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Book Review

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REGULATION OF PASSENGER FARES AND COMPETITION AMONG THE AIRLINES, Edited by Paul W. MacAvoy and John W. Snow, American Enterprise Institute for Public Policy Research, Washington, D.C., 1977, 210 pp. $4.75.

The last bus ran to Langdon this fall. No commercial airline flies to Valley City or Dickinson[1] or between Bismarck and Grand Forks. Rail passenger service through North Dakota was recently cut to four times weekly on the Minot route and three times weekly through Bismarck.[2] In view of these cutbacks, residents of small cities feel threatened and look to regulatory agencies such as the Civil Aeronautics Board (CAB) to maintain whatever passenger service they still retain.

Retention of air service to smaller communities has been one of the major arguments for the regulatory scheme administered by the CAB.[3] This small book, one of the Ford Administration Papers on Regulatory Reform (with a foreword by the former President) attempts to refute that argument by stating that the CAB's "use it or lose it" policy[4] has been incapable of stemming the tide of discontinuance of airline passenger service.

Regulation of Passenger Fares and Competition Among the Airlines advocates the deregulation of air transportation. Its authors support the passage of the Ford Administration's proposed "Aviation Act of 1975." Deregulation of airlines still has supporters among the Carter Administration, which has pledged to secure passage of a similar bill, so the issue is still alive. The book is published by the American Enterprise Institute (AEI), which receives corporate subsidies and generally has taken an industry view of issues. On this particular question, however, the AEI view is much closer to that of Ralph Nader's, and is generally opposed by representatives of the Air Line Transport Association.[5] For this reason it is an interesting

1. *See generally* A. SELBYG, POTENTIAL AIR TRAVEL DEMAND IN NORTH DAKOTA (1976).
2. Minot (N.D.) Daily News, August 24, 1977, at 1, col. 3.
3. *See generally* A. LOWENFELD, AVIATION LAW I-1 through I-22 (1972).
4. *See* W. JONES, CASES ON REGULATED INDUSTRIES 1099-1132 (1976).
5. REGULATION OF PASSENGER FARES AND COMPETITION AMONG THE AIRLINES 24-37 (P. MacAvoy and J. Snow, eds. 1977) [hereinafter cited as REGULATION OF PASSENGER FARES].

book, even though the Aviation Act of which it speaks has gone a-glimmering after the shadows of the Ford Administration.

Small-city airports have had a difficult time of it in the 1970's. The virtual completion of the interstate highway system has made travelers more willing to drive to metropolitan hubs to board aircraft. The industry has abandoned its search for a replacement for the DC-3. Instead, even the local service airlines have been converting to all-jet operation.[6] This means that cities without facilities for handling jet planes are losing service or are restricted to short connecting flights by vintage propeller-driven aircraft (Devils Lake, for example, is down to one flight a day).

Filling the gap left by the departure of the certificated carriers is a new industry known as "commuter airlines." Although they do not carry commuters in the literal sense (daily home-to-work passengers traveling during peak periods on reduced-fare multiple-ride tickets) they do handle a number of passengers on short connecting runs and interchange with scheduled airlines at major airports. Some of these have a large volume of business. Air Wisconsin, for example, handles more passengers each year than North Central.[7] In addition, commuter airlines operate free from regulation by the Civil Aeronautics Board, and can alter their fares and schedules as they see fit. They do not receive subsidies from the federal government, as the local service carriers (except Allegheny) all do.[8] They operate small aircraft with a net takeoff weight of less than 7,500 pounds, and thus have lower operating costs, although they are less economical in markets of 200 miles or more.[9]

The book proposes a supplanting of marginal services by certificated carriers with expanded commuter operations.[10] The authors believe that service would be improved and costs would be lowered. Opposition, of course, comes from the scheduled airline industry, as well as from communities who feel they would be downgraded by the smaller planes, bereft of stewardesses, booze, meals and headroom. Many passengers fear or resent flying in light aircraft. Proponents of substitution of service can expect the same type of protests engendered when passenger trains are replaced by buses.[11]

Control of entry and pricing practices originated with regulation of railroads,[12] and was naturally extended to utility and transit operations. The rationale for such control in these natural monopolies was that the owners of a railroad, pipeline or other fixed right-of-way

6. *Id.* at 22.
7. *Id.* at 133.
8. *Id.* at 110-111.
9. A. LOWENFELD, AVIATION LAW I-17 (1972).
10. REGULATION OF PASSENGER FARES, *supra* note 5, at 12-13.
11. *See generally* W. THOMS, REPRIEVE FOR THE IRON HORSE 12-23 (1973).
12. *See* W. JONES, CASES ON REGULATED INDUSTRIES 8 (1976).

should be protected from competition. A route which could support one railroad might not be able to support two or more; all operators could go broke and abandon their tracks, leaving the communities with no service at all. Thus, regulatory schemes traded off competition for the benefits of continuous service. To prevent monopoly abuse, fares were controlled by the regulatory agency, both to prevent overcharging and to preserve the financial health of the carriers. In short, transportation companies and utilities were to be protected from their own financial follies, because the loss to the community would be severe if the lines were abandoned. A similar philosophy supports regulation of insurance companies and banking.

The analogy breaks down somewhat when applied to operations by motor carriers and airlines. Trucks, buses, and planes do not provide their own rights-of-way but instead use airway control systems and highways owned and paid for by the public. A decision by the CAB that one company is allowed to fly a certain route usually denies other taxpaying companies the right to use that same route for commercial purposes. The rationale historically given is that regulation preserves the financial health and safety of air travel, and insures services to smaller communities which are cross-subsidized by profitable runs. So slavishly has the CAB followed this philosophy that no new trunk line carrier and only one new local service carrier have been certified by the Board since passage of the Federal Aviation Act of 1958.[13]

The current interest in deregulation is spurred by stories like that of Freddie Laker, who successfully fought the International Air Traffic Association cartel to establish his low-fare "Skytrain" service, currently operating between New York and London.[14] Laker has become the symbol, internationally, of the type of price competition proponents of air deregulation hope to introduce in the United States.

The most expensive commodity an airline can fly is an empty seat. Thus, in order to fill up seats which would otherwise be empty, U.S. airlines have offered a plethora of promotional fares to attract the one-time traveler while at the same time keeping to the CAB-approved higher airline fare for regular customers.[15] Typically, the regular customer is a businessman whose expense account is paying for his trip, and who therefore has little interest in price competition. Barred from competing on the dollar level for his custom, the flying machine's proprietors have touted the exquisiteness of their cuisine or stewardesses, the width of their seats and length of their movies, and have offered schedules closely duplicating one another. This

13. Pub. L. No. 85-726, 72 Stat. 731 (codified in 49 U.S.C. §§ 1301 through 1542 (1970), as amended).
14. Wall St. Journal, September 23, 1977, at 6, col. 1; September 27, 1977, at 3, col. 1.
15. A. LOWENFELD, AVIATION LAW, cum. supp. at 11 (1974).

service competition has tended to make an air ticket an expensive proposition. The authors claim that freedom to experiment with price competition will allow a lower-cost package to be offered to regular customers, with higher net revenues for airlines.[16]

John W. Snow, a visiting fellow at the American Enterprise Institute, argues in an introductory chapter that regulation causes air fares to be considerably higher than they would be otherwise, and also results in a serious misallocation of resources.[17] Snow advances the Ford Administration's—and the book's—proposals as facilitating increased pricing flexibility, reducing barriers to entry into air transportation, ending restrictions on certificates, and providing new standards and procedures by which to judge anticompetitive agreements by air carriers.[18]

The firm of Simat, Helliesen and Eichner, Inc., deals with the intrastate experience of Texas and California, where intrastate airlines are able to compete under state regulations with substantially lower fares and higher profitability than the CAB-approved carriers.[19] The picture may seem unduly rosy, however. The routes selected serve large cities with short-distance routes which are a bit too long for a bus or auto service, and where railroad passenger service is virtually non-existent. Few states contain markets of the scope of Los Angeles-San Francisco or Houston-Dallas, and many airlines serving California points have gone out of business. On the other hand, it may not be a great tragedy if a marginal airline goes out of business.[20]

The Department of Transportation's Regulatory Policy Staff examines the question of service to small communities. Their conclusion is that current certificate restrictions do not do much to aid communities in preserving service. All the certificates require is that the airline provide once or twice a day service to a small city, without regard to any particular route. There is no reason why Frontier or North Central could not use their current authority to operate a Bismarck-Grand Forks route segment, but they choose not to do so.[21] The Transportation Department recommends a scheme by which any city now having airline service would continue to have scheduled operations either by certified carrier or by commuter airline. The present local-service subsidy would be replaced by an incentive payment to whichever carrier (probably a commuter line) would agree to operate the service.[22] In the meantime, restrictions

16. REGULATION OF PASSENGER FARES, *supra* note 5, at 4.
17. *Id.* at 3.
18. *Id.* at 12.
19. *Id.* at 41-69.
20. A. LOWENFELD, AVIATION LAW IV-130 (1972).
21. REGULATION OF PASSENGER FARES, *supra* note 5, at 15-20.
22. *Id.* at 97-106.

on entry would be removed, enabling competitive carriers to seek whatever traffic they could serve.[23]

Economist James C. Miller, in a study of the economic effect of deregulation on the industry, concludes that deregulation would probably have little economic effect on the industry as a whole. Some of the more inefficient firms, however, would fall by the wayside.[24]

In the final two chapters of the book, Yale Professor Paul W. MacAvoy suggests that deregulation would not bring chaos, but instead would provide more efficient utilization of aircraft and personnel. But he ends with the gloomy prediction that on some routes, higher fares may accompany higher levels of service. The replacement of trunk carriers by commuter airlines in New England, for example, was accompanied by a doubling of the service offered at a twenty-five percent increase in fares.[25]

This book makes no attempt to present a forum for those concerned with preserving the present system of regulation. Most proponents are connected with the air transport industry, as even the CAB's own task force has come out for massive regulatory reform.[26] Advocates of regulation point out that there really has never been such a thing as a free market in transportation, and we really don't know what such a creature would produce. Perhaps marginal carriers might endanger passengers' safety. Perhaps small-town service would disappear, not to be replaced by anything worth having. One author[27] has proposed reforming the air transportation system by having the routes auctioned off. Airlines would bid for the right to serve a profitable market, while the marginal or unprofitable routes would go to the carrier willing to work for the lowest subsidy. Such a system would be between the extremes of current regulatory control and the deregulation advanced by the American Enterprise Institute.

The book confines itself to the air passenger transportation industry, without taking into consideration government assistance to surface transportation and the necessity to develop an inter modal network. Currently, the government is subsidizing the Amtrak system to a tune of a half billion dollars per year.[28] There are also subsidies for the local service airlines. Bus companies are trying to get in the act as well. Congress, in the Rail Revitalization and Regulatory Reform Act,[29] has made it clear that in the future, consideration must be given to an intermodal mix of transportation, rather than subsidizing competing carriers.

23. *Id.* at 27-28.
24. *Id.* at 200.
25. *Id.* at 210.
26. *Id.* at xii.
27. Ferrar, *Route Assignments and the C.A.B.*, 5 TRANSP. L.J. 215 (1973).
28. *Supra* note 2.
29. Pub. L. No. 94-210, 90 Stat. 33 (1976) (codified in 45 U.S.C.A. §§ 801-854 (Supp. 1977)).

As of this writing, the Senate Commerce Committee is about to report out an airline deregulation bill. A more modest proposal than the proposed Aviation Act of 1975, it would combine freedom to raise and lower fares without CAB permission with facilitating transfer of route segments from regulated carriers to commuter airlines. It would allow the airlines to add one or two routes a year, up to 3,000 miles in length, without CAB approval.[30] Meanwhile, the Board itself has acted in response to criticism by approving more bargain and excursion fares, although it has not opened entry in any significant fashion. It appears we will have some type of free enterprise in the skies by 1980, but what shape it will take is anybody's guess.[31]

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30. Wall St. Journal, September 23, 1977, at 5, col. 1.

31. The Chairman of the C.A.B., Alfred E. Kahn, has said that the Board has changed its opinion on regulatory reform. He now wants Congress to spell out provisions for entry into the business and to drop provisions allowing rate flexibility without C.A.B. approval. TRAFFIC WORLD, October 10, 1977, at 19.

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