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Regulation of Rates in Air Transportation

PART II †
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III
RATES OF COMPENSATION FOR THE CARRIAGE OF MAIL

At least in the first years after the passage of the Civil Aeronautics Act of 1938, the most important provision was Section 406 (b) which stated that in fixing rates of compensation for the carriage of air mail, the Board should consider the need of each air carrier for mail compensation "sufficient . . . 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."

Previously, air carriers, after more or less competitive bidding, had entered into contracts with the Post Office Department to carry air mail. The contracts were subject to revision by the Interstate Commerce Commission. The Civil Aeronautics Act abolished this system of awarding air mail contracts. Section 406 (a) of the act empowered and directed the Civil Aeronautics Board 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." Section 406 (b) established standards which the Board must consider in fixing such rates. These standards are:

1) the increased costs which may result from the fact that the carrier must provide necessary and adequate facilities and services for the transportation of mail;

† Part I of this article appeared at pages 1-22 of this volume.
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100. The mail rate provisions of the Civil Aeronautics Act of 1938 were the culmination of a long series of congressional enactments dealing with airmail compensation. [Air Mail Act of 1925, 43 Stat. 805; Watres Act of 1930, 46 Stat. 1; Air Mail Act of 1934, 48 Stat. 933, 39 U.S.C.A. § 469f (1934)]. Under the Air Mail Act of 1934, the immediate predecessor of the Civil Aeronautics Act, the carriage of mail was put on a three year contractual basis with the original contract rates determined by competitive bidding. In 1935 the act was amended and the Interstate Commerce Commission was directed to review the rates and adjust them upon a reasonable basis within certain statutory limits.

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(2) standards prescribed by law respecting the character and quality of service to be rendered by air carriers;

(3) the need for compensation sufficient to insure the performance of the mail service;

(4) the need for compensation for the transportation of mail sufficient together with all other revenue of the carrier to enable it 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 first three standards do not differ fundamentally from those prevailing in the fixing of rates for the transportation of persons or property or for ordinary public utility services. It is the fourth standard which is unique and by which the United States Government, through the device of air mail payments assumed the responsibility for the proper development of American air transportation. "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 use of air mail payments to develop air transportation has substantially contributed to the conversion of an industry that on the whole was chaotic and bankrupt to a well-financed, well-balanced air transportation system. Prior to 1938, "half of the private capital which had been invested in the industry had been irretrievably lost. The result of shaken faith on the part of the investing public in the financial stability of the airlines was preventing the flow of greatly needed funds into this industry. More than half of the domestic airlines carrying mail disclosed operating deficits for the year ending June 30, 1938." Domestic airlines as a whole had an annual net operating loss of $1,707,870 for the fiscal year ending June 30, 1938. For the fiscal year ending December 31, 1945, this loss had been converted to a net operating profit of $33,980,336. From June 30, 1938 to December 31, 1945, total miles flown increased 308 per cent, and the number of passengers increased almost 614 per cent. The mail pound

miles carried increased over eight-fold and express pound miles carried more than eleven-fold.

A large part of this growth was, of course, due to the expansion of all industrial activity and the tremendous importance of air transportation during the war. An even larger part was due to the fact that most airlines which had survived the early Thirties had managements of competence and vision appropriate to a new and vigorous industry. But there can be no doubt that the planned development resulting from the provisions of Section 406 enabled the industry to meet the demands made upon it and to finance an unprecedented expansion.

The administration of Section 406 placed upon the Board responsibilities far beyond those assumed by the ordinary utility rate-making body. For this was not just a device for payment for services rendered but the most effective tool by which the Board was to develop a sound air transportation system. Nothing is more apparent in the early Board cases than its refusal to be bound by the narrow considerations of traditional utility rate fixing. In its first airmail rate case, the Mid-Continent Airmail Rate proceeding, the Board stated as follows:

"The above factors which the Authority [Board] is directed to take into consideration in fixing and determining fair and reasonable rates under the act, differ from the tests which, under the influence of judicial decision during the past 40 years, have been set up for the guidance of public regulatory bodies in fixing rates for public utilities and common carriers."

The early rate policy of the Board was directed primarily towards enabling the air transportation industry to attain commercial self sufficiency at the earliest possible time. The mail rate provisions were not interpreted as bestowing upon the Board the

103. This was to some degree offset by the fact that after Pearl Harbor a large part of the airline fleet was transferred to the armed forces and airline operations were conducted with an unbelievably small number of planes.
104. Under the Civil Aeronautics Act the amount paid air carriers is not correlated in any way with airmail postage rates. While the industry has been subsidized in the sense that the airlines have been paid in excess of a compensatory charge measured by the cost of the service rendered in carrying the mail, domestic postal airmail revenues from 1938 through 1944 exceeded payments to domestic air carriers by $103,263,320, and the total expense of handling, carrying and delivering domestic air mail by $13,669,336. (See U.S. Post Office Cost Ascertainment Report).
105. 1 C.A.A 45 (April 14, 1939).
106. Id. at 54, 55.
role of a benevolent Santa Claus heedlessly distributing bonanzas to a deserving industry. Instead the emphasis in the early cases was on using airmail compensation as a device to develop efficient and economical management which through expansion of non-mail revenues could develop soundly financed air carriers relying upon a paying public acceptance of air transportation of passengers and property rather than on government payments.

In its First Annual Report, the Board summarized its policy as follows:

"This administration of the Act necessarily involves a policy of rate determination which serves to recognize managerial efficiency and to permit benefits therefrom to redound to the carriers, thus providing an incentive to management for further development while at the same time discouraging inefficient management by refusing, in fixing airmail rates, to allow any of the costs incident thereto. Accordingly, the Authority has analyzed both past and forecast operating revenues and expenses of the air carrier in each proceeding in the light of the statutory test of 'honest, economical, and efficient management,' not for the purpose of invading proper managerial discretion but with the object of encouraging a progressive, efficient management which will be characterized by a constant effort to increase commercial revenues, thereby resulting in the attainment of an increasing measure of commercial self-sufficiency."

In the early cases, enough airmail compensation was given so that the carrier could break even and a little more if its expenses were reasonable. In order to make a more substantial profit, the air carrier had to build up its passenger and property revenues. This policy was designed to encourage development and efficiency on the part of the carriers. The emphasis on efficient management in the early mail rate cases led to a critical examination of every item of expense that would be considered in determining the need. In such cases as Inland Air Lines-Mail Rates, United Air Lines-Mail Rates and T.W.A.-Mail Rates literally every expense was closely scrutinized.

108. 1 C.A.A. 155 (June 7, 1939).
109. 1 C.A.A. 752 (June 22, 1940).
110. 2 C.A.B. 226 (September 19, 1940). Under the Reorganization Act of 1939, the "Authority" was changed to the Board and the economic and safety
Gradually the Board began to consider the return on investment in fixing airmail rates. As early as *United Air Lines-Mail Rates*, the investment in property used and usable in transporting mail was analyzed, but no return on this investment was computed in order to fix the airmail rate. In the first *Braniff Airways-Mail Rate* proceeding, the Board declared that the rate fixed would provide an ample return on investment. It is clear, however, that return on investment was not computed in order to fix the rate but merely to justify a rate computed by other techniques. In *Northwest Airlines-Mail Rates* and in *Chicago & Southern Air Lines-Mail Rates*, investment was computed not so much that a return on it could be allowed, but to measure the efficiency of management by relating the investment to the volume of service. Beginning with *Delta Air Corporation-Mail Rates*, the Board adopted the more standard utility procedure and in each case thereafter computed the return on investment.

The allowance of a fair return on investment, however, was not employed as in the traditional utility rate case to determine the constitutional minimum which must be paid the utility. Instead it was used as an additional device to encourage efficient operation. Air carriers which the Board deemed to be more efficient were allowed a greater return on investment than the less efficient carriers. Thus while American Airlines was allowed a 9.5 per cent return, Colonial was allowed only 5.7 per cent. In *Colonial Air-Mail Rates*, the Board stated:

"While Colonial's return is less than we have approved in several other rate proceedings, we do not believe that it is too low in view of the high operating expenses of 105.56 cents per revenue mile recorded by Colonial for the 2 years ended June 30, 1942, as compared to the costs of all domestic carriers which averaged 66.84 cents per revenue mile, and as compared to the costs of DC-3 operators, which ranged from 55.92 to

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regulation functions were put under the Board. The administrative functions of the Civil Aeronautics Act were continued in a separate agency—the Civil Aeronautics Administration (CAA).

111. 1 C.A.A. 752 (June 22, 1940).
112. 2 C.A.B. 555, 565 (April 8, 1941).
113. 2 C.A.B. 827 (August 1, 1941).
114. 3 C.A.B. 161 (November 14, 1941).
115. 3 C.A.B. 261 (January 29, 1942).
72.79 cents per revenue mile. It is recognized that the comparison of costs per mile of one carrier to similar costs of other carriers is subject to criticism and that because no two carriers operate under identical circumstances, comparative costs do not afford an accurate yardstick for determining the reasonableness of costs. It is further recognized that Colonial conducts operations into a foreign country over a relatively short route which results in somewhat higher operating costs per mile. However, where the costs of a carrier are so far in excess of the average costs of the industry as a whole and of the highest costs recorded by any operator of similar equipment, it is reasonable to question the economy and efficiency of management."

The use of the rate of return on investment as a technique to encourage efficient operations and to reward the development of commercial services was abandoned during the war. With severe limitations on the number of planes, war time use of the airlines as a vital part of our national and international transportation system required that the development of purely commercial traffic be discouraged rather than encouraged. For the duration of the war the rate of return for domestic carriers was standardized at eight per cent for domestic carriers\(^{118}\) and ten per cent for international carriers\(^ {119}\). In announcing the reversal of policy in Pan-American-Grace Mail Rates, the Board stated:\(^{120}\)

"In our decisions in previous rate cases we have dwelled repeatedly and at length upon the importance of giving carriers an incentive to increase the degree of commercial self-sufficiency of their enterprises, and to reduce the extent of their financial dependence upon compensation from the Government. . . .

"Now, however, we are at war. The type and volume of service that a carrier renders is not now determined by commercial considerations, but by the national need in a time of emergency. Services attractive to commercial traffic may have to be scaled down, or abandoned entirely. National policy may require the opening of new routes, or the increase of schedules where ordinary commercial inducements are meager. . . .

\(^{118}\) Northeast Airlines-Mail Rates Route No. 27, 4 C.A.B. 181 (March 18, 1943).
\(^{120}\) Id. at 589.
"Under these conditions we conclude that during the war, and solely because of the conditions that war creates, the rate of return upon investment, which has heretofore been only one of a number of elements taken into account in determining the net operating income that it has seemed reasonable to anticipate in the setting of a mail rate for the individual carriers, should now become the primary and controlling element in that determination."

Soon after the end of the war, however, the Board in ordering Northeast Airlines to show cause why a tentative rate which allowed only a 5.23 per cent return should not be made final, gave a clear indication that rate of return would again be used as an incentive device. The Board stated:121

"Now that we are well along in the transitional period it once more becomes necessary to stress the importance of providing an incentive for the development of traffic and for efficiency and economy of operation. It becomes desirable to reduce the amount of subsidy to a minimum in those instances where high costs result from uneconomical or inefficient management. We cannot but feel that to provide the same rate of return for all carriers regardless of the efficiency and economy of management as reflected by their comparative costs after reasonable allowance for differences in the circumstances and conditions inherent in their operations, would be to stifle initiative and reduce to a minimum the incentive for low cost performance."

The most complete statement of the Board's philosophy of mail rate making under the fourth consideration of section 406 is found in the first American Airlines-Mail Rate Proceeding122 in which the Board declared:

"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,

121. Docket Nos. 1932 and 1890. Show Cause Order dated April 1, 1946.
122. 3 C.A.B. 323 (March 12, 1942).
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.'

"Between the barely compensatory rate required by the Constitution and the 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 'compensation' to be paid to the carrier in the airmail 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 required for the commerce of the United States, the Postal Service and the national defense.'"

Basically, the policy of this case has been followed until the present time. The Board wisely realized that rate determination is primarily a matter of informed judgment and not a mechanical application of statistical computations. In the regulation of a new and growing industry under a statutory mandate to promote its development, the Board has not used traditional rate making techniques to determine minimum payments but has only used those techniques when they fostered the broader objectives of promoting an efficient self sufficient air transportation industry.

123. Id. at 333, quoting from Southwestern Bell Telephone Co. v. Public Service Commission, 262 U.S. 276, 290, 45 S.Ct. 544, 67 L.Ed. 1205 (1923).
Moreover, the Board has refused to become ensnared by fictitious calculations of "reproduction cost" in order to compute a "fair return on fair value." In the rehearing of the American Airlines case, the carrier presented evidence of reproduction cost as a measure of "present value." The Board in no uncertain words indicated that it would refuse to consider such evidence. The Board stated on this point:

"The presentation at the rehearing of the reproduction costs of the carrier's property devoted to transportation service as of December 31, 1941, brings us to the question of the proper use, if any, to be made of such evidence. This Board in exercising its ratemaking functions has never and does not now measure the reasonableness of the rate in terms, of a fair return upon the so-called 'fair value' of the property used and useful in the public service. One of the primary factors, which is frequently controlling, in determining the fair value of such property is its reproduction cost less depreciation. We believe that experience has proved such method to be administratively and economically unsound; its application to public regulated enterprise during the past four decades has placed upon State and Federal regulatory agencies a burdensome, complex, expensive and futile task. . . . We believe that the ascertainment of the capital cost of producing the air transportation service requires that the rate of return should be predicated upon the funds which have been actually and legitimately invested in the transportation enterprise rather than upon any valuation of the carrier's property, and we shall continue to adhere to this method in the future as we have in the past. We accordingly regard reproduction cost evidence as irrelevant and immaterial to the issue of a fair and reasonable rate and evidence of this type in the future will not be admitted to the record in rate proceedings for the purpose of showing the value of the carrier's property." 125

In 1942 it became apparent that the objective of the Board's policy was being achieved by certain carriers which were attaining a degree of commercial self-sufficiency. Since that time, the Board has been fixing rates for two general categories of carriers. The "need" class carriers were those which had not yet attained commercial self-sufficiency. The Board in determining a "need"

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124. 3 C.A.B. 770 (November 12, 1942).
125. Id. at 788-789. Italics suppl'ed.
carrier's mail pay must consider its overall need for revenue sufficient to develop it in accordance with the policy of the act. The considerations and techniques employed in determining this overall need are those discussed in detail supra. The "self-sufficient" carriers constitute the second category. These carriers had developed their passenger and property revenues to such an extent that they no longer required any subsidy. Since they already received enough income from their commercial revenues to enable them to develop properly, the Board was no longer primarily concerned with their overall "need." In fixing fair and reasonable rates for "self-sufficient" carriers the importance of the fourth or developmental consideration of Section 406 is dimmed and the first three considerations become important. These require that the Board consider the increased costs resulting from service and facilities requirements imposed upon a carrier by reason of its carriage of mail under its certificate, the increased costs because of the imposition of such standards respecting service as may be prescribed by law, and the need for compensation sufficient to insure the performance of the service. These requirements are closely akin to those which are considered by a public utility commission in fixing common carrier rates. The Board is no longer primarily concerned with total investment, revenues, and expenses which must be analyzed to determine overall "need." Instead, its attention is focused on the investment and costs allocable to the mail service and its main effort is to pay a reasonable amount for the performance of that service.

With the Eastern Air Lines-Mail Rates\textsuperscript{126} proceeding a rate of 0.3 mills per pound mile was adopted as a service rate for domestic air mail carriage. In this and two other leading cases, American Airlines-Mail Rates\textsuperscript{127} and Pennsylvania-Central Airlines-Mail Rates,\textsuperscript{128} the Board announced the principles which would govern it in determining the service rate. In the leading Eastern Air Lines case, that procedure was outlined as follows:

"Under the circumstances just outlined, it is essential that, as a starting point, we determine a minimum mail rate under which it cannot reasonably be maintained that the Government is taking respondent's property without due process of

\textsuperscript{126} 3 C.A.B. 733 (October 19, 1942).
\textsuperscript{127} 4 C.A.B. 90 (January 8, 1943).
\textsuperscript{128} 4 C.A.B. 22 (December 16, 1942).
law; for under the Civil Aeronautics Act of 1938 the respondent is required by section 405 (g) thereof to carry mail where it is authorized to do so; and under section 406 of the Act it is entitled to fair and reasonable rates for such service and for related services mentioned in that section. This necessarily means that there is such a minimum rate for these services separately considered (i.e. apart from passenger and property transportation services) which must be determined by the Board. It is obvious that in order to reach such a determination we must exercise our judgment as to the proper amount of investment and operating costs properly allocable to the mail service, keeping in mind, however, that such allocated cost is but one of the considerations upon which a judgment may be formed as to the fair and reasonable rates.”

The Board after confessing the weakness of any allocation formula, finally allocated the investment and cost between commercial and mail services on the basis of “the ratio existing between the pound-miles of mail services and the pound-miles of commercial services after first charging to the commercial services those expenses attributable to that service alone.” The Board continued:

“...it is important to bear in mind that the fundamental objective of the Congress as set forth in the declared policy in the Act is the encouragement and development of an air transportation system... This broad policy objective must be borne in mind not only when determining the mail rate for a carrier which requires mail compensation in order to “break even” in its financial operations, but also in determining the mail rate for any carrier.”

Even when fixing a service rate the Board did not fix the constitutional minimum which must be paid for the service rendered, but the policy of the Civil Aeronautics Act to develop air transportation was considered. The rate was also fixed in the light of special services accorded the air transportation of mail, and the prevailing passenger and express fares.

By June 30, 1944, eleven domestic air carriers flying ninety-one per cent of the total revenue miles flown by domestic carriers were being paid the service rate of 0.3 mill per pound mile or sixty cents per ton mile. Only seven domestic air carriers flying only about nine per cent of the domestic revenue miles flown
were being paid a "need" or subsidy rate. All international carriers, however, were still being paid on a subsidy basis.

The 0.3 mill per pound mile rate had been fixed during late 1942 or early 1943 when the effect of the war on the operating profits of the air carriers was uncertain and it contained judgment allowances for this uncertainty. During 1943 and 1944 domestic air carriers carried the heaviest loads and earned the highest profits in their history. On December 22, 1944, the Board ordered American Airlines,129 Eastern Airlines,130 Transcontinental and Western Airlines,131 and United Airlines132 to show cause why the 0.3 mill per pound mile (or 60 cents per ton mile) mail rate should not be reduced to 32 cents per ton mile. In explaining this cut of almost fifty per cent in the service rate the Board in almost identical show cause orders stated:133

"In the previous case (the 0.3 mill per pound mile rate case) we had available only a limited amount of experience under the curtailed service pattern and there was considerable uncertainty as to whether the heavy loads then being carried would continue and as to the effect of Army contract operations on the operating expenses. Consequently the rate fixed in the case contained a large margin above the allocated cost of the mail service. In view of the extended experience which continues to show heavy loads [and] sustained high profits . . . it appears that an adjustment of the mail rate is in order. . . ."

Before the cases could be tried the European war ended. The Board felt that the end of the war substantially changed the operating picture for these airlines and amended the show cause order raising the proposed rate from thirty-two cents to forty-five cents per ton mile. In explaining the need for amendment the Board stated:134

"The period of transition for the industry is not only imminent

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129. Docket No. 1698.
130. Docket No. 1697.
133. The quotation is from page 12 of show cause order in the American Airlines case (Docket No. 1698) but identical language appears in all four show cause orders listed supra issued in the big four cases.
134. The quotation is from pages 2 and 8 of the amended show cause order in the American Airlines case (Docket No. 1699) but identical language appears in all of amended show cause orders.
but is actually under way. It now appears probable that the mail rate fixed in the proceeding will apply primarily to the transitional rather than the war period. It seems appropriate, therefore, that our previous findings be reviewed and our order amended to reflect the costs, the loads, the operating conditions, the equipment situation, and the expansion of service contemplated during the transitional and early post-war period. . . ."

* * *

"It is our purpose to fix a service mail rate which will be high enough to provide reasonable security against the risks inherent in the dynamic and unchartered transitional period ahead and which, at the same time will be low enough to provide a strong competitive incentive for economical and efficient management. . . ."

The Board then pointed out the overall similarity of costs and operating patterns of the four air carriers and tentatively fixed a uniform service rate. The rate was placed substantially above the allocated cost of mail service to protect against anticipated declines in traffic loads before new economies could be realized resulting from expanded mileage and frequencies and from new and improved types of equipment. The new rate was accepted by the carriers. Since these four carriers carried eighty-six per cent of the mail carried by all domestic carriers, a saving of almost six million dollars in mail pay was realized. Shortly prior to the issuance of the final opinions in these cases American Airlines reduced its passenger rates so that they yielded roughly the forty-five cents per ton mile paid for mail. These reductions were generally followed by the other carriers. Thus the service mail rate for air mail for the Big Four carriers is now relatively consistent with passenger rates.

The end of the war brought further changes in airmail rate making technique. On the domestic side the Board issued a series of regional route opinions in which new carriers were granted certificates of convenience and necessity to operate so called "feeder" lines serving smaller communities and tying into the trunk line services of the larger carriers. On the international

135. Texas Case, Docket No. 401-b-2 (November 5, 1943); Rocky Mountain case, Docket No. 452 (March 28, 1946); Florida case, Docket No. 489 (March 28, 1946); West Coast case, Docket No. 250 (May 22, 1946); New England case, Docket No. 399 (June 13, 1946).
side the Board certificated new carriers across the North Atlantic,\textsuperscript{136} South Atlantic,\textsuperscript{137} Pacific\textsuperscript{138} and into South America.\textsuperscript{139} In both situations the Board was faced with the problem of providing mail compensation where there was not sufficient operating experience to warrant a judgment as to the amount of the payment. The Board adopted the practice in these cases of fixing a temporary rate until "adequate experience and operating data have been accumulated to provide a sound and reliable basis for the determination of a fair and reasonable rate."\textsuperscript{140} In the Essair Mail Rate Proceeding, \textsuperscript{141} the Board outlined its reasons for the use of a temporary rate device for feeder carriers stating:

"We have heretofore refused to establish future mail rates on a tentative basis subject to later readjustment. We have held that the adoption of a method of mail rate determination patterned upon a "cost plus" system would tend to destroy a carrier's incentive to maintain costs at a reasonable level and to develop its non-mail business. In the present instance, however, petitioner is presently receiving no mail compensation whatsoever for mail service rendered and it can receive no mail compensation until the Board takes appropriate action. Where, as is the case here, the circumstances surrounding the operations of a particular carrier require that it receive mail payments on a recently-certificated service we believe that we are justified in fixing a temporary rate as a means of establishing a basis for mail payments for the new service and subsequently to proceed to fix and determine a final mail rate as promptly as adequate data concerning the new operations are available."

On July 15, 1946 the Board using basically the same reasoning issued three tentative opinions fixing identical temporary rates for the period after January 1, 1946 for all three American Flag carriers flying the North Atlantic.\textsuperscript{142} These temporary rates con-

\textsuperscript{136} North Atlantic Rate case, Docket No. 855 (June 1, 1945). This case was decided before the end of the Pacific war, but the rate problems did not arise until after the end of the war.
\textsuperscript{137} South Atlantic Route case, Docket No. 1171 (August 13, 1946).
\textsuperscript{138} Pacific Route case, Docket No. 547 (June 20, 1946).
\textsuperscript{139} Latin American Route case, Docket No. 525 (May 17, 1946).
\textsuperscript{140} Essair, Inc., Temporary Mail Rate, Docket No. 2002 (March 22, 1946).
\textsuperscript{141} Ibid.
\textsuperscript{142} American Overseas Airlines Inc. Mail Rate, Docket No. 1666; Pan American Airways, Inc., Transatlantic Services, Docket No. 1706; Pan American Airways Inc. Mail Rate for Transpacific Services, Docket No. 2147; Transcontinental and Western Air, Inc., Mail Rate for Transatlantic Services, Docket No. 2375.
stitute the latest step in the development of the Board's technique for fixing mail rates.

As far as the trunk-line domestic carriers are concerned, the development provisions of Section 406 have pretty well done their job. It is, of course, reasonable to anticipate that after the transitional post war period and with the introduction of more efficient equipment and an expansion in operating volume further reductions in the forty-five cents per ton mile airmail rate will be possible. But the major emphasis will unquestionably be on new and simpler techniques of fixing domestic rates. The fixing of identical rates for the Big Four carriers and identical temporary rates for the North Atlantic carriers indicates a further trend towards group rates applicable to classes of carriers.

The major mail rate problem facing the Board is the development of rate techniques to determine the proper amount of airmail compensation to be paid feeder carriers and international carriers. In both cases the temporary rates now fixed by the Board are obvious makeshifts. In both cases the need for governmental support through mail payments is apparent. In granting certificates to the feeder carriers the Board established safeguards clearly designed to limit the amount of governmental support by (1) authorizing the operations on a temporary three year basis and (2) confining authorizations to operations which would show "a justifiable expectation of success at a reasonable cost to the government."143 The obvious need is for a mail rate technique which will keep the government expense of developing local feeder services at a minimum and at the same time give the carriers every incentive to develop their commercial revenues. These problems are basically similar to those faced by the Board in the early mail rate cases when the industry as a whole was almost as undeveloped as the local feeder services are at the present time. It is likely, therefore, that the early techniques designed to build a self sufficient industry will have a new importance. The Board has indicated, however, that the costs of these carriers must be rigidly controlled, and that the Board expects feeder carriers to exercise considerable managerial ingenuity to keep costs, particularly ground costs, at a minimum.144

143. Investigation of Local Feeder and Pick-up Air Services 6 C.A.B. 1 (July 11, 1944).
144. Rocky Mountain Case, Docket No. 452 decided March 28, 1946.
The second big field for airmail payments in the future will be in international aviation. A large part of the development of new international routes by American Flag carriers will continue to be underwritten by the payment of substantial amounts of airmail compensation. While the development of a relatively high volume of traffic to South America, and over the North Atlantic to Europe may result in elimination of such payment for these routes, there is every indication that other international routes, particularly the Pacific and Africa routes, will require some developmental payments for a substantial period of time. Here again, the emphasis will be on cost controls and techniques designed to hasten the attainment of a self-sufficient status.

IV POLICY FOR THE FUTURE

The air transportation industry has now passed the weaning stage. Techniques of rate regulation which were applicable to the industry in its infancy may no longer be appropriate. A good example of the need of new techniques is found in the growing necessity of integrating mail rate policy with passenger and property rate policy. Previously mail rates have been set almost independently of passenger and property rates. The need for correlation between these rates is obvious and in a mature industry it is manifestly impossible to set a mail rate without considering the effect of that rate on passenger and property rates. For example, if the big carriers are going to have a mail rate set at a minimum service rate a margin of mail revenue will not be avail-

145. A show cause order is now pending reducing the rates of Pan American Inc. on its Latin American Division to a compensatory basis. (Show Cause Order dated May 22, 1945, in Docket No. 1593).

146. There will be a tendency to eliminate any subsidy payments in North Atlantic operations not only because a high volume of traffic may permit it but because of American policy objections to competing with foreign airlines which are directly subsidized by their governments. The desire to eliminate those subsidies by foreign governments to their carriers can only be effectuated if the United States is willing to eliminate its subsidy to American Flag Carriers flying the North Atlantic.

147. In fixing mail rates, the relation of those rates to the possibility of lowering passenger and property rates has been a subterranean consideration. Passenger and property revenues are of course considered in measuring the need for airmail compensation. In the show cause orders in the Big Four cases, a property rate investigation was ordered simultaneously with the order reducing mail rates, but this investigation has since become inactive. At the time of the final decision in these cases, the carriers lowered their passenger rates to be relatively consistent with airmail rates on a ton mile basis. The consideration, however, has been haphazard and the Board has never ordered a comprehensive investigation of all rates, passenger, property and mail.
able to experiment with lowering passenger and property rates and thus promote and develop a volume of traffic which may ultimately pave the way for a lowering of all rates. The present indications are that the Board is aware of the necessity for a margin above a bare minimum service rate. But there has been no comprehensive study by the Board of the interrelation between all rates, and no definite policy has been established of how mail rates may be used to aid in the development of a volume of property and passenger traffic. It is believed that such an investigation and the establishment of a policy which articulates the correlation between all rates is a necessity in fixing air transportation rates in the future period.

Equally pressing are the problems arising out of the increase in air transportation of property. During the war there were so few planes available that the amount of property which could be carried was severely limited. Most of the property was carried by air express under agreements by Railway Express with the air lines. As late as June 30, 1945, only one carrier had filed freight tariffs with the Board. By September, 1946, however, twelve carriers had filed freight tariffs. As it becomes increasingly possible for commercial shippers to ship their products by air, the importance of the property rate structure will increase.

The problems arising out of the expansion of the air transportation of property have been complicated by the development of non-scheduled operations during this same period. Since it takes between one and two years to obtain a certificate of convenience and necessity to operate a scheduled airline and since chances of a new applicant are woefully slim, those wishing to enter the airline business today have for the most part established non-scheduled operations which do not require a certificate. Non-scheduled carriers have been particularly active in the cargo field which the established airlines had neglected. The tendency of non-scheduled operations to expand has been accelerated in the past months by the increasing availability of surplus planes and by the return to civilian life of veterans trained in flying airplanes and anxious to continue flying them. Non-scheduled operations are no longer insignificant. Well financed, competently managed carriers handling a substantial payload are beginning to operate. Unquestionably a lot of non-scheduled operations are founded more on hope than fact and the post war era will see a lot of
capital lost. The trend on the whole, however, is an expanding one—particularly in the cargo field.

There are already indications of a cut rate war involving property charges which may hurt the orderly development of air transportation in this country. The fares charged by some nonscheduled operators bear no relation to the cost of operations. On the other hand, some scheduled airlines have filed tariffs providing for property charges of approximately eleven cents a ton mile in plane load lots while insisting that forty-five cents per ton mile is the minimum for which mail can be carried. It may be that the eleven cents per ton mile rate is justified on a promotional basis or that the difference in the handling costs of mail may warrant the differential in charges. But there is also the possibility that this rate is below cost and designed primarily to drive smaller competitors out of business. Unquestionably competition between and among scheduled and nonscheduled operators has had a healthy effect on forcing down rates. But the history of motor carrier transportation in this country indicates the substantial dangers of cut rate competition. The sickening spectacle in the 1930's of cut rate competition in motor transportation leading to a succession of business failures should not be repeated in the air transportation field. In addition to the amount of the charges, the tariffs that are filed often contain provisions, such as provisions limiting liability in the case of loss, which are of dubious propriety.

Up to the present time, the experience of the Board with property carriage has been so slight that a general investigation of charges and conditions of carriage of property would have had frugal results. But the rapid post war growth of property transportation, by both scheduled and non-scheduled carriers, has provided a background of experience which makes an active investigation not only possible but highly desirable. The Civil Aeronautics Act provides for the fixing of maximum and minimum property rates for both scheduled and non-scheduled common carriers in domestic air transportation. The purpose of this provision was to provide for the orderly development of rate levels. To date the Board has not directly exercised its authority to fix

148. As pointed out supra, on December 22, 1944, the Board concurrently with the issuance of orders to show cause in the Big Four rate cases ordered an investigation into the rates, fares, and charges for the transportation of property by domestic air carriers. This investigation, however, is dormant.
maximum or minimum property rates though tariffs of scheduled operators must be filed with the Board. The purpose of the property rate provision will be frustrated unless the charges for the transportation of property by both scheduled and non-scheduled operators are brought under control. The problem is not simple if full advantage is to be taken of the healthy effect of competition on rates. But with the advent of property transportation as big air transport business, there can be no question that rate regulation in that field is on the agenda for the near future.

The determination of rate policy for the future will also involve fundamental decisions relating to the control of international rates. The present approval of IATA as an instrument of control of such rates will continue only through February 1947. At the end of that time the question of continuing the rate conference procedure of IATA will again be to the fore. If administrative control of international air rates of United States carriers is not conferred upon a federal agency by Congress during the interval, the question of continuing such procedure will be pressing. Either the rate conference procedure will have to continue or an alternative method of control must be sought. Even if power is granted by Congress to a federal administrative body to regulate international rates, the very fact that the rate conference procedure has been in existence for a year will pose obstacles in the way of its removal. In either event, it would seem logical to lodge the control of rates for international air operations in an international body organized to deal with international aviation. We already have at hand such an organization in PICAO and its probably permanent successor body.149

The argument can be made that rate policy under PICAO will be governed by national policy considerations of the majority of members who have traditionally favored high rates and limited frequency of operation. These national policy considerations will exist whether or not PICAO is used as an agency for settling differences. The question of international rates is an international issue, which should be dealt with upon a broad basis. Unilateral or even bilateral control can only mean a process of determination upon a narrow basis which will take into account only the re-

149. When 26 states have adhered to the Chicago Convention on International Civil Aviation, PICAO will become a permanent body. The Congress of the United States in July, 1946, ratified the permanent Convention setting up such a body thus establishing American adherence.
quirements of the particular parties. The United States government has unreservedly given its support and largely placed its faith in the future of the United Nations. That organization can succeed in the long run only if the myriad problems arising within various areas of economic conflict are settled upon an international basis. There can be no whole peace while conflicts exist in the parts that go to make up the whole. One of the points of international friction is the field of aviation where varying economic philosophies and differing national needs combine to produce disagreement. Control of rates is the basic problem within this area of conflict. It can and should be dealt with by an international body as a part of the framework of peace.\footnote{During July, 1946, the United States formally took steps to abandon the principle of multi-lateral air transport agreements inaugurated by the Air Transport Agreement drafted at the Chicago Conference in December, 1944. This was the so-called “Five Freedoms” agreement. This action formally ended a procedure which had been dead in fact for some time. The failure of these multi-lateral agreements further accentuates the necessity of finding an international solution to rate control upon some basis other than the narrow bargaining of bi-lateral negotiations.}