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 31st day of March, 1978

Application of S.B. CRAFT AND N.Y. CRAFT, D/B/A STANDARD AIRWAYS for exemption pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended.	Docket 30693
Application of TRANSOCEAN AIR LINES, INC. for an exemption pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended.	Docket 30723
FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION	Docket 32327

O R D E R

In April, 1977, Standard Airways and Transocean Air Lines 1/filed separate applications for authority to engage in supplemental air transportation domestically and between the U.S. and most of the rest of the world. 2/ The applicants are two of a group of persons who once held operating authority from the Civil Aeronautics Board as large irregular air carriers or "non-skeds"; who applied for certification as supplemental air carriers but either were denied it or had it cancelled; and who, as a consequence, no longer hold authority to engage in air transportation.

1/ The full names of the applicants are respectively, S.B. Craft and N.Y. Craft d/b/a Standard Airways and Transocean Air Lines.

2/ Specifically, Standard and Transocean seek exemptions from section 401 (d) (3) of the Act which would authorize them to engage in supplemental air transportation domestically and between any point in the United States, its territories and possessions, on the one hand, and any point in South America, Central America, Canada, Mexico, Africa, Europe, India, China, Australia, Micronesia and South Pacific, on the other hand. Standard wishes also to serve Scandinavia, Japan and Antarctica, and Transocean seeks additional authority to the Middle East, Southeast Asia, Asia, U.S.S.R., and Siberia. Both applicants request world-wide military authority. Both request that the authority be for a minimum period of 36 months.

In recent years, some of these former non-skeds have stated in every available forum -- including hearings before the Subcommittee on Monopoly of the Senate Select Committee on Small Business, a presentation to the Board, and voluminous correspondence with the Board, individual Board Members, and members of the Board's staff -- that they want to regain authority and resume common carrier air operations. Many of them argue that they were denied supplemental certificates illegally and, therefore, that they are entitled as a matter of right to "grandfather" supplemental certificates or certificates restoring them to their status as large irregular air carriers.

Basically there are three types of operating authority which some or all of them seek. Although not all of their requests are before us in these dockets, we want to clear the air by discussing them generically and stating what we are prepared to do as well as what we will not or cannot do.

First, some of them seek reinstatement as large irregular air carriers. Specifically, they want nationwide authority to engage in regularly scheduled and individually ticketed air transportation in markets of their own choosing but subject to frequency and regularity restrictions and, perhaps, conditioned on the offering of low fares. Second, some of them seek certification in various markets as scheduled air carriers. Third, some seek authorization by certificate or exemption as supplemental air carriers.

The first of these, the recreation of their status as large irregular air carriers, is the one thing that is clearly beyond the power of the Board under existing law. The supplemental air carrier amendments to the Federal Aviation Act and their legislative history leave no doubt that Congress intended to eliminate the kind of operations authorized in the Large Irregular case. In the face of that prohibition we cannot restore these carriers to the status of large irregulars.

The second, certification in individual markets as scheduled carriers, is open to any and all of the former non-skeds. In fact, four of them are applicants in the pending Transcontinental Low-Fare Route Proceeding, Docket 30356. Each is free to file a motion to consolidate its own application into any other route proceeding set down by the Board and, in addition, to file applications together with motions for hearing in any other markets. Each is also free to propose operations in individual markets similar to the ones they had the authority to conduct, on a nationwide basis, as large irregular air carriers. We will give each such application full and fair consideration.

Finally, they seek authority as supplemental air carriers; and this, in essence, is what Standard and Transocean have requested, by exemption, in the present cases.

In support of their applications they state that they first began operations in air transportation in the 1940's, later received CAB Letters of Registration as non-certificated large irregular air carriers, and later were made supplemental air carriers; and that, in light of their extensive operating history, they are well experienced to provide the service they now propose. They argue that there is a serious lack of U.S. charter air carriers and aircraft; 3/ that, as a result, foreign charter operators are carrying significant amounts of U.S. traffic to the detriment of the national balance of payments; that the President of the United States has recognized the urgent need for additional competitive low cost air services; and that, under these circumstances, it would be in the national, public and economic interest of the U.S. to grant the requested exemption applications. Neither Standard nor Transocean owns large jet aircraft at this time. They advise that they will lease suitable aircraft upon receiving this exemption authority. Both applicants also filed motions requesting that their applications be treated expeditiously without formal hearings. Alternatively, they seek expeditious hearing. 4/ Further pleadings in these two dockets are summarized in the margin. 5/

3/ Standard observes that in 1966 there were 13 supplemental carriers and that today there are fewer than five capable of accommodating the nation's international charter demands.

4/ Each applicant further filed a motion requesting that its application be consolidated with those of other "Grandfather" supplemental airline applicants seeking exemption authority to engage in air transportation. By Order 77-6-23, the Board denied these motions to consolidate with Docket 30356, Transcontinental Low-Fare Route Proceeding, which involves charter authority only as an incident to the scheduled authority which is the principal focus of the case. The Board stated its intention, however, to consider the exemption applications together. On June 27, Standard and Transocean petitioned the Board for reconsideration of Order 77-6-23. This petition was denied by Order 77-11-39.

5/ American Airlines, Braniff Airways, National Airlines, Pan American World Airways and Trans World Airlines (trunkline carriers) jointly filed answers opposing both applicants' exemption applications and their motions for expedited proceedings. The trunkline carriers' answers to Transocean were accompanied by motions requesting leave to file the answers late, which we will grant. United Air Lines has also filed an answer in opposition to Standard's exemption application.

The trunkline carriers suggest that the Board summarily dismiss the two applications on the ground that they are legally deficient in material respects. They argue that it would be impossible for the applicants to make the required showing for an exemption and that they should seek certificates if they want supplemental authority. The trunkline carriers also contend that the applicants have failed to demonstrate any facts that would justify expeditious treatment.

Standard has replied and Transocean has, by reference, adopted Standard's reply. Transocean further adopted as part of its reply the entire record of the Senate Subcommittee on Monopoly of the Select Committee on Small Business hearings into "The Decline of Supplemental Air Carriers in the United States," held in October 1976 and February 1977.

We are genuinely receptive to applications for entry into air transportation by persons not now holding operating authority, and for that reason it is with great reluctance that we have decided to deny Standard's and Transocean's exemption applications.

Their applications are broad in scope: they request worldwide supplemental authority, using an unlimited number of aircraft of unspecified size, for a period of 36 months. While we might be willing in some circumstances to grant authority by exemption under any of these three conditions standing alone, we are reluctant to approve the combination of authority requested by these applicants. The exemption process is not intended to cover applications of that magnitude. It is well established that the Act contemplates a basic framework of certificated air service for both route and supplemental air transportation. The Board's authority to grant exemptions is limited to situations in which it finds that enforcement of the certificate requirements would be "an undue burden on a carrier by reason of the limited extent of, or unusual circumstances affecting, the operations" of that carrier, and is not in the public interest. The courts have held, in this connection, that Congress did not carefully construct provisions for the certification of carriers, and at the same time give the Board "power to destroy those elaborate provisions," American Airlines v. CAB, 235 F.2d 845, 850 (D.C. Cir.) cert. denied, 353 U.S. 905 (1956).

Standard and Transocean have not made a showing of an immediate need for their proposed services strong enough to justify the extraordinary relief they request. Nor have they demonstrated that certification proceedings would be unduly burdensome. In light of these considerations we must conclude that the public interest does not warrant exemption from the ordinary certification procedures mandated by the Act.

Our denial of the exemptions, however, is not a bar to operating authority for these carriers. We are at this time opening a separate docket to consider applications for supplemental certificate authority under section 401 (d) (3) of the Act; our solicitation is aimed primarily, though not exclusively, at the former large irregular air carriers. Applicants will have twenty-one days from the service date of this order to file their applications with the Board in a new docket, entitled Former Large Irregular Air Service Investigation. The application should specify the geographic area over which supplemental authority is requested and the nature of the operations for which certification is sought. After the applications are received we will make a prompt determination on whether to set them for hearing.

We make three observations about any such applications. First, that we will, consistently with the requirements of section 401 of the Act, examine the fitness of applicants to provide the service they propose; while previous air transport experience is clearly relevant to the issue of fitness, we will not find fitness solely on the basis of earlier operations. An applicant in this proceeding will be required to demonstrate that it is currently fit, willing and able to conduct operations, as required by section 401 (d) (3).

Second, we will not grant "grandfather" certificates, we are not reopening the records of past proceedings, and we will not undertake an investigation into the history of supplemental air transportation.

Third, we intend to conduct the necessary proceedings, including any hearing, expeditiously and with a minimum of expense to these small entrepreneurs. We will therefore waive the filing fees which would otherwise be required. If there are hearings, the presiding administrative law judge shall also manage the case with a view toward minimizing the cost to the applicants.

ACCORDINGLY, IT IS ORDERED THAT:

1. The motions of Standard and Transocean for expedited treatment of their applications be dismissed;

2. The motions of the trunkline carriers to file answers late to Transocean's application and motion for expedited treatment be granted;

3. The applications of Standard in Docket 30693 and Transocean in Docket 30723 be denied; and

4. A new Docket 32327 be established in which applications for certificates to perform supplemental air transportation may be filed within 21 days of the effective date of this order.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

All Members concurred.