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**Folder Title:** JGR/Civil Aviation Board Decisions  
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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 29, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision  
in Transportes Aereos Kantuta, Ltd.

Richard Darman's office has asked for comments by close of business Monday, May 2, 1983 on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by May 9, 1983).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves a foreign carrier, the proposed letter from the President to the CAB Chairman prepared by OMB does not include the standard sentence designed to preserve availability of judicial review.

This order denies an application for service by a Bolivian airline, because the Bolivian government has not issued the airline a license. My review confirms the OMB description of this as "a routine noncontroversial matter."

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 29, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision  
in Transportes Aereos Kantuta, Ltd.

Our office has reviewed the above-referenced CAB decision and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 4/29/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

April 29, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision  
in Transportes Aereos Kantuta, Ltd.

Our office has reviewed the above-referenced CAB decision and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 4/29/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD)   1  /  1  /

Name of Correspondent: Richard G. DARMAN

MI Mail Report                      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: CAB Decision re: Transportes Kantuta, Ltd

ROUTE TO:	ACTION	DISPOSITION		
Office/Agency      (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code      Completion Date YY/MM/DD
<u>CUH011</u>	ORIGINATOR	<u>8310429</u>		<u>  1  /  1  /  </u>
	Referral Note:			
<u>CUAT18</u>	<u>B</u>	<u>8304129</u>	<u>S</u>	<u>83105102</u>
	Referral Note:			
		<u>  1  /  1  /  </u>		<u>  1  /  1  /  </u>
	Referral Note:			
		<u>  1  /  1  /  </u>		<u>  1  /  1  /  </u>
	Referral Note:			
		<u>  1  /  1  /  </u>		<u>  1  /  1  /  </u>
	Referral Note:			

- |   |   |
|---|---|
| <p><b>ACTION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Appropriate Action</li> <li>C - Comment/Recommendation</li> <li>D - Draft Response</li> <li>F - Furnish Fact Sheet<br/>to be used as Enclosure</li> <li>I - Info Copy Only/No Action Necessary</li> <li>R - Direct Reply w/Copy</li> <li>S - For Signature</li> <li>X - Interim Reply</li> </ul> | <p><b>DISPOSITION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Answered</li> <li>B - Non-Special Referral</li> <li>C - Completed</li> <li>S - Suspended</li> </ul> |
|---|---|
- FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

**WHITE HOUSE STAFFING MEMORANDUM**DATE: 4/28/83 ACTION/CONCURRENCE/COMMENT DUE BY: 5/2/83SUBJECT: CAB DECISION RE TRANSPORTES AEREOS KANTUTA, LTD.

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

May we have your comments on the attached CAB decision by close of business May 2. Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

Response:



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

APR 28 1983

ACTION

MEMORANDUM FOR: ASSISTANT TO THE PRESIDENT  
DEPUTY TO THE CHIEF OF STAFF

SUBJECT: Civil Aeronautics Board Decision:

Transportes Aereos Kantuta, Ltda.  
Trak Airlines  
Docket 39926  
Date due: May 9, 1983

You will find attached a memorandum for the President about the above international aviation case. The interested executive agencies have reviewed the Board's decision and have no objection to the proposed order.

This is a routine, noncontroversial matter. No foreign policy or national defense reasons for disapproving the Board's order have been identified. I recommend that the President sign the attached letter to the Chairman which indicates that he does not intend to disapprove the Board's order within the 60 days allowed by statute. Otherwise, the Board's order becomes final on the 61st day.

Joseph R. Wright, Jr.

Joseph R. Wright, Jr.  
Deputy Director

Attachments:

Memorandum to the President  
CAB letter of transmittal  
CAB order  
Letter to the Chairman



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

APR 28 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Transportes Aereos Kantuta, Ltda.  
Trak Airlines  
Docket 39926  
Date due: May 9, 1983

The Civil Aeronautics Board proposes to deny a foreign air carrier permit to the Bolivian airline, Transportes Aereos Kantuta, Ltda., because the airline cannot obtain a license from the Bolivian Government. Before it will issue a foreign air carrier permit, the CAB requires that an airline obtain homeland operating authority.

The Departments of State, Defense, Justice, and Transportation and the National Security Council have not identified any foreign policy or national defense reasons for disapproving the order in whole or in part.

The Office of Management and Budget recommends that you approve the Board's decision by signing the attached letter to the Chairman which indicates that you do not intend to disapprove the Board's order.

Joseph R. Wright, Jr.

Joseph R. Wright, Jr.  
Deputy Director

Attachments:

CAB letter of transmittal  
CAB order  
Letter to the Chairman

Options and Implementation Actions:

- 1) Approve the Board's order. (DOS, DOD, DOJ, DOT, NSC, OMB.)  
-- Sign the attached letter to the Chairman.
- 2) Disapprove the Board's order.  
-- Implementation materials to be prepared.
- 3) See me.



THE WHITE HOUSE

WASHINGTON

Dear Chairman McKinnon:

I have reviewed the order proposed by the Civil Aeronautics Board in the following case:

Transportes Aereos Kantuta, Ltda.  
Trak Airlines  
Docket 39926

I have decided not to disapprove the Board's order.

Sincerely,

The Honorable Dan McKinnon  
Chairman  
Civil Aeronautics Board  
Washington, D. C. 20428

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

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.  
on the 9th day of March, 1983

-----  
Application of :  
:   
TRANSPORTES AEREOS KANTUTA, LTDA. :  
TRAK AIRLINES : Docket 39926  
:   
for a foreign air carrier permit :  
pursuant to section 402 of the :  
Federal Aviation Act of 1958, as :  
amended :  
-----

ORDER DENYING FOREIGN AIR CARRIER PERMIT

By Show-Cause Order 82-1-77, adopted January 18, 1982, we directed all interested persons to show cause why we should not, subject to the disapproval of the President, issue a foreign air carrier permit to Transportes Aereos Kantuta, LTDA., Trak Airlines, to authorize it to engage in the nonscheduled foreign air transportation of property and mail between a point or points in Bolivia and Miami, Florida, via intermediate points in Panama for a period of three years.

The order directed persons objecting to our tentative findings and conclusions set forth in that order, or to the issuance of the proposed foreign air carrier permit, to file their objections within 21 days.

OBJECTIONS AND ANSWER

Lloyd Aereo Boliviano, S.A. (LAB), and Transamerica Airlines, Inc. filed objections to our tentative findings and conclusions and opposed granting a permit to Trak Airlines. The Bolivian Director General of Air Transport sent a telegram to our Bureau of International Aviation about the status of Trak Airlines' Bolivian authority. 1/ Trak Airlines filed a consolidated answer to these objections.

1/ A copy of this telegram has been placed in Docket 39926.

LAB, another Bolivian airline, stated that Trak Airlines' license from the Government of Bolivia to engage in international air freight services had expired on December 16, 1981, and that the Government of Bolivia will not renew the license because Trak Airlines does not comply with Bolivian law. Therefore, LAB argues that good cause exists for denying Trak Airlines' application.

Transamerica stated that we should reexamine our policy of granting nonscheduled route authority in light of our prior approval policy for Fifth Freedom charters and the inadequate distinction between charter and nonscheduled cargo services. Transamerica also objected to granting Trak Airlines permit authority because it did not hold Bolivian authority and it is a nonoperating carrier.

The Bolivian Director General of Air Transport by telegram dated February 11, 1982 stated that the "Ministry of Aeronautics declared canceled the permit previously granted" Trak Airlines. The Director General said that therefore it would be inappropriate for us to grant Trak Airlines authority for air cargo services between the United States and Bolivia.

Trak Airlines filed a consolidated answer to the objections on February 19, 1982 stating that it was in the process of obtaining renewal of its Bolivian authority, and that it would inform us when this has been accomplished. It stated that Transamerica's concern about nonscheduled authority was a broad and general conceptual issue which could not properly be explored in this docket. Trak Airlines said that we should grant the permit as we proposed in Order 82-1-77 or else we should issue a permit without an effective date pending Trak Airlines' receipt of its Bolivian license.

#### DECISION

We have decided to deny Trak Airlines' application in Docket 39926. Our earlier tentative findings and conclusions were based on Trak Airlines' anticipation that its Bolivian license would be renewed. 2/ We delayed issuing a final order in this case for over a year to give Trak Airlines a reasonable opportunity to regain its Bolivian license. However, Trak Airlines has not supplied us with any information about renewal of its license, and we have no reason to believe the Bolivian Ministry of Aeronautics has changed, or is about to change, its decision on Trak Airlines' license. We have always made homeland operating authority a prerequisite for granting authority to a foreign air carrier to serve the United States. There is no reason to alter our policy in this case. Indeed, the Bolivian Ministry of Aeronautics has explicitly requested us not to grant authority to Trak Airlines. Under these circumstances, we find that it is not in the public interest to issue a foreign air carrier permit to Trak Airlines, and that its application in Docket 39926 should be denied. 3/

2/ See Order 82-1-77, January 18, 1982, footnote 2.

3/ Our action is, of course, without prejudice to a subsequent application by Trak Airlines should it ever regain its license from its government.

ACCORDINGLY,

1. We deny without prejudice the application of Transportes Aereos Kantuta, LTDA., Trak Airlines, in Docket 39926 for a foreign air carrier permit;

2. Unless disapproved by the President of the United States under section 801(a) of the Act, this order shall become effective on the 61st day after its submission to the President, 4/ or upon the date of receipt of advice from the President that he does not intend to disapprove the Board's order under that section, whichever is earlier; and

3. We shall serve this order upon Transportes Aereos Kantuta, LTDA., Trak Airlines, Lloyd Aereo Boliviano, S.A. (LAB), Transamerica Airlines, Inc., the Embassy of the Republic of Bolivia in Washington, D.C., and the Departments of State and Transportation.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

4/ This order was submitted to the President on **MAR 10 1983**  
The 61st day is **MAY 10 1983**

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Civil Aeronautics Board Decision  
in Newark-London Backup Case

Richard Darman's office has asked for comments by noon, Tuesday, May 10, 1983 on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by June 12, 1983).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves domestic carriers, judicial review is theoretically available. Hence, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review, as contemplated by the Executive Order for cases involving domestic airlines.

This order authorizes service by People Express between Newark and London, with back-up authority to World Airways. My review confirms OMB's description of this as a "routine, noncontroversial matter."

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE  
WASHINGTON

May 9, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision  
in Newark-London Backup Case

Our office has reviewed the above-referenced CAB decision and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 5/9/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE  
WASHINGTON

May 9, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision  
in Newark-London Backup Case

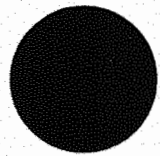
Our office has reviewed the above-referenced CAB decision and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 5/9/83

cc: FFfielding  
JGRoberts  
Subj.  
Chron

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Richard G. Darman

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: CAB Decision re: Newark - London Backup Case

ROUTE TO:		ACTION	DISPOSITION			
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Holland</u>		ORIGINATOR	<u>83105106</u>			<u>1/1</u>
		Referral Note:				
<u>CUAT 18</u>		<u>D</u>	<u>83105106</u>		<u>S</u>	<u>83105110</u>
		Referral Note:				
			<u>1/1</u>			<u>1/1</u>
		Referral Note:				
			<u>1/1</u>			<u>1/1</u>
		Referral Note:				
			<u>1/1</u>			<u>1/1</u>
		Referral Note:				

**ACTION CODES:**

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

**DISPOSITION CODES:**

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

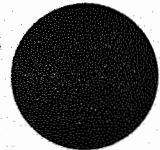
- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



# WHITE HOUSE STAFFING MEMORANDUM



DATE: 5/6/83 ACTION/CONCURRENCE/COMMENT DUE BY: 5/10/83 12:00 NOON

SUBJECT: CAB DECISION RE NEWARK-LONDON BACKUP CASE

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

**Remarks:**

OMB has requested a quick turnaround on this CAB decision. Could we please have your comments no later than 12:00 noon on Tuesday, May 10. Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)

**Response:**



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 6 1983

ACTION

MEMORANDUM FOR: ASSISTANT TO THE PRESIDENT  
AND DEPUTY TO THE CHIEF OF STAFF

SUBJECT: Civil Aeronautics Board Decision:  
  
Newark-London Backup Case  
Docket 41163  
Date Due: June 12, 1983

You will find attached a memorandum for the President about the above international aviation case. The interested executive agencies have reviewed the Board's decision and have no objection to the proposed order.

This is a routine, noncontroversial matter. No foreign policy or national defense reasons for disapproving the Board's order have been identified. I recommend that the President sign the attached letter to the Chairman which indicates that he does not intend to disapprove the Board's order within the 60 days allowed by statute. Otherwise, the Board's order becomes final on the 61st day.

Joseph R. Wright, Jr.

Joseph R. Wright, Jr.  
Deputy Director

Attachments:

Memorandum to the President  
CAB letter of transmittal  
CAB order  
Letter to the Chairman

15707



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 6 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Newark-London Backup Case  
Docket 41163  
Date Due: June 12, 1983

The Civil Aeronautics Board proposes to issue a five-year certificate to People Express Airlines, Inc., authorizing the airline to transport persons, property, and mail between Newark, New Jersey, and London, United Kingdom. The Board proposes to issue back-up authority for this route to World Airways, Inc.

The Departments of State, Defense, Justice, and Transportation and the National Security Council have not identified any foreign policy or national defense reasons for disapproving the Board's order in whole or in part.

The Office of Management and Budget recommends that you approve the Board's decision by signing the attached letter to the Chairman which indicates that you do not intend to disapprove the Board's order. Also, OMB recommends that you state in your letter that no national defense or foreign policy reason underlies your action. This will preserve whatever opportunity is available under the statute for judicial review.

Joseph R. Wright, Jr.

Joseph R. Wright, Jr.  
Deputy Director

Attachments:

CAB letter of transmittal  
CAB order  
Letter to the Chairman

Options and implementation Actions:

- ( ) 1) Approve the Board's order, and preserve whatever opportunity is available for judicial review (DOS, DOD, DOJ, DOT, NSC, OMB).  
-- Sign the attached letter to the Chairman.
- ( ) 2) Approve the Board's order, and do nothing to preserve whatever opportunity is available for judicial review.  
-- Implementation materials to be prepared.
- ( ) 3) Disapprove the Board's order.  
-- Implementation materials to be prepared.
- ( ) 4) See me.

THE WHITE HOUSE

WASHINGTON

Dear Chairman McKinnon:

I have reviewed the following order proposed by the Civil Aeronautics Board:

Newark-London Backup Case  
Docket 41163

I have decided not to disapprove the Board's order. No foreign policy or national defense reason underlies my action.

Sincerely,

The Honorable Dan McKinnon  
Chairman  
Civil Aeronautics Board  
Washington, D.C. 20428

FOR OFFICIAL USE ONLY  
UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D.C.  
on the 7th day of April, 1983

----- :  
NEWARK-LONDON BACK-UP CASE : Docket 41163  
----- :

OPINION AND ORDER

I. Introduction

The Board instituted this proceeding by Order 82-12-88, served December 20, 1982, for the purpose of selecting a backup carrier for the Newark-London route. The instituting order provided that if the primary carrier (Air Florida) indicated its intention not to provide service in the market, this would become a primary carrier selection proceeding. On February 25, 1983, Air Florida served notice to this effect. The Board then directed the Administrative Law Judge to certify the record to the Board, to enable the Board to reach a decision in time to allow the carrier selected to inaugurate service by the beginning of the peak summer season.<sup>1</sup> The Judge has done so, and briefs to the Board have been received from the two remaining applicants in the case, World Airways and People Express, as well as from the Bureau of International Aviation and various civic parties.<sup>2</sup> Oral argument was heard on March 23, 1983, and the case is now ripe for decision.

The Board awarded the route at issue here to Air Florida over a year ago, but allowed it until July 4, 1983, to begin service, because of the uncertain availability of the route under the U.S.-U.K. bilateral.<sup>3</sup> Subsequently, a Memorandum of Consultations (MOC) between the United States and the United Kingdom, signed November 9, 1982, specified the right of the

1/ Order 83-3-33, served March 7, 1983.

2/ The State of Maryland, the Port Authority of New York and New Jersey, and Norfolk Port and Industrial Authority. The Greater Newark Chamber of Commerce had already filed a Brief to the Administrative Law Judge, which we will accept as a Brief to the Board. In addition, Rule 14 Statements of Position have been received from the New Jersey Congressional Delegation and from Governor Kean.

3/ Order 82-4-64, adopted February 10, 1982.

FOR OFFICIAL USE ONLY

United States to designate a U.S. carrier:

The United States may . . . designate an airline to operate Newark/London (Gatwick) service from 1 April 1983. Until 1 April 1985 the designated airline will be permitted to operate 416 roundtrips [sic], provided that the number of round trips in any one week does not exceed five.<sup>4</sup>

The day after the MOC was signed, People Express petitioned the Board to institute a new proceeding, seeking a re-evaluation of the Board's award to Air Florida on the grounds of changed bilateral circumstances and other developments. By Order 82-12-88, the Board instituted the present case, declining to contemplate a revocation of Air Florida's authority, but noting the need for a backup carrier where Air Florida's extended start-up allowance had previously made it unnecessary.

In that order, the Board defined the scope of the proceeding around two issues:

- a. Which carrier should be awarded back-up authority to engage in foreign air transportation of persons, property and mail between Newark, New Jersey, and London (Gatwick), England; and
- b. What terms, conditions, and limitations, if any, should be attached to this authority.<sup>5</sup>

The Board emphasized "structural considerations and . . . the ability of the chosen carrier to mount a successful operation, with the greatest potential public benefits" as primary selection grounds. Proposed fares and services, to the extent consistent with the bilateral agreement, and the ability to institute service promptly were also to be considered.<sup>6</sup>

## II. Applicant Proposals

Six carriers applied for the Newark-London route, but only two, People Express and World, have prosecuted their applications to this point.<sup>7</sup> The proposals of World and People Express differ in virtually every respect, except that both propose to operate all of the 416 flights permitted by the MOC.<sup>8</sup> People Express' proposal involves an innovative,

<sup>4/</sup> See Order 82-12-88, adopted December 17, 1982, at 2 (instituting order).

<sup>5/</sup> Order 82-12-88, at 6 (footnote omitted). In the footnote, the Board specified that the first issue included the question of carrier fitness.

<sup>6/</sup> Id. at 5.

<sup>7/</sup> Global International, Northwest, Overseas National, and Air National Aircraft Sales and Service have all withdrawn from the case.

<sup>8/</sup> This results in an average frequency of four flights per week over the two-year period; both World and People Express propose to operate the maximum of five frequencies in peak season.



low fare structure, "no-frills" service, and on-line connections, with a basic one-way economy fare of \$149 from Newark, \$169 from its online connecting points in the Northeast, and \$189 from its Florida points.<sup>9</sup> World suggests that the true potential of the market is in local rather than connecting traffic, and proposes service with conventional amenities along with fares that fall well within the range established by ECAC.<sup>10</sup>

People Express plans to operate Boeing 747 equipment over the route with a total of 473 seats, 72 in first or "premium" class and 401 in economy. Premium class seat pitch would range from 36" to 40", and economy from 30" to 34", the latter low figure due to People Express' "slimline" seat.<sup>11</sup> The standard economy fares described above would be supplemented by a premium fare of \$439, which represents a significant decrease from the usual first class fare.<sup>12</sup> The economy fares would not include meals, drinks, in-flight entertainment, or belly storage for luggage, all of which would be available for a modest additional fee. People Express would also streamline its processing of passengers at the airport by ticketing in flight, a procedure it claims will save substantial ground-service processing time.<sup>13</sup>

People Express would coordinate its service for maximum connecting convenience, with a departure from Newark at 7:45 P.M. arriving at Gatwick at 7:08 A.M. The return flight would depart Gatwick at 10:05 A.M., somewhat earlier than most westbound service in the market, and arrive at

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9/ Exhibit PE-100, at 1; PE-103. The connecting points in the Northeast include Baltimore/Washington, Boston, Buffalo, Burlington, Columbus, Hartford, Norfolk, Pittsburgh, and Syracuse. In Florida, People Express would serve Jacksonville, Melbourne, Sarasota, and West Palm Beach.

10/ Exhibits WOA-210, -211; Brief of People Express, at 37; 2 Tr. at 141-42.

11/ Exhibits PE-205, PE-200. Testimony clarified that at least some of the economy seats would have a pitch of only 30", 1 Tr. at 141, as opposed to World's pitch of 33" to 35" in economy, 2 Tr. at 113.

12/ Exhibit PE-106. See App. I *infra*.

13/ Exhibits PE-200, at 3; PE-206; 1 Tr. at 64-65, 70.



Newark at 12:27 P.M.<sup>14</sup> Both flights would connect to and from the points on the carrier's domestic system, with connecting times ranging between 25 minutes and 5 hours. Five weekly flights would operate during peak season, from July 1 to October 22, 1983 and March 24 to October 22, 1984. Four flights would operate during the remaining periods.<sup>15</sup> Although People Express has allocated full use of its Boeing 747 to this service, it notes that the aircraft will be available for various supplementary services during the two weekly peak days and three off-peak days without London service.

World proposes a more conventional service, with fares and services both comparable to those presently offered. World would operate one of its DC-10's over the route, with a capacity of 36 in "executive class" and 273 in economy. World may, however, switch to 747 service in the summer of 1984 if market conditions appear to justify the greater capacity. Like People Express, World would provide five flights in peak season and four at other times; unlike it, World would also include the Christmas season in its peak service period.<sup>16</sup>

The most unusual feature of World's proposal is its schedule. Its eastbound flight would depart Newark at 8:15 A.M., arriving in Gatwick at 7:55 in the evening; the return flight would leave Gatwick at 9:30 P.M., and land at Newark five minutes before midnight. The aircraft would thus complete its cycle in a single day. This schedule obviously does little for connecting traffic, but World has only a single connection (its eastbound overnight flight from Oakland) and claims that the potential of the market is in local rather than connecting traffic.<sup>17</sup> Both schedules are several hours removed from peak travel times in the market, which tend to be overnight eastbound and early afternoon westbound.<sup>18</sup>

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14/ Exhibit PE-201. The only earlier westbound flight is British Airways Concorde service, which arrives at Kennedy at 9:25 A.M. Exhibit PE-202.

15/ Exhibit PE-203; Exhibit PE-201, Brief of People Express at 17-18, 18 n.1. This of course results in average service in excess of the MOC's average frequency, but this is offset by the total lack of service in the three months between April 1, 1983 to July 1, 1983. People states that if it were able to begin service sooner than July 1, it would shorten the peak season in April or October to free frequencies for use in June 1983. Brief of People Express, at 18 n.2.

16/ Exhibit WOA-100, at 1; WOA-202.

17/ Exhibit WOA-201; see Brief of World, at 28-29; Exhibit WOA-R-T-1, at 5.

18/ Five carriers presently operate in the New York/Newark-London market, all between Kennedy and Heathrow: Pan American, Trans World, British, Air India, and Kuwait Airways. All operate B-747 service; British also provides Concorde service and Trans World will be operating an L-1011 flight to begin in June. January 1, 1983 O.A.G. Except for the Concorde and one sub-sonic British flight in mid-morning, all eastbound flights depart in the evening; the latest westbound departure is at 6:30 P.M. (beginning March 27), arriving at 8:10.

World, which intimates that it has learned the impracticality of no-frills service, would provide the usual amenities to all its passengers: free meals, free luggage carriage in the hold, and advance rather than on-board ticketing. It also appears that World's seats would allow somewhat greater comfort, although this matter was disputed.<sup>19</sup> In return for these benefits, the World passenger would have a choice of conventional fares, varying both by period and by conditions.<sup>20</sup> World's "Executive One" fare would range from \$632 to \$782 (modified to a constant \$831 in the Exhibit 210A). Both exhibits show an economy fare of \$355 (low), \$395 (shoulder), and \$440 (peak). The lowest generally available peak fares would be mid-week, 21-day advance purchase and "instant purchase" fares, at \$519 round trip; standby, at \$219 one-way; and inclusive tour, at \$479.<sup>21</sup> World has placed great weight on its ability to offer interline fares, which People Express does not, particularly beyond London to points in Europe, Africa, and Asia.<sup>22</sup>

### III. Issues Presented

Because only two applicants with altogether different proposals seek the authority in issue, our choices are relatively straightforward, with one exception: the question of whether, as World argues, the British government will be so unlikely to authorize People Express' proposed fares that they cannot be considered in reaching a decision. The remaining issues are those customarily considered in selection cases: fares and revenues; service, including scheduling and connections; and intergateway competition, in this case whether World's existing Baltimore gateway favors selection of People Express. In addition, we find the question of service amenities, not usually a significant issue in these cases, somewhat more important here because of People Express' "no-frills" orientation.

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19/ People Express emphasized that although it proposes to ticket most of its passengers on board, advance ticketing would be possible through travel agents. 1 Tr. at 55. See 1 Tr. at 140-42 (discussion of seat pitch).

20/ World has submitted two fare tables, the first designed to reflect fares that would have been charged at the end of 1981, as required by the ground rules (Exhibit WOA-210), and the second setting out generally higher fares that World is confident would win British approval (Exhibit WOA-210A). World's witness stated that "[w]e would obviously try for the fares in 210 . . . ." 2 Tr. at 155. World also testified that it would accept a condition requiring an initial tariff based on the fares in Exhibit 210. 2 Tr. at 122. References are to the fares originally proposed in Exhibit WOA-210, except as noted. See Brief of World at 27-28.

21/ Exhibit WOA-210. For a complete comparison, see Appendix I *infra*.

22/ Exhibit WOA-R-204 (comparison of fares between Newark and Amsterdam, Brussels, Paris, Bahrain, and Lagos). It should be noted that in making this comparison favoring World's interline fares, World did not use People Express' proposed fare of \$149, but rather a "one-way, low-season fare of \$305 EWR-LGW." *Id.* at 1 n.2. World derives this fare from the \$609 "lowest basic allowable fare for which People Express qualifies under the ECAC agreement." Exhibit WOA-T-3, at 2.

Every party to this proceeding, except World and the State of Maryland, favors selection of People Express. The State of Maryland takes no position on the selection issue, but argues that any certificate granted to World, whether for primary or backup authority, should be conditioned so as to prevent any adverse effect on Baltimore-London nonstop service. Specifically, Maryland asks that World be prohibited from providing single-plane service between Baltimore/Washington and London via Newark.

#### IV. Summary of Decision

We have decided to award primary authority in this market to People Express. We find that its strong connecting system at Newark, superior service proposal, low costs, commitment to innovation, and ability to provide competition to World's operation at Baltimore all place it ahead of World. We will, however, also designate World as backup carrier, to enter the market if People Express fails to do so within 90 days, as the public interest dictates that the route should not go unused. This condition is not, however, intended to take effect if the delay is beyond the control of People Express. In addition, we find People Express fit, willing, and able to provide this air transportation. We will not, however, adopt the State of Maryland' proposed condition prohibiting World from operating Baltimore-London service over Newark, in the event that it enters the market as backup carrier.

#### V. Discussion of Findings

##### A. Fares and Profitability

Both the Bureau and People Express argue the superior quality of the People Express fare proposal.<sup>23</sup> The Bureau points out that People's weighted average fare is about one-third less than World's, and adds that it would also, unlike World, provide significantly lower on-line fares to domestic points other than Newark. People Express argues that its low costs make its fare proposals reasonable, and that no change from peak to off-peak is necessary because extra peak-season demand cannot be accommodated anyway, because of the frequency limitation. Its fares are consistent with its "unbundled" approach, which has won general acceptance in its domestic markets. Both economy and premium fares substantially undercut existing available fares; the latter service, however, would provide all the usual services to which first-class travelers are accustomed. People Express also emphasizes its low on-line, connecting fares, which would bring low-cost London service to all its domestic points. It contrasts its proposed fares and present services with World's, whose proposed fares it claims represent unjustified reductions from its present Baltimore-London fares.

World in turn attacks People's fares as unrealistic, determined by

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<sup>23/</sup> Brief of the Bureau, at 15; Brief of People Express, at 26-31.

"overstating its traffic and grossly understating its costs."<sup>24</sup> It suggests that People's forecast of 164,504 passengers is inflated in that over one-third will represent interline connections, an unlikely figure in view of People's lack of interline agreements; World predicted less than 16% of its traffic from this source. It also criticizes People Express as predicting a 50% market share in a number of connecting markets where on-line carriers already operate to London.<sup>25</sup> People Express says that World reads its exhibit on this subject inaccurately: it claims 50%, not of these entire markets, but rather 50% of those portions of the markets regarded as "available to People Express." Although most of the latter figures were cited as 100%, presumably indicating that People Express has potential access to the entire market, People Express' witness pointed out that in the case of Boston, for example, People predicts only 50% of 5% of the market, or 2.5%; the share of Baltimore/Washington traffic works out to only 5%.<sup>26</sup>

World submits that People Express has underestimated its operating expenses by \$4,820,000. Specifically, World maintains that People Express has underestimated block times, resulting in understated fuel consumption; fuel cost per gallon; maintenance costs; landing fees; the number (and therefore cost) of necessary flight personnel; and promotion and sales expenses.<sup>27</sup> People Express, noting that the Bureau has predicted even higher revenues for it than it has forecast for itself, specifically rebuts World's adjustments in the areas of block hour expense, fuel cost, maintenance, and sales and promotion.<sup>28</sup>

The Bureau finds People Express' financial forecast reasonable as to both traffic and costs; even with "least favorable adjustments" to People Express' expenses, adding more than \$4,000,000 in costs, the Bureau predicts an operating profit of \$857,000, using People Express' own traffic forecast. The Bureau also compiled a detailed analysis of People's results if it charged World's fares, with the additional revenue more than

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<sup>24/</sup> Brief of World, at 18. See Exhibits WOA-R-T-2, WOA-R-T-3, WOA-R-108, WOA-R-321, WOA-R-401, WOA-R-405, WOA-R-406 to -421.

<sup>25/</sup> Brief of World, at 20, citing Exhibits WOA-R-308, -309, -311 to -314. These include West Palm Beach (competition with Air Florida, Delta, Pan American, and Trans World, connecting at Atlanta, Miami, and New York); Sarasota (against Air Florida, Delta, and Pan American at Miami, Atlanta, and New York); Jacksonville (Air Florida and Delta over Miami and Atlanta); Columbus (Delta at Atlanta and Trans World at Boston, Chicago, and New York); Boston (Aer Lingus via Dublin, Air Canada via Halifax, Pan American and Trans World over New York); and Baltimore/Washington (Northwest over Boston, Pan American over New York, and Trans World over both cities). Direct service was not mentioned, because only shares in connecting traffic are at issue.

<sup>26/</sup> Exhibit PE-301, at 2; 2 Tr. at 173-74.

<sup>27/</sup> Exhibit WOA-R-421; Brief of World, at 22-25; Exhibits WOA-R-T-3, at 5-8, WOA-R-401 to -421.

<sup>28/</sup> Brief of People Express, at 41-46.

offsetting any traffic discouraged by the higher rates.<sup>29</sup> To predict an operating loss, it would be necessary both to accept World's adjustments in their entirety and also predict far less traffic for People Express than either it or the Bureau deem likely. We find it highly improbable that this situation would occur. There is no question but that People Express has submitted a proposal that easily meets the Board's standards of reasonable financial results. In addition, we do not find it necessary to rely on People's precise fare proposals to determine the outcome of this case; they may be readily construed as an avowal of intent to seek the opportunity to offer the lowest fares possible, and this alone is a strong element in favor of People Express.

While the provision of service amenities would normally relate more to service than issues of fares or revenues, World has used People Express' "no-frills" approach to suggest that traffic will be limited by travelers' unwillingness to endure such rudimentary conditions on a transatlantic journey. It has also suggested that certain no-frills features, such as individual meal purchases, are ill-considered as cost-ineffective. Other People Express features, like on-board ticketing, World simply rejects as not practical for international travel.<sup>30</sup> In contrast, the Bureau recalls that no-frills service has proven popular domestically and would provide "an alternative price/service option to the substantial amount of 'traditional' service already operating out of JFK."<sup>31</sup> We agree, and are not so prepared as World to blindly apply that carrier's experience to all potential service in this market. World also raises the spectre of Laker's bankruptcy too readily, given that Laker's and People Express' circumstances differ in a number of respects. To adopt World's arguments regarding People Express' no-frills proposal entails accepting World's fundamental perception of this market as unsusceptible to innovative, low-fare service. We find People Express' approach sufficiently reasonable to merit grant of the authority.

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29/ Exhibit BIA-R-415; Exhibits BIA-R-500, BIA-R-501. World used this conclusion to imply that People Express is failing to fulfill its obligations to its own shareholders by maximizing profits, a suggestion that the Bureau's witness declined to adopt. 3 Tr. at 40-41.

30/ See, e.g., Exhibit WOA-R-T-1, at 4. Exhibit WOA-R-T-1, at 3; 2 Tr. at 53-57.

Many of People Express' proposed points of uniqueness . . . were of necessity abandoned by World after it recognized their impracticality. While People Express's proposals may work well on domestic short hauls, they would not find traveler acceptance on international long hauls. People Express has overlooked the point that Laker, too, began with the rudiments of a no-frill concept and gradually had to abandon it. In brief, World has already served its apprenticeship as a no-frill innovator and knows whereof it speaks on the subject of such innovation in international markets, including U.S.-U.K markets.

Exhibit WOA-R-T-1, at 1.

31/ Brief of the Bureau, at 14.



A subsidiary fare question is the likelihood of British acceptance of People Express' proposed fares. Both World and People Express have prudently refrained from relying entirely on their respective arguments on this point, but both also appreciate the potential importance of our approach to the issue. World argues that People Express' fares will never be accepted by the British, and that therefore its entire proposal, depending on its low fares, must be dismissed.<sup>32</sup> People Express argues that the British will have no reason to disapprove the fares even though they undercut the ECAC levels, because they are cost-justified and consistent with the spirit of the bilateral.<sup>33</sup>

The Bureau and the applicants have addressed the question at some length in their briefs and oral argument. The Bureau states that

Although it is uncertain whether the Government of the United Kingdom would accept People Express' low fares, the Bureau believes that the structural and competitive advantages enjoyed by People Express and its superior service proposal warrant its selection regardless of whether it is able to implement fully its fare proposal.<sup>34</sup>

It agrees with World that the proposed fares are below ECAC and IATA fare levels, but argues (as does People Express) that the British will not necessarily reject the fares for this reason. "World is simply wrong in implying that there is a presumption that fares outside the ECAC zones would be disapproved."<sup>35</sup> The Bureau correctly characterizes the ECAC agreement as merely establishing zones within which fares cannot be rejected, rather than automatically dooming any that fall outside the zones. The Bureau then turns to Bermuda II, which provides that tariffs shall be based on costs, and which therefore should encompass the fares proposed by People Express if they are demonstrably derived from reasonable costs. Neither People Express nor the British government is bound by the IATA agreements, which include only member carriers. As a practical matter, the severe capacity restrictions dictated by the MOC would reduce the effect of People's fares on the present operators' revenues, which should ease acceptance by the British government. Finally, the Bureau warns us to refrain from according decisional weight to this issue, because People Express would be the better choice even at World's fares.

People Express makes similar arguments. It also quotes Bermuda II and notes that fares outside the ECAC zone are not "subject to automatic disapproval."<sup>36</sup> It then lists several factors that should encourage British approval. The new service should divert little traffic because most passengers will be new travelers hitherto unable to afford the journey, particularly given limited frequencies between secondary

32/ Brief of World, at 3-9; id. at 9-13.

33/ Brief of People Express, at 32-35.

34/ Brief of the Bureau, at 3-4.

35/ Id. at 16, 17; see Oral Arg. Tr. at 47.

36/ Brief of People Express, at 32-33.

airports. According to People Express, the lack of interline opportunities and service amenities should have an effect comparable to the restrictions on deeply discounted conventional fares. In addition, the cost basis and innovative nature of the proposed fares clearly places them within the contemplation of Bermuda II.<sup>37</sup> In support of its arguments, People Express cites the Board's decision in the U.S.-London Case (1982), where the Board dealt with and dismissed arguments similar to World's. Like the Bureau, People Express submits that even held to ECAC level fares, its proposal and qualifications are superior to World's.<sup>38</sup>

World declares that "if the Board concludes that that proposal cannot be implemented as proposed, the Board cannot award authority to People Express," and then suggests "that it is a virtual certainty that the British would disapprove" the \$149 fare.<sup>39</sup> World recapitulates Judge Kane's treatment of this issue during the hearing, noting his recognition of the importance of the acceptability issue, his order compelling the Bureau to produce a witness on the subject, and his inclusion of the IATA and ECAC agreements, as well as the bilateral, in the record. World also argues that we must resolve the question, and mentions past examples of the United Kingdom's intractable attitude towards low fares.<sup>40</sup> World notes the degree of difference between the proposed rates and the ECAC/IATA fares and suggests that the degree of speculation about the British response is reduced by this "drastic" difference.<sup>41</sup> World then characterizes People Express' low fares as the "trump card" without which its entire service proposal collapses. Any different service proposal, in World's view, would be entirely new: "People Express has no viable alternatives to its filed proposal and . . . absent the \$149 fare People Express has no proposal at

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37/ Article 12 of Bermuda II reads:

The tariffs charged . . . shall be established at the lowest level consistent with a high standard of safety and an adequate return to efficient airlines operating on the agreed routes. Each tariff shall, to the extent feasible, be based on the costs of providing such service assuming reasonable load factors . . . . To further the reasonable interests of users of air transport services, and to encourage the further development of civil aviation, individual airlines should be encouraged to initiate innovative, cost-based tariffs.

Brief of the Bureau, at 18.

38/ Id. at 33; at 36, quoting Order 82-4-64, at 3; id. at 37-38.

39/ Brief of World, at 2-3.

40/ Id. at 5. World cites the cases of Arrow (in the Tampa-London market) and Air Florida (in the Newark- and Miami-London markets).

41/ Brief of World, at 6-7. No party contests the existence of this discrepancy, but rather only its likely effect on the effectuality of the fares.

all."<sup>42</sup> Finally, World argues that an alternative service proposal is legally essential for an award to People Express, on "due process" grounds.<sup>43</sup>

World is essentially arguing that the British will disapprove the fares notwithstanding their consistency with the terms of the bilateral agreement. World does not argue that its opponent's fares are inconsistent with the terms of the U.S.-U.K. bilateral. They clearly are consistent, and we intend to use our best efforts to ensure that they are permitted to go into effect.<sup>44</sup> Therefore, we will adhere to our customary assumption that a foreign government will and should accept tariffs that fall within the ambit of the applicable agreement.

We are, however, unwilling to predict specifically whether a foreign state will accept filings that for one reason or another are controversial, and thus establish this type of question as a topic for formal resolution on the record in carrier selection cases. We find that any attempt to resolve this question in a formal hearing case is fraught with the same perils we discussed in Order 83-2-62, where we declined to compel the Bureau to produce a witness to address this question - namely, the risk of exposure of sensitive and confidential diplomatic information to harmful public scrutiny and the virtually guaranteed impossibility of a definite answer in any case. In any case, whether the British will accept the proposed fares does not affect the outcome of this proceeding.

We therefore reject the argument that we must attempt to predict the reaction of the British to the proposed fares. Not only would such a prediction always constitute speculation - thus almost invariably resulting in a verdict of uncertainty - but it also could adversely affect the Board's and the U.S. government's negotiating positions, and result in a self-fulfilling prophesy, as the Bureau has argued. This approach is not quite the same as stating that it is unnecessary to reach the question because of other decisive factors, although the Bureau and People Express

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<sup>42/</sup> Brief of World, at 12. World cites People's testimony to the effect that they have no "fall-back" position and do not accept disapproval as "a viable assumption." Id. at 11, quoting 1 Tr. at 182. We interpret the testimony of People Express to reflect its conviction that its fares are reasonable and practicable, rather than its failure to prepare for alternatives.

<sup>43/</sup> Brief of World, at 13. World also notes that while an agency may grant relief to an applicant different from what was sought, "full due process considerations" must be permitted to the applicant's opponents. Id. at 13 n.4.

<sup>44/</sup> We feel strongly on this point, not because People Express' proposed fares are essential to the economic viability of its service, but rather because they are important to the enhancement of Newark's potential as a London gateway.



have so argued, and we are inclined to agree. Rather, it is a positive rejection of the issue as impossible to resolve with any degree of certainty, and inappropriate for consideration in the hearing phase of a carrier selection case. When and if we wish a proceeding to reflect such concerns, as in the Central Zone case, we can so state in the appropriate instituting order; we will not, however, permit essentially prospective and speculative diplomatic considerations to become the subject of testimony or formally to dictate a decision on the record.

As the Bureau has suggested, any positive resolution is impossible, and World is in error to assert that only one British reaction can result. More significantly, we reject the idea that People Express must stand or fall with its proposed fares. World itself has suggested that it would try to implement fares that it suspects may initially be unacceptable to the British; People Express also has the option of adjusting its service and fares if forced to do so by circumstances. We are loath to reject a carrier's application because of possible or even probable difficulties in implementing the fares, to avoid reliance on uncertain predictions, discouragement of innovative proposals, and foreclosure of the U.S. government's negotiating options. Finally, we do not read the law as compelling People Express to either come forward with an alternative proposal or stand irrevocably with its present one. The purpose of the policy World is arguing is to ensure notice to opposing applicants of possible alternatives or arguments that might sway the Board in favor of an application. In this case, World itself is alleging the need for an alternative to People's present plan, and therefore cannot very well argue lack of notice of such an option.<sup>45</sup> It is already addressing the merits of an issue of which it claims to need notice.<sup>46</sup>

For these reasons, we decline to predict the British reaction to People Express' fares. The parties are and will always remain free to argue the point; however, we believe that as a general matter it would be imprudent for us to limit the U.S. government's negotiating flexibility by

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45/ See, e.g., WOA-R-T-2, at 6. See also Oklahoma-Denver-Southeast Points Investigation, Order 77-7-40, July 11, 1977, at 20; Detroit-Boston Nonstop Route Proceeding, Order 76-12-166, December 30, 1976, at 5-6; Chicago-Montreal Route Proceeding, Order 76-11-32, October 8, 1976, at 13; Detroit-Nashville Nonstop Investigation, Order 74-11-128, November 22, 1974, at 5-6, and cases cited therein.

46/ The civic parties do not address this question extensively. The Port Authority notes that although British acceptance is uncertain, People Express' low costs justify them and in any case reflect its commitment to low-fare service. Brief of the Port Authority, at 2. The other three civic parties do not address the issue.

making foreign government reaction a key issue in carrier selection cases.<sup>47</sup>

B. Service

The Bureau has found People Express' service proposal superior on three separate grounds: behind-gateway feed, schedule convenience, and capacity.<sup>48</sup> The first factor is possibly the most decisive in People Express' favor: it enjoys an extensive system of connecting routes already centered in Newark, whereas World relies on interline arrangements and local traffic to support its proposed service, which it predicts will attract substantially fewer passengers.<sup>49</sup> The Bureau cites with approval the importance of structural considerations in recent selection decisions; while the local market is substantial, Newark's history of under-utilization and the impressive assortment of services available at Kennedy make connecting traffic unusually critical in this case.<sup>50</sup> The Bureau notes that even World predicts more connecting traffic for People Express than for itself. People Express' arguments are substantially similar.<sup>51</sup>

World has downplayed the issue of connecting traffic and instead emphasized an essentially unrelated element, its experience in providing transatlantic service with wide-body aircraft. This allusion implies that World has been more realistic in analyzing the potential of the Newark-London market, and that if the market actually held the promise of low-fare, no-frills service, World, a low-fare innovator itself, would have

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<sup>47/</sup> This issue ultimately becomes a procedural rather than a substantive problem. The Board obviously has to consider diplomatic circumstances in all its international functions; the point here is rather whether such issues should be examined in a proceeding after the scope of the case has been defined in an instituting order. The unavoidable consequence would be the constant allegation of diplomatic factors, unsusceptible to clear proof and inappropriate for public airing in an open, adversarial context, to favor a particular party's case. To remain effective, the Board's diplomatic perspectives must remain free from the procedural and evidentiary constraints that exist in carrier selection proceedings.

<sup>48/</sup> Brief of the Bureau at 5-9, 12-13.

<sup>49/</sup> Exhibits WOA-301, WOA-301A; see App. II *infra*.

<sup>50/</sup> Brief of the Bureau, at 5-7; Brief of the Port Authority, at 2-3, 9; Brief of the Newark Chamber of Commerce, at 2. This point represented the latter party's primary argument for selecting People Express.

<sup>51/</sup> Briefs of the Bureau, at 9; of People Express, at 4-5, 8-13.

been the first to take advantage of it.<sup>52</sup> In its only concession to the U.S. connecting market, it accuses the Bureau of ignoring "traffic that might take advantage of the 24-hour IATA transfer period and stopover traffic". World effectively writes off connecting traffic as irrelevant and insignificant: "In any event, since World recognizes the priority of serving the local market and has projected very little connecting traffic for itself, the Bureau's criticism is of little importance."<sup>53</sup>

World's lack of connecting routes actually suggests that instead of catering to connecting traffic with conventionally timed services, it has resorted to an unusual schedule that will arguably face little competition. World's schedules have bemused the Bureau, the Port Authority, and People Express, which suggests that "World's eastbound schedules are, in a word, useless." Not only will few connections feed World's 8:15 A.M. morning departure, but People Express also questions how many local travelers will want to fight rush-hour traffic to arrive in time for the departure. According to People Express, a midnight arrival in Newark would prove equally unattractive, with "no useable connections."<sup>54</sup>

The Port Authority also questions whether these schedules would attract adequate local traffic, and suggests that travelers from east of the Hudson (some 80% of the local traffic) would probably prefer British Airways' 10:00 A.M. flight from Kennedy. The Norfolk Port and Industrial Authority, representing a connecting point on People's system, emphasizes the value of and need for connecting traffic, although it also cites other factors in support of People Express.<sup>55</sup>

The Bureau noted that both carriers would operate all the available frequencies with no single-plane beyond service at either end of the route. Unlike People Express and the Port Authority, the Bureau predicts little effect on local traffic from World's schedule, but takes a dim view of its inconvenience for connections.<sup>56</sup>

People Express will unquestionably provide more capacity: the issue is whether the demand exists to justify it. Significantly, World mentions the possibility of replacing its DC-10's with 747 service in 1984, despite its own modest traffic forecast. The Bureau favorably mentions that People Express will provide 227,986 seats in the forecast year, more than half

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52/ Brief of World, at 27, 27 n.12.

53/ Brief of World, at 28-29.

54/ Brief of People Express, at 18-19.

55/ Briefs of the Port Authority, at 9-10; of the Norfolk Port and Industrial Authority, at 4-5.

56/ Brief of the Bureau, at 12, 13-14.

again World's 147,084.<sup>57</sup> World's lesser capacity is of course consistent with its smaller traffic forecast and lack of on-line feed traffic. People Express points out that "World's DC-10 aircraft would be the smallest wide-bodied aircraft offering the lowest capacity of any airline operating in the New York/Newark-London market."<sup>58</sup>

People Express clearly has presented the better service proposal and beyond-gateway benefits. Even if every other selection factor were equal, its superior single-carrier connecting service alone would justify an award of the route. The availability of such traffic enhances its ability to compete effectively with the carriers serving Kennedy. That factor, combined with its greater per-flight capacity in a market limited in frequencies, makes a decision in favor of World difficult to justify. The distinctions go deeper than the individual merits of the service proposals: People Express appears to have adopted the only attitude toward this market that is likely to prove successful. World's service, predicated on the impossibility of introducing a different kind of service and of attracting significant new traffic in either the local or beyond markets, would merely add a sixth carrier to a market already replete with conventional service, and would serve satellite airports at both ends that may require innovative service to attract new custom. Whereas World has already abandoned any hope of introducing an innovative approach that would encourage the success of another carrier in this market, People Express has the motivation, the route system, and the documented cost basis to make its service attractive.

### C. Intergateway Competition

Considerations of intergateway competition likewise favor selection of People Express. As the Bureau points out, the Board has identified intergateway competition as an important criterion both in carrier selection cases generally and in Northeastern U.S.-London cases; in this case, the proximity of Newark and Baltimore requires a high standard of justification for granting both to the same carrier.<sup>59</sup> People Express has declared its intention to devote its entire resources to this market, whereas World may be less inclined to promote Newark service at the expense of its Baltimore operation, or vice versa.<sup>60</sup>

World alone argues that the intergateway competition issue should not poison its case, and reiterates its pledge to preserve full, nonstop service in both markets if it receives this route.<sup>61</sup> It is this consideration that largely concerns the State of Maryland, which requests the Board to impose a condition prohibiting Baltimore-London service over

<sup>57/</sup> Id. at 13, citing Exhibit BIA-R-306.

<sup>58/</sup> Brief of People Express at 21 (footnote omitted), citing 2 Tr. at 82, Exhibit BIA-103. See Oral Arg. Tr. at 14.

<sup>59/</sup> Brief of the Bureau, at 10, quoting Order 82-4-64, at 4. See Brief of People Express, at 3-9.

<sup>60/</sup> Brief of the Bureau, at 11; Brief of People Express, at 7; Exhibits PE-R-8, PE-R-9.

<sup>61/</sup> Brief of World, at 30-34.

Newark. World states that no per se rule prevents an award to it, but rather that Board policy is based on factors such as potential competition, relative fares and service, and actual likelihood of diversion of traffic from one gateway to another. It submits that the intense competition at New York/Newark will prevent neglect of the route, and that this route generates its own internal competition. Fares would be similar, and World predicts that few Baltimore passengers would be attracted to its early-morning Newark departure.<sup>62</sup>

We disagree. It is entirely possible that prospective travelers in the Baltimore/Washington area may prefer to travel over Newark if fares or schedules are more attractive than at Baltimore; yet it is World's avowed intention to avoid competing with itself there. In contrast, People Express would compete with World at Baltimore, not only for local BWI-London traffic, but also for connecting passengers from some of its on-line markets, such as Norfolk and Pittsburgh, and from many other points served by other carriers. We are also impressed with the broader competitive factors favoring People Express. That carrier has a strong identity at Newark, a satellite airport that we would like to see attract greater use; in addition, People Express would effectively establish Newark as an entirely new gateway to Europe, complete with convenient connections from domestic points that currently do not have such ready access to international routes. Norfolk and Burlington, for example, do not presently have any on-line service to London; other points, like Pittsburgh, Buffalo, and Syracuse, have on-line connections only at Kennedy, the latter two provided only by Pan American.<sup>63</sup>

Newark and Baltimore together represent the best opportunities to provide competition to the more established northeastern gateways of Boston, Kennedy, and Dulles. These two points should not be lumped together under the control of a single carrier.

#### VI. Fitness and Start-up Capability

Merely routine attention to the matter of fitness is generally necessary where the applicants are established international carriers, but People Express, because of its lack of such experience, requires somewhat more detailed treatment. As a related matter, World has also alleged that People Express lacks the wherewithal to inaugurate service in a timely fashion, likening the process to the creation of a new international airline, and repeating that People Express fails to appreciate the problems involved.<sup>64</sup> In addition, World argues that delays in People's inauguration of service will ensue because of the British refusal to accept People's fares and the consequent need for further negotiation. World does not, however, appear to challenge People's fitness specifically.

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<sup>62/</sup> Id.

<sup>63/</sup> O.A.G., April 1983. See Exhibit PE-203 (proposed People Express connections).

<sup>64/</sup> Brief of World, at 14-18.



People Express defends both its fitness and its ability to start service within 60 days of a final Board order.<sup>65</sup> Its management team, financial status, and compliance history more than meet the Board's standards; it also notes the ready availability of appropriate aircraft and ground facilities at Gatwick to facilitate start-up. The Bureau also finds no reason to find People unfit to operate the proposed service.<sup>66</sup> As no party contests such a finding and People Express has an excellent history as an operating carrier, we find People Express fit.<sup>67</sup>

We see no reason not to take People Express at its word and impose a start-up condition, in view of the applicant's representation of readiness to start service within two months. The Bureau supports imposition of a condition requiring inauguration within 60 days. World initially stated its need to have 90 days to begin service, but in the course of the hearing expressed its willingness to abide by a 60-day start-up condition.<sup>68</sup> We will, however, allow both carriers the benefit of the extra month and impose a 90-day start-up condition. This condition is intended to apply to the carrier's ability to start service, rather than extraneous factors beyond its control. If World's dire warnings of People's inability to inaugurate prove true, World will then receive the route as a back-up carrier.

#### VII. Other Issues

Several other matters remain to be addressed. These include the selection of a backup carrier, environmental and energy issues, and tariff filing conditions.

##### A. Backup Authority

This case was originally instituted as a backup selection proceeding, and included no separate provision for selection of a second carrier. However, as we noted in Order 82-12-88, the parties were on notice that this could become a primary selection proceeding; it has become one. We agree with the Bureau that it is in the public interest also to designate a backup carrier. World will be authorized to enter the market if People Express cannot or will not do so under the terms of the start-up condition.

##### B. Environmental and Energy Issues

The Bureau correctly notes that there is no need for unusual treatment of this case on environmental grounds. No ground for an environmental impact statement or assessment exists. Although People Express would surpass the 10 million gallon fuel consumption figure that creates a "major regulatory action," we have consistently held that the advantages of new

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<sup>65/</sup> Brief of People Express, at 46-49; Exhibit PE-609.

<sup>66/</sup> Brief of the Bureau, at 22-23.

<sup>67/</sup> As an operating scheduled carrier, People Express must show the degree of fitness requisite for a substantial change in the scope of its operations rather than meet the standard for an initial applicant for certificate authority.

<sup>68/</sup> Brief of the Bureau, at 24-25; Exhibit WOA-601, 2 Tr. at 120-21.

service outweigh the considerations of energy conservation.<sup>69</sup> The new service here will consist of long-haul, fuel-efficient operations; in addition, load factors should be consistently high, resulting in additional fuel efficiency. Finally, as the Bureau argues, the benefits to the public in the form of new fare and service options outweigh the strictures of energy conservation in this case.

### C. Certificate Conditions

In addition to the start-up requirement, the Bureau recommends that a standard condition be included requiring initial tariff filings commensurate with the fares proposed in the applicants' service proposals.<sup>70</sup> Such a condition is not rendered inappropriate by the uncertainty surrounding the British response to People's fares; if those difficulties are encountered, appropriate negotiations and/or revision of People's tariffs will supercede the initial filing. Until and unless that problem exists, People should be held to its proposed fares. Finally, we have also decided not to impose the State of Maryland's proposed condition on World's backup certificate, prohibiting any one-stop service over Newark from Baltimore, or World's variant of no one-stop service to the detriment of nonstop. We believe that the former condition is too rigid and inflexible and that the latter would not only pose difficulties in factually determining whether a violation had occurred, but would also place the Board procedurally in an enforcement posture, pursuant to Title IX of the Act, should a problem arise. Instead, we admonish World that any failure to maintain a proper level of service at Baltimore will expose it to possible replacement at that point under section 401(d)(8) procedures. We note that Transamerica has applied for renewal of its Baltimore-London backup authority, and that Arrow has also applied for that authority.

### VIII. Conclusion

We select People Express for this route, as every carrier selection factor supports this choice over World. We also find People Express fit, willing, and able to provide the air transportation at issue. The authority will be issued in the form of a standard temporary, experimental certificate pursuant to section 401(d)(8) of the Act, and be awarded subject to 90-day start-up and initial tariff conditions. Finally, World is selected as backup carrier, its authority to mature if People Express fails to inaugurate service as planned, or if it inaugurates but subsequently terminates service within one year. As the parties have had ample opportunity to address the issues and quick decision is essential to this case, no petitions for reconsideration will be entertained.

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<sup>69/</sup> Id. at 25-26.

<sup>70/</sup> Id. at 25.

ACCORDINGLY:

1. We grant the application of People Express Airlines in Docket 41173 and issue to it a temporary experimental certificate for the Newark-London route in the form attached;
2. We receive into evidence the submission of People Express Airlines as a post-hearing exhibit, Exhibit PE-PH-1;
3. We find People Express Airlines fit, willing and able to provide the air transportation for which it seeks authority in this proceeding;
4. We award to World Airways a backup certificate for the Newark-London route in the form attached;
5. These certificates shall be signed on our behalf by our Secretary and shall have the seal of the Board affixed;
6. Unless disapproved by the President of the United States under section 801 of the Act, this order and the attached certificate for People Express Airlines shall become effective on the 61st day after submission to the President or upon the date of receipt of advice from the President that he does not intend to disapprove the Board's order under that section, whichever occurs earlier;<sup>71</sup>
7. We deny all other outstanding applications, motions, petitions, or other requests for relief in Docket 41163; and
8. We will not entertain petitions for reconsideration of this order.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR  
Secretary

(SEAL)

All Members concurred.

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<sup>71/</sup> This order was transmitted to the President on APR 13 1983  
The 61st day is JUN 13 1983



Appendix I: Fares

<u>Fare</u> <sup>1</sup>	<u>World</u>			<u>World (revised)</u>			<u>People Express</u>
	<u>High</u>	<u>Shldr</u>	<u>Low</u>	<u>High</u>	<u>Shldr</u>	<u>Low</u>	(constant)
First class	\$ 782	782	632	\$ 831	831	831	\$ 439
Full economy	440	395	355	440	395	355	149
7-day adv pur	279	249	219	369	339	289	---
21-day adv pur <sup>2</sup>	519	429	369	549	599	579 <sup>3</sup>	---
Same, weekend <sup>2</sup>	559	469	399	549	599	579 <sup>3</sup>	---
Student	269	239	209	---	---	---	---
Senior citzn <sup>2</sup>	---	469	409	---	---	---	---
Incl. tour <sup>2</sup>	479	399	339	---	---	---	---
Instant Purch <sup>2</sup>	519	429	369	---	---	---	---
Same, weekend <sup>2</sup>	559	469	399	---	---	---	---
Standby	219	209	199	350	350	---	---
Military	219	209	159	343	232	232	---
Weighted ave. <sup>5</sup> (with premium)		287			---	4	193
Weighted ave. <sup>5</sup> (without premium)		236			---	4	149

1/ Exhibits WOA-210, WOA-210A, PE-103. See Exhibit BIA-R-201.

2/ Round trip fares.

3/ The higher off-season fares is apparently due to an IATA decision, although World's witnesses appeared to be confused about the matter. 2 Tr. at 41; see id. at 115.

4/ The Bureau has recommended that the fares set out in Exhibit WOA-210A should be ignored, as deviating from the evidence request. See Brief of the Bureau at 15 n.12.

5/ Exhibit BIA-R-200; Brief of the Bureau, at 15.

Appendix II: Traffic Estimates - FY 1984<sup>1</sup>

Carrier	People Express			World		
	<u>BIA</u> <sup>2</sup>	<u>PE</u> <sup>3</sup>	<u>World</u> <sup>4</sup>	<u>BIA</u> <sup>2</sup>	<u>PE</u> <sup>5</sup>	<u>World</u> <sup>6</sup>
forecast by:						
Local Market Passengers	910,186	1,682,245 <sup>7</sup>	770,875 <sup>8</sup>	910,186	910,182	910,182
Participation/ market share	9.6%	7.0%	7.0%	6.4%	7.0% high 8.0% low	7.5% 8.5%
Local passengers	87,378	117,757	53,961	58,252	67,337	71,889
Fare stimulation	71.4%	0.0%	---	21.9%	10%	10%
TOTAL LOCAL PASS.	149,766	117,757	53,961	71,009	74,071	79,078
Online market share	44,959	46,747	20,064	--	--	--
Interline connect'g	701,986	---	121,325 <sup>10</sup>	744,697	744,695 <sup>9</sup>	744,695 <sup>9</sup>
Market share	2.0%	---	7.0%	2.0%	2.0%	2.0%
Interline passengers	14,040	---	8,493	14,894	14,894	14,894
TOTAL CONNECTING	58,999	46,747	28,557	14,894	14,894	14,894
TOTAL PASSENGERS	208,765	164,504	82,518	85,903	88,965	93,972

1/ All forecasts assume fares as originally proposed by applicants. The Bureau also forecast People Express traffic assuming it charged World's fares.

2/ From Exhibits BIA-R-302 (PE), BIA-R-304 (World).

3/ From Exhibit PE-301 (rev.).

4/ From Exhibit WOA-R-320.

5/ From Exhibit PE-R-11.

6/ From Exhibit WOA-301.

7/ Number People Express states as "available" (97% of 1,734,273).

8/ Number World states as available to People Express (97% of 794,716).

9/ Listed by World and People Express as "Stopover/Connecting."

10/ Number World states as available to People Express (10% of 1,213,246).

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

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EXPERIMENTAL CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY  
FOR ROUTE

---

PEOPLE EXPRESS AIRLINES, INC.

is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations issued under it, to engage in foreign air transportation of persons, property, and mail as follows:

Between the terminal point Newark, New Jersey and the terminal point London, United Kingdom.

This service is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries; and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any orders of the Board issued under them or for the purpose of requiring compliance with them.
- (2) The holder may continue to serve regularly any points named here through the airport it last used regularly to serve that point before the effective date of this certificate. Upon compliance with such procedures as may be prescribed by the Board, the holder may, in addition, regularly serve a point named here through any convenient airport.
- (3) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rate, charges, and other projected results will in fact materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (4) The holder's authority to engage in the transportation of mail is limited to carriage on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General.

(5) The exercise of the authority granted here shall be subject to first obtaining required operating rights from the government of the United Kingdom.

(6) The holder shall file initial tariffs at levels no higher than those stipulated in Exhibit PE-103 in Docket 41163 as adjusted to reflect increases in transatlantic industry average costs accruing after the date the fare proposals in that Exhibit were calculated.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

In accepting this certificate the holder acknowledges and agrees that it is entitled to receive service mail pay, as specified here, only for the mail service rendered or to be rendered, and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered in excess of the amount payable by the Postmaster General.

This certificate shall become effective on \_\_\_\_\_ and shall expire [90 days later]; Provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until [five years after its effective date], unless the Board earlier suspends, modifies, or deletes the authority.

The Civil Aeronautics Board has directed its Secretary to execute this certificate, and affix the Board's seal, on April 7, 1983.

PHYLLIS T. KAYLOR  
Secretary

(SEAL)

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

---

EXPERIMENTAL CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY  
FOR ROUTE

---

WORLD AIRWAYS, INC.

is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations issued under it, to engage in foreign air transportation of persons, property, and mail as follows:

Between the terminal point Newark, New Jersey and the terminal point London, United Kingdom.

This service is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries; and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any orders of the Board issued under them or for the purpose of requiring compliance with them.
- (2) The holder may continue to serve regularly any points named here through the airport it last used regularly to serve that point before the effective date of this certificate. Upon compliance with such procedures as may be prescribed by the Board, the holder may, in addition, regularly serve a point named here through any convenient airport.
- (3) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rate, charges, and other projected results will in fact materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (4) The holder's authority to engage in the transportation of mail is limited to carriage on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General.

(5) The exercise of the authority granted here shall be subject to first obtaining required operating rights from the government of the United Kingdom.

(6) The holder shall file initial tariffs at levels no higher than those stipulated in Exhibit WO-210 in Docket 41163 as adjusted to reflect increases in transatlantic industry average costs accruing after the date the fare proposals in that Exhibit were calculated.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

In accepting this certificate the holder acknowledges and agrees that it is entitled to receive service mail pay, as specified here, only for the mail service rendered or to be rendered, and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered in excess of the amount payable by the Postmaster General.

This certificate shall not become effective until People Express Airlines' certificate authority in the Newark-London market has expired or has been deleted or suspended; and shall expire [one year from the effective date of People Express']; Provided, however, That if this authority has become effective prior to that date, it shall not expire until [same date as People Express' expires], unless the holder fails to inaugurate service within 90 days of that effective date, in which case this certificate will expire on the 91st day.

The Civil Aeronautics Board has directed its Secretary to execute this certificate, and affix the Board's seal, on April 7, 1983.

PHYLLIS T. KAYLOR  
Secretary

(SEAL)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decisions in Capitol Air, Inc. and Transamerica Airlines, Inc.; Consolidated Freightways, Inc., and Subsidiary Companies; International Air Associates, Inc.; United Air Carriers, Inc.; and Trans-Air-Link Corporation

Richard Darman's office has asked for comments by close of business Friday, May 13, 1983 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by May 27, 29, 31, June 7, and 24, respectively).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since these orders involve domestic carriers, judicial review is theoretically available. Hence, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review, as contemplated by the Executive Order for cases involving domestic airlines.

The order in Capitol Air and Transamerica denies back-up authority to the airlines, pursuant to established CAB policy only to award such authority when primary authority is first issued. The order in Consolidated Freightways permits that company to acquire Air Express and all its route authority. The remaining three orders issue new operating authorities.

A memorandum for Darman is attached for your review and signature.



THE WHITE HOUSE

WASHINGTON

May 12, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in  
Capitol Air, Inc. and Transamerica Airlines,  
Inc.; Consolidated Freightways, Inc., and  
Subsidiary Companies; International Air  
Associates, Inc.; United Air Carriers, Inc.;  
and Trans-Air-Link Corporation

Our office has reviewed the above-referenced CAB decisions and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 5/12/83

cc: FFFielding  
✓ JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

May 12, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in  
Capitol Air, Inc. and Transamerica Airlines,  
Inc.; Consolidated Freightways, Inc., and  
Subsidiary Companies; International Air  
Associates, Inc.; United Air Carriers, Inc.;  
and Trans-Air-Link Corporation

Our office has reviewed the above-referenced CAB decisions and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 5/12/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

**WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD)    /    /   

Name of Correspondent: Richard G. Dorman

MI Mail Report      User Codes: (A)    (B)    (C)   

Subject: CAB Decisions: Capital Air, Inc.; Transamerica Airlines, Inc.; International Air Associates, Inc.; Fitness Investigation; Trans-Air-Link Corp. Fitness Investigation; Consolidated Helicopters, Inc. and Subsidiary Companies; United Air Carriers, Inc. w/ Overseas National Airways

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CW Holland</u>	<u>ORIGINATOR</u>	<u>8310511</u>		<u>  </u> / <u>  </u> / <u>  </u>
<u>CWAT-18</u>	<u>D</u>	<u>8310511</u>	<u>5</u>	<u>8310513</u> <u>COB</u>
		<u>  </u> / <u>  </u> / <u>  </u>		<u>  </u> / <u>  </u> / <u>  </u>
		<u>  </u> / <u>  </u> / <u>  </u>		<u>  </u> / <u>  </u> / <u>  </u>
		<u>  </u> / <u>  </u> / <u>  </u>		<u>  </u> / <u>  </u> / <u>  </u>
		<u>  </u> / <u>  </u> / <u>  </u>		<u>  </u> / <u>  </u> / <u>  </u>

- ACTION CODES:**
- A - Appropriate Action
  - C - Comment/Recommendation
  - D - Draft Response
  - F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

- DISPOSITION CODES:**
- A - Answered
  - B - Non-Special Referral
  - C - Completed
  - S - Suspended

**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOP).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

## WHITE HOUSE STAFFING MEMORANDUM

DATE: May 10, 1983      ACTION/CONCURRENCE/COMMENT DUE BY: COB FRIDAY, MAY 13

SUBJECT: CAB DECISIONS -- SEE LIST BELOW

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**Remarks:** Please forward comments on the following CAB decisions to my office by close of business Friday, May 13:

Capitol Air, Inc.                      Consolidated Freightways, Inc. and  
Transamerica Airlines, Inc.              and Subsidiary Companies

International Air Associates, United Air Carriers, Inc.  
Inc., Fitness Investigation      d/b/a/Overseas National Airways

Trans-Air-Link Corporation  
Fitness Investigation

**Richard G. Darman**  
Assistant to the President  
(x2702)

**Response:**



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 10 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions:

Capitol Air, Inc.  
Transamerica Airlines, Inc.  
Dockets 40921, 40978  
Date due: May 27, 1983

Consolidated Freightways, Inc.,  
and Subsidiary Companies  
Docket 41290  
Date due: May 29, 1983

International Air Associates,  
Inc., Fitness Investigation  
Docket 41075  
Date due: May 31, 1983

United Air Carriers, Inc.,  
d/b/a Overseas National  
Airways  
Docket 41222  
Date due: June 7, 1983

Trans-Air-Link Corporation  
Fitness Investigation  
Docket 41040  
Date due: June 24, 1983

The Civil Aeronautics Board proposes to take the following actions with regard to the above international air cases:

- Deny the request of Capitol Air, Inc., and Transamerica Airlines, Inc., for backup authority to transport persons, property, and mail between Miami, Florida, and London, United Kingdom, via Shannon, Ireland. The Board denies the airlines' requests because CAB policy is to provide backup authority only when primary authority is first issued in a particular market. Air Florida has been serving the Miami-London market since April 1981 and has not indicated an intention to terminate service.
- The Board proposes to permit Consolidated Freightways, Inc., to acquire Air Express International (AEI) Corporation and all of AEI's international route authority. The new airline, CF Air Express International, Inc., will have authority to provide charter transportation of property and mail between the U.S. and Canada, Mexico, islands in the Gulf of Mexico and the Caribbean Sea, Central and South America, and Europe.
- Issue a certificate to International Air Associates, Inc., authorizing the airline to provide charter transportation of property and mail between the U.S. and Canada, Mexico, Central and South America, and islands in the Gulf of Mexico and the Caribbean Sea.

- Amend the certificate of United Air Carriers, Inc., authorizing the airline to transport persons, property, and mail between the U.S., on the one hand, and Lebanon and Qatar, on the other.
- Issue a certificate to Trans-Air-Link Corporation authorizing the airline to provide charter transportation of property and mail between the U.S. and Canada, Mexico, islands in the Gulf of Mexico and the Caribbean Sea, Central and South America, Asia, Africa, Indonesia, Europe, Australia, Greenland, and the Azores.

The Departments of State, Defense, Justice, and Transportation and the National Security Council have not identified any foreign policy or national defense reasons for disapproving the orders in whole or in part.

The Office of Management and Budget recommends that you approve the Board's decisions by signing the attached letter to the Chairman which indicates that you do not intend to disapprove the Board's orders within the 60 days allowed by statute for your review. Also, OMB recommends that you state in your letter that no national defense or foreign policy reason underlies your action. This will preserve whatever opportunity is available under the statute for judicial review.

Original signed by  
Constance Horner

Constance Horner  
Associate Director  
Economics and Government

**Attachments:**

CAB letters of transmittal  
CAB orders  
Letter to the Chairman

**Options and Implementation Actions:**

- ( ) 1) Approve the Board's orders and preserve whatever opportunity is available for judicial review (DOS, DOD, DOJ, DOT, NSC, OMB).  
-- Sign the attached letter to the Chairman.
- ( ) 2) Approve the Board's orders and do nothing to preserve whatever opportunity is available for judicial review.  
-- Implementation materials to be prepared.
- ( ) 3) Disapprove the Board's orders.  
-- Implementation materials to be prepared.
- ( ) 4) See me.

THE WHITE HOUSE

WASHINGTON

Dear Chairman McKinnon:

I have reviewed the orders proposed by the Civil Aeronautics Board in the following cases:

Capitol Air, Inc.  
Transamerica Airlines, Inc.  
Dockets 40921, 40978

Consolidated Freightways, Inc.,  
and Subsidiary Companies  
Docket 41290

International Air Associates,  
Inc., Fitness Investigation  
Docket 41075

United Air Carriers, Inc.,  
d/b/a Overseas National Airways  
Docket 41222

Trans-Air-Link Corporation  
Fitness Investigation  
Docket 41040

I have decided not to disapprove the Board's orders. No foreign relations or national defense consideration underlies my decision not to disapprove this order.

Sincerely,

The Honorable Dan McKinnon  
Chairman  
Civil Aeronautics Board  
Washington, D.C. 20428





FOR OFFICIAL USE ONLY  
**CIVIL AERONAUTICS BOARD**  
WASHINGTON, D.C. 20428

IN REPLY REFER TO:

MAR 28 1983

B-11

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

I transmit the Board's proposed order denying the applications of Capitol Air, Inc., Docket 40921, and Transamerica Airlines, Inc., Docket 40978, for your consideration under section 801(a) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978. The order will adopt the Board's decision and deny the carriers' applications unless you disapprove it within 60 days of this transmittal.

If you should decide earlier that you will not disapprove, please advise me to that effect; this will allow the earlier issuance of the order.

We are submitting the proposed decision to you before publication under the provisions of section 801(a) of the Federal Aviation Act of 1958. In accordance with Executive Order 11920, however, we plan to release all unclassified portions of the decision on or after the sixth day following this transmittal unless notified by your Assistant for National Security Affairs.

Respectfully yours,

*signed Dan McKinnon*

Dan McKinnon  
Chairman

Enclosures

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