

FEDERAL TRADE COMMISSION DECISIONS  
Findings, Opinions and Orders

IN THE MATTER OF  
THE REUBEN H. DONNELLEY CORPORATION  
FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION  
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT  
Docket 9079. *Complaint, April 13, 1976—Final Order, Jan. 10, 1980*

This order requires, among other things, a New York City firm to cease, in connection with the publication of the Official Airline Guide—North American Edition, or any successor publication, from failing to publish connecting flight listings for commuter air carriers in the same manner as those published for certificated air carriers; or otherwise arbitrarily discriminating against any air carrier or class of air carrier in the publication of such listings.

Appearances

For the Commission: James C. Egan, Jr., Steven A. Newborn,  
Elizabeth J. Keefer and W. Risque Harper.  
For the respondent: William H. Buchanan, New York City and  
Elroy H. Wolff, Thomas J. Hearity and George W. McBurney, Sidley &  
Austin, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating Section 5 of the Federal Trade Commission Act, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint charging as follows:

I. Definitions

1. For purposes of this complaint, the following definitions shall apply:  
"Direct flight" means scheduled passenger air transportation service which, regardless of the number of stops between cities of origin and destination, does not require a change in aircraft;

## Complaint

"Connecting flight" means scheduled passenger air transportation service which requires a change in aircraft between cities of origin and destination served by separate direct flights, whether such change in aircraft involves more than one air carrier or a single air carrier.

## II. Respondent

2. Respondent, The Reuben H. Donnelley Corporation, is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal [2]office and place of business at 825 Third Ave., New York, N. Y. It is a wholly-owned subsidiary of Dun & Bradstreet Companies, Inc., 299 Park Ave., New York, N. Y., which in 1974 had combined operating revenues in excess of \$504 million and total assets in excess of \$345 million. Respondent is engaged, *inter alia*, in the publication, distribution and sale of various publications relating to travel and transportation, including the "Official Airline Guide—North American Edition" ("OAG"), a bi-monthly publication which combines the flight schedules and fares of all scheduled airlines in the United States, Mexico, Canada and the Caribbean into one directory.

## III. Jurisdiction

3. From offices located at 2000 Clearwater Drive, Oak Brook, Illinois, respondent distributes and sells the OAG to subscribers located throughout the United States. The policies, acts and practices of respondent as alleged herein at all times relevant hereto have been in or have affected commerce within the meaning of the Federal Trade Commission Act.

## IV. Nature of Trade and Commerce

4. The OAG is now and at all times pertinent hereto has been the only publication distributed and sold in the United States that combines the passenger flight schedules of all domestic air carriers, and it is now and for many years has been the standard reference for airline ticket offices, travel agents, businesses, and the public generally in ascertaining available flight schedules between city pairs in North America. Approximately 172,000 copies of each bi-monthly OAG issue are sold to such subscribers.

5. Scheduled air passenger transportation service in the United States is advertised, sold and furnished to the public by (1) air carriers whose routes and fares are regulated by the Civil Aeronautics Board pursuant to certificates of convenience and necessity or other economic authority issued by it ("certificated air carriers"); (2) air carriers

operating pursuant to Part 298 of the Economic Regulations of the Civil Aeronautics Board without regulation of routes or fares ("commuter air carriers"); and (3) air carriers whose routes and fares are regulated in varying respects by exclusive authority of the individual State in which each such carrier's operations are limited and confined ("intra-state air carriers"). [3]

6. Certificated air carriers consist of "trunkline" air carriers whose routes include service between and among major metropolitan airport facilities in the United States and North America; "local service carriers" whose operating authority is limited to short-haul service as distinguished from service rendered by trunkline air carriers; and "foreign air carriers" which, *inter alia*, also offer short-haul service in North America pursuant to recognized certificates or equivalents issued by their sovereign governments. A substantial portion of passengers flying local service and foreign air carriers begin or end their journey on connecting flights with trunkline air carriers.

7. Commuter air carriers operate either short-haul service between major metropolitan airport facilities and surrounding smaller community airport facilities, or between such smaller communities, or both. A substantial portion of passengers flying commuter air carriers either begin or end their journey on connecting flights with trunkline air carriers.

8. Intra-state air carriers operate direct flight service over routes between major metropolitan airport facilities and smaller communities or between such smaller communities, or both, within the same state.

9. Except to the extent that competition has been restrained, lessened and eliminated by the acts and practices of respondent as alleged by this complaint, in many instances individual commuter air carriers are engaged in substantial competition with one or more certificated air carriers by offering both direct and connecting flight schedules between the same city pairs, and individual intra-state air carriers are engaged in substantial competition with one or more certificated air carriers by offering direct flight service between the same city pairs.

10. Significant elements of competition between certificated air carriers and commuter air carriers and between certificated air carriers and intra-state air carriers include flight departure times in relation to flights of each other, inclusion of these schedules in the OAG, and the sequence in which such schedules are published in the OAG.

11. At all times hereinafter referred to, publication policies of the OAG have been formulated and/or modified by respondent following consultations with certificated air carrier members of the Air Traffic

Conference of America, a division of the Air Transport Association of America, and the OAG continuously has represented itself as being the "Standard Reference of the Air Traffic Conference of America. [4]

#### V. Acts, Practices, and Methods of Competition

12. For many years, and at least since 1969, respondent has maintained a publication policy with respect to the content and format of the OAG pursuant to which schedules of available flights between city pairs are published in separate categories in the following sequence when and where applicable: (1) direct flights of certificated air carriers; (2) connecting flights of certificated carriers; (3) direct flights of intra-state carriers, and (4) direct flights of commuter air carriers. Within each such category, flights are listed chronologically by order of departure.

13. For many years, and at least since 1971, respondent has refused to accept for publication any schedules of connecting flights of commuter air carriers, even though commuter air carriers offer and sell such service to the public and have made requests of respondent for inclusion of said schedules in the OAG.

14. For many years, and at least since 1971, respondent has refused requests of intra-state and commuter air carriers to publish their direct flight schedules in the OAG on the same terms and conditions as apply to the publication of direct flight schedules of certificated air carriers by integrating the schedules of all air carriers serving given city pairs into single chronological listings.

15. In refusing to modify its OAG publication policies as aforesaid, respondent has solicited and relied upon the views of certificated air carrier competitors of commuter and intra-state air carriers acting under the auspices of the Airline Guides Committee of the Air Traffic Conference of America.

16. The effects of respondent's OAG publication policies as aforesaid are and have been to foreclose commuter air carriers from disseminating information as to available connecting flight schedules to the public; to suggest and/or advise the public that direct flights of certificated air carriers are to be given preference over those of intra-state and commuter air carriers; and to lessen the competitive significance of schedules of direct flight departure times of intra-state and commuter air carriers in relation to those of certificated air carriers. [5]

17. As a result of the acts, practices, and methods of competition as alleged, competition in the development, advertising, offering of sale, and sale of scheduled passenger air transportation in the United States

1

## Initial Decision

has been, or may be, stabilized, controlled, hindered, lessened, foreclosed or restrained.

## VI. Violation

18. The acts, practices, and methods of competition alleged herein by respondent, both individually and in combination with others, constitute unfair acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE

MARCH 6, 1979

## PRELIMINARY STATEMENT

By a complaint issued on April 13, 1976, The Reuben H. Donnelley Corporation ("Donnelley") is charged with a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. [2]

Respondent Donnelley is a subsidiary of the Dun & Bradstreet Companies, Inc., which in 1974 had combined operating revenues of over \$500 million and total assets of about \$345 million. Donnelley is a publishing company which publishes the "Official Airline Guide—North American Edition" ("OAG"), a directory of flight schedules and fares for scheduled air transportation. The OAG is published twice monthly and is sold to air carriers, travel agents, businesses and the general public.

The complaint alleges that the OAG is the only publication sold in the United States that combines the passenger flight schedules of all domestic air carriers and that it is the standard reference for ascertaining flight schedules between city pairs in North America.

Scheduled air passenger transportation in the United States is provided by three categories of airlines: certificated air carriers, commuter air carriers, and intrastate air carriers. The complaint alleges that Donnelley has refused to publish flight schedules for commuter and intrastate air carriers on the same terms as apply to the publication of flight schedules of certificated air carriers. More specifically, the complaint alleges that respondent has refused: (1) to publish in the OAG schedules of connecting flights involving commuter air carriers,<sup>1</sup> and (2) to chronologically integrate schedules of commuter air carriers and intrastate air carriers with those of certificated air carriers.

---

<sup>1</sup> In December 1976, respondent started publishing the connecting flights of commuter air carriers.

The complaint further alleges that Donnelley violated Section 5 "individually and in combination with others," stating that Donnelley's policies have been formulated and modified by respondent "following consultations" with certain certificated air carriers, and that Donnelley has "solicited and relied upon the views of certificated air carrier competitors" in refusing to change its publication policies. [3]

By an answer filed May 28, 1976, respondent admitted some but denied many of the allegations of the complaint. Among the more important issues raised by the answer, respondent: (1) denied that significant competition exists among the three categories of air carriers; (2) stated that there are numerous sources of passenger flight schedule information other than the OAG; (3) stated that it had solicited the views of certificated air carriers concerning separate listing of certificated air carriers, commuter air carriers, and intrastate air carriers, but that it has neither relied nor acted upon those views; (4) stated that these matters are not subject to the jurisdiction of the Federal Trade Commission; and (5) stated that the relief sought, compelling Donnelley to publish flight schedule listings in a manner conflicting with Donnelley's judgment, would violate the First Amendment to the United States Constitution.

Pursuant to prehearing orders, counsel for the parties stipulated that (1) the complaint does not allege unlawful monopolization in the publication and sale of passenger flight schedules of domestic air carriers; and (2) the complaint does not allege unlawful effects on companies other than air carriers, including potential competitors of the respondent in the sale and distribution of passenger flight schedules for domestic air carriers. (Joint Statement filed September 24, 1976.)

After issue was joined, respondent filed a motion to dismiss, asserting that the Commission lacks subject matter jurisdiction over the acts of a publisher who sells and distributes information about air carriers who are themselves subject to CAB jurisdiction. The claim was based on Section 5(a)(2) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(2), which provides that carriers subject to the Federal Aviation Act of 1958 are exempt from the Commission's jurisdiction.

By an order dated September 21, 1976, I invited the CAB to file an *amicus* brief commenting on the issues presented by the complaint. On February 2, 1977, the General Counsel of the CAB filed an *amicus* brief denying, in effect; that the CAB had primary jurisdiction over this matter, or that the CAB had sanctioned the conduct alleged in the complaint. The *amicus* brief states that it is "clear that the [4]exercise of Commission jurisdiction would not cause a collision with the Board's jurisdiction over air carrier competition." After further briefing, I

denied the motion to dismiss by an order dated March 30, 1977. By an order dated July 12, 1977, the Commission denied Donnelley's petition for extraordinary review, holding that there had been no abuse of discretion.

Respondent Donnelley sued in the United States Court for the Northern District of Illinois to prevent further action in the administrative proceeding. I set hearings in the administrative case to begin on September 9, 1977. Well into the defense of the case, I received on November 13, 1977, an order from United States District Court Judge Bernard M. Decker, finding lack of Federal Trade Commission jurisdiction, enjoining further hearings, and ordering that the Commission dismiss the complaint. *Donnelley Corp. v. FTC*, 1977-2 Trade Cases ¶ 61,721 (N.D. Ill. 1977).<sup>2</sup> By an order dated December 20, 1977, Judge Decker vacated his previous order enjoining further administrative proceedings, holding that Donnelley had failed to exhaust its administrative remedy.<sup>3</sup> *Donnelley Corp. v. FTC*, 1977-2 Trade Cases ¶ 61,783 (N.D. Ill. 1978). [5]

This interruption in the administrative proceeding resulted in an eleven month delay.<sup>4</sup> Defense hearings in *Donnelley* resumed on October 16, 1978, and ran through November 17, 1978. Complaint counsel had rebuttal on December 1, 1978.

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and the exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding. The following abbreviations have been used:

- CX – Complaint counsel's exhibit, followed by its number and the referenced page(s);
- RX – Respondent's exhibit, followed by its number and referenced page(s);
- CPF – Complaint counsel's proposed findings;
- RPF – Respondent's proposed findings. [6]

<sup>2</sup> I therefore set Dkt. 9080, *Kaiser Aluminum & Chemical Corp.*, for trial, to commence December 1, 1977.

<sup>3</sup> On cross-appeal, the United States Court of Appeals for the Seventh Circuit held on August 2, 1978, that venue in Chicago was improper and transferred the case to the district court in Washington, D.C. *Donnelley Corp. v. FTC*, 580 F.2d 264 (7th Cir. 1978). Ruling from the bench, Judge Gesell dismissed Donnelley's complaint on September 28, 1978.

<sup>4</sup> Before the administrative hearings in the *Donnelley* case could resume, I finished the trial in the *Kaiser* case, wrote the initial decision in *Amway Corporation*, Dkt. 9023, which I had deferred to start the *Donnelley* hearings (initial decision filed June 23, 1978), and wrote the initial decision in the *Kaiser* case (initial decision filed October 13, 1978).

## FINDINGS OF FACT

*Glossary*

1. A "certificated air carrier" is an air carrier that holds a certificate of public convenience and necessity issued by the Civil Aeronautics Board ("CAB") authorizing the air carrier to fly its routes in commerce in the United States. (Fugere 210; 49 U.S.C. 1371-72)
2. The CAB has created by regulation a classification of air carriers known as "air taxi operators" which operate smaller airplanes (not more than 7,500 pounds payload and having thirty or fewer passenger seats) but which do not hold a CAB certificate. (14 CFR 298)
3. "Commuter air carriers" do not hold CAB certificates. An air taxi which flies passengers on at least five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week and places between which such flights occur, is a "commuter air carrier." (14 CFR 298.2(f)) An air carrier may operate as a commuter air carrier on some of its routes while holding CAB certification on other routes. (CX 188A-F; Nelson 4395)
4. An "intrastate air carrier" is an air carrier which operates solely within a state of the United States and which does not hold a certificate of public convenience and necessity or foreign air carrier permit issued by the CAB. (Griffin 884) An air carrier may operate as an intrastate air carrier on some of its routes while operating as a commuter air carrier on other routes. (Dzenolet 2624-26)
5. A foreign air carrier is any person, not a citizen of the United States, who engages in air transportation between any place in the United States and any place outside thereof. (49 U.S.C. 1301(38)) [7]
6. "Trunk air carriers" are certificated air carriers which operate across the country. An example of a trunk air carrier is American Airlines. (CX 196D; CX 196Z80-Z81) "Local service air carriers" are certificated air carriers. In the late 1940's the CAB started certifying these carriers to provide air service to smaller cities. A federal subsidy payment program was instituted for these carriers. They have since evolved from "feeder" airlines into "regional" carriers with only certain of their operations eligible for subsidy. An example of a local service or regional carrier is Piedmont Airlines. (CX 108 at 7; CX 196Z77)
7. "Replacement carriers" are commuter carriers which agree to substitute for local service carriers on routes that the certificated carriers are obligated to serve but are not doing so at a profit. (CX 107 at 9)

8. A "city pair" is two cities between which there is scheduled airline service. (Fugere 211)

9. A "direct flight" is a flight between a city pair, either nonstop, or, if there are stops, normally involving no change of aircraft or flight number. (Complaint and Answer ¶1; Fugere 211)

10. A "connecting flight" is two or more direct flights used in conjunction with each other to provide transportation between a city pair. (Answer ¶1; Fugere 212)

11. "On-line connections" are connections between two or more direct flights of the same air carrier. (Fugere 211)

12. "Interline connections" are connections involving direct flights of at least two separate air carriers. (Fugere 212).

13. "Interline agreements" are agreements among and between carriers, involving a variety of business arrangements such as ticketing, reservation procedures, joint use of facilities, joint reservations. Such agreements are filed with and approved by the CAB. (Fugere 212-13)

14. "Free or industry connections" are connections submitted by air carriers to respondent and published by respondent without charge to the air carrier based on limitations established by respondent. (RX 66Z18-Z62; Fugere 213-14; Nelson 2487) [8]

15. "Paid connections" are connections which do not qualify as free connections under the limitations established by respondent, and they are published by respondent at the expense of the air carrier that requests the listing. (RX 66Z18-Z62; Fugere 215; Nelson 2502-03)

#### *Respondent*

16. Respondent, The Reuben H. Donnelley Corporation ("Donnelley"), is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business at 825 Third Ave., New York, New York. It is a wholly-owned subsidiary of Dun & Bradstreet Companies, Inc., 299 Park Ave., New York, New York. Donnelley is engaged in the publication, distribution and sale of publications relating to travel, including the Official Airline Guide-North American Edition ("OAG"), a twice-monthly publication which combines into one directory the passenger flight schedules and fares of substantially all the scheduled air carriers in the United States, Mexico, Canada and the Caribbean. (Complaint ¶2; Answer ¶2)<sup>5</sup> In 1962, Donnelley acquired the OAG from its publisher, American Aviation Publications, Inc. (CX 24A; Reich, 1181)

<sup>5</sup> Effective January 1, 1979, Official Airline Guides, Inc., a Delaware corporation and a wholly-owned subsidiary of Dun & Bradstreet Companies, Inc., assumed responsibility for publication of the Official Airline Guide, formerly published by the Transportation Guides and Services Division of The Reuben H. Donnelley Corporation. (RPF p. 7)

*Interstate Commerce*

17. Respondent is now and has been at all relevant times engaged in selling and distributing the OAG to subscribers located throughout the United States, from its offices located at 2000 Clearwater Drive, Oak Brook, Illinois, and from other Donnelley facilities. Respondent is therefore engaged "in commerce" and its business activities "affect commerce," within the meaning of the Federal Trade Commission Act. (Complaint and Answer ¶¶3, 4; Fink 1370; Budzic 3092; Davidoff 3170) [9]

*Official Airline Guide*

18. The OAG was first published as early as 1943 under the title "Universal Airline Schedules." (CX 52C) At first it merely reproduced timetables of each scheduled air carrier. (RX 19D, RX 572, RX 573)

19. In 1958, the OAG started publishing flight schedule listings in the "to-city" format which currently is used in the OAG, rather than simply in a series of individual air carrier's timetables. (RX 19D) The OAG organized flight schedule listings by displaying in alphabetical order the cities to which there was scheduled air carrier passenger service, displaying under each of these cities in alphabetical order the cities from which there was scheduled air carrier passenger service to the city of destination. (RX 258, 571, 573, 574)

*Publishing Policy*

20. Before December 1, 1976, respondent published in the OAG four separate categories of airline schedules in the following sequence:

Certificated Air Carrier - direct flights (published with no headings).

Certificated Air Carrier - connecting flights (published under the heading "Connections").

Intrastate Air Carrier - direct flights (published under the heading "Intra-State").

Commuter Air Carrier - direct flights (published under the heading "Commuter Air Carriers").

(Complaint and Answer ¶12; CX 174; RX 7A; RX 16A) [10]

21. Before December 1, 1976, respondent published in the OAG three categories of direct flight schedules: certificated carriers (including foreign and replacement carriers), intrastate, and commuter carriers, with each category separate and in chronological order:<sup>6</sup>

<sup>6</sup> See CX 113, pp. 1101-02 for letter symbols of airlines; CX 113, pp. 1107-11 for explanation of other abbreviations. (First 9 lines under "Los Angeles" in above schedule deal with fare information.)



tional categories of service, commuter air carrier connections and intrastate air carrier connections, and changed the order of display. (Complaint and Answer ¶13; RX 214; Woodward 4189) [12]

24. On December 1, 1976, the display of categories and service in the OAG was changed to the following order:

- Certificated Air Carrier direct flights (published with no heading).
- Commuter Air Carrier direct flights (published under the heading "Commuter Air Carriers").
- Intrastate Air Carrier direct flights (published under the heading "Intra-State Air Carriers").
- Certificated Air Carrier connections (published under the heading "Connections")
- Connections involving Commuter Air Carriers or Commuter Air Carriers/Certificated Air Carriers (published under the heading "Commuter Air Carrier Connections").
- Connections involving Intrastate Air Carriers or Intrastate/Certificated Air Carriers or Intrastate/Commuter Air Carriers (published under the heading "Intra-State Air Carrier Connections").

(RX 214; RX 258)

#### *Foreign Air Carriers*

25. Though they hold no CAB certificate, foreign air carriers have their schedules chronologically merged in the certificated air carrier columns in the OAG. (Complaint and Answer ¶¶5, 12; Ceresa 987, 988, 1000, 1004) [13]

26. Connecting flight information for foreign air carriers was in the OAG even before December 1976 (CX 174) and is included with certificated air carrier connections:

To KINGSTON, JAMAICA		EDT KIM	
From	Philadelphia Pa/Wilmington, De-Conn.		
61	7:30 P 2:15 A 76 701	7:30	7:00
62	8:15 P 3:00 A 76 701	7:30	7:00
63	9:00 P 3:45 A 76 701	7:30	7:00
64	9:45 P 4:30 A 76 701	7:30	7:00
65	10:30 P 5:15 A 76 701	7:30	7:00
66	11:15 P 6:00 A 76 701	7:30	7:00
67	12:00 P 6:45 A 76 701	7:30	7:00
68	12:45 P 7:30 A 76 701	7:30	7:00
69	1:30 P 8:15 A 76 701	7:30	7:00
70	2:15 P 9:00 A 76 701	7:30	7:00
71	3:00 P 9:45 A 76 701	7:30	7:00
72	3:45 P 10:30 A 76 701	7:30	7:00
73	4:30 P 11:15 A 76 701	7:30	7:00
74	5:15 P 12:00 A 76 701	7:30	7:00
75	6:00 P 12:45 A 76 701	7:30	7:00
76	6:45 P 1:30 A 76 701	7:30	7:00
77	7:30 P 2:15 A 76 701	7:30	7:00
78	8:15 P 3:00 A 76 701	7:30	7:00
79	9:00 P 3:45 A 76 701	7:30	7:00
80	9:45 P 4:30 A 76 701	7:30	7:00
81	10:30 P 5:15 A 76 701	7:30	7:00
82	11:15 P 6:00 A 76 701	7:30	7:00
83	12:00 P 6:45 A 76 701	7:30	7:00
84	12:45 P 7:30 A 76 701	7:30	7:00
85	1:30 P 8:15 A 76 701	7:30	7:00
86	2:15 P 9:00 A 76 701	7:30	7:00
87	3:00 P 9:45 A 76 701	7:30	7:00
88	3:45 P 10:30 A 76 701	7:30	7:00
89	4:30 P 11:15 A 76 701	7:30	7:00
90	5:15 P 12:00 A 76 701	7:30	7:00
91	6:00 P 12:45 A 76 701	7:30	7:00
92	6:45 P 1:30 A 76 701	7:30	7:00
93	7:30 P 2:15 A 76 701	7:30	7:00
94	8:15 P 3:00 A 76 701	7:30	7:00
95	9:00 P 3:45 A 76 701	7:30	7:00
96	9:45 P 4:30 A 76 701	7:30	7:00
97	10:30 P 5:15 A 76 701	7:30	7:00
98	11:15 P 6:00 A 76 701	7:30	7:00
99	12:00 P 6:45 A 76 701	7:30	7:00
100	12:45 P 7:30 A 76 701	7:30	7:00
101	1:30 P 8:15 A 76 701	7:30	7:00
102	2:15 P 9:00 A 76 701	7:30	7:00
103	3:00 P 9:45 A 76 701	7:30	7:00
104	3:45 P 10:30 A 76 701	7:30	7:00
105	4:30 P 11:15 A 76 701	7:30	7:00
106	5:15 P 12:00 A 76 701	7:30	7:00
107	6:00 P 12:45 A 76 701	7:30	7:00
108	6:45 P 1:30 A 76 701	7:30	7:00
109	7:30 P 2:15 A 76 701	7:30	7:00
110	8:15 P 3:00 A 76 701	7:30	7:00
111	9:00 P 3:45 A 76 701	7:30	7:00
112	9:45 P 4:30 A 76 701	7:30	7:00
113	10:30 P 5:15 A 76 701	7:30	7:00
114	11:15 P 6:00 A 76 701	7:30	7:00
115	12:00 P 6:45 A 76 701	7:30	7:00
116	12:45 P 7:30 A 76 701	7:30	7:00
117	1:30 P 8:15 A 76 701	7:30	7:00
118	2:15 P 9:00 A 76 701	7:30	7:00
119	3:00 P 9:45 A 76 701	7:30	7:00
120	3:45 P 10:30 A 76 701	7:30	7:00
121	4:30 P 11:15 A 76 701	7:30	7:00
122	5:15 P 12:00 A 76 701	7:30	7:00
123	6:00 P 12:45 A 76 701	7:30	7:00
124	6:45 P 1:30 A 76 701	7:30	7:00
125	7:30 P 2:15 A 76 701	7:30	7:00
126	8:15 P 3:00 A 76 701	7:30	7:00
127	9:00 P 3:45 A 76 701	7:30	7:00
128	9:45 P 4:30 A 76 701	7:30	7:00
129	10:30 P 5:15 A 76 701	7:30	7:00
130	11:15 P 6:00 A 76 701	7:30	7:00
131	12:00 P 6:45 A 76 701	7:30	7:00
132	12:45 P 7:30 A 76 701	7:30	7:00
133	1:30 P 8:15 A 76 701	7:30	7:00
134	2:15 P 9:00 A 76 701	7:30	7:00
135	3:00 P 9:45 A 76 701	7:30	7:00
136	3:45 P 10:30 A 76 701	7:30	7:00
137	4:30 P 11:15 A 76 701	7:30	7:00
138	5:15 P 12:00 A 76 701	7:30	7:00
139	6:00 P 12:45 A 76 701	7:30	7:00
140	6:45 P 1:30 A 76 701	7:30	7:00
141	7:30 P 2:15 A 76 701	7:30	7:00
142	8:15 P 3:00 A 76 701	7:30	7:00
143	9:00 P 3:45 A 76 701	7:30	7:00
144	9:45 P 4:30 A 76 701	7:30	7:00
145	10:30 P 5:15 A 76 701	7:30	7:00
146	11:15 P 6:00 A 76 701	7:30	7:00
147	12:00 P 6:45 A 76 701	7:30	7:00
148	12:45 P 7:30 A 76 701	7:30	7:00
149	1:30 P 8:15 A 76 701	7:30	7:00
150	2:15 P 9:00 A 76 701	7:30	7:00
151	3:00 P 9:45 A 76 701	7:30	7:00
152	3:45 P 10:30 A 76 701	7:30	7:00
153	4:30 P 11:15 A 76 701	7:30	7:00
154	5:15 P 12:00 A 76 701	7:30	7:00
155	6:00 P 12:45 A 76 701	7:30	7:00
156	6:45 P 1:30 A 76 701	7:30	7:00
157	7:30 P 2:15 A 76 701	7:30	7:00
158	8:15 P 3:00 A 76 701	7:30	7:00
159	9:00 P 3:45 A 76 701	7:30	7:00
160	9:45 P 4:30 A 76 701	7:30	7:00
161	10:30 P 5:15 A 76 701	7:30	7:00
162	11:15 P 6:00 A 76 701	7:30	7:00
163	12:00 P 6:45 A 76 701	7:30	7:00
164	12:45 P 7:30 A 76 701	7:30	7:00
165	1:30 P 8:15 A 76 701	7:30	7:00
166	2:15 P 9:00 A 76 701	7:30	7:00
167	3:00 P 9:45 A 76 701	7:30	7:00
168	3:45 P 10:30 A 76 701	7:30	7:00
169	4:30 P 11:15 A 76 701	7:30	7:00
170	5:15 P 12:00 A 76 701	7:30	7:00
171	6:00 P 12:45 A 76 701	7:30	7:00
172	6:45 P 1:30 A 76 701	7:30	7:00
173	7:30 P 2:15 A 76 701	7:30	7:00
174	8:15 P 3:00 A 76 701	7:30	7:00
175	9:00 P 3:45 A 76 701	7:30	7:00
176	9:45 P 4:30 A 76 701	7:30	7:00
177	10:30 P 5:15 A 76 701	7:30	7:00
178	11:15 P 6:00 A 76 701	7:30	7:00
179	12:00 P 6:45 A 76 701	7:30	7:00
180	12:45 P 7:30 A 76 701	7:30	7:00
181	1:30 P 8:15 A 76 701	7:30	7:00
182	2:15 P 9:00 A 76 701	7:30	7:00
183	3:00 P 9:45 A 76 701	7:30	7:00
184	3:45 P 10:30 A 76 701	7:30	7:00
185	4:30 P 11:15 A 76 701	7:30	7:00
186	5:15 P 12:00 A 76 701	7:30	7:00
187	6:00 P 12:45 A 76 701	7:30	7:00
188	6:45 P 1:30 A 76 701	7:30	7:00
189	7:30 P 2:15 A 76 701	7:30	7:00
190	8:15 P 3:00 A 76 701	7:30	7:00
191	9:00 P 3:45 A 76 701	7:30	7:00
192	9:45 P 4:30 A 76 701	7:30	7:00
193	10:30 P 5:15 A 76 701	7:30	7:00
194	11:15 P 6:00 A 76 701	7:30	7:00
195	12:00 P 6:45 A 76 701	7:30	7:00
196	12:45 P 7:30 A 76 701	7:30	7:00
197	1:30 P 8:15 A 76 701	7:30	7:00
198	2:15 P 9:00 A 76 701	7:30	7:00
199	3:00 P 9:45 A 76 701	7:30	7:00
200	3:45 P 10:30 A 76 701	7:30	7:00

(From RX 258 at 536, showing foreign carrier (BW) listed with certificated connections.)



(From CX 112 at 1109.) [15]

In the "Abbreviations and Reference Marks" section of the OAG, the symbol is defined as follows:

[Symbol] Following Flight Number Indicates A Replacement Flight Operated By A Commuter Air Carrier On Behalf Of A Certificated Air Carrier Pursuant To A CAB Approved Agreement. (RX 571 at 4)

31. In addition to the Allegheny commuters, 30 commuter air carriers operate replacement flights for certificated carriers Alaska Airlines and Wien Air Alaska, Inc. and receive the same display treatment as Allegheny Commuters in the OAG. (Nelson 3462)<sup>7</sup>

To ANVIL, ALASKA	ADT ANV
From ANVIL, ALASKA <td>ADT ANV</td>	ADT ANV
TO 10200	11:00 AM 11:30 AM
TO 10201	11:00 AM 11:30 AM
TO 10202	11:00 AM 11:30 AM
TO 10203	11:00 AM 11:30 AM
TO 10204	11:00 AM 11:30 AM
TO 10205	11:00 AM 11:30 AM
TO 10206	11:00 AM 11:30 AM
TO 10207	11:00 AM 11:30 AM
TO 10208	11:00 AM 11:30 AM
TO 10209	11:00 AM 11:30 AM
TO 10210	11:00 AM 11:30 AM
TO 10211	11:00 AM 11:30 AM
TO 10212	11:00 AM 11:30 AM
TO 10213	11:00 AM 11:30 AM
TO 10214	11:00 AM 11:30 AM
TO 10215	11:00 AM 11:30 AM
TO 10216	11:00 AM 11:30 AM
TO 10217	11:00 AM 11:30 AM
TO 10218	11:00 AM 11:30 AM
TO 10219	11:00 AM 11:30 AM
TO 10220	11:00 AM 11:30 AM

(From RX 258 at 85, showing commuter replacement flights for Wien Air Alaska.)

32. About 700 of the 50,000 direct flights listed in a recent issue of the OAG were replacement flights operated by commuter air carriers but listed in the certificated air carrier category. (Nelson 2521) [16]

33. Certificated airlines are obligated to serve smaller communities pursuant to a CAB route authorization even though they do so at a loss. In that event, the CAB may authorize payment to the certificated carrier of a subsidy. Since 1954, such subsidy payments have amounted to well over \$1 billion. (CX 107, p.7 n.1)

34. Replacement service allows the certificated carriers to fulfill their obligation by delegating the route to a commuter carrier. These replacement carriers, with their more fuel efficient airplanes, serve these smaller communities at a profit. (CX 106 at 16, 76) They cannot receive a federal subsidy. (CX 107 pp. 9-13) In 1975, there were 27 commuter carriers operating replacement service for 11 certificated carriers. (CX 107 p.10)

<sup>7</sup> Not all commuter carriers operating replacement service for other certificated carriers receive "Allegheny treatment." (RX 135A; Nelson 3466; Britt 2545)

## Initial Decision

*Relevant Market*

35. Respondent advertises that the OAG is the "standard reference of the Air Traffic Conference of America."<sup>8</sup> (CX 113, front cover) The OAG is the only complete listing of scheduled flights in North America. (CX 203B(1); CX 204A(1); CX 113 leaf between 2-3) The OAG is the primary source of flight schedule information to the flying public and the primary marketing tool for carriers. (May 565; Fugere 220) It is referred to in the airline industry as the "Bible." (Kyzar 1575; Griffin 851; CX 28B) [17]

36. In addition to the OAG, there are four competitive sources of information about scheduled passenger air transportation. These four sources are the ABC World Airways Guide ("ABC"); computerized schedule information; individual airlines' printed schedules; and radio, television and newspaper advertising. The record reveals that none of these sources offer a real alternative. (McKenna 904; Kyzar 1612; Muse 812) When asked if he could name any actual competitors of the OAG other than ABC, the former Executive Vice President of the OAG testified that there were no significant competitors. (Reich 1299)

37. The ABC is a listing of scheduled flights much in the same format as the OAG but is directed toward international travel. (CX 202B-C; Fugere 238)

38. In 1973 ABC had a total circulation of 1,792 in the United States and Canada while in that same year the OAG had a total circulation of 137,796 in the United States and Canada. (CX 45A)

39. A witness with 14 years experience in the airline industry had only seen one copy of ABC in his life. (May 567) Another representative of a certificated air carrier testified he had never seen a single copy while employed by that carrier. (Mueller 1525) Some air carrier witnesses had never heard of ABC. (Muse 814; Britt 2597)

40. The ABC does not compete with the OAG in providing domestic flight information. (May 567; Jaques 656, 660; McKenna 904; Fink 1410; Mueller 1525; Budzic 3093; Davidoff 3178; Howe 1868; Reich 1295, 1300; CX 202C)

41. SCIP is the acronym for Schedule Change Input Package. (Lobach 4125) SCIP tapes are computer tapes upon which airline schedule information has been coded. When the information on the SCIP tapes is called for by the operator of the computer terminal it is electronically displayed on a cathode ray tube ("CRT"). (Whiteside 454; McKenna 904) [18]

42. While many scheduled air carriers have access to SCIP tape

<sup>8</sup> The Air Traffic Conference of America is the trade association of certificated air carriers. (CX 208 (54); CX 204 (54))

capabilities, only a very small percentage of travel agencies and corporate travel offices use SCIP tapes. (May 568; McKenna 905-06; Ceresa 1012; Reich 1301-02; Davidoff 3153, 3154; Lobach 4219) SCIP tapes are not a marketing substitute for the OAG. (Autry 714; Griffin 854; Ceresa 1012)

43. The cost of a CRT for an office that does about three million dollars a year in business would be about fifteen thousand dollars a year. (Jaques 657) The cost of subscribing to the OAG is currently \$98.44 annually. (RX 571, advertising leaf between pp. 2-3)

44. The use of computerized schedule displays has not changed the growth rate of the OAG. (Lobach 4231; Reich 1208)

45. Even those airlines, travel agents and corporate travel offices that do have computer scheduling capability also subscribe to the OAG. (Kyzar 1613; Budzic 3094)

46. The limited use of CRTs is due in part to the fact that SCIP tapes contain less flight schedule information than the OAG. (Budzic 3085; Lobach 4125; Fink 1428)

47. Most scheduled air carriers print their own individual flight schedules which they furnish to their passengers. These schedules contain only the carriers' own flights. (Fugere 237; McKenna 903; Ceresa 1011-12) The schedules usually have only local or limited distribution. (May 566; Whiteside 432; Autry 710; Muse 814; McKenna 903; Britt 2598) [19]

48. Individual timetables are also expensive. One witness testified that it cost his company approximately \$.50 per schedule. (Muse 840)

49. Airlines, travel agents and corporate travel offices do not normally use individual flight schedules to obtain flight information and book flights. (Jaques 660; Fink 1415, 1416; Fugere 237; Autry 710; Griffin 852; Ceresa 1011-12; Davidoff 3154)

50. Scheduled air carriers sometimes use radio, television and newspapers to advertise their flights. In some instances those advertisements contain limited flight schedule information. Where flight schedule information is advertised, it is only shown for the individual carrier and even then it is limited to a few city pairs. Commuter carriers cannot afford to advertise nationally. (Fugere 236-37; Whiteside 433; May 566; Autry 710; McKenna 904)

51. Airlines, travel agents and corporate travel departments do not rely on radio, television or newspaper advertisements to obtain flight information and book flights. (Jaques 659; Fugere 237; Autry 710; Griffin 852; Davidoff 3154)

*Conspiracy*

52. The Airline Guides Committee is a committee of the Air Traffic Conference of America ("ATC"), a division of the Air Transport Association of America, ("ATA") the trade association of certificated airlines. (CX 203(43); CX 204(43); CX 89A) At Airline Guides Committee meetings, each certificated carrier was entitled to send one authorized representative and each representative had one vote. (Mueller 1497) The only persons entitled to vote at Airline Guides Committee meetings were authorized representatives of certificated air carriers. (Mueller 1500) [20]

53. On September 10, 1971, OAG staff sent a telegram to the ATC. The OAG stated that at the next meeting of the Airline Guides Committee the: "OAG would like to discuss the merger of Certificated, Commuter and Intrastate Air Carrier schedules. OAG thoughts will be presented October 7. We would appreciate carriers coming to the meeting prepared to discuss their respective management opinions." (CX 14)

54. On September 13, 1971, the ATC sent out to all members of the Committee the agenda of the meeting of the Airline Guides Committee to be held October 7, 1971. (CX 89)

55. Item 7 on the agenda, "Merger of Schedules," was proposed by Mr. Howe, the Publication Manager of the OAG, with the approval of Robert Parrish, the Publisher of the OAG. (Howe 1912-13; Reich 4218; Woodward 4216; CX 14; CX 89C)

56. Item 7 on the agenda of that meeting reads:

OAG Staff has suggested that the Airline Guides Committee consider the merger of Certificated, Commuter and Intrastate carriers schedules in the guide publications. Direct flight listings would be listed together chronologically as currently shown.

Additionally, Commuter and Intrastate carriers would have the opportunity to purchase online connections and Commuters would purchase connections with Certificated carriers and visa-versa [sic]. Only two categories of listings, direct and connections, would be required instead of the present four. OAG plans to provide further details at the meeting. Members, however, should be prepared to discuss their respective management opinions. (CX 89C)

57. Members of the committee did seek management opinions. (CX 102)

58. The meeting took place on October 7, 1971, at the Mayflower Hotel in Washington, D. C. (CX 89) [21]

59. Item 7 was discussed during that meeting. (Howe 1698; Mueller 1501-02) Representatives of the OAG were present during the discussion. (Mueller 1508; CX 9A-1)

60. The official minutes of the meeting, published by the ATC and

distributed to all certificated carrier members and to the OAG, state that "During discussion [of Item 7] it became obvious that there was no support for the proposal, therefore, no further action was required." (CX 9H)

61. Notes of the meeting taken by Mr. Howe, the Publications Manager of the OAG, state that: "the carriers were with the exception of [American and National Airlines] against the merger of schedule listings." (CX 10D) He also stated that "[m]ost carriers felt that noncertificated carriers could be included in connections, though, this, of course, would weaken our argument against keeping them out of [merged] schedule listings." (CX 10D)

62. Mr. Howe's notes also state that one certificated carrier was concerned at the meeting that "non-certificated carrier[s] had no restrictions on routes and therefore could parallel the [routes of] certificated carriers at will." (Howe 1769; CX 19C)

63. At the October 7, 1971 meeting the certificated carriers voted not to change the OAG's method of separate, descending listings of the schedules for certificated, commuter and intrastate carriers. (Howe 1872; CX 89C; CX 66A; Mueller 1502, 1508)

64. In 1975 of the 118 commuter carriers publishing schedules in the OAG, 78 purchased 408 subscriptions to the OAG. The remaining 40 may have purchased some additional subscriptions under individual rather than corporate names. (CX 135A) During that year certificated air carriers purchased over 30,000 subscriptions to the OAG, (CX 30)

65. Certificated air carriers are substantial customers of Donnelley products and services including subscriptions to the OAG and other publications, paid connections, and SCIP tapes. (e.g. CX 82B; CX 71) In 1975, seven certificated carriers paid Donnelley well over \$3 million. (CX 71D; CX 73C; CX 77C; CX 80B; CX 82B)<sup>9</sup> [22]

66. Some certificated carriers attempt to use their position as large customers to influence respondent's publishing policies. (CX 118; CX 87)

### *Competition*

#### *Commuters*

67. On April 15, 1975, there were 432 city pairs served by direct flights of both commuter and certificated air carriers. (CX 135E; CX 203(5))

68. In the year ending June 30, 1974, commuter air carriers served

<sup>9</sup> This figure does not include several of the larger air carriers such as American, Eastern, and Pan American, as well as other certificated carriers, who refused to supply this information, nor does it include substantial amounts paid by other certificated carriers. (CX 70; CX 74; CX 75; CX 78B CX 81B; CX 90; CX 91)

514 city-pair markets in which passengers totaled 1,000 or more. Eighty-two of those markets were also served by certificated carriers. In those 82 markets, commuters accounted for 872,300 passengers and the certificated carriers 4,053,760. The commuter share was 17.7%. The 872,300 passengers represented 19.6% of the 4,440,762 commuter passengers in 48 states that year. (CX 62B)

69. In that year there were 19 markets in which commuters had 10,000 or more passengers in competition with certificated carriers. (CX 62C)

70. In that same year there were 25 markets in which certificated carriers had 50,000 or more passengers in competition with commuter carriers. (CX 62C)

71. Certificated carriers generally operate large jet aircraft carrying 100 or more passengers and flying at more than 500 miles per hour. Commuter carriers typically operate two-engine, propeller-driven aircraft seating no more than 30 passengers ("commuter aircraft") such as the Beech-99 (15 passengers, 280 mph), Cessna 402 (10 passengers, 239 mph), Douglas DC-3 (28 passengers, 193 mph), DeHavilland DHC-6 Twin Otter (20 passenger, 209 mph), Piper PA-31 (8 passengers 270 mph), Britten-Norman Islander (10 passengers, 260 mph), DeHavilland Heron (four engine, 17 passengers, 195 mph), and Nord 262 (27 passengers, 240 mph). (RX 571, p. 30; RX 225-F) Here are pictures of commuter aircraft (CX 106 at 2, 38): [23]



Around the world, the busiest commuter airliners are the airliners built by Beech.

It's easy to see why, when you check the specs of the Beechcraft B99...the latest in the series 283 mph cruise and an 832 mile range. A useful load of 5,100 lbs. Standard interior seats 15 passengers and a crew of 2. On a 2,200 hours-per-year utilization schedule, the direct cost-per-seat-mile is only 3.3 cents.

The Beechcraft B99 is a versatile workhorse performing a variety of missions for many different organizations. The operational flexibility possible with its outstanding combination of speed, range and payload makes it the most air transport per dollar in its class.

For full information on the Beechcraft B99, write or call: J. M. Cook, Jr., Manager Airline Sales, Beech Aircraft Corporation, Wichita, Kansas 67201, (316) 689-7077.



#### Beechcraft Airliners fly with 49 organizations worldwide.

Aero Mech, Inc. Clarkburg W Va	Rio Airways Kilorn, Texas
Alt Kentucky Owensboro, Ky	Royale Airlines, Inc. Shreveport, Louisiana
Air Metro Airlines Traverse City Michigan	SMB State Line Muskegon, Oklahoma
Air New England Horton, Massachusetts	Scheduled Skyways, Inc. Fayetteville, Arkansas
Allegheny Airlines, Inc. Washington, D.C.	Skyline Aviation Winchester, Virginia
Alair Airlines Philadelphia, Pennsylvania	Skystream Airlines, Inc. Plymouth, Indiana
Bar Harbor Airways Ellsworth, Maine	Skyway Aviation, Inc. Ft. Leonard Wood, Missouri
Brin Airlines Terre Haute, Indiana	Suburban Airlines Reading, Pennsylvania
Cumberland Airlines Cumberland, Md.	Upper Valley Aviation, Inc. Mellon, Texas
Cascade Airways Spokane, Washington	U.S. Dept. of Agriculture Atlanta, Georgia
Chautauque Airlines Jamestown, New York	Vacation Airways Washington, D.C.
Clark Aviation Middleton, Pennsylvania	Air Alpes Chambery/Alain-Buis, France
Colgan Airways Corp. Manassas, Virginia	Air Cape Cape Town, Cape Province
Command Airways, Inc. W. Springfield, New York	Republic of South Africa Doubtswain, Quebec, Canada
Continental Oil Company Aviation Houston, Texas	Air Glasgow, Inc. Dunblane, Scotland
Fairways Corporation Washington, D.C.	Air Lowveld (Pty.) Limited Johannesburg, South Africa
Freeport Aviation, Inc. Guthrieburg, Md.	Air-Rouergue Rodez-Marcillac, France
Herman Aviation Hagerstown, Maryland	Atlantic Central Airlines St. John's, New Brunswick, Canada
La Grande Air Service La Grande, Oregon	Baron Air A. B. Malmo, Sweden
Metaba Aviation Grand Rapids, Minnesota	Brunel Shell Petroleum Co. Ltd. Geneva, Switzerland
MidState Air Commuter Marshfield, Wisconsin	Business Elite Service Emmaboda, Sweden
Mississippi Valley Airlines LaCrosse, Wisconsin	C. Itoh & Company, Ltd. Bangkok, Thailand
Moistmouth Airlines Farmingdale, New Jersey	Ministerio de Defensa Nacional Santiago, Chile
Parliament Airways Reading, Pennsylvania	Superintendencia de Aeronaves Belen, P.R. Brazil
Pocahontas Airlines, Inc. Aurora, Pennsylvania	Touraine Air Transport Tours, France

(CX 106 at 2)

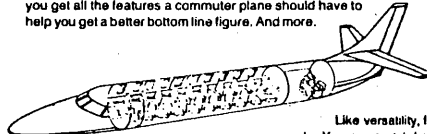
Initial Decision

Your commuter service is programmed for profit.

# METRO II

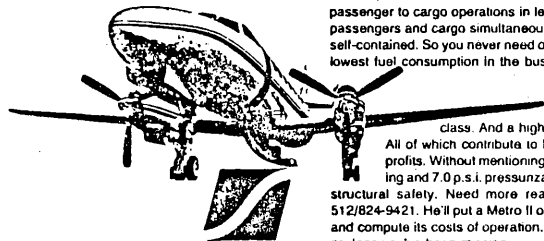
is designed to help you increase it.

With the Metro II, you get an aircraft designed specifically as an airliner. From scratch. Instead of a compromised older model. So you get all the features a commuter plane should have to help you get a better bottom line figure. And more.



Like versatility, for example. You can switch from passenger to cargo operations in less than 30 minutes. You can load passengers and cargo simultaneously. And the Metro II is completely self-contained. So you never need off-site equipment. You also get the lowest fuel consumption in the business. High utilization: over 3000 block hours yearly if you desire. The highest cabin volume. The greatest range in its class. And a high cruise speed of around 300 mph.

All of which contribute to lower operating costs. And higher profits. Without mentioning jet-age comforts like air conditioning and 7.0 p.s.i. pressurization. Or incomparable designed-in structural safety. Need more reasons? Give Earl Morton a call 512/824-9421. He'll put a Metro II on your route, figuratively speaking, and compute its costs of operation. Then you can see for yourself the savings you've been missing.



**metro**  
BY SWEARINGEN

SWEARINGEN AVIATION CORPORATION  
P.O. BOX 32486, SAN ANTONIO, TEXAS 78284  
Telex 767-315



