

1942

## Federal

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### Recommended Citation

*Federal*, 13 J. AIR L. & COM. 142 (1942)  
<https://scholar.smu.edu/jalc/vol13/iss2/4>

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# FEDERAL

Orders

Serial Number 1598

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board held at  
its office in Washington, D. C., on the 12th  
day of March, 1942

In the Matter of the Compensation for the transportation  
of mail by aircraft, the facilities used and useful therefor,  
and the services connected therewith, of

AMERICAN AIRLINES, INC.

} Docket No. 334

In the Matter of the Petition of

AMERICAN AIRLINES, INC.

for the determination of fair and reasonable rates of  
compensation for the transportation of mail by aircraft, the  
facilities used and useful therefor, and the services connected  
therewith on routes Nos. 4 and 23 under section 406 of the  
Civil Aeronautics Act of 1938, as amended.

} Docket No. 204

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## ORDER FIXING AND DETERMINING THE FAIR AND REASONABLE RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT OVER ROUTES OPERATED BY AMER- ICAN AIRLINES, INC.

A full public hearing having been held in the above-entitled proceedings and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED that the fair and reasonable rates of compensation to be paid to the carrier for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the points

which the carrier is authorized to transport mail in the certificates of public convenience and necessity which it holds for routes Nos. 4, 7, 18, 21, 22, 23, 25, 30, and 56, are hereby fixed, determined, and published as follows:

(1) For the period beginning December 1, 1939, to and including March 31, 1942, a rate of 16.5 cents per pay-mail mile flown with mail without preference to base mileage or base poundage of mail carried.

(2) For the period beginning from April 1, 1942, a rate per airplane mile composed of the following:

(a) For any month during which the average daily designated mileage does not exceed 35,000 miles, (1) base rate of 12 cents per airplane mile to be paid for a base poundage of 300 pounds of mail, (2) plus an excess poundage rate of .03 cent per airplane mile for each pound, or fraction thereof, of mail in excess of the base poundage.

(b) For each month during which the average daily designated mileage exceeds 35,000 miles, (1) an effective rate per airplane mile (computed to the nearest hundredth of a cent) to be paid for an adjusted base poundage of mail (computed to the nearest pound), such effective rate and adjusted base poundage to bear the same relation to 12 cents per airplane mile and 300 pounds, respectively, as 35,000 miles bears to the average daily designated mileage, (2) plus an excess poundage rate of .03 cent per airplane mile for each pound, or fraction thereof, in excess of the adjusted base poundage.

The aforesaid rate per airplane mile shall be applied to the direct airport-to-airport mileage between points served for the carriage of mail on each schedule flown with the mail on the route, and the mail poundage for the route shall be computed at the end of each calendar month on the basis of the average mail load per airplane mile carried over the route during such period; provided, however, that if any scheduled flight is operated in two or more sections between any two points served for mail and mail is transported on more than one such section, the aggregate of the sections so used shall for all purposes of computing compensation pursuant to this order be treated as a single flight, and the rate shall be applied to the airport-to-airport mileage flown by that section which covers the greatest airport-to-airport mileage between points served for mail, and the mail poundage shall be computed as though the total weight of mail carried on all sections had been consolidated in a single aircraft.

The average daily designated mileage shall include the mileages of all scheduled trips designated or ordered to be established by the Postmaster General for the carriage of mail, and shall be computed as though the mileage of each such trip were the airport-to-airport distance via all certificated intermediate points along the flight route between the terminals of each trip. The average daily designated mileage for each calendar month shall be determined by taking the average of the daily mileages of regularly scheduled trips for the seven days of the week, without regard to any variations of scheduled mileage on holidays.

By the Civil Aeronautics Board:

DARWIN CHARLES BROWN,  
Secretary.

(SEAL)

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.  
Docket No. 334\*

**AMERICAN AIRLINES, INC., MAIL RATE PROCEEDING**

Fair and reasonable rate of compensation for the transportation of mail by aircraft and the facilities used and useful therefor during the period December 1, 1939, to March 31, 1942, found to be 16.5 cents per pay-mail mile flown with mail.

Fair and reasonable rate of compensation for the transportation of mail by aircraft and the facilities used and useful therefor on and after April 1, 1942, found to be 12.0 cents per airplane mile flown with mail, computed on the basis of direct airport-to-airport mileage for a base mileage of 35,000 miles per day.

Decided March 12, 1942.

**Appearances:**

*Hamilton O. Hale, Robert G. Howlett, Fred M. Glass, and Thomas I. Megan, for American Airlines, Inc.*  
*Emory T. Nunneley, Jr., and Henry L. Hill, Public Counsel.*  
*Howard Westwood and Philip R. Miller, for various air carriers<sup>1</sup> as Amici Curiae.*

**Opinion**

**BY THE BOARD:**

This is a consolidated proceeding under the provisions of section 406 of the Civil Aeronautics Act of 1938, as amended, involving the petition of American Airlines, Inc., filed March 1, 1939, seeking the determination of fair and reasonable rates for the transportation of mail over routes Nos. 4 and 23, constituting its transcontinental service, and the investigation instituted by our order of December 1, 1939, to inquire as to the reasonableness of the rates being paid and to determine the fair and reasonable rates for the transportation of mail over the eight routes, Nos. 4, 7, 18, 21, 22, 23, 25, and 30, which American was then authorized to operate. The scope of the latter was enlarged by stipulation to include the determination of rates of compensation for mail transportation over route No. 56, authorization for which was granted by our order of March 8, 1941.<sup>2</sup>

Public hearing has been held pursuant to the provisions of the Act and the proceeding submitted for decision on oral argument before us following the filing of exceptions and supporting briefs, including brief in behalf of a number of carriers intervening as amici curiae, to a report by Examiner Frank A. Law, Jr.

American is presently authorized to engage in air transportation of persons, property, and mail on each of the nine routes here involved, as follows:

Route No. 4—Between the terminal point Dallas, Texas, the intermediate points Fort Worth, Abilene, Big Spring, and El Paso, Texas, Douglas, Tucson, and Phoenix, Ariz., and the terminal point Los Angeles, Calif.;<sup>3</sup>

\* This proceeding also includes Docket No. 204.

1. All American Aviation, Inc., Braniff Airways, Inc., Canadian Colonial Airways, Inc., Catalina Air Transport, Chicago and Southern Air Lines, Inc., Continental Air Lines, Inc., Delta Air Corporation, Eastern Air Lines, Inc., Hawaiian Air Lines, Inland Air Lines, Inc., Mid-Continent Airlines, Inc., National Airlines, Inc., Northeast Airlines, Inc., Northwest Airlines, Inc., Pan-American Airways System, Pennsylvania-Central Airlines Corporation, United Air Lines Transport Corporation, Western Air Lines, Inc.

2. *Northwest Air., et al., Additional Service to Canada*, 2 C. A. B. 627.

3. *American Air., Grandfather Certificates*, 1 C. A. A. 105 (1938).

Route No. 7—Between the co-terminal points New York, N. Y., and Newark, N. J., the intermediate points Wilkes-Barre and Scranton, Pa., Syracuse, Rochester and Buffalo, N. Y., Detroit, Ann Arbor, Jackson, Battle Creek, and Kalamazoo, Mich., and South Bend, Ind., and the terminal point Chicago, Ill.;<sup>3-4</sup>

Route No. 18—Between the terminal point Boston, Mass., the intermediate points Bridgeport, New Haven, and Hartford, Conn., Springfield, Mass., Providence, R. I., and the co-terminal points New York, N. Y., and Newark, N. J.;<sup>3-5</sup>

Route No. 21—Between the terminal point Boston, Mass., the intermediate points Springfield, Mass., Albany, Utica, Syracuse, Rochester, and Buffalo, N. Y., and Erie, Pa., and the terminal point Cleveland, Ohio;<sup>3</sup>

Route No. 22—Between the terminal point Cleveland, Ohio, the intermediate points Columbus, Dayton and Cincinnati, Ohio, and Louisville, Ky., and the terminal point Nashville, Tenn.;<sup>3</sup>

Route No. 23—Between the terminal point Albany, N. Y., the intermediate points, New York, N. Y., Newark, N. J., Philadelphia, Pa., Baltimore, Md., Washington, D. C., Lynchburg, Roanoke, and Bristol, Va., Knoxville, Nashville, and Memphis, Tenn., Little Rock, and Texarkana, Ark., and Dallas, Tex., and the terminal point Fort Worth, Texas;<sup>3</sup>

Route No. 25—Between the terminal point Washington, D. C., the intermediate points Elkins, Clarksburg, Parkersburg, Charleston-Dunbar, and Huntington, W. Va., Cincinnati, Ohio, and Indianapolis, Ind., and the terminal point Chicago, Ill.;<sup>3</sup>

Route No. 30—Between the terminal point Chicago, Ill., the intermediate points Peoria and Springfield, Ill., St. Louis, and Springfield, Mo., Tulsa and Oklahoma City, Okla., and Dallas, Tex., and the terminal point Fort Worth, Texas;<sup>3</sup>

Route No. 56—Between the terminal point Buffalo, N. Y., and the terminal point Toronto, Ontario, Canada.<sup>6</sup>

The present rates of mail compensation for the transportation of mail, expressed in cents per mile, and the monthly base mileages to which they are applicable as established by the Interstate Commerce Commission, are:

Route No.	Base Rate	Base Mileage
	(Cents)	
4.....	25	240,000
7.....	33⅓	150,000
18.....	31	45,000
21.....	33⅓	36,000
22.....	32	60,000
23.....	23	330,000
25.....	33⅓	40,000
30.....	25	140,000

These rates provide for a base load of 300 pounds, with payments for excess poundage at ten percent of the base rate for each additional 100 pounds, or fraction thereof; and are subject to increase or decrease depending upon the actual airplane miles flown with mail each calendar month. The carrier is transporting mail on route No. 56 without compensation pending establishment of a rate in this proceeding. Mail service over this route was inaugurated on July 15, 1941.

4. *American Atr., et al., New York Operations*, 1 C. A. A. 480 (1939).  
 5. *American Atr., Bridgeport, Conn., Operation*, 2 C. A. B. 436 (1941).  
 6. *Northwest Atr., et al., Additional Service to Canada*, *supra*.

### Power of Board Over Rates During Pendency of Proceeding

The examiner recommended that we find that the fair and reasonable rate of compensation for the carriage of mail by the carrier over its entire system during the calendar year 1940 was 20.56 cents per airplane mile flown with mail, which is approximately 9.55 cents per airplane mile less than the average rate of mail compensation paid to the carrier during that period. For the period on and after January 1, 1941, he also recommended the establishment of rates considerably lower than those which the carrier has been receiving since that date. American and the carriers appearing as amici curiae strongly object to these recommendations, and question our statutory power to revise downward the rates existing during any period preceding the date of our order in this proceeding.

Section 406(a) of the Act provides in part:

"The . . . (Board) . . . is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, 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 . . . and to make such rates effective from such date as it shall determine to be proper; . . ." (Emphasis supplied.)

In previous cases arising under this section, we have accepted the principle that we have the power to make our determination of fair and reasonable rates effective as of the date of the institution of the proceeding.<sup>7</sup> While these previous decisions have in fact involved an upward adjustment of rates over a past period, we are now confronted for the first time with the question of our power to revise rates downward when such revision might have the effect of depriving the carrier of a part of the mail compensation which it has already received. This difference in the factual situation is clearly without legal significance. Since the above quoted language of section 406(a) makes no distinction between rates which raise and those which lower previously existing rates of compensation, but instead applies generally to all rate orders of the Board, there would appear to be no question as to the Board's power to reduce the rates of mail compensation applicable to the carrier subsequent to the issuance of the Board's order on December 1, 1939, instituting this proceeding upon its own initiative. The provisions of the Act require Board action which will assure the carriers total revenues adequate to accomplish the statutory purposes; Congress could not have intended that revenues derived from the transportation of mail should be less than is necessary for those purposes, nor could it have intended that they should exceed the requirement.

Further support for this conclusion is found in the judicial and administrative interpretations of the rate-making provisions of the Railway Mail Pay Act of 1916 and the Air Mail Act of 1934. In *United States v. New York Central R. R. Co.*,<sup>8</sup> the United States Supreme Court held that under the Railway Mail Pay Act of 1916 the Interstate Commerce Commission had the power to establish rates effective from the date on which the proceedings were

7. *T. W. A.—Mail Rates*, 2 C. A. B. 226 (1940); *United A. L. Mail Rates*, 1 C. A. A. 752 (1940); *Inland A. L. Mail Rates*, 1 C. A. A. 155 (1939); *Mid-Cont. Air Mail Rates*, 1 C. A. A. 45 (1939); *National Air. Mail Rates*, 1 C. A. A. 259 (1939).

8. 279 U. S. 73 (1929).

instituted. Recognizing the necessary time involved in a rate proceeding before an administrative tribunal, Mr. Justice Holmes declared, in delivering the opinion of the Court:

"... it is a natural incident of the jurisdiction that it should be free to treat its decision as made at once. Obviously Congress intended the Commission to settle the whole business, not to leave a straggling residuum to look out for itself. . . . We put our decision not on any specific phrase, but on the reasonable implication of an authority to change the rates of pay which existed from the day when the application was filed. . . ."<sup>9</sup>

This conclusion was reached despite the fact that the applicable statute contained no express authority, such as is contained in section 406(a) of the Civil Aeronautics Act, to determine the date on which rate orders should become effective. *A fortiori*, similar reasoning applies to the present case. Under section 406, air mail rates can be determined only after notice and hearing, which require not only lengthy preparation on the part of the carriers and the Board but also considerable time for the subsequent weighing of evidence and reaching of a decision. If the Board is to follow the statutory mandate that the rates fixed as a result of the proceeding shall yield neither inadequate nor excessive compensation, it must, as stated in the quotation above, "be free to treat its decision as made at once."

Similar reasoning induced the Interstate Commerce Commission, in establishing rates under the Air Mail Act of 1934, to construe that Act as empowering it to provide that the rates should be effective from the institution of the proceedings.<sup>10</sup> Again, this conclusion was reached although there was no express statutory provision authorizing the Commission to make its orders effective from such date as it might determine to be proper. It is true that with one exception<sup>11</sup> the adjustments made by the Interstate Commerce Commission involved upward revisions of rates applicable to past periods. But, as previously pointed out, no distinction between the power to raise and the power to reduce rates of compensation paid in the past appears in the letter or in the spirit of the Civil Aeronautics Act, and the reasons sustaining the power to effect such increase in rates apply with equal force to confer upon us the power to effect the proposed decrease in rates.

The carrier contends that the construction here proposed is inconsistent with section 405(a) of the Act, which directs the Postmaster General to pay

9. 279 U. S. at 78, 79.

10. *Air Mail Docket No. 1—Air Mail Compensation*, 216 I. C. C. 166 (1936); *National Parks Airways, Inc.—Base Rate Mileage*, 220 I. C. C. 149 (1937); *Air Mail Rates for Route No. 24*, 222 I. C. C. 749 (1937); *Air Mail Rates for American Airlines*, 225 I. C. C. 12 (1937); *Air Mail Rates for Braniff Airways*, 226 I. C. C. 752 (1938); *Air Mail Rates for Route No. 8*, 227 I. C. C. 509 (1938).

11. On March 11, 1935, the decision in *Air Mail Docket No. 1—Air Mail Compensation*, 206 I. C. C. 675 established rates for all but two of the domestic airlines. This order was subsequently modified in an attempt to eliminate the "overlap" which occasionally resulted in a carrier's receiving less compensation for flying a greater number of miles (*Air Mail Docket No. 1—Air Mail Compensation*, 222 I. C. C. 602 (July 14, 1937)). Although no effective date was specified in this order, the Postmaster General applied it back to March 1, 1935; the modification had the effect of reducing the total compensation which TWA and other carriers had received in the meantime. In a subsequent decision, the Commission stated that the order required "substantial refunds from the carriers" (*Air Mail Docket No. 1—Air Mail Compensation*, 232 I. C. C. 608, 610 (June 12, 1939)). The order in the latter case likewise contained no effective date, but the Postmaster General again gave it application from and after March 1, 1935. The ensuing recomputation of mail pay developed the fact that Eastern had been overpaid during the period from March 1, 1935, to the date of the last order; the Post Office Department collected this excessive compensation by withholding certain sums from current payments until the sum was restored.

compensation for the transportation of mail at the rates fixed by the Interstate Commerce Commission "as if this Act had not been enacted," until the Board fixes rates under section 406 of the Act. It is argued that a determination by the Board of the rates to be paid American prior to the date of issuance of the order issued herewith which would result in a reduction in the rates fixed by the Interstate Commerce Commission, would deny the authority of the Postmaster General, derived from the above provision, to continue to pay such rates; that section 405(a) would thus be rendered meaningless by such an order of the Board, and that the Postmaster General would be placed in the position of having paid too much. Support for this contention is sought in section 406(a) which directs the Postmaster General to pay the rates which have been fixed and determined by the Board. The carrier urges that this position is not inconsistent with the claim that the Board may order an increase in rates effective prior to the date of such order, asserting that an order increasing rates of compensation authorizes the Postmaster General to pay additional compensation from the date it has found that the Commission rates are too low.

We construe the provisions of the Act simply to provide for the continued payment of compensation to the carriers during the inevitable interval between the passage of the Act and the entry of orders fixing their rates under the Act. These orders may be effective as of the date when the Board assumes jurisdiction of the proceeding, and on that date may terminate the authorization of the Postmaster General to pay the rates previously set by the Commission.

On brief and in oral argument the carrier has pressed the proposition established by decisions of the United States Supreme Court,<sup>12</sup> that statutes are to be construed as operating prospectively only, unless the contrary intent plainly appears; the purpose of this argument appears to be to urge upon the Board the necessity of finding express power conferred by the Act to "recapture" any portion of the mail compensation paid to an air carrier. The decisions cited are not in point, for they deal with the retroactive effect of a statute and not with the effect of an administrative order effective for a period subsequent to the enactment of the applicable statute and only during the pendency of the proceeding in which the rate is being fixed.

In the carrier's argument that the Board is without power to set a rate which shall be effective as of the date when it took jurisdiction of the proceeding, it also points out the express provisions in the Transportation Act of 1920 and the Merchant Marine Act of 1936, authorizing the Interstate Commerce Commission and the Maritime Commission, respectively, to recapture excessive profits from carriers by rail and water; it argues that had Congress intended to grant such authority to the Civil Aeronautics Board, it would have written a similar provision into the Civil Aeronautics Act.

The carrier attaches like significance to the absence of a provision in the Civil Aeronautics Act, comparable to section 16 of the Interstate Commerce Act, for awarding reparations to shippers for overpayments; it is contended that there is no practical difference between a railroad transporting property

12. *United States v. Heth*, 3 Cranch 399 (1806); *Hassett v. Welch*, 303 U. S. 303 (1938); *Shwab v. Doyle*, 258 U. S. 529 (1922); *Union Pacific R. R. Co. v. Laramie Stockyards Co.*, 231 U. S. 190 (1913); *United States v. Burr*, 159 U. S. 78 (1895); *United States v. Jacobs*, 306 U. S. 363 (1939); *Brimstone R. R. Co. v. United States*, 276 U. S. 104 (1928); *Union Trust Co. v. Wardell*, 258 U. S. 537 (1922).



for private shippers and an air carrier transporting mail for the Postmaster General, and that the "retroactive" reduction of mail rates can be likened to the award of reparations to shippers by rail. Because the Civil Aeronautics Act contains no provision empowering the Board to award reparations to the Postmaster General or itself to recapture the amount by which it determines the past earnings of an air carrier have been excessive, it is argued that the Board's order would be unenforceable and futile if it simply determined that a past rate of mail compensation had been unreasonably high.

In the present proceeding, the Board's duty is to simply determine a fair and reasonable rate which would be applicable to the carrier during the pendency of the proceeding. If the consequence of the Board's order in the present case is to create a claim in favor of the Government against the carrier for excess payments made under previous authorization, the Government might file suit for the recovery, under ordinary common law principles, of the amount in which the carrier is indebted to it by reason of the overpayments. Or the simpler procedure of set-off might be adopted, either by the General Accounting Office in its adjustment of claims by or against the United States Government,<sup>13</sup> or by the Postmaster General in withholding from current mail payments certain sums until the amount of the excessive past payments has been offset.<sup>14</sup>

Further pursuing the analogy of reparation orders, the carrier cites the case of *Arizona Grocery Company v. Aichison, T. & S. F. R. R.*,<sup>15</sup> in which the United States Supreme Court denied the power of the Interstate Commerce Commission, "acting in its quasi-judicial capacity, (to) ignore its own pronouncement promulgated in its quasi-legislative capacity and retroactively repeal its own enactment as to the reasonableness of the rate it has prescribed." In that case, the Commission fixed a commodity rate in 1921, and had reduced that rate in 1925; later it awarded the shippers reparation in the amount by which the rates paid by them between 1921 and 1925 exceeded those found in 1925 to have been reasonable since 1921. It was this latter award which the United States Supreme Court overruled. In appraising the carrier's argument as to the applicability of the *Arizona Grocery Company Case*, it is to be noted first of all that in the latter case the carriers had charged the rates later held unreasonable in reliance upon the Commission's 1921 decision and without notice that the reasonableness of the rates was questioned by the Commission. In the present case the position of American is entirely different from the shippers in the *Arizona Grocery case*. It had notice from the day our order was entered

13. "All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office." Section 236 of the Revised Statutes (31 U. S. C. 71) as amended by the Budget and Accounting Act, 1921, 42 Stat. 24.

It should be noted that the case of *Richmond, F. & P. R. Co. v. McCarl*, 62 F (2d) 203 (App. D. C., 1932), did not address itself to this statutory provision. The court therein indicated that it was prepared to construe the Act of March 3, 1875, 18 Stat. 481, as prohibiting the Comptroller General from finally setting off without consent any claim other than a judgment debt. However, this act was amended on March 3, 1933, 47 Stat. 1516, so that it clearly requires a set-off by judgment debt only in the instance where the obligation of the United States is in judgment form.

14. In three instances the United States Supreme Court has held that the Postmaster General may properly withhold from current mail payments the amounts by which he has determined past payments to have been excessive. *United States v. Carr*, 132 U. S. 644 (1890); *Wisconsin Central Railroad Company v. United States*, 164 U. S. 190 (1896); *Grand Trunk Western Railway Company v. United States*, 252 U. S. 112 (1920).

15. 284 U. S. 370 (1932).

on December 1, 1939, that the rates it was charging the Post Office Department might be held unreasonably high and that it might be required to refund to that Department the amount of the excess. There exists, moreover, another weakness in the carrier's argument concerning the applicability of the *Arizona Grocery Company* Case. Unlike that case, the instant proceeding does not involve a relationship between a private shipper and a common carrier. If it did, then the carrier's argument that the Board may "retroactively" increase rates apparently has no force in view of the principle that a private shipper, once having paid a published rate, need not concern himself with subsequently having to pay more. On the contrary, the Postmaster General, unlike the private shipper, is the medium through which continuous financial support necessary for the carriers to fulfill the purposes of the Act is extended. Our obligation is to see to it that the rates he pays are at all times sufficient to enable the carriers to accomplish and maintain those purposes. Likewise, our obligation is also to see that the rates do not at any time exceed those which are proper under the statute. We must discharge both obligations.

We conclude that section 406(a) of the Act vests in the Board complete discretion to determine the date upon which its orders thereunder shall become effective. In exercising this discretion, we are limited only by the procedural requirements of notice and hearing and by the necessity of promoting the broad objectives of the Act.

The carrier contends further that, even assuming the Board to have the power to make its rates effective prior to the date of its orders, in the instant case no such rate order can be entered for the reason that the carrier has not received that notice and hearing which are required under the Act and the Fifth Amendment to the Constitutions. It asserts that the Board's order instituting this rate investigation did not constitute notice to the carrier that a reduction in rates was contemplated by the Board, and that, therefore, the proposed reduction in rates to a date prior to the entry of the Board's order herein would be inconsistent with the doctrine of fair play enunciated by the Supreme Court in its decision in the *Morgan* Case.<sup>18</sup>

As we have heretofore pointed out, on March 14, 1939, the carrier filed a petition seeking an increase in the rates of compensation for routes Nos. 4 and 23. The sole issue raised by this petition was the reasonableness of the rates paid upon those two routes, and we do not believe that a review of the reasonableness of the rates paid upon the carrier's entire system beginning on that date would be justified on the basis of that petition. On December 1, 1939, the Board entered its order instituting the investigation covering the rates paid upon American's entire system. This order recites that "an inquiry is necessary to enable the Authority to determine whether or not the rates of compensation *being paid* to said air carrier for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, as aforesaid, are fair and reasonable, and whether or not the total revenues received by said air carrier are *greater or less* than the revenues required to enable such air carrier under honest, economical and efficient management, to maintain and to continue the development of air transportation" pursuant to the mandate of the statute. (*Italics added*). While this notice does

18. *Morgan v. United States*, 298 U. S. 468 (1936); 304 U. S. 1 (1938); 304 U. S. 23 (1938); 307 U. S. 183 (1939).

not specifically state that a reduction in rates was proposed, we believe that it constituted sufficient notice to the carrier that the reasonableness of its rates was in question at least from and after that date and that they were subject to possible reduction. A very similar order issued by the Secretary of Agriculture prior to the reduction of maximum commission rates chargeable by livestock market agencies was held by the United States Supreme Court to constitute sufficient notice of the course proposed to be taken by the Secretary.<sup>17</sup> In our opinion, the terms of the Act are notice of the intent of Congress that the carrier's needs be examined from time to time in accordance with the standards prescribed by the Act and that its mail rates be fixed accordingly. The carrier, of course, knew that its current net earnings resulted in an exceptionally high rate of return on its investment, and, while there had been no decision on the question of the Board's power to fix reduced mail rates which would be effective during the pendency of the proceeding, the carrier, especially in the light of the Board's practice of granting increases in mail payments to carriers during the period of pendency of the proceedings, must be presumed to have recognized the possibility that such construction would be placed upon the Act.

It is claimed that during the course of the present proceeding American was not confronted with a statement of the Government's claims, as required by the second *Morgan* Case. In that case, the Government did not supply a brief, nor did it formulate the issues or furnish the appellants with a statement of its contentions or proposed findings. The Court said:

"Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities, are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals *before it issues its final comment*." (Emphasis supplied).<sup>18</sup>

In the present proceeding, however, the carrier has been confronted with the recommendations of the Examiner, whose report was issued on June 19, 1941, and the matter has been fully presented to us on brief and in oral argument by American, by the carriers appearing as amici curiae, and by Public Counsel, before we were prepared to issue our final order. We believe, therefore, that there has been no denial of fair play and that the requirements of the *Morgan* Cases have been fully met.

American and the carriers appearing as amici curiae contend that assuming the Board has the power to fix rates effective as of the date of the institution of the proceeding, the exercise of such power in a manner which would involve a reduction of the carrier's rates would run counter to the fundamental objective of the Act to encourage the development of an air transportation system required by the national public interest. The fulfillment of the objectives of the Act does not require that the carrier shall have earnings in excess of those specifically necessary to that purpose, nor does the fact that the carrier has already collected the excess earnings during the pendency of the proceeding alter the validity of this conclusion. The institution of a proceeding, such as the present one, gives notice to the carrier that its rates, from that date until the final order, are subject to revision downward if the facts should develop the need for such downward revision. From the moment of the adoption of the order, therefore, the carrier has full notice of the possibility; it is not taken

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17. *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420 (1930).

18. *Morgan v. United States*, 304 U. S. 1, 18-19 (1938).

by surprise, and such plans as it makes during the pendency of the proceeding, and before final order, it must make subject to the knowledge it thus possesses. It has not, by the institution of the rate proceeding, been notified that the Board may reduce its rates for the pendency period to a level which will render it unable to render the air mail service and to accomplish the other objectives of the Act; the carrier is merely informed by the institution of the proceeding that the rates may be so reduced that the *excess* payments received from the Post Office Department (that is, payments received in excess of the amount necessary to provide for the maintenance and development of the type and quality of air transportation contemplated by the Act) will be subject to recovery by the government.

The carrier contends that any downward revision which will result in "recapture" of past earnings will have a detrimental effect upon its plans for future development. In this connection the carrier contends that it contemplates extensive changes in flying equipment. It asserts that during the year 1942 capital expenditures for aircraft and ground facilities will aggregate \$3,655,000, of which \$2,805,000 represents the estimated cost of units of flight equipment and that during 1943 expenditures of \$9,210,000 are anticipated, with \$7,060,000 representing flight equipment. While the Act requires us to take into consideration the encouragement and development of an air transportation system properly adapted to fulfill the stated purposes of the Act, we are unable to find any intent on the part of Congress to provide, in the air mail rates, *capital for the carrier's expansion in addition to compensation sufficient to enable the carrier to fulfill the purposes of the Civil Aeronautics Act*. The purpose of the Act is not to provide capital as such, but to provide a profit sufficient to enable the carrier, among other things, to obtain from private investors the capital it needs. The re-investment, in the business, of the carrier's profits available for distribution among its stockholders, of course, is not inconsistent with this statutory objective.

### Standards of "Fair and Reasonable Rates"

In determining, in the present case, the fair and reasonable rate for the transportation of mail and for the fulfillment of those other purposes contemplated by Section 2 of the Act, we are not only confronted with the task of determining a compensatory rate within the requirements of the Fifth Amendment to the Federal Constitution; we are faced with the duty of fixing a fair and reasonable rate under an Act of Congress. The basic distinction between the two functions, which is of signal importance to the present task, has been clearly stated by Mr. Justice Brandeis in the following language of an impressive dissent:

"The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. Cost includes not only operating expenses, but capital charges. Capital charges cover the allowance, by way of interest, for the use of the capital, whatever the nature of the security issued therefor; the allowance for risk incurred, and enough more to attract capital. *The reasonable rate to be prescribed by a commission may allow an efficiently managed utility much more.*"<sup>19</sup> (Italics supplied.)

Between the barely compensatory rate required by the Constitution and the

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19. *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U. S. 276, 290 (1923).

fair and reasonable rate contemplated by a legislative enactment there exists a marginal field in which administrative discretion may operate to provide an incentive to enterprising management and a stimulus to pioneering initiative which are so essential to the development of the air carrier industry. The fact that regulatory commissions, confusing their function with the court's function, have frequently adopted the standards of just compensation required by the Constitution as their own guide in determining fair and reasonable rates, and thereby eliminated the margin between the compensatory rate and the reasonable rates, does not justify a repetition by this Board of a practice which, if here applied, would obstruct the fulfillment of the objectives of the Civil Aeronautics Act.<sup>20</sup>

Since, therefore, in the case before us we are concerned not with the determination of a compensatory rate under the Constitution, but with fixing a fair and reasonable rate under an Act of Congress, we must look to the standards which that Act has prescribed for our guidance. The Act expressly directs the Civil Aeronautics Board in fixing air mail rates to consider "the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers," it directs the Board to "take into consideration among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail 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 legislative history of the Civil Aeronautics Act, as well as the Federal policy which preceded it, clearly reveals the significance of the mandate which is given to the Board in the last sentence of the above-quoted passage. The "compensation" to be paid to the carrier in the air mail rate is not merely compensation for the transportation of the mail. The use of the mail payments is a statutory device for the accomplishment of national objectives that transcend the interests of the postal service. Those objectives, expressly stated in the Act, encompass the maintenance and continued "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 "compensation" which the carrier receives thus becomes compensation not only for carrying the mail but for the building up of a system of air transportation which will serve the nation's commerce and security as well. The mere transportation of the air mail would not have required the carefully worded

20. "The rule . . . (of *Smyth v. Ames*) . . . was to be applied solely as a means of determining whether rates already prescribed by the legislature were confiscatory. It was to be applied judicially after the rate had been made; and by a court which had had no part in making the rate. . . . But the commissions undertook to make the rule their standard for making, or approving, rates. And the tendency developed to fix as reasonable, the rate which is not so low as to be confiscatory. Thus the rule which assumes that rates of utilities will ordinarily be higher than the minimum required by the Constitution, has, by the practice of the commissions, eliminated the margin between a reasonable rate and a merely compensatory rate; . . ." (Emphasis supplied). *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U. S. 296 (1923). (Justice Brandies' dissent).

"need" formula which the Act sets for the Board's guidance in fixing the air mail "compensation." Section 406(b), more than any other passage of the Civil Aeronautics Act, discloses the basic difference between the dual developmental and regulatory objective of this Act and the regulatory objective of the ordinary statute designed for the control of public utility rates. This Board would not be able to approach soundly its rate-making function in disregard of this essential difference during the period the carriers are building to a position sufficient to enable them to accomplish these broad objectives without including payment therefor in the mail rates.

The years preceding the adoption of the Civil Aeronautics Act of 1938 disclosed a long record of Government sponsorship of the development of civil aviation. Indeed, the air transportation system, particularly that part which was engaged in international service was regarded by an increasing body of opinion, as essentially an air arm of the Federal Government. But while Federal policy in those years had expressly recognized the national concern in the development of air transportation as an essential instrumentality of the nation's commerce and postal service, Congress gave formal expression for the first time in the Civil Aeronautics Act to the importance of air transportation to the national security; and in that Act it laid down for the first time a comprehensive policy of Government financial aid and encouragement to the airlines as a means of implementing the national defense objective.<sup>21</sup> Throughout the text of this statute can be discerned the basic assumption that a sound civil aviation is of essential value to the national security.<sup>22</sup> If any doubt existed as to the validity of such assumption that doubt has been removed by the assistance which the air carriers of the United States, both domestic and international, have rendered to the military forces in the present war.<sup>23</sup>

It is clear from the above that the Civil Aeronautics Act envisages the fair and reasonable mail rate to be the result of an informed judgment reached by the Board upon the basis of the standards thus set forth. No controlling

21. It is significant that the Civil Aeronautics Act grew out of recommendations of the Interdepartmental Committee, appointed by the President, to consider the need for a revision of Federal Aviation policy and that the War and Navy Departments were represented on that Committee.

22. The President of the United States stated in a communication to the National Aviation Forum dated January 24, 1939, in part, as follows:

"Civil Aviation is clearly recognized as the backlog of national defense in the Civil Aeronautics Act which set up the effective machinery for a comprehensive national policy with respect to the air.

"Underlying the statute is the principle that the country's welfare in time of peace and its safety in time of war rests upon the existence of a stabilized aircraft production—an economically and technically sound air transportation system, both domestic and overseas—an adequate supply of well-trained civilian pilots and ground personnel.

"This new national policy, set up by the Congress, views American aviation as a special problem requiring special treatment. Aviation is the only form of transportation which operates in a medium which knows no frontiers but touches alike all countries of the earth. One fact which stands out is that hardly another civil activity of our people bears such a direct and intimate relation to the national security as the civil aviation. . . ."

Further evidence of the national defense objective is found in the requirement that all the decisions of the Civil Aeronautics Board authorizing international service shall receive the approval of the President, who is in control of foreign relations and Commander in Chief of the armed forces, and that the Act does not provide any judicial review of such decisions. *Pan American Airways Company v. Civil Aeronautics Board and American Export Airlines, Inc.*, 121 F. (2d) 810 (C. C. A. 2d, 1941).

23. United States air carriers in addition to supplying essential transportation services connecting various defense centers of the United States and connecting the United States with distant parts of the world, have performed and are performing important services in the training of pilots, navigators and flight engineers for the Army and Navy; in providing overhaul repair and installation work for the Army.

consideration is prescribed. The Board is to weigh the evidence in the light of all of the factors named. Some of those factors may be capable of approximate evaluation in mathematical terms; others because of their intangible nature are not. But however difficult of quantitative measurement they may be, the standards thus provided by the statute and the evidence relating thereto must be considered and weighed by the Board in reaching its conclusion as to what constitutes a fair and reasonable rate in each case.

In its brief the carrier strongly objects to the adoption of a fixed return upon the fair value of the carrier's property as the measure of a fair and reasonable rate. The Board does not consider, nor has it ever considered, that a predetermined rate of return upon the so-called "fair value" of the carrier's property is the measure of reasonableness. The ascertainment of the rate of return upon the actual legitimate investment, that is, the funds which have been legitimately devoted to the enterprise by its owners, does not share the defects of the so-called "fair value" method and may be considered as *evidence* bearing upon the reasonableness within the meaning of the Civil Aeronautics Act, albeit not the only such evidence.

While it would be erroneous to assume that the reasonableness of an air mail rate under the Civil Aeronautics Act should be measured by a fixed and uniform rate of return on the carrier's legitimate investment, it would be equally erroneous to assume that a reasonable rate could be determined in disregard of the relation which the carrier's net earnings bear to its investment. The Civil Aeronautics Act, as previously pointed out, requires the Board to consider the "need" of the air carrier for a rate which will be sufficient, among other things, to insure the performance of the mail service. Obviously, a carrier would be unable to perform such service unless it were receiving from various sources, including the mail compensation, a total revenue sufficient to cover the total expenses of operation and the capital cost. In determining the "need" of the carrier, therefore, it is necessary to inquire into the amount of the carrier's investment and to consider what is necessary to constitute an adequate return on that investment. A specified return on a carrier's investment which would enable that carrier to earn an amount sufficient to cover its capital cost would not be an inflexible *measure* of the fair and reasonable rate contemplated by the Civil Aeronautics Act; it would, however, constitute significant and valuable *evidence* to be taken into account in connection with the determination of such a rate. Likewise, the relationship which the carrier's profit bears to its total revenues, would offer some evidence of reasonableness when considered in comparison with similar data of other industries of similar risk. In this connection the ratio between the carrier's investment and the volume of service rendered, when compared with the higher ratio prevailing in other public utilities, would also be a proper subject of consideration.

The carrier urges certain characteristics of the air carrier industry as controlling considerations in the determination of the air mail rate. It calls attention to the rapid obsolescence of equipment, which renders difficult an accurate estimate of operating expenses; it reminds us that the operating revenues of this industry are subject to violent fluctuations due to the effect of accidents on the public mind, and it contends that the high ratio existing between the capital investment of an air carrier and its gross revenues makes it possible for comparatively slight errors in the estimation of expenses or revenues to change a profit into a loss. It is also urged that this industry is

peculiarly affected by the unpredictable fortunes of war, that military requirements threaten further to restrict or interrupt its operations and to drain or deplete its personnel and equipment.

It may be doubtful whether certain of the risks are as great as portrayed. At least there are considerations which tend to reduce the effectiveness of some of the factors which have been noted. Thus, if rapid technological changes occurring in this industry render accurate expense estimates difficult, if fluctuations in operating income make difficult predictions of future revenues, nevertheless, the Board has the statutory power, through readjustment of the mail rate from time to time to meet the "need" of the carrier as currently apparent, to grant the carrier relief from the consequences of such eventualities.

We are aware that an air carrier's operating results are dependent to a large degree upon the existence or intensity of the competition to which it is subjected by other air carriers, by other modes of transportation, and by the air carriers of other nations. But we are equally aware that Title IV of the Act confers upon us broad powers of control over the extent of the competition which is to exist among the air carriers themselves, and over the competitive practices which they may employ. Furthermore, section 2(d) of the Act does not prescribe competition at all events; it calls for "competition to the extent necessary to assure the sound development of an air transportation system" properly adapted to the national need.<sup>24</sup>

On the other hand, we would be blind to the realities if we did not recognize the fact that many investors will refuse to place unlimited reliance upon statutory provisions the implementation of which must depend upon an administrative body which acts within a range of discretion. Investors will be cognizant of the fact that legislative policy with respect to a rapidly developing industry is subject to change, and that the policy of the administrative agency may likewise change with varying economic conditions or with the varying personnel of the agency. These are realities of the investing world; and they often constitute a greater influence upon the investor's attitude than does newly established government policy which may offer assurances regarded as more theoretical than real.

All these considerations must play a very real part in any sound analysis of the rate-making problem which is before this Board. In air transportation we can see but dimly the shape of things to come; but there is every reason to believe that the close of the present war will open an era of airline expansion in the United States and in the international field without historic parallel. These developments will involve capital requirements of great magnitude, which in all likelihood will have to be met with great rapidity. They cannot be satisfactorily met unless those who supply the necessary funds are convinced that the enterprise will have a fair opportunity to secure earnings commensurate with the risk of the undertaking. The final measure of that risk will be determined by a number of factors, not least of which will be the economic results of the present regulatory policy now developing in the administration of the Civil Aeronautics Act.

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24. As the Board said in an earlier case, "... competition in air transportation is not mandatory. . . . Clearly, Congress has left to the discretion of the Board the determination of whether or not competition in a particular area is necessary to assure the sound development of an appropriate air transportation system." *American Export Air., Trans-Atlantic Service*, 2 C. A. B. 16, 31 (1940).



### Rates During Pendency of Proceeding

Consideration of the reasonableness of the rates during the pendency of the proceeding will be considered upon the basis of two separate periods as follows:

(1) the period from March 14, 1939, the date on which American filed its petition for an increase in the rates for routes Nos. 4 and 23, to December 1, 1939, the date on which our investigation herein was instituted, and (2) the period from December 1, 1939, to the effective date of our order herein.

#### *March 14, 1939—November 30, 1939*

In its petition of March 14 the carrier asks that the rates of compensation for routes Nos. 4 and 23, which together constitute its transcontinental route, providing service from New York to Los Angeles, be increased to a base rate of 32 cents per airplane mile. While the petition seeks only a review of the rates for the two routes, it is desirable to consider the results of operation over the entire system, since, under the provisions of the Act, we are called upon to determine the need of the carrier for compensation sufficient to enable it with "revenues from all sources" to continue to render adequate air transportation service.<sup>25</sup> For this reason the following tabulation sets forth not only the operating results reported by the carrier for routes Nos. 4 and 23 but also the results for the entire system for the period from March 1, 1939, to November 30, 1939. The carrier's reports to us are submitted on a monthly basis and it is therefore not possible for us to ascertain definitely the results of operations for the period from March 14 to March 31, 1939.

	Route 4	Route 23	System
Revenues .....	\$1,786,627	\$2,428,611	\$11,924,886
Expenses .....	1,384,999	2,147,551	9,996,314
Operating Profit .....	\$ 401,628	\$ 281,060	\$ 1,928,572

In view of the fact that the period covered by these data includes the best operating months of the year, reference must be made to the results of operations for a 12-month period in order to eliminate seasonal factors. The carrier's reported figures for the year ended December 31, 1939, set forth below, afford a basis for considering the reasonableness of rates for the March-November period:

	Route 4	Route 23	System
Revenues .....	\$2,425,291	\$3,143,596	\$15,050,610
Expenses .....	1,884,990	2,859,391	13,023,398
Operating Profit .....	\$ 540,301	\$ 284,205	\$ 2,027,212

These data reflect operating profit for the system of 16.24 cents per pay-mail mile and 10.58 cents per revenue mile; for route No. 4 of 18.72 cents per pay-mail mile and 17.24 cents per revenue mile; for route No. 23 of 7.52 cents per pay-mail mile and 6.39 cents per revenue mile.

25. *Chicago and Southern A. L., Mail Rates*, C. A. B. Docket No. 333, decided November 14, 1941.

The carrier's investment as of January 1, 1939, and December 31, 1939, was \$4,449,168 and \$7,047,435, respectively, determined in the following manner:

	Jan. 1, 1939	Dec. 31, 1939
Current Assets and Deferred Debits.....	\$2,605,287	\$5,531,998
Less Current Liabilities and Deferred Credits.....	1,408,376	2,819,987
Working Capital .....	1,196,911	2,712,011
Investments .....	8,064	12,325
Real Property and Equipment (Net after Depreciation) .....	3,244,193	4,323,099
Total Investment .....	\$4,449,168	\$7,047,435

The average investment for the year 1939 determined in this manner from the carrier's reports would be approximately \$5,748,301.

The total recorded profit of the carrier for the 12-month period ended December 31, 1939, would constitute a return of approximately 35.27 percent on the average investment during the period, which would be reduced to about 29.43 percent after Federal income taxes.

There is no definite basis upon which the carrier's investment may be allocated to the individual routes. However, a very rough approximation may be derived upon the basis of the number of revenue miles flown by the carrier. During the year 1939 the total of revenue miles flown was 19,170,018, of which total 3,133,670 miles, or 16.35 percent, were flown on route No. 4, and 4,449,124 miles, or 23.21 percent, were flown on route No. 23. An application of these percentages to the average investment during the above period results in allocating \$940,000 and \$1,334,000, respectively, as the investment attributable to those routes. The operating profit reported for routes Nos. 4 and 23 would, as the result of such a very rough allocation, amount to a return of about 57 percent on the investment for route No. 4 and 21 percent for route No. 23.

Even allowing for the considerable inexactness of such calculations it is still abundantly clear from the foregoing data that the rates of compensation paid the carrier between March 14, 1939, and November 30, 1939, for routes Nos. 4 and 23 were not less than were fair and reasonable.

The principal argument advanced by the carrier in support of its contention for increased rates on routes Nos. 4 and 23 is the fact that these routes compete with transcontinental routes operated by United and TWA upon which higher rates of compensation were effective. It is not possible to make any absolute comparison between operations of carriers subject to our jurisdiction because of the existence of varying factors which influence both revenues and expenses, including differences between the territories in which the carriers operate, the volume of traffic handled, and the revenues per mile received.<sup>26</sup> These factors all have a direct bearing upon the "need" of the carriers for mail compensation to enable them under honest, economical and efficient management to accomplish the objectives of the statute and must be considered by us in fixing the rates of compensation for individual carriers. They do not, however, constitute any reason why the rates paid the carrier should be identical with those paid competing carriers.

26. *Braniff Airways, Mail Rates, Routes Nos. 9, 15, and 50*, 2 C. A. B. 555 582 (1941).

December 1, 1939, to date of order

Traditionally, air mail rates have been fixed by routes in terms of cents per airplane mile, and American's records and its reports to us reflect the operations of each route separately. We held in our opinion in the *Chicago and Southern Rate Case*<sup>27</sup> that the Act does not require the maintenance of the route concept.

"The new Act of 1938 discarded the route concept and established in its place the air carrier as the primary unit around which the national air transportation system was to be developed through the instrumentality of air mail compensation. Section 406(b) directs this Board to take into account 'the need of each . . . air carrier' after taking into account 'all other revenues' of the carrier. The 'need' is that of the air carrier as a whole and not that of any particular geographical division of its operations."

The administrative work involved in computing compensation at varying rates for a number of different routes of a single system would be substantially simplified by the application of a single rate for the entire system. There appears to be no good reason in this case for consideration of the carrier's rates upon the basis of the individual routes and no further consideration will be given to the results of operations on those routes.

The results of operations reported by the carrier for the two years following the date of our order instituting the investigation of the rates for the carrier's system are shown below:

Mileage	Year Ended Nov. 30, 1940	Cents Per Rev. Mile	Year Ended Nov. 30, 1941	Cents Per Rev. Mile
Mail Pay .....	13,045,905		13,204,532	
Non-Mail .....	13,370,733		18,487,908	
Non-Revenue .....	1,237,659		1,162,228	
Total .....	27,654,297		32,854,668	
Operating Revenues				
Passenger .....	\$15,863,599	60.05	\$20,274,767	63.97
Express .....	559,063	2.11	728,116	2.30
Excess Baggage .....	149,234	.57	221,575	.70
Miscellaneous and Incidental.....	161,046	.61	228,623	.72
Total .....	\$16,732,942	63.34	\$21,453,081	67.69
Operating Expenses				
Direct Flying .....	\$ 9,468,243	35.84	\$11,526,087	36.37
Indirect Flying .....	4,785,345	18.11	6,055,484	19.11
Traffic and Advertising.....	2,584,644	9.79	2,990,471	9.44
General and Administrative.....	1,098,919	4.16	1,513,286	4.77
Total .....	\$17,937,151	67.90	\$22,085,328	69.69
Mail Pay Needed to Break Even.....	\$ 1,204,209	4.56	\$ 632,247	2.00
Mail Pay .....	3,902,239	14.77	4,232,878	13.36
Net Profit from Operations.....	\$ 2,698,030	10.21	\$ 3,600,631	11.36

27. *Chicago and Southern A. L., Mail Rates, supra.*

Our investigation of the carrier's reports and the record in this proceeding indicates that certain adjustments are necessary in the foregoing figures. The reports of the Post Office Department indicate that the amount of mail compensation which the carrier reported for the period here involved should be increased by an amount of \$12,060. In addition, an adjustment appears necessary to eliminate excess depreciation charges during this period. At the time of the hearing the carrier was depreciating Douglas DC-3 and DST aircraft on the basis of a five-year life, with an \$8,000 residual value. Effective January 1, 1941, the carrier changed the estimated life of Douglas aircraft purchased after January 1, 1940, to four years, with an \$8,000 residual value.

The carrier's change in the service life of its Douglas equipment was based upon its conclusion that obsolescence is the major factor in aircraft depreciation, and that, with the development of military aircraft now under production which are adaptable to the requirements of civil air transportation, existing types used in civil air transportation are obsolete in design. It asserts that the air transportation industry would currently be in the process of acquiring replacements more modern in design and construction were it not for the fact that aircraft productive capacity in reasonable volume for commercial purposes is not now available. On the basis of the service lives it has assigned to its aircraft, all but four of its present fleet of Douglas equipment would be fully depreciated before the end of 1944.

The experience of the air transport industry has demonstrated that aside from the element of obsolescence, resulting from the development of the industry, modern transport aircraft could be continued in operation for a considerably longer period than five years. There is, of course, no way of knowing when new types of equipment will become available in sufficient quantities for use on the commercial airlines, and experience in the use of other types of equipment has shown that, even though more modern equipment is available, older equipment should be continued in service on routes where the volume of traffic does not warrant inauguration of service with larger and more expensive aircraft. The present national emergency with its restrictions on the manufacture of aircraft for commercial use will obviously result in a substantial revision of the equipment program of the carrier. Certainly there will be no wholesale re-equipment such as is contemplated by the carrier and we believe that it is altogether probable that certain units of equipment now in use on the carrier's system will have to be continued in use subsequent to the year 1944. We have heretofore approved a service life of five years with a residual value of 20 percent for Douglas DC-3 and DST aircraft.<sup>28</sup> In view of the uncertainties existing at the present time, we will adhere to our prior ruling with respect to the depreciation base for Douglas aircraft.

The direct flying depreciation expense reported by the carrier for the two-year period is \$352,277 less than the actual charges based on the carrier's depreciation rate due to the fact that profit on the sale of aircraft and engines was treated as a deduction from depreciation expense. For reasons stated in the Board's opinion in the *Chicago and Southern Rate Case*, *supra*, no change will be made in the carrier's reported figures on this account.

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28. *T. W. A.—Mail Rates, supra; Chicago and Southern A. L., Mail Rates, supra; Delta Air Corp., Mail Rates*, C. A. B. Docket No. 331, decided January 29, 1942.

With the foregoing adjustments the results of operations for the years in question would be:

	Year Ended 11-30-40	Cents Per Rev. Mile	Year Ended 11-30-41	Cents Per Rev. Mile
Non-Mail Operating Revenues.....	\$16,732,942	63.34	\$21,453,081	67.69
Operating Expenses .....	17,815,374	67.44	21,809,499	68.82
Mail Pay to Break Even.....	1,082,432	4.10	356,418	1.13
Mail Pay .....	3,911,300	14.81	4,235,878	13.37
Net Profit from Operations.....	2,828,868	10.71	3,879,460	12.24

During the period here in question the carrier operated numerous schedules upon a weight-credit basis and some schedules upon which no mail was transported. We have heretofore concluded that such schedules should receive consideration in our determination of the rate of compensation to be paid for the transportation of mail if it can be shown that the schedules were reasonably required in the interest of commerce or the national defense.<sup>29</sup> The record shows that during the year ended November 30, 1940, the carrier averaged 11.75 passengers per revenue mile. During this year it had a number of 14-passenger DC-2 aircraft in operation. In the year ended November 30, 1941, the carrier averaged 12.62 passengers per revenue mile. In these averages are included large numbers of extra sections made necessary by traffic demands and flown to supplement scheduled service, as well as schedules maintained primarily for mail and express. During the several preceding years the carrier has succeeded in increasing its non-mail revenue per revenue mile progressively and at a greater rate than its increase in operating expense per mile with consequent progressive decrease in its mail pay requirements. Further, the mileage flown by American in weight-credit and non-mail service since the institution of this proceeding has yielded non-mail revenue well in excess of the "additional cost" of operating such service. Upon the basis of the entire record we find the mileage flown by American in weight-credit and non-mail service was required in the interest of commerce and should, therefore, be considered in the determination of the rate for American's system during this period.

*Investment*—Balance sheets for the carrier as of November 30, 1939, 1940, and 1941 are set forth in Appendix I. The carrier's net investment as of November 30, 1939, determined from the balance sheet of that date was \$6,094,926.85, while that for November 30, 1941, was \$15,660,379.33, determined in the following manner:

	Nov. 30, 1939	Nov. 30, 1941
Current Assets and Deferred Debits.....	\$4,342,322.21	\$15,949,852.75
Less Current Liabilities and Deferred Credits.....	2,542,005.51	6,553,909.27
Working Capital .....	1,800,316.70	9,395,943.48
Investments .....	12,374.73	15,323.73
Real Property and Equipment (Net after Depreciation) .....	4,282,285.42	6,249,112.12
Total .....	\$6,094,926.85	\$15,660,379.33

29. *Northwest Air., Mail Rates*, 1 C. A. A. 275 (1939).

The average net investment for the year ended November 30, 1940, as determined in this manner from the carrier's reports for each month would be \$9,023,241. The average investment for the year ended November 30, 1941, determined in a similar manner would be \$14,045,023. The average investment of the carrier for the last two years was \$12,201,000. However, this amount includes funds arising from the excess profits of the carrier as found herein. Eliminating the excess profits in accordance with the adjustment of the rates hereinafter determined, and, after giving effect to the depreciation adjustments, the average investment for the two-year period would be reduced to \$11,054,000 which we find to have been reasonably required.

*Conclusion as to rates applicable between December 1, 1939, and date of order*—The data heretofore set forth show that for the year ended November 30, 1940, the carrier required 4.10 cents per revenue mile in the form of mail pay to enable it to break even in its operations. For the year ended November 30, 1941, the amount needed was 1.13 cents per revenue mile, and for the two-year period was 2.48 cents per revenue mile. Since any rates which we fix herein will be applicable only to those schedules designated by the Postmaster General for the transportation of mail, the need of the carrier should be related to the pay mail miles operated during the period. On that basis the break-even need for the two-year period would have been 5.48 cents per pay-mail mile. During that period the carrier received mail pay aggregating \$8,147,178 and after adjustments of recorded revenues and expenses heretofore explained, an operating profit before Federal income taxes of \$6,708,328, or about 11.54 cents per revenue mile. This amounts to an average annual operating profit equal to 30.34 percent of the average investment heretofore found to be required. After deducting the carrier's provision for Federal income taxes, this would amount to 22.00 percent. The ratio of profit to non-mail income was 17.57 percent before income taxes and 12.74 percent after deducting the carrier's provision for such taxes.

There are certain factors which we believe must be taken into consideration in arriving at the ultimate rate to be applied during the period between December 1, 1939, and the date of our order herein. American entered 1940 with a deficit of \$381,200 in its earned surplus account remaining from the unprofitable operations of prior years. The net earnings after income taxes during the years immediately prior to the inauguration of the present proceeding have been:

1938 — \$ 430,983  
1939 — 1,691,520

We do not believe that rates should be revised upward for the purpose of enabling a carrier to recoup past losses; but it seems to us appropriate that in considering the reasonableness of the carrier's rates, consideration should be given to the total results over a reasonably extended period, and not merely to a brief period during which the existing rate may have produced particularly favorable results for the carrier. In deciding whether or not a fair and reasonable rate for the period from December 1, 1939, to the date of the present order should be lower than the existing rate, and, if lower, how much, we accordingly take note of the fact that during the two years preceding January 1, 1940 (a date only one month after the inauguration of the proceeding) the carrier's average earnings were \$1,061,252 per year, constituting a return of 19.06 percent on the mean investment over that period, and a profit of 10.96

percent of the average annual non-mail revenues during the same period. It would appear from the foregoing that the earnings during this two-year period were adequate and that therefore results of operations during that period need not be considered in the determination of a rate to be made effective December 1, 1939.

In previous opinions we have pointed out that to develop and encourage an air transportation system such as is envisaged in the Civil Aeronautics Act involves a policy of rate determination which will recognize managerial efficiency and permit benefits therefrom to accrue to the carrier. This will provide an incentive to further development.<sup>30</sup> The record shows a continual increase in the volume of non-mail business handled over the carrier's system. During the year ended November 30, 1940, its non-mail revenue was approximately 81 percent of the total revenue received, and during the year ended November 30, 1941, had increased to 83.5 percent of the total revenue. For the latter period, the non-mail revenues covered 98.37 percent of the total operating costs as reported by the carrier. The ratio of non-mail revenues to total revenues reflected in these figures is to be compared to the average of all domestic air carriers of 72.4 percent for the year ended November 30, 1941, and represents the highest percentage recorded by any of the domestic air carriers with the exception of Eastern Air Lines, upon which non-mail revenues constituted 85 percent of the total revenues for the year.<sup>31</sup> In our consideration of the record in this case, supplemented by our general regulatory experience, we are convinced that the results of petitioner's operations reflect a very creditable performance on the score of honesty, economy, and efficiency of management. This air carrier has, as noted elsewhere herein, attained a financial plane where it requires a minimum of Government aid. We believe that this highly desirable objective has been achieved in a very substantial measure because of the efficiency of management. These considerations, reflecting economic and efficient management as that term is used in the Act, will be given proper consideration in our determination of the fair and reasonable rates for the transportation services provided by the carrier.

Giving due weight to the factors which we have set forth heretofore, we conclude that a proper allowance to the carrier in addition to the amount needed to break-even, in determining the rate of compensation for the transportation of mail upon the basis of the results herein obtained will be 11.02 cents per pay mail mile, or 5.43 cents per revenue mile. Such a figure would provide the carrier an operating profit which would represent eight percent of the non-mail revenues or 13.1 percent of investment. The net profit after Federal income taxes would represent 5.5 percent of the non-mail revenues or 9.5 percent of investment.

We therefore find that the fair and reasonable rate of compensation for the transportation of mail by aircraft and the facilities used and useful therefor during the period December 1, 1939, to November 30, 1941, was 16.5 cents per

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30. *Mid Cont. Air., Mail Rates, supra.*

31. The recorded non-mail revenue for Pennsylvania-Central Airlines Corporation for the year ended November 30, 1941, amounted to 84.40 percent of the total revenue for the year. However, during this period PCA operated a considerable route mileage for which it received no mail compensation as rates had not yet been set. A proceeding is pending for the determination of a fair and reasonable mail rate for this route mileage.

pay-mail mile flown with mail without reference to base mileage or base poundage of mail carried. This figure is arrived at by adding the break-even need of 5.48 cents noted on page 162 to the allowance of 11.02 cents heretofore referred to.

A comparison of the actual results of operations with the estimates for the future set forth hereinafter shows that there is no probability of important changes in the operating or financial condition of American between December 1, 1941 and March 31, 1942.

Therefore, we find, on the basis of the evidence of record, that the rate heretofore found fair and reasonable for the two years ended November 30, 1941 was the fair and reasonable rate for the period between December 1, 1941 and the effective date of our order herein.

### Future Rates

At the hearing the carrier presented a forecast of the revenues and expenses which it anticipated for the year ended June 30, 1941. This estimate was prepared on the basis of the operating results through June 30, 1940. Subsequent to the close of the hearing supplemental exhibits submitted by the carrier were received in evidence showing the increases in expenses which had been incurred since the preparation of the original estimate. These exhibits cover payroll increases resulting from wage agreements consummated during the months of May and June, 1941, increases in pilots' pay and expense allowances under an agreement with representatives of the Airline Pilots' Association dated August 2, 1941, and increased costs resulting from the employment of guards for the protection of company property during the period of the national emergency. It also includes an estimate of the increased fuel costs incurred between January and July 15, 1941. These data reflect all of the payroll increases up to and including January, 1942, and indicate that the annual increase in costs including increased fuel costs over May, 1941, amounted to \$995,801.

Considerable evidence was introduced with respect to rising cost trends as support for the carrier's contention that the operating results of the past periods should not be used as a basis for estimating results of future operations. An expert witness testified with respect to a study which he had conducted of the effect of war conditions upon the operations of the carrier, and a comparison was drawn between the present situation and that which confronted the railroads during the last war, where, notwithstanding large increases in revenues the railroads' net income was substantially reduced as a result of increases in operating costs.

The reported operations of the carrier during recent months show costs in excess of those originally forecast, and the carrier submitted supplemental exhibits showing specific increases in cost. While it is not possible at this time to appraise with any degree of accuracy the extent of the increases in operating costs that will appear in the near future, we shall take into consideration the probable early effects of the upward trend of costs, in accordance with specific allowances hereinafter developed.



A study of the carrier's operating results shows that it has achieved its present favorable position as the result of a steady growth. For the year ended December 31, 1938, the carrier's non-mail revenues as reported to us totalled 52.24 cents per revenue mile and its operating expenses 70.90 cents per revenue mile, resulting in 18.66 cents per revenue mile as the mail revenue required to enable it to break even in its operations. For the year ended December 31, 1939, similar figures were 59.41 cents, 67.94 cents, and 8.53 cents, respectively.

We have heretofore set forth the adjusted results of operations for the years ended November 30, 1940, and 1941. For the former year the carrier's non-mail revenues were 63.34 cents per revenue mile and its adjusted operating expenses 67.44 cents per revenue mile, leaving 4.10 cents per revenue mile as its break-even need. For the latter year its non-mail revenues were 67.69 cents per revenue mile and its expenses 68.82 cents per revenue mile, leaving a break-even need of 1.13 cents per revenue mile. The reported operating expenses for these years as shown above are after a depreciation expense credit of approximately \$352,000 which amount represents the difference between the amount received for certain equipment sold by the carrier and the net book value of such equipment. In addition, the recorded expenses for the year ended November 30, 1941, include charges for obsolescence of aircraft material and supplies. For reasons hereinafter stated, we have concluded that, while such charges were appropriate during the prior period, no allowance therefor should be made in the future. With these adjustments, the operating expenses for the two years would be increased to 67.83 cents and 68.90 cents per revenue mile, respectively, and the amount needed for the carrier to break even to 4.49 cents and 1.21 cents per revenue mile, respectively.

*Mileage*—During the year ended November 30, 1941, the carrier operated a total of 31,692,440 revenue miles, which was an increase of 20 percent over the 26,416,638 revenue miles flown during the year ended November 30, 1940. Under normal conditions it would, we believe, be reasonable to expect that the carrier would increase its flight mileage substantially in the immediate future. Present war conditions make it a practical impossibility to accurately forecast the amount of mileage which the carrier will be able to operate. Our estimates herein will be computed upon an annual mileage of 32,000,000 revenue miles, which constitutes a very slight increase over the mileage for the year ended November, 1941.

It is estimated that the carrier will complete 31,007,752 miles on an airport-to-airport basis, since the actual mileage flown represents approximately 103.20 percent of the direct airport-to-airport mileage on the basis of schedules in operation as of June 30, 1941.

*Mail Pound Miles*—During the year ended June 30, 1941, the mail pound miles represented an increase of 15 percent over the previous year while the mail pound miles of approximately 5,698,000,000 for the year ended November 30, 1941, represented an increase of approximately 26 percent over the previous year. We estimate that during the coming year the mail pound miles should increase approximately 15 percent over the mail pound miles for the year ended November 30, 1941, which would result in a total estimate of approximately 6,550,000,000 mail pound miles. Converting the mail pound miles to a direct airport-to-airport basis would reduce the total to approximately 6,345,-

700,000. This relation of the actual mail pound miles flown to the total flown on the basis of the direct airport-to-airport mileage is 103.22 percent, based on the weighted average of experience on the carrier's routes for the year ended June 30, 1941.

*Revenue Passengers*—During the fiscal year ended June 30, 1941, the carrier averaged a passenger load of 11.89, which was increased to 12.62 for the year ended November 30, 1941. The average loads on certain of the carrier's routes are so high as to render further increase difficult of achievement. However, in the light of the increasing trend in volume of traffic reflected in the carrier's past operations and of the fact that no increase in mileage is contemplated, it is reasonable to assume that the carrier's average revenue passenger loads will be increased to 13 passengers. Based upon the estimate of 32,000,000 revenue miles, this would result in a total of 416,000,000 revenue passenger miles in comparison with approximately 400,000,000 for the year ended November 30, 1941.

*Revenue estimates*—During the fiscal years ended June 30, 1940, and 1941, the average yield was 5.14 cents and 5.07 cents per revenue passenger mile, respectively. The yield during the year ended November 30, 1941, was 5.07 cents per revenue mile, as compared with 5.11 cents for the previous year. Upon the basis of the average yield for the year ended November 30, 1941, the annual passenger revenue would amount to \$21,091,200, or 65.91 cents per revenue mile.

We estimate an annual express revenue of approximately \$861,000, or 2.69 cents per revenue mile, based upon the revenues received from this source during the year ended November 30, 1941, giving consideration to the trend of increase in such traffic. The express revenue for the fiscal year ended June 30, 1941, represented an increase of 32.03 percent over the previous fiscal year, while the amount received during the year ended November 30, 1941, was about 30 percent greater than that for the previous year. While this traffic does not vary directly with the number of miles flown, it must be recognized that a limitation on expansion of operations would have an effect on express volume. Our estimate computed at approximately one-half of the foregoing rate of increase appears to be conservative.

Excess baggage revenue is estimated at 0.73 cents per revenue mile, or \$234,100, based upon the percentage relation of excess baggage to passenger revenues during the year ended November 30, 1941, applied to the estimate of annual passenger revenue. Miscellaneous and incidental revenues have been estimated at 0.67 cents per revenue mile, or \$214,000, on the basis of the experience during the year ended June 30, 1941.

On the foregoing basis the annual revenues of the carrier have been estimated at 70.00 cents per revenue mile, or \$22,400,300, as compared with 67.69 cents per revenue mile, or \$21,453,081, for the year ended November 30, 1941.

*Expense estimates*—The annual future operating expenses estimated together with the results of operations for the year ended November 30, 1941, as hereinbefore adjusted, are set forth below:

	Estimate		Year Ended Nov. 30, 1941	
	Amount	Cents Per Rev. Mile	Amount	Cents Per Rev. Mile
Operating Expenses:				
Direct Flying:				
Operations .....	\$ 7,456,000	23.30	\$ 7,375,889	23.27
Maintenance .....	2,448,000	7.65	2,375,912	7.50
Depreciation .....	1,367,100	4.27	1,498,457	4.73
Total Direct Flying.....	\$11,271,100	35.22	\$11,250,258	35.50
Indirect Flying:				
Operations .....	4,640,000	14.50	4,185,516	13.21
Maintenance .....	1,541,100	4.82	1,533,243	4.84
Depreciation .....	353,000	1.10	336,725	1.06
Total Indirect Flying.....	\$ 6,534,100	20.42	\$ 6,055,484	19.11
Traffic and Advertising.....	3,000,000	9.38	2,990,471	9.44
General and Administration.....	1,550,000	4.84	1,513,286	4.77
Allowance for General Cost				
Increases in Prospect.....	419,760	1.31		
Total Operating Expense.....	\$22,774,960	71.17	\$21,809,499	68.82

Our estimates have been based upon a consideration of the most recent available data which include the operations of the Toronto service showing the carrier's operating costs together with the supplemental evidence with respect to increases in the carrier's wages and fuel costs.

Direct flying depreciation in the amount of \$1,367,100 has been allowed herein on the basis of the carrier's rates of depreciation for aircraft engines, propellers, communication equipment, and miscellaneous equipment. As previously discussed, the depreciation rates on Douglas flying equipment have been adjusted to a five-year basis, with a 20 percent residual value. The result of our estimate is an allowance of 4.27 cents per revenue mile, which is less than the expense for this item during the year ended November 30, 1941, due to the fact that a number of units of flying equipment became fully depreciated before the year 1942 or will become fully depreciated during that year.

Our estimate of the indirect flying operations expense is based upon the current level of costs reported by the carrier except for salaries and wages which are based on the payroll for the month of November, 1941, with allowances for increases estimated by the carrier during December, 1941, and January, 1942, and the cost of conducting operations over route No. 56.

The expenditure of \$1,533,243 recorded as indirect flying maintenance expense for the year ended November 30, 1941, includes an amount of \$220,000 as the estimated expense of obsolescence of inventories of spare parts. This amounts to approximately 0.69 cent per revenue mile during that year, and if eliminated from the recorded amount would reduce the maintenance expense to 4.14 cents per revenue mile. The carrier asserts that it is required to maintain substantial inventories of spare parts and accessories for use in conjunction with its Douglas aircraft and engines, used therein in order to meet its operating and maintenance procedure and in the light of the demands for such equipment

during the present national emergency. The carrier is of the opinion that these materials and supplies will become obsolete if the aircraft for which they are intended become obsolete. Accordingly, provision has been made for the amortization of the inventories held as of June 30, 1941, at a rate of \$20,234.23 per month. These charges contemplate the amortization of the materials involved over a period from January 1, 1941, to June 30, 1944, with a residual value of 50 percent on that portion of the parts, accessories, and equipment classified as general parts and supplies and 20 percent on that portion of the parts, accessories, and equipment specifically designed for use in Douglas DC-3 and DST aircraft. On this basis a reserve of \$220,000 was established November 30, 1941. The record does not provide us with any basis for measuring the amount of obsolescence which might be chargeable to materials and supplies held for maintenance of the carrier's flying equipment. It appears to us that the reserve built up by charges to operations during the year 1941 should be sufficient to cover any normal losses of materials and supplies for types of equipment now in use. As we have heretofore pointed out, we believe that the Douglas aircraft will be in service for a considerable period of time beyond the four-year period estimated by the carrier. Even if such aircraft were supplanted by newer equipment, prior to the utilization of the stock of material and supplies, it is reasonable to suppose that present inventories would be materially reduced before that time, and that the Douglas planes would be placed in service on other lines, and that the material necessary for their maintenance would be transferred with the aircraft. Accordingly, no allowance is made in our estimates herein for the item of obsolescence of materials and supplies. Basing our estimates on the current level of expenses, except on salaries and wages, which are taken in the amount of the November payroll, with additional allowances for subsequent increases forecast by the carrier, results in an estimate of \$228,000 more than the year ended November 30, 1941, after adjustment for charges for inventory obsolescence.

The indirect flying depreciation expense for the fiscal year ended June 30, 1941, was \$320,905, or 1.08 cents per revenue mile. For the twelve-month period ended November 30, 1941, it was \$336,725, or 1.06 cents per revenue mile. On the basis of the recorded expenses for the year ended November 30, 1941, we estimate this item at \$353,000, or about 1.10 cents per revenue mile.

The carrier has realized a decreasing ratio of traffic and advertising expense to passenger revenues. For the year ended November 30, 1940, the traffic and advertising expenses amounted to 16.29 percent of the passenger revenues; for the fiscal year ended June 30, 1941, 15.84 percent; and for the year ended November 30, 1941, 14.75 percent.

During the year ended November 30, 1941, the traffic and advertising expense amounted to \$2,990,471. In view of the fact that the scope of the carrier's operations contemplated for the future are substantially the same as during that year, we believe an allowance of \$3,000,000 would cover the reasonable requirements for this expense, particularly in view of the fact that with the increasing traffic demand and the limitation on space available for passengers, the amount of advertising required will be less than under normal conditions. This allowance would amount to 14.22 percent of passenger revenue.

Based on the recorded General and Administrative expense of \$1,513,000 for the year ended November 30, 1941, and further salary increases estimated

by the carrier, we will include in our estimate of operating expenses \$1,550,000 for General and Administrative Expense.

The carrier has contended that allowance should be made for probable increases in the cost of doing business under conditions now in prospect, even though such prospective increases may not be specifically identified and individually computed. It is a matter of common knowledge, supported by an immense amount and variety of statistical material, that commodity prices and the cost of doing business have, as a whole, been rising for a number of months, and that the general consensus of experienced judgment anticipates a continuation of such increases. It is characteristic of a wartime economy to show an upward trend in costs. During the last previous experience of the United States in war, the U. S. Department of Labor's index of wholesale prices of commodities other than farm products and foods rose in 1916 to an average 30 percent above its 1915 value; increased again by 29 percent in 1917; and by nine percent in 1918. Costs and prices have shown substantial increases in Great Britain during the present war, notwithstanding all the measures of control that have been adopted. Specifically, the index number for the prices of industrial products in the United Kingdom, as used in the Federal Reserve Bulletin, shows a mean value for 1940 30 percent above that of 1939, while the figure for November, 1941 was 14 percent above the 1940 average. The Department of Labor index of wholesale prices of commodities other than farm products, experience with which in the earlier World War has just been cited, has again increased by 13.2 percent between November, 1940 and November, 1941, with 57 percent of the increase taking place during the last six months of the twelve. The widely used index of construction costs prepared by the American Appraisal Company has increased by seven percent during the year ended in November, 1941. The average hourly earnings of labor in 90 industries, as reported by the Department of Labor, have increased by approximately 15 percent during the same period.

Although the rate of increase in the cost of operating air transport enterprises has been considerably less rapid than that of the general cost indices that have been discussed, the increase has been appreciable. The average cost of operation per revenue mile flown by American Airlines during the twelve months ended November 30, 1941, as reported by the carrier without adjustment but excluding depreciation on flying equipment from consideration, was 3.2 percent higher than for the similar period ended November 30, 1940, notwithstanding an increase of 20 percent in the total revenue mileage flown. United Air Lines, which, like American, operated substantially the same type of equipment during the two periods, showing an increase of 5.7 percent in cost per revenue mile again excluding depreciation on flying equipment from the year ended November 30, 1940, to that ended November 30, 1941, notwithstanding a 13 percent increase in total number of revenue miles flown. While between these two periods the average passenger loads transported by these two carriers increased 7.40 percent and 4.85 percent respectively, these increases appear to only partially account for the increase in per mile flying expenses.

Although it is difficult to make a definite allowance for future increase in operating cost, in view of the fact that the period covered by the rate set for the future begins to run as of the day of issuance of the order and will continue in effect for an indeterminate length of time, so that the period with respect to which cost increase is being estimated in an indefinite one, we

believe that it is virtually certain that there will be some further increase in cost, not now predictable in detail and, therefore, not taken into account in the evaluation of individual items of cost herein, during the time over which the rate now established will remain effective. While any change in cost would, of course, create a change in conditions which might call for the immediate inauguration of a new rate proceeding, it is desirable that the constant reopening of such proceedings be avoided by making allowance at least for the amount of cost increase that can be foreseen as virtually certain to occur. Upon that basis, we have allowed for a general increase of two percent in all costs other than those of depreciation of flying equipment, and have included such an allowance in the tabulation of costs herein and in all calculations subsequently deriving therefrom.

On the basis of the foregoing estimates, the carrier would experience a loss of 1.17 cents per revenue mile on its operations without mail pay.

*Investment*—The net investment of the carrier as of November 30, 1941, as shown in the balance sheet in Appendix I is \$16,185,379. Included in this total are assets totaling \$525,000 which are not used in domestic transportation operations. Of this amount \$25,000 represents net investment in miscellaneous physical property and \$500,000 is the amount of investment in stock of a Mexican company which was formed by the carrier in connection with a proposed operation to Mexico City. Eliminating these items results in a total investment of \$15,660,379. This total is composed of working capital in the amount of \$9,395,943, investments of \$15,324, and real property and equipment with a net book value of \$6,249,112.

The total of \$15,660,379 includes, however, a substantial amount of excess profit derived from the payment during the pendency of the present proceeding of rates in excess of those now found to be fair and reasonable for that period. Obviously it would be inappropriate to consider that portion of the total sum, derived as it is directly from payments from Government, as being a part of, or on a par with, the investment contributed to the enterprise by private parties.

The rates arrived at herein as fair and reasonable during the pendency of the proceeding would, if given effect throughout the period from December 1, 1939, to November 30, 1941, have produced mail pay \$3,815,856 less than that which the carrier actually received during that period. Making allowance for the adjustment of Federal Income Taxes during this period leaves a net reduction in assets of approximately \$2,756,000. Subtracting that amount from \$15,660,379, there remains \$12,904,379. This figure must however be increased by \$379,606 to allow for the depreciation adjustment arrived at herein, bringing the adjusted net book value of the real property and equipment of the carrier as of November 30, 1941, to \$6,646,718, and the total investment to \$13,283,985. It may be noted that these adjustments leave the carrier with a working capital, derived from the funds privately invested in the business, in the amount of \$6,639,943. This amount of working capital does not appear to be excessive in view of the scope of the operations contemplated and the uncertainties and unpredictable vagaries surrounding costs and operating conditions.

*Conclusion as to future rates*—It has been our customary practice in the past, in arriving at a rate for a carrier which is at the time of the decision

in the proceeding operating schedules in addition to those currently designated by the Postmaster General for the carriage of mail to analyze all such schedules in detail, and to determine which of them are to be considered as required in the interest of commerce and therefore to be taken into account in determining the compensation to be awarded for the carriage of mail under the standards of Section 406(b) of the Act. Under the circumstances of the present proceeding, no such detailed analysis seems necessary. The carrier has achieved so close an approach to independence of any Government aid sources that our estimates indicate that more than 98 percent of the total operating expenses of the immediate future will be covered by non-mail revenues. The records of traffic handled establish a steady increase in the degree of completeness of utilization of the space available in the aircraft operated by the carrier. The mean revenue passenger load factor for the twelve months ending with November 30, 1941, was reported by the carrier as 68.84 percent, a figure at least bordering, if not actually exceeding, the maximum that expert judgment has commonly considered as being commercially practicable before having to turn away a large number of applicants for accommodation. The volume of operation is currently limited, not by the demand for space, but by the amount of equipment available and the present impossibility of securing any substantial amounts of additional equipment. We conclude, therefore, that the carrier's present operations as a whole, and the entire amount of 31,007,750 miles<sup>82</sup> of revenue flying which we have forecast for the coming year, are required in the interest of commerce; and we so find. The entire cost and the entire revenues of the operation, as herein forecast and adjusted, will therefore be taken into consideration in the establishment of a rate.

The total mileage operated by the carrier on schedules designated for the carriage of mail during the twelve months ended November 30, 1941, was 13,204,532, an average of 36,177 miles per day. Although no exact analysis has been made of the daily average scheduled mileage represented by schedules currently designated for the carriage of mail, the average daily scheduled airport-to-airport mileage so designated during the twelve months ended November 30, 1941, was approximately 36,500 miles. The rate in the present proceeding will be so established as to provide for automatic variation of the base rate with any variations that may take place in the amount of scheduled mileage designated for the carriage of mail, thus permitting the Post Office Department to receive the full benefit of all schedules operated by the carrier, and permitting the carrier to make a better distribution of mail loads among the schedules operated and to avoid undue concentration on a few schedules. This will be without increase of cost to the Post Office Department. This automatic variation will be accomplished, in accordance with the principles laid down in the show-cause orders issued by the Board on February 19, 1942, with respect to all existing rate orders, by varying the base rate of payment per mile flown with mail in inverse proportion to the ratio of the average daily scheduled mileage represented by schedules actually designated by the Postmaster General for the carriage of mail to the base mileage established in the order; and by varying the base poundage, from its normal figure of 300 pounds, in the same ratio. Thus if the schedules actually designated by the Postmaster General for the carriage of mail, at any particular time, represented an average

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82. Estimate of 32,000,000 miles reduced to a direct airport-to-airport basis.

scheduled mileage double the base mileage set forth in the order, the base rate payable per mile flown with mail would be reduced to one-half of that given in the order, and the average load beyond which excess compensation would begin to be paid would be reduced from the customary 300 pounds to 150. It will further be provided herein, as set forth in the show-cause orders of February 19, that for each pound by which the average load exceeds the base poundage thus determined, the total compensation per mile will be increased by 0.03 cent.

In applying this system of automatic variation of rate with variations in schedule designations by the Postmaster General, it is necessary that there be established as a starting-point a base mileage, upon which the base rate as originally determined by the Board will apply. The base mileage so established must not exceed the average daily schedule mileage currently represented by schedules designated for the carriage of mail at the time when the order takes effect; but if the base mileage established should be less than the mileage so corresponding to the schedules currently designated for the carriage of mail, the difference would be without effect on the total compensation received by the carrier, as the automatic adjustment provided for in the order would serve to take automatic account of the change from the base mileage established in the Board's order to the actual scheduled mileage currently designated for the carriage of mail, as well as of all upward modifications which might subsequently be made in the number of schedules and amount of mileage so designated.

We will, therefore, establish the base rate in the present case upon an average daily scheduled mileage, on schedules designated for the carriage of mail, of 35,000. Upon that basis, and after giving consideration to all the factors herein discussed, both tangible and intangible, and to the entire record in the present proceeding, we conclude that a fair and reasonable rate is 12 cents per mile for such mileage; and our order will be drawn accordingly.

The actual effects of such a rate, under the estimates arrived at herein and the further estimate that 96.5 percent of the carrier's scheduled miles will be completed, and on the assumption that all of the carrier's schedules will in due course be designated for the carriage of mail (although, as previously indicated herein, the extent to which they were actually so designated would make no difference in the total compensation received by the carrier) are shown by the tabulation:

Total mileage flown per year (airport-to-airport).....	31,007,750
Scheduled mileage per year (airport-to-airport).....	32,132,350
Scheduled mileage per day.....	88,034
Ratio of average daily scheduled mileage to base mileage established in opinion .....	2.5153
Base rate (after all scheduled mileage is designated for carriage of mail) (cents per mile).....	4.77
Base poundage (similarly corrected for designation of all schedules) .....	119.3
Average mail load to be carried.....	204.6
Addition to rate for excess poundage of mail (cents per mile)	2.56
Total rate (cents per mile).....	7.33
Total Compensation .....	\$2,273,000



The mail pay required for the carrier to break even under the estimates for the future arrived at herein being \$375,000, the total compensation of \$2,273,000 as foreseen under the rate to be established by the Board's order would yield to the carrier an operating profit of \$1,898,000. The corresponding return on an investment of \$13,283,000, the amount arrived at herein as required for the operations contemplated, would be 14.29 percent before Federal income tax and 9.86 percent after Federal income tax at the rates now in force. The net profit after Federal income taxes would amount to 5.85 percent of the total anticipated non-mail revenues.

We further conclude that the rate established herein, in addition to being fair and reasonable under the standards specifically set forth in the Civil Aeronautics Act, is adequately compensatory for the service rendered.

Ascertainment of the cost of the mail service performed would require a determination of the costs which pertain to the mail service alone and an allocation of the costs common to both mail and commercial services. It would further require an evaluation of such factors as the adverse effect which the conditions connected with the rendering of one type of service (as, for example, the carriage of mail) may have upon the possibility of developing revenue from other branches of service or types of traffic. While the imperfections and inequalities in cost allocations have been universally recognized in the field of public utility regulation, and although neither the carrier nor Public Counsel attempted in the instant proceeding to develop a basis for determination of the separate cost of transporting the mail, the record contains data upon which such a determination can be made with a sufficient degree of reasonableness to warrant its consideration along with other factors in our determination of the fair and reasonable rate to be paid the carrier.

The carrier's pound-mile cost for all types of cargo was .245 mill for the year ended November 30, 1941, and will be .243 mill on the basis of our future estimates. Appendix II shows a distribution of the actual expenses for the year ended November 30, 1941, and of the estimated expenses for a future year, between mail and commercial services. In this distribution all expenses relating to commercial services only are assigned directly to that service, and all remaining expenses allocated between commercial and mail services on the basis of the relation of the number of pounds of commercial and mail cargo, respectively, to the total number of pounds carried. The expense allocated to mail service on this basis amounts to .205 mill per pound-mile for the year ended November 30, 1941, and .205 mill per pound-mile for the future period. The latter figure would be increased to .211 mill per pound-mile on a direct airport-to-airport basis.

The total mail compensation of \$2,273,000 to be received by the carrier during a year under the conditions of operation foreseen herein, would correspond to a payment at the average rate of 0.358 mill per pound-mile on the total volume of mail traffic anticipated.

We, therefore, find that the fair and reasonable rate for the transportation of mail by aircraft, and the facilities used and useful therefor over the carrier's system from April 1, 1942, herein is 12 cents per mail mile for a base load of 300 pounds, computed on direct airport-to-airport mileage, during any period in which the average daily scheduled mileage on schedules designated by the

Postmaster General for the carriage of mail does not exceed 35,000 and that the rate so established will be subject to variation with increases in the mileage scheduled to be flown on schedules designated for the carriage of mail in accordance with the provisions for automatic adjustment as described herein; and that the rates established shall further be subject to additional payment for the carriage of average mail loads exceeding a base poundage determined, and automatically adjusted for schedule variation, as described herein.

An appropriate order will be entered.

Baker, Vice Chairman, Branch, Ryan and Warner, Members of the Board, concurred in the above opinion.  
Pogue, Chairman, Concurring.

I concur with the majority opinion except in three respects.

First, I am unable to agree that the allowance of 2% of estimated operating costs to meet the rising trend of such costs represents the exercise of sound judgment in the light of facts now known. The majority opinion recites annual increases in wholesale commodity costs in the critical period of World War I of 30%, 29% and 9%; and it refers to numerous price and wage increases which have already occurred in the present period, outside of airline operation, ranging from 7% to 30%. These facts together with many other facts of common knowledge, including recent upward cost trends in the air transportation industry of which I believe we can take administrative notice, point with sureness to substantially higher operating costs. The petitioner's experience for the year ended November 30, 1941, to which the majority seem to tie the 2% allowance, cannot be relied upon to guide us in forecasting expenses for a period beginning after our entrance into the world-wide war involving enormous economic dislocations. Under the circumstances I would prefer to make no allowances for increasing costs, leaving adjustments in this connection for action under the Board's new show cause rate procedure. On the other hand, if the problem of meeting rising costs is to be met by making an allowance therefor in this proceeding, I think that 5% would constitute a minimum allowance which could be tolerated by an informed judgment.

Second, while I do not here take issue with the judgment of the management of the petitioner in issuing cumulative convertible preferred stock in order to raise capital, I think that the Board should take the position that it will, as a matter of general policy in fixing rates, take reasonable steps to encourage the preservation of simple common stock capital structures as far as possible. It is common knowledge that some public utility enterprises have in the past developed involved capital structures complicated with bonds, debentures, convertible debentures, preferred stock, and various other securities ranking prior to the equity stockholders who bear the fundamental risks of the business. This pyramiding of capital structures is admittedly undesirable where some simpler form of financing is feasible. In the air transportation industry up to the present time there is a minimum of such pyramiding. Exceedingly few bonds or debentures burden the air transportation business. Common stock has carried the load. It seems self-evident that this practice should be encouraged. I do not say that it was improper for this petitioner to issue an amount of cumulative convertible preferred stock substantially equal in dollar capital value on the balance sheet to that of the common stock. I

merely wish to indicate that any tendency to burden the enterprise with fixed or cumulative charges should be met by the retarding influence of somewhat lower rates than would be permitted if the capital structure is kept free from such senior securities. Under the Act, particularly in the light of the declaration of policy set forth in Section 2 thereof, it is the duty of the Board to regulate air transportation in such manner as to foster sound economic conditions therein. This duty applies to all air carriers whether or not they have attained a position of freedom or substantial freedom from government aid. Certainly any trend toward involved capital structures is a trend away from sound economic conditions in the industry.

I agree with the majority that under the Act a rate of return upon investment is not the test of what the air mail rate should be but is merely one of the numerous considerations to which the Board's judgment should turn for guidance. Thus in this limited respect I note that while the rate fixed permits an annual return (upon the basis of estimated revenues and expenses) of 9.86% upon the investment determined to be required for the proper conduct of the enterprise, the return enjoyed by the common stockholders, on this same basis, will be substantially higher due to the fact that the cumulative convertible preferred stock is entitled to dividends at the limited rate of 4.25%. It is because of this that I have felt that the rate in this case should be somewhat lower than I would favor allowing if the common stock were not permitted to enjoy this advantageous position. Under the Act the Congress has not merely assigned us the duty of regulating rates downward; it has told us to fix rates to meet the "need" of the air carrier in the light of certain national objectives, assuming of course honest, economical, and efficient management which is abundantly demonstrated by this petitioner. This policy as set forth in the law itself suggests, on the one hand, that, except under unusual circumstances, capital should be attracted to the industry without resorting to preferred stock or other senior securities; and, on the other hand, that the practice of permitting a limited amount of common stock to enjoy a favored position with respect to earnings is unnecessary and undesirable.

Third, I think that it is not proper to omit from this opinion a recognition of the acute financial needs which are very apt to arise, particularly in the light of the unknown requirements of the rigorous period which is ahead of us, and for which some intelligently planned provision through properly controlled reserves should be made. It is a well-recognized fact that air carriers were not able to accumulate any substantial earned surpluses or reserves prior to the enactment of the Civil Aeronautics Act of 1938. On the contrary there had been a long period of very lean financial years with losses continually mounting. On page 1 of the First Annual Report of the Civil Aeronautics Authority it was stated, "When the Civil Aeronautics Authority assumed office 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." Although the air carriers have done somewhat better financially since the enactment of the Act, generally speaking only a limited number of them have accumulated any substantial reserves. Prior to the entry of our order herein, American Airlines, the petitioner in this proceeding, was one of them. By the rate which we are fixing in this case as being the fair and reasonable rate for a period prior to the entry of our order we are saying that a very

substantial amount should be returned to the Government. It may be that in later air mail rate cases of other air carriers there will be instances where similar problems arise. This situation brings to mind possibilities for the wise use of such moneys as alternatives to a recapture by the Government.

The war period before us will no doubt bring heavy financial demands on air carriers. Violent fluctuations in operating costs may occur. It would seem both wise and feasible, particularly in view of the unsteady demands of war-time economy, to have funded reserves available for prompt use when necessary. Such reserves are "funded," as I use that term, if held or invested separately from the air carrier's other assets. But I do not find in the Act any power in the Board to require companies to establish and maintain such reserves. If we had appropriate statutory authority to do this, we could fix a higher rate, for example, during the period while this proceeding has been pending and we could require the petitioner to place reasonable amounts in such reserves as a backlog for use in emergency periods. I am of the opinion that we should now recommend to the Congress that it favorably consider additional legislation to authorize the Board to require air carriers to maintain such funded reserves in reasonable amounts. I think that the Board should be authorized to require amounts to be transferred to such reserves out of compensation received for the transportation of mail and out of funds received from its general commercial business.

The reserves should not be available for use by the air carrier except under general authorizations secured from the Board upon petition by the air carrier; and except in rare cases where important national interests so require, such funds should be available only for operating expenses and not for capital investment.

The establishment and maintenance of the reserves in question should not shrink the benefits flowing from efficient management, nor should it interfere with or cut down the recognition the Board would give to efficient management in the absence of such a reserve plan.

To say that the rate-making procedures under the Act are always available to meet any new needs of the air carrier is to ignore the admitted impossibility of deciding rate cases fast enough to keep current with changing conditions. All Governmental experience rises to testify eloquently to the lag between the impact of events and the rectification of rates through the regulatory processes.

For these reasons I favor requesting the Congress to consider this matter now.

## Appendix I

## AMERICAN AIRLINES, INC.

## Balance Sheets

As At November 30, 1939, 1940 and 1941

Assets	November 30, 1939	
(1)	(2)	(3)
Current and Accrued Assets:		
Cash .....	\$2,183,642.95	
Accounts Receivable, Net.....	1,277,404.73	
Traffic Balances Receivable .....		
Inventories, Net .....	604,977.68	
Short Term Investments.....		
Other Current and Accrued Assets.....	169,594.40	\$4,235,619.76
Investments in Stocks, Bonds and Mortgages.....		12,324.73
Investments in Affiliated Companies.....		
Deferred Debits .....		106,702.45
Fixed Assets:		
Real Property and Equipment (Net after depreciation) .....	\$4,282,285.42	
Miscellaneous Physical Property (Net after depreciation) .....	77,406.32	4,359,691.74
Total Assets .....		\$8,714,338.68
Liabilities		
Current and Accrued Liabilities:		
Accounts Payable .....	\$ 583,751.21	
Traffic Balances Payable .....	331,565.23	
Taxes Accrued .....	368,144.37	
Liability for Deposits on Air Travel Plan .....	871,469.92	
Other Current and Accrued Liabilities.....	387,074.78	\$2,542,005.51
Long Term Debt Securities.....		3,451,898.00
Deferred Credits .....		
Net Worth:		
Common Stock Outstanding.....	\$3,027,740.00	
Premium and Assessment on Capital Stock.....		
Preferred Stock .....		
Unappropriated Earned Surplus.....	474,791.69	
Unearned Surplus .....	62,497.50	
Operating Reserves—Contingency .....	104,989.36	2,720,435.17
Total Liabilities, Capital and Surplus.....		\$8,714,338.68

## Appendix I

## AMERICAN AIRLINES, INC.

## Balance Sheets

As At November 30, 1939, 1940 and 1941

Assets	November 30, 1940	
(1)	(2)	(3)
Current and Accrued Assets:		
Cash .....	\$7,318,984.19	
Accounts Receivable, Net.....	1,571,339.03	
Traffic Balances Receivable.....	66,080.85	
Inventories, Net .....	980,013.72	
Short Term Investments.....	59,974.25	
Other Current and Accrued Assets.....	374,941.96	\$10,371,334.00
Investments in Stocks, Bonds and Mortgages.....		12,824.73
Investments in Affiliated Companies.....		
Deferred Debits .....		153,623.79
Fixed Assets:		
Real Property and Equipment (Net after depreciation) .....	\$7,587,783.04	
Miscellaneous Physical Property (Net after depreciation) .....	30,000.00	7,617,783.04
Total Assets .....		\$18,155,565.56
Liabilities		
Current and Accrued Liabilities:		
Accounts Payable .....	\$ 653,086.35	
Traffic Balances Payable.....	299,204.01	
Taxes Accrued .....	813,600.33	
Liability for Deposits on Air Travel Plan.....	1,535,953.57	
Other Current and Accrued Liabilities.....	494,139.77	\$ 3,795,984.03
Long Term Debt Securities.....		2,496,125.00
Deferred Credits .....		100,088.25
Net Worth:		
Common Stock Outstanding.....	\$3,718,670.00	
Premium and Assessment on Capital Stock....	1,435,230.00	
Preferred Stock .....	5,100,000.00	
Unappropriated Earned Surplus.....	1,509,468.28	
Unearned Surplus .....		
Operating Reserves—Contingency .....		11,763,368.28
Total Liabilities, Capital and Surplus.....		\$18,155,565.56

## Appendix I

## AMERICAN AIRLINES, INC.

## Balance Sheets

As At November 30, 1939, 1940 and 1941

Assets	November 30, 1941	
(1)	(2)	(3)
Current and Accrued Assets:		
Cash .....	\$9,867,647.89	
Accounts Receivable, Net.....	2,222,625.78	
Traffic Balances Receivable.....	28,680.38	
Inventories, Net .....	1,200,856.73	
Short Term Investments.....	2,098,688.62	
Other Current and Accrued Assets.....	160,793.76	\$15,579,293.16
Investments in Stocks, Bonds and Mortgages.....		15,323.73
Investments in Affiliated Companies.....		500,000.00
Deferred Debits .....		370,559.59
Fixed Assets:		
Real Property and Equipment (Net after depreciation) .....	\$6,249,112.12	
Miscellaneous Physical Property (Net after depreciation) .....	25,000.00	6,274,112.12
Total Assets .....		\$22,739,288.60
Liabilities		
Current and Accrued Liabilities:		
Accounts Payable .....	\$ 685,166.79	
Traffic Balances Payable.....	1,297,077.50	
Taxes Accrued .....	1,551,774.39	
Liability for Deposits on Air Travel Plan.....	2,158,382.45	
Other Current and Accrued Liabilities.....	791,508.14	\$ 6,483,909.27
Long Term Debt Securities.....		
Deferred Credits .....		70,000.00
Net Worth:		
Common Stock Outstanding.....	\$5,748,480.00	
Premium and Assessment on Capital Stock....	1,942,682.50	
Preferred Stock .....	5,100,000.00	
Unappropriated Earned Surplus.....	3,394,216.83	
Unearned Surplus .....		
Operating Reserves—Contingency .....		16,185,379.33
Total Liabilities, Capital and Surplus.....		\$22,739,288.60

## Appendix II

## AMERICAN AIRLINES, INC.

Distribution of Expenses Between Commercial and Mail Service for the Year Ended November 30, 1941,  
and for the Future on the Basis of Estimates in This Analysis

	Total Expense	Forecast—This Analysis		
		Direct Expense	Commercial Service— Allocated Expense	Mail Service Allocated Expense
Direct Flying				
Operations	\$ 7,456,000			
Stewards and Stewardesses		\$ 393,600	\$ 393,600	
Passenger Supplies and Expenses		956,800	956,800	
Passenger Liability Insurance		310,800	310,800	
All Other			\$ 5,388,400	\$ 406,400
Maintenance	2,448,000		2,276,300	171,700
Depreciation	1,367,100		1,271,200	95,900
Indirect Flying				
Operations	4,640,000	73,200		
Consolidated Airport Ticket Office Expenses				
All Other			73,200	
Maintenance	1,541,100		4,246,500	320,300
Depreciation	353,000		1,433,000	108,100
Traffic and Advertising	3,000,000		328,300	24,700
Traffic Managers, Agents, and Solicitors		489,900		
Clerks and Attendants		300,300		
Consolidated Ticket Office Expense		33,000		
Agency Commissions		139,500		
Newspaper and Periodical Advertising		644,100		
Display Advertising		68,100		
Folders and Circulars		204,900		
Miscellaneous Publicity and Advertising		44,700		
All Other			1,000,100	75,400
General and Administration	1,550,000		1,441,300	108,700
Allowance for Price Increases	420,000		390,500	29,500
TOTAL	\$22,775,200	\$3,658,900	\$17,775,600	\$1,340,700



Appendix II  
AMERICAN AIRLINES, INC.

Distribution of Expenses Between Commercial and Mail Service for the Year Ended November 30, 1941,  
and for the Future on the Basis of Estimates in This Analysis

	Results of Year Ended November 30, 1941				Mail Service Allocated Expense
	Total Expense	Direct Expense	Commercial Service Allocated Expense	Total	
Direct Flying					
Operations	\$ 7,375,889.17	\$ 394,772.39	\$	\$ 394,772.39	
Stewards and Stewardesses		905,338.31		905,338.31	
Passenger Supplies and Expenses		267,798.38		267,798.38	
Passenger Liability Insurance					
All Other			5,436,850.16	5,436,850.16	371,129.93
Maintenance	2,375,912.32		2,224,091.52	2,224,091.52	151,820.80
Depreciation	1,498,455.98		1,402,704.64	1,402,704.64	95,751.34
Indirect Flying					
Operations	4,185,516.36				
Consolidated Airport Ticket Office Expenses		73,211.89		73,211.89	
All Other					
Maintenance	1,533,243.08		3,849,528.21	3,849,528.21	262,776.26
Depreciation	336,724.91		1,435,268.85	1,435,268.85	97,974.23
Traffic and Advertising	2,990,471.24		315,208.19	315,208.19	21,516.72
Traffic Managers, Agents, and Solicitors		488,430.64		488,430.64	
Clerks and Attendants		299,420.14		299,420.14	
Consolidated Ticket Office Expense		32,974.08		32,974.08	
Agency Commissions		139,175.69		139,175.69	
Newspaper and Periodical Advertising		642,063.86		642,063.86	
Display Advertising		67,932.68		67,932.68	
Folders and Circulars		204,323.22		204,323.22	
Misc. Publicity and Advertising		44,569.27		44,569.27	
All Other			1,003,107.59	1,003,107.59	68,474.07
General and Administration	1,513,286.07		1,416,587.03	1,416,587.03	96,698.98
TOTAL	\$21,809,499.07	\$3,560,010.55	\$17,083,346.19	\$20,643,356.74	\$1,166,142.33

Appendix II  
AMERICAN AIRLINES, INC.

Distribution of Expenses Between Commercial and Mail Service for the Year Ended November 30, 1941,  
and for the Future on the Basis of Estimates in This Analysis

	Forecast—This Analysis			Mail Service Allocated Expense
	Direct Expense	Commercial Service— Allocated Expense	Total	
Joint Costs Allocated on Basis of Average Pounds				
of Traffic as Follows:				
Passengers (Taken @ 200 lbs. per passenger and free baggage)	2,600	2,600	2,600	
Excess Baggage	23	23	23	
Express	95	95	95	
Mail	205	.....	.....	205
Total Pounds	2,923	2,718	2,718	205
Percent	100	92.987	92.987	7.013
Cost Per Pound-Mile (In Mills)	.243		.246	.205
Results of Year Ended November 30, 1941				
Joint Costs Allocated on Basis of Average Pounds				
of Traffic as Follows:				
Passengers (Taken @ 200 lbs. per passenger and free baggage)	2,524.0	2,524.0	2,524.0	
Excess Baggage	28.0	28.0	28.0	
Express	81.8	81.8	81.8	
Mail	179.8	.....	.....	179.8
Total Pounds	2,813.6	2,633.8	2,633.8	179.8
Percent	100.00	93.610	93.610	6.390
Cost Per Pound-Mile (In Mills)	.245	.247	.247	.205

**SUMMARY OF WAR CONTROL OF CIVIL AVIATION\***

1. On December 7, 1941, the Assistant Secretary of Commerce for Air telegraphed the Governors of the several States, Alaska, and the Canal Zone requesting them to assign police officers to all landing fields for the protection of field facilities and to ground all aircraft unless they were engaged in scheduled air transportation or were publicly owned or operated under contract with the Federal Government, pending the issuance of instructions as to how such aircraft may be permitted to operate.

2. On December 7, 1941, the Assistant Secretary of Commerce for Air instructed all Civil Aeronautics Administration personnel that on account of the existing state of war between Japan and the United States they should render the armed forces of the United States every assistance requested by them in handling communications.

**Certificates Suspended**

3. On December 7, 1941, the Administrator issued Administrator's Order No. 3 suspending all pilot certificates as of December 8, 1941, until such time as such certificates were reinstated in accordance with the manner prescribed in said order.

4. On December 8, 1941, the Administrator issued Part 531 of the Regulations of the Administrator of Civil Aeronautics authorizing inspectors of the Civil Aeronautics Administration to seize or impound any aircraft owned, operated, or piloted by an alien or by a person not possessed of a currently effective pilot certificate issued by the Administrator, or by a holder of a pilot certificate issued by the Administrator which was suspended pursuant to the terms of Order No. 3 above.

**Regulations Adopted**

5. On December 10, 1941, the Civil Aeronautics Board adopted the following Civil Air Regulations:

(a) *60.349 Passenger baggage restrictions*—provides that a pilot shall not fly aircraft, except in scheduled air transportation, carrying passengers, baggage, or cargo unless—

(1) He or his agent examines all baggage and cargo and loads same, with no intervening possession by any other person:

(2) He places all cameras of passengers in compartments inaccessible to them during flight. Pilots of civil aircraft shall permit search thereof by any representative of the Army, Navy, Civil Aeronautics Administration, Civil Aeronautics Board, or by civil police.

(b) *60.322 Pilot identification card*—provides that no pilot shall operate civil aircraft in flight after January 8, 1942, except scheduled air-carrier aircraft, unless he has in his possession an identification card, satisfactory to the Administrator, containing his fingerprints, pictures, and signature.

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\* This is a codification of convenient reference taken from the Civil Aeronautics Journal of March 15, 1942 (Vol. 3, No. 6). It is a summary to date of the measures adopted by the Civil Aeronautics Administration and the Civil Aeronautics Board for the control of civil aviation during the existing state of war.

(c) *20.617 Permission to use aircraft*—provides that the owner of an aircraft shall not permit operation thereof by another person unless:

(1) He ascertains by examination that such person holds a currently effective pilot certificate; and

(2) Requires proof of personal identification.

6. On December 16, 1941, the Administrator telegraphed all Regional Managers of the Civil Aeronautics Administration to advise owners of private aircraft to render their aircraft inoperative while not in use, by the removal of an essential mechanism unless such aircraft is stored or staked out under 24-hour guard.

### Emergency Regulations

7. On January 15, 1942, the Civil Aeronautics Board adopted Emergency Regulations, 60-95, effective February 15, 1942, which provides, among other things:

(a) *60.951 Flight rules*.—No person shall land at or take off from any landing area other than a "Designated Landing Area" except—

(1) when prior approval of the Administrator is secured; or

(2) when such landing is necessitated by emergency conditions beyond the control of the pilot, in which event he shall report to the Administrator or his representative within 24 hours after landing.

(b) No person shall take off aircraft from a designated landing area unless—

(1) He submits to the Administrator or his representative information as to identity of the pilot, occupants, aircraft, route, duration, nature, and purpose of flight, and

(2) He receives clearance from such person.

(c) Clearance will be granted only if the applicant is—

(1) The holder of a currently effective pilot certificate;

(2) Presents his identification card as required by section 60.322;

(3) The route proposed to be flown permits compliance with section 60.91

(h) with respect to vital defense areas and zones of military operation;

(4) The aircraft is equipped with functioning two-way radio if flight is other than local; and

(5) The issuance of such clearance is consistent with instructions issued by the Administrator: *Provided*, That the Administrator may grant special permission for contact flight during hours of daylight beyond the local area when the aircraft is not equipped with a two-way radio.

(d) No person shall take off aircraft from a designated landing area for flight to another landing area through vital defense areas or military zones unless prior to take-off he transmits to such landing area through the clearance

official a message identifying the aircraft and stating time of arrival: Provided this need not be done if a flight plan has been filed with the airway traffic control.

(e) No person shall take off from a designated landing area unless cognizant of all current flight information.

(f) Immediately upon landing at a designated landing area the pilot shall—

(1) Submit to the Administrator or his representative a copy of his clearance; and

(2) Transmit by telephone or telegraph to the landing area of departure a message identifying his aircraft and time of arrival: *Provided*, This need not be done if a flight plan has been filed with the airway traffic control.

(g) No person shall operate an aircraft other than in accordance with the description of flight submitted to the Administrator or his representative at the landing area of take-off except in emergency, in which case, he shall report immediately to the Administrator or his representative at the landing area of departure or arrival describing the cause of the deviation.

(h) No person shall leave an aircraft unattended under circumstances which would permit its operation by an unauthorized person without rendering the aircraft incapable of operation in a manner consistent with any instructions issued by the Administrator for this purpose.

(i) *60.952 Aircraft basing.—*

(1) No person shall base aircraft at other than designated landing areas without first obtaining permission of the Administrator.

(2) Upon basing at a designated area the owner shall submit to the Administrator or his representative at such area information as to the identity of the aircraft, its owner, and the last previous base. If aircraft is to remain away from its base for more than 72 hours, the owner shall submit to the Administrator's representative at such base information as to enable him to locate the aircraft promptly. Prior to changing base the owner shall notify the Administrator or his representative at his present base of his intention, stating the name and location of the new base.

(j) *60.953 Landing area rules.—*

(1) Designated landing areas shall furnish current flight information to persons operating therefrom and shall maintain records of landings and take-offs, which records, as well as buildings and equipment, shall be open to inspection by any representative of the Army, Navy, Civil Aeronautics Administration, or Civil Aeronautics Board.

(2) The Administrator may cancel the designation of a landing area at any time in the interest of public safety or national defense.

(3) No person shall forge, counterfeit, alter, or mutilate any records or documents required by section 60.95 or make any false or misleading statements of information required by section 60.95.

**Release Issued**

8. On January 15, 1942, Acting Director of Safety Regulation of the Civil Aeronautics Administration issued to all aircraft owners of record Safety Regulation Release No. 87, effective February 15, 1942, containing instructions for establishing either an operating base or a place of storage for all civil aircraft and for keeping the Administrator advised as to the location of their aircraft.

9. On January 15, 1942, Acting Director of Safety Regulation of the Civil Aeronautics Administration issued Safety Regulation Release No. 88 effective February 15, 1942, containing instructions and requirements for designation and operation of a designated landing area.