

1940

## Editorial

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## WHAT IS PUBLIC CONVENIENCE AND NECESSITY?

Next to "just and reasonable" the most elastic yardstick and the broadest delegation of legislative authority in the public utility field has been "public convenience and necessity." So broad is it that those concerned with economic regulation have looked eagerly to each new pronouncement on the subject, and particularly where a new field of transportation is involved. The Civil Aeronautics Act of 1938 kept the old standard and the first four-square holding of the Civil Aeronautics Authority under it was on March 6, 1940 in its opinion in Docket Nos. 131 and 232 authorizing a certificate of convenience and necessity for a new air carrier operation between St. Paul-Minneapolis, Minn., and Duluth, Minn.-Superior, Wis. by Northwest Airlines, Inc.

The Northwest-Twin Cities-Duluth opinion is logical and well grounded. Because of this and its priority in the air carrier field it is certain to be often quoted. It may become as famous in transportation as *Smyth v. Ames*, The Minnesota Rate Cases, The Los Angeles Gas Case and *Lindheimer v. Illinois Bell Telephone Co.* have in the general utility field of valuation and rate-making. The pertinent language follows:

"The applications herein are governed by the provisions of Section 401 of the Act, subsection (d) (1) of which provides that the Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application if it finds that the applicant is fit, willing and able properly to perform such transportation and that such transportation is required by the public convenience and necessity<sup>1</sup>.

The phrase 'public convenience and necessity' has long been used as the statutory standard for the guidance of various administrative bodies in connection with the regulation of public utilities. It has been universally recognized that the phrase is susceptible of no exact definition and that its meaning must be largely ascertained by reference to the context and objectives of the particular statute in which it is used. Although it is obvious that a fixed and rigid

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1. Section 401(d)(1) provides:—"The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied."

concept of the term, to be applied uniformly to every new route application, cannot be evolved by the Authority and that each application must be determined upon the basis of the particular circumstances surrounding the proposed new operation, certain sources of interpretation are, nevertheless, available which indicate the purpose of the phrase as used in the Act and give some bounds to the problem for the guidance of the Authority in reaching its determination in each case. Two important sources are the 'Declaration of Policy' of the Act and two subsequent sections thereof (Section 406 [a] and [b] and Section 302 [a]) relative to the financial responsibility of the Government resulting from the issuance of certificates for new routes.

"Section 2, entitled 'Declaration of Policy,' directs the Authority, in the exercise and performance of its powers and duties under the Act, to consider certain factors, among others, as being in the public interest and *in accordance with public convenience and necessity*. These factors are

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

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

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

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

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

(f) The encouragement and development of civil aeronautics.

The Declaration of Policy of the Act thus sets out the broad standards which the Authority is to apply to the facts of any given case in determining whether the 'public convenience and necessity' requires the issuance of a certificate authorizing an air carrier to engage in air transportation over a new route. Obviously, in the light of these standards, it was not the Congressional intent that the air

transportation system of the country should be 'frozen' to its present pattern. On the other hand, it is equally apparent that Congress intended the Authority to exercise a firm control over the expansion of air transportation routes in order to prevent the scramble for routes which might occur under a 'laissez faire' policy. Congress, in defining the problem, clearly intended to avoid the duplication of transportation facilities and services, the wasteful competitive practices, such as the opening of non-productive routes, and other uneconomic results which characterized the development of other modes of transportation prior to the time of their governmental regulation.

Furthermore, it must not be forgotten that the determination of the Authority relative to the issuance of a new route certificate authorizing air transportation with respect to persons, property and mail involves as its necessary consequence a certain cost to the Government in the form of mail compensation. Under section 406(b) of the Act, mail rates are to be fixed in the light of the objectives of the Act, which, among other things, include 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.

Moreover, the Government's financial responsibility may not be limited to the direct payments which may be made for services in carrying the mail. Indirectly, the establishment of a new route has commonly resulted in the past, and may be expected frequently to result in the future, in the designation and establishment by the Administrator of a civil airway and the construction and maintenance of appurtenant air navigation facilities pursuant to Title III of the Act. Thus, if the operation of a proposed route appears only to be required by the public interest in the event that air navigation facilities are installed, it is incumbent upon the Authority to consider the cost of the installation and operation thereof in connection with the granting of a new route certificate. If, on the other hand, it appears that a proposed service is required by the public interest even though it is only to be operated on a day-time contact basis, it is unnecessary to weigh the cost to the Government incident to the installation and operation of air navigation facilities in connection with the determination of the requirements of the public convenience and necessity.

Although it is apparent that the benefit to be derived from the installation and maintenance of any facilities which might later be established would not be enjoyed exclusively by the air carrier to whom a new route certificate was issued but would be shared, in varying degree, by military and other types of fliers as a part of a

national airway system, a proper portion of the cost to the Government of these facilities must be considered in those cases where the proposed service appears only to be required by the public interest in the event that air navigation facilities are installed. It is obvious, however, that as the technique of flight progresses it may develop that the installation of fewer of such aids will be required and that as a result the possible cost to the Government incident to the establishment of a new route will be substantially reduced. Any conclusions, therefore, with respect to the present costs of such facilities must necessarily be regarded with reserve.

The Authority, in determining whether the inauguration of a new service will result in carrying out the objectives of the Act as set forth in the Declaration of Policy, must consequently consider not only the need of the particular community or section for the proposed operation but also the relationship which such service bears to the development of a nationally adequate and economically sound air transportation system from the broad standpoint of the Postal Service, commerce, and the national defense. Furthermore, this determination must be made in the light not only of the cost to the public incident to the inauguration and operation of the service but also of the regulation of the expansion of the industry at a crucial period of its development in a manner which will not only foster sound economic conditions in air transportation at the present time but also in the future. One of the factors directly related to the interests of the public and to the economic welfare of the industry is the relationship between the estimated commercial revenues and operating costs of the proposed service. It is our belief that unless exceptional circumstances, such as the particular importance of a route from the standpoint of the national defense, exist in a given case, this relationship should not initially impose upon the Government an unduly large proportion of the total operating cost. Conditions surrounding the operation of any service receiving a certificate should also be such as to justify an anticipation that commercial revenues will show a continuing tendency to increase, with a consequent progressive decrease in the degree of the carrier's dependence on the Government. However, in gauging the commercial revenue potential of a proposed route it is apparent that its establishment, like the inauguration of steamboat and railroad service in earlier days, and the use of the automobile, will serve as a means for the development of the communities and the areas which may be served, and that it may well result in an accentuation of the passenger, express and mail traffic of the particular section in question."

## PRESIDENT REORGANIZES THE CAA.

On the second day of this month the President submitted to the Congress his Third Reorganization Plan, certain portions of which vitally affect the internal management of the Civil Aeronautics Authority. The pertinent excerpts are as follows:

"TO THE CONGRESS OF THE UNITED STATES:

When I submitted Reorganization Plans I and II at the last regular session of Congress, I indicated that certain reorganizations of an intradepartmental character were necessary but that detailed study would be required for the preparation of specific plans. Since that time the heads of the executive departments and my own office have continued to study the internal organization of the several agencies of the Government. I have considered recommendations made to me as a result of these studies and have found it possible to make a number of needed improvements of organization by administrative action. In other instances, I can effect the necessary changes only under the procedure set up in the Reorganization Act of 1939.

I am transmitting herewith Reorganization Plan III which I have prepared in accordance with the provisions of section 4 of the Reorganization Act of 1939 (Public No. 19, 76th Congress, 1st Session) approved April 3, 1939; and I declare that with respect to each reorganization made in this Plan, I have found that such reorganization is necessary to accomplish one or more of the purposes of section 1(a) of the Act:

1. To reduce expenditures;
2. To increase efficiency;
3. To consolidate agencies according to major purposes;
4. To reduce the number of agencies by consolidating those having simliar functions and by abolishing such as may not be necessary; and
5. To eliminate overlapping and duplication of effort.

\* \* \* \* \*

*Civil Aeronautics Authority:* I propose to clarify the relations of the Administrator of the Civil Aeronautics Authority and the five-member Board of the Civil Aeronautics Authority. The Administrator is made the Chief Administrative Officer of the Authority with respect to all functions other than those relating to economic regulation and certain other activities primarily of a rule-making and

adjudicative character which are entrusted to the Board. This will eliminate the confusion of responsibilities existing under the Civil Aeronautics Act and provide a more clear-cut and effective plan of organization for the agency.

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FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

April 2, 1940.

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#### REORGANIZATION PLAN NO. III

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 2, 1940, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939.

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#### CIVIL AERONAUTICS AUTHORITY

*Sec. 7. Functions of the Administrator Transferred*—The functions vested in the Civil Aeronautics Authority by the Civilian Pilot Training Act of 1939; the functions of aircraft registration and of safety regulation described in Titles V and VI of the Civil Aeronautics Act of 1938, except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing; the function provided for by Section 1101 of the Civil Aeronautics Act of 1938; and the functions of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator; are transferred from the Civil Aeronautics Authority to and shall be exercised by the Administrator, who shall hereafter be known as the Administrator of Civil Aeronautics.

#### GENERAL PROVISIONS

*Sec. 8. Transfer of Records, Property, and Personnel*.—All records and property (including office equipment) of the several agencies, and all records and property used primarily in the administration of any functions, transferred or consolidated by this Plan and all the personnel used in the administration of such agencies and functions (including officers whose chief duties relate to such administration and whose offices are not abolished) are transferred or consolidated, as the case may be, within the department or agency concerned, for use in the administration of the agencies and functions transferred or consolidated by this Plan: *Provided*, That any person-

nel transferred or consolidated within any department or agency by this section found by the head of such department or agency to be in excess of the personnel necessary for the administration of the functions transferred or consolidated shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

Sec. 9. *Transfer of funds.*—So much of the unexpended balances of appropriations, allocations, or other funds available (including funds available for the fiscal year ending June 30, 1941) for the use of any agency in the exercise of any function transferred or consolidated by this Plan, or for the use of the head of any department or agency in the exercise of any function so transferred or consolidated, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred within the department or agency concerned for use in connection with the exercise of the function so transferred or consolidated. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939."

The effect of these changes, as described by the President, is to transfer by law to the new office of Administrator of Civil Aeronautics "all functions other than those relating to economic regulation and certain other activities primarily of a rule-making and adjudicative character." In short we will have a chief administrative officer of the Authority and the 5-Member Authority proper will be only an administrative court, with the possible exception of economic regulation functions. Even this last can be definitely accomplished by Authority transfer of functions under Section 308 of the Civil Aeronautics Act of 1938.

This reorganization is assumed to be the result of a study by the office management division of the Bureau of the Budget. It certainly accomplishes what the first framers of the 1938 Act intended and what Congress made possible by Section 308 of the 1938 Act. Just why the executive functions in connection with economic regulation were not covered in the Executive Order and left to Section 308 is not clear. Perhaps it was felt economic regulation is yet too formative to have its delicate and flexible administrative balance disturbed.



Anyhow it is a good job from the standpoint of administrative agency government. It is hoped that it may be so as a practical matter. It can be if able and industrious Clinton M. Hester is made Administrator of Civil Aeronautics and equally capable Chairman Robert H. Hinckley and his fellow Authority members are continued in office. Aviation is in for another beating if good machinery is bogged down by personnel upheavals. Incidentally, the five members of the Authority should welcome the opportunity to bring up to date their heavy docket, the slow handling of which has been the one universal and unanswered criticism of its administration.

Nine days after Reorganization Plan III was sent to Congress, the President put forth Plan IV. It is so far reaching that comment is presently withheld and only the necessary portions are given. The President's message reads:

*"Department of Commerce:*

One of the purposes of the reorganization act is to reduce the number of administrative agencies and thereby simplify the tasks of executive management. We have made substantial progress toward this objective under previous reorganization plans. I am now proposing another step in this direction by placing the Civil Aeronautics Authority within the framework of the Department of Commerce.

Reorganization Plan III, which deals with intra-Departmental changes, draws a more practical separation between the functions of the Administrator and the Civil Aeronautics Board. In Plan IV, which is concerned with inter-Departmental reorganization, I am bringing the Authority into the departmental structure. The Administrator will report to the Secretary of Commerce. The five-Member Board, however, will perform its rule-making, adjudicative, and investigative functions independent of the Department. In the interest of efficiency it will be supplied by the Department with budgeting, accounting, procurement, and other office services. As a result of the adjustments provided in Plans III and IV, I believe the Civil Aeronautics Board will be able effectively to carry forward the important work of accident investigation heretofore performed by the Air Safety Board. In addition to the effective and coordinated discharge of accident investigation work which this transfer will facilitate, economies in administration will be possible.

The importance of the *Weather Bureau's* functions to the nation's commerce has also led to the decision to transfer this bureau to the Department of Commerce. The development of the aviation

industry has imposed upon the Weather Bureau a major responsibility in the field of air transportation. The transfer to the Department of Commerce, as provided in this Plan, will permit better coordination of Government activities relating to aviation and to commerce generally, without in any way lessening the bureau's contribution to agriculture."

#### PLAN IV:

##### "Sec. 7 . . . *Transfer of Civil Aeronautics Authority*

(a) The Civil Aeronautics Authority and its functions, the Office of the Administrator of Civil Aeronautics and its functions, and the functions of the Air Safety Board are transferred to the Department of Commerce.

(b) The functions of the Air Safety Board are consolidated with the functions of the Civil Aeronautics Authority, which shall hereafter be known as the Civil Aeronautics Board and which shall, in addition to its other functions, discharge the duties heretofore vested in the Air Safety Board so as to provide for the independent investigation of aircraft accidents. The offices of the Members of the Air Safety Board are abolished.

(c) The Administrator of Civil Aeronautics, whose functions shall be administered under the direction and supervision of the Secretary of Commerce, and the Civil Aeronautics Board, which shall report to Congress and the President, through the Secretary of Commerce, shall constitute the Civil Aeronautics Authority within the Department of Commerce; *provided*, that the Civil Aeronautics Board shall exercise its functions of rule-making (including the prescription of rules, regulations and standards), adjudication, and investigation independently of the Secretary of Commerce; *provided further*, that the budgeting, accounting, personnel, procurement, and related routine management functions of the Civil Aeronautics Board shall be performed under the direction and supervision of the Secretary of Commerce through such facilities as he shall designate or establish.

Sec. 8 . . . *Transfer of Weather Bureau*—The Weather Bureau in the Department of Agriculture and its functions are transferred to the Department of Commerce and shall be administered under the direction and supervision of the Secretary of Commerce; *provided*, that the Department of Agriculture may continue to make snow surveys and to conduct research concerning; (a) relationships between weather and crops, (b) long-range weather forecasting and (c) relationships between weather and soil erosion."

## AIR TRANSPORTATION IS SAFEST

A safety record unparalleled in transportation history was completed on March 26, 1940 by our domestic air carriers. *These airlines in regular scheduled air transport operated one year without a single accident involving a fatality to passengers, crew or anyone else.* In the twelve months ending March 26th 2,030,000 passengers were carried, 87,325,145 airplane miles were flown and 814,906,250 passenger-miles were operated all over 36,500 route miles. All this was done during a period of change-over to new equipment in many instances and of increased schedules, seats operated and lowered fares.

For a comparison as to passenger safety, as distinguished from general public safety, note that the American railroads in 1939 operated 830,000,000 passenger-miles per fatality. Also, it is noteworthy that the last fatal airline accident occurred on an air carrier which had just been awarded a certificate of special commendation by the National Safety Council for seven years continuous operation without fatal or serious accident.

## FIRST ANNUAL REPORT OF THE CIVIL AERONAUTICS AUTHORITY\* 1939

The Civil Aeronautics Authority in its first Annual Report transmitted to Congress covering the year and five months since its establishment, attributes the tremendous growth in civil aviation in this country to the fact that "for the first time civil aviation in this country has had the benefit of a unified and comprehensive national policy administered by a single Federal agency."

Due to this, the report says, all branches of the industry have been able to adopt long-range programs in cooperation with the Government.

"When the Civil Aeronautics Authority assumed office," the Report points out, "it found the American Air Transport industry in a state described by the House Committee in charge of the new legislation as 'chaotic'. Half of the private capital which had been invested in the industry had been irretrievably lost. The result of shaken faith on the part of the investing public in the financial stability of the airlines was preventing the flow of greatly needed funds into this industry. More than half of the domestic airlines carrying mail disclosed operating deficits for the year ending June 30, 1938."

The report then points out that the domestic air carriers are now handling 45.9% more passenger traffic, 49.7% more express and 12.5% more mail than a year ago and that, with but few exceptions the carriers are operating in the black. They have been protected, the Report says, against uneconomic and destructive competition and wasteful duplication of services and their air mail rates have been fixed upon a sound economic basis constantly subject to review and adjustment by the Authority.

### AIRLINE SAFETY

Though the figures in the Report for airline safety are less recent than those made public by the Authority the first of January, the Report attributes the growth of passenger traffic to the gain in safety of operations which by the end of the year was almost four times better than that of any other year.

The development of the Federal Airways System under the Administrator "to a new level of effectiveness" is credited with a large part in this increased safety.

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\*Taken from a Press Release of the C.A.A. dated January 8, 1940.

1. As of April 1, 1940, the estimated total mileage of such implemented airways was 25,000 miles.

## IMPROVED FEDERAL AIRWAYS

The year marked the completion of the extension and modernization program commenced in July of 1937, involving as its principal feature the construction of 110 radio range and communication stations, of which 40 replaced obsolete stations. 50 additional stations were converted to simultaneous type. 100 cone of silence markers were installed, as were 21 ultra-high frequency fan type markers.

1500 miles of new airways were fully equipped with lights and radio aids. The teletype circuits for weather reporting and traffic control were increased by 12,000 miles with the addition of 80 teletype stations.<sup>2</sup>

By the increase of traffic control centers to 12, 45 percent of the airways were brought under this dispatching system which will now handle approximately 375,000 airplane movements a year, an increase of 28 percent.

The second program for the Federal Airways authorized by Congress last spring was well under way towards the addition of another 5,000 miles to the system, equipped with teletype, radio range and communication stations.

Among the most important additions are the airways in Alaska on the route Ketchikan-Anchorage and Fairbanks-Nome. Radio range and communication systems are being installed in Hawaii and the South Pacific Islands and a new station has been erected on Long Island for the use of the trans-Atlantic services. 10 instrument landing systems will be installed for service tests, 80 additional ultra-high frequency fan markers are being installed for traffic control and hazard marking and the ultra-high frequency airway between New York and Chicago is under construction for service test in comparison with existing normal frequency radio aids.

## NEW PILOTS DEMAND NEW PLANES

Predicting that there will be 40,000 certified civilian pilots in the United States at the end of the Authority's second year in office, the Report says that this increase in pilots has already created a new and vigorous demand for civil aircraft engines and accessories as well as for the various maintenance and operations services involved. The Authority recognized the heavy responsibility in connection with this increase in the number of pilots and aircraft.

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<sup>2</sup>. As of April 1, 1940 the estimated total mileage of such teletype circuits was 30,000 miles.

As of October 31, 1939 the Report says there were 27,691 holders of student pilot certificates and 29,513 holders of pilots certificates of higher grades.<sup>3</sup> During the fiscal year ending June 30, 1939 this required the staff of the Authority to give 17,000 complete pilot examinations, including both written and flight tests, 7,000 additional flight tests for instructor and instrument ratings, the inspection and rating of 37 flying and ground schools and the examination of 169 applications for ground instructor certificates.

#### HEAVY TASK FOR INSPECTORS

In the inspection and certification of aircraft, engines and accessories, the Authority issued 237 new type certificates and 85 certificates for new models for aircraft, engines, propellers, appliances and radios. These certificates involved 255 engineering flight tests and inspections and the individual inspection of over 1,400 aircraft in addition to numerous endurance tests for engines, propellers and other devices, many of which due to shortage of personnel the Authority's inspectors could not completely cover.

In addition, the Report points out, the Authority's field staff must make at least one annual inspection of each of the certificated aircraft in the United States and special inspections following any major repairs or alterations. This duty alone required approximately 14,000 physical inspections of aircraft during the year.

The certification of mechanics authorized to keep planes in an airworthy condition required 2,500 examinations for certificates, and 4,800 examinations for renewals.

Hundreds of other inspections were required for mechanics' schools, repair stations, parachute riggers and other certificated facilities and personnel.

In safeguarding airline operation alone, the Authority's inspectors made 270 flight tests for rating transport pilots, 234 flight tests for instrument ratings, 418 inspections of airports for safe airline operation features and 584 flight checks of procedures used in connection with radio aids.

Extensive flight tests and engineering studies were made during the year on notable new aircraft, such as the Douglas DC-4 and DC-5, and the Boeing 307 and 314, all airplanes with radically new design features.

#### VIOLATIONS AND ENFORCEMENT

For violation of the regulations between August 22, 1938, and October 31, 1939, 193 certificates of airmen were suspended and

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3. As of April 1, 1940 the estimated total number of such pilots was 32,200

48 were revoked. In 212 cases in which civil penalties were indicated, compromise was effected with the violator upon a financial penalty commensurate with the gravity of the offense. Fifteen cases were transmitted to the Attorney General for appropriate action.

#### THE AIR SAFETY BOARD

A special section of the Report devoted to the Air Safety Board says that that body, created within the Authority for the purpose of making independent investigations of accidents and reports to the Authority with recommendations tending to prevent their recurrence, conducted 2,668 investigations of accidents involving aircraft. As the result of these investigations of accidents of all sorts from the most trivial to the most serious, the Board has made 101 recommendations to the Authority. One recommendation led to the modification of the fuel system of an important class of air carrier aircraft; another to the redesign of certain structural features in a new type intended for airline service. Other recommendations dealt with were air carrier operations, procedures and practices; reduction of engine power output; the use of full-feathering propellers, and the pursuit of studies concerning various phases of the aeronautical art. Further recommendations dealt with the revocation of certificates, changes in the requirements for certification of pilots and requirements for instructor rating.

#### AIRPORT RECOMMENDATIONS

The Report draws attention to the nation-wide airport survey made by the Administrator and transmitted to Congress last March recommending Federal participation in the development of a national system of airports and suggesting the immediate allocation of \$100,000,000.00 of relief appropriations and a \$25,000,000.00 special appropriations for this purpose.<sup>4</sup>

"The Authority does feel . . . that the direct appropriation of Federal funds for airport projects deserves serious and early consideration. The rapid development of air transport activities upon the nation's leading air terminals and the growing concern of our military officials over the adequacy of our current airports for defense purposes, indicate the desirability of creating some new air terminals and of improving or enlarging others at the earliest possible time."

#### ECONOMIC REGULATION

Discussing the Authority's important duty of economic regulation, the report in its introduction makes the following statement:

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4. The McCarran "Aircraft Landing Area Development Act" introduced in the Senate on March 19, 1940 appears to be intended to authorize such a program, and even more.

"The Civil Aeronautics Act is broader in scope than any other Federal regulatory statute (particularly any other transport or public utility statute), covering, as it does, interstate, overseas, and international air transportation, and extending its jurisdiction not only over common carriers of the air but over all commercial air transportation, all private flying, and, to a degree, over production and over pilot and mechanic training agencies. Yet no provision of that statute and no order of the Authority issued under it has thus far (as of October 31, 1939) been challenged in any court."

The Report says that after full hearing certificates of convenience and necessity have been granted to all of the existing domestic air mail routes under the so-called grandfather clause of the Act. Applications for new routes have been received from air carriers, newly organized companies, and companies engaged in other forms of transportation. They involved a total of 30,653 route miles as compared with 36,533 existing route miles, and (eliminating duplications) would, if all granted, create 19,126 new route miles.

On these proposed new routes hearings on sixteen applications have been concluded and the cases are now under consideration by the Authority. The Report points out:

"These applications for authority to engage in air transportation over new routes with respect to persons, property and mail, involving a form of transportation which will derive assurance of economic survival through the payment of air mail compensation, raise new problems in connection with the concept of the 'public convenience and necessity'."

With respect to the determination of mail routes, the Report says that 10 cases have been decided out of 14 such proceedings brought and investigation is under way, on the Authority's own initiative, with respect to the mail rates paid to all other air mail carriers. On its own initiative the Authority is likewise investigating the so-called air travel card plan and other discounts provided by the carriers.

Two important merger applications have been made to the Authority, the first of which, that between United Air Lines and Western Air Express, is scheduled for hearing on January 8 before Dr. Roscoe F. Pound, acting as a Special Trial Examiner.<sup>5</sup>

#### INTERNATIONAL SERVICE

The Report points out that the International Division of the

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5. Dr. Pound filed his Special Trial Examiner's Report on March 19, 1940 finding that the proposed merger is consistent with the public interest and that the application therefor be approved by the Authority. To date the Authority has not acted.



Authority has discharged the work connected with the inauguration of trans-Atlantic service; the fixing of mail rates for it and for the trans-Pacific service; the negotiation, through the State Department, of an agreement with France for landing rights; and participation in numerous international conferences. The International Division has also developed numerous important surveys of foreign rates and services and of the status of civil aviation in other countries.

The Report reviews the initiation of the Pilot Training Program and predicts important results, not only from the training of some 10,000 students under a strictly controlled curriculum but from the research program in pilot aptitude now going on along with the Training Program.