

ROUTE SCHEDULES IN CANADIAN-AMERICAN CIVIL AIR RELATIONS:
THE 1966 AIR TRANSPORT SERVICES AGREEMENT

Submitted by Howard L. Culver in partial fulfillment of
the requirements for a Master of Laws, Faculty of Law.

Abstract Summary

The route schedules in the 1966 Air Transport Services Agreement between the United States and Canada indicate a breakthrough with respect to Canada's previous unequal status in bilateral air agreements. Deep penetration routes and improved operating authority over transborder routes are landmarks in this agreement which provides direct linkage of many American and Canadian traffic centers without change of planes or intermediate stops.

However, largely through the failure of the United States to make a major departure from the "horsetrading" practices in bilateral negotiations, an opportunity was lost for the creation of an integrated and rationalized North American air transport route network with little artificial restraint by the border. The formulation of the route schedules demonstrates the problems in the nations' civil air relations which prevented this continental from coming into being.

ROUTE SCHEDULES IN THE 1966 CANADIAN-U.S. AIR TRANSPORT AGREEMENT

Institute of Air and Space Law
Mc Gill University
Faculty of Law
Montreal, Quebec, Canada

ROUTE SCHEDULES IN CANADIAN-AMERICAN CIVIL AIR RELATIONS:
THE 1966 AIR TRANSPORT SERVICES AGREEMENT

Submitted in partial
fulfillment of the
requirements for a
Master of Laws

HOWARD L. CULVER
March 31, 1968

PREFACE

The scarcity of source material on Canadian-American civil air relations in general, and the 1966 Air Transport Services Agreement in particular, made personal interviews and informal conversations the principal method of obtaining information. Staff members of the American Civil Aeronautics Board and the Canadian Air Transport Committee as well as of several airlines were consulted during the preparation of this thesis. The individuals consulted were very responsive to the questions posed and freely offered facts and their opinions. However, at their request, most of the information in this thesis has not been identified as to source. It was only by guaranteeing anonymity that their cooperation and valuable information were obtained.

TABLE OF CONTENTS

PREFACE	i
INTRODUCTION	1
CHAPTER I: PRIOR BILATERAL AGREEMENTS	3
CHAPTER II: PROBLEMS OF CANADIAN-AMERICAN CIVIL AIR RELATIONS AND THE GALBRAITH REPORT	12
CHAPTER III: FORMULATING THE ROUTE SCHEDULES OF THE NEW BILATERAL AGREEMENT	24
Introduction	24
Eastern Canada-Florida	25
Eastern Canada-California	31
Vancouver-California	33
Chicago-Toronto/Montreal	37
Detroit-Toronto	42
Vancouver-Seattle	44
Philadelphia-Toronto	45
Buffalo-Toronto	46
Toronto-Cleveland and Boston-Montreal	48
Winnipeg-Minneapolis	50
Denver-Calgary	53
Local service routes	54
Conclusion	57
CHAPTER IV: PROBLEMS OF ROUTE SCHEDULE INTERPRETATION	60
Philadelphia problem	60
Nonstop problem	65
CONCLUSION	87

TABLE OF CONTENTS
(continued)

APPENDIX I	90
APPENDIX II	92
APPENDIX III	94
BIBLIOGRAPHY	96

INTRODUCTION

It is a sad commentary that we have not yet been able to do more in the direction of rationalization. One need only look at an air-route map of the United States-Canada border to see how badly we have done and how difficult the task is. There are a good number of transborder routes in the East; there are a few in the Far West, but in the middle there is a large gap with very few air routes in an area where air transportation would seem to be the natural means of communication because of the long distances involved and limited surface transportation available. Furthermore, this gap is not due to any lack of interest on the part of the air carriers as is evidenced by the number of applications to perform such services before the Civil Aeronautics Board and its Canadian equivalent, the Air Transport Board. Nor are the local communities reluctant about begging for such services. These two friendly neighbors have simply not been able to reconcile the various conflicting interests and agree to an exchange of rights in addition to those already granted.¹

In an attempt to rationalize and improve not only the transborder routes, but also the entire American and Canadian air route network, at the request of President Kennedy, Mr. John Kenneth Galbraith undertook a study of Canadian-American civil air relations. In his report to the President in the fall of 1963, he made numerous recommendations, including one that the present bilateral air transport services agreement between the United States and Canada should be renegotiated because it no longer provided a satisfactory

1. Stoffel, American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age, 26 J. Air L. & Com. 119 (1959).

framework for air relations between the two countries. As a consequence of the recommendations of his report and as a result of the difficulties with the Canadians under the bilateral agreement then in effect, especially with respect to the Buffalo-Toronto route and the problem of deep penetration routes for Canadian carriers, consultations with the Canadians aimed at negotiating a new bilateral agreement were commenced in the late spring of 1964. Final agreement was reached almost two years later, and the new bilateral was signed on January 17, 1966. The new agreement is a considerable improvement over the previous one although it falls far short of rationalizing the American and Canadian air transport network. In addition the new agreement has created nearly as many new problems as it left old ones unsolved. The past and present problems of American and Canadian civil air relations are to a substantial degree reflected in the agreement route schedules which provide a basis for analysis of the bilateral agreements between the two countries.

CHAPTER I: PRIOR BILATERAL AGREEMENTS

From 1920 to 1928 air navigation between Canada and the United States was governed by informal arrangements which were usually renewed every six months. These arrangements were not made reciprocal until 1927 or after the passage of the Air Commerce Act of 1926 by the U.S. Congress. The first formal air transportation relations with Canada began in 1929 with an Exchange of Notes² between the two countries regarding the admission of civil aircraft and the recognition of pilots' licenses. However it was not until 1938 that the making of air navigation arrangements which might be construed as granting to foreign non-scheduled and scheduled air service operators the privilege of entry without specific prior authorization was undertaken with Canada.³ Air transport arrangements containing undertakings to grant operating privileges to foreign carriers continued to be concluded with Canada in 1939,⁴ 1940,⁵ and 1943.⁶ These arrangements either slightly modified, supplemented, or renegotiated the 1938 arrangement.

2. Exchange of Notes, Signed August 29 and October 22, 1929. Executive Agreement Series No.2.

3. Air Navigation, Arrangement between the United States of America and Canada, Effected by Exchange of Notes, Signed July 28, 1938. Executive Agreement Series No. 129.

4. Exchange of Notes, August 18, 1939. Executive Agreement Series 159.

5. Exchange of Notes, November 29 and December 2, 1940. Executive Agreement Series 186.

6. Exchange of Notes, March 4, 1943. Executive Agreement Series 314.

On February 17, 1945, an air transport services agreement was signed with Canada which superseded all the previous arrangements between the two governments.⁷ This was the first air transport agreement with Canada and marked the first appearance of a specified route schedule for the scheduled air carriers of the two countries. The routes specified in the 1945 agreement were as follows:

<u>Canada</u>	<u>United States</u>
Halifax - Boston	Boston - Moncton
Toronto - New York	New York or Boston - Quebec
Toronto - Cleveland ²	New York - Montreal
Toronto - Chicago ^{1&2}	- Ottawa ³
Port Arthur - Duluth	Washington - Montreal ¹
Victoria - Seattle	- Ottawa ^{3&4}
Whitehorse - Fairbanks	Fairbanks - Whitehorse
	Buffalo - Toronto (2 carriers)
	Fargo - Winnipeg
	Great Falls - Lethbridge
	Seattle - Vancouver

Notes:

1. Intermediate points in Canada served on this route must be at least 40 miles from Detroit.
2. On these routes no through service is to be provided to points beyond Canada.
3. On these routes both Montreal and Ottawa may not be served on the same flight.
4. On this route all intermediate U.S. points must be east of Longitude 77° East.

In addition all Canadian flights authorized to stop at Windsor may stop at Detroit, and all American flights authorized to stop at Detroit may stop at Windsor. (Hereafter referred to as the Windsor provision).

Many features of this first agreement are present in the most recent agreement, and many of the routes operated by American and Canadian air carriers today are identical with the routes operated under this agreement. The authorization for two American carriers to serve the

7. Air Transport Services, Agreement between the United States of America and Canada, Effected by Exchange of Notes, Signed February 17, 1945. Executive Agreement Series 457.

Buffalo-Toronto route as opposed to single carrier service on all other routes was perhaps the forerunner of the multiple designation controversy which almost caused the collapse of the negotiations for the 1966 agreement. All of the authorized routes were transborder services; deep penetration by Canadian carriers into the United States was not authorized as all American gateways for Canadian carriers were located close to the border. The location of American gateways and Canadian deep penetration routes posed major problems in the negotiations of the current agreement. Another issue prominent in the discussions of the current agreement was competitive service over the routes. In the 1945 agreement it should be noted that, with the exception of Fairbanks-Whitehorse, all the routes were exclusive track for the carrier of one country or the other. Double-tracking was nowhere authorized except for the one noted route. The provision in the present agreement prohibiting through service by Canadian carriers to points beyond Canada and the United States also had its origin in the 1945 agreement.

In 1945 these arrangements were undoubtedly satisfactory. Transborder routes were adequate for the volume of traffic between the two countries in the immediate post-war years since most of the traffic was between border cities and the number of passengers between the nations' interior points would not justify separate routes. Indeed, the volume of traffic over the transborder routes themselves

was not even sufficient to justify competitive service. As a result an attempted economic division of the routes on an exclusive track basis took place. Since Canada received nearly exclusive access to and from Toronto, the United States was granted exclusive access to Montreal for its carriers. Because American policy favored the seacoast gateway approach to overseas travel, it was only logical for the United States to insist on prohibiting Canada from transporting passengers from interior American cities to points overseas via Canadian points with through plane service. Considering the circumstances of the period, the 1945 agreement served both the Canadian and American public as well as it was economically possible to do.

In 1947 several minor amendments were made to the route schedule of the 1945 agreement.⁸ The route Seattle-Whitehorse was added for the United States, and the restriction against serving Montreal and Ottawa on the same flight from Washington and New York was eliminated. The Canadians received a new route from Winnipeg to Toronto with traffic rights at Sault Ste. Marie, Michigan, since there was not airport at Sault Ste. Marie, Ontario. The restriction against serving intermediate Canadian points within forty miles of Detroit on Canada's Toronto-Chicago route was also dropped.

In 1949 Newfoundland, which had formerly been a

8. Air Transport Services, Agreement between the United States and Canada, Effected by Exchange of Notes, Signed April 10 and 12, 1947. Treaties and Other International Acts Series 1619.

British possession, became part of Canada. The Canadians by gaining control of the airspace over the airfield at Gander, an important stop on the transatlantic route, gained new bargaining power. The United States responded by suggesting that the bilateral air agreement with Canada should be renegotiated. Actually the Canadian Government stated its intentions of canceling the American landing privileges at Gander in the absence of a new agreement.⁹ The new agreement which superseded the 1945 agreement as amended in 1947 went into effect on June 4, 1949.¹⁰

This agreement included the usual exchange of trans-border routes with some authorized to Canada on an exclusive track basis and others authorized to the United States on an exclusive track basis. Some of the more heavily traveled routes were double-tracked thus introducing significant competitive service for the first time in the two nations' air relations. Canada gave up its exclusive rights on the Toronto-New York route in return for the United States' giving up its exclusive rights on the New York-Montreal route. It was this latter act that resulted in the Colonial Airlines controversy concerning the validity of executive agreements.¹¹ The agreement provided for a

9. Hackford, The Colonial Airlines Challenge to the U.S.-Canadian Transport Agreement, 19 J. Air L. & Com. 1 (1952).

10. Air Transport Services, Agreement between the United States and Canada, Signed June 4, 1949. Treaties and Other International Acts Series 1934.

11. Colonial Airlines, Inc., a U.S. air carrier authorized to operate a scheduled air transport service between New York and Montreal, sought to enjoin members of the Civil Aeronautics Board from having hearings and having further proceedings on the application of TCA, a Canadian carrier, for competing

route exchange as follows:

<u>Canada</u>	<u>United States</u>
Victoria - Seattle	Seattle - Vancouver
Whitehorse - Fairbanks	Fairbanks - Whitehorse
Winnipeg - Sault Ste.	Seattle - Whitehorse
Marie - Toronto	Great Falls - Lethbridge
Toronto - Chicago	Great Falls - Edmonton
Toronto - Cleveland	Fargo - Winnipeg
Toronto - New York	New York - Toronto
Montreal - New York	New York - Montreal
Halifax - Boston	Washington - Montreal
Canada - Honolulu -	Washington - Ottawa
Australasia & beyond	New York - Ottawa
Canada - Tampa - points	Either New York or Boston
in the Caribbean	- Quebec
& beyond	Boston - Montreal
	Boston - Moncton
	U.S. - Edmonton - Alaska
	& beyond
	U.S. - Gander - Europe
	& beyond

Note: The so-called "Windsor" provision of the 1945 agreement was continued.

In addition to the new Canadian carrier route Montreal-New York in exchange for the new American carrier route New York-Toronto, Canada received the Tampa and Honolulu

11. (continued) service between the same two cities and from issuing a foreign air carrier permit for such service. Colonial alleged the invalidity of the 1949 Air Transport Agreement with Canada in which the U.S. undertook to permit an airline designated by Canada to operate a service between Montreal and New York. Colonial was challenging the whole executive agreement procedure by which the executive branch of the government exchanged air transport privileges with other countries without any participation by Congress either in consultation or by the formal process of treaty procedure.

On November 16, 1949, a statutory three judge court of the U.S. District Court for the District of Columbia upheld the disputed section of the Civil Aeronautics Act as being a constitutional delegation of power by Congress to the executive branch and in dismissing the complaint found it unnecessary to pass upon the validity of the agreement itself. 87 F.Supp. 242 (1949). Colonial appealed to the Supreme Court but shortly before the date of the hearing moved to dismiss its appeal. 70 Sup.Ct. 490 (1950).

routes in return for giving the United States the Gander-Europe and Edmonton-Alaska routes. Deleted from Canada's schedule was the Port Arthur-Duluth route and deleted from the American route schedule was Buffalo-Toronto. Added to the U.S. schedule was the new route Great Falls-Edmonton.

This new route exchange has several prominent features besides the double-tracked routes from Montreal and Toronto to New York. Canada was granted her first deep penetration route with the award of Tampa. Canada thus gained access to the Florida market with beyond rights to the Bahamas and the rest of the Caribbean. In return the United States received the deep penetration routes of Great Falls-Edmonton and U.S.-Edmonton-Alaska and beyond. Clearly the award to Canada was more lucrative than the awards to the United States since the traffic over the former was greater than that over the latter. However, in the era before the non-stop transatlantic service, the United States received the very valuable U.S.-Gander-Europe and beyond route in exchange for granting Canada the Canada-Honolulu-Australasia and beyond route. The Gander rights were far more valuable to the United States than Honolulu rights to Canada at that time and for a considerable number of years thereafter since nonstop flights to Europe were not yet possible. Thus, after comparing the entire exchange, these long-haul and deep penetration routes balanced each other. By far, the two most lasting and influential results of this agreement

were the breakthrough with respect to a deep penetration route for Canada and the introduction of competition by double-tracking the more heavily traveled routes.

For ten years the route schedule remained unchanged except for an amendment in 1955 altering the route Winnipeg-Sault Ste. Marie-Toronto to read Western Canada-Sault Ste. Marie-Eastern Canada.¹² However, significant revisions took place in 1959. The 1959 amendments made the following changes in the route schedule:¹³

<u>Canada</u> (added)	<u>United States</u> (added)
Prince Rupert - Ketchikan	Ketchikan - Prince Rupert
Calgary - Spokane	Spokane - Calgary
Toronto - Buffalo	Buffalo - Toronto
Winnipeg and/or Kenora - International Falls	Great Falls - Calgary ²
Fort William/Port Arthur - International Falls	Either Minot or Williston - Regina
Halifax - New York ¹	Duluth/Superior - Fort William/Port Arthur
	Hancock/Houghton - Fort William/Port Arthur
	Great Falls - Lethbridge (deleted)

Notes:

1. Both New York and Boston can be served on the same Halifax flight; however, no U.S. cabotage.
 2. Both Calgary and Edmonton can be served on the same Great Falls flight; however, no Canadian cabotage.
- In regard to the U.S.-Edmonton-Alaska and beyond route, flights terminating in Edmonton from Minneapolis may serve Winnipeg; however, no Canadian cabotage.

The new routes resulting from the 1959 amendments were essentially all transborder routes. The extension of Halifax-

12. Air Transport Services, Agreement between the United States of America and Canada, Effected by Exchange of Notes, Signed November 22 and December 20, 1955. Treaties and Other International Acts Series 3456.

13. Air Transport Services, Agreement between the United States of America and Canada, Effected by Exchange of Notes, Signed April 9, 1959. Treaties and Other International Acts Series 4213.

Boston service to New York and the addition of Minneapolis behind Fargo-Winnipeg on service terminating at Edmonton cannot be regarded major deep penetration although the services were extended beyond border points. In the addition of numerous transborder routes, several were double-tracked. This, however, was not an indication of greater Canadian or American willingness to see competitive service on the routes, but rather an indication that the governments were unable to reach agreement on double-tracking major routes (like Toronto-Chicago). They only double-tracked some of the transborder routes as a consequence of their being unable to economically divide them on an exclusive basis without upsetting the balance of economic benefits to be gained from the route schedule in its entirety.

Many of the transborder routes authorized by the 1949 agreement as amended in 1959 were never operated, and many of those that were operated were discontinued by the carriers after a showing of a scarcity of traffic on the routes. Thus in the early 1960's a situation prevailed where the Canada-United States bilateral air transport agreement provided for numerous transborder services which were not operated due to low load factors, for several transborder services connecting the major cities of the two countries where traffic was heavy but which were operated by only one carrier without competitive incentive to improve service, and for virtually no deep penetration routes in response to the public's desire to go directly to interior points without changing planes at gateway cities and without numerous stops.

CHAPTER II: PROBLEMS OF CANADIAN-AMERICAN CIVIL AIR
RELATIONS AND THE GALBRAITH REPORT

Commencing in 1953, Canada pressed for major revision of the 1949 bilateral agreement. In consultations held in September 1955 Canada proposed so-called deep penetration routes which would allow the Canadian airlines to provide direct service to major traffic centers in the heart of United States territory. As grounds for this request the Canadians stressed the fact that the services by U.S. air carriers in reality did not originate or terminate at the terminals named, but rather from major traffic centers deep within U.S. territory. The United States did not grant the requested deep penetration routes as the Canadians had not offered an adequate quid pro quo. In 1960 the Canadians again pressed for a broad revision of the bilateral. Their particular objection was that the United States had refused to grant them deep penetration routes to principal traffic centers in the heart of the United States, while the U.S. carriers, on the other hand, by funneling traffic through the gateway points named in the route descriptions, had been able to provide services from the major traffic centers in Canada to almost any major point in the United States. The Canadians continued to press for deep penetration routes in 1961, but again without success.

Closely related to this concern for deep penetration

routes was the problem that grew out of the Buffalo-Toronto route which had been granted to both Canadian and American carriers at the 1959 negotiations. Although it had been explained to Canada that the granting of this route would allow a United States carrier to provide service from Toronto to Florida points with a stop at Buffalo, which might provide substantial competition with the existing T.C.A. Canada-Tampa route, the Canadians apparently did not realize the full significance of the route until after negotiations were concluded. The Civil Aeronautics Board, however, did agree that it would not authorize a nonstop service from Buffalo to Miami in conjunction with operations on the Buffalo-Toronto route. This agreement was incorporated in an exchange of letters between N.A. Robertson, Canadian Under Secretary of State for External Affairs, and U.S. Ambassador R.B. Wigglesworth in April 1959. Yet, in a decision of January 8, 1963, the Canadian Air Transport Board denied Eastern Air Lines' application for a license to conduct Buffalo-Toronto service despite the fact that it had been designated by the U.S. Government for the route. The Board based its decision on grounds that Eastern's proposed operations over the route did not bear a close relationship to the capacity requirements for the trans-border route.

When Prime Minister Pearson met with President Kennedy in May 1963, the Prime Minister raised the issue of civil aviation and the problems Canada had with the present agree-

ment. After these discussions President Kennedy requested John Kenneth Galbraith to conduct a review of U.S.-Canada civil air relations for the purpose of recommending possible avenues of solution to the problems outstanding between the two countries in this area. In October 1963 the report with recommendations was submitted to the President.

The Galbraith report found that the chief complaint of Canadian air carriers was discrimination evidenced by the denial of deep penetration routes for their carriers. The Canadian public complained about the poor service to the United States which required in many instances a change of planes and lines at gateway cities or numerous intermediate stops in order to reach a final destination. American carriers expressed fear of traffic diversion if Canadian carriers were granted deep penetration routes, while the American public for the most part was unaware of the shortcomings of air travel between the two countries. Although the number of passengers exchanged between the two countries each year is almost equal,¹⁴ the ratio between the American and Canadian population is ten to one. This undoubtedly explains why the Canadian public was much more aware of the problem. Thus the major issue besetting Canadian-American civil air relations was the limited direct linkage of Canadian and American centers.

14. <u>Passenger traffic</u>	<u>1965</u>	<u>1966</u>
Canada - United States	1,133,000	1,306,000
United States - Canada	1,137,000	1,331,000

Prior to the 1966 agreement, Canadian carriers operated only to the northerly gateway cities in the United States. There, passengers had to change to American carriers to complete their journey to U.S. points behind the gateway. Even the one deep penetration route to Tampa was in a sense just a gateway point as a substantial portion of the Canadian-originating traffic was destined for Miami and therefore had to transfer to an American carrier at Tampa. American carriers not only had the advantage of picking up traffic for further carriage at U.S. gateway points, but also the advantage of being able to provide single-plane through service to Canadian gateway points after an intermediate stop at the U.S. gateway city. Since Canada has few cities of any importance behind its border gateways, the American carriers had the further advantage of serving Canada's major cities by serving only its gateway cities. Only at U.S. gateways to which a Canadian carrier had exclusive access to Canada did the American carriers have a disadvantage, but this was partially offset by the advantage they had to take the passenger between an interior point in the United States and the U.S. gateway.

For example, a Canadian passenger from Montreal to Miami could take a Canadian carrier to New York and change to an American carrier to go to Miami; or he could take a Canadian carrier to Tampa and change to an American carrier to go to Miami; or he could take an American carrier from Montreal to New York, and after a stop in New York but with

no change of plane continue to Miami. Most passengers would probably choose the last alternative since no change of plane was involved, and thus the American carrier would transport the passenger the entire trip. However, even under the other possibilities, the American carrier had the passenger for part of the trip. Only with respect to a Toronto-Saint Louis type passenger were the carrier advantages equal. The passenger would travel a Canadian carrier from Toronto to Chicago and an American carrier from Chicago to Saint Louis. However, with respect to routes where Canada did not have exclusive access at the gateway, Canada was at a distinct disadvantage to American through carrier service.

With respect to deep penetration routes Canada is a victim of geography. All her principal cities lie close to the frontier. Unlike Mexico which has populous centers away from the border and thus can bargain for deep penetration routes to the United States, Canada is without much bargaining power when it comes to seeking such routes. In the absence of deep penetration routes, Canadian carriers have attempted to get as much traffic as possible directed through the gateways where they provide exclusive service or at least competitive service to Canada. Thus Canada insisted that all service to Canada from U.S. interior points include a stop at a U.S. northerly gateway since her carriers were not permitted to serve beyond border points and had to compete with American through plane service from several points in the U.S. to several points

in Canada. As a result parity was maintained by keeping an equilibrium of inferior service. For the passenger going to or from an American interior point from or to Canada, it meant changing planes at the gateway or several intermediate stops.

In response to Canadian arguments for deep penetration, American carriers cite the example of Canadian through plane service from interior American points to Europe via Canada and recall Air Canada's Cleveland-Toronto-London service and Canadian Pacific's Honolulu-Vancouver-Europe service. However, Canadian carriers have a corresponding complaint of even greater weight about American carriers diverting Canadian-Caribbean and European traffic through U.S. northerly gateways. American carriers also feared that deep penetration routes awarded to Canada would precipitate similar route demands from other foreign carriers. Yet it was the failure to grant deep penetration routes to Canadian or American carriers that resulted in the ludicrous situation on the Montreal-Chicago route where nonstop service was only provided by the European carriers Alitalia, Air France, and BOAC. Canada had refused to grant the U.S. access to Montreal from Chicago, and the U.S. had insisted that Montreal-Chicago service by a Canadian carrier must include an intermediate stop at Toronto.

The United States has always bargained from a position

of being the largest single source of air traffic in the world.¹⁵ This is true with respect to most of the countries of the world, but Canada is an exception. Canadian citizens comprise the majority of transborder passengers between the two countries. Since Canada is the source of the greater part of the traffic, Canadian carriers have argued that they should be entitled to carry that traffic to its ultimate destination in the United States when there is a demonstrated traffic volume sufficient to economically support such service. With respect to most of the northerly gateway cities, the Canadians agree that they have a fair opportunity to carry Canadian-originating traffic. However, with respect to the deep penetration routes, particularly Florida and California, the Canadians argue, and rightly so, that they have been unjustly prevented from carrying this traffic.

The Americans argue that the Canadians have full access to the two most important U.S. traffic generating centers, Chicago and New York. American carriers also note that in recent years Canadian carriers have transported 60-65% of the passengers between the two countries. While the Canadian carriers do not dispute these facts, they point out that Canadian expenditures on American carriers exceed American expenditures on Canadian carriers. The chief reason for this imbalance is the Canadian lack

¹⁵ Johnson, The International Aviation Policy of the United States, 29 J. Air L. & Com. 366 (1963).

of deep penetration routes with the result that the Canadian traveling beyond the northerly gateway must continue his journey by an American carrier.

The result of these two different points of view has been inadequate service for the traveling public to maintain equity between the carriers. There is perhaps no better example of trying to maintain an equilibrium at the expense of the Canadian and American public than in the controversy over the Buffalo-Toronto route which was one of the compelling factors in forcing the recent renegotiation of the bilateral agreement.

This short transborder route was originally operated by American Airlines, but due to the carrier's inability to make it profitable as it did not link up well with the rest of the carrier's system, it was transferred to Eastern Air Lines in the anticipation that Eastern could provide through plane service from Toronto to Florida with an intermediate stop at Buffalo. It was also anticipated that this through service, while not directly competitive with Air Canada's nonstop from Toronto to Tampa, would divert some Toronto-Tampa traffic to Toronto-Miami and would capture all the Toronto-Miami traffic which previously had to change at Tampa.

An obstacle in the operation of such service was the 1959 Robertson-Wigglesworth exchange of letters which required that any U.S. carrier operating over the Buffalo-Toronto route must make at least one intermediate stop

between Buffalo and Miami. With this restriction the Canadians hoped to protect their Toronto-Tampa nonstop while holding on to a major portion of the Toronto-Miami traffic. Further reflection convinced the Canadians that this safeguard was not enough, and so they subsequently refused to grant Eastern authority to conduct any operations over the Buffalo-Toronto route. Thus the cost of keeping this competitive equilibrium was inferior service.

The Galbraith recommendations urged that a new bilateral be made with Canada, not on the basis of inequity of the present agreement but on the basis of the poor quality of service under the then current agreement which inhibited and excluded nonstop service for carriers of both countries on deep penetration routes. The recommendations favored a continental as opposed to a transborder system of route exchange. In view of the special relationship between Canada and the United States, Canada should be included in the concept of a North American route system with only a minimum of artificial restraint by the border.

If the Galbraith recommendations were carried out, there would be equitable access to the traffic by carriers of both countries who would be able to share in the business. A continental transport network would result in deep penetration routes for Canadian air carriers and new routes and nonstop authority for American carriers. Where economically feasible the gateway concept would be abolished with more traffic being permitted to go directly to the ultimate destination. A consequence of a continental

route system would be the opportunity for the air carriers to employ more modern equipment, especially in relation to the nonstop and long-haul routes.

The Galbraith report also favored a departure from the exclusive track concept which had so long dominated Canadian and American civil air relations. Where twice daily service was economical throughout the year or a major portion of the year, competition should be introduced over the routes by double-tracking. Where, however, only once a day service was economically feasible, the routes should be single-tracked but divided equally for the carriers of the two countries.

Once a continental route system was established, however, it was not to be used to carry traffic from one country to the other and then beyond to third countries (sixth freedom traffic). The main purpose of the continental system as opposed to the transborder system was to permit freedom of movement within North America through as few artificial gateways as possible. For local service routes Mr. Galbraith urged a new procedure for flexibility of certification so that local transborder routes could be integrated within the continental system and instituted outside of the bilateral as the need arose.

The Galbraith report and recommendations covered the substance of the problems in Canadian-American civil air relations. They were successful in highlighting and bringing to the attention of government officials the inadequacies

under the agreement then in force. While the recommendations offered very little in the way of specific suggestions for improvement of the route schedules, they did present policy guidelines to be used in formulating specific proposals. While the tendency has been to look at air transport from the air carrier's point of view, this study focused on the public's use of air transport and found that artificial restraints used to maintain equity between the national carriers resulted in inadequate service to the traveling public. Galbraith's solution to better air transport for the public lay in the abandonment of the governmental policy of looking upon air transport between Canada and the United States as merely a transborder operation. A broader approach looking toward an integrated and rationalized continental system which dispensed with northerly gateways and permitted deep penetration and non-stop service was required.

The release of the recommendations of the Galbraith report prompted the two governments to begin consultations leading toward negotiating a new bilateral agreement. Negotiation of the new Canada-United States bilateral Air Transport Services Agreement¹⁶ took place over a period of almost two years and involved formal sessions in both Ottawa and Washington as well as informal meetings and

¹⁶. Air Transport Services, Agreement between the United States of America and Canada, Signed January 17, 1966, with Exchange of Notes. Treaties and Other International Acts Series 5972.

study groups. The negotiations commenced in April of 1964, and the agreement was signed on January 17, 1966. The prolonged discussions were primarily due to failure to agree on the route schedule to be annexed to the agreement although there was also considerable disagreement on general principles, double-tracking, sixth freedom traffic, and multiple designation.

CHAPTER III: FORMULATING THE ROUTE SCHEDULES OF THE NEW BILATERAL AGREEMENT

Introduction

The specification of routes forms essentially the main part of a bilateral air transport agreement and has become more and more detailed as a means of regulating competition and protecting national aviation interests. The dual aims of a route exchange are an expanding air transport network and room for the national carriers in this network. In attempting to accommodate these two aims each of the parties to an agreement tries to obtain routes which are equivalent to the ones he is giving away in return. This involves a search for an equitable exchange of economic rights by route rights of equal market value with the realization that reciprocal rights may not have the same value.

With the exception of the deep penetration route to Tampa, Canadian carriers were confined to entry at the northern gateway cities like Seattle, Chicago, Cleveland, New York, and Boston. This pattern profited U.S. airlines by having the Canadian carriers deposit their passengers at the various U.S. gateways where they were picked up by American domestic carriers and carried deeper into the country. Even the Canadian deep penetration route to Tampa afforded American carriers the opportunity of carrying a substantial amount of beyond traffic as much of

the traffic on that route continued on to Miami. It is not surprising therefore that one of the principal aims of Canada in the negotiations was the grant of authority to operate new deep penetration routes.

One of the major goals of the United States during the negotiations was the removal of the Robertson-Wigglesworth restriction on the Buffalo-Toronto route which required at least two stops between Toronto and Miami and the agreement on no restrictions of behind the gateway operations. The United States also recognized that routes from interior cities to Canadian cities were desirable; however, the U.S. believed that most of these routes should be awarded to American carriers. It became apparent that while the U.S. was willing to concede some deep penetration routes to Canada, it was only willing to grant deep penetration part way and not to the ultimate destination of the traffic, thus reserving for itself not only the ultimate destination routes but also providing the opportunity for American carriers to carry traffic from the intermediate deep penetration point to the ultimate deep penetration point.

Eastern Canada-Florida

The Montreal and Toronto routes to Florida provide an excellent vehicle for studying the Canadian and American approach. Canada sought to change its Canada-Tampa and beyond route for a route Toronto-Tampa/Miami and Montreal-Tampa/Miami. This later was modified to read

Canada-Tampa/Miami and beyond with the offer of a route Miami-Toronto for an American carrier. This proposal was immediately rejected by the United States which offered the alternative proposal of a route Montreal/Toronto-Tampa/Miami for a Canadian carrier but with a mandatory stop at Tampa. For the United States Montreal-Miami and Toronto-Miami routes were proposed. Under this proposal the U.S. not only had nonstop rights between Miami and the terminals Montreal and Toronto as opposed to the Canadians one-stop authority, but also could use Tampa as an intermediate point on the route under an ordinary "direct route" clause allowing intermediate stops in the homeland. The American routing could not only be competitive with the Canadian routing in so far as Tampa was concerned, but would also have the advantage of nonstop rights to Miami with the right to use Tampa for additional support traffic when needed. This last right would be of great importance during the off-season in Florida. The U.S. carrier would be able to carry traffic generated at both points in Florida and at Montreal and Toronto. Although the Canadians would also have the right to carry traffic generated at the co-terminals of Montreal and Toronto, they would just have the Tampa terminal nonstop with one-stop service to Miami whereas the American carrier would have the greater traffic generating center of Miami on a nonstop basis.

In response to the American proposal which so heavily favored U.S. carriers, Canada proposed that both Canadian

and American carriers could operate on the Montreal-Tampa/Miami and Toronto-Tampa/Miami routes. This proposal envisioned reciprocity for both countries on the routes. It should be noted, however, that under this proposal Canada would have the right to coterminals in the United States and by use of behind gateway rights in Canada would also have the opportunity to use Montreal and Toronto as coterminals in the absence of any restrictive language. The United States, on the other hand, would not have the right to serve Montreal and Toronto as coterminals but would have Tampa and Miami coterminals.

The U.S. alternative to the above Canadian proposal envisioned routes for Canada from Montreal to Tampa/Miami with a mandatory stop at Tampa and from Toronto to Tampa. The U.S. under this proposal would have nonstop rights between Miami and Montreal and Miami and Toronto. In the absence of any restrictive language on intermediate points, the U.S. could also serve Tampa on both routes. Thus in return for giving up Montreal and Toronto as coterminals on the Florida routes, the U.S. was restricting the Canadian route from Toronto to the terminal point Tampa.

The American position at this point was fairly clear. It supported for U.S. carriers the right to operate nonstop from Miami to Toronto and from Miami to Montreal with the right to make an intermediate stop at Tampa if desired. Canadian carriers in contrast would be able to operate only to Miami on a Montreal route with a mandatory stop__

at Tampa and only from Toronto to Tampa. Thus the United States was preventing Canada from having a deep penetration route to the ultimate destination of Miami from Toronto and severely restricting service from Montreal to Miami by requiring a mandatory stop at Tampa. The U.S. got the lucrative nonstop authority plus the right to add support traffic at Tampa when it so desired. The Canadians viewed this American strategy as denying and restricting deep penetration routes from Canada to Florida for Canadian carriers while granting unrestricted authority to U.S. carriers to operate to Montreal and Toronto from the specific points that were denied or restricted to Canadian carriers.

Reacting to what they considered a discriminatory American approach, the Canadians became adamant that they would accept nothing less than the right to operate from Montreal to Tampa/Miami and from Toronto to Tampa/Miami without any restriction of a mandatory stop at Tampa for Canadian carriers. Reciprocal rights were proposed for American carriers. In other words Canada wanted unrestricted deep penetration routes to Florida and on a reciprocal basis with American carriers.

After strongly insisting on a mandatory stop at Tampa on the Montreal-Tampa/Miami route for Canada, the United States proposed that any Canadian carrier authorized for the route should delay operation until a U.S. carrier was authorized for the route. By requiring this delay the U.S.

sought to postpone any operation over the route since no American carrier was as yet authorized for service over this route. The additional problem of Eastern's inability financially to compete with equipment was also a factor. The United States, however, still insisted that the Canadian route from Toronto extend only as far as Tampa. American carriers would, under this proposal, receive authority to operate from Miami to Montreal and from Toronto to Miami. In this proposal the U.S. agreed to language that would prevent American carriers from using Tampa as an intermediate point. In effect the United States was giving up the right to serve Tampa on its Miami-Canada routes and removing the Canadian mandatory stop at Tampa on the Montréal-Tampa/Miami route in return for restricting Canadian carriers from serving Miami from Toronto.

The Canadians were insistent, however, on serving Miami from Toronto, and believed that this right was more valuable than any restriction on U.S. rights to serve Tampa as an intermediate point. They reiterated their support for reciprocity between American and Canadian carriers on the Montreal-Tampa/Miami and Toronto-Tampa/Miami routes, but they agreed that they would delay nonstop service from Canada to Miami until the U.S. operated Miami-Canada nonstop service, provided that Eastern did not operate Toronto-Buffalo until Air Canada operated Toronto-Tampa/Miami. Since this proposal would seriously curtail Florida traffic, Canada believed that the U.S. of necessity would expedite

authorization of a U.S. carrier to serve Miami-Montreal.

This proposal was rejected by the United States, not because of the provisions on delay, but because the Canadian proposal still included the right of a Canadian carrier to operate from Toronto to Tampa/Miami. The U.S. insisted on keeping Toronto-Miami as an exclusive for a U.S. carrier although it was willing to grant Canada Montreal-Miami. At this point an impasse was reached, and the negotiations threatened to collapse on the Florida question.

The United States, apparently recognizing the seriousness of the Canadian position of reciprocity on the Florida routes, finally submitted a proposal which solved the Florida route question. The proposal granted both American and Canadian carriers authority to operate Montreal-Tampa/Miami and Toronto-Tampa/Miami with a restriction that all flights to or from Miami include a stop at Tampa until November 1, 1967, or until an earlier mutually agreeable date. This delay would protect American carriers from nonstop Canadian competition until the Civil Aeronautics Board authorized a carrier for the Montreal-Tampa/Miami route. It was additionally provided that if the same U.S. airline was designated to operate both the Toronto-Tampa/Miami route and the Montreal-Tampa/Miami route, such airline could serve Toronto and Montreal on the same flight and would be entitled to stopover privileges as though Toronto and Montreal were named as coterminals

on each route.

Both sides benefited in the finalization of the Florida routes. Canadian carriers won their long sought after deep penetration routes to Florida while American carriers were able to compete with Canadian carriers over the same routes without any intermediate stops. Perhaps the greatest victory was for the Canada-Florida passenger who now had nonstop service to choose from and no longer had to change planes at northern gateway cities or endure several intermediate stops.

Eastern Canada-California

Several other routes also posed the problem of deep penetration. These routes involved Eastern Canada to California and Vancouver to California. Prior to the recent agreement, Chicago was the gateway between California and Eastern Canada. Toronto and Montreal passengers had to take a Canadian carrier (or a foreign carrier in the case of Montreal) to Chicago where it was necessary to change to an American carrier to complete the journey beyond Chicago. As in the case of Florida traffic, the lack of a nonstop deep penetration route necessitated the changing of planes at the gateway; however, it did not even have the additional alternative of through plane service with intermediate stops, since TCA alone served Canada from Chicago.

The United States proposed a route for American carriers from the coterminals of San Francisco and Los Angeles to Toronto. For a Canadian carrier the U.S. pro-

posed a route from Los Angeles to Montreal/Toronto. Under this proposal an American carrier had coterminals at the U.S. end of the route while the Canadians had coterminals at their end of the route. While seemingly a proposal of reciprocity, this proposal had a built in advantage for the United States since the value of the additional coterminal of San Francisco was greater with respect to traffic than that of Montreal. The Canadians proposed San Francisco/Los Angeles-Montreal/Toronto for both a Canadian and American carrier. Thus Canada was consistent in her policy on deep penetration routes of reciprocity for the carriers of both countries over the same route. This alternative was rejected by the United States which again submitted its previous proposal for Canadian consideration.

The Canadians, however, realized that with respect to the route Los Angeles/San Francisco-Toronto for an American carrier and Montreal/Toronto-Los Angeles for a Canadian carrier, the former was more advantageous for the U.S. carrier since there was more San Francisco-Toronto traffic than Montreal-Los Angeles traffic. The Canadians therefore strongly affirmed that they would only consider reciprocity for the carriers of both countries on the route. Again the United States insisted on its original proposal while the Canadians insisted on serving San Francisco as well as Los Angeles. To break the deadlock the U.S. counterproposal offered the route

Toronto-Los Angeles on a reciprocal basis for both countries. Canada once more suggested reciprocity on the route Montreal/Toronto-Los Angeles/San Francisco but finally agreed to the U.S. proposal of Toronto-Los Angeles. Canada had the advantage in this final proposal of being able to serve Montreal behind Toronto thus giving added support traffic to the route which the American carrier would not have. However, the route exchange probably did balance in the end as the United States could serve Toronto-San Francisco via the Chicago gateway.

Vancouver-California

A more complex problem arose over the route from Vancouver to California. The first U.S. proposal granted the route San Francisco-Vancouver to a Canadian carrier and the route San Francisco/Los Angeles-Vancouver to an American carrier. The Canadians proposed the route San Francisco/Los Angeles-Vancouver for a carrier of each country. Again the Canadians initial proposal was reciprocity on the deep penetration routes. The U.S. proposal for this route also again showed its policy of stopping Canada one terminal short of its deep penetration goal as it attempted to do with its Toronto-Tampa proposal while retaining for its own carriers not only the deep penetration terminal sought by and denied to Canada, but also adding as a coterminal for the U.S. carrier the terminal granted to the Canadians. The result of this policy was not only the denial of the more valuable terminal to the Canadians

but also the award of the more valuable terminal to the U.S. carrier with the additional advantage of being able to compete with the Canadian carrier at the less valuable terminal.

As applied to this particular route an American carrier could operate from Vancouver to the greater traffic generating center of Los Angeles as well as the coterminial of San Francisco. The Canadian carrier which was denied access to Los Angeles must also compete with the American carrier at its coterminial of San Francisco. From the standpoint of scheduling this is most important. The largest market in the long run for Vancouver on the route is Los Angeles. The Canadian carrier thus has no chance to compete for the largest share of the market which would travel on the nonstop flight. It is also at a disadvantage to compete for the one-stop Los Angeles traffic since a U.S. carrier could schedule through service via a stop at San Francisco(also via Seattle since a U.S. carrier holds Vancouver-Seattle authority) whereas a passenger on a Canadian carrier would have to change planes at San Francisco to continue to Los Angeles. Greater frequencies by serving two terminals in the U.S. on the same flight also would divert traffic from the Canadian carrier. With respect to the San Francisco-Vancouver route, the Canadian carrier not only faced direct competition from the American carrier but also faced the greater frequencies that could be mounted by an American carrier operating

from Los Angeles through San Francisco.

It is not surprising therefore that the United States opposed the addition of Los Angeles on the Vancouver route while the Canadians just as strongly sought its inclusion. The U.S. was also seeking Montreal as a coterminal with Toronto on the Chicago route. This route negotiation will be discussed later, but it is important to note here that the Canadians used Montreal as the quid pro quo in the bargaining for Los Angeles. The Canadians flatly opposed giving Montreal on the Chicago route to an American carrier unless Los Angeles was given to a Canadian carrier on the Vancouver route. The United States refused to concede Los Angeles for Montreal, undoubtedly hoping that it might be able to bargain another point on a different route for Montreal.

The Canadians in an attempt to reach a compromise proposed Vancouver-Los Angeles for a Canadian carrier and Vancouver-San Francisco for a U.S. carrier. The value of a Vancouver to Los Angeles route for Canada is apparent in this proposal as Canada was willing to give up San Francisco on the route. The U.S. carrier would receive Vancouver-San Francisco rights and in addition could operate behind the gateway at San Francisco to Los Angeles thus giving it one-stop through service from Vancouver to Los Angeles. Canada would have the Vancouver-Los Angeles nonstop authority. Canada's position here is analagous to the U.S. position during the Canada-Florida negotiations

when the U.S. wanted to reserve the Canada-Miami nonstops for its carriers but restrict Canadian carriers to a stop at Tampa on the way to Miami. Just as the Canadians rejected a mandatory stop at Tampa, so the Americans rejected any intermediate stop between Los Angeles and Vancouver. However, it should be noted that the Canadians originally offered reciprocity on a Vancouver-Los Angeles/San Francisco route, and that with regard to Florida the Americans did not originally offer reciprocity.

The U.S. rejected the alternative Canadian proposal and stated categorically that Los Angeles on a Vancouver route was not negotiable. Whereas reciprocity had been the solution in the Toronto and Montreal to Florida routes and in the Toronto-Los Angeles route, the Canadians did not get reciprocity with respect to their Vancouver-California deep penetration route. They accepted Vancouver-San Francisco for a Canadian carrier and Los Angeles/San Francisco for an American carrier. Thus they not only lost on reciprocity but also on the ultimate destination of Los Angeles on the deep penetration route. As will be noted later, the Canadians in turn denied reciprocity and deep penetration which the U.S. sought when Montreal was denied as a coterminal with Toronto on a route from Chicago for an American carrier.

The Canadian desire for access to Los Angeles from Vancouver did not end with the agreement. In an exchange of letters between Paul Martin, Canadian Secretary of State

for External Affairs, and the U.S. Ambassador to Canada, W. Walton Butterworth, dated the same day of the agreement, it was specifically recognized that this route along with two others should be re-examined in 1969.

Chicago-Toronto/Montreal

One of the other routes to be re-examined in 1969 was the route from Chicago to the coterminals of Toronto and Montreal for an American carrier. The United States had originally proposed the route Chicago-Toronto/Montreal both for Canada and the United States with the added provision that the U.S. could designate more than one carrier to serve the route. The Canadians rejected multiple American carrier designation on the route. Multiple designation refers to the designation by a country of more than one national airline to operate on international routes. This concept has caused considerable difficulty in negotiating and implementing U.S. bilateral air agreements. Since the U.S. early considered and finally rejected the chosen instrument concept in international air transportation, it was determined that several carriers would be authorized over international routes, and consequently the U.S. insisted that the bilateral agreements refer throughout to an airline or airlines designated by the U.S. Government.

Under the previous agreement, Canada had had a monopoly in the Chicago market with respect to Toronto. All U.S. traffic to or from Toronto had to pass through the four gateways of Chicago, Buffalo, Cleveland, or New York.

At the New York gateway a Canadian carrier did compete with an American carrier. With respect to the other gateways, Canada had denied operating rights for a U.S. carrier over the Buffalo-Toronto route(except for a local service carrier), and a Canadian carrier was the only one to provide service from Chicago or Cleveland to Toronto. Understandably Canada was reluctant to give up her superior access rights to Toronto, especially via the densely traveled Chicago gateway.

Although Canada realized that she could not keep the monopoly position in any new agreement, she had never expected to be confronted with the U.S. request for multiple designation over the route. One American carrier on the Chicago-Toronto route would provide a Canadian carrier with sufficient competition in Chicago-Toronto traffic. In addition this carrier would deprive a Canadian carrier of much of its connecting traffic at Chicago by being able to provide through plane service from several U.S. cities to Toronto via the Chicago gateway. To add an additional U.S. carrier or carriers over the route would not only take away more from the Canadian share of true origin and destination Chicago-Toronto traffic, but would also deprive the Canadian carrier of an even more substantial portion of Chicago connecting traffic by serving U.S. points behind the Chicago gateway. Coupled with the right in the U.S. proposal to have American carriers serve the terminal of Tpronto was the identical right of multiple

designation with respect to the coterminal Montreal on the Chicago route.

The U.S. proposal was rejected by Canada on grounds of multiple designation and the coterminals Toronto and Montreal on the Chicago route. Canada did however offer a counterproposal granting Montreal/Toronto-Chicago to a Canadian carrier and Toronto-Chicago to a U.S. carrier but with no provision for multiple designation on the route. Surprisingly the U.S. accepted the Canadian route proposal which denied to an American carrier the last remaining major possibility for a deep penetration route into Canada, Montreal.

In an attempt to soften the Canadian opposition on multiple designation, the U.S. proposed that the U.S. carriers designated over the Chicago-Toronto route would serve different market areas behind the Chicago gateway. This presumably would allow the Canadians more access to connecting traffic at Chicago. It is a debatable point, however, whether two or more U.S. carriers serving different geographical areas behind the Chicago gateway would deprive the Canadians of more or less connecting traffic. This modified multiple designation proposal was also rejected.

The U.S. had second thoughts about accepting the Canadian proposal of a Chicago-Toronto route for an American carrier, especially in view of the Canadian opposition to multiple designation. The United States reverted to its

previous proposal of reciprocity on the Chicago-Toronto/Montreal route. The Canadians indicated a willingness to consider granting the U.S. access to Montreal from Chicago but without any rights to serve Toronto on the same flight in addition to a Chicago-Toronto route.

Service from Chicago to Montreal had long been a glaring example of the bizarre results that often occur from a strong disagreement. In earlier bilateral negotiations Canada had denied the United States access to Montreal from Chicago, and the U.S. had denied Canada nonstop rights between Montreal and Chicago. The result was that Canada could only provide one-stop service over the route via Toronto. All nonstop service was curiously provided by three foreign carriers, Alitalia, Air France, and BOAC.

However, at this point in the negotiations the U.S. position on the refusal to include Los Angeles on a route for a Canadian carrier from Vancouver had been made clear. Accordingly, in rejecting multiple designation the Canadians also eliminated Montreal as any kind of a terminal of the Chicago-Toronto route. As long as Los Angeles was withheld from a Canadian carrier, Montreal would be withheld from an American carrier.

The U.S. delegation remained firm on both its multiple designation and Vancouver positions. Yet it still wanted to get rights to serve Montreal from Chicago. Thus when the U.S. agreed to designate only a local service carrier

to serve the Detroit-Toronto route, the grant of which had been opposed previously by Canada, and to prohibit Detroit from being served as an intermediate point between Chicago and Toronto, it sought a Canadian concession in the right to serve Montreal from Chicago. Canada was only willing to grant Montreal in return for Vancouver and expected the Canadian route concession on Detroit to be matched by a U.S. concession on Canadian routes to Florida.

After strongly opposing multiple designation throughout the negotiations, the Canadians finally proposed a Montreal/Toronto-Chicago route for Canada with the Canadian right to designate two carriers to serve the Toronto-Chicago segment and a route from Chicago to Toronto for two U.S. carriers. While the U.S. was gratified that the Canadians agreed to multiple designation on the Chicago-Toronto segment, the U.S. still sought to include rights from Chicago to Montreal. This was rejected by Canada as long as Vancouver-Los Angeles was denied to a Canadian carrier. The Canadians indicated toward the end of the negotiations that they might consider yielding on Montreal if the U.S. granted Canada a Winnipeg-Chicago route, but the U.S. rejected such an exchange. The U.S. in the end accepted the Canadian proposals on multiple designation and on Montreal but included in an exchange of notes collateral to the agreement a reference to the American desire for a Chicago-Montreal route which would be re-examined in 1969.

Detroit-Toronto

The United States proposed a route between Detroit and Toronto for multiply designated U.S. carriers. This proposal was rejected by the Canadians for several reasons. In the first place, the U.S. proposed multiple designation for the route, a concept which the Canadians were opposing in the Chicago-Toronto case. In addition the Detroit-Toronto route would be competitive with Canada's route from Windsor, Ontario(just across from Detroit), and Toronto and would be tantamount to cabotage. Moreover such a route might deprive Canada of connecting traffic at the gateways of Chicago, Cleveland, and Windsor as a carrier could fan out from Detroit and provide single-plane service to Toronto from many markets unavailable to Canadian carriers. Canada preferred the status quo whereby Detroit-Toronto passengers had to travel via a Canadian carrier from Windsor and whereby Toronto passengers from points in the Midwest and West would have to travel to the gateways of Chicago or Cleveland where a Canadian carrier had access to this connecting traffic.

In an attempt to break Canadian reluctance to give the Detroit-Toronto route, the U.S. noted that Detroit could be served as an intermediate point on the Chicago-Toronto route under the language that had been agreed to regarding serving intermediate points. The Canadians, however, reiterated their opposition to the route regardless if it was served as an intermediate point on another route.

or as a separate route; they were also prepared if the need arose to put in a restriction that Detroit could not be served as an intermediate point between Chicago and Toronto. The fact that Windsor was the riding of Canadian External Affairs Minister Paul Martin may partially explain the Canadian desire to protect the city from competition at Detroit.

The U.S., still determined to get the route, proposed that only a local service carrier be authorized to serve the Detroit-Toronto route. This proposal had the desired effect of meeting Canadian objections to trunk competition for the Canadian carrier operating out of Windsor. Furthermore Detroit could not be served as an intermediate point on another route, and there would be little diversion of connecting traffic from the Chicago or Cleveland gateways since the local service carrier would have access only to limited markets. In return for abandoning Detroit as an intermediate point on another route, giving up the right of multiple designation, and confining the Detroit-Toronto route to a local service carrier, the U.S. expected Montreal on the Chicago-Toronto route.

The Canadians agreed to a Detroit-Toronto route being served only by a U.S. local service carrier and insisted that Detroit could not be an intermediate point on a Chicago-Toronto route except if the local service operations were discontinued and then only with prior approval by the Canadian Government. Furthermore the

Canadians rejected the exchange sought by the U.S. of Montreal on the Chicago-Toronto route and instead sought an exchange in reciprocity on the Florida routes. In the final round of negotiations the U.S. accepted the Canadian proposals including the qualifying language on serving Detroit as an intermediate stop between Chicago and Toronto. Vancouver-Seattle

Canada proposed that the existing routes for a Canadian carrier between Victoria and Seattle and for an American carrier between Seattle and Vancouver be modified by the addition of a Vancouver-Seattle route for a Canadian carrier. In other words the Canadian proposition was to double-track this latter route. The U.S. proposal was the continuation of the existing single-tracked routes. The major concern of the U.S. in denying the Canadians Seattle-Vancouver was the prevention of their using Vancouver as a gateway for Seattle passengers to Eastern Canada and Europe. Canada already operated flights from Vancouver to Eastern Canada and Europe and could be expected to link these services from Vancouver to Seattle to capture the traffic in that region that was without single-plane service to those points. Although language was to be included in the agreement restricting the promotion of services to third countries, it might be ineffective, and in any case it would not prevent promotion of through service Seattle-Vancouver-Eastern Canada. Although the Canadians pressed strongly for Vancouver-Seattle, they finally agreed

to maintain the existing routes of Victoria-Seattle for Canada and Seattle-Vancouver for the U.S.

Philadelphia-Toronto

The United States had long sought a route from Philadelphia to Toronto. While it never was able to obtain a direct route from the Canadians, the U.S. sought to have one-stop through-plane service via Buffalo. However these hopes were dashed when the Canadians refused to issue a permit to Eastern Air Lines over the Buffalo-Toronto route in spite of its bilateral obligation to do so. Although the principal reason for the denial concerned through service to Florida, the result was that through service to Philadelphia was prevented. Therefore the U.S. proposed a route in the new agreement for a U.S. carrier from Washington/Baltimore/Philadelphia(all coterminals) to Toronto.

While the Canadians at first proposed a Washington/Philadelphia-Toronto route for a U.S. carrier, they early withdrew it and later rejected the American proposal. Their withdrawal of their first proposal and rejection of the American proposal indicated that they preferred to have Washington, Baltimore, and Philadelphia traffic go to New York where a Canadian carrier would have equal access with an American carrier to the Toronto traffic. The U.S. proposal was thereafter modified to read Philadelphia-Toronto, but this was also rejected by the Canadians.

A corollary problem was the question of Philadelphia

as an intermediate on a route Washington-Ottawa/Montreal. In proposing the above route which was accepted by the Canadians, the Americans clearly contemplated serving Philadelphia since it seemed to fall within the language of permissible intermediate points under Article III. The Canadians undoubtedly preferred Philadelphia not to be served as an intermediate on a route to Ottawa/Montreal from Washington, since they would rather have this traffic connect at New York where a Canadian carrier could have access to a part of it. Whether Philadelphia can be served as an intermediate point is one of the sources of conflict in the present bilateral agreement which will be discussed later.

In view of the Canadian refusal to authorize a route from Toronto to Philadelphia in the agreement, the U.S. proposed a route from Erie to Toronto. The attempt here was to create another gateway besides Buffalo for through plane service to Toronto from Philadelphia, Washington, and other cities. This proposal was accepted by Canada with the understanding that the route would be operated by a local service and not a trunk carrier.

Buffalo-Toronto

There is a long-standing history of controversy over the Buffalo-Toronto route. As mentioned earlier the route was abandoned by American Airlines and then transferred to Eastern Air Lines which planned to use Buffalo as a gateway for service from Florida and other cities

to Toronto. Although two carriers were authorized in the bilateral revisions of 1959 to serve the route, any services operated beyond Buffalo to Miami had to have at least one additional intermediate stop according to the 1959 Robertson-Wigglesworth exchange of letters. Despite the fact that this restriction on service between Toronto and Florida via Buffalo would eliminate competition on Canada's route to Tampa, Canada refused to issue a Buffalo-Toronto route license to Eastern on grounds that the capacity offered over the route was far in excess of the primary justification traffic over the transborder route. Canada did however issue a license to Mohawk Airlines for the route.

The Buffalo-Toronto problem precipitated the Galbraith report which in turn resulted in negotiations for a new agreement. One of the major aims in the negotiations was the removal of the Robertson-Wigglesworth restriction and the grant of a license to Eastern for the Buffalo-Toronto route without conditions. In its proposal for a U.S. route Buffalo-Toronto, the U.S. provided for multiple designation of carriers over the route. The Canadians while not opposing the grant of the route itself, flatly opposed multiple designation especially in view of the past history.

Although the U.S. insisted and the Canadians agreed that all conditions on service over the route would be removed, Canada pressed for a condition that a U.S. carrier could not operate to Florida from Toronto via Buffalo until

a Canadian carrier operated the Florida routes. This would assure that one side could not build up an advantage on the route before the other carrier commenced services. The requirement for a mandatory stop at Tampa until November 1, 1967, is the final version of the restrictive principal proposed above.

The U.S. accepted the Canadian position except with respect to multiple designation upon which it insisted although it agreed to a provision in Article III prohibiting multiple designation by indirection. In the final round of negotiations when the Canadians agreed to the multiple designation of two carriers on the Chicago-Toronto route, they also agreed to the designation of two U.S. carriers for exclusive operations on the Buffalo-Toronto route. While it would appear that the Buffalo-Toronto problem was finally resolved, it reappears in the discussions on the interpretation of the current bilateral. Its relevance in the current dispute will be discussed later.

Toronto-Cleveland and Boston-Montreal

The Cleveland-Toronto route which Canada had been operating on an exclusive track basis had been a source of irritation to the United States. Since Cleveland was a major interior U.S. city without any through service to Europe by an American carrier, the Canadians had operated a through-plane service from Cleveland to Europe via Toronto. In addition to removing the Robertson-Wiggles-

worth restriction, a principal aim of the negotiations of the new agreement was the cessation of this Canadian sixth freedom practice. On this point the U.S. was successful in that Article III of the agreement prevented the promotion of through or single-plane service to third countries.

Although the U.S. didn't propose Cleveland-Toronto for an American carrier at first, it later proposed service by a Canadian carrier and by multiply designated U.S. carriers which would thus eliminate the monopoly that Canada had for so long exercised on the route. Under the U.S. proposal Cleveland would become another gateway to Toronto from other U.S. points. The Canadians rejected multiple designation of U.S. carriers over the route, but agreed to the double-tracking of the route. However, double-tracking Toronto-Cleveland was conditional upon the reciprocal double-tracking of Boston-Montreal which heretofore had been single-tracked by a U.S. carrier. Had these two routes been double-tracked it would have been a significant breakthrough for competitive service on previous exclusive routes.

The U.S. reacted to the Canadian proposal by dropping not only multiple designation on the Cleveland-Toronto route but also by eliminating a competitive U.S. carrier on the route. In return the U.S. rejected double-tracking the Montreal-Boston route. As ambitious as the proposals were initially on both sides, the result was a return to

the status quo of an exclusive track for Canada on Cleveland-Toronto and an exclusive track for the U.S. on Boston-Montreal. The concept of noncompetitive service which had so long dominated Canadian-U.S. route discussions refused to fall with respect to these routes as it had fallen with respect to so many other routes in the negotiations.

While Canada accepted the U.S. position on single-tracking the above routes, the Canadians offered an additional proposal granting Canada the right to go beyond New York to Boston on the Toronto-New York route. Although this proposal was made in connection with negotiations on Cleveland-Toronto and Montreal-Boston, it was probably submitted as an additional route that the Canadians could exchange in case the U.S. refused to modify its stand on Philadelphia-Toronto. This proposal can also be viewed in the context of an alternative means of providing Toronto-Boston service via New York since the U.S. had rejected double-tracking Montreal-Boston which would have given the Canadians the opportunity to link Toronto and Boston via Montreal. Boston, however, on the Toronto-New York route was rejected, and the Canadians accepted single-track routes as before for Cleveland-Toronto and Boston-Montreal.

Winnipeg-Minneapolis

To remedy the scarcity of any major routes connecting the Prairie Provinces with the Middle West, Canada proposed double-tracked routes Winnipeg-Chicago under which the

U.S. designated carrier could also serve Minneapolis as an intermediate point and a single-tracked Winnipeg-Minneapolis route for a Canadian carrier. This was consistent with Canada's approach in most previous route matters in which she advocated deep penetration and reciprocity for a carrier of both countries on the route. The U.S. proposal was for a single-track route for an American carrier of Winnipeg-Minneapolis. An earlier formulation of this route included the coterminal Fargo; however this was dropped in response to the Canadian objection that it was a fictitious gateway not deserving of designation on a route. The Canadians objected to the route and the single-tracking of the route by a U.S. carrier. The Canadians submitted a counterproposal giving the route Winnipeg-Chicago to a Canadian carrier and Winnipeg-Minneapolis to an American carrier with the right to serve behind the gateway to Chicago. This compromise took the same format with the same principles as the Canadian alternative proposal of Vancouver-Los Angeles(Canada) and Vancouver-San Francisco(U.S.). This compromise too was rejected by the United States which again proposed Winnipeg-Minneapolis for an American carrier on an exclusive basis.

During the early part of the negotiations, heavy emphasis was not placed on the routes from Winnipeg. In large part this was due to the Canadians' desire to concentrate their efforts on the long-haul routes to Florida from Eastern Canada and to California from Eastern Canada and

British Columbia. The Canadians planned to use the routes from Winnipeg to gain concessions from the U.S. on other routes or to even out the exchange of benefits at the end of the negotiations.

However in the final stages of the negotiations Winnipeg routes became crucial. When the U.S. remained firm on denying Canada access to Los Angeles from Vancouver, the Canadians refused to give the Americans Montreal on the route from Chicago. In addition the Canadians sought compensation for the denial of Los Angeles with a route from Winnipeg to Minneapolis and/or Chicago. Furthermore, if the Canadians were to give up Montreal they would have to have these routes from Winnipeg. Behind this renewed interest in Winnipeg was a serious political problem.

Air Canada, which maintained its service base at Winnipeg, had decided to build a new base in Montreal to handle its new jets leaving the Winnipeg base to service only its propeller planes. This decision was hot with political controversy for the Liberal government which was accused of favoring Eastern Canada and in particular French-speaking Quebec. In attempt to assuage the feelings of Winnipeg, Canada sought to secure air routes for Canada from Winnipeg to Minneapolis and Chicago to preserve Winnipeg's status as an air center.

If the Canadians had given up Montreal to the U.S. on the Chicago route, they would have unquestionably insisted on a route for a Canadian carrier from Winnipeg

as a quid pro quo. However the Canadians did not yield on Montreal and reluctantly granted the Minneapolis-Winnipeg route to the United States. In an attempt to save face the Canadian interest in the route Winnipeg-Chicago was included in an exchange of notes as a route that would be up for discussion in 1969. In this manner the Canadians evidenced their desire in the route which would politically placate the vocal desires of Winnipeg for aviation recognition.

Denver-Calgary

Another route linking the mid-section of both countries but further west along the Rockies involved Calgary, Great Falls, and Denver. The U.S. proposed a route for an American carrier from Denver/Great Falls to Calgary. The Canadians opposed the inclusion of Great Falls since it was an artificial gateway like Fargo in the Minneapolis-Winnipeg route. In their view a route schedule should name in so far as practicable the major destination of the traffic. Therefore the Canadians proposed a route from Denver to Calgary for a U.S. carrier with the recognition that Great Falls could be served as an intermediate stop. The U.S., however, insisted that Great Falls and Denver be coterminals. No reason was given, but it is apparent that the U.S. wanted to be able to use Great Falls as a gateway point for connection to other cities, notably Salt Lake City and points south. The Canadians did not strongly object to Great Falls as a coterminal with Denver

and so accepted the U.S. proposal although they undoubtedly would have preferred to have cleaned up the route schedule by designating the route Denver-Calgary.

Local service routes

Although there was a special exchange of notes regarding mutual cooperation in the authorization of carriers to conduct regional and local service routes, several local service routes were set forth in the route schedule of the agreement. For the United States the routes from Spokane to Calgary, from Ketchikan to Prince Rupert, and from Duluth/Superior to Fort William/Port Arthur, which were added in the 1959 amendments, were continued in the present agreement. The local service routes Hancock/Houghton-Fort William/Port Arthur and Minot or Williston-Regina, which were also added by the 1959 amendments, were deleted in the present agreement. Actually authorization for service over these routes had been terminated by the Civil Aeronautics Board after a showing of low load factors. A new route from Juneau to Whitehorse was added replacing the route Seattle-Whitehorse which was contained in the 1949 agreement. Fairbanks-Whitehorse was continued from the 1949 agreement into the present agreement. As discussed earlier a new local service route from Erie to Toronto was added in place of Toronto-Philadelphia to which the Canadians would not agree.

Several other routes appearing in the 1949 agreement and not deleted by the 1959 amendment were deleted by the

new agreement. These were as follows: Great Falls-Edmonton, Fargo-Winnipeg(replaced by Minneapolis-Winnipeg), either New York or Boston-Quebec, Boston-Moncton, and U.S.-Edmonton-Alaska and beyond, as well as the Windsor-Detroit provision.

Only three local service type routes were listed for Canada in the new agreement: Prince Rupert-Ketchikan, Whitehorse-Fairbanks, and Whitehorse-Juneau. Although the first two routes, which are continuations of routes in the 1949 agreement as amended in 1959, were never operated, the Canadians nevertheless believed that for political purposes the Northwest could not appear to be left out in the new agreement, so these two routes plus the latter one were included. Several other regional routes for Canadian carriers, added by the 1959 amendment, were, however, deleted in the new agreement: Calgary-Spokane, Toronto-Buffalo, Winnipeg and/or Kenora-International Falls, and Fort William/Port Arthur-International Falls. Other than the Northwest to Alaska regional routes which were included for optical and political purposes, Canada did not seek to include routes of this nature in the agreement and preferred to rely on the authorization procedure set forth in the exchange of notes for any new regional routes. This was because Canada had no procedure for subsidizing regional carriers who would undoubtedly need subsidy to be able to operate such routes. Therefore, unless a regional carrier actually requested a specific route,

there was no need to put one in the agreement. Canada also deleted the route from Western Canada-Sault Ste. Marie-Eastern Canada since a new airport had been completed at Sault Ste. Marie, Ontario.

As part of its deep penetration routes to Florida, Canada gave up its right to serve points in the Caribbean and beyond from Tampa. Actually Canada had been serving points in the Caribbean directly from Canada and did not need beyond rights from Tampa. Canada also agreed to the deletion of the Detroit-Windsor provision. With respect to other routes in the agreement, there was no question as to their acceptance. The U.S. received U.S.-Gander-Europe and beyond while Canada received Canada-Honolulu-Australasia and beyond. The routes Montreal-New York and Toronto-New York continued to be double-tracked with a U.S. carrier receiving the coterminals of Ottawa/Montreal. Canada received Halifax-Boston/New York while the U.S. received Washington-Montreal/Ottawa with the right to serve Washington through Friendship, Dulles, or National airports.

Also included in the new agreement by an exchange of notes was an understanding introducing greater flexibility in the handling of regional and local service routes. This was an implementation of a recommendation contained in the Galbraith report. It provided that once a carrier's own aeronautical authorities authorized the airline to conduct a particular local transborder service, upon application, the aeronautical authorities of the other

country would act expeditiously and if appropriate favorably upon the application. This exchange of notes providing more flexibility in authorizing regional transborder services could have far reaching consequences for modifying the present agreement without high level negotiations. However both sides have the means for controlling authorizations and thus can regulate these routes. Since Canada does not subsidize its regional carriers, it is not expected that there will be too many applications from Canadian carriers to operate routes under this form of authorization. Presently three U.S. carriers hold authority granted outside the route schedule under this procedure for the operation of four transborder routes: Burlington-Montreal(Mohawk), Rochester-Toronto(Mohawk), Northway-Dawson(Alaska Airlines), and Fairbanks-Old Crow (Northern Consolidated). Two other local service carriers, North Central and Frontier, have applied to the Civil Aeronautics Board for authority to serve Minot-Winnipeg and Bismarck/Minot-Winnipeg respectively under the new regional route procedures. Whether operating these local service routes on subsidy or not, the U.S. local service and Alaskan carriers would be in a better position than Canadian regional carriers to sustain these operations due to their stronger route structures.

Conclusion

While the new route schedules fall far short of rationalizing the route network between Canada and the United

States, they provide for more and better air service. Travelers between the two countries can reach their destination with fewer intermediate stops and less changing of planes at the gateway cities. While Galbraith's recommendation of a continental system was not heeded, there was a general departure from the transborder system of previous bilaterals. Canada received four new deep penetration routes (Montreal-Tampa/Miami, Toronto-Tampa/Miami, Toronto-Los Angeles, and Vancouver-San Francisco), while the United States, in addition to corresponding rights on these routes, received some new routes (Chicago-Toronto and Detroit-Toronto) and improved authority on other routes (Denver-Calgary and Minneapolis-Winnipeg).

In the bargaining for these routes Canada almost consistently proposed reciprocity on them and their maximum extension to interior points. During the negotiations the United States took the defensive position of trying to cut down the requested Canadian authority instead of offering proposals of its own. The U.S. attack on the Canadian proposals consisted primarily of trying to stop the deep penetration routes short of their ultimate destination or making the deep penetration service conditional for the Canadian carrier. In this way an American carrier would have the advantage of providing better service from the ultimate destination which was also the greater traffic generating center to Canada. On the other routes the United States favored exclusive tracking and multiple designation

with the resulting many opportunities for American carriers to fan out behind the U.S. gateways.

While the route schedules in the new agreement provide improved service between the major cities of the two countries, they are still a long way from the Galbraith concept of an North American air transport network with a minimum of artificial restraint caused by the frontier. The bargaining for the formulation of the schedules during the negotiations indicates that the failure to achieve this integration and rationalization of the route structure with resulting convenience of service to the public was the responsibility of the United States which was unwilling to accept an entirely new approach to bilateral agreements that put the public interest ahead of national carrier interest.

CHAPTER IV: PROBLEMS OF ROUTE SCHEDULE INTERPRETATION

Since the conclusion of the new agreement with Canada in January 1966, two problems of interpretation have arisen which seriously threaten the exercise of rights by the parties over many of the routes.

Philadelphia problem

The lesser in importance of the two problems concerns serving Philadelphia as an intermediate point on the route Washington-Ottawa/Montreal. Service was first proposed over a Washington-Philadelphia-Syracuse-Ottawa route by Colonial Airlines (a predecessor of Eastern Air Lines) in 1954. The United States supported this as being consistent with the 1949 Air Transport Agreement with Canada. The Canadians, however, did not agree with this view. They contended that the addition of a stop at Philadelphia would be more than a minor deviation from the approved operating pattern. Furthermore the Canadians considered Philadelphia to be a population center of such importance that a traffic stop there would overshadow Washington and thus change the essential nature of the service. Despite American representations, the Air Transport Board did not grant Colonial the requested amendment of its license to add Philadelphia as an intermediate stop.

A subsequent attempt by Eastern to secure ATB authority for operations via Philadelphia also failed. Accordingly,

in the 1964-65 negotiations which led to the signing of the present bilateral, one of the American objectives was the obtaining of Canadian agreement that U.S. airlines operating the Washington-Ottawa/Montreal route would, under the new agreement, clearly have the right to elect to serve Philadelphia as an intermediate point.

During the negotiations Canada was concerned that on some routes the United States could, through adding intermediate points that were terminals on other routes, thus designate indirectly a second carrier to operate over a route that was intended for only one carrier. This was known as "multiple designation by indirection." The Canadians therefore favored a provision prohibiting on all routes the addition of intermediate points which were terminal points on another route. In this context the question of serving Philadelphia as an intermediate arose since Philadelphia was to be a terminal on a U.S. proposed route Toronto-Philadelphia.

One interpretation of the discussions favorable to the Canadians would be that the Canadians, though opposed to Philadelphia as an intermediate between Ottawa/Montreal and Washington, did not have to mention it specifically since they thought the condition on multiple designation by indirection would preclude such operation because Philadelphia was a terminal point on a Toronto route. However, the Americans could conclude that if Philadelphia were not named as a terminal on another route, absent any

other restriction, it could be served as an intermediate on the Ottawa/Montreal route. These two interpretations are possible because the route Philadelphia-Toronto was left out of the final route schedule, and the restriction on serving intermediate points precluded adding intermediates only where to do so would result in the carriage of traffic over a route for which the carrier was not designated.

Within a month after the agreement was signed, Eastern consulted American and Canadian officials regarding the addition of Philadelphia as an intermediate point. Both sides apparently believed that Philadelphia fell within the criteria of Article III(a) of the agreement, and on May 12, 1966, Eastern applied for the necessary authority to list Philadelphia as a traffic stop on its license for the Washington route. The application was denied on September 29, 1966, on the ground that Philadelphia was not in reasonable proximity to the direct route between the named terminals. Eastern's reply pointed out that in every combination of points which it might which to serve the mileage via Philadelphia was well within 115% of the direct mileage(a recognized and usually accepted international standard).

After representations between the two governments extending over a period of several months during which each side undoubtedly recounted its recollections of the negotiations, the Air Transport Board granted Eastern authority to serve Philadelphia as an intermediate point

between Washington and Ottawa/Montreal until the matter is reviewed during the next discussions of the agreement in 1969.

Although the Canadians probably intended to prevent service to Philadelphia as an intermediate point during the negotiations and thereby channel the traffic through New York so that Air Canada could compete for it, they did not carefully follow the changes in the routes and the wording of the agreement with respect to their effect on an American carrier operating through Philadelphia. As soon as Philadelphia was dropped as a terminal from a Toronto route and the language on serving intermediate points narrowed from "named terminals on another route" to "routes for which the carrier was not designated," the Canadians should have realized their vulnerability with respect to Philadelphia.

The additional traffic stop at Philadelphia proposed by Eastern appears to be in full accord with the criteria for such operations set forth in Article III(a) of the agreement. It complies with (a)1 since Philadelphia is situated geographically between the named terminals and is in reasonable proximity to the direct route connecting them; with (a)2 since Philadelphia is not a named point on any other route; and with (a)3 since Eastern has not sought authority to originate or terminate flights at Philadelphia.

The Canadians might argue as they did in the case of

Colonial that the parties to the agreement had not intended to permit unilateral addition of such a major traffic point as Philadelphia. They could cite Eastern's authorization by the ATB to serve thirteen other U.S. cities between the named terminals on this route, all of which might be called medium-sized or small cities in contrast to Philadelphia. The size of an intermediate point, however, is not a criterion under Article III(a). Moreover, it can be argued that the Canadians did not consider size to be an unstated criterion when they acknowledged that San Francisco and Portland could be served on a then discussed Los Angeles-Vancouver route and that Detroit could be served as an intermediate on the Chicago-Toronto U.S. route if no separate Detroit-Toronto route were established.

The Canadians apparently recognized their weakness on the Philadelphia problem, and thus authorized Eastern to serve Philadelphia as an intermediate until discussions on the route schedule take place in 1969. At this time the Canadians conceivably might try to use a proposal to restrict serving Philadelphia as a bargaining point to gain concessions on the Vancouver-Los Angeles and Winnipeg-Chicago routes which are also up for review at that time. Thus they will have forced the U.S. to bargain again for the right to serve Philadelphia, a right the Americans believed they had already bargained for.

Nonstop problem

The more significant problem that has arisen since the signing of the agreement is whether the agreement prohibits U.S. carriers from offering single-plane service other than nonstop between Toronto or Montreal and Los Angeles and Tampa/Miami. The agreement contains three new deep penetration routes: Route No. 6, Tampa/Miami-Toronto; Route No. 7, Tampa/Miami-Montreal; and Route No. 8, Los Angeles-Toronto. The route schedule specifically provides:

Notwithstanding the provisions of Article III, no intermediate points between the named terminals may be served on routes numbered 6, 7, and 8.

Identical routes are granted to Canada, and the same prohibition is imposed.

The Canadian Air Transport Committee(formerly the ATB) notified American, Eastern, and Northeast that in the opinion of the ATC the single-plane services with one or more intermediate stops which they were operating and proposed to operate between Toronto and Los Angeles(American), between Toronto and Tampa/Miami(Eastern), and between Montreal and Tampa/Miami(Eastern and Northeast) were in violation of the provision in the route schedule prohibiting service to intermediate points on routes numbered 6, 7, and 8. The communications directed the airlines to cancel such flights immediately. The United States took the position that the restriction was de-

signed to prevent U.S. carriers from operating both non-stop and, by addition of intermediate points under Article III, via U.S. traffic centers not available to the Canadian carriers. It was the Canadian position, however, that the prohibition precluded any single-plane service by any carrier between Montreal or Toronto and Los Angeles, Tampa, and Miami except by the nonstop flights of the airlines designated for routes 6, 7, and 8.

The Canadian position first became known on May 6, 1967, when the ATC sent a telegram to American Airlines rejecting its schedules showing both nonstop flights between Los Angeles and Toronto(U.S. Route 8) and flights over the Chicago-Toronto route(U.S. Route 4) which originated in Los Angeles and offered one-stop service to Toronto. U.S. protests were unavailing, and in order to begin the Chicago-Toronto service on the scheduled inaugural date American requested and received ATC permission to operate the Los Angeles-Chicago-Toronto frequency through June 18, when the Los Angeles-Toronto nonstop service could begin. Thereafter American revised its schedules to substitute San Francisco for Los Angeles beyond Chicago but reserved its position on the acceptability of Los Angeles as a terminal. On September 6, 1967, American received another telegram from the ATC ordering it to discontinue a flight listed in the revised schedule and which had been in operation since June 18 between Los Angeles and Toronto via three intermediate points(San Diego, Phoenix, and Tucson) in addition

to Chicago.

Eastern Air Lines and Northeast Airlines received letters from the ATC on November 28, 1967, requesting the cancellation and discontinuance of single-plane services with one or more intermediate stops between Tampa/Miami-Toronto(Eastern) and between Tampa/Miami-Montreal(Eastern and Northeast). The ATC claimed these flights were contrary to the requirements of the route schedule prohibiting serving intermediate points between Tampa/Miami-Toronto and Tampa/Miami-Montreal. The objectionable flights operated by Eastern involve flights from Florida to Montreal via the New York and Washington gateways and flights from Florida to Toronto via the Buffalo gateway. Northeast's objectionable flights are from Florida to Montreal via the Boston gateway.¹⁶

A partial answer to the question of interpretation of this controversial language in the route schedule lies in the negotiating history of the agreement. As stated before, the Canadians were very concerned about the U.S. proposal of multiple designation as it affected the deep penetration route Los Angeles to Toronto. If multiple

¹⁶. If United Airlines, the other designated carrier on the Chicago-Toronto route were to attempt to originate or terminate its flight at Los Angeles, the Air Transport Committee would undoubtedly take the same position as it has with respect to Eastern Air Lines on flights from Montreal to Tampa/Miami over the New York and Washington gateways.

designation were permitted, an unknown number of U.S. carriers could operate not only nonstop but also operate via intermediate points and flood the market with frequencies that a Canadian carrier could not begin to match. The same would happen on the Chicago-Toronto route, where U.S. carriers could fan out from behind Chicago to numerous terminal markets in the U.S. and deprive a Canadian carrier of all the connecting traffic it had access to previously and, in addition, seriously dilute its share of origin and destination Chicago-Toronto traffic by multiple frequencies supported by back-up traffic. The same nonstop arguments can apply to the routes from Toronto and Montreal to Florida, and the same fanning out arguments can apply with respect to traffic to Montreal and Toronto over the Buffalo, Washington, New York, and Boston gateways.

In an effort to ameliorate the Canadian fears with respect to multiple designation, the U.S. offered to limit designations over the Chicago-Toronto route to one carrier for each beyond market area. The Canadians rejected this proposal and remained strongly opposed to multiple designation in general. The Canadians were also concerned about multiple designation by indirection in which a carrier by adding an intermediate point on a long-haul route could suddenly become a carrier on a transborder route. The United States agreed to restrict the use of intermediate points on the long-haul routes to California

and Florida from Eastern Canada and suggested language that unnamed intermediate points could not be added on these routes, unless specifically agreed, if such intermediate points were named terminals of any other route. The Canadians wanted this language concerning a terminal on one route not being used as an intermediate on another route to apply to all routes so as to totally prevent multiple designation by indirection.

Since the U.S. had all but given up on multiple designation, it apparently saw no point in not agreeing to prevent multiple designation by indirection. It agreed to accept the restriction on intermediates as applying on all routes; however, the U.S. suggested narrowing the restriction to apply only where such intermediate stops would result in service over a route for which the carrier was not designated instead of to those points which were named terminals of another route. This revision, which was accepted by the Canadians and became Article III (a)2 of the agreement, would permit a U.S. carrier to stop at Philadelphia on the route to Montreal from Washington even if Philadelphia were a named terminal on a Toronto route.

Despite this safeguard on multiple designation by indirection, the Canadians still favored retaining a provision prohibiting intermediate stops on the long-haul routes to Florida and California from Montreal and Toronto so as to protect a Canadian carrier on these routes from

the traffic dilution which would result if competing American carriers could mount increased frequencies with supporting intermediate traffic. The U.S. also agreed that these deep penetration routes should be operated by carriers of both countries as nonstop routes. The controversial language that now appears in the route schedule was therefore added.

What effect each side intended this separate restriction to have is the basis of the present dispute. Was it to have the effect of precluding all intermediate stops regardless of the manner of operation as the Canadians claim, or was the effect only to preclude intermediate stops operated on a particular route number and not those points served as an intermediate which were gateway points linking a transborder route with a domestic route as the Americans claim?

On a route from Los Angeles to Toronto, the Canadian view would exclude both Chicago and Kansas City as intermediates, whereas the American view would only exclude Kansas City because the segment Chicago-Los Angeles was a domestic route tacked on to a foreign route so Chicago could not be an intermediate point as two separate routes were involved.

The Canadian position is that the restriction limits U.S. carrier through-plane service between the Canadian and American terminals on routes 6, 7, and 8 to nonstop service, thus precluding single-plane service

with a single flight number via the United States terminals on other routes. The economic argument supporting the Canadian position is that an intermediate stop at New York, for example, would make it possible for an American carrier to operate more Montreal-Tampa/Miami service than would otherwise be economically possible without intermediate support traffic. This increased U.S. carrier service could make a Canadian carrier's operation uneconomic as the greater frequencies would divert traffic from the Canadian carrier which would have to operate the service nonstop without any supporting traffic from intermediate points.

The American view is that the language meant simply that operations on routes 6, 7, and 8 must be nonstop without service to any intermediate point, and that the restriction does not in any way subject an airline operating on other routes to any restriction on the points that it can serve behind the gateway, even if they are terminals on the nonstop routes.

In this connection it should be noted that the problem which led to the negotiations was the behind the gateway operation of Eastern on the Buffalo-Toronto route, and that one of the major goals of the U.S. was the cancellation of the 1959 Robertson-Wigglesworth exchange of letters which required that any U.S. carrier operating over the Buffalo-Toronto route make at least one stop between Buffalo and Miami. These letters were canceled by the Butterworth-Cadieux exchange of notes shortly after the

agreement was signed, and the cancellation of the restriction was a sine qua non of the new agreement. In light of these events it is doubtful that the Canadians ever questioned the right of a designated carrier to operate behind the gateway point to points in its own territory as long as the gateway was not fictitious(i.e., the named gateway serving only as an intermediate between an unnamed traffic generating center and Canada).

Behind the gateway operations on these routes were nothing new, and it can be argued that if the Canadians meant to prevent them, they would have specifically done so. Canada had been operating Montreal-Toronto-Tampa since 1950 under the prior agreement which had granted Canada an exclusive nonstop route between Canada and Tampa. Furthermore, at the time of the negotiations two U.S. airlines had operated single-plane services for many years between Montreal and Florida, Eastern over the New York-Montreal and the Washington-Montreal routes and Northeast over the Boston-Montreal route. Eastern began its service to Florida beyond New York in 1957 and extended its Montreal-Washington flights to Florida in 1963. Except for seasonal interruption, these flights have been operated continuously since their inauguration. Northeast first provided single-plane service between Montreal and Tampa/Miami via Boston in 1960. Except for occasional interruptions, variations of this service have continued since that time. A similar history would exist of Eastern's operations

to Florida over the Buffalo-Toronto route had Canada granted it a license.

The Canadians could argue that it was precisely these behind the gateway operations that the disputed language was designed to eliminate and that no more specific a provision was needed. This argument suffers as a consequence of the operations and events during the almost two years subsequent to the agreement before the Canadian interpretation became known.

On March 8, 1966, Air Canada applied to the Civil Aeronautics Board for authority to operate the new Florida routes provided for in the agreement. At the hearing on April 14, 1966, it stated its intention to operate initially Montreal-Toronto-Tampa-Miami, a fact which was noted by the hearing examiner in his recommended decision served April 22, 1966. After Board and Presidential approval Air Canada inaugurated its flight #980 between Montreal and Tampa/Miami via Toronto on August 1, 1966, and continued the operation until November 1966 when it introduced nonstop flights between Montreal and Florida. However from January 1967 to January 1968 Air Canada scheduled flights from Montreal to Tampa via Toronto. Indeed its summer schedules effective April 28, 1968, show a daily flight Montreal-Toronto-Miami and a daily flight Montreal-Toronto-Tampa. If the Canadians had such a firm understanding of the restrictive language in the route schedule, one might at least have expected them

to communicate it to their national carrier. However, the ATC at this writing has apparently voiced no objection to Air Canada's behind the gateway operations which are, according to the Canadian interpretation, in violation of the agreement.

After the signing of the agreement Eastern continued its operations from Montreal to Florida behind the New York and Washington gateways and commenced operations from Toronto to Florida via the Buffalo gateway on October 1, 1966. Northeast also continued its behind Boston gateway flights from Montreal to Florida. Yet it was not until almost two years after the signing of the agreement that the ATC on November 28, 1967, objected to these carriers' operations as being in violation of the agreement. As noted earlier the ATC notification to American that its multistop flight from Los Angeles to Toronto via Chicago and other cities was in violation of the agreement followed by nearly four months its initial approval in the revised schedule. These delays in the face of existing and well-known behind the gateway operations indicate at least that the Canadians may not have had a clear conviction of their interpretation of the restrictive language.

The licenses for the routes involved granted by the ATC do little to clarify the government's interpretation of the language. Eastern's Canadian licenses to operate New York-Montreal and Washington-Montreal and Northeast's license to operate Boston-Montreal have not been amended in the more than two years since the signing of the agree-

ment to restrict their operations behind their gateways to points other than Tampa or Miami. The licenses issued to Eastern in April 1966 for Buffalo-Toronto and to American in April 1967 for Chicago-Toronto are similarly without any restrictions. Surprisingly, since it was issued after the controversy with American, the license issued to United in July 1967 for the Chicago-Toronto route contains no specific restriction on its operation behind Chicago. It could be argued, therefore, that Canada did not consider that the behind the gateway operations of all these carriers to terminal points on the nonstop routes were in violation of the agreement.

The licenses granted to American in April 1967 and to Northeast in August 1967 for the Toronto-Los Angeles and Montreal-Tampa/Miami routes respectively did incorporate the restriction of the route schedule, but the license issued to Eastern in April 1966 for Toronto-Tampa/Miami contains no similar condition nor in fact any reference whatsoever to the schedule requirement that the route be operated nonstop. While these inconsistencies and omissions in the Canadian licenses issued to the American carriers may tend to indicate that the Canadians had no definitive idea about the restrictive language, it could also be argued that these actions or inaction were the result of administrative oversight and delay and therefore do not detract from the position that Canada is now taking with respect to the language on intermediate points.

The meaning of the language to the Americans as judged by subsequent events is quite clear. The carriers' actions in operating behind the gateways speak for themselves. The understanding of the government is reflected in the decisions of the Civil Aeronautics Board and the record in the Los Angeles/Chicago-Toronto and Montreal-Tampa/Miami cases. The Board's opinion in the first case (Order E-24904) points out in footnote one that "under the bilateral, if the same U.S. carrier is designated for both routes, it may serve Chicago as an intermediate point on the Los Angeles-Toronto route." In the Montreal-Tampa/Miami case the principal contenders, Eastern and Northeast, both presented arguments based on the assumption that, if awarded the nonstop route, existing service between Montreal and Florida via New York and Boston, respectively, would be continued. The Board's opinion in that case (Order E-25277) states on page 5: "Northeast will operate direct through-plane service between Montreal and Tampa/Miami and in addition will provide single-plane and single-carrier service via Boston. Eastern will continue to serve the Montreal-Florida market providing one-stop services via New York and Washington and single-carrier connections, irrespective of the outcome of this proceeding." These two cases reflect the understanding of the Board and the U.S. industry that the requirement in the schedule that no intermediate points between the named terminals may be served on routes numbered 6, 7, and 8 did not mean

that flights over other routes could not serve the named terminal markets.

Another pertinent point which undercuts the Canadian interpretation is the text under Route Schedule I which states; "If the same United States airline is designated to operate both Route 6(Tampa/Miami-Toronto) and Route 7 Tampa/Miami-Montreal), such airline may serve Toronto and Montreal on the same flights....." This provision authorizes a U.S. carrier under certain conditions to provide single-plane service between Montreal and Tampa/Miami via Toronto. Significantly, the Canadian Route Schedule II contains no similar or corresponding provision. Schedule II does not authorize Canada to so operate, presumably because the Canadian Government believed that the agreement did not prohibit Air Canada from continuing to operate its historical pattern of service; that is, that the agreement did not prohibit Air Canada from operating between Montreal and Tampa/Miami, the named terminals of Canadian route 8, via an intermediate point in its own country(Toronto) which is a named terminal of another route(route 7). Under these circumstances, and if the Canadian present interpretation were to be imposed, a Canadian carrier could not serve Montreal beyond Toronto from Florida. It is extremely hard to believe that Canada would have granted this route to a United States carrier while simultaneously denying it to a Canadian carrier, especially when Air Canada had been operating that route

for years before and during the negotiations and even presently continues to operate that route in spite of the government's objections to American carriers' behind the gateway operations to Florida and California.

Canada's approach to American carriers' behind the gateway operations on the deep penetration routes has been belated and inconsistent. The ATC's delayed response to these operations, its piecemeal notifications to the carriers, and its inconsistency with respect to Air Canada's operations as well as with respect to American carriers' licenses, all indicate that Canada may not have had a clearly defined interpretation of the restrictive language. Its concurrence in unquestioned operations behind the gateways, the removal of the Robertson-Wigglesworth restriction by the Butterworth-Cadieux exchange of letters, the specific provision permitting a U.S. carrier to operate beyond Toronto to Montreal from Florida under certain conditions, and the absence of a similar provision for a Canadian carrier, all indicate that the Canadians may not have viewed the restrictive language as precluding behind the gateway operations for either American or Canadian carriers to the terminals on the long-haul routes from Eastern Canada to California and Florida. Added to the above factors is the practice of behind the gateway operations prior, during, and subsequent to the negotiations by carriers of both countries. Combining all these elements tends to lead to the conclusion that the Canadians lacked certainty of

conviction of their interpretation and that it may not have entirely been administrative oversight and delay that resulted in their belated application of their interpretation.

It is possible that the Canadians only realized some time after the negotiations the consequences that their present interpretation would have and that their insistence on their present interpretation could merely be to build up a reservoir of items for which the Americans would have to bargain when the route exchange is reviewed in 1969. This is probable since the Canadians were made very much aware of their lack of bargaining leverage in the last negotiations and of the need to strengthen their position for the next round of negotiations.

The United States can demonstrate by prior and subsequent operations as well as its insistence on removing restrictions on behind gateway operations (i.e., Butterworth-Cadieux cancellation of the Robertson-Wigglesworth exchange of letters) that its intention was that the restriction on serving intermediate points on routes 6, 7, and 8 did not mean that a carrier operating on routes 4, 9, 10, 11, 12, and 13 could not serve as behind the gateway points the United States terminals named on routes 6, 7, and 8. The Board decisions cited earlier confirm this viewpoint.

The Canadians strongest argument, however, is the actual language of the restriction itself precluding inter-

mediate stops on the routes from Eastern Canada to Florida and California and the reason for its inclusion. The Canadians could argue that the prohibition is meaningless unless it includes points named as terminals on other routes as well as unnamed intermediate points. Why would the Canadians only want to prevent an American carrier on the route from Los Angeles to Toronto, for example, from serving Denver and Kansas City but not the greatest traffic generating center Chicago, or on the route from Montreal to Florida from serving only Philadelphia and Atlanta and not New York. In view of the apparent Canadian concern during the negotiations about dilution of traffic from the nonstop flights by the addition of intermediate points thus enabling a carrier to provide more frequencies, it is reasonable to assume that the Canadians believed the restriction applicable to any intermediate point. The restriction would then apply to any point served between the route terminals with single-plane service with no change of flight number. The American operation of tacking a domestic route to a transborder route in the Canadian view is a violation of the nonstop provision unless two flight numbers are used and unless the flight is operated as a connecting service even though as a practical matter the same plane is used for both segments. Unless the language is to be superfluous, the Canadians would argue that their interpretation is the only meaningful one.

The meaningfulness of their interpretation can be supported by economic arguments. The Americans might argue that one-stop service is not competitive with nonstop service. This is true, however, only where the market between two points is strong enough to support numerous nonstops well-spaced throughout the day. Where the traffic is not sufficient to support numerous nonstop services, those that are operated can be operated only at certain times of the day. For a good percentage of travelers, the time of departure and arrival are of more if not of equal importance to the number of stops. One stop with no change of plane would not discourage these travelers. Therefore added one-stop frequencies would tend to divert traffic from nonstop service.

One stop frequencies can easily be added where the traffic between the two terminals to the intermediate point is heavy. Both the Montreal-New York and the New York-Miami markets are large and support a great number of frequencies. Since these markets are large in and of themselves a service Montreal-New York-Miami would not only benefit from the two markets previously discussed but also from any additional Montreal-Miami traffic. With three markets to draw from a greater number of frequencies can be operated from Montreal to Miami via New York which would seriously dilute any nonstop Montreal-Miami service. Proof of this fact is Eastern Airlines 41 weekly flights Montreal-New York-Miami as of December 14, 1967(20 north-

bound, 21 southbound), compared to Air Canada's 28 weekly nonstops and Northeast's 14 weekly nonstops. A similar comparison could be made with the Los Angeles-Toronto and Chicago-Toronto markets.

Not only do the behind the gateway operations enable a carrier to channel traffic away from the nonstop service, but they also enable a carrier to provide through-plane service to intermediate points, other than the gateway terminals, that would not otherwise be possible. These additional intermediate points also provide support for the long-haul routes in competition with the nonstops. Although the restrictive language prohibits intermediate points between Montreal and Tampa/Miami, Eastern by behind the gateway operations has not only been able to serve the gateway terminals of New York and Washington but also the intermediate points Fort Lauderdale and Orlando on its Florida flights to Tampa and Miami while Northeast has been able to serve Fort Lauderdale in addition to the Boston gateway. On the route Toronto-Tampa/Miami Eastern has been able to serve the intermediate points West Palm Beach, Orlando, Tallahassee, Atlanta, and Pittsburgh as well as the Buffalo gateway. Thus by tacking a domestic route to Tampa/Miami behind a transborder route to Toronto or Montreal, American carriers have been able to add numerous intermediate points on these routes in spite of the language meant to assure that these routes were operated nonstop.

An argument can be made and strongly supported that the United States did not contemplate that the limitation on deep penetration routes would prohibit any U.S. carrier from operating behind a named U.S. terminal gateway point to a point specified as a terminal of the deep penetration routes. Likewise, a clear case can be made to support the present Canadian interpretation based on the language itself, the logical basis for including it to protect Canadian carriers from dilution of traffic on the deep penetration routes, and the economic arguments which reinforce the Canadian position. Subsequent Canadian practice and the response to American practices weakens the strength of the Canadian position by lessening the possibility that the Canadians had a definite viewpoint as to the possible broad meaning of the language when it was included. Subsequent events further indicate that the Canadian position on the language may have evolved over a period of time and that even at this writing it has not been fully implemented since no request has been made that Air Canada discontinue its beyond Toronto to Montreal operations from Florida.

However, regardless of the possible lack of understanding and meaning of the ramifications of the restrictive language at the time it was inserted in the agreement and in spite of the prior and subsequent practices of the carriers and the governments, the clear meaning and purpose of the language would seem to preclude intermediate stops on routes

6, 7, and 8, even though the intermediate stop resulted from tacking a domestic route on to a transborder route which enabled the operation of through-plane service without a change of flight number between the terminals on the deep penetration routes. To interpret the language otherwise would defeat the purpose for its inclusion by the Canadians to prevent dilution of traffic on the deep penetration routes. To prohibit intermediate stops on the deep penetration routes but to allow them on flights to the same terminals via behind the gateway operations on other routes would be meaningless and would make the restriction a complete sham. Despite subsequent lack of clarity in the Canadian interpretation of the provision, the purpose for its inclusion is unmistakably clear, and to follow the American interpretation would be illogical in view of this purpose.

How the differences of interpretation are going to be resolved is a complex matter. American has discontinued its objectionable flights. Eastern and Northeast have continued to operate their flights while referring the matter to the U.S. Government for resolution. U.S. protests were apparently unavailing so formal consultations were held in Ottawa in February 1968 in an attempt to resolve the dispute.¹⁷ The results of these consultations are not yet known. Conceivably, since the Canadians' primary

¹⁷. Aviation Daily, February 19, 1968, p. 264.

objection has been to single-plane service with the same flight number from the Canadian terminal to the American deep penetration terminal via a transborder gateway, the Americans or the Canadians may have suggested a compromise whereby the behind gateway operations could continue except that provisions similar to Article III (d) on flights to third countries would apply with respect to promotion of the service. This would mean that although single-plane service could be used, such service to a deep penetration terminal on routes 6, 7, and 8 over another route would have to be held out as a connecting flight with a change of flight number at the transborder gateway. In the absence of some form of compromise, the parties could have agreed to postpone resolution of the problem until 1969 when the route schedule is to be reviewed. The unsolved nonstop and Philadelphia problems plus the Canadian desire for Vancouver-Los Angeles and Winnipeg-Chicago routes would give the Canadians superior bargaining power in their bilateral negotiations for the first time. The result could be Galbraith's continental air transport network after all.

A final step, of course, could be arbitration of the dispute under Article XV of the agreement. Although numerous factors including the negotiating history and subsequent practice of the parties would be considered in any arbitration, the clear meaning of the language prohibiting intermediate stops on the Tampa/Miami and Los Angeles routes

to Montreal and Toronto and the clear Canadian purpose for its inclusion to protect the Canadian carrier from traffic diversion and dilution on the deep penetration routes would probably be decisive over the strongest American arguments of their clear contrary intention evidenced by the Butterworth-Cadieux exchange of notes canceling the Robertson-Wigglesworth restriction and the specific provision allowing American use of Montreal and Toronto coterminals on the Florida route, subject to certain conditions. The result would be the rejection of the American view that operating the same flight over a transborder route followed by a domestic route does not make the gateway city an intermediate point on a route connecting the terminals of origin and termination of the flight.

CONCLUSION

From the very beginning the route schedule has been the principal source of disagreement in civil air relations between Canada and the United States. It has been the source of disagreement because it reflects the major problems besetting the civil air relations between the two countries.

The Canadians believe that the Americans have taken advantage of Canada's geography and close contacts with the United States and made her an unequal partner in the bilateral air agreements. Since all of Canada's principal cities are within a short distance of the frontier, the United States by gaining access at border gateways in effect serves all of Canada. While many major American cities are also close to the frontier, several principal cities are far removed from the border. As the Galbraith report pointed out, the Canadians view equality in air relations as the right to serve the principal market areas, not just the border gateways. Therefore the Canadian aim in the bilateral negotiations has been to acquire deep penetration routes so that its carriers can serve all principal American cities and not just those situated near the border.

The United States, as the Galbraith report noted, has viewed air service to Canada as merely an extension of domestic air routes. Consequently it has only been willing to grant Canadian carriers access to the northern

gateway cities, reserving the deep penetration traffic for its domestic carriers on through-plane or connecting services to Canadian cities. By operating these services behind the border gateways the American carriers have been able to link most American cities with Canada, but the price for the traveling public has been high. The behind gateway operations involve changing planes or several intermediate stops before reaching the final destination.

Consequently the Canadian aim in the negotiations of the 1966 agreement was the acquisition of deep penetration routes to put Canadian carriers on an equal competitive basis with American carriers who could serve the deep penetration markets with behind the gateway operations. The new route schedules indicate that substantial progress was made with respect to deep penetration routes although a continental network of rationalized air routes was not achieved. To assure equality on the newly won routes, Canada insisted that behind the gateway operations be restricted by limiting multiple designation to only two routes and prohibiting multiple designation by indirection. Further restrictions were placed on serving intermediate points between the named terminals on the deep penetration routes. The current dispute on this restriction involves its application to behind the gateway operations.

The basic problem of Canada's unequal status in

Canadian-American civil aviation relations has been reflected in the formulation of the route schedules of the bilateral agreements. The disputes in the negotiations of the current agreement nearly all revolved around the question of equitable access to the air traffic markets. But where Canada proposed reciprocity and deep penetration, the United States proposed exclusive tracking and conditional or curtailed deep penetration. The problem of an equal economic exchange of benefits is still unresolved, and as the exchange of notes collateral to the agreement indicates, a further attempt to rationalize the route structure will be made in 1969. However, little progress can be made if the United States still approaches the formulation of the route schedules with the aim of retaining Canada's unequal status. The formulation of the route schedules should be undertaken with the aim of creating an integrated North American route system with equitable access to principal markets by carriers of both countries and with little artificial restraint caused by the frontier.

Schedule I

An airline or airlines designated by the Government of the United States of America shall have the right to operate air services on each of the air routes specified in this paragraph, in both directions, and to make scheduled landings in Canada at the points specified.

1. Seattle - Vancouver
2. Los Angeles/San Francisco - Vancouver
3. Denver/Great Falls - Calgary
4. Chicago - Toronto
5. Detroit - Toronto (local service airline only)
6. Tampa/Miami - Toronto
7. Tampa/Miami - Montreal
8. Los Angeles - Toronto
9. New York - Montreal/Ottawa
10. New York - Toronto
11. Boston - Montreal
12. Washington - Ottawa/Montreal
13. Buffalo - Toronto
14. Minneapolis - Winnipeg
15. United States - Gander - Europe and beyond
16.
 - a. Spokane - Calgary
 - b. Duluth/Superior - Ft. William/Port Arthur
 - c. Ketchikan - Prince Rupert
 - d. Fairbanks - Whitehorse
 - e. Juneau - Whitehorse
 - f. Erie - Toronto

Notwithstanding the provisions of Article III, no intermediate points between the named terminals may be served on routes numbered 6, 7, and 8. All flights to and from Miami over Routes 6 and 7 shall be via Tampa until November 1, 1967 or such earlier date as may be agreed by the Contracting Parties. If the same United States airline is designated to operate both Route 6 and 7, such airline may serve Toronto and Montreal on the same flights, and shall be entitled to stopover privileges in accordance with Article IV of this Agreement, as though Toronto and Montreal were named as co-terminals on each route. Washington may be served on any flight through any one of the following airports at the option of the airline: National, Friendship, Dulles. The Government of the United States may designate two airlines to serve Route 4(Chicago-Toronto) and two airlines to serve Route 13(Buffalo-Toronto). For three years from the time of signature of this Agreement the Government of the United States shall not designate more than one airline for any other route specified in this Schedule. Thereafter the Government of the United States may designate additional airlines for any route specified in this Schedule, subject to the prior agreement of the Government of Canada.

Schedule II

An airline or airlines designated by the Government of Canada shall have the right to operate air services on each of the air routes specified in this paragraph, in both directions, and to make scheduled landings in the United States of America at the points specified.

1. Victoria - Seattle
2. Vancouver - San Francisco
3. Halifax - Boston/New York
4. Montreal/Toronto - Chicago
5. Toronto - Cleveland
6. Toronto - Los Angeles
7. Toronto - Tampa/Miami
8. Montreal - Tampa/Miami
9. Montreal - New York
10. Toronto - New York
11. Canada - Honolulu - Australasia and beyond
12. a. Prince Rupert - Ketchikan
b. Whitehorse - Fairbanks
c. Whitehorse - Juneau

Notwithstanding the provisions of Article III, no intermediate points between the named terminals may be served on routes numbered 6, 7, and 8. All flights to and from Miami over Route 7 and Route 8 shall be operated via Tampa until November 1, 1967 or such earlier date as may be agreed by the Contracting Parties. The Government of Canada may designate two airlines to serve the Toronto-

Chicago segment of Route 4. For three years from the time of signature of the Agreement the Government of Canada shall not designate more than one airline for any other route specified in this Schedule. Thereafter, the Government of Canada may designate additional airlines for any route specified in this Schedule, subject to the prior approval of the Government of the United States.

Article III

Except as otherwise specified in the Schedules annexed to this Agreement,

(a) additional traffic stops on any route specified in the Schedules annexed to this Agreement may be made in the territory of a Contracting Party by the airline or airlines designated by such Contracting Party, provided

1. such stops are between the named terminals and in reasonable proximity to the direct route connecting them;
2. such stops may not result in service by such airline or airlines over any other route specified in the Schedules annexed to this Agreement for which such airline or airlines have not been designated in accordance with Article V; and
3. flights on any specified route may not be originated or terminated at such additional traffic stops;

(b) named points other than terminals on any of the routes specified in the Schedules annexed to this Agreement may at the option of the designated airline or airlines be omitted on any or all flights;

(c) any route specified in the Schedules annexed to this Agreement having two or more terminal points may be operated to one or all of such terminal points on any or all flights at the option of the designated airline or airlines;

(d) the routes specified in the Schedules annexed

to this Agreement shall be operated and promoted as routes between the United States and Canada. Should a designated airline of either country provide a service to points beyond its home country in connection with such routes, public advertising or other forms of promotion by such airline in the territory of the other country or in third countries may not employ the terms "single carrier" or "through service" or terms of similar import, and shall state that such service is by connecting flights, even when for operational reasons a single aircraft is used. The flight number assigned to services between the United States and Canada may not be the same as that assigned to flights beyond the home country of the airline performing the service.

BIBLIOGRAPHY

Exchange of Notes, Signed August 29 and October 22, 1929.
Executive Agreement Series No.2.

Air Navigation, Arrangement between the United States of
America and Canada, Effected by Exchange of Notes,
Signed July 28, 1938. Executive Agreement Series
No. 129.

Exchange of Notes, August 18, 1939. Executive Agreement
Series 159.

Exchange of Notes, November 29 and December 2, 1940.
Executive Agreement Series 186.

Exchange of Notes, March 4, 1943. Executive Agreement
Series 314.

Air Transport Services, Agreement between the United States
of America and Canada, Effected by Exchange of Notes,
Signed February 17, 1945. Executive Agreement Series 457.

Air Transport Services, Agreement between the United States
and Canada, Effected by Exchange of Notes, Signed
April 10 and 12, 1947. Treaties and Other International
Acts Series 1619.

Air Transport Services, Agreement between the United States
and Canada, Signed June 4, 1949. Treaties and Other
International Acts Series 1934.

Air Transport Services, Agreement between the United States
of America and Canada, Effected by Exchange of Notes,
Signed November 22 and December 20, 1955. Treaties
and Other International Acts Series 3456.

Air Transport Services, Agreement between the United States
of America and Canada, Effected by Exchange of Notes,
Signed April 9, 1959. Treaties and Other International
Acts Series 4213.

Air Transport Services, Agreement between the United States
of America and Canada, Signed January 17, 1966, with
Exchange of Notes. Treaties and Other International
Acts Series 5972.

Aviation Daily, February 19, 1968, p. 264.

Hackford, The Colonial Airlines Challenge to the U.S.-
Canadian Transport Agreement, 19 J. Air L. & Com. 1
(1952).

Johnson, The International Aviation Policy of the United
States, 29 J. Air L. & Com. 366 (1963).

Stoffel, American Bilateral Air Transport Agreements on
the Threshold of the Jet Transport Age, 26 J. Air
L. & Com. 119 (1959).