

Mandate for Leadership

**Policy Management
in a
Conservative Administration**

Edited by
Charles L. Heatherly

Foreword by
Edwin J. Feulner, Jr.

The 
Heritage Foundation
Washington, D.C.

1981



The Heritage Foundation

Board of Trustees: Hon. Ben B. Blackburn (*Chairman*), Dr. David R. Brown, Joseph Coors, Ambassador Shelby Cullom Davis, Hon. Jack Eckerd, Thomas C. Ellick, Edwin J. Feulner, Jr., J. Robert Fluor, Joseph R. Keys, Dr. Robert Kriebel, Lewis Lehrman, J. F. Rench, Hon. Frank Shakespeare, Hon. William E. Simon, Frank J. Walton. **President:** Edwin J. Feulner, Jr.

The Heritage Foundation is a Washington-based, tax-exempt, non-partisan public policy research institution dedicated to the principles of free competitive enterprise, limited government, individual liberty and a strong national defense.

The Heritage Foundation publishes a wide variety of research in various formats for the benefit of decision-makers and the interested public. The views expressed in the Foundation's publications are those of the authors and do not necessarily reflect the views of the Foundation or its Trustees.

Policy Reviews is The Heritage Foundation's quarterly journal of public policy. An editorial advisory board of distinguished specialists in economics, foreign policy, defense studies, political science, sociology and other disciplines seeks out for publication original proposals and critiques addressed to the problems of our society.

Subscriptions to *Policy Review* are available for \$12 for one year, \$21 for two years and \$30 for three years.

The Heritage Foundation Research Department frequently publishes *Issue Bulletins* and *Backgrounders*: the former are concise and timely analyses of specific, current policy issues; the latter are in-depth studies of longer-range policy questions.

The Heritage Foundation Resource Bank is a clearinghouse of information useful to like-minded organizations. Its newsletter, the *Insider Newsletter*, transmits news of conferences, publications and work-in-progress to interested institutions and individuals.

The Communications Network provides lecturers in both foreign and domestic policy to colleges and civic groups.

The Washington Semester Program was established to provide an opportunity for interested students to increase their knowledge by first-hand experience of Congress and the legislative process. It is an intensive, one-semester program designed to provide a balance between lectures, a Congressional internship and individual research.

The Foundation is classified as a Section 501 (c)(3) organization under the Internal Revenue Code of 1954. It is further classified as a "non-private" (i.e., "public") Foundation under Section 509 (a) (2) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Foundation through tax-deductible gifts. Background material will be provided to substantiate tax-deductibility.

Library of Congress Catalog Card Number: 80-8950

ISBN Number: 0-89195-028-1

©1981 by the Board of Trustees of The Heritage Foundation.

All rights reserved. Printed in the United States of America.

Designed by Shirley Shaubuck

CONTENTS

Foreword	vii
Preface	ix
Contributors	xi

Part I THE CABINET DEPARTMENTS

1. AGRICULTURE	Don Paarlberg	3
2. COMMERCE	Charles H. Bradford	33
3. DEFENSE	Tidal W. McCoy and Sven Kraemer	89
4. EDUCATION	Ronald F. Docksai	163
5. ENERGY	Milton R. Copulos	213
6. HEALTH & HUMAN SERVICES		
	David A. Winston	245
7. HOUSING & URBAN DEVELOPMENT		
	M. Danny Wall	307
8. INTERIOR	Robert L. Terrell	333
9. JUSTICE	Michael E. Hammond	403
10. LABOR	Robert P. Hunter	453
11. STATE	Jeffrey B. Gayner	503
12. TRANSPORTATION	Frank S. Swain	599
13. TREASURY	Norman B. Ture	647

Part II INDEPENDENT REGULATORY AGENCIES

14. REGULATORY REFORM: AN OVERVIEW		
	James E. Hinish, Jr.	697
15. CIVIL AERONAUTICS BOARD		
	James I. Campbell, Jr.	709
16. COMMODITY FUTURES TRADING COMMISSION		
	Leighton Lang	719
17. CONSUMER PRODUCT SAFETY COMMISSION		
	Loc Nguyen	725
18. FEDERAL COMMUNICATIONS COMMISSION		
	Ray Strassburger	735
19. FEDERAL ELECTION COMMISSION		
	James Shoener	745

20.	FEDERAL MARITIME COMMISSION Stephen D. Little	751
21.	FEDERAL TRADE COMMISSION Kendall Fleeharty	759
22.	INTERSTATE COMMERCE COMMISSION Matt Scocozza	767
23.	NATIONAL TRANSPORTATION SAFETY BOARD Matt Scocozza	789
24.	SECURITIES & EXCHANGE COMMISSION Robert Kabel	803
25.	U.S. POSTAL SERVICE & THE POSTAL RATE COMMISSION James I. Campbell, Jr.	813
26.	ROUNDTABLE DISCUSSION OF THE ROLE OF THE WHITE HOUSE IN REGULATORY POLICY-MAKING	829

Part III OTHER AGENCIES

27.	THE SENIOR EXECUTIVE SERVICE Robert M. Huberty and James L. Malone	869
28.	THE INTELLIGENCE COMMUNITY Samuel T. Francis	903
29.	OFFICE OF MANAGEMENT & BUDGET Joe O. Rogers	955
30.	ENVIRONMENTAL PROTECTION AGENCY Louis J. Cordia	969
31.	THE NATIONAL ENDOWMENTS FOR THE HUMANITIES & THE ARTS Michael S. Joyce	1039
32.	ACTION, LEGAL SERVICES CORPORATION & COMMUNITY SERVICES ADMINISTRATION Alfred S. Regnery	1057
	EPILOGUE: WHAT THE PRESIDENT CAN DO BY EXECUTIVE ORDER Danny J. Boggs	1077

FOREWORD

Mandate for Leadership was conceived in the fall of 1979 as a means of assisting the transition to a new administration in the event that a conservative President were elected in 1980. Our premise was that conservatives must be prepared to answer the question, "What is the conservative agenda, particularly for the 'first 100 days'?"

The recommendations in this volume are not presented as cure-alls for the nation's problems, nor as a comprehensive catalogue of every policy concept in the conservative storehouse of ideas. Nor, it should be emphasized, is there unanimity among the trustees or staff of The Heritage Foundation or the several hundred contributors to this volume with regard to the specific recommendations in the various chapters. What is offered by the authors is a series of proposals which, if implemented, will help revitalize our economy, strengthen our national security, and halt the centralization of power in the federal government. The full recovery of our nation in both the economic and foreign policy spheres will require the sustained application of sound policies over several years. There are no "quick fix" solutions to problems that have been years in the making. But no time must be lost in taking the first decisive steps on the road to recovery.

The proposals in this volume have already had an impact in Washington, due to the pre-publication release of the draft manuscript to President-Elect Reagan's transition team and to the press in November 1980. Predictably, the proposals were not well received by that segment of the political establishment whose main preoccupation since the election of Ronald Reagan has been to reinterpret the election results as a victory for "pragmatism" over "ideology." The self-appointed guardians of political fashion, whom Irving Kristol has called "the new class," advise the new President to "avoid ideology," which roughly translates into an admonition to reject any substantive changes in the direction of government. Thus,

CIVIL AERONAUTICS BOARD

James I. Campbell, Jr.

INTRODUCTION

When Congress established the CAB in 1938, it delegated to the Board four basic powers. First, the CAB could grant or deny a certificate to operate a given route and hence to get into the airline industry in the first place. Second, the CAB could prohibit any prices which were unjustly or unreasonably high, low, or discriminatory. Third, the CAB could award subsidies to bolster air service to small towns. Fourth, the CAB could immunize inter-airline agreements from the antitrust laws.

Between 1938 and 1978, the Board generally used these powers to retard competition among airlines. Price competition was discouraged, new trunk airlines were prohibited, and the shifting of routes by existing airlines was hampered. The subsidy program grew to \$70 million per year, although little of this subsidy was in fact providing air service to those who would not otherwise receive it. While restraint of competition and provision of unneeded subsidies were not intended by Congress in 1938, they appear to have been the CAB's policy.

In 1979, the domestic airline industry earned \$17.49 billion while producing 181 billion passenger-miles and other services. The U.S. international aviation industry earned \$5.19 billion while producing 52 billion passenger-miles and other services.

Aviation Acts of 1978 and 1980

The Airline Deregulation Act of October 1978 provided for phased deregulation of most of the domestic aviation industry between 1978 and January 1, 1985, except that regulation of

essential air service to small towns was increased by enacting a guarantee of essential air service to all towns then served by CAB certificated carriers. The International Air Transportation Competition Act of 1979, enacted in February 1980, enjoined the CAB to adopt a more procompetitive international aviation policy, loosened CAB's power to disapprove fares, and eased the standards for new entry into international routes. At the same time, the international act adopted some specific anti-competitive or pro-American carrier provisions.

Summary of the Economic Aviation Policies of the U.S.

Viewing the whole history of regulation and deregulation, the major points of U.S. aviation policy, as enacted by Congress, appear as follows:

1. Except as required to ensure safety, the federal government should not prohibit any person from entering any route in domestic aviation, nor prohibit any person from entering the industry as a whole. Phasing out of existing restrictions should take place as soon as practicable.

2. The federal government should not prohibit price cutting in domestic aviation. If competition will prevent airlines from charging unjustly and unreasonably high prices, then the federal government should not prohibit the raising of prices. Congress was more reluctant and circumspect about phasing out of high-rate regulation than low-rate regulation.

3. The airlines should not be permitted to discriminate unjustly against persons.

4. The federal government should guarantee essential air service to small towns and subsidize such service if necessary.

5. The federal government must continue to regulate international aviation, but should encourage the maximum feasible degree of competition consistent with the realities of aviation economics and international politics.

SUMMARY OF PRINCIPAL DEFICIENCIES OF EXISTING POLICY

Although the role of the federal government in the aviation industry has been correctly identified by Congress, there are some significant deficiencies in the statutes and in the administration of the statutes by the CAB. They may be summarized as follows:

1. *Difficulty of Attracting Top Staff to the Board.* In too many cases, the economic and legal analysis underlying the

Board's administration of the statutes has been inadequate. In part, this is due to the fact that the Board is attempting to break new ground. But in part, this is due to intrinsic problems associated with a long, drawn out sunset. Now that the crusade is over and the Board is on its last legs, top young staff are looking elsewhere for challenge.

2. *CAB's Allowance of Large and Uneven Price Increases.* On May 14, 1980, in PS-94, the Board announced that it generally would not suspend air fares for being too high if they are less than 30 percent above the 1977 levels, as adjusted for increased costs. This upward zone of fare flexibility increases to 50 percent in markets within a 400 mile radius and unlimited in markets within a 200 mile radius. Eleven senators petitioned the Board to reconsider this decision. On September 24, 1980, the Board revised PS-94 slightly. However, there is deep, continuing unhappiness in Congress over this CAB policy. The feeling is that the CAB is deregulating more quickly than authorized and that passengers on short routes to small towns are being discriminated against by the Board. A consumers' group is appealing PS-94 in the courts.

3. *Elimination of Essential Service to Small Towns.* Many small towns and members of Congress feel that the Board has been niggardly in administering the 1978 Act's guarantee of essential service to small communities. Senator Robert Byrd (D-W. Va.), for example, held up renomination of the Chairman of the CAB for five months (until July 25, 1980), protesting the diminution of service to West Virginia.

The CAB is also pursuing other actions that may result in deterioration of service to small towns. The uncapping of prices on short routes is mentioned above. The Board also is considering repudiation of its duty to divide "joint" fares in a manner which protects the small town passenger. If joint fares are deregulated, many small towns (most plausibly, the smallest of the small towns) fear that the large trunk airlines will force up the prices of the commuter airlines that "feed" small town passengers into hub airports for connection on to trunk flights to distant destinations. The relaxation of joint fare restraints is one aspect of the Board's general withdrawal from discrimination regulation, described in the next section. In general, elimination of the restraints of unjust discrimination appears contrary to the best interests of small town residents, who are likely to be relatively unorganized and unsophisticated buyers of air transportation.

4. *CAB's Allowance of Previously Unjust Discrimination.* On

May 29, 1980, in PS-93, the Board announced that it would not prohibit personal price discrimination unless such discrimination rose to the level of discrimination violative of the civil rights laws. Historically, the CAB, in common with most other federal economic regulatory agencies, has prohibited an airline from charging different passengers different prices for substantially the same service, unless the differential is justified by transportation related considerations. Certain persons, however, are allowed special discounts by statute, including airline employees, ministers, older persons, and handicapped persons.

The legislative history of the Airline Deregulation Act of 1978 suggests that Congress was happy with the historical policy. In any case, the law on unjust discrimination was not changed. (On January 1, 1983, the prohibition against unjust discrimination in the federal aviation act will be abolished, apparently investing the Federal Trade Commission with authority to prevent unfair trade practices. The effect of the 1983 sunset of the unjust discrimination provision is unclear, however; it was added hastily in the conference report without prior consideration by either chamber or its legislative committee.)

Three recent decisions illustrate the CAB's new policy on unjust discrimination. In January 1980, the Board allowed an airline to single out passengers acting as couriers and charge them a baggage rate twice as high as that charged other passengers (this case is now on appeal to the courts). In July 1980, the CAB approved a tariff granting a special discount to a specific large buyer—the General Services Administration—notwithstanding the fact that the air service provided the large buyer is in no way different from the service offered the general public. With this decision, the Board has opened the door for special discounts for all large corporations and large unions. Most recently, on September 30, 1980, the CAB issued a proposed rule which would allow unlimited secret rebating to individual customers, effectively ending the value of publicly posted tariffs, for both domestic and international aviation.

These kinds of discounts seem contrary to basic American precepts of justice. Allowing selective price gouging, non-cost justified discounts for big customers, and secret rebates seems to favor the large organized interests with competitive alternatives at the expense of the unorganized, uneducated, or captive passenger. It should be recalled, that transportation regulation in the United States originated primarily as a reaction to discriminatory pricing by the railroads, not to their charging

exorbitantly high rates. Thus, the Board's repudiation of its duty to prevent unjust discrimination may precipitate an unfortunate backlash for re-regulation.

5. *Slot Access at Major Airports.* Some big city airports are becoming so congested that all possible landing "slots" are assigned, at least at prime times. Prior to deregulation, slots at congested airports were assigned by agreement among the trunk airlines who served the airport (the agreements were subject to CAB approval). Since the 1978 act, airports have become more crowded and new airlines, especially commuters, are demanding slots at the congested airports. The incumbent airlines are reluctant to give up their slots, particularly to competitors. (A highly visible example is the case of New York Airways which is having great difficulty getting access to Washington National Airport.) So far the CAB has not worked out any procedure to distribute slots fairly. The problem of allocating scarce slots at congested airports will probably get worse in the near future.

6. *Tie Up Loose Ends of the 1978 Act.* There are numerous confusing technical problems with the Airline Deregulation Act of 1978. For example, statutory standards are left in place even though the Board will no longer be in existence to enforce them. These ambiguities should be resolved by clarifying legislation.

SHORT-TERM PROBLEMS AND OPTIONS

The President's direct administrative control over the CAB is limited to appointment of the five members, with the advice and consent of the Senate and annual designation of one of the members as chairman. As shown in Table 1, none of the current members' terms is completed before December 31, 1982.

Annual designation of the chairman is an important Presidential prerogative. The chairman controls all staffing and generally manages the Agency. However, it does not appear that any of the alternatives to the current chairman would significantly alter the Board's current policy.

Table 1
Membership of the CAB

<u>Person</u>	<u>Position</u>	<u>Party</u>	<u>Term Expires</u>
Marvin Cohen	Chairman	Democrat	Dec. 31, 1985
Elizabeth Bailey	Member	Republican	Dec. 31, 1983
Gloria Schaffer	Member	Democrat	Dec. 31, 1984
George Dalley	Member	Democrat	Dec. 31, 1982
James R. Smith	Member	Independent	Dec. 31, 1986

Short-Term Options at DOT

In addition to his appointment power, the President can influence aviation policy through the work of the Department of Transportation. DOT's jobs in the aviation field are: (1) represent the President's policy before Congress; (2) represent the President's policy before the CAB; and (3) represent the President's policy in international negotiations and advise on other international aviation matters. DOT will have an important role to play in aviation matters in the first year because it appears that a congressional review of the Airline Deregulation Act of 1978 may be undertaken. And by representing the President's position knowledgeably and expertly to the CAB, DOT may be expected to wield substantial persuasive influence with a Board which does not itself have much expertise.

In addition, under the current law, after January 1, 1985, DOT will have direct regulatory responsibility for the domestic aviation subsidy program and for international aviation matters. (In the next section, it is suggested that DOT take over these responsibilities more quickly and the sunset of the Board be advanced to December 31, 1981.)

Therefore, it is very important that the staffing of DOT be carried out so that at least one high official is appointed who is very familiar with aviation matters, is capable of representing the President's aviation policy to Congress and to foreign governments, and, if necessary, is capable of establishing an efficient bureaucracy which is ready to take over administrative responsibility for various aviation policies.

There is currently no office within DOT devoted to aviation. Aviation matters are handled by the Assistant Secretary for Policy and International Affairs. The Assistant Secretary is advised by a Senior Aviation Adviser. The only staff devoted to aviation matters are those within the all-modes offices under the directorship of the Assistant Secretary, such as the Office of International Policy and Programs and the Office of International Policy and Programs and the Office of Regulatory Policy.

It is important that the new administration realize that appointments at DOT will have more affect on U.S. aviation policy than anything that the President can do at the CAB. Futhermore, with capable leadership from DOT, significant positive developments in aviation law are possible.

MEDIUM-TERM PROBLEMS AND OPTIONS

The deficiencies outlined in the above section will probably result in congressional hearings in 1981 on the matter of air service to small communities and the Board's administration of deregulation. Rather than allowing congressional discontent to fester with unpredictable results, the new administration should take the lead by proposing legislation to cure the deficiencies of current aviation policy. Legislation should be ready in mid-spring 1981.

The main points of such legislation should be as follows:

1. *Advance the Sunset of the CAB to December 31, 1981.* The Board's most basic power, control over entry, was abolished under the current law as of December 31, 1981. The Board today exercises virtually no control over low fares and very little control over high fares. The Board's major remaining powers are more properly under the control of the President—international aviation policy and protection of service to small towns.

As mentioned above, the Board's greatly diminished powers make it extremely difficult to attract good personnel to the CAB. Abolition of the CAB and transfer of remaining functions to DOT holds the promise of substantially improving the administration of the remaining aviation responsibilities of the U.S.

More important, by abolishing the CAB as soon as possible, the Administration will create a precedent which will make it easier to push for total abolition of other federal agencies, in the same way that the success of diminished aviation regulation has made possible the application of similar measures to surface transportation and, to a lesser extent, telecommunications.

Early sunset of the Board would probably be favored by all airlines. Some senators have already suggested this idea. The consumer groups and congressional representatives of rural areas possibly may oppose this measure, however, unless the following provision is also included.

2. *Grant the Secretary Authority to Prescribe Maximum Fares and Rates in Markets in Which There is Insufficient Competition to Control Prices.* Congressional members and consumer groups are very upset about the CAB's repudiation of its responsibility to control maximum prices in small town markets. Their fears are reasonable although, probably not often justified. In cases in which a small town truly is at the mercy of an air carrier, it may be reasonably argued that maximum fare regulation is needed.

The law's bias in favor of unregulated operation of the carriers should not be changed. There is no case for federal control of entry or of minimum prices. However, in cases in which the complainant can demonstrate the lack of competitive checks, governmental decree of maximum fares appears reasonable. In practice, a maximum price power would amount to no more than the power to force an airline to lower rates from a monopolistic level to a reasonable level. If the maximum prices were set any lower than a reasonable level, the airline would exercise its option to abandon the market (or it would get a federal subsidy to compensate for CAB mandated service). Such authority must be carefully drawn, however, so that it does not appear to amount to re-regulation of the industry. The maximum price orders should probably be statutorily limited to a relatively short time period, requiring the complainant to prove his case anew before another maximum price order can be issued.

3. *Prohibit Personal Discrimination.* Historically, unjust discrimination, rather than rate levels, has been the major problem instigating transportation regulation in the U.S. Explicit reinstatement of this prohibition may be necessary to forestall a demand for re-regulation in the future. Moreover, such a prohibition is reasonable and reflects longstanding national policy. The creative task of new legislation will be to design an effective and reasonably simple mechanism for enforcing this prohibition without retreating from the pro-competitive stance of the 1978 act. Rather than a new federal agency, however, a carefully drafted procedure by which complainants can obtain relief in federal court should be provided.

Such a provision would probably be popular with consumer groups and rural interests. There might be minor airline opposition. The most strenuous opposition would come from those who favor a public policy based strictly in economic efficiency.

4. *Provide for Allocation of Airport Slots by Open Competitive Bids.* A permanent statutory solution to the problem of allocating scarce slots at airports is desirable. Even though commuter airlines and small town passengers will generally be outbid for the most desirable landing times, the best solution is a simple open bid system for these slots. If prime time access to a congested airport is essential for a commuter airline serving a small town, then the commuter airline should be allowed to devote federal subsidy funds to the open bid process. The

funds received from the bid system should be devoted to expanding the facilities of the congested airport.

5. *Reporting Requirements.* The law is unclear whether air carrier reporting requirements for domestic operations end on January 1, 1985. While the substantive section is not altered, the Board itself is abolished. The function of administering this section is not explicitly transferred to DOT.

The continuation of the filing of minimal reports should be considered. One of the main reasons that airline deregulation was accomplished was that good data was available concerning the industry and these data led to careful academic studies proving the case for deregulation. The continuation of reports should be valuable in allowing long-term assessment of deregulation and help to prove the case for further deregulation of the economy. On the other hand, reporting requirements are today very burdensome. Therefore, the statute should be carefully drafted to limit DOT's power to require reports.

BUDGET

FY 1981

The Carter Administration has requested \$28.8 million for administering the CAB in FY 1981.

The Carter Administration has also asked for \$86.3 million for subsidy payments to the airlines. Of this amount, \$58.2 million goes to so-called "local service" airlines such as Hughes Airwest, Republic, and Piedmont which probably do not need subsidies. These subsidy payments are generally required by statute, but are being phased down to zero by January 1, 1986. The remaining \$28.1 million supports genuinely essential air service to small and Alaskan communities. The Administration is reported to be preparing a supplemental request for more airline subsidy funds, but this supplemental has not been announced.

FY 1982

If the Board's demise is legislatively advanced, as suggested above, the Board will require minimal funds in FY 1982 to allow the windup of its affairs. If sunset is not advanced, the Board will require somewhat less than \$28 million due to its continuing cutback on staff in anticipation of a January 1, 1985 termination.

The new administration should request as little as legally

possible in the subsidy for "local service" airlines. Nonetheless, given the rise in airline costs, this will probably amount to \$90 to \$100 million in FY 1982. A big drop in the subsidy will occur in FY 1983 when certain statutory standards are relaxed. The most desirable budget request would actually propose a reduction in the "local service" subsidy by proposing a one-year advance in the date on which these mandated standards are relaxed. Such a proposal, however, would be vigorously opposed by the local service carriers. On the other hand, from a sound political standpoint, the new administration should consider funding the true small town subsidy program somewhat more generously. As a rough estimate, it would be reasonable and politically popular to consider a 33 percent increase in this program, to about \$37 million.

LONG-TERM PROBLEMS AND OPTIONS

The enactment of the so-called International Air Competition Act of 1979 did not represent a thorough revision of U.S. international aviation policy. This policy is still evolving within the constraints of a world generally not very sympathetic to competition. The CAB has generally extended the laissez faire approach of domestic deregulation to international aviation, but this is not necessarily appropriate. Economies of scale, for example, appear to be much more important in international aviation than in domestic aviation.

Aside from the general question of the appropriate level of regulation in the international field, the most important problem is the selection of carriers to serve foreign countries. In the past, carrier designation has been extremely political, with the result that the public has not always received the best carrier. The CAB appears to be headed in the direction of a bid-type system in which the designation is given to that carrier which promises the most benefits to the public. While not yet refined, this approach appears sound and probably should be codified into a statute.

Overall, the whole matter of international aviation policy requires study with a view to substantial legislative or administrative reform, probably in 1982.

UNITED STATES POSTAL SERVICE & POSTAL RATE COMMISSION

James I. Campbell, Jr.

U.S. POSTAL SERVICE

The United States Postal Service is an "independent agency" of the United States federal government, established by the Postal Reorganization Act of 1970. It is very large. The Postal Service's projected budget for FY 1981 is \$21.2 billion, or 3.4 percent of the total federal budget. It is the largest commercial undertaking of the U.S. government (as large, for instance, as the entire U.S. airline industry).

The Postal Service is directed by the Board of Governors of the Postal Service. The Board is composed of eleven members—nine "Governors," the Postmaster General and the Deputy Postmaster General. The nine Governors are appointed by the President for nine-year terms with the advice and consent of the Senate. The Postmaster General and the Deputy Postmaster General are chosen by, and serve at the pleasure of, the nine Governors. The Postmaster General is the chief executive officer of the Postal Service. The Governors also select a chairman from the members of the Board.

The Postal Service's predecessor was the Post Office Department, an executive department of the President. Unlike the Post Office Department, the Postal Service now prepares its own budget, sets its own postage rates (with the approval of another agency, the Postal Rate Commission, see below), bargains collectively with its employees, and generally operates without prior approval of either the President or Congress.

Congress has defined the mission of the Postal Service (39 U.S.C. 403) as follows:

The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and . . . throughout the world, written and printed matters, parcels, and like materials. The Postal Service shall service as nearly as practicable the entire population of the United States.

The Postal Service is further directed to give the "highest consideration to . . . the most expeditious collection, transportation, and delivery of important letter mail." (39 U.S.C. 101(e)).

This general statement of the Postal Service's duty is modified and amplified by various special obligations and constraints. First, Congress specifically directed the Postal Service to provide "a maximum degree of effective and regular postal service to rural areas" served at a loss and required the Postal Service to litigate the closing of any rural post office before the Postal Rate Commission. Second, the Postal Service generally cannot alter its prices without the approval of the Postal Rate Commission. Third, the Postal Service is required to establish a first-class letter rate that is uniform throughout the United States even though such a rate may not be commercially reasonable. Fourth, Congress has directed that certain items be carried at free or reduced rates: diplomatic correspondence; mail matter of the blind or handicapped; local, non-profit, and classroom periodical publications; bulk non-letter mailings of non-profit religious, educational, scientific, philanthropic, agricultural, labor, veterans, and fraternal organizations and by political committees; cultural or educational matter generally; and library materials between libraries.

Congress also provides many forms of special assistance to the Postal Service. The Postal Service is granted an annual "public service" subsidy. Under the Act, this subsidy will decline to about \$460 million in FY 1984 and thereafter. The Postal Service is also given a so-called "revenue forgone" subsidy which is keyed to postal rates and the amount of mail carried at free or reduced rates set by Congress. It is unclear, however, whether this revenue is, in any meaningful sense, "forgone," i.e., revenue that the Postal Service would have earned but for congressional directives. A second important benefit is the postal monopoly: criminal laws prohibit private companies from carrying "letters without payment of postage,"

a term the Postal Service argues covers all of first and most third class mail. Third, the Postal Service's revenues and bonds are exempt from state and federal taxes. Fourth, the Postal Service also has priority boarding for its freight on common carriers and gets free transportation for its employees. Finally, the Postal Service is the official representative of the United States in dealing with foreign post offices.

There is no logical connection between the special benefits given the Postal Service and the duties and obligations imposed by Congress.

POSTAL RATE COMMISSION

The Postal Rate Commission is an "independent establishment of the executive branch." It is composed of five Commissioners, appointed by the President, with the advice and consent of the Senate. Each commissioner serves a six-year term. A commissioner is designated by the President as chairman and serves in that capacity at the President's pleasure. The Postal Rate Commission is funded through the Postal Service; its budget may be reduced by unanimous vote of the Board of Governors.

The Postal Service is required to submit to the Postal Rate Commission any change in postal rates, mail classifications, or other "changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." Commission should read "While postal rate changes may only be proposed by the Postal Service, the Commission may 'on its own initiative' propose mail classification changes. Individual parties may also file rate or service complaints with the Commission." *See* 39 U.S.C. §§ 3622, 2623, 3661 and 3662. The Commission must hold a public hearing on proposals originated by the Postal Service and return a recommended decision to the Governors. The Governors may approve, allow under protest, reject, or modify the Commission's recommended decision. If a decision is allowed under protest, the Governors can either submit the matter to the Commission or appeal to the courts. The Governors can also reject the recommended decision and resubmit it to the Commission. If the Governors agree unanimously, they can modify a recommended decision in any manner that the Governors deem consistent with the postal code and the revenue needs of the Postal Service. If a recommended decision allowed under protest or a recommended decision

modified by the Governors is appealed to the Court of Appeals, the Court is apparently limited to affirming the action or remanding it to the Postal Service.

With a cohesive majority under strong, imaginative leadership and with the tacit cooperation of at least one Governor and one complainant (say, the Council on Wage and Price Stability), the Postal Rate Commission could be very influential in shaping future postal policy. The Commission can virtually force the Postal Service to establish reasonable prices and mail classifications, without waiting for proposals from the Postal Service. Moreover, notwithstanding the Commission's prior reluctance, the Commission's power to disallow unreasonable costs in approving postage rates is, in effect, the power to approve or disapprove the Service's costs.

Overall, the Commission has not used its powers as aggressively as possible but it has carefully and conscientiously tried to regulate the relationship between various postage rates. In the last three years, there have been two especially noteworthy decisions by the Commission. In 1978, the Commission voted three to two to deny the Postal Service's proposed "citizens' rate mail" (which would allow household originated letters to be posted at 13¢ instead of 15¢). This proposal was generally opposed by business groups. In 1980, the Commission, again by a three-to-two vote, rejected the Postal Service's proposed entrance into the telecommunications business, a proposal strongly opposed by telecommunications companies.

SUMMARY OF PRESENT U.S. POSTAL POLICY

The postal policy of the U.S. embraces several conflicting themes, as follows (this list of basic goals would not necessarily be agreed to by Postal Service officials):

1. The basic mission of the Postal Service is the mass, regular delivery of personal correspondence. The Postal Service should deliver personal correspondence expeditiously throughout the United States.

2. The prices of postal services should be set so that the services are paid for by users, except the United States should subsidize services to small towns and other places in which postal service cannot be sustained at prices reasonably similar to those paid by large city patrons. The Postal Service's costs should be reasonable and appropriate to the services rendered.

3. Postal services should be used as a means to promote—and

indirectly subsidize—blind and handicapped persons, members of the armed forces, and readers of newspapers, magazines and educational literature.

4. Within the framework of the public interest services mandated by Congress, the Postal Service should be operated on the basis of objective, non-political, economic criteria and free from political influence on personnel selection.

SUMMARY OF PRINCIPAL DEFICIENCIES OF EXISTING POLICIES

The Postal Service's Costs Are Too High and Largely Out of Control

The Postal Reorganization Act of 1970 granted the postal unions the right to bargain collectively. Professor Douglas Adie, an expert on postal economics, estimates that "postal workers [earn] in excess of 40% higher wages than the average American and [enjoy] far greater job security, pensions, and fringe benefits." In FY 1979, the Postal Service paid an average of \$21,946 in wages and benefits per work year—that is, averaging over all employees including part-time employees. The comparable figure for FY 1980 is \$24,009; for FY 1981, \$26,383. Moreover, the Postal Service has contractually guaranteed most permanent postal employees lifetime jobs.

Even assuming that postal workers should be paid as much as the average American and that the Postal Service actually needs all the persons currently on the payroll, this finding suggests that almost one-third of the Postal Service's entire budget is excess wages. Unless postal unions moderate their wage demands in the future, it will be very difficult to bring postal costs into line with competitive communications modes in the foreseeable future.

The Overall Price Level of Postal Services is Too High and Largely Out of Control

The prices of postal services have increased more than twice as fast as inflation in the last decade. First-class mail rates have risen from 6¢ in 1968 to 13¢ in 1975, 15¢ in 1978, and a proposed 20¢ in 1981.

Keeping the prices of postal services within reasonable bounds is the job of the Postal Rate Commission. However, the Postal Rate Commission "firmly rejects any notion that its role is that of an 'inspector general' attempting to oversee or vouch for every aspect of the Postal Service's performance or effi-

ciency." In other words, the overall level of postal prices is determined on a simple "cost plus" basis. The Commission refuses to exert any significant restraint on the level of postal prices based upon its own independent judgment as to which costs are reasonable, *despite its statutory authority to do just that*. Since only the Postal Rate Commission has authority to restrain postal price increases, there is no restraint at all, except insofar as costs themselves are restrained.

The Scope of the Postal Monopoly is Being Expanded by the Postal Service by Means of Vague and Overboard Administrative Interpretations

By virtue of an 1872 statute, the Postal Service has a monopoly over the regular carriage of "letters." There is no legislative history to suggest that Congress meant "letters" to mean anything but that which is called "letters" in everyday usage, and in the ensuing decades, the lawyers for the Post Office have interpreted "letters" to mean "current and personal correspondence."

The Postal Service, however, has issued administrative regulations stating that the term "letters" as used in the postal monopoly statutes (but not other statutes) refers to virtually any tangible object bearing information to any identifiable person or address. In recent years, the Postal Service has claimed that its letter monopoly includes such items as payroll checks, fishing licenses, Walt Disney posters, football tickets, IBM cards, blueprints, data processing tapes, computer programs, gasoline company credit cards, intra-corporate memoranda, and documents which have been electronically transmitted. As a former General Counsel of the Post Office has stated, the Postal Service now claims a monopoly over items that "no one in their right mind would have ever believed come close to the definition of a letter." Judge Malcolm R. Wilkey of the D.C. Circuit Court of Appeals summed up the situation: "[The Postal Service] has always latched onto whatever interpretation of a word "letter" which would give it the most extensive monopoly power which Congress at that time seemed disposed to allow."

Using this broad claim of monopoly, Postal Service inspectors threaten businessmen with large (but apparently unauthorized) back-postage fines for all items sent by private carriers. Business resentment over these tactics led Congress to hold hearings on the postal monopoly laws in 1978 and 1979. As a result, the Postal Service waived its claim of monopoly over

certain items about which the protest was the loudest—time-sensitive documents and advertisements included in boxes of merchandise. Still, the discrepancy between statute and administrative claim and the Postal Service's use of its regulations to intimidate businessmen remain as problems.

The Postal Service Appears Headed for Increasing Deficits.

Notwithstanding a projected subsidy of \$1.6 billion, the Postal Service expects a deficit of \$2.4 billion in FY 1981. This figure, however, does not take into account postal rate increases which should take effect in early spring of 1981. There are limits to the level to which the Postal Service can raise its prices. Many magazine publishers, for example, are already using private delivery services.

The Postal Service and Electronic Telecommunications

Historically, the United States has maintained a sharp line between the public postal business and private telecommunications companies. Neither was allowed to venture into the work of the other. In 1978, the Postal Service proposed to offer a service whereby it would accept electronic messages that could be converted into letters, electronically transmit them to a post office near the addressees, convert them to hard copy letters, and deliver the letters via the normal first class delivery system.

The Postal Rate Commission found that proposal anti-competitive and recommended that the Postal Service leave the electronic transmission to others and confine itself to the receipt, printing out, and delivery of electronic messages. The Commission left the door open, however, for the Postal Service to operate its own telecommunications network in the future and the Postal Service has indicated that it will press Congress for clear authority to do so.

There appears to be no public interest in the Postal Service directly engaging in electronic telecommunications operations. On the other hand, there may or may not be a public interest in allowing the Postal Service to modernize (1) by purchasing telecommunications services from private companies; that is, in effect, allowing the Postal Service to contract with a telecommunications carrier in the same way that it contracts with airlines, railroads, and trucking lines; or (2) by allowing the Postal Service to accept messages sent to it via private telecommunications carriers, convert the message to hardcopy, and place the message in the first-class mail stream.

The primary danger in permitting the Postal Service to modernize in these two ways is that the Postal Service may attempt to use its monopoly to gain a competitive edge over private competitors. If such anti-competitive dangers can be avoided, permitting the Postal Service to modernize in this manner might improve a small but significant portion of the Postal Service's operations.

SHORT-TERM OPTIONS

Overall Presidential Strategy

Early in the new Administration, the President should develop an overall, interim strategy for dealing with the Postal Service.

It is suggested that the basic elements of this strategy should be as follows:

The President Should Keep His Distance From, and Not Try to Assume Direct Control Over, the Postal Service.

The Postal Service appears headed for another round of financial troubles, congressional debate, and deteriorating service. The President today has little direct control over the Postal Service and should not try to assume public responsibility for that which he cannot control.

To gain direct control over the Postal Service would require a long legislative effort to repeal much of the thrust of the 1970 Reorganization Act. It is very unclear whether re-politicizing the Postal Service would be wise. Moreover, even if the President took over administration of the Postal Service, it is difficult to see what he could do to prevent the impending problems. Therefore, it is probably best that the President not expend the effort necessary to resume administrative control over the Postal Service.

The President Should Construe the Present Monopoly Narrowly and Propose Direct Subsidy of Rural Postal Services.

The Postal Service's costs must be brought under control for the good of the nation. There appear to be only two ways to control postal costs: either (1) by public utility rate regulation by either Congress or an independent agency; or (2) by competition. Given the pervasiveness of postal service, regulation by Congress has shown itself to be politically impossible; the Commission has failed even more emphatically to hold down

costs. The only method that holds any promise of working is the traditional alternative—competition.

While more competition might have an adverse effect on the Postal Service's financial position in the short run, it appears to be the only viable long run solution. More competition should greatly strengthen the hand of Postal Service management in the contract negotiations of 1982 since it will be difficult for the postal unions to threaten a strike or to demand much higher wages. (In this respect, it may be desirable to propose a legislative reform of 39 U.S.C. 1207 which requires binding arbitration of labor agreements). At the same time, the President should oppose proposed changes in the criminal code that would strengthen the penalties for competing with the Postal Service.

There are three possible strategies for providing more competition in the postal business: (1) announce an Attorney General's opinion that construes the current postal monopoly narrowly (short term option); (2) propose legislation to redefine or repeal the postal monopoly (medium to long term); or (3) after a majority of Postal Rate Commission members are picked, have the Commission assume authority to interpret the monopoly laws (long term). Although an Attorney General's opinion will have limited effect since it can only interpret, not alter, the current statutory monopoly, it can be issued immediately and is more controllable than a Congressional or Commission decision. Therefore, it appears to be the best option available.

A narrowing of the postal monopoly, by any means, would be widely praised by businessmen, but would be opposed by the Postal Service, postal unions, and those who think they receive a subsidy from the Postal Service (for example, newspapers, magazines, and greeting card manufacturers).

A move toward more competition must also take into account those postal services which are often said to be "public interest" in nature and might be jeopardized by increased competition with the Postal Service. First, service to rural areas is carried on at a loss by the Postal Service, although the subsidy is hidden in the general postal appropriations. Rural service is an extremely sensitive political issue. The new administration should propose to guarantee the current level of rural postal service for ten years and a *direct* subsidy to pay the Postal Service for proven losses incurred in carrying out this guarantee (See discussion below.). Second, the Postal Service carries newspapers, magazines, and educational mate-

rial at reduced rates; Congress already directly subsidizes this traffic. Given the Postal Service's financial problems and the political sensitivity of this topic, this direct subsidy should, at least for now, be continued, but only under the current statutory scheme which phases out much of this subsidy. Third, competition may endanger the uniform first-class mail rate. It is unclear, however, why a uniform first-class mail rate is in the national interest. Further, it is unknown how much, if any, more competitive rates would vary with distance. Given these unknowns, it would be best to wait and see the degree to which added competition affects the uniformity of first class mail rates and the public's reaction to such changes.

The President Should Appoint Tough-minded, Economically Sophisticated Members To the Postal Rate Commission.

The Commission has very substantial powers to control the Postal Service's prices, services, and indirectly, costs. The appointments to the Commission will need to be supplemented by a least one good appointment to the Board of Governors.

The President Should Order a Review Of the Postal Service's Role. If Any, in Telecommunications.

See discussion below.

Order the Attorney General to Issue an Opinion Narrowly Construing the Current Postal Monopoly Law.

Historically, the Attorney General was deemed the official authorized to issue administrative interpretations of the criminal laws. While the Postal Service's postal monopoly regulations were given some recognition in a recent court case, there is no reason why the Attorney General may not lay claim to a superior right to speak for the Executive on the scope of the postal monopoly in view of the following considerations: (i) the Department of Justice, not the Postal Service, is primarily responsible for enforcement of the postal monopoly; (ii) the laws creating the postal monopoly are criminal; and (iii) the Postal Service has a financial interest in interpretation of the postal monopoly laws.

An Attorney General's narrowly construing current postal monopoly law would not abolish the monopoly. However, it would provide some assurance to businessmen who need to use private alternatives and would thus provide a marginal increase in the competitive check on escalating postal costs. An

Attorney General's opinion also has the advantage that it can be issued quickly and can be controlled by the Executive.

The basic thrust of the opinion should be to interpret the term "letter," as used in 18 U.S.C. 1693-99, in accordance with everyday usage and probably the original Congressional intent. The term "letter" should exclude any document which has been electronically conveyed at some point between origin and destination. In addition, "regular carriage," as used in 18 U.S.C. 1696, might be interpreted to exclude any type of carriage service that did not exist when the law was originally enacted (1872), i.e., parcel post and express mail services (basically codifying exemptions already recognized by the Postal Service, 39 C.F.R. 320).

If it is to be issued, the Attorney General's opinion should be issued as soon as possible. While fears of the Postal Service and its employees over any change in the postal monopoly appear to be wildly exaggerated, it may be that a narrow construction of the current law will give rise to competition for the carriage of non-letter documents which is somehow too zealous from a public policy standpoint. By immediately issuing a careful Attorney General's opinion, the Administration will leave itself adequate time to assess the practical impact (if any) of the opinion and to develop legislative proposals for modifying and perhaps expanding the current monopoly statute in a manner suited to the twentieth, rather than the nineteenth, century. Furthermore, immediate issuance of an Attorney General's opinion will serve as a useful signal to the negotiators who, in spring 1981, will begin to work on a new postal contract. A pro-competitive attitude on the part of the Administration should strengthen the hand of the Postal Service management in its attempt to keep down postal costs.

An Attorney General's opinion could also serve as a basis for ensuring the competitiveness of the international flow of documentary data, a policy clearly favorable to the high technology industry of the U.S. International Express Mail is established by bilateral agreements which must be approved by the President. 39 U.S.C. 407. The International Express Mail program is just getting started. So far the U.S. only has agreements with approximately 17 countries. To promote the free flow of documentary information, the President might consider withholding his approval of International Express Mail agreements unless the agreement recognizes the principle that express services—as opposed to traditional letter-post services—should be freely competitive and the information

contained therein should not be subject to duty (see 19 U.S.C. 1202 sec. 870.10).

It should be noted that the Department of Justice is the lawyer for the Postal Service. Therefore, careful monitoring by the White House and the Attorney General himself is essential to ensure that the resulting Attorney General's opinion correctly reflects the President's policy.

Order the Secretary of Commerce to Develop an Administrative Policy on Postal Service Participation in Telecommunications.

On July 20, 1979, after a six-month inter-agency inquiry headed by the Domestic Policy Advisor to the President, the Carter Administration generally endorsed the Postal Service's proposals to enter some aspects of the telecommunications business. This statement is vague and ambiguous. Much of what was then proposed has already been outdated by legal and policy decisions of the Postal Rate Commission and the Federal Communications Commission.

The Administration should immediately begin to develop a new, sounder policy of postal participation in telecommunications (if any). The task should be assigned to a Cabinet official since it will be necessary to formally present the Administration's position to Congress. Hearings may be expected relatively early in the 97th Congress. The only possible Cabinet official for this job appears to be the Secretary of Commerce. The Secretary of Commerce is the President's principal adviser on telecommunications policies (Ex. Order 12046, July 20, 1979). Furthermore, the Postal Service is primarily an instrument of commerce; about three quarters of first-class mail is bills and transactions rather than personal correspondence. (The Carter Administration attempted, without success, to "make do" with an official from the Office of Management and Budget and the Domestic Policy Advisor as the spokesmen for postal policy.)

MEDIUM-TERM PROBLEMS AND OPTIONS

Propose Legislation to Guarantee and Directly Subsidize Rural Postal Service.

The most politically powerful argument for the postal monopoly and postal subsidy is the prospect of rural areas losing satisfactory postal service. No one knows, however, how much of the direct and indirect subsidy given the Postal Service

actually is used to support rural service. Therefore, any proposal to cut back on the postal monopoly or postal subsidy is opposed by members of Congress from rural areas who fear that their district is at the "end of the line" and will be cut off first. The best solution appears to be automatic appropriations specifically dedicated to rural postal service in much the same way that appropriations are dedicated to supporting rural airline service or reduced rate postal service for educational institutions.

In order to gain needed support for legislation to end the postal monopoly, the new administration should consider proposing legislation to subsidize rural postal service directly and to guarantee the current level of service *for a finite period of time*. As a first step in the preparation of such legislation, the Office of Management and Budget should require the annual budget of the Postal Service identify losses incurred in service to specific rural areas. See 39 U.S.C. 2009. As suggested in the previous section, the legislation itself should be drafted by the Secretary of Commerce.

Appointments at the Postal Rate Commission and Board of Governors

The new President will be able to replace Commissioner Dupont immediately and designate the new commissioner as chairman. He will also be able to name a new Governor to the Board to replace Governor Wright.

BUDGET

FY 1981.

The budget appropriation for the Postal Service for FY 1981 is \$1.593 billion.

The postal budget is not recalculated each year; it is set by the statutory formulae for the "public service" and "revenue forgone" subsidies set out in the Postal Reorganization Act of 1970. See discussion above.

FY 1982.

The "public service" portion of the FY 1982 budget will decline \$92 million to \$644 million. The "revenue forgone" portion of the subsidy will depend upon the outcome of the current postal rate case which should be concluded in February 1981. Overall, the total appropriation will probably drop slightly from the FY 1981 level.

Any attempt to revise the formula of the Postal Reorganization Act will open a Pandora's box of powerful political applicants for postal subsidies. The new administration should take the formula of the Postal Reorganization Act as a given, adding the rural postal service subsidy program discussed above.

PERSONNEL

The implications of the above analysis on immediate personnel decisions are as follows:

1. The Secretary of Commerce and/or the Assistant Secretary for Communications and Information should have some familiarity with the issues in the debate over the Postal Service's potential role in telecommunications and should be sympathetic to the President's general policies in this matter.

2. The Attorney General and/or the Assistant Attorney General for Antitrust and/or the Assistant Attorney General, Office of Legal Counsel, should have some familiarity with the issues in the debate over the Postal Service's monopoly and should be sympathetic to the President's general policies in this matter.

3. The new President will have one vacancy in the Board of Governors to fill. The appointee should be prepared to support to the Postal Rate Commission, once it becomes dominated by members of the President's persuasion. The President also may fill one new slot on the Postal Rate Commission.

LONG-TERM PROBLEMS AND OPPORTUNITIES

Order the Secretary of Commerce to Develop a Revision of the Entire Postal Code.

The Postal Reorganization Act of 1970 has so many flaws that a complete revision should be considered. Following are some of the major issues that should be addressed:

1. The postal monopoly is based upon nineteenth century concepts which are almost completely inappropriate to today's methods of communication. The postal monopoly and related restrictions on the use of mail boxes by private parties should probably be abolished entirely. At the very least, the concept should be updated in the light of economic and technological developments since 1872, the date of the enactment of the current statute.

2. The Postal Service should probably be given greater control over its pricing policies. The postal statutes now require the pricing on the basis of fully allocated costs—a somewhat arbitrary and restrictive requirement.

3. The general public service subsidy, which is phased down to \$46 million per year in FY 1984, should be phased out entirely and replaced by direct, dedicated subsidies such as the rural postal service subsidy described above.

4. All the “revenue forgone” subsidies should be reexamined and restructured so that they benefit the intended beneficiaries rather than merely support a bloated Postal Service.

5. The concept of the Board of Governors should be reexamined; it appears to be largely ineffective and a waste of money.

6. The long term future of the Postal Service should be reexamined. In a competitive age in which the telephone, not the post, provides essential communications, it is unclear why there should be a publicly owned and supported national document delivery company.