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## Civil Aviation - Section IV of Survival in the Air Age, a Report by the President's Air Policy Commission, January 1, 1948

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# FEDERAL

Department Editor: Louis E. Black, Jr.\*

## CIVIL AVIATION — SECTION IV OF SURVIVAL IN THE AIR AGE, A REPORT BY THE PRESIDENT'S AIR POLICY COMMISSION, JANUARY 1, 1948<sup>1</sup>

THE air lines, the most important element of civil aviation, are passing through one of the most serious crises of their history. The domestic trunk lines of the country suffered an operating loss of approximately \$22,000,000 in the fiscal year ending June 30, 1947.

This situation is significant for two reasons. If not relieved it will contribute to the rapid deterioration of air-line service to the public. A second reason is now of even greater importance. The air lines have a fleet of aircraft of great value to the military services as a reserve in time of war. As a potential military auxiliary, the air lines must be kept strong and healthy. They are not in such a condition at the present time.

Most of the air lines are in financial difficulties for a number of reasons. Both their management and Government aviation officials were over-optimistic as to the volume of postwar passenger traffic. Starved for both airplanes and personnel during the war, the lines hired large numbers of new people when the war ended, ordered many new airplanes and in several instances made what may prove to have been unwise route extensions.

Losses for a number of lines began in the latter half of 1946. There were high expenditures due to the changeover from war to peacetime conditions. These included costs from the expansion of routes, services, and organizations; the introduction of new types of airplanes; rapid and unforeseeable cost increases; a reduction in passenger fares and mail rates coupled with a decline in mail volume; the reappearance of seasonal declines in passenger traffic; a series of dramatic accidents; and public dissatisfaction resulting from lack of dependability. Strikes and the grounding of airplanes have added additional heavy financial burdens on some lines. To a large extent the causes of these losses are temporary, but only if the air lines and the Government profit by the recent experience.

We have heard much testimony on what to do to rectify the present situation. We will discuss the major problems under the headings of Air Mail Payments and Subsidy, Safety and Regularity, Economic Regulation, Taxation, and International Transport Problems.

### AIR MAIL PAYMENTS AND SUBSIDY

The Government has had a policy of encouraging the development of an air transport system in this country ever since 1918. In 1925 the Kelly Act provided for financial assistance to private air line operators. The most important promotional legislation was the Civil Aeronautics Act of 1938. Throughout the prewar years, the air transport system which we had in this country could not have existed without subsidies by the Government. The Congress recognized that a strong air transport industry was necessary for national defense, for American commerce and for the postal service, and accordingly enacted the policy of governmental financial aid to the air lines.

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<sup>1</sup> Full text of Section IV follows. See Editorial, page 64 of this issue. For origin of the Commission see 14 JOURNAL OF AIR LAW AND COMMERCE 364 (1947).

By the end of 1942, several of the largest air transport companies which had grown up with the aid of subsidy had reached a point where they could earn a profit without depending on subsidy mail pay. Their receipts from passenger service, express service, and a mail payment based on a rate roughly equal to the passenger rate, more than offset their total expenses. This was an important milestone in the history of air transportation, for it indicated a successful policy on the part of the Government and successful management by those companies which had reached the much desired point of relative self-sufficiency.

Throughout the war the air lines were financially strengthened by military contract work plus abnormally high load factors. In both the CAB and the air lines it was believed that a greatly increased demand for air transportation in the postwar years would continue this trend toward self-sufficiency. The difficulties in which the air transport industry now finds itself can be traced primarily to over-expansion based on the mistaken assumptions of postwar traffic.

Although some air-line problems of 1947 may differ from those of the prewar period, the over-all situation is the same: The revenue from passengers and cargo, plus a revenue for the carriage of the mail roughly equal to the passenger rate, will not support the operations of many of the companies. If they are to continue in operation and start again up the ladder toward self-sufficiency the Government will have to increase the mail rates.

There is no need to change the law in this respect. It already is drawn to cover exactly such a situation. The method of determining mail payment for subsidized carriers under the Civil Aeronautics Act of 1938 was developed by the CAB as follows: On the basis of estimates made by an air line and by the Board's staff, the CAB determined the probable future income to the line from the carriage of passengers and property. It likewise determined the probable over-all cost of the operations. Such a cost figure invariably exceeded the estimated nonmail revenues. The mail rate then was set at a figure which provided enough additional income to close the gap between nonmail revenues and expenses incurred under honest, economic and efficient management and to leave something over as a profit.

By "subsidy" is meant the payment to an air line for the carriage of mail of a sum greater than that to which the carrier would be entitled for the simple performance of this function at a service rate on a strictly business basis. The excess of payments above the "service" rate is a subsidy, or as described in the Civil Aeronautics Act, a "need" payment, based on the need of the air line for financial assistance to balance its expenses with its revenues and earn a reasonable profit.

As noted above in the early days of the war certain lines reached a stage where mail payments could be based on a rate roughly equivalent to the passenger rate. Since that time there have been two principal ways of paying for the carriage of the mail. Ton-mile payments have been made to relatively self-sufficient carriers; plane-mile payments have been made to other carriers considered to be in the "need" class and therefore requiring higher mail rates. In either case, if the carrier has found that the rate does not in fact enable it to cover its expenses, it may petition the Board to increase the rate. When the Board has examined the new facts it may fix a new future rate. The Board may and usually does then also set a retroactive rate back to the date on which the carrier petitioned for a rate increase.

In the case of the international carriers, the Board has followed a slightly different practice. It usually fixes an avowedly temporary, experimental rate and then, in the light of experience, adjusts this rate to meet the actual needs of the carrier over a past period of a year or more. The

rate continues to be a temporary one until such time as the Board feels experience is sufficient to enable it to fix a permanent rate, if necessary retroactive to the date of the original petition.

Recently the Board has modified somewhat the usual forms of domestic mail payment for certain carriers in special distress. In grave emergencies such as existed during the winter of 1946-47, the Board sets an emergency rate without taking its usual careful consideration and then starts a careful scrutiny of the justification of the expenses of the companies to make sure that the gap between nonmail revenues and expenses is not due to uneconomical, inefficient, or dishonest management.

The task of making the estimates necessary to setting a mail rate is a difficult one almost always involving disagreement between the claims of the interested air line and the Government officials who must be concerned about the public expenditure of funds.

We consider that direct Government financial aid to commercial air lines is fully justified on grounds of national security and economic welfare. We believe the air transport system of this country can, with such aid now, become self-supporting in the future. We are convinced that any impartial investigators of air transport would endorse the use of public funds to obtain such a sound air transport system. This means the continued granting of subsidies to air lines for an additional period.

*Expediting CAB Procedure.*—Means must be found to decrease the time necessary for the CAB to process rate cases. We believe that the transfer of safety functions out of the Board, an increase in the Board's staff, and an increase in the number of members in order to make possible a special division of the members focusing their attention primarily on rate cases are therefore desirable.

It is not only necessary that the Board act quickly in determining air-mail rates but that it grant enough mail pay to keep all the lines in business to the extent required by the public interest, provided their difficulties are not due to dishonest, uneconomical or inefficient management. This can be done at a total cost that appears reasonable compared with other Federal expenditures for aviation purposes.

*Separation of Subsidy from Air Mail Pay.*—It has been suggested to us that a division in the air mail pay be made to show how much of the pay is for service rendered by the air line and how much is for subsidy. We see no advantage now in disturbing a practical working situation. It is desirable, however, for the CAB, in cooperation with the Post Office Department, to study the cost of air-mail service with a view to the future when most air lines will be able to operate without subsidy payments. It is to be expected that, as the CAB develops new methods of cost accounting in determining fair and reasonable rates for the carriage of passengers and property, it also will develop cost standards applicable to mail carriage.

When the CAB made temporary upward adjustments in mail payments for certain carriers in financial difficulties in the spring of 1947, at the same time it wisely initiated field investigations into the efficiency and economy of those carriers. It is admittedly difficult for any Government regulatory agency to determine whether the management of a particular company in any field is in fact efficient and economical. Yet such a requirement is imposed upon the Board by the mail rate provisions of the Civil Aeronautics Act.

*Standard Operating Costs.*—It has therefore been suggested to us that standard operating costs for various types of services be developed by the Board. These standard costs would be kept current with changes in the general price level by frequent adjustments to conform to an industry cost index. Components making up the index would be the major items which enter into air-line costs. The standard operating costs could then be used

as yardsticks on which "need" air-mail payments could be based. With such yardsticks, "need" mail payments could be made more quickly and bear a closer relation to efficient and economic operation.

We have considered this proposal and believe that it might have substantial advantage to all air lines. The Board might well be able to keep a closer check on efficiency and economy of air-line operation. We realize that the CAB has considered similar proposals. We recommend that the Board give this problem further study and investigation.

*Carriage of All First-Class Mail.*—A suggested financial aid to the air lines would be the carriage of first-class mail by air where delivery would be expedited. Domestic air-mail volume for fiscal 1947 amounted to an estimated 33,000,000 ton-miles. The Post Office Department has estimated an additional 146,000,000 ton-miles of domestic first-class mail which movement by air would expedite. The institution of a policy of moving first-class mail by air whenever the postal service would benefit thereby would increase the volume of air mail by something over eight times in pounds and over five times in ton-miles. The benefits to the air lines by giving them this traffic, even if a large amount were carried at "service" mail rates, are obvious. For during the same period, total mail revenue to the domestic carriers amounted to a little over \$21,000,000.

We do not believe however that provision of traffic to the air lines is the major criterion in advocating the movement of first-class mail by air without surcharge. Rather, the test as to what first-class mail shall move by air should be the best mail service to the public. And it is obvious that long-haul mail can often be handled faster by the air lines than by surface carriers.

The Post Office Department estimates a loss of approximately \$5,000,000 to domestic surface carriers if first-class mail were to be carried by the air lines whenever such handling gives faster service. The taking of a large volume of first-class mail now handled by surface carriers and giving it to the air lines would not be discriminating against the surface carriers if the service to the public were better. The question raises, however, the over-all problem of the dependence of a war effort on all forms of transportation. We have not gone into that problem but anticipate that the Congress will do so.

The Congress will undoubtedly also consider the fact that carrying first-class mail by air without surcharge, whenever delivery can be expedited thereby, will involve, according to the Post Office figures, an additional cost to the Government of some \$96,000,000. This loss would come from a decrease in the present profit made on first-class, 3-cent mail, a profit which now subsidizes the carriage of other classes of mail.

We understand that the Post Office Department has now under way studies of the cost of inaugurating air parcel post on both domestic and international air routes. Our recommendation is that the step of carrying by air all first-class mail which can be expedited thereby and the step to parcel post service by air not be taken until the air lines achieve a satisfactory regularity status. At that time we recommend that the Congress should give most serious consideration to these proposals.

#### SAFETY AND REGULARITY

We have not gone into the technical aspects of safety because the President's Board of Inquiry on Air Safety, appointed June 15, 1947, has been intensively studying the problem.<sup>2</sup> We do, however, wish to make a few comments on this important subject. In Section V of this report, we recommend the establishment of an Air Safety Board.

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<sup>2</sup> See 14 JOURNAL OF AIR LAW AND COMMERCE 363 (1947).

The question of safety in commercial aviation is of prime importance, not only because of the importance of human life but because of its psychological effect on traffic and the effect of traffic upon the self-sufficiency of the air lines. Air-line travel is, in fact, far safer than the public believes. The increasing size of planes, with the resultant increase in number of passengers killed in any one accident, has increased public anxiety out of all proportion to the actual conditions of safety. The disproportionate amount of publicity inevitably given air-line crashes gives an unwarranted impression that air-line travel is basically unsafe. Statistics on scheduled air-line operations compiled by the CAB show that the chances of fatality in terms of passenger miles flown are very slight.

Normal competitive business factors, between manufacturers and between air lines, as well as the pressures of traffic upon equipment, result in a strong tendency to put new planes into service as quickly as possible. In spite of this, new planes have been put through long and careful test periods. It is our belief, however, that events have proved that these periods have not been long enough.

We recommend that new types of transport planes be operated regularly on nonpassenger schedules for a specified mileage before passengers are carried. The period should be sufficiently long to permit mechanical or design weaknesses to become apparent under normal operating conditions. We suggest that the test airplanes be operated day by day on cargo and air-mail runs over approximately the same routes and using the same airports as they will later be flown in passenger use. We realize that both the manufacturer and the air line buying a new type of plane have flown the aircraft for long periods prior to its use in passenger service. But such flights are usually made with special crews, under special conditions, and with special maintenance. We are aware that it may be expensive to follow our recommended practice. The test planes may be operated at a relatively low load factor and income will necessarily be less than if the airplane is carrying passengers.

We are also concerned over the lack of consideration for safety that has been shown by some contract carriers. The fact that the CAB does not have economic regulatory control of contract carriers means that the Board has no official record of their activities. Often the Board's first consciousness of the existence of a charter operation over which its safety regulations do apply is when such accidents as that of the Bermuda Sky Queen or of Page Airways call public attention to the operations. We are confident that the CAB is endeavoring to take all possible steps to eliminate hazardous accidents among contract operations. Its effectiveness in this regard will be greatly increased if it is given the economic control of such carriers we recommend below.

Next in importance to increased safety on the air lines is an increase in regularity of service. Air travel will never be mass transportation until people are reasonably certain that they can depart and arrive on schedule. An illustration of unreliability in good weather is afforded by the figures from an air line flying in and out of New York City in June 1947, which was a good-weather month. This air line offers over-all service considered to be among the best in the country, yet of planes arriving in New York, 89 per cent were late and 46 per cent of all airplanes were delayed more than one hour. Forty-one per cent of all airplane departures from New York were late, and 16 per cent were over one hour late. The steady traveler, most often a business man with appointments to maintain, has learned from bitter experience that his plane will arrive on time about once in ten trips and will depart on time even less often.

Delayed departures are often as irritating as late arrivals. It is irksome to passengers to make a great effort to get to the airport 20 or 30 minutes

before scheduled departure, a practice recommended by the air lines, only to wait an hour or more for the take-off. This is especially true on early morning flights.

It is equally irritating for the passengers not only to arrive at their destination hours late but sometimes to arrive at alternate airports which are often miles away from the intended destination of the particular flight. Problems of cancelled flights or the using of alternate airports, however, will not be solved until safe all-weather flying has been achieved.

For safety and regularity on the air lines a basic requirement is a nation-wide system of air traffic control, navigation, and landing aids. The Federal Government has, for many years, built and operated navigational facilities and emergency landing fields.

We consider that adequate airways and airports coupled with ground aids for traffic control, navigation and landing are so important to the preservation of our air transport system that the Government must continue to be responsible for developing, installing and maintaining a thoroughly adequate network. The Federal Government must accept the financial burden until the users of these aids are in a financial position to pay their fair share of the costs.

All-weather flying will not be achieved until adequate instrument landing systems are installed and operating at a majority of air-line stops. Technical knowledge in the field of electronic aids for aviation is far ahead of actual practice. Systems have been developed which would go far toward increasing reliability and safety.

The Civil Aeronautics Administration has already installed improved-type radio and high intensity lighting facilities at a considerable number of air fields. But the program has only been started. The CAA estimates the cost of new construction of air navigation aids, air traffic control and landing aids over the next five fiscal years as \$190,000,000. The estimated annual cost of maintenance and operation for an integrated network of aids will cost \$100,000,000 per year, beginning with 1953.

Before the Congress can be expected to appropriate these large sums, the various interested private groups and responsible Government agencies must reach agreement on a common system of landing aids for immediate installation which will adequately serve both civil and military needs. Such agreement is now being sought by a technical group of experts, the Radio Technical Commission for Aeronautics, at the special request of the Air Coordinating Committee. As soon as agreement has been reached, the Executive Branch of the Government should request the Congress for funds to carry out the necessary air traffic control, navigation and landing aids programs.

Equally important is early agreement on research and development programs in the field of electronic aids to aviation, which will insure that the means of handling traffic will keep pace with the steadily increasing traffic. The Research and Development Board is now engaged in exploring the types of research and development in electronic aids which will have application to both military and civil aviation. The work of this Board should be expedited and should be coordinated with the long-range program on electronic aids, now being developed by the RTCA under the policy direction of the ACC.

Larger expenditures for electronic aids to air traffic control, navigation, and landing will do more than anything else foreseeable today to build the air lines toward economic self-sufficiency. They will also materially bolster certain phases of the national defense. A carefully worked out program for these aids together with its rapid implementation has become a top priority for civil air transportation.

We believe that Government money can be spent more productively on

the means for increased regularity of operation than by increasing subsidy payments to support additional competition in the present air-line system.

The question of dependability with safety is not exclusively a domestic matter. It affects the international operations of our air carriers as well. Testimony has been submitted which shows that aviation communications and electronic aids are in a very unsatisfactory state on most of the international routes now in operation. We have investigated the "joint support" program of the International Civil Aviation Organization. Under this program each nation whose air lines expect to use a facility outside its own territory which is not being constructed by the state where the facility is found to be required, contributes to the cost of its establishment and operation in proportion to the use made of the facility. It was under this program that the nations flying the North Atlantic agreed on the Ocean Weather Stations Program for that area of the world. We believe that the "joint support" program of ICAO provides the best and fairest means of insuring the installation of adequate aviation aids along the routes of the world, and accordingly recommend that the Congress appropriate funds necessary to permit the United States to participate fully.

Airplanes are often late in clear weather due to congested airports. Airports at large centers of population are not adequate for handling air traffic at peak periods. Although the CAB might be blamed in part for authorizing more air lines into these airports than can be handled, the solution for this phase of the problem lies in the hands of the local governments. In cities where existing airport facilities are inadequate to handle growing traffic, local government action, plus Federal aid under the Airport Act, can and must remedy the situation. It is obvious that the Nation's airport system must be improved if we are to have a larger fleet of commercial airplanes in daily operation. Specific recommendations on the Federal Airport program are made below.

As discussed above the Government can and should do much to improve regularity of service on the air lines. But the air lines themselves have control of a large share of their own destiny. They can improve their operations to make air travel more attractive to the public. They are now carrying many empty seats that could be filled if their service were better.

In the investigations of the Commission an interesting fact came to light. It developed that neither the CAA nor the CAB kept records of air-line regularity, nor were they, on request, able to supply them. Nor do many of the air lines themselves keep more than fragmentary statistics on this subject.

Now that air travel is accepted as a standard form of transportation, passengers are deeply critical of delays and the whole matter of public dissatisfaction and lack of confidence in the air lines touches everyone's pocketbook because it can directly affect subsidy. We have been given estimates of millions of dollars which the air lines have lost because of flight cancellations and irregularity in general.

#### ECONOMIC REGULATION

*Domestic route pattern.*—The problem whether there is too much or too little competition in our domestic air-transport system involves not only the question of new entries into the field and competitive extensions of the routes of existing companies, but also the important question whether combination of existing companies should be encouraged or prevented by the Board.

We recommend that the CAB defer for a short time decisions in new route certification cases. This should not be confused with a freezing of the present route pattern, which would certainly be undesirable. There is, however, a widespread confusion as to the principles which guide the CAB



in its route determinations. A body which is under the constant pressure of daily decisions of case after case cannot accomplish the careful planning which the development of a national route pattern demands. The present air transportation system has not developed as expected before and during the war. There is need for a comprehensive survey of the present situation and the development of a more cohesive philosophy. The resulting clarification of policy should bring about acceleration of subsequent route decisions.

As a part of such review, if the Board should find any routes no longer now required by public convenience and necessity, it should use any present legal powers such as suspension or reduction of "need" payments to reduce the effect of any errors in the present system. This appears preferable to causing instability in the industry through granting to the Board the right of outright revocation of routes.

If it is found that the Board is unwilling or unable to develop a more clear-cut plan for an over-all domestic air transport pattern, the Congress should give serious thought to giving over-all planning functions of route development to the Secretary of Civil Aviation [who would head a Department of Civil Aviation within the Department of Commerce] recommended in Section V. We have had testimony from some of those interested in Government organization and procedure that such a step is now desirable, but we are much impressed with the difficulty, both practical and theoretical, in breaking apart this function from other Board functions, and propose that the Board be given ample opportunity to develop a thoughtful, over-all approach to the problem before such action be taken.

*Contract Carrier Regulation.*—A contract carrier in any form of transport can operate when he wishes and renders his service by specific contract with a shipper or group of shippers. The contract carrier has less responsibility than a common carrier and is normally subject to more competition. A common carrier of goods or people holds himself out to serve the public at large and has many responsibilities to the public. In return for undertaking these obligations it has been customary for the Government to grant to the common carrier a limitation on the amount of competition from other common carriers in his field. The Congress found it necessary to give the Interstate Commerce Commission control of both common and contract motor carriers. In contrast, although the CAB has economic control over common carriers, it has no such control over contract carriers. This is true in spite of the fact that competition between the two types is often intense.

When the Civil Aeronautics Act was passed the volume of business done by contract carriers was small and few carriers were engaged in contract operations except those who had qualified for common carriers status before the CAB.

Much of the development of air cargo over the past 2 years is due to the aggressive and capable management of certain contract cargo carriers. Unfortunately, some passenger contract carriers have misrepresented their services, and have operated illegally as common carriers. Disregard by some of these contract carriers of the responsibility and duty owed to the public by any carrier for hire tends to discredit all carriers in the eyes of the traveling and shipping public.

We believe that the economic regulation of contract carriers is necessary to prevent unstable conditions in the air transport field similar to those in the motor carrier field prior to the Motor Carrier Act of 1935. The difficulties encountered by the CAB during the past 2 years as regards contract carriers is adequate evidence that the Board should be given the authority to regulate all types of air carriers for hire. There should of course be adequate provision in any new legislation to protect legitimate contract carrier rights of currently operating contract air carriers, including those now operating under CAB regulation 292.1 and those operating under regulation

292.5 if their present request for full common carrier status is denied, just as was done for contract motor carriers on adoption of the Motor Carrier Act of 1935.

Furthermore, until the CAB is given the authority to promulgate and enforce economic regulations over contract carriers, the Board will constantly be placed in the embarrassing position of having little or no information on the services performed by such operators.

*Air Cargo Development.*—The question of air cargo development has been widely discussed. The issues appear to be two: (1) Should the potential market for air cargo by common carriers be spread among more lines than now exist in the category, and (2) should there be subsidy stimulation of cargo carriage by common or contract carriers, or both?

Property carried by air has increased strikingly since the end of the war although there has been some carriage of property by air as long as there has been air transportation. It was slowly and steadily growing in the period just before the war. Several factors account for the fact that since the war more air cargo has been carried by noncertificated carriers than by certificated carriers.

One was the necessary concentration of the certificated lines on handling passenger traffic which was overwhelming their equipment. This required the concentration of management upon that problem and the use of available financing for the building up of the passenger fleet. Another factor was the existence of large numbers of military surplus cargo planes available at low cost and on easy terms from the War Assets Administration.

A third factor was the large number of men who started and operated air cargo lines and developed traffic; but at rates too low to cover their costs of operation. Their activity created an increasing consciousness in the shippers' minds of the possibilities of air cargo service. Yet another factor was the aggressiveness and lasting power of a few of the more rugged organizations which entered the air cargo field.

Cargo operations by noncertificated lines were carried on as contract carrier operations. The certificated carriers gave only their secondary attention to the increase of air cargo. With the realization that postwar passenger business was not going to be as great as had been expected, and with the striking results of aggressive management on the part of some of the contract operators becoming evident, the certificated air-line managements, while bedeviled with organization and safety problems, nevertheless began to turn with more and more energy to the development of the cargo business.

In regard to the first issue (spreading air cargo among more lines than now exist as common carriers) as we have said above, most common carrier air lines certificated for the carriage of passengers, property, and mail, after a steady progression toward self-sufficiency from 1938 to 1946 have suffered a serious set-back. Our major problem is to get them started once again up the ladder toward self-sufficiency. To advocate at this time the entry into this field of a large number of new carriers would certainly seem to postpone rather than hasten the attainment of such a state.

The CAB has faced this problem of the economic number of companies since 1938, in regard to the carriage of both passengers and property, although the problem has only recently been focused in the direction of property. The basic question to be decided by the Board is whether the public convenience and necessity require that additional service be supplied and if so whether it should be supplied by expanding the service of existing lines or by letting in additional carriers. This is exactly the kind of problem for which the act of 1938 has provided a CAB and it is certainly not for this Commission to recommend the decision.

We do express our belief, however, that in deciding on certificates for

new cargo operations, the Board should avoid impairing the soundness of the existing air-transport system by spreading the present and potential traffic among too many separate carriers. If the Board finds that the public convenience and necessity does require some additional common carrier operators, we hope that it will give weight to the records built up by any of those contract operators that have proven their ability to operate economically and efficiently and now desire common carrier status. The Board will also undoubtedly give serious consideration to the suggestion that certification for cargo operations should apply between and within specified areas rather than between fixed termini.

In regard to the second issue raised above (a subsidy stimulation of cargo carriage), we feel that the only excuse for the subsidization of cargo carriage by air at this time would be to develop a fleet of cargo planes to act as a military pool for emergency use. One way to meet the military need would be for the services to buy the air transports they need in the same way that they buy combat aircraft. Congress may decide not to appropriate money for this purpose and may prefer to obtain replacements and additions to the present military transport fleet reserve, through subsidizing the carriage of cargo by air. If it chooses the latter method, it will undoubtedly weigh the effect such a course would have on other forms of transport since it might well raise the possibility of a subsidy or reduction in taxes to these forms to make possible the readiness for war loads on such transportation. The problem of building up a pool of military transport planes in commercial use seems to warrant a more coordinated study of the number of transports needed, the potential commercial cargo traffic, and the possible subsidy cost to the Government than has been carried on by the armed services, the Department of Commerce, and the CAB. We recommend that the problem receive the immediate attention of the ACC.

Witness after witness has testified to the difficulty of obtaining the amounts of private capital that are needed to develop new and advanced types of airplanes.

The soundest way to build up a pool of cargo planes for an emergency is to develop a cargo plane that can operate on a profitable basis. We are recommending the creation of an Aircraft Development Corporation whose initial and primary task could be the development of an all-cargo transport airplane. Such a plane would of course have to be useful to the military; but it should be designed primarily with a view to economic commercial operation.

*Feeder Air Lines.*—A complicated problem facing the Civil Aeronautics Board is that of the feeder air lines, a term popularly used to apply to an air line operating a local service with frequent stops at intermediate centers of population.

The chief objection to these local service air lines is their potentially high cost to the Federal Government. Their costs vary widely with different regions, depending upon the adequacy of surface transportation. Some regions have topographical features which make the surface connections between cities unsatisfactory. In these areas there appears to be a need for local service air transportation and we believe that feeder air lines in such places are desirable for the full development of the national air-line network.

There is a real need on such routes for proper navigation and landing aids, and adequate airport facilities. In carrying out its airport and electronic aids programs, the Federal Government will undoubtedly pay adequate attention to the needs of population centers served only by local service air lines.

In granting feeder air-line franchises, the CAB has done so on a 3-year experimental basis. Feeder-line officials appearing before us have pointed

out that the 3-year period does not give them enough stability to permit sound financial and other planning.

We recommend that the experimental period for existing feeder air lines remain for the present at 3 years, unless it becomes evident that this period can be extended without burdensome cost in mail pay. Then, and only in that case, it should be extended, even if the initial testing period has not been completed. We also recommend that new certifications, if any are found to be required by the public convenience and necessity, be made for 5 years.

*Surface Carriers in Air Transportation.*—The question of whether or not surface carriers, such as railroads, busses, and steamship lines, should be permitted to enter the air transport business is an important policy matter. There are differences of opinion as to the intent of the 1938 act.

We recommend that the CAB prevent the control by surface carriers of the United States air transport system or any important segment thereof. We believe, however, that individual progressive surface carriers, desirous of developing air transport as a part of a coordinated service, should not be automatically prevented from such action simply on the grounds that they are surface carriers—as now appears from the record to be the case. We recommend that the Congress enact legislation clarifying these two points.

*Air Line Finance.*—The air lines have traditionally operated on low working capital. Moreover, current assets accumulated during the war years were depleted by the purchase of new airplanes and by operating losses.

Loans secured by equipment are difficult to obtain in the air transport field. Railroads are able to secure financial aid to buy new equipment through the sale of equipment trust certificates at low interest rates without restrictions on their operations or finances. It would be desirable if the equipment-trust method of financing, so successful with railroads, could be used for the purchase of air transport equipment.

Three legal obstacles, however, must be overcome before this method can be made effective. These are: (1) Federal recordation of engines, propellers and major spare parts, similar to the present recordation of aircraft; (2) clarification of the liability of the trustees of equipment trusts for damage done by aircraft; and (3) assurance that creditors having equipment liens can obtain immediate possession of the equipment in event of reorganization, similar to that now applicable to railroad equipment under Section 77(j) of the Bankruptcy Act.

In addition United States air lines operating the international routes are faced with the difficulty that in many cases foreign laws are not uniform either among themselves or with American law concerning the rights of lien holders on aircraft used in international operations.

These legal obstacles should be removed as soon as possible. It may be that the private market for aircraft equipment-trusts will never reach the high credit standing now enjoyed by rail equipment trusts. Every effort should be made, however, to make aircraft equipment-trusts salable in the private investment market. The elimination of these obstacles would hasten that accomplishment.

Studies are now being made with a view to making recommendations for legislative action by the Federal Government and the states to eliminate these domestic legal obstacles. It is recommended that the Department of Commerce take the lead through the ACC in developing an agreed legislative program to eliminate these domestic impediments to the sale of aircraft equipment trusts.

For aircraft engaged in operations abroad, an international convention to make uniform the rights of lien holders has been drafted for presentation to the next assembly of the ICAO.<sup>3</sup> We recommend that the U.S. Govern-

<sup>3</sup> For Text and Commentary see 14 JOURNAL OF AIR LAW AND COMMERCE 500 (1947).

ment press for adoption of the convention and promptly ratify it thereafter.

It has been suggested by members of the CAB that they be given authority to pass upon air-line financing. The ICC now has the duty of approving or disapproving security issues of railroads as does the Maritime Commission for subsidized shipping lines. The public utilities commissions of the States in many cases have similar authority as to the security issues of public utilities. The Securities Acts of 1933 and 1934 give to the Securities and Exchange Commission the duty of considering security issues in the interest of the investing public.

It has been argued before us that unsound financial planning has played a part in contributing to the difficulties of the air lines today. It may be that the absence of legal control over air-line financing is a gap in our regulatory system which should be filled.

However, any authority which the Board might be given over air-line financing would have to be applied with great expedition. In another part of this report we have made recommendations aimed at facilitating a speed-up in Board procedures. If, as a result of the carrying out of these recommendations or for any other reason, the Board does reach a point where it is in a position to handle its present duties expeditiously, consideration should then be given to the question of conferring the desired authority upon the Board.

#### INTERNATIONAL AIR TRANSPORT

*Competition vs. Monopoly.*—We agree with the present CAB Board policy which favors limited competition among American operators on international routes. We have studied the testimony before the Interstate and Foreign Commerce Committee of the House of Representatives in the spring of 1947, in which both sides of the issue were exhaustively presented. The Commission has also heard testimony from those advocating one international air line instead of a number of lines operating abroad.

Some forecast that we shall carry less and less international traffic through inability to compete with low-cost, heavily-subsidized, foreign air lines and that we shall be driven from the skies, as our Merchant Marine was once driven from the sea. We do not agree with this pessimism. We believe that our international operators should receive such Government aid as will permit them to compete effectively with their foreign rivals. American technical and managerial ability, plus the spur of competitive effort, should win for them a substantial share of the world's traffic. The policy of regulated competition that has assured the development of our domestic air lines should be followed in our international system. Present competition seems only adequate to provide the desired incentive to management and a yardstick for comparison between American carriers.

Several of the most important certificates granted by the CAB for international operations are temporary and will expire in 1952. At that time there should be a complete review of the entire international competitive picture. There is no evidence now that an earlier reappraisal is either necessary or desirable.

*Restriction on Travel.*—International air travel can reach its fullest development only when governments have taken steps to do away with or improve the restrictive conditions which now exasperate the passenger. Requirements for the issuance of passports and visas; customs rules, and public health and quarantine regulations must be greatly simplified subject to proper security regulations. Our own Government is and has been one of the chief offenders in imposing burdensome regulations. Full support should be given to the efforts of the ACC to eliminate obstacles to international trade and travel by air created by our own laws and regulations, and to the work which the ICAO is attempting in the same field.

*Executive Agreements vs. Treaties.*—Past experience has proven that executive agreements are better than treaties for covering international air transport rights. It is only because the Department of State, working closely with the CAB, effectively negotiated bilateral agreements with some 34 nations that we have a world-wide pattern of operating rights. These agreements came into effect upon signature, thus permitting immediate inauguration of services. Treaties would have required ratification in most instances by the legislative bodies of the two signatory states. The inevitable delay in getting the ratification of 34 treaties would have kept our air lines out of action so long that foreign competitors would have had a commanding leadership from the start. Due to prompt action on our part, that leadership is now ours.

Because of changing conditions, it will almost certainly be necessary to amend the existing agreements with various countries from time to time. We should not incur the risks we would run from delay if these agreements were in treaty form and could be amended only by the treaty process.

*International Rights of Operation.*—The Commission has seen with regret the failure of the International Civil Aviation Conference at Geneva to agree on a multilateral treaty covering rights and obligations in international air operations.<sup>4</sup> We feel, however, that agreements should not be sought at the cost of abandoning the so-called Bermuda-type provision in regard to the right to carry passengers between any two foreign countries on a route.

This right, known as the Fifth Freedom, appears essential not only for the economic operation of our international carriers, but also for the widest development of air transportation. Unreasonable restrictions on traffic would adversely affect all long-haul international carriers, and would hamper that full expansion of world-wide air commerce which modern aviation can do so much to promote. While for a few nations such restrictions may appear temporarily advantageous to their national air lines, in the long run these restrictions will react against the best interests of those nations along with the rest of the world.

We feel that there should be no change in our present policy of exchanging operating routes through executive bilateral agreements, and fixing universal standards of practice and procedure through multilateral treaties.

*Economic Control Needed.*—The Civil Aeronautics Act of 1938 gives the CAB control over all types of domestic traffic rates. Similar control over international rates is conspicuous by its absence from the act. The volume of traffic and the number of United States flag carriers employed in carrying that traffic have increased greatly. With the present lack of specific authority over international rates the CAB cannot control the rates set by foreign air carriers permitted into this country under reciprocal agreements as effectively as is desirable. We see no valid reason why rate control is not just as necessary in international operations as in domestic operations. The Executive Branch of the Government has committed itself, under the Bermuda and other bilateral air transport agreements, to use its best efforts to obtain direct authority over international rates from the Congress. We recommend that the Congress comply with the CAB request that it be given authority over all international rates.

The control of contract carriers operating internationally poses especially difficult problems. At the present time, the CAB has no control over non-scheduled and contract foreign carriers entering this country. The only requirement for the entry of these carriers is a permit issued by the CAA under the reciprocal provisions of Section 6(c) of the 1926 Air Commerce Act.

<sup>4</sup> See Final Report of ICAO Commission on Multilateral Agreement, page 92 *supra* of this issue.

The extension of CAB economic regulation to cover all carriers for hire as recommended above would permit the economic regulation of all types of carriers by air operating into or out of this country to be centered in the CAB. However, the status of nonscheduled and contract carriers operating internationally still needs clarification. Article 5 of the Convention on International Civil Aviation states that aircraft not engaged in scheduled international air services and carrying passengers, cargo, or mail for hire, shall have complete traffic rights subject only to regulations, conditions, or limitations as any State may consider desirable. At the present time, no agreement has been reached among the countries adhering to the convention on the meaning of this article. We recommend that our Government urge an early clarification with respect to the interpretation of Article 5 of the Convention on International Civil Aviation so that there shall be clearly established legal status for nonscheduled and charter flights, operating internationally.

#### TAXATION

Air lines engaged in interstate commerce operate in many taxing jurisdictions. They are thus subject to multiple taxation which may well result in burdens on interstate commerce. The Congress, realizing this situation, adopted Pub. L. 416, 78th Cong. 2d session, pursuant to which an investigation was made by the CAB resulting in a report to the Congress.

On the basis of the facts disclosed in this report, it appeared that an undue burden may be imposed on interstate commerce by (1) the multiple taxation by the States and their subdivisions of air carriers engaged in interstate commerce; (2) the absence of adequate judicial protection against multiple taxation; and (3) the absence of statutory standards or administrative procedures for accomplishing the avoidance of such multiple tax burdens on interstate commerce.

Taxation of aviation fuel by the States is an anomaly caused by the fact that State taxes on gasoline were intended to be paid by operators of automobiles. Taxes collected on gasoline for aviation uses were not, in any significant amount, used for aviation needs. The injustice of such taxation is attested by the fact that 27 States and the District of Columbia grant either total exemption or a full refund of such taxes, and 12 States grant a partial refund. However, there is no assurance that these exemptions and refunds will not be rescinded, or taxes increased, by State legislation at any time.

It is true that the States are making substantial contributions to airport development. On the other hand the air lines make user contributions to airports in the landing fees and rentals and other charges. Any additional contributions through a tax on fuel in the case of the subsidized carriers often constitute an additional levy on the Federal Treasury since these payments will have to be balanced by higher mail payments.

To meet these problems, a bill, H.R. 1241, has been introduced in the 80th Congress. This bill provides formulae for the equitable allocation of the taxable base between different jurisdictions measured by (a) value of operating property, operating revenues, or capital stock representing investments in operating properties, and (b) net income. The bill makes unlawful any tax imposed on the air carrier on a tax base in excess of the allocation provided by the authorized formulae. The allocation formulae do not apply to real property and tangible personal property permanently located in a particular taxing jurisdiction. The CAB is named as the agency to administer the provisions of the bill, including the allocation of the tax base to be used by the several taxing jurisdictions. Provision is also made in this bill for judicial review of such allocations on the petition of an air carrier or an interested taxing jurisdiction.

With respect to the taxation of aviation fuel, Section 6 of the bill directs the Secretary of the Treasury to consult with the State authorities and recommend within 12 months a program which will remove impediments to a balanced and normal development of civil aviation.

The Federal Government establishes, operates, and maintains the Federal airways, and a reasonable Federal tax on aviation fuel is a means of making aviation generally and the air lines in particular contribute to the Government a portion of this expense. It is hoped that as a result of the consultation provided in Section 6 of the bill, an equitable reallocation of aviation fuel taxes can be arranged.

We therefore recommend that hearings be held on this bill at an early date, and that it be enacted into law with such amendments as the hearings may show to be desirable.

#### PERSONAL AVIATION

The term "personal aviation" is meant to include all flying activities not classifiable as either military or as the carrying of persons or property for hire. It includes "private carriers," that is, the flying of executives and other personnel in company-owned planes, and "industrial flying." The latter consists of crop dusting, aerial advertising, and other activities using the airplane as a tool. The term also includes most of the activities of "fixed-base operators" such as the sale, renting, repairing, and servicing of personal aircraft, and flight instruction. "Private flying" is the ownership and operation of aircraft for personal business or pleasure.

*Federal Support.*—A number of witnesses representing these varied activities came before the Commission. Most of them pleaded for Government subsidies for flight training, airport development, navigation aids, research on personal planes, or for other services that would benefit personal aviation. Many arguments were based on claims that the stimulation of personal aviation would be of military benefit.

Personal aviation clearly proved its value to the military services in the last war. The fact that the Nation was air-minded was a national asset. Without pilots and mechanics drawn from personal aviation, and the use of civil airports and ground facilities, the Air Force and the Navy would have been retarded. The Civilian Pilot Training Program was especially successful. Light aircraft, developed originally for private fliers, were of value as artillery spotters, for personnel transports and for other uses. Private pilots of the Civil Air Patrol made an admirable contribution. In any future conflict there is little doubt that an air-minded Nation, with hundreds of thousands of civilian pilots and mechanics, and a network of airports and navigation aids is better prepared for an air war than a nation with undeveloped civil air facilities.

Although instruction skills have historically been valuable to the military, testimony of the armed services indicates that this will not be as true in the future. The usefulness of civilian instructors in military training is constantly being diminished by the advancement and refinement of military techniques and equipment. But most important is the fact that according to evidence submitted to the Commission civilian instructors are unlikely to be required for any emergency within the next 15 years because of the availability of World War II pilots. This 15-year availability of World War II pilots for instructor, patrol, and transport duties ensures personnel for these three important emergency functions which were largely performed by private pilots in the early years of World War II.

The taxpayer has contributed generously in the past to personal aviation. Considerable help was given throughout the prewar years, but the greatest benefits were in the Government-sponsored civilian pilot training in the American colleges. Airport operators in all parts of the country were able



to hire new instructors, refurnish and reequip their buildings, improve their airports and in general put themselves on a businesslike basis. The greatest help to the private plane industry was the demand for new airplanes for instruction, purchases of which reached a new peak in 1940 and 1941.

During the war nearly all manufacturers of personal planes produced aircraft for military purposes, or had subcontracts from other plane manufacturers. They were able to modernize their factories and buy new equipment that they could not previously afford.

Many airports built or improved by the Government during the war are now being used by civilian pilots. In addition, other new airports are being built under the Federal Airport Act of 1946. This is a program now going on which will be of considerable help to pilots.

Greatest postwar windfall to the personal aviation industry has been the decision of thousands of veterans to learn to fly, or to improve their flying, under the GI bill of rights. The Veterans' Administration estimates that \$125,000,000 was spent for flight training in 1946 and it is likely that veterans will continue to take flight training until the program terminates.

As was true with the Civilian Pilot Training Program before the war, Government money under the GI bill filters down to nearly all phases of the personal aviation industry. A considerable amount goes to manufacturers for new airplanes. Other Government money spent for airports, control tower operation, navigation facilities, and other purposes is also a direct help to private flyers.

In the past 10 years the Government has paid for the training of hundreds of thousands of military and civilian pilots who compose the largest ready-made market for personal planes and for airport facilities that has ever existed. This great mass of pilots will decide the near future of personal aviation. If enough of them do not continue flying to support the personal plane industry, their neglect should be an unmistakable sign to airplane designers that a new airplane is needed which will provide more utility at a lower operating cost. If, in fact, private aircraft do possess a significant economic potential, the Commission is confident that private enterprise will seize the opportunity as it already appears to be doing in the development of light planes for executive transportation.

This Commission, trying to judge personal aviation impartially, believes that a healthy, personal plane industry is of value to the Nation. We believe that it should be encouraged by the continuation of funds for airports, for navigation and landing facilities, and for basic improvement in personal plane design (discussed in Section III).<sup>5</sup> We believe that the appropriations to personal aviation for these purposes, plus the very substantial financial assistance provided for veterans' flight training, are sufficient.

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<sup>5</sup> Another way in which Government may properly encourage the development of aircraft suitable for private use is by the NACA continuing some research directly applicable to small aircraft. Any device that would make possible lower landing speeds coupled with higher top speeds would be significant from the standpoint of the private pilot and would have useful military implications. Slotted wings and trailing-edge flaps have been the subject of NACA investigations for many years, but further research on boundary-layer control would appear to be useful. Unconventional configurations (possibly combining the principles of the helicopter and the fixed-wing airplane) should be fully explored, as such studies might open new fields for designers in their search for the ideal aircraft for the private owner.

The NACA effort in these areas should be limited strictly to basic research, and not be applied to the development of any commercial article. In such fields of activity, the normal laws of economics should control the direction and rate of development.

The military services cannot offer much in the way of direct financial assistance to the individual experimenter who may have a new idea for the development of a new type of personal aircraft. They should lend what encouragement they

*Federal Regulation of Personal Aviation.*—We recommend that every effort be made by Government aviation agencies to simplify and reduce the air and ground regulations affecting the personal flyer as a further step toward the development of personal aviation. In Section II of this report we have made recommendations aimed at lightening the regulatory burden on the light plane manufacturer.<sup>6</sup>

*State Enforcement and Participation in Federal Aviation Policy.*—The postwar expansion of personal aviation has made impossible the direct Federal enforcement of Civil Air Regulations without the creation of a large and cumbersome Federal policing agency. Rather than expanding the Federal pay roll, the Commission recommends that the Civil Aeronautics Act be amended to authorize State aviation officials or courts to enforce the noncarrier safety regulations of the Federal Government. We emphasize, however, our belief that the Government should retain its power to promulgate Civil Air Regulations in order to preserve national uniformity.

State aviation activities have grown rapidly in both extent and function, and the States will have an increasing concern with Federal policies. At present, the States have no formal representation or participation in any Federal aviation agency. Section 205(b) of the Civil Aeronautics Act empowers the Civil Aeronautics Authority to confer with or to hold joint hearings with State aeronautical agencies. We believe that more extensive use of this provision by the constituent Federal agencies is desirable.

To give official recognition to State and local aviation organizations at the Federal level, we recommend the establishment of a State-local aviation panel, advisory to the Air Coordinating Committee. The panel should be organized along lines parallel to the ACC industry advisory panel and should include representation from nationally recognized State and municipal aviation associations. This panel would provide Government agencies other than Federal agencies with a formal medium wherein they can work closely with Federal aviation agencies. The panel will permit responsible State and local aviation officials to express their views on the larger issues of national air policy and will guarantee their associations official status in consulting with departments and agencies represented on the ACC.

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can, however, in the form of loans of surplus or semiobsolete equipment for experimental purposes. The prewar practice of lending engines, instruments, propellers, etc., should be pursued whenever occasion offers. When such equipment is thus loaned, the services should be given first information on any new inventions or developments which may result.

<sup>6</sup> *Federal Regulation of Personal Aircraft.*—The present detailed requirements for certificating light aircraft of new design are complex, and tend to retard experimental design. The Commission agrees with the Administrator of Civil Aeronautics that it is time to recognize and encourage the moral and legal responsibility of the light aircraft manufacturers for the safety and integrity of their products. The Federal Government should continue to promulgate aircraft design standards in collaboration with established technical groups, research agencies and safety organizations, but compliance with these standards should be the primary responsibility of the manufacturer. After careful initial checking for competence, each should be required to certify to the airworthiness, the proper flight characteristics and operational limitations of the production type and to the fact that the airplane has been submitted to an exhaustive performance and service test. The present testing procedure now executed by the CAA should be conducted and sworn to by the manufacturer.

To discourage the entrance of irresponsible or technically ill-equipped firms into the private aircraft industry and to prevent the deterioration of standards among established firms, we recommend that the Government establish simplified but adequate standards of fitness and ability to be met and maintained by each company selling personal aircraft. A manufacturer's certificate based on proven ability should be issued by the Department of Commerce. Periodic spot checks should be made, and the Department should have the power of revocation for just cause. By thus certifying qualified manufacturers they could, in turn, certify all personal airplanes.

## AIRPORTS

An adequate domestic airport system can best be achieved through the combined efforts of the Federal and local governments. By enactment of the Federal Airport Act in 1946, which provides for Federal participation with local governments in building new airports or improving old ones, Congress has reaffirmed its long-established policy of furthering such cooperation.

As a general rule, military fields were not built close enough to cities for air-line or personal-plane use, and there is still need for more commercial airports. Traffic congestion in large metropolitan areas is so great that additional airports are badly needed. Many smaller communities must also have new fields if they are to attract air lines and get benefit of aviation.

The Federal Airport Act authorizes financial grants totaling \$500,000,000 within the United States over a 7-year period and an additional \$20,000,000 for Hawaii, Alaska, and Puerto Rico, and placed a limit of \$100,000,000 in any one year. The act did not appropriate any funds. The 1947 appropriation was \$45,000,000. Although the President requested \$65,000,000 for 1948, Congress appropriated only half that amount. We recommend that Congress appropriate each year the full amount of Federal aid permissible.

Representatives of local governments and the aviation industry testified that the airport construction program has been delayed by complicated and confusing CAA regulations. While we believe there is some merit in these complaints, we recognize that much of the delay is due to difficulties of hiring a staff and carrying out the new act.

Whether a public airport should grant exclusive rights to any fixed-base operator or other person to engage in an aviation or a nonaviation business is at best a difficult question and one which is ordinarily best answered on the merits of each individual airport situation.

Due to the relatively small business potential at many airports, some local communities find it difficult to assume the financial burden of airport maintenance and operation without the power to grant exclusive rights. In these circumstances, there may be some cases where exclusivity is justified. On the other hand, fixed-base operators and others prevented from establishing themselves at public airports argue that they are built with public funds and should be open to all desiring to engage in business.

We feel there is no question but that the landing area should be available for the use of all aircraft on a nonexclusive basis. At the other extreme, we feel there is no objection to exclusive contracts for such services as a restaurant at an airport. The difficult question to decide is whether exclusivity should apply to such services as gasoline and maintenance facilities. The Civil Aeronautics Administration is now in the process of working out regulations to cover these questions.

It is charged that certain overseas facilities were constructed in whole or in large part with Government funds made available to the owner air line through mail pay or otherwise, and therefore that these facilities should be available on reasonable and equal terms to all United States civil aircraft. Otherwise there must be a wasteful duplication of facilities the cost of which the taxpayer will be called upon to defray through air-mail payments.

The Commission believes that where a question arises as to whether airport facilities were constructed with the aid of Government funds or through the use of private capital, an investigation should be made by the CAB, with the cooperation of the other pertinent Government agencies through the ACC. In the event it is found that Government funds were used, steps should be taken to make these facilities available to other United States civil aircraft at reasonable rates.