland radio range, the call being made within 20 minutes after the plane was overdue at Oakland according to Showalter's estimates, and within 16 minutes after a message had been received from the plane to the effect that it was still on the northeast leg of the Oakland range and proceeding towards Oakland. Looking at these facts in retrospect, it can be said that Showalter permitted a somewhat excessive time to elapse before he contacted his superiors in the company. However, it does not appear that he can reasonably be held to have failed to perform properly his duties to an extent which would justify revoking or suspending his dispatcher's certificate, in view of fact that:

"(a) Showalter, on the ground, could make only an estimate as to when the plane should arrive over Oakland;

"(b) Within approximately 5 minutes after the time Showalter estimated the plane should be over Oakland, the plane reported that it was still on the northeast leg of the Oakland range and proceeding towards Oakland;

"(c) To the best of Showalter's knowledge, Captain Stead at the time had definite indications that the plane was on the northeast leg of the Oakland range and proceeding towards Oakland; and

"(d) Showalter left the balcony of the station within approximately 10 minutes after he had estimated the plane should be over Oakland, and within approximately 5 minutes after the plane reported that it was still on the northeast leg and proceeding towards Oakland, leaving a man on the balcony in his place. From that time until he called the superintendent of flight operations, Showalter took steps to assist the plane, including checking the 3:41 a. m. weather sequence and talking over the telephone to Captain Williams at Sacramento concerning the velocity and direction of winds aloft and directing that this information be broadcast to the plane.

"(4) Showalter was first definitely advised that the plane was in distress at approximately 4:10 a. m. and for approximately the next 7 minutes was talking to the superintendent of flight operations on the telephone. During that conversation Showalter directed the radio operator to send the plane the instructions given by the superintendent regarding the taking of bearings and the conservation of fuel. Immediately thereafter Showalter called the Coast Guard, the Naval Radio station at San Francisco, and the Pan American base for the purpose of locating the plane and advising Coast Guard stations and ships at sea of the status of the plane. Under all the circumstances it cannot be said that Showalter failed to act promptly in procuring the aid of emergency agencies after he knew the plane was in distress.

"(5) In view of the findings outlined above, it does not appear that Showalter 'failed to demonstrate a reasonable degree of initiative and judgment in attempting to cope with the obvious emergency in which said aircraft was involved.'"

After consideration of the record these findings appear to be amply supported by the evidence and, accordingly, the Authority concurs therein.

#### *Charles B. Stead*

The Authority's order to show cause directed to Charles B. Stead recites that there is probable cause to believe that respondent Stead is not competent to perform the duties of an airline pilot in that he failed to perform his duties in connection with United Air Lines' Trip 6 of November 28, in the following particulars:

"(1) Prior to the departure of said aircraft from Medford, Oregon, while enroute, respondent failed to give proper consideration to the fuel supply on board said aircraft, or to the amount of fuel that might be required

for the trip in view of adverse weather and wind conditions forecast over the course to be flown;

"(2) After respondent reported he was on a leg of the Oakland, California, radio range (thought by him to be the northeast leg), he failed to recognize the inconsistency of the compass headings of the aircraft with the heading required to fly the on course signal of the northeast leg;

"(3) Respondent continued the flight of said aircraft in a westerly direction for an excessive period of time, beyond that which would have been required for said flight to reach Oakland from respondent's estimated position on the northeast leg of the Oakland radio range;

"(4) Respondent failed to work an orientation problem and to establish definitely the position of the aircraft, either at the time of intersecting a leg of the Oakland radio range at 3:17 a. m., November 29, 1938, or during such additional period of time as to be able either to remain within range of or to return to safe landing area;

"(5) No effort was made by respondent to conserve fuel within a reasonable period of time after the aircraft failed to arrive in Oakland subsequent to intersecting a leg of the Oakland radio range";

The Vice Chairman made the following findings with respect to respondent Stead:

"(1) The record shows that Captain Stead estimated, prior to the time the plane was cleared from Medford, the amount of fuel which would be on board the plane at Medford. For the reasons set out in detail in the findings made herein with respect to Van Sciever, Captain Stead did not fail to perform his duties in the particulars specified in paragraph (b) of order No. 609-1.

"(2) Captain Stead did not fail to perform his duties in the particulars set out in paragraph (c) of order No. 609-1 in view of the fact that the forecast of the United Air Lines meteorologist at Seattle, which was a part of the flight plan of Trip 6, predicted winds of 280° between Sacramento and Oakland and a compass heading of 225° on the northeast leg of the Oakland range would be consistent with the compass bearing of that leg under such a wind condition.

"(3) Captain Stead failed to perform his duties in the particulars specified in paragraphs (d) and (e) of order No. 609-1, in view of the fact that:

"(a) From approximately 12:58 a. m., when the plane passed over Etna until 3:03 a. m., when it reported an estimated position between Williams and Protrero, no definite fix of the position of the plane was obtained. During this period the plane flew approximately 210 miles and after 1:51 a. m., when it was estimated to be in the vicinity of Red Bluff, flew entirely by a compass course without the aid of ground navigational facilities. No precise information as to the actual winds aloft which would be encountered had been available to Captain Stead at the time the plane left Medford and, in fact, the possibility existed that a frontal condition might be encountered in the southern part of the flight.

"Under these circumstances, when the plane at 3:03 a. m., and thereafter, was receiving the Oakland radio range, competent handling of the flight by the pilot would require that he use the loop antenna to take a bearing on the Oakland range to determine the location of the plane with respect to the Oakland station.

"Captain Stead testified that he did not recall whether he attempted to take a bearing on Oakland around 3:03 a. m. The plane had reported, however, that it was 'receiving Oakland strong' and that 'the Oakland range is building up.' Moreover, the plane was not more than 60 miles from Oakland and subsequently at 3:17 a. m. was able to receive the on course signal of the leg of the range clearly enough to follow the leg. It is clear, therefore, that had Captain Stead used his loop on the Oakland range after 3:03 a. m., he would have obtained bearings on Oakland, and it must be concluded that he failed to use this procedure. Such a procedure would have revealed whether the plane was heading to the east or west of the Oakland station or toward a point in close proximity to it.

"At this time also an orientation procedure by the use of the loop antenna was available which would have fixed the distance of the plane from Oakland. Instead of using such a procedure Captain Stead continued his compass course from his estimated position at 3:03 a. m., intersected a leg of the Oakland range, and, after establishing to his satisfaction the identity of the leg, turned, he thought, toward Oakland, still without information as to the plane's distance from Oakland, and having only an estimate of that distance made by him after a flight of approximately one hour and 24 minutes without the aid of radio range or other directional facilities; and

"(b) After intersecting what Captain Stead thought was the northeast leg of the Oakland range, the plane flew for 51 minutes before Captain Stead realized that he must have passed over Oakland. At a ground speed of 100 m. p. h., which would be based upon a head wind of approximately 70 m. p. h., it would have taken only 36 minutes for the plane to reach Oakland from a point 60 miles away in the immediate vicinity of Sacramento.

"When it is considered that any determination Captain Stead made as to the distance of the plane from Oakland when it intersected the Oakland range was made after the plane had flown a compass course for one hour and 24 minutes without usable directional facilities, the fact that he did not realize that the plane had passed over Oakland until approximately 15 minutes after it should have arrived over Oakland from the farthest point which could reasonably have been believed to be the point at which the plane intersected the range constitutes incompetence in handling the flight.

"At any time after 3:17 a. m. when the plane was proceeding along a leg of the Oakland range Captain Stead could have determined whether the plane was east or west of Oakland by taking bearings on the Oakland station through the use of the loop antenna. He should have done so shortly after intersecting a leg of the Oakland range in view of the nature of the flight prior to that time, and certainly should have done so when the plane had proceeded along a leg of the Oakland range for 31 minutes without arriving there. After intersecting a leg of the Oakland range, however, no bearings were taken until after 4:15 a. m., when the plane had already turned (at approximately 4:10 a. m.) and was proceeding from its position at sea towards Oakland, and then Captain Stead did so only after being directed to do so by the company station at Oakland. He was then successful in taking a bearing which indicated that the plane was west of Oakland.

"The record establishes that at 4:10 a. m. the plane was on the northwest leg of the Oakland range and had been flying a 225° compass heading along that leg. In view of the fact that the record also shows that from the time the plane first took up a fixed compass course on a leg of the Oakland range until it turned back at 4:10 a. m. it at all times followed a compass heading of 225°, the absence of a change in compass heading during this period can be explained only on one of the following bases:

"(a) The plane at 3:15 a. m. intersected the northeast leg at a point approximately 30 miles or more east of Oakland but encountered a wind shift from a northerly component to a southerly component at about the time it passed over Oakland; or

"(b) The plane at 3:15 a. m. intersected the northeast leg of the Oakland range at a point only a few miles east of Oakland and passed over Oakland before establishing itself on the on course signal of the northwest leg; or

"(c) The plane at 3:15 a. m. intersected the northwest leg of the Oakland range. Since no wind shift actually occurred at this time in the vicinity of Oakland, it must be concluded that one of the latter two explanations correctly describes what actually occurred to the plane.

"Captain Stead should have realized either of these possibilities and the exercise of a reasonable degree of alertness by him in determining the position of the plane with respect to Oakland would have prevented the long flight westward over the ocean.

"(4) Section 609 of the Civil Aeronautics Act of 1938 provides in part as follows:

'The Authority may \* \* \* revoke, in whole or in part, any such (airman certificate) for any cause which, at the time of revocation, would

justify the Authority in refusing to issue to the holder of such certificate a like certificate. \* \* \*

"The findings made above establish incompetency on the part of Captain Stead in navigating the plane by reason of the fact that he did not exercise a reasonable degree of alertness in safeguarding the flight. Such a finding constitutes proper grounds for revoking his certificate under that section of the Civil Aeronautics Act."

The exceptions to the report of the Vice Chairman filed by Captain Stead are thirty in number. Taken together these exceptions raise three general contentions:

- (1) That the faulty radio reception during the night of November 28 and early morning of November 29 along the course of the flight constituted sufficient justification for respondent Stead's failure to arrive at his destination; and
- (2) That the orientation procedures conducted by Captain Stead between 3:03 a. m. and 4:10 a. m. of November 29 must be regarded as sufficient because nothing occurred in connection with the flight during that time to indicate to Captain Stead that his calculations were in error and that he was not proceeding toward Oakland;
- (3) That because of poor radio reception during the period between 3:03 a. m. and 4:10 a. m. of November 29, Captain Stead could not have taken usable bearings with which to determine his position with relation to Oakland.

(1) It appears from the record that due to atmospheric conditions along the course taken by the flight in question, radio reception was unfavorable. Undoubtedly the conditions under which this flight operated were such as to require the exercise of skill in air navigation and the operation of aircraft. However, despite the poor radio reception and other adverse conditions under which the flight was conducted, it appears that the exercise of sound judgment and the proper prudence and care would have brought the trip to a safe landing. Therefore, poor radio reception cannot be considered as sufficient justification for Captain Stead's failure to land the aircraft safely at its destination.

(2) The various exceptions, all of which bear upon this general contention, will not be discussed in detail because it appears that there is one answer to all of them, an answer which is clearly brought out in, and constitutes the essence of, the report of the Vice Chairman. In his report the Vice Chairman finds that Captain Stead should have realized that he had made an error in his calculations and was not on the northeast leg of the Oakland radio range some time before he actually did so. We believe this finding to be amply supported by the evidence.

The Civil Aeronautics Authority interprets the Act of Congress which it administers as calling for the highest degree of care on the part of those who sit at the controls of the air liners that carry the traveling public. That such a degree of care has with rare exceptions been exercised by our air line pilots is one of the principal reasons for the safety record of the American air carriers which exceeds that of the air carriers of any other nation. Even if it be assumed that Captain Stead, the respondent, had no reason to take warning prior to 4:10 a. m. at which time he descended and turned back toward Oakland, it still must be concluded from all the evidence that he did



not exercise the judgment, skill and prudence that must be required of an air line transport pilot.

For this purpose, it is conceded that from 3:17 a. m. until 4:10 a. m. he had no reason to believe that he was not on the northeast leg of the Oakland radio range. However, more must be required of the respondent under the circumstances surrounding this flight. There were possibilities of error in his calculations of which he should have taken cognizance. These possibilities are set forth in the report of the Vice Chairman. Captain Stead should have conducted such orientation procedures as would eliminate these possibilities of error to the greatest possible extent. From his own testimony it appears that Captain Stead had flown for an hour and twenty-four minutes solely on a compass course without benefit of ground navigation aids. Moreover, during this time he was not possessed of any current information as to the direction and velocity of the winds at his flight altitude. Therefore, when he first heard at approximately 3:03 a. m. the "N" signal of the Oakland range and the twilight "A" signal of the Fresno radio range, his position in the large area within which such signals might be received was extremely uncertain. Under these circumstances the proper performance of his duty required him to determine with the greatest possible accuracy his position with relation to Oakland both as to direction and distance by the standard orientation procedures mentioned in the report of the Vice Chairman.

(3) The contention made by counsel for Captain Stead that usable bearings could not have been taken during this period in order to determine accurately the position of the flight with relation to Oakland does not appear to be sound. The record is clear that from 3:17 a. m. until the landing of the aircraft off Point Reyes at 5:25 a. m., the Oakland radio range was being received with sufficient clarity to follow an on course signal. This being true, no satisfactory reason appears for Captain Stead's alleged inability to take a bearing on that radio range. Moreover, it appears from the evidence that a bearing was taken at approximately 4:16 a. m. which established the position of the flight.

In his brief respondent argues that Vice Chairman Branch should not have considered, in making his findings and recommendations, any failure by the respondent to work an orientation procedure prior to 3:17 a. m. because any evidence of such a failure would be outside of the issue raised in the proceedings. Even if this contention were sound, it would not constitute a reason for altering the conclusion reached by the Vice Chairman. The respondent's failure to work an orientation problem subsequent to 3:17 a. m. is sufficient to justify the finding of incompetence made by the Vice Chairman.

However, it is our conclusion that the contention is not sound. In so arguing the respondent relies upon the specific recitals contained in Order 609-1 as being in the nature of counts in a pleading or indictment and thus exclusive in their operation. These recitals, however, are of an entirely different character and serve an entirely different purpose. In the order they only purport to be specific statements of the reasons which justify the Authority in initiating a proceeding against respondent Stead for the purpose of determining whether his air line transport pilot certificate should be suspended or revoked. They do not constitute an exact description of the issues involved. This is clearly shown by clause (3) of the findings of Order 609-1 which does set forth the scope of the issues involved in the proceeding. It states:

"(3) A public hearing is necessary to enable the Authority to determine whether (a) the public interest requires that said certificate be suspended, in whole or in part, for any further period, and (b) any cause exists which would justify the permanent revocation of such certificate in whole or in part."

Obviously, within the scope of the issues in this proceeding, the Vice Chairman was justified in finding, and the Authority may properly find, that the failure of Captain Stead to work the proper orientation procedures prior to 3:17 a. m. constitutes grounds for revoking his airman certificate.

After careful consideration of the record, Vice Chairman Branch's findings with respect to respondent Stead appear to be amply supported by the evidence and, accordingly, the Authority concurs therein. In accordance with this opinion, appropriate orders will be entered removing the suspension of the certificates of competency of respondents Van Sciever and Showalter and revoking the certificate of competency of respondent Stead.

The following members of the Authority concurred in the above opinion: HINCKLEY, RYAN, MASON.

Vice Chairman BRANCH did not participate in the decision in this case.

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THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held at its office in Washington, D. C.,  
on the 28th day of April, 1939

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205(a) and 401(f) thereof, and finding that its action is necessary and appropriate to carry out the provisions of the Act, and is required by the public interest, the Civil Aeronautics Authority hereby amends Regulation 401-F-1 to read as follows:

**Regulation 401-F-1**  
(as amended on April 28, 1939)

**Terms, Conditions and Limitations  
of Certificates of Public Convenience  
and Necessity Issued Under  
Section 401 of the Act.**

Unless the order authorizing the issuance of a particular certificate shall otherwise provide, there shall be attached to the exercise of the privileges granted by each certificate of public convenience and necessity issued pursuant to section 401 of the Civil Aeronautics Act of 1938, the terms, conditions, and limitations hereinafter set forth, and such other terms, conditions and limitations as may from time to time be prescribed by the Authority.

I.

If at any time the holder of the certificate desires to render a scheduled non-stop service between any two points not consecutively named in the certificate, and if non-stop service between such points is not then regularly scheduled by such holder, such holder shall file with the Authority written

notice of its intention to inaugurate such service. Such notice shall be filed at least twenty days prior to inaugurating such service, shall be conspicuously entitled "Notice of Non-Stop Service" and shall fully describe such service. At the time such notice is filed with the Authority a copy thereof shall be served by such holder upon the Postmaster General and upon such other persons as the Authority may require: *Provided*, That subject to the provisions of section 405(e) of the Act, non-stop service may be inaugurated between any two points at any time without the filing of the notice herein prescribed if, during the twelve months preceding such inauguration, non-stop service was regularly scheduled by such holder between such points during a period of at least forty-five days.

Such non-stop service may be inaugurated upon the expiration of twenty days after the filing of such notice unless (1) the Authority notifies such holder within said twenty-day period that a direct straight-line course between the points between which such service is to be operated appears to involve a substantial departure from the shortest course between such points as determined by the route described in the certificate, in which event such service shall not be inaugurated unless and until the Authority finds, upon application of the holder and after notice and public hearing, that the public interest would not be adversely affected by such service on account of such substantial departure; or (2) such service involves a schedule designated for the transportation of mail and the inauguration of such service on such date would be prohibited pursuant to the provisions of section 405(e) of the Act, in which event the inauguration of such service shall be subject to said section.

The Authority may, subject to the provisions of section 405(e) of the Act, permit non-stop service to be inaugurated at any time after the filing of the "Notice of Non-Stop Service" herein prescribed whenever the circumstances warrant such action.

The holder of a certificate issued pursuant to section 401(e)(1) of the Act may, subject to the provisions of section 405(e) of the Act, continue to render any non-stop service regularly scheduled on the date of issuance of such certificate, although such non-stop service was not regularly scheduled by the holder on August 22, 1938, if the holder files a "Notice of Non-Stop Service" with respect to such service with the Authority within thirty days after such date of issuance: *Provided*, That if a direct straight-line course between the points between which such service is operated appears to involve a substantial departure from the shortest course between such points as determined by the route described in the certificate, and if the Authority shall, after notice and public hearing instituted within ninety days after such date of issuance, find that the public interest would be adversely affected by such service on account of such substantial departure, such service shall thereupon be discontinued: *Provided further*, That subject to the provisions of section 405(e) of the Act, non-stop service may be continued between any two points without the filing of the notice herein prescribed if, during the twelve months preceding the date of issuance of the certificate, non-stop service was regularly scheduled by the holder of the certificate between such points during a period of at least forty-five days.

## II.

If the holder of the certificate desires to serve regularly a point through an airport not then regularly used by such holder, such holder shall file

with the Authority written notice of its intention so to do. Such notice shall be filed at least thirty days prior to inaugurating the use of such airport. Such notice shall be conspicuously entitled "Airport Notice," shall clearly describe such airport and its location, and shall state the reasons the holder deems the use of such airport to be desirable. At the time such notice is filed with the Authority, a copy thereof shall be served by the holder upon the Postmaster General and upon such other persons as the Authority may require.

The use of any such airport may be inaugurated upon the expiration of thirty days after the filing of such notice, unless within said thirty-day period the Authority shall serve upon the holder an order directing such holder to show cause why such use should not be disapproved: *Provided*, That the Authority may permit the use of any airport prior to the expiration of such thirty-day period whenever the circumstances warrant such action. Upon service of such order, such use shall not thereafter be inaugurated, except as may be expressly permitted by such order, unless and until the Authority finds, after notice and public hearing, that the public interest would not be adversely affected by such use.

In no event, however, shall the holder use the provisions of this Article as authority to receive regularly passengers or property at one airport and discharge the same at any other airport serving the same point.

### III.

It shall be a condition upon the holding of the certificate that any intentional contravention in fact by the holder of the terms of Title IV of the Act or of the orders, rules, or regulations issued thereunder or of the terms, conditions, and limitations attached to the exercise of the privileges granted by the certificate, even though occurring without the territorial limits of the United States, shall, except to the extent that such contravention in fact shall be necessitated by an obligation, duty, or liability imposed by a foreign country, be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 401(h) of the Act.

By the Authority:  
(SEAL)

PAUL J. FRIZZELL,  
Secretary.

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THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held in the City of Washington, D. C.,  
on the 17th day of May, 1939

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205(a) and 401 (f) thereof, and finding that its action is necessary and appropriate to carry out the provisions of the Act and is required by the public interest, the Civil Aeronautics Authority hereby makes and promulgates the following regulation, subject to the approval of the President of the United States:

**Regulation 401-F-2**  
(superseding Regulation 401-F-1 with respect to certificates for foreign air transportation)

**Terms, Conditions and Limitations  
of Certificates of Public Convenience  
and Necessity Issued Under  
Section 401 of the Act Authorizing  
Foreign Air Transportation.**

Unless the order authorizing the issuance of a particular certificate shall otherwise provide, there shall be attached to the exercise of the privileges granted by each certificate of public convenience and necessity authorizing an air carrier to engage in foreign air transportation issued pursuant to section 401 of the Civil Aeronautics Act of 1938, the terms, conditions and limitations hereinafter set forth and such other terms, conditions and limitations as may from time to time be prescribed by the Authority and approved by the President of the United States.

I.

If at any time the holder of a certificate desires to render a scheduled non-stop service omitting one or more of the intermediate points named in the certificate, and if such non-stop service is not then regularly scheduled by such holder, such holder shall file with the Authority written notice of its intention to inaugurate such service. Such notice shall be filed at least 20 days prior to inaugurating such service, shall be conspicuously entitled "Notice of Non-Stop Service in Foreign Air Transportation" and shall fully describe such service. At the time such notice is filed with the Authority a copy thereof shall be served by such holder upon the Postmaster General and upon such other persons as the Authority may require: *Provided*, That, subject to the provisions of section 405(e) of the Act, non-stop service may be inaugurated between any two points at any time without the filing of the notice herein prescribed, if, during the twelve months preceding such inauguration, non-stop service was regularly scheduled by such holder between such points during a period of at least 45 days.

Such non-stop service may be inaugurated upon the expiration of 20 days after the filing of such notice unless (1) the Authority notifies such holder within said 20-day period that a direct, straight-line course between the points between which such service is to be operated appears to involve a substantial departure from the shortest course between such points as determined by the route described in the certificate, in which event such service shall not be inaugurated unless and until the Authority finds, upon application of the holder and after notice and public hearing, that the public interest would not be adversely affected by such service on account of such substantial departure; or (2) such service involves a schedule designated for the transportation of mail and the inauguration of such service on such day would be prohibited pursuant to the provisions of section 405(e) of the Act, in which event the inauguration of such service shall be subject also to said section. The Authority may, subject to the provisions of section 405(e) of the Act, permit non-stop service to be inaugurated at any time after the filing of the "Notice of Non-Stop Service in Foreign Air Transportation" herein prescribed whenever the circumstances warrant such action.

The holder of a certificate issued pursuant to section 401(e)(1) of the Act may, subject to the provisions of section 405(e) of the Act, continue

to render any non-stop service regularly scheduled on the date of issuance of such certificate, although such non-stop service was not regularly scheduled by the holder on August 22, 1938, if the holder files a "Notice of Non-Stop Service in Foreign Air Transportation" with respect to such service with the Authority within thirty days after such date of issuance: *Provided*, That if a direct, straight-line course between the points between which such service is operated appears to involve a substantial departure from the shortest course between such points as determined by the route described in the certificate, and if the Authority shall, after notice and public hearing, instituted within 90 days after such date of issuance, find that the public interest would be adversely affected by such service on account of such substantial departure, such service shall thereupon be discontinued: *Provided Further*, That, subject to the provisions of section 405(e) of the Act, non-stop service may be continued between any two points without the filing of the notice herein prescribed if, during the twelve months preceding the date of issuance of the certificate, non-stop service was regularly scheduled by the holder of the certificate between such points during a period of at least forty-five days.

## II.

If at any time the holder of a certificate is required, in order to comply with any obligation, duty or liability imposed by any foreign country (other than any obligation, duty or liability arising out of a contract or other agreement heretofore or hereafter entered into between an air carrier or any officer or representative thereof and any foreign country if such contract or agreement has been disapproved by the Authority as being contrary to the public interest).

- (1) to inaugurate scheduled non-stop service omitting one or more of the intermediate points named in the certificate and situated in one or more foreign countries; or
- (2) to add a stop at a point not named in the certificate and situated in such foreign country; or
- (3) to change the terminal point in such foreign country;

such holder shall file with the Authority written notice of such requirement. Such notice shall be filed within 20 days after the air carrier shall have been advised of such requirement; shall be conspicuously entitled "Notice of Non-Stop Service Required by Foreign Country," "Notice of Additional Stop Required by Foreign Country," or "Notice of Terminal Change Required by Foreign Country," as the case may be, and shall fully set forth the facts and circumstances relating to such requirement. At the time such notice is filed with the Authority a copy thereof shall be served by the holder upon the Postmaster General and upon such other persons as the Authority may require. Such service may be inaugurated immediately upon the filing of such notice and may be continued unless and until the Authority, after notice and public hearing, shall disapprove such service as being contrary to the public interest or unless and until the Authority shall find, after investigation, that such requirement of the foreign country is not in effect.

## III.

If the holder of a certificate desires to serve regularly a point through any airport not then regularly used by such holder, such holder shall file

with the Authority written notice of its intention so to do. Such notice shall be filed at least 30 days prior to inaugurating the use of such airport. Such notice shall be conspicuously entitled "Airport Notice—Foreign Air Transportation," shall clearly describe such airport and its location, and shall state the reasons the holder deems the use of such airport to be desirable. At the time such notice is filed with the Authority a copy thereof shall be served by the holder upon the Postmaster General and upon such other persons as the Authority may require. Subject to the provisions of section 405(e), the use of any such airport may be inaugurated upon the expiration of thirty days after the filing of such notice, unless within said thirty-day period the Authority shall serve upon the holder an order directing such holder to show cause why such use should not be disapproved. *Provided*, That, subject to the provisions of section 405(e) of the Act, the Authority may permit the use of any airport prior to the expiration of such thirty-day period whenever the circumstances warrant such action. Upon service of such order such use shall not thereafter be inaugurated except as may be expressly permitted by such order unless and until the Authority finds, after notice and public hearing, that the public interest would not be adversely affected by such use.

In no event, however, shall the holder use the provisions of the foregoing paragraph of this Article as authority to receive regularly passengers or property at one airport and discharge the same at any other airport serving the same point.

If at any time the holder of a certificate is required, in order to comply with any obligation, duty or liability imposed by any foreign country (other than any obligation, duty, or liability arising out of a contract or other agreement heretofore or hereafter entered into between an air carrier or any officer or representative thereof and any foreign country, if such contract or agreement has been disapproved by the Authority as being contrary to the public interest) to serve regularly a point or points in such foreign country through any airport not then regularly used by such holder, such holder shall file with the Authority written notice of such requirement. Such notice shall be filed within twenty days after the air carrier shall have been advised of such requirement; shall be conspicuously entitled "Airport Notice—Foreign Air Transportation—Change Required by Foreign Country"; and shall fully set forth the facts and circumstances relating to such requirement. The use of such airport may be inaugurated immediately upon the filing of such notice and may be continued unless and until the Authority, after notice and public hearing, shall disapprove the use of such airport as being contrary to the public interest or unless and until the Authority shall find, after investigation, that such requirement of the foreign country is not in effect.

#### IV.

It shall be a condition upon the holding of a certificate that any intentional contravention in fact by the holder of the terms of Title IV of the Act or of the orders, rules, or regulations issued thereunder or of the terms, conditions, and limitations attached to the exercise of the privileges granted by the certificate, even though occurring without the territorial limits of the United States, shall, except to the extent that such contravention in fact shall be necessitated by an obligation, duty, or liability imposed by a foreign country, be a failure to comply with the terms, conditions, and

limitations of the certificate within the meaning of section 401(b) of the Act.

V.

This regulation shall apply only to certificates of public convenience and necessity authorizing an air carrier to engage in foreign air transportation, and to this extent it supersedes the Authority's Regulation 401-F-1 as amended. Unless otherwise expressly provided therein, future amendments to Regulation 401-F-1 shall not affect this regulation.

VI.

This regulation shall take effect from the date of its approval by the President of the United States.

By the Authority.

(SEAL)

/s/ PAUL J. FRIZZELL,  
Secretary.

The White House,

May 18, 1939.

Approved:

/s/ FRANKLIN D. ROOSEVELT.

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THE UNITED STATES OF AMERICA  
CIVIL AERONAUTICS AUTHORITY  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Authority  
held at its office in Washington, D. C.,  
on the 19th day of May, 1939

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205(a) and 401(f) thereof, and finding that its action is necessary and appropriate to carry out the provisions of the Act, and is required by the public interest, the Civil Aeronautics Authority hereby makes and promulgates the following regulation:

**Regulation 401-F-3**

**Serving of "Notice of Non-Stop Service" or "Airport Notice."**

(a) A copy of each "Notice of Non-Stop Service" filed with the Authority pursuant to Regulation 401-F-1, as amended, by the holder of a certificate of public convenience and necessity, shall be served upon the following:

1. The Postmaster General, marked for the attention of the Division of Air Mail Service;
2. Each scheduled air carrier which regularly renders service to or from any point named in such certificate;
3. The chief executive of each point between which the proposed non-stop service is to be operated, as well as the chief executive of each point proposed to be omitted by reason of the non-stop service;



4. The chief executive of the state or states in which are situated the points between which the proposed non-stop service is to be operated, as well as the chief executive of the state or states in which are situated the points proposed to be omitted by reason of the non-stop service, or, if there exists in such state a commission or other agency of the state having jurisdiction of transportation by air, then upon such commission or agency; and

5. Such other persons as the Authority may specially designate in a particular case.

(b) A copy of each "Airport Notice" filed with the Authority, pursuant to Regulation 401-F-1, as amended, by the holder of a certificate of public convenience and necessity shall be served upon each of the following:

1. The Postmaster General, marked for the attention of the Division of Air Mail Service;

2. Each scheduled air carrier which regularly renders service to or from the point intended to be served through the proposed airport;

3. The chief executive of the point intended to be served through the proposed airport;

4. The chief executive of the city or other political subdivision in which is situated the airport theretofore regularly used;

5. The chief executive of the city or other political subdivision in which the proposed airport is situated;

6. The chief executive of the state in which is situated the point intended to be served through the proposed airport, or, if there exists in such state a commission or other agency of the state having jurisdiction of transportation by air, then upon such commission or agency;

7. The chief executive of the state in which is situated the airport theretofore regularly used, or, if there exists in such state a commission or other agency of the state having jurisdiction of transportation by air, then upon such commission or agency;

8. The chief executive of the state in which the proposed airport is situated, or, if there exists in such state a commission or other agency of the state having jurisdiction of transportation by air, then upon such commission or agency; and

9. Such other persons as the Authority may specially designate in a particular case.

(c) Service of a copy of a "Notice of Non-Stop Service" or an "Airport Notice" upon any person hereunder may be made by personal service, or by registered mail addressed to such person. Whenever service is made by registered mail, the date of mailing shall be considered as the time when service is made. Each copy of Notice served hereunder shall be accompanied by a letter of transmittal stating that such service is being made pursuant to Regulations 401-F-1, as amended, and 401-F-3 of the Authority.

(d) Ten copies of each "Notice of Non-Stop Service" or "Airport Notice" shall be filed with the Authority, and each such copy shall be accompanied by a statement to the effect that the air carrier has served copies there-

of upon each person required to be served hereunder. Such statement shall include the names and addresses of the persons upon whom a copy of such Notice was served.

(e) This regulation shall become effective on and after June 1, 1939.

By the Authority:

(SEAL)

PAUL J. FRIZZELL,  
Secretary.

**INTERSTATE COMMERCE COMMISSION: AIR MAIL  
DOCKET NO. 29**

**Air Mail Rates for Route No. 29 Operated by  
Continental Air Lines, Inc.<sup>1</sup>**

*Submitted September 26, 1938.*

*Decided October 31, 1938.*

Rates of compensation for the transportation of air mail by airplane and the service connected therewith over air mail route No. 29, found not to have been fair and reasonable from and after October 6, 1937. Fair and reasonable rates determined and published.

*Wm. I. Denning and John W. Cross for Continental Air Lines, Inc.  
Walter E. Kelly, Acting Solicitor, and William C. O'Brien for the Postmaster General.*

**REPORT OF THE COMMISSION**

**DIVISION 3, COMMISSIONERS McMANAMY, MAHAFFIE, AND MILLER**

**By DIVISION 3:**

No exceptions were filed to the report proposed by the examiner. Our conclusions agree with those recommended by him.

The Civil Aeronautics Act of 1938, approved June 23, 1938, repeals the Air Mail Act of 1934 (except certain provisions), but provides that proceedings pending before the Interstate Commerce Commission for the determination of rates for the transportation of air mail by aircraft on the date of the enactment of the Civil Aeronautics Act of 1938 "shall be continued, orders therein issued, appeals therefrom taken, and payments made by the Postmaster General pursuant to such orders, as if this Act had not been enacted."

In a petition filed October 6, 1937, Continental Air Lines, Inc., hereinafter called the carrier, prayed for an increase in the rates of compensation paid for the transportation of air mail over route No. 29 as of the date of filing the petition. The Postmaster General's answer denied the necessity for any increase, and alleged the Commission had no power to grant any increase except from the date of the order entered therein. The petition and motion of the Postmaster General for examination and audit of the carrier's accounts by us prior to the assignment of this proceeding for hearing was denied in accordance with previous decisions. *Air Mail Rates for Route No. 31*, 214 I. C. C. 387, *Air Mail Rates for Route No. 24*, 222 I. C. C. 749. On March 29, 1938, prior to the hearing, the examiner's tentative report in

1. This proceeding also embraces Air Mail Docket No. 41, *In Re Rates For Continental Air Lines, Inc.*

Air Mail Docket No. 40, *Varney Air Transport, Inc.-Varney Speed Lines, Inc., Rate Review, 1934-1937*, under section 6(b) of the Air Mail Act of 1934, as amended, was served, in which it was tentatively found that no unreasonable profit had resulted or accrued to Varney Speed Lines, Inc., a predecessor corporation of the carrier, from the rate of compensation being paid for the transportation of air mail and the service connected therewith over the route under consideration from July 15, 1934 to January 31, 1935, but unreasonable profit had accrued to Varney Air Transport, Inc., otherwise designated herein as Transport, the operator of the route and successor of Speed Lines for the period from February 1, 1935 to March 31, 1937. On March 26, 1938, the Commission instituted a proceeding on its own motion to determine what change, if any, should be made in the rates of compensation being paid for the transportation of mail over the route under consideration. A consolidated hearing has been held in all dockets involving the carrier and its predecessors. With the enactment of the Civil Aeronautics Act of 1938, Air Mail Docket No. 40, *Varney Air Transport, Inc.-Varney Speed Lines, Inc., Rate Review, 1934-1937* was dismissed on September 2, 1938.

*Route and operations.* The air mail route here under consideration originally extended from Pueblo, Colo., via Trinidad, Colo., and Santa Fe and Albuquerque, N. Mex., to El Paso, Texas, a distance of approximately 542 miles over which several courses were designated by the Department of Commerce. Effective July 1, 1937, the carrier, through its predecessor, purchased from Wyoming Air Service, Inc., with the approval of the Postmaster General, that part of air mail route No. 17 between Pueblo and Denver, Colo., a distance of 104 miles. On the same date, under order of the Postmaster General, this portion of route No. 17 became a part of route No. 29, and operations by Wyoming ceased. The route, which is without airway aids, traverses rugged terrain and parallels the Continental Divide and the Sangre de Christo Mountain range, with no emergency landing fields for the equipment now being used. Most of the airports are unimproved and lie at an elevation of about one mile. At the time of the hearing, operations into the airports at Trinidad, Colo., and Las Vegas, N. Mex., with large equipment were prohibited by the Department of Commerce.

The contract for the transportation of mail between Pueblo and El Paso was awarded on June 12, 1934, for a period of 90 days to Varney Speed Lines, Inc., a California corporation then operating a passenger and express transportation service between San Francisco and Los Angeles, Calif. On July 15, 1934, that company began operations over the route which was designated as its southwest division, and records therefor were separately maintained. The contract was subsequently extended for a total of 9 months and, under the provisions of section 6(c) of the Air Mail Act of 1934, as amended, was continued indefinitely. Prior to March 1, 1935, compensation was at the contract rate of 24 cents per airplane mile for 15 cubic feet of space, equivalent to 135 pounds of mail. On that date, in accordance with the amendment of August 14, 1935, to section 6(c) of the Act, the rate fixed in *Air Mail Compensation*, 206 I. C. C. 675, was made applicable as the rate of payment. That rate was 29 cents per mile for an average monthly mail load per mile of 300 pounds or less for a base mileage of 32,000 miles. The rate of compensation over route No. 17 at the time part thereof was acquired by the carrier was

also 29 cents per airplane mile for an average mail load per mile of 300 pounds or less, with a base mileage of 25,000 miles.

Scheduled mail passenger service originally consisted of one round trip daily between Pueblo and El Paso in mail-pay service which on July 1, 1937, was extended to Denver. The average monthly revenue mileage of 32,000 miles previously flown was then increased to approximately 38,600 miles. On February 15, 1938, the Postmaster General authorized, and several days later the carrier began operating, a round-trip mail-pay schedule between Denver and Albuquerque, which increased the average monthly revenue mileage to about 57,000 miles. The schedules in effect as of this date were in operation at the close of the hearing. Mail has not been carried on a weight-credit basis at any time and no mileage has been flown in off-line service or as nonmail schedules. The carrier has no direct competition from other air lines. A limited number of passengers are delivered to and received from the transcontinental lines at Denver, Albuquerque, and El Paso. From July 1, 1937 to June 30, 1938, the carrier scheduled approximately 575,345 miles of mail-passenger service of which about 93 per cent was flown.<sup>2</sup> During that period about 30 per cent of the seat-miles operated were used by revenue passengers. Prior to July, 1937, when the mileage scheduled and flown was considerably less, the revenue-load factor was somewhat higher because of the lower capacity of the airplanes used. The mail load has averaged approximately 38 pounds per mail mile.

*Corporate history and capitalization.* Varney Speed Lines, Inc., the original contractor on this route, was incorporated in the State of California with an authorized capital stock of 200,000 shares with a par value of \$1 per share. The records reviewed did not indicate the amount of stock issued or the name of more than one stockholder. Varney Air Transport, Inc., was incorporated in Nevada on December 17, 1934, with an authorized capital stock of 500 shares with a par value of \$100 per share of which 250 shares were issued and outstanding in the name of a single stockholder. On February 1, 1935, this corporation acquired the operating property of Varney Speed Lines, Inc., together with the mail contract, the transfer of which was approved by the Postmaster General. During April, 1936, the outstanding stock was distributed among five holders, no one of whom had voting control. On April 5, 1937, a cash dividend of \$50 per share was paid on the outstanding stock to stockholders of record on April 2, 1937. In April, 1937, 125 shares of unissued stock were sold for \$75,000 cash, or \$600 per share, while shortly thereafter another five shares were sold for \$3,000 cash. In June, 1937, the name of the corporation was changed to Continental Air Lines, Inc.

*Investment and physical property.* Operations over the route were begun by Speed Lines with three single-engine four-passenger Lockheed Vega monoplanes and one spare engine which were from 4 to 6 years old when acquired. Prior to the filing of the petition two more second-hand Lockheed Vegas and four used engines were acquired while retirements consisted of four

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2. From July 15, 1934 to January 31, 1935, Speed Lines flew 226,482 revenue miles and 2,332 nonrevenue miles; Transport flew 154,160 revenue miles and 4,273 nonrevenue miles from February 1, 1935 to June 30, 1935, and 387,969 revenue miles and 6,118 nonrevenue miles from July 1, 1935 to June 30, 1936; Transport and Continental flew 374,700 revenue miles and 36,808 nonrevenue miles from July 1, 1936 to June 30, 1937; and Continental flew 538,576 revenue miles and 23,563 nonrevenue miles during the following fiscal year ended June 30, 1938.

airplanes and five engines. To meet requirements of the Department of Commerce, effective in June, 1937, passenger operations were begun with two new twin-motored six-passenger Lockheed Model 12-A airplanes, and a major installation of airway and aircraft communication equipment was made. An additional Lockheed 12-A was acquired later. These planes were acquired at a cost of approximately \$50,000 each, fully equipped. A second-hand Stearman also was purchased, and several types of small airplanes were leased from time to time for emergency purposes.

Neither the carrier nor any of its predecessors owns or owned any real property, but leases or leased the office, airport, and terminal facilities of municipalities or other air-transport companies. Comparative balance sheets are shown in the margin.<sup>3</sup>

The miscellaneous physical property, valued at \$35,000, represents the purchase price of the route extension into Denver. Current and accrued liabilities include outstanding notes aggregating \$112,676, of which \$11,734 is secured by a vendor's lien on one of the Lockheed airplanes; \$75,000 is secured by a stockholder's lien on the other two airplanes and two spare motors; and the remainder of the outstanding notes represents unsecured loans made by stockholders to the carrier. The unearned paid-in surplus of \$65,000 was the premium received from the sale of stock.

*Operating revenues and expenses.* Recorded operating revenues per airplane-mile other than from mail service show a steady increase.<sup>4</sup> During

3. COMPARATIVE BALANCE SHEETS					
<i>Asset Side</i>	July 15, 1934	Feb. 1, 1935	May 1, 1936	June 30, 1937	Mar. 31, 1938
Equipment .....	\$19,708	\$21,393	\$33,181	\$129,966	\$176,843
Current and accrued assets.....	1,919	17,939	36,052	25,388	43,307
Deferred debits .....	—	2,655	1,985	2,430	7,017
Miscellaneous physical property..	—	—	—	35,000	35,000
<b>Total assets .....</b>	<b>\$21,627</b>	<b>\$41,987</b>	<b>\$71,216</b>	<b>\$192,784</b>	<b>\$262,167*</b>
<i>Liability Side</i>					
Capital stock .....	—	\$25,000	\$25,000	\$ 37,500	\$ 38,000
Advances—(Account 535) .....	\$21,627	—	—	—	—
Current and accrued liabilities..	—	434	1,738	53,443	117,557
Operating reserves .....	—	3,547	8,396	—	4,690
Depreciation reserves .....	—	10,120	14,965	11,510	35,837
Profit and loss credit balance....	—	2,886	21,117	27,831	—
Unearned paid-in surplus.....	—	—	—	62,500	65,000
Unappropriated earned surplus...	—	—	—	—	1,075
<b>Total liabilities .....</b>	<b>\$21,627</b>	<b>\$41,987</b>	<b>\$71,216</b>	<b>\$192,784</b>	<b>\$262,168</b>

\* Use of round numbers causes discrepancy of one dollar.

4. OPERATING REVENUES (Cents per airplane mile)			
<i>Period</i>	<i>Mail</i>	<i>Passenger, Express, Etc.</i>	<i>All Service</i>
July 15, 1934-January 31, 1935.....	22.69	2.37	25.06
(Speed Lines)			
February 1, 1935-June 30, 1935.....	23.48*	2.62	26.10
(Transport)			
July 1, 1935-June 30, 1936.....	28.55*	3.35	31.90
(Transport)			
July 1, 1936-June 30, 1937.....	26.54	4.01	30.55
(Transport & Continental)			
July 1, 1937-March 31, 1938.....	27.91	8.72	36.63
(Continental)			
July 1, 1937-June 30, 1938†.....	27.78	8.38	36.16
(Continental)			

\* Back pay amounting to 3.94 cents per mile for the earlier period and 4.98 cents per mile for the July 1, 1935 to June 30, 1936, period not included.

† Including revenues as shown in the carrier's report to the Postmaster General for April, May, and June, 1938, stipulated into the record.

the first 7 months of service, Speed lines' revenues were about 25.06 cents per airplane mile in revenue and nonrevenue service. During the July, 1937-June, 1938, period, the total revenue was 36.16 cents per mile, the greater part of the increase being in passenger revenue. This was due in part to an intensive advertising campaign about the time of the installation of the new equipment and extension of the route into Denver.

When the single-motor Lockheed Vegas were used exclusively, operating costs averaged from 22.70 cents to 26.30 cents per mile in all service.<sup>5</sup> After the installation of the new equipment, operating costs rose to 40 cents per airplane mile, an increase of about 14 cents per mile. Most of the increase occurred in direct aircraft operating expense which, during the earlier periods, ranged from 13.48 cents to 16.58 cents per mile. The new equipment, which requires a copilot, fuel and oil expense of an additional engine, and added depreciation charges, increased direct flying costs to approximately 26 cents per mile. The marked increase in direct aircraft operating expense for the fiscal year ended June 30, 1937, when the new equipment was flown 36,912 nonrevenue miles, was due to the requirements of the Department of Commerce for testing airplanes before they were placed in revenue service,<sup>6</sup> aggregating 50 hours, and for the training of pilots.

Prior to June, 1937, most of the general officers were active pilots and, except for an occasional bonus of moderate proportions for their services as officers, were paid as pilots in accordance with the National Labor Board scale. During this period general and administrative costs averaged around 2.11 cents per airplane mile, but when this practice was discontinued and salaried officers were appointed such expense arose to a maximum of 4.80 cents during the fiscal year ended June 30, 1938. For the period ended June 30, 1936, traffic and advertising costs averaged .51 cent per airplane mile, but upon the installation of the new equipment and removal of the base of operations from El Paso to Denver, these costs for the ensuing fiscal years fluctuated from .55 cent to 2.23 cents. Indirect flying costs involving operations and maintenance of ground facilities, including depreciation charges thereon, for the fiscal year ended June 30, 1937, were approximately 5.50 cents per airplane mile, increasing to 6.94 cents for the following year.

Neither of the predecessor companies followed uniform rules in the accrual of a reserve for depreciation of equipment. Varying service lives

5. OPERATING EXPENSES (Cents per airplane mile)			
Period	Total Operating Expense	Direct Air- craft Oper- ating Expense	Depreciation Exclusive of Retirements
July 15, 1934-January 31, 1935... (Speed Lines)	22.70	15.01	4.62
February 1, 1935-June 30, 1935... (Transport)	26.30	16.58	4.99
July 1, 1935-June 30, 1936..... (Transport)	24.93	13.48	2.58
July 1, 1936-June 30, 1937..... (Transport & Continental)	28.85	20.29*	2.06
July 1, 1937-March 31, 1938..... (Continental)	41.80	26.90	6.91
July 1, 1937-June 30, 1938†..... (Continental)	39.20	25.23	6.48

\* Includes cost of testing new equipment and qualifying pilots.

† Including operating expenses as shown in the carrier's reports to the Postmaster General for April, May, and June, 1938, stipulated into the record.

6. Under the accounting classification, this expense averaging less than one cent per airplane mile should have been charged to the equipment investment amount.

in terms of years or months were assigned to the Lockheed Vegas, and the resulting rates applied either to an actual or estimated cost or book value. The equipment was originally depreciated to zero, but later each unit was given a residual value and depreciated accordingly. The practice in connection with the engines used in these airplanes was substantially the same, except that service lives averaged about one year and occasionally, when turned in on the purchase of other engines, brought more than the residual value or remaining book value. The full measure of depreciation had accrued on some planes and engines prior to May, 1936, although they remained in service long after that date. No further depreciation was being accrued on the single Lockheed Vega owned by the carrier on April 31, 1938, although it was being held for emergency use, while the Stearman, with a residual value of \$1,000 was being depreciated about 25 per cent annually. Monthly accruals were being made on the Lockheed Model 12-A's on the basis of a 4-year service life, with a residual value of \$5,000. The experience of this carrier or other air transport companies offers no index to the proper service life to use for these Model 12-A airplanes, as few are in use. Other companies have used a 4-year service life for a larger all-metal airplane similar in design and produced by the same manufacturer. *Air Mail Compensation*, 216 I. C. 166. In *Air Mail Rates for Braniff Airways, Incorporated*, 226 I. C. C. 752, it was found that Lockheed Electras should be regarded for purposes of section 6 of the Air Mail Act of 1934 as having a service life of at least 4 years. The Wasp Jr., engines used on the Model 12-A's were being depreciated on the basis of 5,000 service hours with a residual value of \$350. Propellers have been given a life of 1,500 hours, while aircraft communication equipment carried but 2 years. A witness for the carrier testified that this short service life for radio equipment is justified because turbulent flying conditions necessitate frequent overhauls and also provides for the replacement of the apparatus with improved types in order to overcome completely the difficulties now experienced in connection with radio reception common to all mountainous territory.

*Income, and profit and loss.* In the annual reports to the Postmaster General for the year ended June 30, 1935, it is shown that the net revenue from operations of Speed Lines for the period it operated was \$5,410, which, when combined with the deficit of \$306 incurred by Transport, amounted to a net revenue from operations of \$4,904. For the fiscal year ended June 30, 1936, the net revenue from operations was \$27,462 and for the fiscal year following there was a deficit of \$359. For the year ended June 30, 1938, the operating deficit was approximately \$17,061.<sup>7</sup> The carrier estimated the operating deficit for July-December, 1938, period would be approximately \$3,647.

Evidence offered by the Postmaster General concerning the carrier's net revenue showed the necessity for making certain adjustments, information concerning which was not available at the time the accounting was first performed. The adjustments for the fiscal year ended June 30, 1935, included delayed mail pay which was recorded originally in surplus account instead of operating revenue account; portion of the excess of insurance

7. The net revenue from operations for the fiscal years ended June 30, 1935, 1936, and 1937, as shown by the carrier, averaged 1.27 cents, 6.97 cents, and 1.70 cents per airplane mile, respectively. The deficit as of June 30, 1938, was 3.03 cents per mile.

recovery above book value on airplanes and engines destroyed in accidents which was also entered in surplus account instead of offsetting depreciation already charged in operating expenses; the cost of incorporating Transport which were originally accounted for as operating expense, instead of being handled as a corporate charge, and numerous miscellaneous adjustments of a minor nature, all of which, when taken into consideration, result in an adjusted net income from operations for this period of \$17,204. Other adjustments in operating expenses for the fiscal year ended June 30, 1937, developed a net income from operations of \$21,679, while net income for the same period amounted to \$10,550. The net deficit from operations for July, August, and September, 1937, of \$2,539 shown by the carrier, was increased by the adjustments of the Postmaster General to \$2,925.<sup>8</sup>

Operating statistics pertaining to the period before the acquisition of the new equipment do not offer a reliable index to the cost of operations at present or since the date of the carrier's petition in this case. The evidence of the Postmaster General concerning the deficit incurred during the first 3 months of the fiscal year beginning July 1, 1937, amounting to more than 2 cents per airplane mile substantially agrees with what the carrier shows. The carrier's evidence showing operations for the fiscal year ended June 30, 1938, indicates the deficit was approximately 3.03 cents per mile.

*Conclusions.* The carrier's petition seeks fair and reasonable rates of compensation for the transportation of the mail and the services connected therewith, and on brief the carrier urges the reasonableness of a rate of 33½ cents per airplane mile with a base mileage of 78,600 miles monthly.

The record is persuasive that the operation of the new equipment has materially increased operating expenses and has resulted in losses for the fiscal year ended June 30, 1938. The carrier's evidence extends over a year's operations with such equipment, while that of the Postmaster General covers only 3 months. The latter shows even greater losses for the 3 months than are shown by the carrier. Although the trend of passenger traffic is slowly rising, the rate of increase is not sufficient to warrant the conclusion that revenues therefrom will overcome operating deficits in the near future. No losses can be attributed to nonmail schedules or off-line operations. The carrier has undertaken active steps not only to hold the present volume of traffic, but to acquire as much more as the limited population of the territory served will permit. Because of flying conditions, and in accordance with Department of Commerce requirements, the carrier is compelled to use airplanes with a limited seating capacity, which restricts passenger revenues in times of heavy demand. The record indicates that upon completion of airway aids and the enlargement of present emergency landing fields, one of the present daylight flights will probably be changed to a night schedule to connect with transcontinental schedules at Denver and Albuquerque. Inasmuch as present operations require the constant use of two airplanes for operation of the schedule between Denver and El Paso, and the constant use of a third airplane for round-trip operation of the schedule between Denver and Albuquerque, the conversion of the latter to a night schedule will require the

8. After making these adjustments, the net revenue from operations for each of the fiscal years ended June 30, 1935, 1936, and 1937 was 4.44 cents, 5.50 cents, and 2.56 cents per airplane mile, respectively. For July, August, and September, 1937, the last period audited by the Postmaster General and when the volume of passenger traffic was most favorable, the deficit was 2.36 cents per mile.



purchase of at least one additional airplane. Operating costs will thus be increased by the additional depreciation and direct flying costs of a fourth airplane, and also by added ground expenses resulting from the night operation.

Taking into consideration the volume of mail and the distance carried, the losses suffered by the carrier during the past year or more, the potential development of passenger and express business, the equipment changes required in the event of the future revision of schedules, the present length of the route and schedules being flown, the indirect competition from other air transport companies for a part of the transcontinental business, and the directions and limitations of the statute respecting the determination of a fair and reasonable rate, we find:

1. That the rate of compensation for the transportation of air mail and the service connected therewith over route No. 29 was not, and will not be, fair and reasonable from and after October 6, 1937, the date of filing the petition herein; and

2. That the fair and reasonable rates of compensation for each airplane mile actually flown with 300 pounds of mail or less, and the service connected therewith over route No. 29, as extended from and after the date of the filing of the petition herein were, are, and will be those determined by applying the provisions of the Commission's order of March 11, 1935, as amended by the order of June 14, 1937, in *Air Mail Compensation*, 206 I. C. C. 675, and 222 I. C. C. 602, to a base rate of 33½ cents and a base mileage of 60,000 miles per month.

The findings herein are without prejudice to any rates which may be fixed by the Civil Aeronautics Authority under the provisions of the Civil Aeronautics Act of 1938 which differ materially from those of the Air Mail Act of 1934.

An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting in part:

For reasons stated in my separate expression in *Air Mail Compensation*, 216 I. C. C. 166, 191, I do not concur in the retroactive application of the rates herein approved.

### Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 31st day of October, A. D. 1938.

### Air Mail Docket No. 29

Air Mail Rates for Route No. 29 Operated by Continental Air Lines, Inc.

### Air Mail Docket No. 41

In Re Rates for Continental Air Lines, Inc.

This proceeding being at issue upon petition and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said division hav-

ing, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon which said report is hereby referred to and made a part hereof:

*It is ordered,* That fair and reasonable rates of compensation for the transportation of air mail by airplane and the service connected therewith over air-mail route No. 29, from and after October 6, 1937, were, are, and will be, for each airplane mile actually flown with 300 pounds of mail or less, the rates determined by applying the provisions of the Commission's order of March 11, 1935, in *Air Mail Compensation*, 206 I. C. C. 675, as amended by the Commission's order of June 14, 1937, 222 I. C. C. 602, to a base rate of 33½ cents per airplane mile for a base mileage of 60,000 miles per month.

By the Commission, Division 3.

W. P. BARTEL,  
*Secretary.*

(SEAL)

**INTERSTATE COMMERCE COMMISSION: AIR MAIL  
DOCKET NO. 47**

**Air Mail Rates for Route No. 28 Operated by Inland Air Lines, Inc.**

*Submitted November 12, 1938.*

*Decided December 16, 1938.*

Rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over air mail route No. 28, found not to have been fair and reasonable. Fair and reasonable rates determined and published.

*William I. Denning and John W. Cross* for petitioner.

*Walter E. Kelly*, Assistant Solicitor, and *William C. O'Brien*, for Postmaster General.

**REPORT OF THE COMMISSION**

**DIVISION 3, COMMISSIONERS McMANAMY, MAHAFFIE, AND MILLER**

**BY DIVISION 3:**

No exceptions were filed to the report proposed by the examiner, which was served upon the Postmaster General and Inland Air Lines, Inc.

The Civil Aeronautics Act of 1938, approved June 23, 1938, repeals the Air Mail Act of 1934 (except certain provisions), but provides that proceedings pending before the Interstate Commerce Commission for the determination of rates for the transportation of air mail by aircraft on the date of the enactment of the Civil Aeronautics Act of 1938 "shall be continued, orders therein issued, appeals therefrom taken, and payments made by the Postmaster General pursuant to such orders, as if this Act had not been enacted."

By petition filed June 6, 1938, under the provision of section 6(a) of the Air Mail Act of 1934, as amended, Wyoming Air Service, Inc., operator of air mail route No. 28, seeks reexamination of the fair and reasonable rate for the transportation of air mail over that route as determined and pub-

lished in *Air Mail Compensation*, 206 I. C. C. 675. The name of the carrier was changed to Inland Air Lines, Inc., on July 1, 1938.

No formal action was taken on the petition of the Postmaster General to have assignment of hearing deferred pending completion of an investigation and audit of the carrier's books, records, and accounts under section 6(b) of the act, the Commission having held that a finding under that section is not a condition precedent to the determination of fair and reasonable rates, *Air Mail Rates for Route No. 31*, 214 I. C. C. 387. Prior to the hearing, however, a tentative report of an audit and investigation under section 6(b) for the period from the beginning of operations on route No. 28 through March 31, 1936, was served on the Postmaster General and the carrier. No hearing in that proceeding was requested, and it was decided on September 15, 1937. *Wyoming Air Service, Incorporated, Rate Review, 1934-1936*, 225 I. C. C. 1.

Wyoming Air Service, Inc., was incorporated in May, 1930, and thereafter operated passenger and express service by air between Billings, Mont., and Denver, Colo. Its capital stock originally consisted of 5,000 shares of common, par value, \$10 per share. During May and June, 1934, the authorized capital stock was increased to \$200,000 common, and \$150,000 preferred. The carrier recorded in the books an amount of \$127,120 preferred stock which is \$500 more (representing 50 shares of stock) than the value of the preferred stock actually issued. The 50 shares were held in the treasury to be exchanged for old common stock not surrendered. During the month of June, 1937, a cash dividend of \$2.10 per share (7 per cent of three years) was declared and paid on the preferred stock. On January 24, 1938, the stockholders authorized the retirement of the outstanding preferred stock at par. Shortly thereafter such action was taken. At a meeting of the Board of Directors held on the preferred stock at the rate of 7 per cent per annum from July 1, 1937, until such time as the preferred stock should be retired was ordered paid. This dividend amounted to \$1,383.43.

In January, 1938, the common stock was reduced to \$100,000. The \$100,000 reduction was treated as donated surplus and was applied on the books to reduce the valuation of contracts and leases.

Mail operations were started over route No. 28 between Billings and Cheyenne, Wyo., a distance of 418 miles, on June 20, 1934, under a contract for mail service for a period of three months. The period was extended for 9 months and thereafter indefinitely under the provisions of section 6(c) of the Act of June 12, 1934. The route was extended to Great Falls, Mont., via Lewistown, Mont., a distance of 192 miles, on August 1, 1937. The carrier was also awarded contracts for mail operations over route No. 17, between Cheyenne and Pueblo, Colo., via Denver, and route No. 35 between Huron, S. Dak., and Cheyenne, respectively. Operations over route No. 17 were conducted from May 15, 1934 to July 1, 1937, when the contract was transferred to United Air Lines Transport Corporation and Continental Air Lines, Inc. Operations were commenced over route No. 35 on April 17, 1938, and are now being conducted by the carrier. The proceeding does not involve the reasonableness of the rates on routes Nos. 17 and 35.

The rate provided in the 3-month contract was 28.5 cents per mile for 15 cubic feet of mail space, one cubic foot being considered equivalent to 9 pounds of mail. This rate was continued until the amendment to section 6(c) of the Act, approved August 14, 1935, made the rate published in *Air*

*Mail Compensation, supra*, effective as of March 1, 1935. Under that decision the rate was 29 cents per airplane mile for transportation of an average load of 300 pounds of mail or less, with a base mileage of 25,000 miles per month. Progressive increases and decreases were provided in event of changes in miles flown with mail and increases in the average weight of mail carried. The mail transported has never averaged more than 300 pounds per month, but the rate has been reduced below 29 cents for some months because of mileage flown in excess of the base mileage.

The route is operated over high terrain, and high winds are frequently experienced. During the winter very low temperatures prevail and heavy snows on some occasions make it impossible to land at some of the airports. Radio and weather reporting facilities are inadequate and only visual contact day flying is authorized over the route. Loose gravel at landing areas damages aircraft, especially propeller blades, and it is necessary during very cold weather to warm the engines before they can be started.

The carrier uses six 10-passenger Boeing airplanes in the operation of routes Nos. 28 and 35. Two of these were purchased from United Air Lines Transport Corporation in May, 1936, and another from the same carrier in February, 1937. Two were purchased from Pennsylvania-Central Airlines Corporation in August, 1937, and the sixth from United in May, 1938. All had been used in air-transport service prior to their acquisition by the carrier. The planes are used interchangeably on the two routes and the evidence of record indicates that five planes would be necessary for the operation of route No. 28, if the routes were operated by separate carriers. The schedules on route No. 28 require that three planes be in service at one time and it is usually necessary that one plane be undergoing repairs. This leaves one plane for reserve.

The equipment used by the carrier is overhauled by United at its Cheyenne shops. This is the largest aircraft overhaul plant in the country, and it appears that it is more economical to the carrier to have necessary repairs made at that shop than to incur the expense necessary to equip a plant of its own. Parts for replacement are secured from United at cost plus 25 per cent, but as United makes purchases in large quantities, obtaining large discounts, the carrier actually buys many articles from United at lower prices than it would pay on purchases direct from the factories.

The wages of the pilots and co-pilots employed by the carrier are fixed on the basis of National Labor Board Decision No. 83. Seven pilots and six co-pilots are now employed, but it will be necessary to employ one or two more pilots in order to keep the hours flown per month within the limits applicable under the Civil Aeronautics Act. Certain other employees of the carrier work longer hours and for less wages than employees performing similar duties for most other carriers.

The evidence submitted by the carrier indicates that operations during the fiscal year ended June 30, 1938, resulted in a loss of \$62,908. The Postmaster General contends that the loss was \$53,445. The difference is due to adjustments in the carrier's accounts to conform the accounting to the classification prescribed by the Postmaster General. One item of \$4,215 is for the purpose of reflecting residual values for three aircraft. The carrier agrees that this adjustment is proper. An amount of \$623 results from the use of \$1.0411 per engine hour as the reserve for engine overhaul, whereas the carrier had estimated that item at \$1.25 per engine hour. The amount

used by the Postmaster General reflects the actual experience of the carrier.

Another adjustment, in the amount of \$4,960, reflects deferred expenses in connection with two aircraft between the dates of purchase and induction into service. The remaining amount of \$335 relates to several minor items.

The carrier also showed an operating loss of \$5,979 for the 6-month period ended June 30, 1937. The Postmaster General contends that the loss was only \$4,565. The carrier now agrees that an adjustment of \$1,122 for the purpose of reflecting a residual value for certain aircraft used during that period is proper.

*Conclusion.* The evidence submitted shows that the carrier and its predecessor have operated the route efficiently and economically. Every effort has been made to build up the passenger and express service but due to the fact that the territory served is very sparsely populated the business secured has not been sufficient to make the operation profitable.

Since the rate now in effect was fixed by the Commission the route has been extended a distance of 192 miles. One daily round trip over the present route amounts to approximately 37,000 miles per month. The carrier operates in mail-pay service one round trip daily over the entire route; and since May 19, 1938, has also operated in mail-pay service one additional round trip daily, except Sundays and holidays, between Cheyenne and Billings. The carrier is now required to use multimotored airplanes equipped with two-way radio, and the flying equipment which is now required for operation of the route is thus more expensive than that which was formerly used. Wages of personnel have been increased and there have been material increases in taxes and insurance costs.

Giving consideration to all of the facts of record we find that the rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over route No. 28, were, and are, not fair and reasonable from and after June 6, 1938, the date of the filing of the petition herein, and that the fair and reasonable rates of compensation for each airplane mile actually flown with 300 pounds of mail, or less, and the service connected therewith over route No. 28, from the date of the filing of the petition herein, were, are, and will be those determined by applying the provisions of the Commission's order in *Air Mail Compensation, supra*, as amended, to a base rate of 33½ cents per airplane mile for a base mileage of 37,000 miles per month.

The findings herein are without prejudice to any rates which may be fixed by the Civil Aeronautics Authority under the provisions of the Civil Aeronautics Act of 1938, which differ materially from those of the Air Mail Act of 1934.

An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting in part:

For reasons stated in my separate expression in *Air Mail Compensation*, 216 I. C. C. 166, 191, I do not concur in the retroactive application of the rates herein approved.

### Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 16th day of December, A. D. 1938.

## Air Mail Docket No. 47

## Air Mail Rates for Route No. 28 Operated by Inland Air Lines, Inc.

Investigation of the matters and things involved in this proceeding having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That fair and reasonable rates of compensation for the transportation of air mail by airplane and the service connected therewith over air mail route No. 28, on and after June 6, 1938, the date of the petition herein, were, are, and will be for each airplane mile actually flown with 300 pounds of mail or less, the rates determined by applying the provisions of the Commission's order in *Air Mail Compensation*, 206 I. C. C. 675, as amended by the Commission's order of June 14, 1937, to a base rate of 33¼ cents per airplane mile for a base mileage of 37,000 miles per month.

By the Commission, Division 3.

W. P. BARTEL,  
Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION: AIR MAIL  
DOCKET NO. 17<sup>1</sup>

Air Mail Rates for Route No. 2 Operated by Transcontinental  
& Western Air, Inc.

*Submitted November 5, 1938.*

*Decided December 22, 1938.*

Rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over air mail route No. 2 found not to have been fair and reasonable. Fair and reasonable rates determined and published.

*Gerald B. Brophy and George A. Spater*, for Transcontinental & Western Air, Inc.

*Walter E. Kelly*, Assistant Solicitor, and *William C. O'Brien* for Postmaster General.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS McMANAMY, MAHAFFIE, AND MILLER

BY DIVISION 3:

Exceptions were filed by the Postmaster General to the report proposed by the examiners and applicant replied.

Transcontinental & Western Air, Inc., hereinafter referred to as the carrier, by petition filed October 1, 1936, under the provisions of the Air Mail Act of 1934, as amended, seeks re-examination of the fair and reasonable rate for the transportation of air mail over air-mail route No. 2 as determined and published in *Air-Mail Compensation*, 206 I. C. C. 675. No formal action was taken on the petition of the Postmaster General to have assignment of

1. This report also embraces Air Mail Docket No. 36, *In Re Rates for Transcontinental & Western Air, Inc.*

hearing deferred pending completion of an investigation and audit of the carrier's books, records and accounts under section 6(b) of the act, we having held in *Air Mail Rates for Route No. 31*, 214 I. C. C. 387, and again in *Air Mail Compensation*, 216 I. C. C. 166, that a finding under that section was not a condition precedent to the determination of fair and reasonable rates. However, a report, under section 10, based on an examination of the books, records, and accounts from the beginning of operations to April 30, 1936, was furnished the Postmaster General and the carrier on December 4, 1936. Hearing originally set for January 26, 1937, was indefinitely postponed upon request of the carrier. Reassignment was not sought until October, 1937.

Subsequently, a tentative report by the examiner in Air Mail Docket No. 30, *Transcontinental & Western Air, Inc., Rate Review, 1935-1936*, a proceeding under section 6(b) of the act, was served upon the Postmaster General and the carrier; and the Commission, by division 3, instituted, by order of December 3, 1937, a proceeding on its own motion with a view to determining what change, if any, should be made in the rate or rates of compensation for the transportation of air mail by airplane and the service connected therewith over route No. 2, Air Mail Docket No. 36, *In Re Rates for Transcontinental & Western Air, Inc.* The carrier filed exceptions to the tentative report in Docket No. 30 and requested hearing thereon. At the opening of the hearings on February 8, 1938, the three proceedings were consolidated.

In its petition in Docket No. 17 the carrier alleges that the rate fixed in *Air Mail Compensation*, *supra*, for route No. 2 was not fair and reasonable at the time it was fixed; that it has not yielded the compensation contemplated by the Commission or required by law; and that the factors considered in fixing such rate have so materially changed that the cost of performing the contract services has substantially increased. Relief is sought from the date of the filing of the petition. In support of the petition the carrier presented evidence with respect to the operation of route No. 2 from its inauguration on May 13, 1934 to December 31, 1937, as well as the corporate and financial history of the carrier and its predecessors. These data were presented separately for the period prior to May 1, 1936, covered by the tentative report in Docket No. 30, and the period subsequent thereto, the data for the latter period being further divided into the 14 months ended June 30, 1937, and the 6 months ended December 31, 1937.

Following the presentation of evidence by the carrier a continuance of 90 days was granted upon motion of the Postmaster General. For the purposes of comparison the evidence of the Postmaster General, as presented at the resumed hearing, covered the same periods as that of the carrier. On rebuttal the carrier introduced evidence covering operations from January 1 to May 31, 1938, and an exhibit further separating the results of operations to show separately such results for the period subsequent to October 1, 1936, the date its petition was filed. Hearing was concluded on August 16, and briefs were filed on September 23, 1938.

The Civil Aeronautics Act of 1938, 52 Stat. 973, effective August 22, 1938, repealed the provisions of the Air Mail Act of 1934, as amended, under which these proceedings were inaugurated. However, section 1108(b), thereof, provides that proceedings for the determination of rates for the transportation of air mail by aircraft, pending before the Commission on the

date of enactment of the Act should be continued as if the Act had not been enacted.<sup>2</sup> By order of September 2, 1938, we dismissed all cases pending under section 6(b) of the Air Mail Act, including Docket No. 30. This report, therefore, will contain no further discussion in connection therewith.

Operations over route No. 2 between Newark, N. J., and Los Angeles, Calif., under a temporary contract entered into between the Postmaster General, acting in behalf of the United States, and the carrier's predecessor, TWA, Inc., began on May 13, 1934. With the approval of the Postmaster General the contract was transferred to the carrier effective at midnight December 31, 1934, and effective May 13, 1935, was indefinitely continued. TWA, Inc., bid 24 cents for each airplane mile flown with mail scheduled and authorized by the Postmaster General. This rate was applicable for an initial unit of 45 cubic feet of air-mail space, one cubic foot being considered the equivalent of 9 pounds of mail, and the Postmaster General reserved the right to require additional space, if needed, to be paid for at the same rate per cubic foot. The bid rate was paid up to March 1, 1935, except that from February 10 to February 28, 1935, two scheduled trips between Newark and Los Angeles were compensated for at a negotiated rate of 22 cents. Pursuant to the provisions of section 6(c) of the act, as amended August 14, 1935, compensation from March 1, 1935, has been at the rate fixed by the Commission in *Air Mail Compensation, supra*, for air-mail service on route No. 2. Under that decisions the bid rate of 24 cents was retained as a base rate, but was made applicable to a base mileage of 600,000 airplane miles per month for the initial unit of 300 pounds of mail, or less, fixed by the act. Automatic changes in the base rate were provided for variations in the mileages flown and increases in loads.

On August 25, 1937, the carrier was awarded the air-mail contracts for route No. 36, between Dayton, Ohio, and Chicago, Ill., and route No. 37, between Winslow, Ariz., and San Francisco, Calif., for initial periods of 3 years. Operations began September 1st on route No. 36 and September 5th on route No. 37. The contract rate for each route was 1 mill per airplane mile for loads of 300 pounds or less.

*Corporate history and capitalization.* The carrier was incorporated on December 27, 1934, under the laws of the State of Delaware, with an authorized capital stock of 1,000,000 shares of \$5 par value each, for the purpose of effecting a consolidation of two then existing corporations i. e., Transcontinental & Western Air, Inc. (old company), and TWA, Inc.

Transcontinental & Western Air, Inc. (old company), also a Delaware corporation, was incorporated on July 21, 1930. From February 20 until September 22, 1934, it operated an exclusive passenger and express service from Newark to Los Angeles.

TWA, Inc., was incorporated under the laws of the State of Delaware on April 17, 1934, with an authorized capital stock of 25,000 shares of a par value of \$10 each. The stock was all issued for cash to Transcontinental Air Transport, Inc., Western Air Express Corporation, and Pittsburgh Aviation Industries Corporation, which companies also owned the capital stock of the old company. TWA, Inc., was organized for the purpose of submitting bids

2. However, it was provided that rates should be determined without regard to that portion of section 6 (e) of the Air Mail Act, which provided as follows: " \* \* \* which, in connection with the rates fixed by it for all other routes, shall be designed to keep the aggregate cost of the transportation of air mail on and after July 1, 1938, within the limits of the anticipated postal revenue therefrom."



for air-mail service and, following its successful bid on air mail route No. 2, leased certain equipment from the old company. Eventually it took over the latter's passenger and express services which it continued to operate in conjunction with the mail service until December 27, 1934, when the consolidation of the two companies took place.

As a result of the consolidation the carrier acquired the assets and assumed the liabilities of the predecessor corporations. Capital stock was issued to the three controlling companies on the basis of their holdings in the former corporations; 296,825 shares each to Transcontinental Air Transport, Inc., and Western Air Express Corporation, and 29,485 shares to Pittsburgh Aviation Industries Corporation. The first two corporations, in turn, distributed the shares received prorata to their respective shareholders.

A dividend of 25 cents per share on the 623,135 shares of outstanding stock was paid to stockholders of record as of December 17, 1936. The carrier also offered its stockholders the right to subscribe to 207,711 shares of common stock at \$12 per share at the rate of one-third of a share for each share held. The net proceeds of that transaction after deducting underwriting expenses, or \$2,321,025.86, were added to the carrier's general funds. As of December 31, 1937, there were 830,846 shares of common stock of a par value of \$5 per share outstanding, distributed among approximately 28,000 stockholders. No funded debt has been incurred.

Comparative general balance sheets as of December 27, 1934, April 30, 1936, June 30, 1937, December 31, 1937, and May 31, 1938, accompany this report as Appendix A.

*Investment.* At the beginning of operations under the mail contract TWA, Inc., did not own any physical property, but leased from the old company such flying equipment and ground facilities as were necessary to conduct operations. Prior to December 27, 1934, it made minor investments in miscellaneous equipment totaling \$9,825. The assets originally covered by the lease, recorded at a cost of \$4,068,109 and a net book value of \$2,124,856, are briefly described in *Air-Mail Compensation, supra*, at pages 734, 735. However, as there stated, the lease covered certain items which had become obsolete and had been abandoned or were unused.

Following the consolidation, the recorded investment in real property and equipment was \$5,405,427. Of this amount, \$4,180,879 represented property and equipment acquired from the old company, and \$1,214,723 represented land and improvements at airports formerly owned by a wholly owned subsidiary of the latter. The difference represented the miscellaneous items of property acquired from TWA, Inc. The depreciation accrued against these properties by the former owners, totaling \$2,077,352, was entered on the books of the carrier, leaving a net book value of property and equipment owned as of December 27, 1934, amounting to \$3,328,075.

The recorded investment in real property and equipment as of December 31, 1937, was \$6,210,120.79. The depreciation reserve on that date was \$2,452,810.70, leaving a net book value of \$3,757,310.09. Flying equipment in service and maintained in reserve consisted of 37 planes, of which 34 were Douglas models, 17 DC-2's, 9 DC-3's and 8 DST's; and 114 engines, of which 112 were Wright-Cyclones. All planes were equipped with two-way radio. Ground radio stations, complete radio telephone systems, and meteorological equipment were owned and operated at various points on the system. The principal maintenance and overhaul base was maintained at Kansas City. The

recorded net book value of real property and equipment as of May 31, 1938, was \$3,680,226.95.

*Nonoperating property.* The Postmaster General introduced a schedule of certain properties owned by the carrier which he alleged were not used in operations. This exhibit shows the cost, accrued depreciation and net book value of all such property as of various dates including December 27, 1934, and September 30, 1937. As of those dates, the net book values are shown as \$1,202,426.86 and \$1,104,056.94, respectively. Of those amounts \$1,073,026.78 and \$1,008,230.21, respectively, represent the Alhambra, California, airport property; and \$107,244.61 and \$82,563.01, respectively, represent a hangar and miscellaneous equipment at Tulsa, Okla. The latter property is admitted by the carrier to be off the line of its system and not used for transportation purposes.

The Alhambra airport is located on the outskirts of Alhambra, east of Los Angeles, and was originally acquired and developed by Western Air Express, as the headquarters of its system. It was developed to meet the requirements of extensive passenger operations in all directions out of Los Angeles. At that time there were no other airports available for passenger equipment in the Los Angeles area. Subsequently an airport was developed at Glendale, California, by Maddux Airline and Transcontinental Transport interests. Later the Union Air Terminal at Burbank, California, was purchased and developed by United Air Lines. The carrier acquired the Alhambra and Glendale properties through its predecessor Transcontinental and Western Air, Inc. (old company), which was organized in 1930 through consolidation of Western Air Express, Maddux Airlines, and Transcontinental Air Transport.

The carrier's president testified that operations were moved from Alhambra to Glendale because of the Post Office Department's desire to facilitate the transfer of mail between the carrier and United plus certain economies which could be effected by leasing portions of the latter airport. Pressure from the Department to have all mail operations at Los Angeles concentrated at one airport together with dissatisfaction with facilities at Glendale were said to have resulted in the further move to Burbank.

The witness stated that during the period since operations were moved from Alhambra, that property has been maintained as an airport and has been used by the carrier on numerous occasions as an emergency field when weather conditions did not permit landing at Glendale or Burbank. It has also been used for the storage of reserve equipment and supplies pending their use in connection with operations as well as for charter trips, motion picture work and other special uses. He further stated that the airports in and around Los Angeles are not capable of handling the larger equipment that is being developed for transport use. Circumstances similar to those which made desirable the removal of the carrier's base from Alhambra might, well, in his opinion, necessitate the resumption of operations at that airport. In that connection, the carrier was said to have made studies from time to time looking toward the expansion and further development of the Alhambra site in the event that other airports of suitable size are not developed in the meantime. He was of the opinion that the Alhambra airport is definitely an asset of the carrier usable in its transportation operations.

To justify the classification of the Alhambra airport as property actually devoted to transportation service it should be shown that it is either presently

useful or necessary for needs that are near at hand. It is not sufficient that it be claimed as held for future use when and if the presently used airports become inadequate without some showing of the probability of such inadequacy in the not too remote future. See *Spring Val. Waterworks v. City, Etc., of San Francisco*, 192 Fed. 137, 159. *Atchison, Topeka & Santa Fe Ry. Co.*, 127 I. C. C. 1, 56.

The use made of the Alhambra Airport in connection with the carrier's transport operation cannot fairly be said to justify the outlay represented thereby, nor is there any real basis of record to support a conclusion that the presently used facilities at Burbank will become inadequate in the near future. For the purposes of this proceeding the Alhambra airport will be considered as not used in the carrier's transport operations.

The amount involved in the numerous other items of alleged nonoperating property as shown in the Postmaster General's exhibit is relatively so insignificant as not to affect the conclusions hereinafter reached. No attempt will be made to determine the extent of their use by the carrier.

*Operations.* Route No. 2, which at the close of the period under consideration extended from Newark to Los Angeles, via Philadelphia (Camden), Harrisburg and Pittsburgh, Pa., Columbus and Dayton, Ohio, Indianapolis and Terre Haute, Ind., St. Louis and Kansas City, Mo., Wichita, Kans., Amarillo, Texas, Albuquerque, N. Mex., and Winslow, Ariz., is described in *Air Mail Compensation, supra*, at page 734. Off-line service between Pittsburgh and Chicago, Ill., was operated during May and June, 1934, and then temporarily discontinued. This service, re-established on August 15, 1934, and extended to Kansas City, was operated during the interim by Transcontinental & Western Air, Inc. (old company).

At the beginning of contract operations the authorized mail service consisted of two daily round-trips over the mail route. On August 15, 1934, a weight-credit schedule between Newark and Kansas City was authorized. This schedule was on-line between Newark and Pittsburgh and off-line, via Chicago, between Pittsburgh and Kansas City. In the latter instance the weight of the mail carried was credited to certain on-line schedules and no mileage compensation allowed. Except for the period August 1, 1934, to February 19, 1935, when one transcontinental schedule was operated in mail-only service, all schedules provided passenger and express facilities.

On September 23, 1934, an exclusive passenger schedule between Newark and Los Angeles via Chicago and Kansas City was inaugurated. Beginning October 1 this schedule was authorized to carry mail. The authorization between Los Angeles and Kansas City was on a mail-pay basis and that between the latter city and Newark on a weight-credit basis, with the weight of the mail carried on the off-line portion credited to certain on-line schedules. From February 10 to 19, 1935, the off-line authorization was changed to a mail-pay basis. On February 20, 1935, this trip was rerouted to follow the mail route and authorized as a mail-pay schedule. At the same time an additional one way weight-credit trip, Newark to Kansas City, via Chicago, was authorized.

Additional service was scheduled from time to time between Chicago and Pittsburgh and Newark, which in certain instances carried mail on either a pay or weight-credit basis. Nonstop service between Chicago and Newark was furnished beginning in February, 1935.

As of December 31, 1937, on-line scheduled service consisted of three

round-trips between Newark and Los Angeles (all mail-pay); one round-trip between Newark and Kansas City, two one-way trips Newark to Pittsburgh, a one-way trip Pittsburgh to Newark, and one round-trip between Columbus and Dayton (all weight-credit); and a one-way trip Pittsburgh to Newark (all exclusive passenger). Off-line schedules included three round-trips between Chicago and Pittsburgh, two round-trips between Kansas City and Chicago, and one non-stop round-trip between Newark and Chicago (all exclusive passenger). On May 19, 1938, the round-trip between Newark and Kansas City formerly operated on a weight-credit basis was authorized as a mail-pay schedule.

The parties submitted exhibits detailing the airplane miles flown in the various types of service during the period from May 13, 1934 to December 31, 1937. The Postmaster General's exhibit reflects a grand total of 30,719,456 revenue miles for the system, while the carrier's exhibits indicate a total of 30,246,435 revenue miles flown on route No. 2 and off-line. The revenue miles shown by the Postmaster General's exhibit for routes Nos. 36 and 37, together with the miles flown off-line, which were credited to route No. 36, total 473,021 miles, and account for the difference.

For that portion of the period beginning May 1, 1936, the total as shown by the Postmaster General's exhibit is 16,082,580 revenue airplane miles, of which 12,183,017 are allocated to route No. 2, 3,503,783 to off-line, and 395,780 to routes Nos. 36 and 37. The allocation between on- and off-line service was made on the basis of published schedules. For the same period the carrier's exhibits show a total of 15,609,559 revenue miles. The difference of 473,021 miles is explained above. However, on the basis of actual flight performance, the carrier assigns 12,445,675 miles to route No. 2 operations and 3,163,884 to off-line. In addition a total of 638,594 nonrevenue miles were flown of which 557,423 are classified as route No. 2 and 52,751 as off-line in the carrier's exhibits. The monthly reports to the Postmaster General, which were incorporated in the record by reference, show the remaining 28,420 miles as applicable to routes Nos. 36 and 37. No separations of non-revenue miles are shown in the Postmaster General's exhibit.

The miles flown, separated as between the various classes of service, are shown for the 14 months ended June 30, 1937, and the 6 months immediately following in Appendix B. When effect is given to the conclusion hereinafter reached, that all mail service should be classified as on-line for the purposes of this proceeding, the differences between the parties with respect to classifications are not substantial.

Allocations of the 124,246,548 revenue passenger-miles flown over the system during the period May 1, 1936 to December 31, 1937, between the various classes and types of service as shown in the exhibits of the parties follow their allocations of airplane miles. In the Postmaster General's exhibit 93,813,236 are allocated to route No. 2, 29,322,454 to off-line, and 1,110,858 to routes Nos. 36 and 37. Corresponding figures as shown by the carrier are 95,873,446, 27,259,315 and 1,113,787, respectively. The revenue passenger-miles for the 14 months ended June 30, 1937, and the six months ended December 31, 1937, separated as between services, are shown in Appendix C.

As shown by an exhibit of the carrier, route No. 2 mail-pay miles upon which compensation was computed totaled 9,124,361<sup>3</sup> miles for the period

3. The mileages shown for November and December, 1937, were taken from the Post Office Department Billing and are subject to change.

May 1, 1936 to December 31, 1937. Of this total 1,379,088 were flown during the last three months of 1936 and 5,381,458 during the calendar year 1937. Pound miles flown totaled 4,413,287,497 during the total period of which 699,691,654 were performed during the three months period and 2,548,789,908 during the following year. The average monthly mail load ranged from 441 to 594 during the full 20 month period and averaged 474 pounds during the calendar year 1937.

*Comparative operating statistics.* The carrier submitted exhibits showing passenger and mail statistics for all domestic air mail carriers. Those relating to passenger operations cover the period May 1, 1936 to November 30, 1937, and were prepared from monthly reports issued by the Department of Commerce. The exhibit shows that the carriers flew 107,258,393 airplane miles and carried 1,826,843 passengers a total of 781,967,157 passenger miles. The average haul per passenger was 428 miles and the number of passengers per mile averaged 7.29. As compared with these figures the carrier had an average haul of 782 miles and an average number of passengers carried per mile of 9.25. In both instances the carrier's averages were higher than any other individual airline.

The mail statistics covered the period May 1, 1936 to October 31, 1937, and were prepared from the monthly preliminary statements issued by the Post Office Department. The exhibit shows that for performing 19,228,360,458 pound miles of mail service the domestic air carriers received a total of \$19,469,299.44, resulting in an average of \$.001013 per pound mile or \$2.026 per ton mile. On these bases the rates received by the carrier were the lowest of all the domestic carriers. The statistics for the three transcontinental carriers as shown by the exhibit are as follows:

	<i>Pound miles</i>	<i>Payments</i>	<i>Rate per pound mile</i>	<i>Rate per ton mile</i>
TWA .....	3,998,351,693	\$2,644,143.59	\$.000661	\$1.322
United .....	6,899,081,580	4,997,234.08	.000724	1.448
American .....	3,627,498,167	4,014,701.75	.001107	2.214

*Competition.* The carrier contends that its competitors possess decided economic advantages arising out of the geographical location of the respective transcontinental routes and their ownership of feeder lines.

The carrier operates the central transcontinental route with competitive routes paralleling on both the north and south. The carrier's vice-president in charge of traffic testified that as a result of this situation the area from which it could draw non-competitive passenger traffic was greatly restricted. He further testified that the cities served by the carrier between Wichita and Los Angeles had a population of only 73,619 according to the 1930 census. The importance to be attached to the ownership of feeder lines was alleged by the witness to be greatly increased in the present case because, due to comparative location of the three transcontinental routes, independent feeder lines would of necessity short haul themselves in routing through traffic over the carrier's route. In discussing the indispensable nature of the carrier's off-line operations, the witness stated that the report of the Consolidated Air Lines Ticket Office at Chicago for the month of January, 1938, indicated that 85 per cent of the air passengers originated at that point and destined to Los Angeles traveled over the carrier's system. If dependent upon con-

necting lines for traffic originating at or destined to Chicago he was of the opinion that most if not all of such traffic would be lost to competitors. However, the evidence clearly indicates that any advantages which its competitors may have held because of location or ownership of feeder lines was more than off-set as early as the fall of 1934 by the unquestioned superiority of the equipment flown by the carrier. This equipment was faster, coast to coast, by five hours, and considered generally as safer and more comfortable than other transport equipment then in use. The witness estimated that over 75 per cent of all transcontinental passengers to and from Los Angeles were carried by the carrier during the period this superiority was maintained.

The evidence shows that the carrier continued in practical control of the transcontinental air passenger traffic until its competitors acquired more modern equipment. Exhibits submitted by the carrier indicate that beginning in the fall of 1936, when the first of its competitors commenced operations with the improved equipment, a steady diversion of this traffic to the competitive lines was started. In addition, since that time the carrier has failed to share in the general upward trend of all domestic air mail carriers with respect to average mail loads carried.

The carrier's witness pointed out that the mail rates now in effect were determined at a time when the carrier held a decided advantage over the other transcontinental carriers. In addition to the diversion of traffic described above the increased competition is alleged to have caused many increases in expenses. As a direct result thereof the carrier was forced to acquire improved equipment, the necessity for which had not previously been anticipated; advertising expense was increased; and many additional expenses in connection with passenger traffic and services were made necessary. In connection with these increases there is much uncontroverted testimony that it would be impossible to reduce them without a disastrous effect on the carrier's revenues.

*Depreciation.* As of December 27, 1934, the investment in real property and equipment and the depreciation reserves applicable thereto were entered on the carrier's books without adjustment and depreciation accruals were continued on bases formerly used by the predecessor corporations. For Douglas DC-2 flying equipment these accruals were based on cost, without allowance for salvage, and estimated service lives of three years for aircraft, 2,500 hours for engines and 2 years for aircraft communication equipment. The estimated service life of the engines was increased to 3,000 hours in December, 1935, and again to 3,500 hours in December, 1936. At the latter date the estimated service lives of the aircraft and aircraft communication equipment were also increased to four and three years, respectively. However, adjustments on the books reflecting these changes were not carried beyond the calendar year in which the changes were effective. An estimated service life of four years was applied in computing the depreciation accruals on the DC-3 and DST equipment subsequently acquired.

The Postmaster General contends that, based upon the carrier's experience, service life of not less than five years for Douglas aircraft, 5,000 hours for engines and four years for aircraft communication equipment should be used. In support of the five year estimated life on Douglas aircraft he submitted an exhibit showing for each aircraft sold by the carrier between December 27, 1934 and December 31, 1937, the original cost of the plane; the price at which it was sold; the difference between the cost and sale

price, which he regarded as the true depreciation; the number of months the plane had been used by the carrier; the "true depreciation" rate per month; and the number of months which would have been required at that rate to depreciate the entire original cost. On this basis the average life expectancy of the ten Douglas DC-2 models for which data were included in the exhibit was 4.76 years. The witness presenting the exhibit pointed out that this average would be increased if the planes sold after being used for periods of but slightly over one year each were eliminated from consideration. He also testified that the purchaser of five of the planes, used approximately three years each by the carrier, was accruing depreciation thereon on the basis of an additional three year life and a residual or salvage value of \$3,900 per unit.

The actual number of hours flown per engine by the Wright-Cyclone F-50 engines on hand as of December 31, 1937, the average of which was shown by an exhibit of the Postmaster General to have been 4,044 hours, was the basis of the estimated life of 5,000 hours which he contends should be applied to all engines used in Douglas aircraft. In addition, an exhibit similar to that presented in connection with aircraft developed an average life of 5,061.5 hours for F-50 engines sold prior to December 31, 1937, based on cost and sale price.

The four year service life urged in connection with aircraft communication equipment was predicated upon the alleged practice of the majority of domestic airlines.

The carrier admits that its Wright F-50 engines can now reasonably be anticipated to have a probable life of 5,000 hours. However, with respect to its Douglas aircraft and the aircraft communication equipment used therein as well as the Wright G-102 engines, with which the DC-3 models are powered, it contends that there is no reasonable indication that the estimated service lives now used as a basis for its depreciation accruals are too low. Its witnesses testified that those estimates were adopted on the advice of its engineers and operating officials based on years of experience in all phases of air transportation. Great reliance was placed on obsolescence as a controlling factor affecting depreciation of flying equipment.

With respect to aircraft and aircraft communication equipment, units are generally retired because of obsolescence, inadequacy, or public requirement, and the rate of obsolescence is governed to a large extent by competition. As far as wear and tear is concerned it appears possible that useful service may be prolonged indefinitely by repairs. To reach reasonable approximations of service lives consideration should be given both to past experience, as developed from properly kept records, and the advice of informed parties as to modern tendencies in the industry and in the trend of business growth. The data available with respect to past experience are very limited, both as to number of units and the period covered. Furthermore, it is doubtful if accurate life tables are available from any source, due to the comparatively relatively brief existence of the industry as a whole. The record does not warrant modification of the carrier's estimated service life for Douglas DC-3 and DST aircraft. However, certain Douglas DC-2 aircraft were fully depreciated on the books before the expiration of the period covered by the carrier's exhibits. Furthermore, application of an estimated service life of four years, with no residual value, as urged by the carrier, would result in

9 of the 17 units owned being fully depreciated on or before August 15, 1938.

With respect to aircraft communication equipment, use of a three year life, without allowance for residual value as urged by the carrier, would result in many units being fully depreciated prior to the expiration of the period covered by its exhibits. Under these circumstances, the service lives contended for by the Postmaster General for DC-2 aircraft and all aircraft communication equipment must be accepted for the purpose of this proceeding.

As stated in *Air Mail Compensation, supra*, at page 706, there is a general tendency to use engines until they are worn out, and obsolescence is of much less importance than in the case of aircraft. Although the G-102 as compared with the F-50's, are newer and include numerous improvements, they were designed to produce increased power and speed. Actual airline performance records of engines of this type are not available. In the absence thereof the estimates by the carrier's engineers with respect to the future service life cannot be ignored. The record does not sustain the use of a service life in excess of 3,500 hours in the computation of depreciation accruals on the G-102 engines.

The parties also disagree as to the period to which adjustments of depreciation expense should be applied after proper service lives are determined. The Postmaster General contends that the net book value of the equipment as of December 27, 1934, represents cost to the carrier and that any adjustment of depreciation expense should be based upon that cost. The carrier urges that the correct procedure is to adjust from the date of original purchase and that any excess of depreciation on the books of the predecessor corporation should be adjusted through capital surplus. As previously explained, no adjustment of recorded values was made at the time of the consolidation. The sale of many items of property at a price in excess of net book value as of December 27, 1934, leads to the conclusion that cost to the present company in many instances was less than the actual value of the property. Under these circumstances, adjustments of depreciation expense should be applied to the period during which the depreciation was charged.

*Results of system operations.* The carrier's books show a net loss from operations for the system as a whole during the period May 13, 1934, to December 31, 1937, of \$623,821. Both the carrier and the Postmaster General contend that adjustments are required to show the true results of the operations for the period. The net deficit from operations as recorded and as adjusted by the parties, divided to show separately the results for certain stated periods, is shown below:

<i>Period</i>	<i>Books</i>	<i>Carrier</i>	<i>Postmaster General</i>
May 13, 1934-April 30, 1936 .....	\$ 14,075.20	\$123,827.54*	\$407,262.31*
May 1, 1936-June 30, 1937 .....	135,379.07	237,978.70	7,585.02
July 1, 1927-Dec. 31, 1937 .....	474,367.06	613,032.77	498,499.84
<b>Total .....</b>	<b>\$623,821.33</b>	<b>\$727,183.93</b>	<b>\$ 98,822.55</b>

\* Denotes net income.

For the 14 months period ended June 30, 1937, and the six months period ended December 31, 1937, the differences between the adjusted net deficits



from operations as shown in the exhibits of the parties amount to \$230,393.68 and \$114,532.93, respectively, or a total of \$344,926.61 for the full twenty months period. Of that amount \$159,666.18 reflects the disagreements of the parties in connection with depreciation of flying equipment, and \$47,029.50 with respect to the classification of certain property as operating or non-operating. These contentions have been previously discussed and adjustments of operating expenses reflect the conclusions hereinbefore made with respect thereto.

In making its adjustments the carrier included certain items totaling \$90,689.20 in operating expense which the Postmaster General contends should be charged to surplus. Of this amount approximately \$61,000 represents expense in connection with the proposed establishment of an extension from Winslow, Ariz., to San Francisco, Calif., before the letting of the mail contract on route No. 37 between the same points; \$15,000 expenses, mostly legal, in connection with the proposed purchase of another air carrier; \$10,000 legal expenses in connection with a suit before the United States Court of Claims to recover money due the "old company" under a former mail contract; and the balance miscellaneous items, including expenses in connection with other proposals for acquisition of new lines.

Clearly none of these items should be considered proper charges against operations for the purposes of this proceeding. The Court of Claims action relates to a transaction of a prior period and the expense incurred in connection therewith as well as any amount recovered should be considered as applicable to the period in which the service was performed. Expenses in connection with the acquisition of new lines, or the extension of existing lines, are in the nature of capital expenditures and should not be allowed to affect the results of operations for the purposes of this proceeding.

The carrier's contention that expenses should be adjusted to include amortization of the expense incurred by the "old company" in connection with the development of an experimental tri-motored plane is not sustained by the evidence. The \$16,666.70 sought to be so charged during the period May 1, 1936, to June 30, 1937, should be considered as a deduction from gross income, as originally recorded. It is not here necessary to pass on the carrier's contention that income taxes are a proper charge to operations. However, it is clear that such taxes should be considered in the determination of the reasonable rate.

A question similar to that which arose with respect to the period to which depreciation adjustments should be applied arises in the application of adjustments should be applied arises in the application of adjustments in connection with profits or losses on equipment sold, the propriety of which is agreed to by the parties. As there appears no reason to warrant a different conclusion in this instance the adjustments of the carrier will be accepted.

The remaining items in dispute are small in amount and the net effect on the conclusion to be reached is negligible. For convenience such items will be dealt with as originally recorded.

When the differences between the parties are adjusted in accordance with the conclusions reached above the result of the carrier's system operation during the periods May 1, 1936, to June 30, 1937, and July 1, 1937, to December 31, 1937, are net deficits from operations of approximately \$48,000 and \$573,000, respectively.

*Increased expenses.* The record supports the carrier's allegation that there have been many increases in items properly chargeable to operating expenses since the period under consideration in the prior rate determination. The carrier's witnesses testified that increased competition, as hereinbefore described, necessitated the acquisition of Douglas DC-3 equipment and the employment of additional personnel. The record shows that the cost of replacement parts for the DC-3 aircraft is approximately 50 per cent greater than similar items for DC-2's, and that use of the new equipment resulted in increased charges for depreciation and insurance. In addition, agreements with employees under the Railway Labor Act have necessitated increased payroll expense. Many of these agreements provide for periodical increases based on length of service. The requirements of the Social Security Act have placed an additional burden on the carrier. The witnesses further testified as to increased cost of gasoline, oil and material and supplies of all kinds. Examples of this type of increased expenses indicate that many of them were effective around the middle of the calendar year 1937.

The recorded operating expenses for the period from beginning of operations to February 28, 1935, averaged less than 55 cents per mile flown. Adjusted operating expenses for the 14 months ended June 30, 1937, and the 6 months ended December 31, 1937, averaged 62 and 66 cents per mile, respectively.

*Results of operations, separated between routes and services.* The parties submitted exhibits showing the results of the system operations, adjusted according to their respective contentions and separated as between routes and services. The carrier's exhibits show separately the results of on-line and off-line operations, with the former further divided as between mail-passenger and exclusive passenger service. All mail service is treated as on-line regardless of where flown. The Postmaster General's exhibits show separations as between pay mail-passenger, credit mail-passenger, exclusive passenger, and charter services in connection with both on-and off-line operations. All charter service is treated as off-line. For the period subsequent to the inauguration of operations on routes Nos. 36 and 37 both parties show the results of operations on those routes separately. The net deficits from operations shown in these exhibits for the periods May 1, 1936, to June 30, 1937, and July 1, 1937, to December 31, 1937, are shown in Appendix D.

In view of our decision in *Air Mail Rates for Route No. 24*, 222 I. C. C. 749, that weight credit schedules are not "nonmail" schedules, there is no necessity for a separation between pay-mail and credit mail operations. Furthermore, as it does not appear reasonable to disregard the results of operation of a portion of the mail service duly authorized by the Postmaster General in determining the rate of mail compensation merely because that service might not have been flown directly on the mail route, no separation of mail operation between on-and off-line service need be made for the purposes of this proceeding.

The Postmaster General's exhibits allocate the net profits from incidental services such as sales of gasoline and oil and repairs to equipment of others between the various routes and services on the basis of revenue miles flown, while the carrier credits the amounts thereof directly to off-line operations. Inasmuch as the results of off-line operations are to be disregarded in determining the mail rate, the latter practice will produce results in accordance with our previous decisions. *Inter-Island Airways, Ltd., Rate Review 1936*,

225 I. C. C. 115. *National Airways, Inc., Rate Review*, 226 I. C. C. 409, 417.

*Allocation of Revenues and Expenses Between Routes and Service.* The Postmaster General's exhibits separating revenues and expenses between routes and services were developed upon the premise that the carrier is engaged in the business of providing airplane transportation and that each mile flown in revenue service should bear a proportionate share of the cost of furnishing that transportation. In the preparation of these exhibits passengers and excess baggage revenues were allocated on the basis of revenue passenger-miles flown, excluding the miles flown in charter service; express and freight revenue was separated on the basis of revenue miles flown, excluding charter; mail revenue was credited to the route on which earned; charter flights were credited directly to the off-line service; and incidental revenues were allocated on the basis of revenue miles flown. Expenses which vary with the amount of flying performed were allocated on either a revenue-mile or revenue-engine-hour basis; expenses which vary with the number of passengers carried were separated on the basis of revenue passenger-miles; and expenses which remain constant regardless of the number of plane miles or passenger miles flown were allocated on the basis of miles scheduled to be flown. A witness for the Postmaster General explained that the allocating factors were applied to total revenues and expenses to determine the separation between routes and also the further separation between services. No attempt, it was admitted, was made to determine what expenses could be definitely identified as on-line or off-line or applicable to a particular service.

Witnesses for the carrier contend that the organization was set up to fulfill the requirements imposed by the contract covering the transcontinental air mail route. As the general organization is necessary to conduct the operations required by the contract, it is urged that the burden of the general organization should be charged to the mail service, and that the financial success of nonmail operations, whether on-line or off-line, should be determined by considering only such costs as would not have been incurred if nonmail schedules had not been operated. Since July 1, 1937, the carrier has followed this principle in recording the on-line and off-line revenues and expenses. Exhibits covering periods prior to that date represent an effort to apply the same theory insofar as it is possible to do so. The carrier's treasurer testified that, under its present accounting system, each invoice, work order or other evidence of the accrual of expense is marked to indicate the service to which it is applicable. Revenues and expenses are distributed to routes and types of service directly when it is possible to do so and items which cannot be identified as attributable to a particular route or type of service are allocated on a basis which is directly related to the item involved. In this connection he stated that, in general, the type of expenses assigned directly to the mail service on the theory that no increase therein was required by the operation of the other services included general superintendence and certain costs connected with general offices, shops, traffic offices, and landing fields.

In the preparation of the carrier's exhibits passenger and excess baggage revenues were allocated on the basis of revenue passenger-miles flown, express and freight revenue on the basis of express pound-miles flown, mail revenue was credited directly to the route on which earned and all charter and incidental revenues were credited to the off-line route. Allocating factors based upon scheduled operations were applied to indirect flying expenses and fac-

tors based upon actual performance were applied to direct flying expenses. Traffic and advertising expenses were prorated on the basis of scheduled operations, except, "Commissions on Ticket Sales," which was allocated on a revenue passenger-mile basis, and expenses in connection with express service, which were allocated on the basis of express pound-miles performed. Several factors were used to allocate general and administrative expenses. The factor of express pound-miles performed was used to allocate the cost of accounting for the express business; that of miles scheduled in mail-passenger service was applied to the general executive salaries and expenses, regulatory bodies expense, and experimental and development expense; while all other accounts under this heading were allocated on the percentage of all other expenses charged to a particular route or service.

A witness for the carrier, an accountant who has specialized in the study of cost accounting systems, reviewed in detail several recognized methods, including those here advocated by the parties for the allocation of costs as between different products or services. He was of the opinion that the method used by the carrier was both sound and defensible in the instant case. He was convinced that the abandonment of the off-line service could not possibly make the on-line service as profitable as is implied by the Postmaster General's exhibits, but would result in the loss of the intangible values of the latter operation, including revenue contributions to on-line operations. It was his opinion that the allocations of the Postmaster General should be rejected as based on a method which produced unsound results when applied to the circumstances surrounding the carrier's operations.

In *Air Mail Compensation*, *supra*, at page 697, the Commission said that the results of off-line operations are not to be considered in fixing rates, and by the terms of section (6)e of the Act losses resulting, in the opinion of the Commission, from the unprofitable maintenance of "nonmail schedules," when the gross receipts from such schedules fail to meet the additional operating expenses occasioned thereby, must be disregarded. In view of our decision in *Air Mail Rates for American Airlines, Inc.*, 225 I. C. C. 12, 30, that expenses which are constant regardless of the volume of schedules are not "additional expenses" resulting from the maintenance of nonmail schedules the carrier's separation as between mail and nonmail service must be approved. However, in *Air Mail Rates for Braniff Airways, Inc.*, 226 I. C. C. 752, in which the carrier appeared as an intervener, the term nonmail schedules as referred to in section 6(e) was held not to include off-line service. The approval, in the latter case, of the use of an estimate of the results of off-line operations by which such operations were charged with a proportionate part of all expenses, however, is not controlling in this proceeding. It was recognized in that case that such a basis assigned a portion of certain expenses wholly attributable to mail service to off-line operations but pointed out that the record then under consideration did not contain the amounts of such expenses. Furthermore, the off-line operations were operated for but three months of the period under consideration.

The purpose of a separation as between on- and off-line service is the determination of the results of operation of the former. In making such a determination a consideration of the circumstances surrounding the operations of the particular carrier under consideration is material. Such consideration might well result in the rejection of a method based on generalities and designed to fit all situations. The method of separation here advocated by

the Postmaster General makes no attempt to assign any expenses directly to one service or the other, although the correctness of such a procedure is admitted. Not only does the separation advocated by the carrier make such an assignment wherever possible but consideration is given to the circumstances effecting a particular expense in determining a basis of prorate for items chargeable to both classes of service. Furthermore the statement in *Air Mail Rates for American Airlines, Inc., supra*, at page 30, to the effect that although expenses may be increased by the maintenance of other services such service cannot reduce the cost of carrying the mail, cannot be ignored.

Ascertainment of the cost of performing a particular service is always beset with difficulties. *Switching Rates in Chicago District*, 177 I. C. C. 669, 711. The exhibits here presented are more exhaustive than any heretofore undertaken in other proceedings involving air mail rates. Just as the determination of the reasonableness of rates involves the exercise of an informed judgment, so does the determination of the relative costs of services performed with common facilities necessitate the reasonable exercise of a judgment informed by the best available facts of record and by experience. Considering all the facts of record, including the origin and extent of the respective services, the benefit accruing to the mail service by reason of the off-line operations, and the use made of the latter in the interest of mail transportation, it appears that the method used by the carrier to separate the results of its on-line service, produces results which are sufficiently accurate for present purposes. In this connection it must be noted that cost is not the only or necessarily the controlling factor in the determination of reasonable rates. *Air Mail Rates for American Airlines, Inc., supra*. On the other hand, a cost study cannot be disregarded merely because it may not be correct in every detail. *Switching at Kansas City, Mo.*, 96 I. C. C. 538.

The carrier's exhibits showing the separation of revenues and expenses between routes and services include such adjustments suggested by the Postmaster General as were accepted by the carrier. However, as hereinbefore indicated, other suggested adjustments are proper. If these additional adjustments are applied to the carrier's exhibits the net deficits from operation of the various services for the two periods under discussion would be approximately:

Service	May 1, 1936- June 30, 1937	July 1, 1937- Dec. 31, 1937
Mail-passenger, A. M. 2 .....	\$40,000*	\$290,000
Exclusive-passenger, A. M. 2 .....	9,000	7,000*
Off-line .....	79,000	70,000
Mail-passenger, A. M. 36 and 37 .....	—	220,000
	<hr/>	<hr/>
System .....	\$48,000	\$573,000

\* Denotes income.

For the 5 months period January 1 to May 31, 1938, the books show a net operating loss of \$821,217.26, which the carrier contends should be adjusted to a deficit of \$880,040.68. The evidence of the Postmaster General does not cover this additional period. In addition, the carrier presented exhibits separating the results of operations, as reflected in its prior exhibits, subsequent to October 1, 1936, the date its petition was filed. These exhibits

contain the operating results as contended for by the carrier. No comparable exhibits were presented by the Postmaster General and no adjustment of the amounts shown will here be attempted. A summary of the exhibits insofar as they reflect deficits from operations is as follows:

Service	Oct. 1, 1936 to June 30, 1937	July 1, 1937 to Dec. 31, 1937	Jan. 1, 1938 to May 31, 1938	Total Oct. 1, 1936 May 31, 1938
On-line				
Mail-pass. . .	\$488,286.17	\$325,827.64	\$472,980.77	\$1,287,094.58
Pass. only . . .	18,660.74	6,780.49*	12,856.74	24,736.99
Off-line . . . . .	102,419.53	71,881.79	117,027.07	291,328.39
Route Nos.				
36 and 37 . . . .	—	222,103.83	277,176.10	499,279.93

\* Denotes income.

*Conclusion.* The carrier contends that the base rate for route No. 2 should be increased to 33 1/3 cents, the maximum allowed by the act, effective October 1, 1936. No change is sought in the base mileage of 600,000 miles per month as fixed in *Air Mail Compensation, supra*. The many changes in the circumstances surrounding the operation of route No. 2 since the prior rate determination have been previously detailed. In addition, as stated in *Air Mail Rates for Route No. 24, supra*, at page 761 the amendments to the act subsequent to the former determination which gave legislative sanction to weight-credit service have resulted in a material reduction in the compensation contemplated by the former determination.

The record shows that the carrier's operations were conducted at a profit immediately following the effective date of the present rate. However, a decline in its transcontinental passenger traffic, which began in the fall of 1936, following the installation by one of its competitors of new equipment and improved service, was further accelerated in the spring of 1937 by the acquisition of similar equipment and the inauguration of express schedules by the other transcontinental competitor. In addition, during the same period, the management was faced with the problem of absorbing increased operating expenses and additional tax burdens. Under these circumstances operations for a considerable period have been carried on at a loss. Although, as stated in *Air Mail Rates for Route No. 6*, Air Mail Docket No. 28 decided September 15, 1938, deficiencies in earnings alone do not conclusively establish the need for or amount of increase in mail compensation, determination of the extent to which such deficiencies are attributable to the mail operations requires the exercise of judgment based on all the evidence of record.

Giving consideration to all of the facts of record we find that the rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over route No. 2, were, and are, not fair and reasonable from and after the date of the filing of the petition herein, and that the fair and reasonable rates of compensation for each airplane mile actually flown with 300 pounds of mail or less, and the service connected therewith over route No. 2, from the date of the filing of the petition herein to and including June 30, 1937, were those determined by applying the provisions of the Commission's order in *Air Mail Compensation, supra*,

as amended, to a base rate of 27 cents per airplane mile for a base mileage of 600,000 miles per month; and from and after July 1, 1937, were, are, and will be those determined by applying the same provisions to a base rate of 30 cents per airplane mile for a base mileage of 600,000 miles per month.

The findings herein are without prejudice to any rates which may be fixed by the Civil Aeronautics Authority under the provisions of the Civil Aeronautics Act of 1938, which provisions differ materially from those of the Air Mail Act of 1934.

An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting in part:

As to rates for the future, I agree. For the reasons stated in my separate expression in 216 I. C. C. 166, 191, I do not concur in making the changes in rates retroactive.

### Appendix A

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

Comparative General Balance Sheets

Asset Side				
		December 27, 1934	April 30, 1936	June 30 1937
<i>Investments</i>				
501	Real Property and Equipment..	\$5,405,426.55	\$5,001,254.08	\$5,400,141.65
503	Investments in Affiliated Companies .....	280,756.27	280,756.27	280,756.27
504	Other Investments—Stocks and Bonds .....	7,553.00	57,553.00	1,007,551.00
Total Investments .....		5,693,735.82	5,339,563.35	6,688,448.92
<i>Current and Accrued Assets</i>				
505	Cash .....	318,805.95	483,444.11	1,346,764.88
506	Special Deposits .....	5,745.06	1,280.00	401,009.62
507	Loans and Notes Receivable....	100.00	6,252.53	64,125.00
508	Traffic Balances Receivable....	66,223.61	201,538.30	167,481.52
509	Net Balances Receivable.....	27,423.43	35,880.63	26,479.96
510	Accounts Receivable .....	658,805.78*	542,670.09	566,923.79
511	Materials and Supplies.....	235,202.35	280,106.31	266,395.89
512	Interest and Dividends Receivable	—	—	13,491.50
513	Work Fund Advances.....	6,236.73	18,921.10	25,539.81
Total Current and Accrued Assets .....		1,318,542.91	1,570,102.07	2,878,211.97
<i>Special Funds</i>				
516	Insurance and Other Reserve Funds	—	125,362.00	—

*Deferred Debits*

518	Prepayments .....	148,827.28	75,421.03	59,519.25
521	Other Deferred Debits—			
	Work in Process.....	15,616.60	56,601.46	108,149.21
521	Other Deferred Debits—			
	Other .....	253,053.37	164,641.91	185,466.05
	Total Deferred Debits.....	417,497.25	296,664.40	353,134.51
	Total Assets and Other			
	Deferred Debits.....	\$7,429,775.98	\$7,331,691.82	\$9,919,795.40

\* Includes \$243,040.20 intercompany accounts.

**Appendix A**

Air Mail Dockets Nos. 17 and 36  
Transcontinental and Western Air, Inc.  
Comparative General Balance Sheets

**Liability Side**

	<i>December 27, 1934</i>	<i>April 30, 1936</i>	<i>June 30 1937</i>
<i>Capital Stock</i>			
531 Capital Stock .....	\$3,115,675.00	\$3,115,675.00	\$4,154,230.00
531 Capital Surplus .....	1,359,024.36	1,326,434.49	2,603,279.09
Total Capital Stock.....	4,474,699.36	4,442,169.49	6,757,509.09
<i>Current and Accrued Liabilities</i>			
536 Loans and Notes Payable.....	59,538.73	—	—
537 Traffic Balances Payable.....	2,637.68	60,515.24	176,676.44
538 Accounts and Wages Payable..	561,932.50*	229,028.71	484,998.88
542 Miscellaneous Current Liabilities	14,418.73	88,044.20	44,026.64
543 Taxes Accrued .....	2,068.68	37,810.39	46,397.59
544 Interest Accrued .....	457.93	—	—
545 Miscellaneous Accrued Liabilities	8,417.86	15,295.88	25,904.28
Total Current and Accrued Liabilities .....	649,472.11	430,694.42	778,003.83
<i>Deferred Credits</i>			
547 Miscellaneous Deferred Credits	40,441.58	141,936.35	241,798.55
<i>Reserves</i>			
548 Operating and Insurance Reserves	73,950.12	86,090.49	48,802.54
549 Accrued Depreciation—Buildings	275,261.04	343,150.33	382,145.16
550 Accrued Depreciation—Equipm't	1,802,031.34	1,853,563.12	2,006,725.91
552 Miscellaneous Reserves .....	113,860.43	116,807.08	86,689.18
Total Reserves .....	2,265,162.93	2,399,611.02	2,524,362.79



<i>Appropriated Surplus</i>			
554	Contingency Reserves .....	—	19,000.00      11,007.23
<i>Unappropriated Surplus</i>			
556	Profit and Loss—Balance.....	—	101,719.46†      392,886.09†
Total Liabilities and Other			
Credits .....		\$7,429,775.98	\$7,331,691.82      \$9,919,795.40

\* Includes \$243,040.20 intercompany accounts.

† Denotes red figures.

### Appendix A

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

Comparative General Balance Sheets

#### Asset Side

		December 31 1937	May 31, 1938
<i>Current and Accrued Assets</i>			
101	Cash .....	\$1,118,380.90	\$ 278,813.58
102	Working Fund Advances.....	23,178.29	30,159.37
103	Special Deposits .....	401,649.62	402,699.62
104	Accounts Receivable .....	552,035.97	544,744.60
105	Traffic Balances Receivable .....	123,197.82	181,118.30
106	Net Balances Receivable From Agents.....	18,736.00	22,984.27
107	Loans and Notes Receivable .....	60,562.50	16,031.25
108	Aircraft Engine Fuel .....	25,258.48	22,326.55
109	Aircraft Engine Oil .....	2,822.58	1,773.85
110	Materials and Supplies .....	336,814.74	384,302.92
111	Interest and Dividends Receivable.....	6,323.91	1,652.61
Total Current and Accrued Assets.....		2,668,960.81	1,886,606.92
<i>Investments</i>			
121	Investments—Stocks .....	7,552.00	7,552.00
121	Investments—Bonds .....	1,250.00	3,750.00
122	Investments in Affiliated Companies—Net....	208,885.75	205,635.75
Total Investments .....		217,687.75	216,937.75
<i>Deferred Debits</i>			
131	Prepayments .....	103,956.24	71,980.88
133	Experimental and Development Charges.....	30,457.89	40,099.10
134	Other Deferred Debits—Work in Process...	69,405.74	64,632.53
134	Other Deferred Debits—Other.....	149,796.64	141,836.25
Total Deferred Debits.....		353,616.51	318,548.76

*Special Funds*

143	Other Reserve Funds.....	13,600.20	29,153.00
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*Fixed Assets*

150	Real Property and Equipment.....	6,210,120.79	6,540,524.96
160	Accrued Depreciation—Real Property and Equipment .....	2,452,810.70†	2,860,298.01†
170	Miscellaneous Physical Property.....	12,068.94	12,068.94
	Total Fixed Assets.....	3,769,379.03	3,692,295.89
	Total Assets and Other Debits.....	\$7,023,244.30	\$6,143,542.32

† Denotes red figures.

**Appendix A**

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

Comparative General Balance Sheets

**Liability Side**

		December 31 1937	May 31, 1938
<i>Current and Accrued Liabilities</i>			
201	Accounts Payable .....	\$ 483,393.79	\$ 303,090.03
202	Traffic Balances Payable .....	115,980.93	132,365.87
206	Loans and Notes Payable.....	—	222.60
207	Other Current Liabilities .....	43,660.52	94,073.26
208	Salaries and Wages Accrued.....	52,114.42	59,350.19
210	Taxes Accrued .....	49,864.47	30,631.86
211	Other Accrued Liabilities .....	35,632.43	114,826.67
	Total Current and Accrued Liabilities...	780,646.56	734,560.48
<i>Deferred Credits</i>			
232	Other Deferred Credits .....	274,165.20	265,607.11
<i>Reserves</i>			
241	Operating and Insurance Reserves.....	—	9,544.85
242	Reserve for Self-Insurance.....	9,544.85	—
245	Employees' Deposits to Stock Purchase Trust Fund .....	13,600.20	29,153.56
246	Miscellaneous Reserves .....	11,569.70	—
	Total Reserves .....	34,714.75	38,698.41
<i>Capital Stock</i>			
256	Common Stock Authorized.....	5,000,000.00	5,000,000.00
257	Common Stock Unissued .....	845,770.00†	845,770.00†
259	Premiums and Assessments on Capital Stock	1,282,470.96	1,282,470.86
	Total Capital Stock .....	5,436,700.86	5,436,700.86

<i>Surplus</i>			
291	Unappropriated Earned Surplus .....	850,251.91†	1,679,293.38†
292	Unearned Surplus .....	1,347,268.84	1,347,268.84
Total Surplus .....		497,016.93	332,024.54†
Total Liabilities and Other Credits .....		\$7,023,244.30	\$6,143,542.32

† Denotes red figures.

### Appendix B

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

Miles Flown, May 1, 1936, to December 31, 1937

	<i>May 1, 1936 to</i>		<i>July 1, 1937 to</i>	
	<i>— June 30, 1937 —</i>		<i>— December 31, 1937 —</i>	
	<i>Postmaster</i>		<i>Postmaster</i>	
	<i>Carrier</i>	<i>General</i>	<i>Carrier</i>	<i>General</i>
REVENUE MILES				
<i>Route No. 2</i>				
Mail only .....	23,259	23,001	20,378	18,056
Pay mail passenger .....	6,406,608	6,411,904	2,712,132	2,714,846
Credit mail passenger .....	1,579,345	1,582,369	1,127,162	973,892
Passenger only .....	469,643	366,733	85,675	75,650
Express and freight only .....	21,473	16,566	—	—
Total .....	8,500,328	8,400,573	3,945,347	3,782,444
<i>Route No. 36</i>				
Mail only .....	—	—	2,022	2,022
Pay mail passenger .....	—	—	51,114	51,114
Total .....	—	—	53,136	53,136
<i>Route No. 37</i>				
Mail only .....	—	—	7,520	7,520
Pay mail passenger .....	—	—	167,538	167,538
Credit mail passenger .....	—	—	166,271	155,271
Passenger only .....	—	—	1,315	1,315
Total .....	—	—	342,644	342,644
<i>Off-line</i>				
Pay mail passenger—A.M. 2 .....	5,426	—	392	—
Credit mail passenger—A.M. 2 .....	1,580	1,553	—	150,544
Credit mail passenger—A.M. 36 .....	—	—	77,241	77,029
Passenger only .....	2,298,717	2,399,018	759,009	771,972
Express and freight only .....	4,773	—	—	—
Charter .....	82,865	92,545	11,122	11,122
Total .....	2,393,361	2,493,116	847,764	1,010,667
Total Revenue Miles .....	10,893,689	10,893,689	5,188,891	5,188,891

## NON-REVENUE MILES

Route No. 2.....	372,008	—	185,415	—
Route No. 36.....	—	—	4,755	—
Route No. 37.....	—	—	23,665	—
Off-line .....	44,666	—	8,085	—
<b>Total non-revenue Miles</b>	<b>416,674</b>	<b>416,674</b>	<b>221,920</b>	<b>221,920</b>
<b>Total Plane Miles.....</b>	<b>11,310,363</b>	<b>11,310,363</b>	<b>5,410,811</b>	<b>5,410,811</b>

## Appendix C

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

## Revenue Passenger Miles Flown, May 1, 1936, to December 31, 1937

	May 1, 1936 to — June 30, 1937 —		July 1, 1937 to — December 31, 1937 —	
	Postmaster		Postmaster	
	Carrier	General	Carrier	General
<i>Route No. 2</i>				
Pay mail passenger.....	48,369,298	48,409,760	20,670,725	20,661,279
Credit mail passenger.....	12,585,813	12,536,134	9,520,769	8,298,446
Passenger only .....	4,108,750	3,379,965	618,091	527,652
<b>Total .....</b>	<b>65,063,861</b>	<b>64,325,859</b>	<b>30,809,585</b>	<b>29,487,377</b>
<i>Route No. 36</i>				
Pay mail passenger.....	—	—	246,550	246,550
<i>Route No. 37</i>				
Pay mail passenger.....	—	—	400,332	400,332
Credit mail passenger ...	—	—	464,806	461,877
Passenger only .....	—	—	2,099	2,099
<b>Total .....</b>	<b>—</b>	<b>—</b>	<b>867,237</b>	<b>864,308</b>
<i>Off-line</i>				
Pay mail passenger—A.M. 2	44,737	—	1,960	—
Credit mail passenger—A.M. 2	31,360	16,107	—	1,249,478
Credit mail passenger—A.M. 36	—	—	714,792	714,792
Passenger only .....	19,630,892	20,428,884	6,095,751	6,248,914
Charter .....	637,824	637,824	101,999	26,455
<b>Total .....</b>	<b>20,344,813</b>	<b>21,082,815</b>	<b>6,914,502</b>	<b>8,239,639</b>
<b>Total Revenue Passenger Miles .....</b>	<b>85,408,674</b>	<b>85,408,674</b>	<b>38,837,874</b>	<b>38,837,874</b>

## Appendix D

Air Mail Dockets Nos. 17 and 36

Transcontinental and Western Air, Inc.

Adjusted Net Deficits from Operations, Separated as Between  
Routes and Services

May 1, 1936, to December 31, 1937

Service	May 1, 1936 to — June 30, 1937 —		July 1, 1937 to — December 31, 1937 —	
	Postmaster		Postmaster	
	Carrier	General	Carrier	General
<i>Route No. 2</i>				
Pay-mail and passenger....	\$136,780.22	\$740,024.92†	\$325,827.64	\$153,613.30†
Credit mail and passenger.		306,008.98		249,190.01
Passenger only .....	11,425.15	58,990.97	6,780.49†	4,980.62
Total .....	148,205.37	375,024.97†	319,047.15	100,557.33
<i>Off-line</i>				
Credit-mail and passenger, A.M. 2 .....	—	101.03†	—	26,172.87
Credit-mail and passenger, A.M. 36 .....	—	—	—	14,245.14
Passenger only .....	89,773.33	381,643.80	71,881.79	191,127.05
Charter .....		1,067.22		879.70
Total .....	89,773.33	382,609.99	71,881.79	232,424.76
<i>Routes Nos. 36 and 37</i>				
Pay-mail and passenger....	—	—	222,103.83	97,303.48
Credit-mail and passenger..	—	—	—	67,896.67
Passenger only .....	—	—	—	317.60
Total .....	—	—	222,103.83	165,517.75
System .....	\$237,978.70	\$ 7,585.02	\$613,032.77	\$498,499.84

† Denotes red figures.

## Order

At a session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 22nd day of December, A. D. 1938.

Air Mail Docket No. 17

Air Mail Rates for Route No. 2

Air Mail Docket No. 36

In Re Rates for Transcontinental &amp; Western Air, Inc.

This proceeding being at issue upon petition and answer on file, and having been duly heard and submitted by the parties, and full investigation of

the matters and things involved having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon which said report is hereby referred to and made a part hereof:

*It is ordered,* That fair and reasonable rates of compensation for the transportation of air mail by airplane and the service connected therewith over air-mail route No. 2, from October 1, 1936, to and including June 30, 1937, were, for each airplane mile actually flown with 300 pounds of mail or less, the rates determined by applying the provisions of the Commission's order of March 11, 1935, in *Air Mail Compensation*, 206 I. C. C. 675, as amended by the Commission's order of June 14, 1937, 222 I. C. C. 602, to a base rate of 27 cents per airplane mile for a base mileage of 600,000 miles per month; and from and after July 1, 1937, were, are, and will be those determined by applying the same provisions to a base rate of 30 cents per airplane mile for a base mileage of 600,000 miles per month.

By the Commission, division 3.

W. P. BARTEL,  
*Secretary.*

(SEAL)

**INTERSTATE COMMERCE COMMISSION: AIR MAIL  
DOCKET NO. 38**

**Air Mail Rates for Route No. 13 Operated by Western Air  
Express Corporation**

*Submitted December 20, 1938*

*Decided February 23, 1939*

Rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over air mail route No. 13 found not to have been fair and reasonable. Fair and reasonable rates determined and published.

*Leslie Craven and John S. Wynne* for petitioner.

*Walter E. Kelly*, Acting Solicitor, and *William C. O'Brien* for Postmaster General.

**REPORT OF THE COMMISSION**

**DIVISION 3, COMMISSIONERS McMANAMY, MAHAFFIE, AND MILLER.**

**BY DIVISION 3:**

Exceptions were filed by the carrier to the report proposed by the examiner and reply was filed by the Postmaster General. Oral arguments were heard. Our conclusions differ from those of the examiner.

The Civil Aeronautics Act of 1938, approved June 23, 1938, repeals the Air Mail Act of 1934, (excepting certain provisions) but further provides that proceedings pending before the Interstate Commerce Commission for the determination of rates for the transportation of air mail by aircraft on the date of the enactment of the Civil Aeronautics Act of 1938 "shall be continued, orders therein issued, appeals therefrom taken, and payments made

by the Postmaster General pursuant to such orders, as if this Act had not been enacted."

By petition filed December 28, 1937, under the provisions of section 6(a) of the Air Mail Act of 1934, as amended, Western Air Express Corporation, hereinafter called the carrier, alleged that the rate of compensation received by it for the transportation of air mail by airplane over air mail route No. 13 under the provisions of *Air Mail Compensation*, 206 I. C. C. 675, is less than fair and reasonable. The Postmaster General filed an answer denying that the rate of compensation paid to the carrier is less than fair and reasonable, and at the same time filed a petition urging that no hearing be assigned in this proceeding until the Commission has completed an audit and investigation of the carrier's books and records under section 6(b) of the Act. Similar contentions have been rejected by us in numerous previous air mail cases and the petition was therefore denied. *Air Mail Rates for Route No. 31*, 214 I. C. C. 387. Prior to the hearing in this proceeding we issued a report under section 6(b) finding that for the period from May 8, 1934 to June 30, 1936, no unreasonable profit had been derived or accruing to the carrier from the air-mail rates of compensation being paid on route No. 13. *Western Air Exp. Corp. Rate Review, 1935-36*, 225 I. C. C. 743.

Base rates of compensation were fixed in *Air Mail Compensation, supra*, for the transportation of air mail by airplane for all routes then in operation, each base rate being applicable only to the mileage named therefor. The rate for route No. 13 was fixed at 33 1/3 cents per airplane mile for a base of 45,000 miles per month. Provision was made for progressive decrease of 1 cent in the base rate for each 10 per cent increase in the mileage flown, subject to a maximum decrease of 5 cents less than the base rate. This provision was subject to the further exception that when the base mileage is the substantial equivalent of one round trip daily per month, the provision of the scale decreasing the base rate should not become effective until the miles flown totaled 180 per cent of the base mileage. Additional mail schedules authorized from time to time on route 13 since the original decision have resulted in an increase in the authorized monthly mail-pay mileage to approximately 134,000. Under the provisions of the original order, therefore, the rate of compensation has been reduced to 28 1/3 cents per mile. The carrier proposes that an increase in this rate be effectuated by an increase in the base mileage to 134,000 miles. Such an increase would have the effect of increasing the rate at which the carrier is now compensated to 33 1/3 cents per mile.

The carrier contends that the reduction in the per-mile cost of transporting the mail by reason of the additional mail schedules authorized has not been sufficient to offset the mail rate reduction and that the rate reduction constitutes a burden on its operations. It asserts that there have been substantial increases in its operating costs and that additional increases are anticipated in the future. These increases have resulted from the increased cost of operating Douglas equipment over the cost of the Boeings originally operated, increased wages paid personnel, increased Social Security taxes and increased insurance rates. As a result of these increased costs, resulting in an unfavorable operating ratio, the carrier contends that it has been unable properly to finance needed improvements in the property either through earnings or through the attraction of outside capital. Improvements needed, according to the carrier's president, include an additional Douglas plane and

spare engines, new radio equipment, a new passenger station at Las Vegas, repairs to the Salt Lake City hangar, and a Link trainer. These improvements would necessitate additional capital expenditures of \$330,000.

A description of the carrier's route No. 13 is contained in *Air Mail Compensation*, *supra*, page 739. Details with respect to corporate history and capitalization are reported in *Western Air Exp. Corp. Rate Review*, 1935-36, *supra*, page 744. As of the date of the close of the hearing herein, May 14, 1938, there had been no change in the carrier's corporate structure from that set forth in the above report. However, effective July 1, 1937, the carrier acquired the property of National Parks Airways and was granted an assignment of the mail contract for route 19 previously held by that carrier. This proceeding is limited to a consideration of the mail compensation on route 13.

*Investment.* The investment of the carrier in real property and equipment as of March 1, 1936, according to its exhibits, was \$371,167.11 with accrued depreciation of \$148,528.57, leaving a net book value of \$222,638.54. As of June 30, 1937, the investment was shown to be \$515,076.04, the accrued depreciation \$189,733.28, and the net book value \$325,342.76. The figures for June 30, 1937, include an item of \$113,853.13 representing expenditures for a Douglas DST plane purchased but not delivered on that date. The investment as of January 31, 1938, in property used on route No. 13 was \$499,004.86, the depreciation \$164,404.78, and the net book value \$334,600.08. The latter figures reflect the carrier's investment in certain property located at Salt Lake City and used jointly in the operation of routes Nos. 13 and 19. Elimination, upon the basis of use, of that portion of the cost of this jointly used property properly allocable to route No. 19 would reduce the foregoing figures to \$472,616.48, \$144,612.24 and \$328,004.24, respectively.

Exhibits showing the carrier's investment as of the end of the fiscal years 1935, 1936 and 1937, and as of January 31, 1938, were also introduced in behalf of the Postmaster General. The figures shown for June 30, 1937, and January 31, 1938, do not differ materially from those included in the carrier's exhibit.

*Aircraft.* As shown by the report in *Western Air Exp. Corp. Rate Review*, 1935-36, *supra*, 745, the carrier began operations under the present contract with Fokker planes, which were replaced on October 15, 1934, with four new Douglas DC-2 planes. The latter planes were sold to Eastern Air Lines on December 31, 1934, and on that date the carrier began operations with four Boeing 247 planes, which were subsequently remodeled as 247-D. In November 1936 the carrier placed orders for two new Douglas DST sleeper planes. This equipment was not delivered and placed in service until June and July, 1937. However, in April 1937, the carrier began operations with Douglas DC-3 planes leased from United Air Lines.

The Douglas DST type of plane will accommodate 14 passengers with sleeping facilities and 28 without, and is easily convertible. Its initial cost is considerably higher than that of the Boeings and its per-mile operating expense to the carrier exceeds that of the Boeings by approximately 7.5 cents. However, witnesses for the carrier asserted that the acquisition of this equipment was necessary for the efficient operation of the route. The Boeings were three and a half years old and were rapidly becoming obsolete. Furthermore, it was pointed out that the standardization of equipment with



United Air Lines, which uses Douglas planes, was highly desirable from a competitive standpoint.

All of the carrier's schedules to Salt Lake City connect with planes of United Air Lines at that point and about half of its passenger business is through traffic between Los Angeles and San Diego and the East. This traffic is highly competitive since through passenger service is provided between coast points and the East by the transcontinental routes of Transcontinental & Western Air, and American Airlines. These carriers operate their through service exclusively with Douglas equipment. The carrier contends that it was necessary for it to provide comparable facilities in order to maintain its position and secure a fair share of the through passenger traffic. It was testified that prior to the installation of Douglas equipment complaints had been received from west-bound passengers at Salt Lake City, forced to transfer from United Douglas planes to the smaller, older, and less well equipped Boeings.

Other factors which influenced the carrier in the acquisition of its new equipment were the increased capacity of the plane and its greater cruising range. The new plane, as operated by the carrier, has accommodations for 28 passengers as compared with 10 provided by the Boeings, thus providing adequate facilities to take care of peak loads. The record shows that express loads, which at times are as high as 2,000 pounds, reduce the cruising range of the Boeing to such an extent that it is necessary either to take fewer passengers or to make intermediate stops for fuel. It is further shown that the carrier frequently has been compelled to turn away passengers because of lack of space in the Boeings. The cruising range of the Douglas can be extended in case of emergency to 1,500 miles, whereas the maximum cruising range of the Boeing is but 500 miles.

The Postmaster General takes the position that the purchase of the large expensive equipment with substantial increases in operating costs was improper, unjustified by the traffic demands, and resulted in an uneconomical operation of the route, the additional costs of which should not be added to the cost to the Government of transporting the mail. An exhibit was introduced comparing the results of operations for the period July 1937 to January 1938, when the Douglas planes were used, with the period July 1936 to January 1937, when operations were conducted exclusively with Boeing equipment. This exhibit indicates a decline in the later period in passenger and express traffic and revenues but an increase in traffic and advertising expenses. Based upon these data witness for the Postmaster General concluded that the purchase of the Douglas equipment was not justified by the traffic needs. He did not dispute the carrier's need for new equipment but expressed the opinion that smaller modern ships suitable to the carrier's operations could have been obtained, which could have handled the available traffic and would have been less expensive to operate.

It was also argued in behalf of the Postmaster General that the Douglas DST sleeper equipment was purchased by the carrier in contemplation of a proposed through sleeper service over United Air Lines route No. 1 and the carrier's route No. 13 by means of an agreement providing for the interchange of equipment by the carrier and United Air Lines. This arrangement was disapproved by the Postmaster General and the through service was not put into operation. The Postmaster General contends that the carrier exercised poor judgment in entering contracts for the purchase of sleeper

equipment for use in through service without having previously ascertained that such service would be permitted.

While it is true that traffic statistics presented by the Postmaster General show that the anticipated increases in passenger traffic with the acquisition of Douglas equipment were not forthcoming, it must be borne in mind that there had been a general business decline throughout the country which was reflected in the air-transport industry. Furthermore, the number of accidents which occurred in the winter of 1936-1937 had an extremely depressing effect upon the normal growth of the passenger business of the airlines. In the opinion of an officer of the carrier the decline in its passenger and express business would have been more marked if it had not placed the Douglas planes in service.

The record does not substantiate the assertion by the witness for the Postmaster General that smaller planes were available which would have served the carrier's requirements, and at less expense than the Douglas planes. The witness admitted that he had made no special investigation of the equipment situation and based his opinion upon his general knowledge. On the other hand the carrier's witness testified that a careful study had been made of various types of equipment. It appears from his testimony that the Douglas DC-2 plane was not available either new or second-hand at the time the carrier placed its orders for equipment. The Lockheed Electra planes could not be used in the carrier's operations because of restrictions placed by Department of Commerce regulations upon its use over terrain similar to that traversed by route 13. The Lockheed 12 provided space for only 6 passengers and has since proven inadequate for use even on route 19, upon which passenger traffic is much lighter, while the Lockheed 14's were not available when the carrier needed equipment replacements.

With respect to the Postmaster General's contention that the Douglas sleeper planes were acquired for use in connection with an interchange of equipment arrangement with United Air Lines, the evidence is conflicting. The carrier placed its order for Douglas equipment in November, 1936. There is some indication of record that negotiations with United Air Lines for the interchange agreement were under consideration at that time and it appears that advertisements for the through service appeared in May, 1937, although no agreement was executed until some time in June. There appears to have been no reason for the purchase of the sleeper equipment except for interchange with United in connection with the proposed through-sleeper service. However, the difference between the initial cost of the sleeper plane and the DC-3, is not substantial and the cost of operation is the same.

As we stated in *Air Mail Rates for Route No. 24*, 222 I. C. S. 749, 762, the propriety of equipment replacements is primarily a responsibility of management, and a carrier must be allowed some latitude for the exercise of business judgment in such matters as are not controlled by law. The reasons which led the carrier to acquire and place in operation new Douglas equipment have been summarized heretofore. The tendency throughout the air-transport industry is toward the acquisition of faster, larger, and more luxurious flying equipment. Whether this tendency is sound from the standpoint of the economic welfare of the air lines generally need not be considered in this proceeding. However, it is certain that if the carrier here involved is to receive its fair share of the competitive passenger traffic it must provide facilities comparable to those of competing carriers. The evidence

is convincing that the traffic and safety development of the carrier required that in making necessary replacements it keep step with its competitors in the industry in the matter of equipment. It is our conclusion, therefore, that the Douglas equipment used in the operation of route 13 was reasonably necessary for efficient operation and did not constitute an abuse of managerial discretion.

*Operations.* Route No. 13 extends from Salt Lake City to San Diego, via Las Vegas, Nev., and Los Angeles, Calif., a distance of about 780-miles, traversing a mountainous terrain for about four-fifths of its distance. With the beginning of operations under the present contract one round trip daily between Salt Lake City and San Diego was scheduled in mail service. On February 15, 1935, an additional round trip daily, except Sundays and holidays was scheduled for mail between Salt Lake City and Los Angeles. There were no changes in the scheduled mail-pay trips of the carrier until March 15, 1936, when the frequency of the Salt Lake City to Los Angeles mail-pay round trip was changed to daily. On August 1, 1937, an additional round trip between these points was authorized daily, except Saturday and Sunday. Effective February 15, 1938, one round trip daily between Salt Lake City and San Diego, and two round trips daily and one round trip daily except Sunday and holidays between Salt Lake City and Los Angeles were authorized. This is the authorized mail-pay service in effect at the close of the hearing in this proceeding.

Effective April 1, 1936, a daily round trip in weight-credit service was authorized between Salt Lake City and San Diego, in addition to a daily weight-credit schedule from San Diego to Los Angeles, and a similar schedule daily, except Sundays and holidays, from Los Angeles to San Diego. This service has changed from time to time with changes in the authorized mail-pay schedules. At the close of the hearing the only weight-credit schedule consisted of a trip on Sundays and holidays between San Diego and Los Angeles.

Detailed statistical data covering the carrier's operations for the period prior to June 30, 1936, are set forth in *Western Air Exp. Corp., Rate Review, 1935-36, supra*, 747. For the year July 1, 1936 to June 30, 1937, the reports of the carrier to the Postmaster General show that it flew a total of 1,699,393 miles, of which 1,593,251 were in mail and passenger service and 106,142 miles in ferry and miscellaneous service. The average mail load during this period was 329 pounds. A total of 20,494 revenue passengers were transported, an average of 4.5 passengers per revenue mile. The load factor during the period averaged 44.35 per cent, ranging from 23.58 per cent in February, 1937, to 62.25 per cent in August, 1936. The carrier transported 438,878 pounds of express during the period, ranging from 24,629 pounds in April, 1937, to 48,851 pounds in October, 1936.

From July 1, 1937 to March 31, 1938, the carrier reported a total of 1,185,987 revenue miles flown and 68,130 nonrevenue miles. The average mail load during the period was 248 pounds. During the period 15,161 revenue passengers were carried, which is the equivalent of 4.8 passengers per revenue mile. The load factor for this period was 40.09 per cent, ranging from 22.94 per cent in November, 1937, to 56.50 per cent in September, 1937. While the load factor is somewhat lower during this 9-month period than the preceding year, it should be noted that the revenue passengers per mile is higher. The reduced load factor indicated for this period may be due in

part to the installation of Douglas planes with a larger passenger capacity. However, a large part of the difference is probably attributable to the fact that only a portion of a year is reflected, omitting three of the carrier's better operating months.

From the period from the beginning of operations under the mail contract to June 30, 1936, we found in *Western Air Exp. Corp. Rate Review, 1935-36, supra*, 750, that the revenues received from exclusive passenger schedules substantially equalled the additional expenses incurred in their operation. From July 1, 1936 to June 30, 1937, the exclusive passenger operations of the carrier were restricted to the operation on Sundays and holidays of schedules authorized to transport mail during the other days of the week and to the completion of mail schedules canceled because of bad weather or other conditions. From July 1, 1937, to the close of the hearings the carrier scheduled no exclusive passenger flights. Such exclusive mileage as was reported consisted entirely of the completion of canceled mail schedules.

*Results of operations.* Exhibits were introduced by the carrier showing the results of its operations from May 8, 1934, the date operations were started under the present mail contract, to January 31, 1938. Similar statistics were presented by the Postmaster General for the period from March 1, 1935 to January 31, 1938. The results of operations as reflected in the carrier's monthly reports to the Postmaster General are also of record. For purposes of this proceeding, discussion will be restricted to the 12-month period ended January 31, 1938, as fairly representative of present conditions on the line, and as reflecting the seasonal variations in traffic.

According to the carrier's exhibits which purport to reflect the results of operations as shown on its books, it received revenues attributable to operations totaling \$764,792.55 for the year ended January 31, 1938. These revenues were the same as those reported to the Postmaster General except that adjustments have been made to include mail revenues in the months in which earned. Operating expenses for the same period were \$770,491.84, resulting in a net deficit for the period of \$5,699.29. A further adjustment is proposed by the carrier to eliminate a credit to depreciation during the month of December, 1937, of \$40,300, representing profit from the sale of two Boeing 247-D planes to the Scadta Airlines of South America. This sum, representing the difference between the amount received on the sale of the equipment and the net book value at which it was carried in the accounts of the carrier, was credited to depreciation expense in accordance with the Uniform System of Accounts of the Post Office Department.

A witness for the carrier pointed out that under the System of Accounts in effect prior to July 1, 1937, this profit would have been credited to profit and loss. He testified that the planes had been purchased from United Air Lines in the summer of 1935, at which time they were a year and a half old. The planes were depreciated on the carrier's books on a 4-year life basis. He attributed the high price realized from this sale to the abnormal demand for second-hand planes resulting from the foreign situation and urged that as the profit was of a nonrecurring nature it should not be considered as a proper part of a statement of operating results. If this item were treated in accordance with the carrier's contention the net deficit for the year would be increased to \$45,999.29.

The Postmaster General proposed a number of adjustments in the carrier's reported figures. With these adjustments, the net deficit for the

12-month period ended January 31, 1938, would be \$34,360.19. The carrier has from time to time adjusted the depreciation rates on its planes and engines. These adjustments were reflected in the accounts by credits to operating expenses in the month during which the adjustment was made. The witness for the Postmaster General allocated these credits to the months during which the depreciation had been accrued. The net effect of this adjustment to the year ended January 31, 1938, is insignificant. In the accounting necessary in connection with the accidents which have occurred on the route the carrier made debits and credits to its profit and loss accounts to reflect amounts by which its insurance recovery failed to meet or exceeded the loss suffered through the accident. The witness for the Postmaster General charged these items to the carrier's operations with a resultant net increase in operating expenses for the period covered by his examination of \$9,727.31. The carrier contends that in those cases in which the plane lost was not insured to its full value of loss suffered should properly be considered as an expense of operation. On the other hand, it takes the rather inconsistent position that in those instances in which the insurance recovery was greater than the book value of the plane the amount of "profit" should be credited to profit and loss rather than to operating expense. However, these adjustments took place prior to February 1, 1937, and hence do not affect the figures for the year ended January 31, 1938.

The most important adjustment proposed by the Postmaster General pertained to the accounting for the book profit received from the sale of the two Boeing planes heretofore discussed. The witness for the Postmaster General considered the book profit from the sale of the planes to be excess depreciation charged prior to their sale and accordingly in his adjustments credited depreciation expense each month over the life of the planes with a proportionate share of such excess depreciation. In support of this procedure, he pointed out that the Boeings sold had been depreciated on the basis of a 4-year life whereas the Boeings which the carrier is now using are being depreciated upon the basis of a service life of about 6 years. If the Boeings which the carrier sold had been depreciated on the latter basis the depreciation accruals would have been reduced \$24,177.81. This would leave a profit of \$17,160.83 from the sale of the planes over their net book value. However, as heretofore explained, the witness for the Postmaster General treated the entire profit received from the sale of the planes as excess depreciation. This conclusion presumes a service life in excess of 8 years. There is no basis in the record for such assumption. On the contrary the record contains convincing evidence to show that the Boeings were rapidly becoming obsolete for operation on the carrier's line and that their sale at an unusually high figure was due to abnormal conditions in the airplane market. Furthermore, the estimated life of 4 years used by the carrier in computing depreciation charges upon its Boeing planes is not out of line with the depreciation practices of other comparable airlines using similar equipment. It is, we think, apparent that the sale of these planes, resulting in a profit of a nonrecurring nature, and not being an incident to the operation of the air line, should not be considered in arriving at the results of operations.

*Conclusion.* The carrier contends that even if it is granted the full increase in compensation it seeks, its net income from the operation of route 13 for the calendar year 1938 will be only \$5,530. It estimates that for the calendar year 1938 increased revenues which will accrue to it, if granted the

entire increase it seeks, will be \$135,457. Partially offsetting this increase in revenue are estimated increases in items of expense aggregating \$65,405, leaving a net increase of \$70,052. The deficit shown by the carrier for the calendar year 1937 was \$64,522. This would leave the estimated net profit above referred to. This contention is predicated upon the assumption that the operating efficiency in 1938 would be the same as that in 1937, and that there would be no increase in passenger or express revenue. At the hearing witnesses for the carrier indicated that they were hopeful of some increase in passenger business during the year. However, monthly reports of the carrier to the Post Office Department since the hearing indicate that the improvement in that respect has been nominal.

It will be noted that there is included in the estimated items of additional expense an item of \$12,000, designated as the cost of raising additional capital. This item clearly would not be chargeable to the operating expenses of the carrier.

The record clearly establishes that there have been and will be, substantial increases in the cost of operations, a proportionate share of which should be borne by the mail service. According to the carrier the cost per mile increased from 43 cents in 1936 to 51 cents in 1937. The Postmaster General's exhibit shows increases in the per mile costs from 42 cents for the fiscal year ended June 30, 1936, to 46.5 cents for the year ended June 30, 1937, and to 50 cents for the 7-month period from July 1, 1937 to January 31, 1938. As supporting its contentions that these increases were not excessive or unreasonable the carrier referred to the annual report of United Air Lines showing an increased cost per mile from 56.3 cents in 1936 to 66.2 cents in 1937, and of Transcontinental & Western Air showing an increase from 62 cents to 69 cents.

As heretofore shown, the carrier's figures show a deficit of \$45,999 for the year ended January 31, 1938. For the same period the Postmaster General's evidence shows an adjusted deficit of \$34,360.

The determination of reasonable rates for the future may not properly be predicated solely upon the results of operations in the past, nor may reasonable rates properly be based upon estimates for the future without reference to the experience of the past. Such determination must be the result of an informed judgment based upon consideration of all the facts of record.

We find that the rates of compensation for the transportation of air mail by airplane, and the service connected therewith, over route No. 13, were, and are, not fair and reasonable from and after the date of the filing of the petition herein, and that subject to the provision of section 3(f) of the act, the fair and reasonable rates of compensation for each airplane mile actually flown with 300 pounds of mail or less, and the service connected therewith, over route No. 13, from and after the date of the filing of the petition herein were, are, and will be, those determined by applying the provisions of the Commission's order in *Air Mail Compensation, supra*, as amended, to a base rate of  $33\frac{1}{3}$  cents per airplane mile for a base mileage of 134,000 miles per month.

The findings herein are without prejudice to any rates which may be fixed by the Civil Aeronautics Authority under the provisions of the Civil Aeronautics Act of 1938, which differ materially from those of the Air Mail Act of 1934.

An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting-in-part: .

As to rates for the future I agree. For the reasons stated in my separate expression in *Air Mail Compensation*, 216 I. C. C. 166, 191, I do not concur in making the changes in rates retroactive.

### Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 23rd day of February, A. D. 1939.

### Air Mail Docket No. 38

#### Air Mail Rates for Route No. 13 Operated by Western Air Express Corporation

This proceeding being at issue upon petition and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon which said report is hereby referred to and made a part hereof:

*It is ordered*, That fair and reasonable rates of compensation for the transportation of air mail by airplane and the service connected therewith over air mail route No. 13 are, and will be, for each airplane mile actually flown with 300 pounds of mail or less, the rates determined by applying the provisions of the Commission's order in *Air Mail Compensation*, 206 I. C. C. 675, as amended by the Commission's order of June 14, 1937, to a base rate of 33⅓ cents per airplane mile for a base mileage of 134,000 miles per month.

By the Commission, Division 3.

W. P. BARTEL,  
*Secretary.*

(SEAL)

### INTERSTATE COMMERCE COMMISSION: AIR MAIL DOCKET NO. 1<sup>1</sup>

#### Air Mail Compensation

*Submitted April 9, 1938*

*Decided June 12, 1939*

Proviso in order of June 14, 1937, modifying order of March 11, 1935, to provide that compensation payable under any rate in the scale shall not exceed the minimum compensation payable under the next lower rate, vacated and set aside. Findings and order of March 11, 1935, modified and amended. Previous reports 206 I. C. C. 675, 216 I. C. C. 166, 220 I. C. C. 149, and 222 I. C. C. 602.

*Gerald B. Brophy, Paul M. Godehn, Frank E. Quindry, Carleton Putnam, John S. Wynne, and Robert W. Oliver* for the carriers.

*Karl A. Crowley*, Solicitor for Post Office Department, and *William C. O'Brien* for Postmaster General.

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1. This report also embraces Air Mail Docket No. 16, *Air Mail Rates for Route No. 24*, and Air Mail Docket No. 18, *National Parks Airways, Inc., Base Rate Mileage*.

## REPORT OF THE COMMISSION ON FURTHER HEARING

## BY THE COMMISSION:

The Civil Aeronautics Act of 1938, approved June 23, 1938, repeals generally the provisions of the Air Mail Act of 1934, but specifically provides that proceedings for the determination of rates for the transportation of air mail by aircraft pending before us on the date of the enactment of the Civil Aeronautics Act of 1938 "shall be continued, orders therein issued, appeals therefrom taken, and payments made by the Postmaster General pursuant to such orders, as if this Act had not been enacted."

In *Air Mail Compensation*, 206 I. C. C. 675, decided March 11, 1935, we prescribed base rates per airplane mile for air mail routes with base mileages for each route. The base mileage represented the average number of airplane miles, including weight credit miles, which it was estimated would be flown per month on each air mail route. A scaling provision in connection with the rates prescribed was as follows:

"The base named for each route shall be used only for the mileage named for that base and shall be (1) progressively decreased 1 cent upon each increase in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, and (2) progressively increased 1 cent upon each decrease in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, \* \* \*."

This rule of progression in rates based on variations in airplane miles flown was amended and modified by a proviso in our order of June 14, 1937, *Air Mail Compensation*, 222 I. C. C. 602, reading as follows:

*Provided*, That the compensation payable under any rate so determined shall not exceed the minimum compensation payable under the next lower rate so determined.

In a subsequent petition Transcontinental & Western Air, Inc., asked that the proviso of our order of June 14, 1937, eliminating the overlap in the original scale of air mail rates, be vacated on the ground that it constituted a change in compensation without due notice and hearing as required by the terms of section 6(a) of the Air Mail Act of 1934, as amended. Thereupon, by order of December 13, 1937, we reopened the proceedings for further hearing "solely upon the effect and the reasonableness of the said proviso," but specified that pending such hearing our order should remain in full force and effect. Further hearing, at which all parties were afforded the opportunity to appear and at which other carriers in addition to petitioner offered evidence, has now been had.

*Air Mail Compensation*, Air Mail Docket No. 18, *National Parks* case, and Air Mail Docket No. 16, *Air Mail Rates for Route No. 24*, were reopened upon petitions of the Postmaster General by order of April 5, 1937, for argument before us on the questions of (1) our authority to make orders fixing fair and reasonable rates effective as of the date of the filing of the petition, and (2) as to the necessity for clarification of the original order of March 11, 1935, in *Air Mail Compensation* respecting the computation of rates.

The two questions argued were (1) whether the Commission had power to make its orders fixing fair and reasonable air mail rates effective prior



to the date of its findings and (2) whether the so-called 180 per cent rule required a decrease of 1 cent in the rates when the mileage flown reached 180 per cent of the base mileage or whether such rule required 1 cent decrease for each 10 per cent increase in mileage after the mileage flown equalled 180 per cent of the base mileage.

During the course of the argument, however, it was pointed out that in numerous instances the air carriers received less compensation for flying more miles when the rates changed from one rate in the scale to another. This defect in the progression of the scale had previously been eliminated in *Air Mail Compensation*, 216 I. C. C. 166, which related to the rates of Northwest Air Lines, Inc., and in *National Parks Airways, Inc., Base Rate Mileage*, 220 I. C. C. 149, by adding a proviso to the orders therein to the effect that the compensation payable under any rates determined under the scale should not exceed the minimum compensation payable under the next lower rate in the scale.

In our report and order of June 14, 1937, heretofore referred to, we found that we had authority to fix fair and reasonable air mail rates effective as of the date of the filing of a petition for determination of such rates. We also clarified the 180 per cent rule. In addition we also included the proviso quoted above, limiting the compensation payable under any rate to the minimum compensation payable under the next lower rate in the scale.

*Jurisdiction.* Petitioner contends that we were without jurisdiction to insert the proviso in question, amending our original order of March 11, 1935, in our order of June 14, 1937. Although it is a party to *Air Mail Compensation*, Air Mail Docket No. 1, and received our order of April 5, 1937, reopening that proceeding, it now takes the position that that case was reopened solely with respect to the two questions raised in the Postmaster General's petitions and states that as petitioner was not interested in either of the questions stated in the order it was not represented at the argument. The fact that these proceedings were reopened by our order of April 5, 1937, merely for oral argument with no opportunity for the introduction of testimony, is the basis of a contention that an adequate hearing was not afforded. Petitioner further contends that even if our order of June 14 is valid, it nevertheless named no effective date and the Postmaster General therefore erred in making the order effective as of March 1, 1935, and in thereby requiring substantial refunds from the carriers. These contentions were supported by the other carriers who appeared at the further hearing.

*Effect and reasonableness of the proviso of order of June 14, 1937.* Although not waiving their contention with respect to jurisdiction, the carriers submitted evidence with respect to the original scale and the effect upon their total compensation of the progression from one rate bracket thereof to another. They also introduced evidence with respect to the effect and reasonableness of the proviso in our order of June 14, eliminating the overlapping in the original scale. Petitioner introduced exhibits showing that in certain instances this overlapping in the original scale resulted in smaller total compensation for flying a given number of miles than would have been received for flying a lesser number of miles. In the aggregate petitioner received \$8,811.15 less than it would have received had it flown fewer miles during the period March 1, 1935, to December 31, 1937. For example, in July, 1935, the mail-pay miles flown by petitioner totaled 484,652, which for an average mail load of 359 pounds resulted in payment of \$133,279.30 at a rate of 27.5

cents per airplane mile. If it had flown 479,999 miles, (one mile less than the rate breaking point) the rate would have been 28.6 cents per mile, and it would have received \$137,279.71, or \$4,000.41 more than it actually received for a greater mileage, namely 3,653 miles greater.

Our order of June 14 as applied retroactively by the Postmaster General, while eliminating the objectionable overlapping, served to reduce petitioner's compensation \$53,579.69 for the 3-year period from March 1, 1935, to December 31, 1937, below that computed under the terms of our original order. The maximum loss in any one month occurred in July, 1936, when petitioner flew 479,751 miles with an average mail load of 524 pounds. At the rates prescribed in our order of March 11, 1935, this would have entitled the carrier to a rate of 33.8 cents per mile or a total compensation of \$162,155.84. The minimum compensation payable under the next lower rate bracket was \$156,000.32, and under the proviso of our order of June 14 this is the amount to which the compensation for that month was reduced by the Postmaster General, a reduction of \$6,155.52. Petitioner points out that the minimum compensation payable under the next lower rate bracket would be reached under the rate of 33.8 cents per mile at 461,539 miles, with the net result that it received no additional compensation for flying the mail 18,212 additional miles.

In the case of the four routes of North American Aviation, Inc., the loss in compensation as a result of overlapping in the original scale was shown to be \$28,651.72, and as a result of the proviso of our order of June 14, \$31,186.65, for the period March 1, 1935, to December 1, 1937. United Air Lines Transport Corporation shows reductions in compensation of \$4,097 on its route No. 1, and of \$10,611.17 on its route No. 11, for the same period, as a result of the application of the proviso of our order of June 14. Western Air Express Corporation shows that on its route No. 13 reductions totaling \$6,048.93 were made in compensation for the period from March 1, 1935, to June 14, 1937. For the last half of June and the month of July reductions in compensation amounted to \$812.29. On route No. 19 the reduction prior to June 14 amounted to \$43.57 and subsequent to that date to \$371.91. On route No. 29, operated by Continental Air Lines, Inc., the reduction in compensation made effective by the Postmaster General amounted to \$304.22. This reduction was in the compensation for February and March, 1937. The record does not disclose the amount of losses, if any, due to overlapping in the original scale in respect of any carriers other than petitioner and North American Aviation, Inc.

A witness for petitioner stated that in his opinion the proviso in question in our order of June 14 had resulted in an unreasonable reduction in mail compensation and suggested, as an alternative method for eliminating the overlapping, that a proviso to the effect that the "compensation payable under any rate should not be less than the maximum compensation under the next higher rate bracket" be substituted for that included in our order of June 14. Under this proposal petitioner would have received \$137,279.71 in July, 1935, and \$162,155.84 in July, 1936, in lieu of the amounts computed by the Postmaster General as due under our orders, namely \$133,279.30 and \$156,000.32, respectively. According to petitioner's witness, if this proposal had been applied during the 3-year period its compensation would have been increased \$8,811.15, instead of being reduced \$53,579.69. The other carriers concurred in this recommendation, which is, of course, a reversal of the method now in

effect, and which would flatten out the scale at higher levels than at present by operation of the proviso in question. The method which we adopted to eliminate the overlap resulted in considerable loss of revenue to the air carriers, whereas the rule proposed by the air carriers for elimination of the overlap would result in more revenue than under the original scale.

It was suggested at the hearing by an attorney for one of the air lines that the overlap in the scale might be practically eliminated by the substitution of a rule to the effect that for every 1 per cent increase or decrease in mileage flown the rate should be progressively decreased or increased by 1 mill. This rule would make a gradual progression from one rate to another in the scale, which was our intention in prescribing the original scale.

The present rate of pay for carrying 300 pounds of mail or less on air mail route No. 2 operated by Transcontinental & Western Air, Inc., is 30 cents with a base mileage of 600,000 airplane miles per month as fixed in *Air Mail Rates for Route No. 2*, 231 I. C. C. 229. A comparison of the following four methods of computing rate and monthly compensations, using T.W.A. figures as illustrative, is shown in the appendix: (1) under our original order of March 11, 1935, (2) under the rule prescribed in our order of June 14, 1937, (3) under the carriers' proposed rule, and (4) under the suggested 1-per cent - 1-mill progression. The fourth method does not entirely eliminate the overlap, but reduces its amount so that it is of little practical importance. Either the rule of June 14, 1937, or the rule proposed by the air carriers may be applied to the rates made by the 1-per cent - 1-mill progression, and thus eliminate the overlap. However, it would simplify computation of rates to apply the 1-per cent - 1-mill progression without any rule for disposing of overlap.

We have authority upon our own motion to correct an error in our former findings and to make such finding in the form of an amendment to our original findings and order. As previously stated, a full hearing on this question has been held.

**Conclusions.** The Air Mail Act of 1934, with its maximum limitations of 33½ cents per airplane mile for 300 pounds of mail and 40 cents per airplane mile for any load, indicated that air mail rates should be determined upon the basis of airplane miles flown. The suggested rule of progression of 1 mill change in rate for each variation above or below the monthly base mileage would smooth out the progression in the scale originally prescribed, and continued in connection with air mail rates fixed and determined by us. We find that the 1-per cent - 1-mill rule of progression was and is fair and reasonable.

We find that the proviso in our findings and order of March 11, 1935, reading as follows:

The base named for each route shall be used only for the mileage named for that base and shall be (1) progressively decreased 1 cent upon each increase in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, and (2) progressively increased 1 cent upon each decrease in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, \* \* \*.

should be amended and modified by substituting therefor the following proviso:

The base named for each route shall be used only for the mileages named for that base and shall be (1) progressively decreased 1 mill upon each increase in the number of airplane miles actually flown with mail each month which equals 1 per cent of the mileage named for that base, and (2) progressively increased 1 mill upon each decrease in the number of airplane miles actually flown with mail each month which equals 1 per cent of the mileage named for that base.

Our findings and orders in each air mail case decided subsequent to our original findings and order of March 11, 1935, which refers to the original order and is made subject to the original findings and order for the method of computing rates, will be modified to conform to the substituted proviso.

The proviso of our order of June 14, 1937, reading as follows:

*Provided*, That the compensation payable under any rate so determined shall not exceed the minimum compensation payable under the next lower rate so determined

and a similar proviso in the order of division 3, Air Mail Docket No. 18, dated February 8, 1937, respecting the rate for National Parks Airways, Inc., will be vacated and set aside. A similar proviso in the order of division 3 in Air Mail Docket No. 1, dated June 6, 1936, respecting rates for Northwest Airlines, Inc., will not be vacated because it applies in connection with specific rates and the rule of progression is not the same as under the original scale.

An appropriate order will be entered.

COMMISSIONER MILLER concurs in the results.

LEE, *Commissioner*, dissenting:

The proviso of our order of June 14, 1937, to the effect that the maximum compensation under any rate in the scale should not exceed the minimum compensation under the next lower rate in the scale, effectively eliminated the objectionable overlapping in the original scale. Upon petition of one of the air carriers, contending that such proviso was inserted in our order of June 14, 1937, without adequate notice and hearing, and that it should not have been applied retroactively to March 1, 1935, we reopened these proceedings "solely upon the effect and the reasonableness of the said proviso," and a full hearing was had.

In my opinion the proviso in question was and is fair and reasonable, but it should not have been applied retroactively. We should affirm the proviso in question contained in our order of June 14, 1937, effective as of December 13, 1937, the date of our last order reopening these proceedings.

COMMISSIONERS PORTER AND MAHAFFIE dissent.

COMMISSIONER AITCHISON, being necessarily absent, did not participate in the disposition of these proceedings.

### Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of June, A. D. 1939.

Air Mail Docket No. 1  
Air Mail Compensation

## Air Mail Docket No. 16

## Air Mail Rates for Route No. 24

## Air Mail Docket No. 18

## National Parks Airways, Inc., Base Rate Mileage

*It appearing*, That on March 11, 1935, the Commission made and filed its report and entered its order in Air Mail Docket No. 1; that on June 6, 1936, division 3 made and filed its report on further hearing and entered its order in that proceeding; that on February 8, 1937, division 3 made and filed its report and entered its order in Air Mail Docket No. 18; and that on February 12, 1937, Air Mail Docket No. 16 stood submitted for decision by division 3;

*It further appearing*, That on April 5, 1937, the Commission, by appropriate order, reopened said proceedings for oral argument before it solely on the questions of (1) its authority to make its orders fixing fair and reasonable rates effective as of the date of filing of the petition, and (2) as to the necessity for clarification of the order of March 11, 1935, in Air Mail Docket No. 1, respecting the computation of rates;

*And it further appearing*, That on June 14, 1937, the Commission made and filed its report and entered its order in the above-entitled proceedings;

*And it further appearing*, That Transcontinental & Western Air, Inc., on November 5, 1937, filed a petition to vacate the proviso of our order of June 14, 1937, relating to the maximum compensation payable under any rate determined under the original scale of March 11, 1935; that the Commission by appropriate order reopened these proceedings for further hearing solely upon the effect and reasonableness of said proviso; and that further hearing was held on February 3, 1938;

*And it further appearing*, That these questions have been fully heard and that the Commission has, on the date hereof, made and filed a report on rehearing containing its findings and conclusions thereon, which said report is hereby referred to and made a part hereof:

*It is ordered*, That the proviso in our findings and order of March 11, 1935, reading as follows:

"The base named for each route shall be used only for the mileage named for that base and shall be (1) progressively decreased 1 cent upon each increase in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, and (2) progressively increased 1 cent upon each decrease in the number of airplane miles actually flown with mail each month which equals 10 per cent of the mileage named for that base, \* \* \*."

is hereby modified and amended by substituting therefor the following proviso:

The base named for each route shall be used only for the mileages named for that base and shall be (1) progressively decreased 1 mill upon each increase in the number of airplane miles actually flown with mail each month which equals 1 per cent of the mileage named for that base, and (2) progressively increased 1 mill upon each decrease in the number of airplane miles actually flown with mail each month which equals 1 per cent of the mileage named for that base.

Air Mail Dockets.  
Nos. 1-16-18.

# A P P E N D I X

Miles TWA Base mileage 600,000	Original basis under order of March 11, 1935	Present basis			Carriers' proposed basis			Suggested		
		Rate	Total monthly compensation	Maximum overlap	Rate	Total monthly compensation	Rate	Rate	Total monthly compensation	Maximum overlap
% less than base mileage					maximum under any rate minimum under next lower rate	maximum under any rate minimum under next higher rate	1 per cent — 1 mill basis	With no rule for disposing of overlap		
540,001	\$162,000.30	30	\$162,000.30		30	\$167,400	30.9	\$166,860.31		
10% less	540,000	31	167,400	\$5,399.70	31	167,400	31	167,400		\$539.69
	534,001	31	165,540.31	3,540.01	31	162,000.30	31	165,540.31		
11% less	534,000	31	165,540	3,539.70	31	162,000.30	31	165,540		533.69
	528,001	31	163,680.31	1,680.01	31	162,000.30	31	163,680.31		
12% less	528,000	31	163,680	1,679.70	31	162,000.30	31	163,680		527.69
	522,001	31	161,820.31		31	161,820.31	31	161,820.31		
13% less	522,000	31	161,820		31	161,820	31	161,820		521.69
	516,001	31	159,960.31		31	159,960.31	31	159,960.31		
14% less	516,000	31	159,960		31	159,960	31	159,960		515.69
	510,001	31	158,100.31		31	158,100.31	31	158,100.31		
15% less	510,000	31	158,100		31	158,100	31	158,100		509.69
	504,001	31	156,240.31		31	156,240.31	31	156,240.31		
16% less	504,000	31	156,240		31	156,240	31	156,240		506.69
	498,001	31	154,380.31		31	154,380.31	31	154,380.31		
17% less	498,000	31	154,380		31	154,380	31	154,380		497.69
	492,001	31	152,520.31	1,079.69	31	152,520.31	31	152,520.31		
18% less	492,000	31	152,520	1,080	31	152,520	31	152,520		491.69
	486,001	31	150,660.31	2,939.69	31	150,660.31	31	150,660.31		
19% less	486,000	31	150,660	2,940	31	150,660	31	150,660		485.69
	480,001	31	148,800.31	4,799.69	31	148,800.31	31	148,800.31		
20% less	480,000	32	153,600		32	148,800.31	32	153,600		479.69

*It is further ordered*, That our findings and orders in each air mail docket decided subsequent to our original findings and order of March 11, 1935, which are made subject to the original findings and order for the method of computing rates, be, and they are hereby modified to conform to the substituted proviso contained in the next preceding paragraph of this order.

*And it is further ordered*, That the proviso of our order of June 14, 1937, reading as follows:

*Provided*, That the compensation payable under any rate so determined shall not exceed the minimum compensation payable under the next lower rate so determined,

and a similar proviso in the order of division 3 in Air Mail Docket No. 18, dated February 8, 1937, respecting the rates for National Parks Airways, Inc., is hereby vacated and set aside.

By the Commission:

W. P. BARTEL,  
Secretary.

(SEAL)