Honorable Herbert H. Lehman  
United States Senate  
Washington, D. C.

Dear Senator Lehman:

This will acknowledge receipt of your letter of March 3, 1954, with attached letter to you from Mr. H. Craig Cooper, Partner, Century Travel Service, concerning North American Airlines, Inc. In your letter you ask for a report on the matter.

At the present time North American Airlines is engaged in two principal types of proceedings before the Civil Aeronautics Board, one relating to route authorization proceedings and the other to enforcement proceedings.

The principal route authorization proceeding involves a proceeding instituted by the Board known as the Large Irregular Carrier Investigation, Docket No. 5132. That investigation involves all irregular carriers and is concerned with the question of proposed changes in the existing regulations and requirements of the Board governing the large irregular carriers. Full consideration will be given there to the need in the public interest for broadened operating authority for such carriers. In addition, North American is an applicant for scheduled trunkline service in three major route certification proceedings known as the New York-Chicago Service Case, Docket No. 986, involving service in the area between New York and Chicago, the Denver Service Case, Docket No. 1841, involving service between the West Coast and Chicago, and the Northeast-Southwest Service Case, Docket No. 2355, involving service between the New York area and the Oklahoma-Texas area.

Pending determination of these four cases, however, the Board believes that it cannot permit North American to disregard the requirements of the Act and the lawful limitations on its operating authority any more than it can permit any other regular or non-scheduled carrier to ignore or violate the law. Accordingly, in accordance with the Board's normal procedures and policies, a petition and complaint was filed with the Board on March 12, 1953, by our Office of Compliance.
instituting an enforcement proceeding against the group of carriers and other persons operating under the name of North American Airlines. The issues involved in the enforcement proceeding relate solely to alleged past violations of the Act and existing requirements and regulations of the Board. They include allegations of violations of sections 401 and 406 of the Act, violations of certain regulations relating to the frequency and regularity of operations, and violation of the ticket and ticket agency regulations of the Board.

The enforcement proceeding involves a formal administrative proceeding before the Board in which the carrier will be entitled to all procedural and other safeguards provided under the Civil Aeronautics Act and the Administrative Procedure Act. North American will have full opportunity in the hearing to present its own witnesses and evidence, to cross-examine the witnesses of others, to submit legal briefs, and to argue its case orally before the Board. In addition, the carrier will be entitled to appeal to the courts if the Board commits legal error.

Needless to say the Board has not reached any conclusion on the question whether North American is a violator, or, if it is, the nature or severity of the corrective action which may be called for in order to protect the public interest. We believe merely that we are under a duty to determine, after notice and hearing, whether any of the alleged violations have in fact occurred, and if so, to take such corrective action as may be required in the public interest. The Board has not at any time attempted or proposed to apply any sanctions or penalty against North American prior to completion of the proceeding which has been instituted to determine whether violations have occurred.

One of the points emphasized in Mr. Cooper's letter is the thought that if North American is put out of business such action by the Board will constitute a serious and damaging blow to the American system of free enterprise. I should like to comment briefly on this contention.

It has long been an accepted principle that certain business enterprises, usually referred to as public utilities, are affected with a public interest and that it is necessary and desirable in the interest of the public to provide for governmental regulation of such enterprises and for limited entry into that particular field of business enterprise. Everyone is aware of the fact that such enterprises as motor carriers, railroads, water and gas companies, communications companies, and similar enterprises are not permitted to begin operations
whenever and wherever they choose, but are required to obtain a license, franchise or similar authorization from the proper governmental authority. Apparently it is not as generally known that by passage of the Civil Aeronautics Act in 1938 Congress determined that air transportation should likewise be classed and regulated in the same manner. Under the Act no person can engage in air transportation unless and until it obtains authorization from the Board. In brief, the system of "free enterprise" in air transportation was abolished by the Congress in 1938, and was replaced by a system of limited entry administered by the Board pursuant to standards established by Congress in the Civil Aeronautics Act.

It should also be noted that North American, like every other air carrier operating under an authorization received from the Board, is itself a beneficiary of the provisions of the Act restricting free entry into air transportation. North American is a Large Irregular Carrier, authorized to engage in air transportation of persons and property between any points in the United States on an irregular and infrequent basis. As such it is protected against unauthorized and illegal entry into its field by new companies which do not obtain a proper authorization from the Board. Moreover, it is also protected against unauthorized and illegal entry into its field by the certificated carriers. Each air carrier—whether it be a trunkline carrier, local service carrier, helicopter operator, cargo carrier, or other carrier—must confine itself to the type of service which it has been authorized to perform. Moreover, North American and other irregular air carriers receive these benefits from the prohibition against free entry into the air transportation field despite the fact that they, unlike the certificated carriers, were not required to prove their fitness, willingness and ability to conduct operations.

No public regulatory statute such as the Civil Aeronautics Act can be effective unless it is enforced. If unlimited entry is in fact permitted through lack of enforcement the statute no longer fulfills its purpose and ceases to have any practical effect. This principle not only requires that companies holding no authorization whatsoever must be required through legal proceedings to terminate operations illegally inaugurated, but likewise requires that an air carrier—whether it be a Large Irregular Carrier, cargo carrier, or trunkline carrier—which holds authorization to engage in a particular type or kind of air transportation must likewise be required through legal proceedings to terminate any operations which exceed its authorization from the Board. While the public interest may be injured to some extent whenever a technically qualified company is required to
terminate or curtail its operations, the Board must consider whether the public interest will not be injured much more seriously if the violations are sanctioned. If the law is not enforced it ceases to exist as an effective instrument of national policy.

In short, therefore, the contention that enforcement proceedings which may result in the termination or curtailment of unlawful operations constitute an attack on and a departure from the principles of free enterprise indicates a misconception of the purposes of the Civil Aeronautics Act of 1938, and a failure to understand the purpose of the Board's proceeding. The purpose of that proceeding is not merely to punish, but rather to protect and preserve the national plan against the economic chaos which would be brought about by the policy of ignoring knowing and willful violations of the law.

Once again I wish to emphasize that the outcome of the proceeding cannot be predicted at this stage. If in fact the carrier has observed the requirements of law the Board obviously would not put the carrier out of business, nor could it do so under the law. The drastic remedy of revocation of the carriers' operating authority will be utilized by the Board only if the violations are of such a knowing and willful and flagrant character as to justify and require such action.

The letter from Mr. Cooper also interprets the Board's action against North American as one favoring "big business". This indicates a misunderstanding of the Board's enforcement policy. Since it is the Board's responsibility to regulate and police air transportation in the interest of the public, enforcement actions are brought against both large and small carriers whenever the nature and seriousness of violations requires such action. Thus enforcement actions are not brought for the purpose of protecting the "big carriers", but to protect the public interest in a sound and adequate air transportation system. Other carriers, large and small, holding authorization from the Board are also benefited only as an incident—-in fact an unavoidable incident—to the protection of the public interest.

The letter from Mr. Cooper also states a belief that termination of operations by North American will mean an end of low cost coach service which has been of great benefit to persons of low income desiring air transportation. The Board believes that no such result is to be feared or anticipated. While it is true that the irregular carriers have "pioneered" low cost coach service, this does not mean that the cessation of operations by North American would put an end
to that type of service. The Board since December 6, 1951, has been on record as favoring and encouraging low cost coach type service, and on that date called upon the air carriers to expand their coach services promptly and substantially. Under this policy, domestic coach services have rapidly expanded and developed. Thus during the year 1953 the regular services of the trunklines increased only 8.3% over 1952, while the coach services increased 58.2%. During the year 1953 one fourth of the total volume of domestic passenger operations of the trunkline carriers consisted of coach operations, while in the international field the proportion was even higher. Moreover, should expansion and gradual extension of coach services to new cities lag, the Board has adequate power under the Civil Aeronautics Act to require the rendition of such services.

I am returning herewith Mr. Cooper's letter. Should you desire any further information in connection with this matter the Board will, of course, be happy to furnish it.

Sincerely yours,

[Signature]

CHAN GURNEY
Chairman