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House - Post Office & Civil Service  
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REPEAL OF PROVISIONS RELATING TO THE  
FURNISHING OF INFORMATION TO THE  
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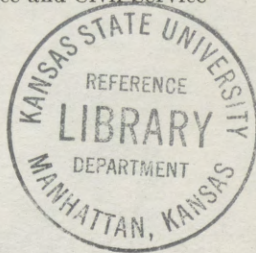
HEARINGS  
BEFORE THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES  
EIGHTY-SEVENTH CONGRESS  
FIRST SESSION  
ON

**H.R. 1986 and H.R. 5600**

BILLS TO REPEAL THE PROVISIONS OF SECTION 5 OF  
THE ACT OF JULY 28, 1916, AS AMENDED, RELATING TO THE  
FURNISHING OF INFORMATION TO THE POSTMASTER GEN-  
ERAL BY THE INTERSTATE COMMERCE COMMISSION WITH  
RESPECT TO REVENUE RECEIVED BY RAILROADS FROM  
EXPRESS COMPANIES FOR THE TRANSPORTATION  
OF EXPRESS MATTER

MARCH 8, 16, 29, AND APRIL 14, 1961

Printed for the use of the Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1961



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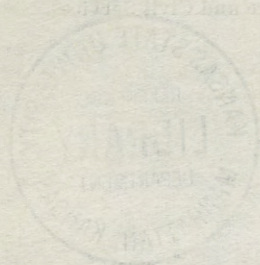
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## REPEAL OF PROVISIONS RELATING TO THE FURNISHING OF INFORMATION TO THE POSTMASTER GENERAL BY THE INTERSTATE COMMERCE COMMISSION

WEDNESDAY, MARCH 8, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10 a.m., in room 215, House Office Building, Hon. Thaddeus J. Dulski (subcommittee chairman) presiding.

Mr. DULSKI. The subcommittee will please come to order.

This subcommittee was appointed to consider H.R. 1986, a bill to repeal the provisions of section 5 of the act of July 28, 1916, as amended, relating to the furnishing of information to the Postmaster General by the Interstate Commerce Commission with respect to revenue received by railroads from express companies for the transportation of express matter.

The members of the subcommittee are Representatives Henderson, Olsen, Addabbo, Gross, Wallhauser, and Barry, and I was designated chairman.

Without objection, a copy of the bill will be inserted in the record at this point.

(The bill, H.R. 1986, follows:)

[H.R. 1986, 87th Cong., 1st sess.]

A BILL To repeal the provisions of section 5 of the Act of July 28, 1916, as amended, relating to the furnishing of information to the Postmaster General by the Interstate Commerce Commission with respect to revenue received by railroads from express companies for the transportation of express matter

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby repealed that portion of section 5 of the Act of July 28, 1916 (39 Stat. 428), which reads as follows: "The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General."

Mr. DULSKI. The provisions of law in question require the Postmaster General to request from the Interstate Commerce Commission, from time to time, information with respect to revenues received by railroad companies from express companies for services rendered by the railroads in the transportation of express matter. The Postmaster General also is authorized, in his discretion, to ar-



range for the transportation by railroads of other than first-class mail at rates not exceeding the rates for such express matter as so ascertained and reported to him.

These provisions were enacted by the Congress in 1916 for the purpose of preventing rate discrimination by the railroads against the Government in the transportation of the mails. At that time there existed several competing railway express companies, each of which maintained separate contractual relations with the railroads. Reimbursement to the railroads was based upon a specific rate structure.

Today, however, railway express operations are conducted on an entirely different basis.

The end of Federal control of the railroads and express companies in 1920 was followed by a series of changes in the status of railway express, resulting finally in the establishment of a single express agency, Railway Express Agency, Inc., under the ownership and control of a large number of railroads. The express company acts as the agent of the railroads and the transportation of express matter over their lines is not now and has not for many years been performed under a system of rates. The rate structures formerly utilized in determining the amounts to be paid by railway express to the railroads have been discontinued. What the railroads now receive from the express agency is not a "rate," but a share of the returns from a business, the amount varying with business conditions and the effectiveness of competition.

The Interstate Commerce Commission states that these changes in the organization and operation of the express agency and in the relationship between the agency and the railroads have made the statutory provisions in question obsolete.

Enactment of H.R. 1986 is officially recommended by the Interstate Commerce Commission and similar recommendations have been part of the legislative programs recorded by the Commission in each of its last three annual reports, including the current annual report for the fiscal year ending June 30, 1960. H.R. 1986 is based on a draft prepared by the Interstate Commerce Commission in the 86th Congress to carry out its recommendations, and was introduced by our colleague, Dr. Alford, who served as chairman of this subcommittee in the last Congress. An identical bill was sponsored in the 86th Congress by Chairman Oren Harris of the House Committee on Interstate and Foreign Commerce.

At this point, I should like to express my personal regret—and, I am sure, the feeling of the other subcommittee members—that my good friend Representative Alford has resigned from this committee to accept appointment as a member of the House Committee on Appropriations—quite an advancement. Certainly we all profited by our association with Dr. Alford and by his exceptional ability and experience when he was a member of this committee. We wish him well in his important new assignment.

We are fortunate, however, in that while we have lost Dr. Alford, we still have, as members of this subcommittee, both of the minority members of the subcommittee which acted on an identical bill in the 86th Congress. They are Mr. Gross, our ranking minority member, and Mr. Robert R. Barry, both of whom are fully conversant with the matter now before us.



The subcommittee, under the chairmanship of Representative Alford, last year unanimously recommended approval of H.R. 7055, which is identical to H.R. 1986 of the present Congress. The 86th Congress adjourned before the full committee had opportunity to act on the favorable recommendation of the Alford subcommittee. However, by special direction of Chairman Tom Murray, the report of last year's subcommittee was printed as a committee print in order that the information and evidence developed, and the determinations reached by that subcommittee might be available as a permanent record for further consideration of this legislation. A copy of the committee print is on each member's desk this morning.

In view of the widespread interest in this legislation and the divergent views held thereon, the subcommittee will proceed today to hear proponents on H.R. 1986 and it is hoped that their testimony can be completed in this one session. Since the Post Office Department has not yet submitted its official views on H.R. 1986, and in consideration of the recommendation by the Department on last year's similar bill, it is planned that the subcommittee will adjourn following today's hearing and will reconvene at 10 a.m., next Thursday, March 16, to hear representatives of the Post Office Department and any witnesses who desire to appear in opposition to this legislation. Of course, any witnesses favoring the legislation who are unable to testify today will have a later opportunity to present their statements.

Our first witness this morning is the Honorable Dr. Alford, a Representative in Congress from the State of Arkansas.

We are very happy to have you with us this morning, Dr. Alford, and certainly appreciate your taking the time from your busy schedule to give us the benefit of your knowledge and experience with respect to this legislation.

Dr. Alford.

#### **STATEMENT OF HON. DALE ALFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS**

Mr. ALFORD. Mr. Chairman, it is certainly a pleasure to be back over here in Post Office and Civil Service, and I see that you have some very capable new members. It is a privilege and an honor for me to be here this morning.

I thank you for your very kind remarks and for permitting me to appear this morning in support of this legislation which I have sponsored in the present Congress.

With your permission, I will briefly review certain highlights of the background of this legislation and the present state of the law.

The chairman already has most ably explained the provisions of the bill and the desirable effect of its enactment. The fact of the matter is, quite frankly, that the provisions to be repealed by H.R. 1986 are obsolete, long since have outlived any useful purpose intended for them when enacted, and are impossible of performance for such purpose.

Postmasters General in several instances have attempted to carry out the specific requirements of these provisions, but, understandably, without success. The Postmaster General in 1949, 1954, and in 1959 requested the Commission to furnish information as to revenues re-



ceived by railroads for the transportation of express matter and as to rates—as ascertained by the Commission—paid by the Railway Express Agency, Inc., to the railroad companies. These requests all were in accordance with the terms of the statute.

The Interstate Commerce Commission declined each such request. The Commission, in reaching its conclusions, took the position that, in view of the present organization and operations of the Railway Express Agency, Inc., the law places on the Commission no duty or mandate to study and investigate the present operations in connection with the transportation by the railroads of express matter, or of railroad revenues from such transportation, for the purpose of formulating rates.

The Commission further concluded that the transportation by railroads of express matter is not performed under a system of rates and that any investigation and rate determination made by the Commission in any event could apply only to a given period of time in the past and could have no prospective effect or application.

Accordingly, it is apparent that the conclusions reached by the Interstate Commerce Commission are, in summary, that any information which it might develop in an endeavor to comply with such requests from the Postmaster General would be useless for the contemplated purpose. The Commission, in its last three annual reports to the Congress, has recommended repeal of this 45-year-old provision of law as contained in section 2 of the Railway Mail Pay Act.

I strongly concur in the position taken by the Interstate Commerce Commission and respectfully invite attention to the supporting views of Chairman Oren Harris of the House Committee on Interstate and Foreign Commerce, as indicated by his introduction of the first bill to repeal the useless language. In the light of the record, the provisions in question are completely nugatory. They have remained on the statute books for 45 years without ever having been placed in effect. To continue them would be merely to perpetuate surplusage in the law, since it is doubtful that they ever can be applied and, therefore, they can benefit no one.

Moreover, there is serious question with respect to the constitutionality, as well as the practicability, of the provisions of section 557 which would be repealed by H.R. 1986. It would be unduly burdensome to attempt computations of comparable rates for mail and for express shipments, as contemplated by these provisions, because the services furnished by the rail carriers differ substantially. Even under the payment arrangements proposed by the new express contract, only the preliminary amounts paid to the rail carriers will be fixed. Final determination of the amounts to be paid under the contract will depend, as in the past, on the results of actual express operations—results which cannot be ascertained prospectively and which, therefore, could provide no basis for the fixing of future mail-transportation charges by the Postmaster General rather than by the Interstate Commerce Commission.

On the other hand, from the information and evidence developed during my study of this matter, it is my considered judgment that the retention of the provisions of section 557 here in question—in spite of their doubtful application—well might seriously threaten the continued existence of the Railway Express Agency, Inc. This



is no idle conjecture since the rail carriers, quite understandably, feel that they can take no chances whatever that the section might be applied. I believe it to be definitely in the public interest to keep a nationwide express service—such as the one directly concerned in this instance, which handles 70 million shipments annually and provides employment for 33,000 persons—operating as a successful private enterprise transportation facility.

Regardless of approval or disapproval of H.R. 1986, the Interstate Commerce Commission from time to time in the future will exercise its rate-fixing authority under the Railway Mail Pay Act to prescribe rates and methods of payment for the transportation of mail and the units of service to which the rates apply.

I recognize the legitimate concern of the Postmaster General to provide a measure of protection to the taxpayer against unreasonably high charges for the transportation of mail by railroads. I hope the subcommittee in its report will urge the Interstate Commerce Commission to give careful consideration to all requests of the Postmaster General to adjust rates for the transportation of mail by railroads.

Mr. Chairman, this concludes my prepared statement, except that I should again like to express my appreciation for your courtesy in hearing me this morning on this legislation which is of such vital importance to major segments of our transportation industry.

Mr. DULSKI. Any questions?

Mr. GROSS. You do recognize that there is a relationship between express operation and parcel post?

Mr. ALFORD. I do recognize that relationship. I feel, however, that those of us who are committed to the preservation of private enterprise, where possible, as a tax paying institution providing jobs for several thousands of individuals and their families, that we should at least attempt to maintain a reasonable opportunity for such enterprises.

Mr. DULSKI. Thank you, Dr. Alford.

Mr. ALFORD. Thank you, Mr. Chairman.

Mr. DULSKI. The next witness to be heard is Mr. Alvin L. Corbin, Acting Assistant Director, Bureau of Rates and Practices, Interstate Commerce Commission.

**STATEMENT OF ALVIN L. CORBIN, ACTING ASSISTANT DIRECTOR,  
BUREAU OF RATES AND PRACTICES, INTERSTATE COMMERCE  
COMMISSION, ACCOMPANIED BY HIRAM SPICER, LEGISLATIVE  
COUNSEL; AND DALE HARDIN, CONGRESSIONAL LIAISON OFFICE**

Mr. CORBIN. Mr. Chairman and members of the subcommittee, before I start with this statement I would like to introduce my two colleagues, Mr. Hiram Spice, our legislative counsel, is sitting next to me, and Mr. Dale Hardin, our congressional liaison officer, is sitting on the other side of Mr. Spicer.

My name is Alvin L. Corbin. I have been with the Interstate Commerce Commission for 20 years, and, at present, I am Acting Assistant Director of its Bureau of Rates and Practices. I am familiar with the situation which H.R. 1986 is designed to correct, and I am appearing today at the request of the Chairman of the Commission to testify on its behalf.



Incidentally, the reason that a Commissioner was not able to be present this morning was that they are sitting listening to oral argument on new and different types of ratemaking.

H.R. 1986 would repeal certain provisions of section 5 of the Railway Mail Service Pay Act which have become obsolete. The bill is consistent with and would, in fact, give effect to legislative recommendation No. 8 in the Commission's 74th annual report. Recommendation No. 8 reads as follows:

We recommend that those provisions of section 5 of the Railway Mail Service Pay Act, 39 Stat. 428, under which the Commission, from time to time, is requested to furnish the Postmaster General with information as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, be repealed.

These provisions, formerly codified as 39 U.S.C., section 557, direct the Postmaster General to request from the Interstate Commerce Commission, from time to time, information with respect to revenue received by railroad companies from express companies for services rendered in the transportation of express matter. He is also authorized, in his discretion, to arrange for the transportation of other than first-class mail at rates not exceeding those so ascertained and reported to him.

These provisions were enacted by the Congress in 1916 for the purpose of preventing rate discrimination by the railroads against the Government in the transportation of the mails. At that time there were several independent competing railway express companies, each of which maintained separate contractual relations with the railroads. Today, however, railway express operations are conducted on an entirely different basis.

Following the end of Federal control of the railroads and the express companies in 1920, a series of changes occurred in the status of railway express. This series of changes culminated in the establishment of a single express facility, Railway Express Agency, Inc., under the ownership and control of a large number of participating railroads. This single express company acts as the railroads' agent, and the transportation of express matter over their lines is not now and has not for many years been performed under a system of rates.

What the railroads now receive from the express agency is not a rate determined or agreed upon as reasonable for the service, but, rather, they receive a share of the returns from a business wholly owned by them, the amount of such share varying with business conditions and the effectiveness of competition. The agency first pays its own expenses, and the railroads get what is left over for line-haul transportation. Thus, the changes in the organization and operation of the express agency, and in the relationship between the agency and the railroads, have made the statutory provisions in question obsolete.

Nevertheless, in compliance with the law, the Postmaster General has, on several occasions, requested from the Commission information as to the revenue received by the railroads from the Railway Express Agency and the rates, as ascertained, for services rendered in the transportation of express matter. These requests were not merely for the gross revenue received from express service, or even the gross revenue plus car miles, car-foot miles, or ton miles of service performed. Rather, they were, in effect, requests for the Commission to construct something in the nature of an abstract rate by translating revenue re-



ceived into rates based on units of service. The Commission, in declining to grant such a request in 1949 took the position that, in view of the present organization and operations of the express agency, the statute does not place upon it the duty or mandate to make an investigation and study of the operations of the railroads and the express agency in connection with the transportation of express matter, and the revenues derived from such transportation, for the purpose of formulating rates, and, further, that the statute does not contain any direction to the Commission from the Congress to do so.

The same request was considered in 1954, and as recently as May 20, 1959. The Commission in each instance arrived at the same conclusion. However, the Commission pointed out that the Postmaster General was entitled to, and that the Commission is willing to furnish to the Postmaster General, all the information it has concerning the revenue receipts of the railroads from Railway Express.

Even if an investigation were undertaken by the Commission to determine the amount of express matter carried by the railroads in any given period of time, upon a space, weight or other basis, and the relation of that amount, by units of service or otherwise, to the revenue which the railroads received from Railway Express, the information developed would only reflect, or be reportable as, the result of operations during a selected prior period. Since business conditions change, it would have no prospective application or effect. The data thus obtained, even if related to amounts of service performed in selected units of service, would not result in an ascertainment of rates charged by the railroads for service furnished the Express Agency. A lawful rate, moreover, should at least cover out-of-pocket costs, and the railroads have sustained a heavy deficit from these operations for years. An investigation of this type would be a major undertaking, would require considerable time, and the information developed would be useless for the contemplated purpose.

In *Express Contract, 1959*, reported in 309 I.C.C. 545, decided September 21, 1959, the Railways Express Agency, Inc., and certain common-carrier railroads sought Commission approval and authority under section 5(1) of the act for continued pooling and division of traffic, service, and earnings incident to the conduct of the Railway Express business, under a new agreement intended to become effective on October 1, 1959. The Commission's report, in that case, stated as follows:

We believe that the Express Agency occupies a useful place in the transportation of small shipments and that its continuance would be preferable to a substitute organization whose entry into the field might be attended with uncertainty and confusion.

Under the pooling arrangement approved and authorized by the Commission in *Express Contract, 1954*, reported in 291 I.C.C. 11, participating rail carriers were given the right to withdraw from the agreement on the first day of any month after December 31, 1958. Some of the smaller rail carriers availed themselves of this right of withdrawal, and one large eastern railroad served notice of its intention to withdraw at the end of 1959. There were indications that if this intention had been carried out the eastern carriers would have followed this example, foreshadowing a liquidation of the Express Agency.



In *Express Contract, 1959, supra*, the Commission pointed out that in 1955 the total out-of-pocket deficit of the railroads from the express service was approximately \$16 million. In 1956 this figure was \$24,500,000 and in 1958, \$40 million. The estimated 1959 deficit, originally set at \$38 million, was substantially reduced as a result of sharp cutbacks in operating expenses, including discontinuance of advertising, curtailment of sales force, etc. The Commission also pointed out that "to avoid that liquidation if at all possible, the new agreement was devised by the directors and other officers of the Express Agency after extensive negotiations." Continuing, the Commission said, "the broad objective of the agreement is to facilitate contemplated improvements in service and place the express business on a profitable basis."

The new express agreement entered into by the railroads and the Express Agency specifically provides that the use of the new plan for eventual payment to rail companies on a car-foot mile basis is contingent upon the repeal of the statutory provisions in question, or amendment thereof to make them inapplicable to express companies owned or controlled by rail carriers.

It is my understanding that in 1959 the Senate Civil Service and Post Office Committee gave consideration to the possibility of the Post Office Department taking over the express service. However, in view of the new agreement between the railroads and the Express Agency, that I have just mentioned, Government operation of the express service was not given any further consideration. The Commission feels that the Express Agency should be given the fullest opportunity to develop a sound basis of payment to the railroads.

In the light of the expression of the Commission that the Express Agency occupies a useful place in the transportation of small shipments, and since the repeal of the statutory provisions under consideration would remove from the books an obsolete law and free the hands of the railroads and Express Agency, the Commission recommends the enactment of H.R. 1986.

Mr. Chairman and members of the subcommittee, I wish to thank you for this opportunity to appear and testify in support of this measure, and if there are any questions I will do my best to answer them.

Mr. DULSKI. Mr. Corbin, would you care to make your statement here part of the record at this point?

Mr. CORBIN. Yes, sir.

Mr. DULSKI. Any objections?

So ordered.

Any questions?

Mr. GROSS. For my information, on what basis are rates fixed? How are rates fixed by the Interstate Commerce Commission? Is that on the basis of cost plus a reasonable profit?

Mr. CORBIN. There are quite a few factors that go into it. The costs, of course, are important factors, but there are such things as value of service, the flow of the traffic, volume of movement, and things of that nature. There are quite a few different factors which are taken into consideration, and the final figure by the Interstate Commerce Commission is, in fact, a judgment figure which is based on their experience, considering all of the factors which are involved in each individual case.



Mr. GROSS. But, broadly speaking, cost plus a reasonable profit. Is that it?

Mr. CORBIN. You can't just exactly say that, Mr. Gross, and I will tell you why. If you did, and based it strictly on cost and cost alone, plus a reasonable profit, you would then have all commodities moving under the same rate. You would have sand and gravel, let's say, which would be moving under the same rate as liquor or one of our higher value commodities.

Mr. GROSS. How about a reasonable return upon investment?

Mr. CORBIN. Even then if you just fixed it based upon the costs of the railroad plus a reasonable return on investment, you would have all rates gravitated to one level and the value of service and a lot of other considerations would be left out entirely, including also the value of the commodity.

Certainly a carload of silk or a carload of liquor shouldn't be entitled to the same rate as a carload of sand or gravel, and that is what would happen if we based rates entirely on cost plus a reasonable return.

Mr. GROSS. Regardless of that, you can't arrive at a rate—or can you very well arrive at a rate—without knowing something about the operation of the Express Agency. As you have stated here, its operation has apparently been a considerable drain upon the railroads.

Mr. CORBIN. That's right. It has been, sir.

Mr. GROSS. So you must be concerned with the rate.

Mr. CORBIN. Well, we are concerned with costs; now don't get me wrong.

Mr. GROSS. I am talking about rates.

Mr. CORBIN. Costs are a very valuable consideration in determining rates.

Mr. GROSS. Yes. So the rates charged by the Express Agency are of vital concern to the Interstate Commerce Commission; isn't that correct?

Mr. CORBIN. Yes. And I might add at this point that the Postmaster General also can come in to us and we will determine what is a reasonable rate that they should pay the railroads for the service which is being performed in the transportation of mail.

Mr. GROSS. You are the final adjudicator of that, are you?

Mr. CORBIN. We are the final adjudicator; except, of course, they also have recourse to the courts, if necessary, if they don't like our particular decision.

Mr. GROSS. Have they ever gone to the courts?

Mr. CORBIN. No. In fact, in the last few cases, the railroads and Postmaster General have gotten together on an agreed increase which, incidentally, would be below the rate which the costs might justify.

In other words, based on the railroads' costs, they might have been able to justify a higher rate, but the railroads and the Postmaster General have gotten together and agreed on an increase.

Mr. GROSS. Would you say that the Express Agency is a direct competitor of the parcel post.

Mr. CORBIN. To a certain extent; yes.

Mr. GROSS. Especially in view of Public Law 199?

Mr. CORBIN. Yes.

Mr. DULSKI. I would like to ask you one question.



In determining the rates, do you separate your administrative costs from the operating costs on the shipments of Railway Express? Do you take all your assets and establish your administrative costs, your depreciation, your administrative costs, and then you take your actual operating costs that you have in the Railway Express to determine the rate, or is that an overall picture?

Mr. CORBIN. Wait a minute.

They take into consideration the actual expenses of moving the traffic.

Mr. GROSS. "They" being the Commission?

Mr. CORBIN. The Commission.

At this point I would have to confess that I can advise you later, but I am not sure of what percentage they take into consideration for overhead expenses.

Mr. DULSKI. Any questions?

Mr. ADDABBO. Mr. Corbin, how often are the rates revised? Is there a yearly contract on them?

Mr. CORBIN. The rates are revised whenever the Postmaster General believes that they should be revised. They are the initiating party.

Mr. GROSS. One other question.

If this law is repealed, do you see any danger of the express company becoming a monopoly?

Mr. CORBIN. Certainly I wouldn't say any railroad agency could become a monopoly today, when you have the airlines, you have the trucks, you have freight forwarders. Of course, the latter do not handle mail, but when you have all these other modes of transportation—

Mr. GROSS. I am talking about mail exclusively.

Mr. CORBIN. No, sir; I don't think so.

Mr. GROSS. Well, they are the only agency in the field, aren't they?

Mr. CORBIN. Well, you have a lot of motor carriers who are now going specifically into handling small packages.

Mr. GROSS. The Railway Express Agency is a trucking agency, isn't it? It also operates trucks?

Mr. CORBIN. They do operate some trucks, yes; but primarily they still depend upon the rail transportation to go between their major points.

Mr. GROSS. There is nothing to prevent them from expanding if they want to, is there?

Mr. CORBIN. Yes.

Mr. GROSS. What?

Mr. CORBIN. They would have to come in to us to get authority to operate those trucks over the routes.

Mr. GROSS. Well, I understand that, but I am wondering if they would be denied the authority?

Mr. CORBIN. That would depend upon the opposition and the evidence that was presented.

Mr. DULSKI. Any other questions?

Mr. BARRY. I would like to ask a question.

On page 5 you state, in the second paragraph, "Certain common carrier railroads sought Commission approval," and later on you say, "Under a new agreement intended to become effective on October 1, 1959, the Commission's report in this case stated as follows."



Now, those certain carriers—are all of the carriers bound by what those certain carriers asked for?

Mr. CORBIN. Only the carriers that were involved in the Railway Express agreement.

You see, the Railway Express Agency is owned by a group of carriers which cover the entire United States, but all carriers are not involved.

Mr. BARRY. In this agreement?

Mr. CORBIN. That's right, sir.

Mr. BARRY. And what happens to the rest of them?

Mr. CORBIN. I don't follow you just exactly. You mean they—some of them will provide service at a specified price or cost, but all of the carriers are not involved. And since the last agreement which allowed the carriers on option of dropping out, lots of the smaller carriers have dropped out.

I don't recall whether it was the New Haven or the New York Central, but one or the other of them was also threatening to withdraw from the agreement.

Mr. BARRY. And, as I gather, then, the purpose is primarily to put the railway company into a position so it could ascertain mileage rates—

Mr. CORBIN. They are going to try, and they want to get on a basis where they can actually show profit or loss. But the main reason that we are here today is because this particular statute, which we advocate be repealed, is obsolete in that it does not apply and hasn't applied for many years, because the Railway Express does not charge its owner-lines rates, all they get is a percentage of the revenue after all Railway Express expenses are paid, and that revenue which they receive does not cover the cost of providing the service.

Mr. BARRY. Is there any particular reason why the express company must get onto a rate charge base on individual items and parcels?

Mr. CORBIN. Well, they have been operating for years without it, but apparently their executives and the executives of the railroads think that something should be done to get them on a true profit and loss deal.

Mr. BARRY. And you believe that this is one of the impediments for them?

Mr. CORBIN. Yes.

Mr. BARRY. What is the main reason that you feel it is an impediment?

Mr. CORBIN. Well, I think you would have to ask the executives of Railway Express and the railroads for their reasons, but they have obviously made it a condition because they will not change their method of paying their owner railroads until this act is either repealed or amended specifically so as not to apply to them.

Mr. BARRY. Do you think it is a fear that their rates—

Mr. CORBIN. I think we are probably—

Mr. BARRY (continuing). Might be known by the Post Office Department since they would be operating on a competitive basis with the Post Office?

Mr. CORBIN. I think they are probably afraid they might be required to transport mail at less than their cost, and when I talk about cost I am talking about out-of-pocket costs.



Mr. BARRY. Do you think there would be any particular advantage to the Railway Express Co., even with the existing law, to let their rates be known or at least—they don't know them themselves under the system presently—

Mr. CORBIN. They don't have rates as such. So far as their member lines are concerned.

Mr. BARRY. But if they have the rates, would that not be a justification perhaps for them to get a higher postal rate for the parcels that they carry?

Mr. CORBIN. That I cannot answer.

Mr. DULSKI. Pursuant to the same question of Mr. Barry, if you include administrative costs, their differentials, if you include an overall picture, then you will be in the red but if you—

Mr. CORBIN. Well, right now the Railway Express operates in the red so far as its member lines are concerned. There is no question about that.

Mr. DULSKI. On the rate that you have fixed now?

Mr. CORBIN. Now wait a minute. We don't have a rate which is fixed on Railway Express. Now there is a rate fixed which governs the amount which the Postmaster General pays for the movement of mail other than first class.

Now there is a definite rate which has been determined to be a reasonable price for the service performed by the carriers.

Mr. GROSS. If you were convinced that a reorganization, a wedding, whatever you want, shotgun or otherwise, between the railroads and the express agency was justified in the public interest, the Interstate Commerce Commission would have no authority to intervene or to use any of its power to bring about such a situation?

Mr. CORBIN. We have no power that would enable us to bring about a wedding between any modes of transportation, no matter how good we might think it was for the entire country and for the general public.

Mr. GROSS. I asked you the question—and I will be very brief about this—about the ratemaking abilities of the Interstate Commerce Commission, because I have always been intrigued by this business of a farmer shipping a carload of cattle or a carload of corn to the market in Chicago, and the railroad knowing to the penny, or almost to the penny, what it was going to get for having shipped these food products to Chicago, and the farmer not having the slightest idea of what he was going to get when he got to Chicago with his cattle or his corn.

Mr. CORBIN. Well, he generally—he sells his products—

Mr. GROSS. On the open market, yes, and he buys the service on a closed market.

Mr. CORBIN (continuing). Let's say to Chicago less the freight rate between his home and Chicago.

Mr. GROSS. He sells on an open market and buys the service on a closed market.

Mr. CORBIN. And they are also using a whole lot of trucks which are operating—

Mr. GROSS. Well, the same thing applies. We are dealing with railroads today primarily. There is an agency of the Government that fixes the rates by which the railroad knows exactly what it is going to get for the service it performs.



Mr. CORBIN. Wait just a minute, sir. We only fix the rates in contested cases. Otherwise, the rate is initiated by the railroads at the point that they file their proposed schedules of rates. We have authority when we go over them, and there it's got to be something that has to be done in a hurry, to suspend those rates for a period of 7 months.

If we suspend them or if we do not suspend them but vote to investigate them, then the railroads have to come in, in an open hearing, with protestants also having a chance to put in their evidence, and justify those rates and we turn down an awful lot of rates.

Mr. GROSS. But the fact remains, the rates are fixed in the final analysis.

Mr. CORBIN. They are either fixed by the carrier or by us, that is right.

Mr. DULSKI. Thank you very much.

The next witness is Mr. William B. Johnson, president of the Railway Express Agency.

**STATEMENT OF WILLIAM B. JOHNSON, PRESIDENT, RAILWAY EXPRESS AGENCY, INC.**

Mr. JOHNSON. Mr. Chairman and members of the subcommittee, I am William B. Johnson, president of the Railway Express Agency.

My purpose this morning is, with your permission, to file a statement with you and to just talk about it and to answer any questions which you might have.

I would hope that the record of this hearing would include the report of the subcommittee on H.R. 7055, if that were proper or necessary. I don't know whether it is or not, but the report covers the heart of the matter, and I think it would be helpful to do that and perhaps save some repetition.

Mr. DULSKI. Is there any objection?

There being none, it is so ordered.

Mr. JOHNSON. I believe the subcommittee has copies of my prepared statement dated today, March 8, and, if I may, I think it would save your time and perhaps be less boring if that were just copied into the record, if it might be, along with my original statement on H.R. 7055, which I must say was prepared with more care and in considerably greater detail. The new statement, dated today, is simply a supplement to bring the old one up to date. If those two statements might be copied into the record, then I might just go ahead and tell you my position.

Mr. DULSKI. Is there any objection?

Mr. HENDERSON. Your previous statement appeared in the previous hearings?

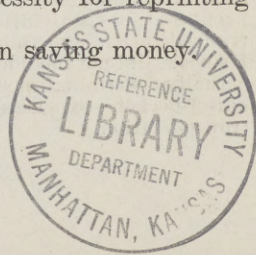
Mr. JOHNSON. Yes; it was in the hearings. I have a copy here for you, if I may.

Mr. DULSKI. Hearing no objection, it is so ordered.

Mr. HENDERSON. I wonder if there is any necessity for reprinting it in this hearing?

Mr. JOHNSON. Well, I am always interested in saving money.

Mr. HENDERSON. We can take care of that.





(Mr. Johnson's previous statement on H.R. 7055 is printed on pages 24-29 of the hearing held on June 15, 1960.)

(Statement of Mr. Johnson, March 8, 1961, follows:)

My name is William B. Johnson. I am president of Railway Express Agency, Inc., which we now call REA Express. The address of the company's headquarters is 219 East 42d Street, New York, N.Y. REA Express is essentially a small shipments service to approximately 23,000 communities in all 50 States plus a few in Canada. We also have through-bill-of-lading service to and from 41 foreign countries through agreements with carriers operating to, from, and within these countries.

I appear in support of H.R. 1986 which would repeal one of the provisions of the Railway Mail Pay Act of 1916. This provision reads:

"The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General."

This provision was until last summer section 557 of title 39 of the United States Code. When title 39 was recodified by the 86th Congress this provision was neither repealed nor reenacted as part of the codification. It was referred to for years as section 557 and I shall continue to call it that today, although strictly speaking this is not accurate.

H.R. 1986 is identical with H.R. 7055 introduced in the 86th Congress. This bill was the subject of subcommittee hearings on three dates in June 1960. I appeared and testified before the subcommittee and also submitted a written statement.

The subcommittee under the chairmanship of Congressman Alford reported the bill favorably and unanimously, but due to the time element there was no opportunity for further consideration by the full committee or by the House. My written statement and the report of the subcommittee are just as valid now as when they were made and I tender copies of these documents and ask that they be placed in the record of this hearing.

I will not read my previous statement, but would like to give a brief summary of its main points.

Conditions in the 120-year-old express business had deteriorated to such an extent by 1958 that it was estimated that in that year on a bare out-of-pocket basis the railroads lost about \$40 million on this service. It was evident that this situation could not continue and it appeared almost inevitable early in 1959 that the business would either be liquidated or nationalized—probably the latter. A liquidation plan was prepared, and a resolution was introduced in the Senate looking toward nationalization of the express company. At that time we had some 37,000 employees and were handling 70 million shipments a year.

However, by drastic measures and revisions of the terms of the express contracts between REA and the railroads and between REA and the airlines, the continuation of the business for a trial period was accomplished. We are still in the trial period and much remains to be done.

The evil days of the express business were due both to external causes—principally the below-cost competition of the Government's parcel post service—and internal causes. The important internal causes were the necessity of operating the business on traditional, outmoded, and uneconomical lines and the provisions of the express contract relating to accounting to the railroads for their portion of the gross revenues from the business. In a word, the express company collected the gross revenues from the public for the complete express service, paid its own expenses—largely incurred in terminal service including pickup and delivery—and turned over the remainder to the railroads which performed inter-city transportation of express.

The express company always broke even—it could not have either a profit or a loss. Its management not only did not have the incentive and discipline of a profit and loss statement, it had no way of measuring the unit cost of line-haul transportation, and this made it difficult to quote rates attractive to the public. Its books did not include any charge for railroad transportation, and the amounts actually remaining for distribution to the railroads were insufficient to cover the out-of-pocket expenses incurred by them in furnishing the line-haul transportation.



When the railroads concluded in 1959 to continue the express business for at least a trial period important changes were made. The express company was given a great deal more independence in the routing and handling of the traffic. It was given the authority to make rates under the regulatory laws. The method of accounting to the railroads was completely changed, although this did not take effect immediately. Commencing July 1, 1961, if section 557 has been repealed by that time, certain initial basic payments will be made to the railroads for transporting express and there will also be additional payments, depending on the results of express operations.

This last and very important change will place the Railway Express Agency on a profit and loss basis for the first time in its history. I am certain that being placed on such a basis is necessary to assure the efficient and economical operation required for the preservation of the business. It is most unlikely, however, that this fundamental change will be made effective if section 557 is not repealed by July 1 of this year.

This old law has never been applied in the 45 years it has been on the books—and it is incapable of application at the present time. There simply have been no "rates" paid by the express company to the railroads for the transportation of express. Whatever has been left at the end of each month after payment of all REA's expenses has been divided among the express carrying roads. There has been no way to determine in advance what this amount would be and it varied widely from year to year and indeed from month to month. So long as the present arrangement with respect to express continues there can be no way to apply section 557. Moreover, the present arrangements are not likely to change unless this section is repealed.

The new arrangements, if 557 is repealed, contemplate the payment of an initial "rate," although this will not be the total payment. There is some question as to whether section 557 will be applicable even under the new contractual arrangements, but there is great danger that the railroads will feel they cannot take the risk. In fact, the new express contract with the railroads provides specifically that the second step of the reorganization plan—the profit and loss basis—will not take effect unless section 557 is repealed or made inapplicable. With the huge passenger service deficits of the railroads it would be disastrous to have their mail pay reduced in any amount and it would be folly for them to expose themselves to the possibility of this danger.

It can be seen from the above that section 557 will never be applied as a practical matter and will never be able to be used to obtain reduced mail rates. As I have said, the railroads could not afford to gamble and, without repeal, would be forced to continue the old arrangements which nearly brought us to disaster. In this event, a new crisis would be likely to develop, probably again threatening nationalization. Repeal thus cannot cost the Government or the taxpayers a single dollar because the law will not be applied. But inaction, nonrepeal, would seriously threaten the continued existence of the express business. Continued express service to the Nation's towns and continued employment of our 32,000 people in private enterprise is, I submit, in the public interest.

One further point should be made indelibly clear. Section 557 is in no sense required to insure reasonable railroad rates for the transportation of second-, third- and fourth-class mail. Such rates are regulated by the Interstate Commerce Commission which fixes them on the basis of cost plus a 3-percent return on investment. The Post Office Department has ample, fair, and equitable protection by reason of the provisions giving the Commission control over the rates. The Post Office can never be forced to pay more than the Commission finds to be fair—and can force the railroads to serve as it directs.

The situation today is essentially the same as it was when I testified last June before Mr. Alford's subcommittee. Due to the general decline in business our traffic has fallen off somewhat and the financial results have not been as good as we had hoped. Practically all transportation agencies have suffered a decline in business. Our losses of volume have not been as great proportionately as those of many of our competitors.

Substantial progress has been made in reorganizing the methods of carrying on the express business. Diversion of express traffic from channels through which it has moved historically to more efficient and economical routes has continued. Since the date of the new agreement, October 1, 1959, to the present time such diversions have resulted in REA operating savings of over \$3,700,000 annually as well as in improved service. In addition, these have reduced the amount of transportation required from the railroads and it is estimated that



these reductions in service requirements have reduced the costs of the railroads by more than \$2 million annually.

Terminal operations have been modernized. Five new terminals have been constructed and put into operation. These are at Kalamazoo, Mich.; Lakeland, Fla.; and three on Long Island. Together with an addition to a terminal at Atlanta, Ga., and new shop facilities at New Orleans, these are expected to result in annual savings of over \$600,000. Additional terminals are under construction and still more are in the planning stage, including major building programs at San Francisco and Boston. Nearly 1,500 new automotive units—trucks, tractors, and trailers—have been put into service since I testified last June. The use of containers has received a great deal of study and we have a number of experimental operations now in effect. Since the beginning of 1960 we have invested or committed over \$14 million in borrowed or depreciation funds for new equipment and facilities.

As a result of these and other improvements, we were able to cut the railroads out-of-pocket express deficit to a little over \$10 million in 1960. It would have been less—between \$7,500,000 and \$8 million—had it not been for the severe and unexpected snow storms and cold weather in December. I believe this is a very good record in view of the fact that in 1958 the deficit was estimated to approximate \$40 million. A 75-percent reduction in 2 years is a substantial accomplishment. Nevertheless, the deficit is still \$10 million on an out-of-pocket basis and there is no assurance that the express business will continue unless such deficit is eliminated. To the contrary, I am sure it will not do so—at least in private enterprise.

I am just as convinced as ever that the complete and permanent elimination of the express deficit will be difficult, if not impossible, unless we can put the company on a profit and loss basis as contemplated by the new agreement. A business simply cannot successfully be operated in this country's economy the way ours has been in the past. One of the fundamental principles of the private enterprise system is that of profit or loss. Even the Russians see the importance of the profit motive. The absence of the profit incentives has, I am sure, had much to do with our difficulties.

However, as I have said before, it seems unlikely to me that this basis can be made effective while section 557 is still on the books. To repeat, the railroads just cannot afford the risk, however remote, of having their mail pay reduced below the cost basis fixer by the Interstate Commerce Commission after hearings.

The testimony at the subcommittee hearings last June by opponents of repeal of section 557 centered largely on the contention that the law could be applied and should have been applied, and that as a result of nonapplication the Post Office Department had paid too much for its transportation. This is completely incorrect since all rates were fixed by the Interstate Commerce Commission on the basis of cost plus a modest 3 percent return on investment. It is incomprehensible to me how it could be said such rates were unreasonably high. To the contrary, even if section 557 could have been applied it would have resulted in confiscation.

Equally important is the fact that there has been no way to apply it. There were no "rates" for the line-haul transportation of express by the railroads and there has been no way to tell until long after the event how much the railroads would receive from the express company for any given period.

The Interstate Commerce Commission has furnished the Post Office Department with all the information in its possession and this was essentially all the information which could be assembled on the subject. It is not the fault of the Commission nor anyone else that this proved of no value in fixing rates. It cannot be emphasized too strongly that there have been no "rates" charged the express company by the railroads for transportation of the express traffic.

In conclusion, let me say again that the 45-year-old section 557 has not been and never will be applied. Its repeal will hurt no one and will not cost anyone, the Post Office Department, the taxpayers, or the parcel post users a single cent. Failure to repeal the section, on the contrary, would seriously threaten the existence of REA with its nationwide and international air, rail, motor, and water common carrier services, handling many millions of shipments annually and employing over 32,000 persons. I submit that passage of H.R. 1986 is clearly in the public interest. On the other hand, failure to pass it would invite nationalization, which I believe is clearly against the public interest.



Mr. JOHNSON. I have been president of the express company for 2 years. This is almost my second anniversary, since it is March 2, 1959.

When I took the presidency the company was scheduled for liquidation on December 31, 1959. I took the presidency on March 2, about 10 months before the scheduled liquidation.

My endeavor was to avoid liquidation. The company is owned by 64 railroads, and the railroads did not want to see the company liquidated, and, needless to say, our employees didn't. We had 37,000 of them.

Our company operates in all 50 States, and serves about 22,000 or 23,000 communities. It has 10,500 offices with the door open to do business.

It uses rail service, passenger rail service, for most of its transportation. I would say on a ton-mile basis about 80 or 85 percent. It also uses motor common carriers. I think we now have 490 contracts with motor common carriers. We also run some trucks of our own where we can do it cheaper and get better efficiency than existing motor common carriers.

We use water services, particularly in our international business. We have air services throughout the country, and internationally. Our air express revenues last year were just about \$50 million. We use all air lines and most railroads, certainly the largest ones, and a large number of motor carriers and water carriers as well.

I think our company is the only nationwide company with national coverage still operating in private enterprise. The only other nationwide transportation company that I know of is the parcel post, operated by the Federal Government.

To some extent, as Mr. Gross implied, these are competitors, I am sorry to say, because we don't do very well competing with the Federal Government. They have some advantages we don't have. For one thing, if they run out of money, the Federal Treasury is there, and we used to rely on the treasury of the railroads, but they are not there any more.

Another thing, the Federal Government and the parcel post, of course, don't have to pay taxes; don't have to pay a great many items of expense that we do. That is not the point here today, but it's very important in this context, because as we raised our rates following World War II to meet the inflated costs, and about 80 percent of our company's expense is wages, we were confronted with the fact that the Federal Government service, parcel post, did not have to. In fact, even if they tried, they couldn't do it as fast under the law, and we lost a great deal of our business to parcel post, commercial business, not the residential business and not the rural business, big business.

We had in 1946, I think, 246 million shipments. Today we have 66 million, 4 million less than last year.

A great nationwide company that is trying to do a full job for the people of the country has to have some business to operate.

The parcel post competition by the Federal Government—and we were in existence first, I would just like to point that out; we are 122 years old, and the parcel post started in 1913. But that wasn't just the only reason that our company got into trouble. We have been through a lot of crises, but when I took the presidency we were in a first-class crisis. The other reasons—there were two, in my opinion.



One was inflation, which has, as you all know, an extraordinary impact on any business which uses a lot of people, and in the small shipments business you use a lot of people—and we still have 32,500 employees—and incidentally, they have worked an average of 21 years for our company; a long period of service.

But inflation was the big factor because it forced us into 13 rate increases and got our rates so high they wouldn't move a lot of business, and particularly with the parcel post rates being low and the parcel post piling up deficits.

Mr. GROSS. May I interrupt, since you are not following your prepared script?

What is your minimum rate?

Mr. JOHNSON. It varies on different commodities, Mr. Gross.

On the first-class business I think it's \$2.77 today, in the East. It varies in different sections of the country. We have some minimum rates which are, I believe, as low as \$1.67 on some commodities under our so-called incentive rates.

Mr. GROSS. Well, I am thinking in terms of the casual user of express, the citizen using it. What would be your rate from here to Waterloo, Iowa? What would be your rate on a watch or something of that type?

Mr. JOHNSON. A watch would never be shipped by express.

Mr. GROSS. You mean it couldn't be?

Mr. JOHNSON. We handle anything; we handle a lot of things that are not eligible for parcel post.

Mr. GROSS. What is your minimum rate?

Mr. JOHNSON. I would say if somebody were to ship a watch by express, it would be \$2.77 in the East. I think it would be about 25 cents less than that within the South, and within the Mountain Pacific territory and the west coast, it would be in the middle.

Mr. GROSS. You have no idea of what the parcel post rate on that would be?

Mr. JOHNSON. I have this idea, it's an awful lot lower than ours. There is no doubt about that. Generally speaking, parcel post rates are far lower than express, and also, parcel post is probably losing \$75 to \$100 million a year.

Mr. GROSS. You got some help out of Public Law 199, didn't you?

Mr. JOHNSON. If we didn't we wouldn't be in business today.

Mr. GROSS. You got a subsidy?

Mr. JOHNSON. No, sir.

Mr. GROSS. Well, did you take business away from the Post Office or didn't you?

Mr. JOHNSON. I think some of the business that left parcel post when the rates and sizes were reduced came to us—well, I know it did—and if it hadn't, we wouldn't be here. I think some of that business also went to motor carriers, United Parcel Services, bus express—

Mr. GROSS. There is no question of that, but the express company did get an indirect subsidy under Public Law 199, didn't it?

Mr. JOHNSON. Not in my opinion, Mr. Gross. I say that because I think the word "subsidy" is perhaps one that we don't agree on. All the money that we get from the public is earned by us at rates subject to regulation by the Commission. We are regulated by 53 commissions, more than any company in the United States. Nobody pays us



a dollar for free. That would be a subsidy, but we don't get it. Nobody gives us the use of any facilities for free, or at less than cost. We provide our own. I don't see how the express company can ever be regarded as receiving a subsidy simply because the Government decided to withdraw from a portion of their business in competing with private enterprise.

It would be just the same as saying that when the Government is not engaging in the Pepsi-Cola business, they are subsidizing the Pepsi-Cola Co. The Government is not engaging in some of its former competition with the express company today, but I don't think that is a subsidy to the express company. That is why I respectfully took issue with that word "subsidy."

Mr. GROSS. Well, we will never get together on that one.

Mr. JOHNSON. Well, I do think that the congressional action on Public Law 199 was very much in the public interest in recognizing that business and private enterprise cannot survive under Federal competition. I do not suggest for a minute that parcel post should be discontinued. It has a very important public role, but I do not think that the Government should go into direct competition with private enterprises. This is one of our problems.

But as I say, one problem was inflation, and another problem was the poor organization of the express company, and that perhaps is the thing that this bill is most about.

How did this issue come up? Well, when I got the presidency of the company, we had an out-of-pocket deficit of \$38 million, as Mr. Corbin, the Commission's staff man, has expressed.

I knew that there was no hope for saving our company unless that deficit were reduced, because the railroads could not underwrite us. They had been underwriting the express company for so many years, and their deficits were so large, they had to take off so many trains, that there just had to be an end sometime to the railroads' subsidy of the express business.

So we set about by internal economies of a drastic and painful nature to get that deficit down so that we could cope with the problem and perhaps reorganize the company. By the end of 1959 we had it down to \$14.5 million. In fact, in about 5 months we made enough economies to knock out about \$24 million of our expenses on an annualized basis.

But in the meantime, the public concern for the possible liquidation of the express company and all its services all over this country was so great that Senate Resolution 8 was introduced in the Senate to provide for a study to determine the prospects for nationalizing our company.

A hearing was held on this on July 7, 1959. I prevailed on the people in the Senate committee, the Senators, to please give us some time to see if we could save the company and keep it in private enterprise. To do that we had to sign up new contracts with all the airlines and all the railroads, and we had to get unanimous agreement from 178 railroads to cancel the old contracts. Unanimous agreement from 2 railroads is difficult, and we had to get it from 178. And after some 13 abortive efforts, we got unanimous agreement from all the railroads to cancel the old contracts.



This paved the way for new contracts, and 157 railroads signed the new contracts and all the airlines signed the new contracts, and on October 1, 1959, we started out on our reorganization program. The mission was to keep the company alive and to keep it in private enterprise rather than Government ownership.

We have done a great many things since that time. I think it's fair to say—and I am very proud of it—that we have convinced a large segment of the shipping public of this country that our company is interested in doing something about the small-shipments problem. So many carriers, all people in the small shipments virtually, have a difficult problem, and the public has a difficult problem with small shipments, and yet, because of the intense competition in various fields of business, particularly in a depressed economy, inventories must be kept at a minimum, which means shipments must be smaller.

And so, while all the carriers are having trouble, trouble in meeting expenses, and the Post Office is losing money in its small-shipments business, transportation, and the trend is steadily growing.

At the same time, this is an opportunity for the express company if we can do a good job for the public, which is the foundation stone of our existence.

I think it's salutary, and perhaps even surprising, that we invested since that reorganization program started over \$16 million in new equipment and facilities, or we have committed it, and we have programs for a great deal of additional investment. This has provided additional jobs and has given better service, and I think we are doing a better job for the public.

We have developed new services that promise to be of greater public value, in my opinion. I don't want to waste your time going into those, although I will be glad to answer any question.

In short, I think it can be said that our service has improved and our prospects are reasonably good. I think the public knows that we are doing a better job. I think we are in a field of great importance to the public, and I think we can make our way in private enterprise. In fact, I think we can do a great job with the new privileges that management has.

What are these privileges? Well, there are three of them.

First, we were given by the railroads the freedom to put our business in the hands of motor common carriers or trucks and to take it off the railroads, because the railroads recognized that the old contracts which forced us to use rail service—spread this traffic out among the railroads—based on test periods in 1916 to 1918, was no way to operate a modern business after the motortrucks and new highways and the airplanes had come into existence.

So the railroads in effect signed away their rights to the traffic and gave us the privilege of using the most efficient and economical means of transportation, whatever it might be, and we started doing that as the first step of our reorganization program on October 1, 1959.

We have made great use of that, and I think that is one of the big ways that we have improved our service to the public. This cost the railroads traffic, but on the other hand, the railroads recognized that if the company was going to live it had to be efficient.

The second freedom that they gave us was the privilege of pricing the service realistically on the levels that would move traffic, good traffic, in express service. Prior to that time we did not have that au-



thority except by approval of a large number of traffic committees composed of railroad people, large committees, and it was virtually impossible to keep our rate structure attuned to the needs of the public.

Since October 1, 1959, when we got the privilege of pricing our services realistically, we have made some 33 major rate reductions. Now naturally our competitors don't like this, but the public likes it, and we had better price our service realistically so the public can use it and quit pricing ourselves out of the market for good business, for that is another way to die, and we have set about simplifying our rate structure, reducing our rates, but always keeping them at a compensatory level, and I am proud to say—every one is priced out in advance—and I am proud to say that only one of those is in litigation today, only one has been suspended by the Interstate Commerce Commission.

Mr. Gross. Mr. Johnson, what do you mean by compensatory level? You mean cost plus?

Mr. JOHNSON. More than meets the out-of-pocket cost of performing the service, yes, sir. It's unlawful to create destructive competition by pricing transportation services at less than out-of-pocket costs.

So that is the second privilege that the management has which it didn't used to have.

The third one is what this is all about. We all knew—I thought this for 8 years, and I worked on express matters when I was—before I joined the Express Co., for more than 10 years.

We were convinced—at least I was and lots of other people, and eventually the whole railroad industry was—that business just cannot be run efficiently without a profit and loss statement that has some meaning. Even the Russians have found that you can't be effective and efficient in running a business unless you have got a profit incentive, and more important in our case, the discipline of a loss on a balance sheet.

Now what did we have before? Believe it or not, from the day the company was organized, it was organized as an agency, and we never made a dollar or lost a dollar on our books. The railroads said this: You are our agent; collect the gross revenue from the public and we will give you the transportation service free of charge; no charge; and there is no cost on our books for transportation; it's free, as far as the railroads are concerned. And you pay your employees and your other expenses, and when the month is over, you give us all the money you have got and we will spread it out amongst the railroads. And that is why there are no rates such as are contemplated by this old 1916 law. In 1916 there were, but there haven't been since the Express Co. was organized in 1928. They didn't make any charge to us. We paid our expenses out of the money we collected from the public, and we gave the railroads all of it.

Now you see what happens. No matter how hard anybody in the Express Co. works, the company never shows a profit. There is no regional vice president that can say that he has earned a profit for the Express Co. Even worse, there is no way I can say to any regional vice president, you produced a loss for the Express Co. Because we don't have losses. Our losses are developed, our other express deficits are developed, only by comparing this leftover money which we give



the railroads with what it cost them to provide this service to us which they didn't charge us for. That is the only way you could figure it, and this cost study takes time, and sometimes they are controversial, and I think anybody in the transportation business knows there are a lot of ways of figuring cost; there are a lot of problems involved, but there is no way of passing that down the line in the management of this company, and I can't do it today; I can't credit complete responsibility to any operating man or traffic man for producing a profit for the company, and I can't discipline him for producing a loss, because there isn't any.

In short, our books only have part of the cost of doing the business, and we had no charge on our books for line-haul service, the actual transportation, and we are a transportation company.

I just don't think in these competitive days that you can run a business efficiently and successfully without a profit and loss statement, because you don't have the incentive, you don't have the discipline, you don't have the accounting, and you just don't know what is going on.

Mr. GROSS. Did the railroad companies know what was going on?

Mr. JOHNSON. The railroad companies are just like the rest of us, they can find out only by making a study of their passenger train system and allocating the costs of the passenger train system between the various types of traffic or people carried on that system. That means you have got to split it up between commuter service, coach service, pullman service, dining car service, baggage service, milk and cream, mail and express. And if you make that study, then you can find out, but you can't do this every week. What we need is unit cost so that any man in the Express Co. that routes a piece of express will know he is spending money, and that is a consciousness that we have never had because our business was set up the way it was.

Now I don't think I can run this business successfully this way, and I don't think anybody else can, and I think history has proven so, and that has been one of our major problems.

How and why did we get into this problem? Because the railroads were always paying the bill, whatever it might be, and you don't know what it was really until you made a big cost study, and you don't develop a responsiveness—

Mr. GROSS. You mean the public was paying the bill.

Mr. JOHNSON. The public would have paid the bill if there had been enough money to meet our expenses, but there wasn't enough money. That is why we had a \$40 million out-of-pocket deficit in 1958. We started with \$38 million in 1959. I got it down with our people to \$14.5 million. Whatever bill was being paid, the public was paying, except the railroads stood the losses, and ultimately the stockholders and the properties have been cannibalized to pay these bills. And in addition, the freight shipper had to contribute to some of these big losses, which are still over a half a billion dollars a year, but the railroads set about to correct this situation, and one way to do it is to say to the express business, we can't subsidize you any more; stand on your own feet; sink or swim, and that is where we are today.

Under this new contract right here, on July 1, 1961, if this law is passed, H.R. 1986, the railroads have agreed to sell us—to give us a price for transportation service, as low a price as they could con-



sistently agree to, to give us a chance to try to earn our own way and demonstrate through efficiency and public service the ability to survive in private enterprise. That is what we have got a chance to do, provided this law is passed and the old law repealed. If this law is not repealed, the contract says this will not take effect, and that is why it's important to get this law repealed.

Mr. DULSKI. When you say the railroads will set a figure, will you pass that set figure on to the people at an additional price, or will the price be set just to meet the railroad's circumstances?

Mr. JOHNSON. That is a good question, and I think I can explain it this way: Anybody in the transportation business has terminal costs and line-haul costs. The terminal costs are ours now, they are on our books and it's our employees and facilities. The line-haul costs we have not had, but the railroads are going to charge us line-haul costs, and that will make up the total cost of providing the service to the public. The terminal plus the line-haul, and we will fix the rate on the basis of those two costs.

Mr. DULSKI. You will fix it to the consumer?

Mr. JOHNSON. Yes, sir. They are subject to regulations, of course. As I pointed out, we are regulated by the ICC and—

Mr. DULSKI. Yes; you said 53 agencies.

Mr. JOHNSON. Every State regulates us, and no other agency can make that statement.

Mr. DULSKI. I thought we had just 50 and—

Mr. JOHNSON. Well, we also have the Civil Aeronautics Board and the Maritime Board, and we have the Federal Communications Commission because of our radio trucks, so that makes 54.

Mr. BARRY. Where did you get the \$16 million to improve facilities?

Mr. JOHNSON. We borrowed \$7 million on a hundred percent loan, and we took the rest of it out of excess depreciation, depreciation beyond the requirements of our equipment obligations. There is a limit to that; you run out ultimately.

Mr. DULSKI. Well, I know they have one big building for sale—

Mr. JOHNSON. This is another one of our little problems. The railroads are in such bad conditions that we are renting a lot of facilities from them and they are selling them out from under us. In addition, we have got a lot of facilities which we wish somebody would sell because they are obsolete and inefficient and we have got to replace them. That is a part of our reorganization program. This is something we have got to do if we are going to serve the public at a cost which the public can afford to pay.

What does the old section 557 have to do with this? Perhaps it is clear to you now, but I would like to state it again. This old law was passed in 1916, and it says, the Postmaster General may ask the ICC to tell him what revenues the railroads are getting from the express company for transportation service. And then he—the Postmaster General, not the ICC—he may reduce—that is the way it works—may reduce the payment to the railroads for hauling mail down to the same level. Now this means that the rates which the Commission has fixed for transportation of mail on the basis of hearings, which I think our post office friends and I have—we have been in these cases together, and we know they take a long time. The Commission struggles to get the right answer, and it generally fixes



the rates primarily, I think, on the basis of cost plus 3 percent return. But as Mr. Corbin pointed out, recently the railroads and the Post Office Department have been able to agree and avoid costly and unnecessary litigation.

Mr. GROSS. Mr. Johnson, isn't it something of an assumption to say that the Postmaster General asks for these rates so that he can reduce the mail to the rates of the express company? How do you know what is in the Postmaster General's mind?

Mr. JOHNSON. Well, that is what the law is for. That is the only purpose the law is for.

Mr. GROSS. So they can reduce the rates?

Mr. JOHNSON. Sure; yes, sir. That is the only purpose of the law. The Postmaster General shall from time to time request information from the ICC as to revenue received—and it goes on, but I don't want to bore you by reading it all, but it then says—

He may in his discretion arrange for the transportation of mail, other than first-class, at rates not exceeding those ascertained and reported to him.

That is the whole purpose of the law.

You see, Mr. Gross, the Commission fixes the rates, and this is the means by which it can be used. He can come down below the rates fixed by the Commission, which means below the rates fixed for the railroads in hauling mail.

Mr. HENDERSON. For that reason the railroads do not want to fix rates for your line-haul costs?

Mr. JOHNSON. Not as long as that law is on the books, because, Mr. Henderson, they have invested \$27.5 million in our company; that is their investment. In addition, they have lost a lot of money on express.

Now I think I have convinced them that express can stand on its own feet if they will give it a chance, but only if they will sell us transportation on the lowest possible economically sound basis, which means out-of-pocket costs. But if they do that, and the Postmaster General goes to this law and can apply it, he pulls down the mail pay and—I don't know how much it would be, but in the first year it could be more than the total amount they have got in the express company, so what is the answer for the railroads? They can't afford to take a chance on that. Anybody can have the express company; the Government, and that is where it would go, because nobody else would take it, except to salvage what they could out of our trucks and our refrigerator cars and our facilities, our buildings. There is nobody going to operate it except the Government.

You can just make up your mind whether the service is valuable to the public. Well, I know it is, and the public knows it, but why should the railroads take a gamble on receiving less compensation for hauling mail than the ICC has fixed after hearings on the basis of what they spend to serve the Government? Why should they take a chance on that?

Now I think that law is unconstitutional. As Justice Holmes said with respect to this 1916 law, when the Congress gave the Postmaster General the right to require the railroads to haul mail under penalty of fine, that in effect was a seizure of service, and under the Constitution the railroads are, therefore, entitled to fair and just compensation, and Justice Holmes said, for this reason, when the railroads object



and the Commission finds what the fair pay is, the railroads are entitled to it from the day the service was rendered.

By the same token, if the railroads are entitled to those rates fixed by the Commission, and if this law says they get less than those rates fixed by the Commission, then this law is unconstitutional, but who is going to take a chance on the courts finding that that law is unconstitutional? I don't think I would, because you never can predict what the courts are going to do.

I also think that law cannot be applied by the Commission no matter how hard they try, and there are three or four reasons.

In the first place, if the Commission ever tried to do it, they would try to do a conscientious job, and they would have to make allowances for the differences between mail and express, and there are plenty of them.

In the first place, we haul different types of traffic.

You can't ship dynamite by parcel post, but you can by express. You can't ship Christmas trees by parcel post but you can by express. Baby chicks they handle now, I think. You can't ship an alligator by parcel post; you can by express and we haul them. And there is a long list of different corrosive chemicals and a long list of other things different in size and weight.

Mr. GROSS. Mr. Johnson, on January 12 you made a speech to the Atlantic State Shippers Advisory Board, is that correct?

Mr. JOHNSON. In New York, yes, sir; a joint meeting.

Mr. GROSS. And portions of that were published in the Traffic World of January 21; you probably saw it, in which you spoke of an oversupply of "competing services."

Mr. JOHNSON. Yes, sir, I think that is true.

Mr. GROSS. Would you amplify that just a little bit?

Mr. JOHNSON. Yes, sir. This gets a little beyond the point, but I will be glad to answer your question.

Mr. GROSS. I wouldn't say it is beyond the point. You wouldn't say it doesn't have a place in this hearing, would you, your words on this subject?

Mr. JOHNSON. I think the references to the oversupply of transportation, competing transportation in this country, have a bearing on this question, only because that is one of the reasons why any transportation company has got to be efficient if it's going to survive.

Mr. GROSS. There are 19,000 motor common carriers in the United States, and I will wager that 75 percent of them haul small shipments. There are bus companies all over the country that handle small shipments; the air lines have an air freight service now and they handle small shipments. United Parcel specializes in small shipments. We handle them; the railroads have l.c.l. freight, which handles small shipments. There are some 87 freight forwarders which handle small shipments, and there is just too much small shipment transportation available for the demand, in my opinion.

Mr. GROSS. Then following that up you say, and again I quote, "Coordinating the use of all forms of line-haul carriage through a national small shipments network under a single management." That you advocate apparently.

Mr. JOHNSON. Yes.

Mr. GROSS. Under a single management?



Mr. JOHNSON. That is what we have today.

Mr. GROSS. Would you be talking about a monopoly?

Mr. JOHNSON. Oh, my goodness, no. No, I have no interest in monopoly. I think a monopoly is contrary to the public interest, and I am the last to suggest it.

Mr. GROSS. Then I don't quite understand this language; you said that coordinating the use of all forms of line-haul carriage through a national small shipments network under a single management is basic.

Mr. JOHNSON. Here is what I mean is basic. I am talking about exactly what the express company is today. We coordinate through a single management all forms of transportation. We can provide the public with rail, water, air, and highway service, and it's under a single management, our company, because we contract with all these people to provide this service. Coordinated transportation is the key to maximum efficiency for the public. You have got to be able to tie the motor carrier and his advantages into the rail service, and that we are doing and have been doing right along. But I don't mean to suggest that we ought to acquire all the motor carriers in the United States.

Mr. GROSS. And then you go on to say, "Given a green light by the regulators and legislators, and continued reasonable attitudes by our labor leaders, we will ultimately succeed if we can stick to sound fundamentals."

Mr. JOHNSON. I think that is right. I am talking about what we have today; no change.

Mr. DULSKI. It is now 11:30, and we have two more witnesses.

Mr. JOHNSON. Yes, sir. I will hurry along. I have about reached the conclusion.

I said first that I think I have explained why we need this law repealed, because the railroads won't take the chance and the contract says so.

Secondly, if the law were tried to be applied, I think it would be unconstitutional.

In addition, I think it's impractical of application because there are differences between express and mail that would have to be taken into account. Mail gets a priority; we get the space that is left over. This priority service we see even in distinguishing between surface mail moving in planes, air mail, between the space available and the priority service. The Post Office has a priority on space in the passenger train; we take the space that is available after they get the priority.

You would have to make allowances for all these things. We do the terminal work; in mail the railroads do the terminal work. You would have to make an allowance for that. There are so many differences. Loss and damage; we pay all loss and damage. In the case of the Post Office, they have the power to recover some of that through fines, where appropriate. But there are a lot of differences, and in addition, this law only contemplates prospective application, and yet under this treatment you would—you could only determine what the price was by looking backwards, and so you would have a prospective law and retroactive determination, and for that reason I don't think you can apply it. There are a lot of reasons for thinking



this law couldn't be effectively applied. Because it is unconstitutional, impractical and so forth. It never has been used, and I know that there will never be a set of facts available, because the railroads can't afford to add to their present deficits and haul mail for less than the rates fixed by the Commission.

Now that is way, to sum it up, we have reached the step where we are not ready to take the second step in the efforts of the express company to stand on its own feet, demonstrate its value, and succeed or fail on business principles. That is scheduled for July 1, 1961 but the contract provides it will not take effect unless old 557 is repealed.

The Post Office does not need this to get a fair deal or to protect the public, because the Commission has full authority to fix the rates. The Postmaster General then can initiate proceedings before the Commission, get a full hearing, and when the Commission comes out with a decision, if they don't like it they can take it to court, and you don't need a double standard.

I think when Congress passed this old law originally, the day they passed it they didn't need it, because the day they took this corrective measure, they took a bigger corrective measure which overshadowed that; they gave full authority to the ICC to fix the rates, so there is full protection available.

I believe that the interests of our people and the public requires that the express company be given a chance to prove that it can stand on its own feet. We don't ask for any subsidy, Mr. Gross, not a dollar, and we are not getting anything free. Whatever money we collect from the public we earn under the regulated rates, but we need a chance to stand on our own feet.

This law only hurts—if you repeal this law, it won't cost the Post Office five cents; it won't cost anybody a nickel. The one thing it would do, it would give us a chance to go forward with our reorganization program, which otherwise I don't think we will have. But if you pass this law, as we hope you do, it wouldn't cost anybody a penny.

Mr. DULSKI. Thank you very much.

Mr. OLSEN. Mr. Chairman, one question please.

Do you know whether or not the railroads would be satisfied with something less than this whole demand? That is, leave the Postmaster General with the authority to contract with the railroads independent of the ICC?

Mr. JOHNSON. He has that today.

Mr. OLSEN. You say he has that today?

Mr. JOHNSON. He has that under the Transportation Act of 1940, and he does that right along. That is the common practice; below the Commission's rates, where the railroad agrees to it; the railroad has to agree. But this law doesn't give him any chance—this says he may require him to haul under penalty of a fine at less than the Commission's rates.

Mr. GROSS. In other words, the railroads can pull the string. They have to agree to it, don't they?

Mr. JOHNSON. No.

Mr. GROSS. But if they don't, it goes to the ICC?



Mr. JOHNSON. Right. But once the ICC fixes the rate, Mr. Gross, the Postmaster General can compel the railroads to haul the mail at that rate, which is determined by the Commission to be reasonable. There is where the protection lies. The only time the railroad gets a voice is through hearings before the Commission, or secondly, if they are willing to take less than a reasonable rate. That helps the public, that doesn't hurt them, and it helps the railroads.

Mr. OLSEN. The Postmaster General could go to some transportation agency other than the railroads?

Mr. JOHNSON. He does that all the time. He uses motor carriers. The Post Office has the same problem we do; we are both using motor carriers. They contract with motor carriers, and the air lines are hauling mail. They are hauling mail that doesn't have air mail stamps. And they have need of other transportation, and they need it to be efficient, and we need it to be efficient.

We have all got the same problems.

Thank you very much.

Mr. DULSKI. The next witness is Mr. Charles B. Bailey, legislative representative, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who will present a statement for the vice grand president of the organization, Mr. Charles E. Kief.

**STATEMENT OF CHARLES B. BAILEY, LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ON BEHALF OF CHARLES E. KIEF, VICE GRAND PRESIDENT OF THE ORGANIZATION**

Mr. BAILEY. Mr. Chairman, my name is C. B. Bailey. I am legislative representative to the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and I am under direct supervision of Mr. Charles E. Kief, vice grand president of the organization.

I will be very brief. I know your time is limited here.

At the present time I am on a leave of absence. I am happy to be an employee of Railway Express. I have been an employee for 41 years.

I am quite well acquainted with the situation over the years and as to the way the Railway Express has lost employment, and due to the fact that our organization represents 75 percent of the total employees. We are very much interested in seeing that H.R. 1986 is passed and that the law is repealed.

We certainly would like to see the Railway Express start anew as of July 1, 1961.

In reading this statement you will find that our employees back home are on the fence. They don't know what is going to happen and, naturally, on July 1, if some other program has to be taken up with the railroads to continue in business, or possibly the railroads will decide not to go along, why we might be out of employment. At the present time there are 32,000 employees involved. Just in the last year we have lost about a thousand employees. You take this on a



family basis and that is over 100,000 people that are going to be involved if the Railway Express should go out of business.

As I say, I am representing our organization which represents those 75 percent of the employees of the Railway Express.

We urge your support of H.R. 1986 and hope that you will recommend it for passage.

I thank you, Mr. Chairman.

Mr. GROSS. Mr. Chairman, just to keep the record straight, the loss of that thousand employees last year—I believe that was your statement?

Mr. BAILEY. Yes.

Mr. GROSS (continuing). Was not attributable to this law that presently exists.

Mr. BAILEY. I think we are involved in the unemployment cycle now.

Mr. GROSS. Yes, the railroads are taking off trains and—

Mr. BAILEY. They have taken off trains, yes, but we have supplemental service. I think we will be able to handle that.

Mr. DULSKI. Any other questions?

Mr. OLSEN. Is your pay scale about the same as comparable pay for comparable work in the Post Office Department, or do you know?

Mr. BAILEY. I wouldn't know that, but I do know that our rate is a fair rate and our labor management relations over the years have been very good and at the present time are very good.

Mr. DULSKI. Any other questions?

Mr. ADDABBO. Will the reorganization plan cause any further layoffs on the manpower—

Mr. BAILEY. No, I think it will increase the employment. I am quite sure it will.

Mr. DULSKI. Thank you very much, sir.

(The statement of Mr. Kief follows:)

My name is Charles E. Kief and I am a vice grand president of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. My office is located at 400 First Street, N.W., Washington, D.C. The chief executive officer of our brotherhood is Mr. George M. Harrison, grand president, with offices located at 1015 Vine Street, Cincinnati, Ohio.

Our brotherhood is appearing before you in support of House bill H.R. 1986. We represent approximately 75 percent of the total number of employees of Railway Express Agency.

Shortly after World War II the total number of express workers numbered approximately 85,000. As of the present time, the total number of express workers number approximately 32,000. In 1958 the express company employed about 37,000 employees, this number has been reduced to 32,000 employees and 1,000 of these were laid off during the last year.

Accordingly, we are vitally interested in the welfare of the express agency and in the preservation and protection of the jobs of the present employees. Of course, we are also interested in the creation of additional job opportunities and in the returning to express service the many workers who have been laid off over the last few years.

The primary reason for the decline in employment in the express business has been the steady shrinkage in the volume of express traffic since World War II.

In early 1959 liquidation of the express company was seriously considered and to our present knowledge the final decision as to the express agency's existence has not been definitely determined. As I have said, approximately 5,000 employees were laid off since 1958 and none of those remaining have any assurance that their jobs have any degree of permanency. Morale among the employees has been and still is very low.



The rate of the express agency's 32,000 employees, as well as the many who have been furloughed, is a matter of grave concern to us. For their sakes as well as in the public interest generally, the agency should be encouraged in its efforts to build up the business and make it more secure.

Since it appears that the repeal of section 5 is an important factor in making this effort successful, the Brotherhood of Railway Clerks strongly urges the immediate enactment of H.R. 1986.

Mr. DULSKI. Mr. Lester J. Dorr, executive secretary, National Industrial Traffic League.

#### STATEMENT OF LESTER J. DORR, EXECUTIVE SECRETARY, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. DORR. Mr. Chairman and members, I appreciate this opportunity of appearing before you and presenting the views of the National Industrial Traffic League and its 1,700 members.

I am executive secretary of the National Industrial Traffic League, which is a nationwide organization of shippers and users of all forms of transportation. The league is dedicated (1) to the attainment and preservation of an adequate and efficient national transportation system and (2) to the protection of the shippers' interest in transportation problems. The league has 1,700 members with members in almost every State of the Union and includes among its membership numerous chambers of commerce and other associations representing in turn their own members.

The league membership includes many users, large and small, both of the Railway Express and of the postal service. The maintenance of both of these vital services is regarded as a matter of greatest importance to the league membership, and the league maintains among its standing committees both an express committee and a postal committee.

At the 1960 annual meeting of the league, which was held last November in New York, it was directed by action of the entire membership that the league should support and urge the early passage of a repeal of the following provision contained in title 39, United States Code, section 557:

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

H.R. 1986, introduced January 6, 1961, by Mr. Alford, embodies the above recommended repeal. The league respectfully prays that this committee will promptly recommend that the bill be reported favorably without amendment.

We believe section 557 is obsolete; it has never been applied, and it is difficult to foresee any circumstances in which it could reasonably be applied. The section is not required to insure reasonable railroad rates for the transportation of mail, over which the Interstate Commerce Commission has plenary jurisdiction. Even if the section were capable of use, its application would be unfair and unreasonable because the railroad services and responsibilities for mail are greater and different from those for express. Actually, the retention of section



557 will be of no benefit to anyone but might threaten the continued existence of the Railway Express Agency.

I will not attempt to repeat in this statement the many arguments and considerations going to the merits of this bill. They were presented to the 86th Congress in connection with H.R. 7055. That bill was identical with the present H.R. 1986 and was thoroughly discussed in public hearings. It received the unanimous recommendation of a special subcommittee of this committee, in a report which was dated September 9, 1960. That report shows that the repeal of section 557 has been a part of the legislative program of the Interstate Commerce Commission as recommended in its recent annual reports.

The express agency, in support of the repeal of section 557, points out that at the time this legislation was enacted there were several independently owned express companies which had contracts with the railroads which provided for the carriage of express by the railroads for specified prices.

Section 557 was not used from 1916 to 1928 when the Railway Express Agency was formed by the railroads, and since 1928 the transportation of express over railroad lines has not been performed under a system of rates, the railroads receiving only their proportion of moneys remaining after the agency had paid the expenses incurred in performing the terminal portion of the express service.

The new express contract commencing July 1, 1961, provides that the express company will make initial payments to the railroads for line-haul transportation on a car-foot-mile basis. The agency further states that because the contracts provide for supplemental payments for transportation equal to one-half of the "profit" of the express company, section 557 may still be inapplicable but there is danger that the railroads will not be willing to take the risk of its application. The new agreement specifically provides that if section 557 shall not have been repealed or made inapplicable by July 1, 1961, the new method of reimbursing the railroads shall not take effect.

It appears that if section 557 is not repealed, the express company may not be able to proceed with the complete plan of operation inherent in the new agreement.

Therefore, the league urges that the committee will report the bill favorably and that the Congress will enact it without amendment.

Thank you very much.

Mr. DULSKI. Any questions?

(No response.)

Mr. DULSKI. Thank you very much.

We have some statements that were presented in favor of H.R. 1986. The first one is from Mr. Daniel P. Loomis, president, Association of American Railroads; Mr. C. E. Huntley, American Short Line Railway Association; Mr. S. G. Tipton, president, Air Transport Association; Chamber of Commerce of the United States; Mr. Harold F. Hammond, executive vice president, Transportation Association of America; National Association of Railroad and Utilities Commissioners; Mr. Howard D. Pollen, president, Atlantic States Shippers Advisory Board; Mr. C. L. Wornson, general chairman, Mid-West Shippers Advisory Board; Mr. Lester W. Brann, Jr., executive vice president, Milwaukee Association of Commerce; Mr. R. F. Treptow,



general chairman, Trans Missouri-Kansas Shippers Board; Mr. Ellis A. Stoker, general secretary, Central Western Shippers Advisory Board; Mr. E. J. Dunne, general secretary, Pacific Coast Shippers Advisory Board.

Is there any objection to placing those statements in the record?

If not, it is so ordered.

(The statements referred to follow:)

STATEMENT OF DANIEL P. LOOMIS, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

I would like to express the view of the railroad industry as represented by the Association of American Railroads on H.R. 1986, which is the subject of a hearing on March 8, 1961 before a special subcommittee, of which you are chairman, of the House Committee on Post Office and Civil Service. The railroads strongly urge enactment of this bill to repeal that portion of section 5 of the act of July 28, 1916 (39 Stat. 428), which reads as follows:

"The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General." I am sure that all members of the subcommittee are aware of the very serious problem facing the railroad industry with respect to their passenger train services. The deficits from these services for the years 1955 to 1959, inclusive, computed on the formula prescribed by the Interstate Commerce Commission have been:

|       |       |                  |
|-------|-------|------------------|
| 1955  | ----- | \$636, 693, 000  |
| 1956  | ----- | 696, 938, 000    |
| 1957  | ----- | 723, 670, 000    |
| 1958  | ----- | 610, 424, 000    |
| 1959  | ----- | 543, 820, 000    |
| Total | ----- | 3, 211, 545, 000 |

The figures for 1960 are not yet available but, while there has been an improvement, the loss is still so high that it threatens the future of the service. It is of vital importance to the industry and to the public that these deficits continue to be substantially reduced. Otherwise, it will be impossible for the railroads to continue their present level of passenger train service.

Both express and mail are parts of these services and both contribute substantial amounts to the gross revenues of the railroads. It is of the greatest importance that adequate revenues be obtained from all branches of the passenger train services including mail and express.

During the last few years the number of dollars received by the railroads from express has been substantial, but has not been great enough to cover even the bare out-of-pocket costs of the railroads in performing the line-haul service required for the transportation of express. By fall of 1958 this situation had reached a point where it was evident that the trend could not continue without irreparable harm to the rail transportation industry. For a time liquidation or nationalization of the express business appeared to be the only alternatives and undesirable as either of these courses would be, they were preferable to the mounting express service deficits. Fortunately, however, as time went on, another solution appeared to offer possibility of relief.

By midsummer of 1959 a great deal of time and effort produced a reorganization plan for the Railway Express Agency which gives hope of successful operation, at least to the extent of returning to the railroads their out-of-pocket costs of performing their portion of the service. The ultimate success of this plan, the first step of which was effective October 1, 1959, is dependent upon several factors, one of which is the enactment of H.R. 1986 or similar legislation.

The statement that will be presented to your subcommittee by the express company explains the past operations of that company and points out the fact the company, under the former method of operation, could never have a profit



or a loss. It was assured a break-even status and therefore lacked a basic incentive of private enterprise in this country. It is the opinion of railroad officials that this fact was one of the major causes of the severe deterioration in the financial results of the express business. It is important that the business be put on a basis comparable to that obtaining in American industry generally, i.e., that management be required to show a profit, or at the very least to avoid continued losses. In order to do this there must be some kind of a stated charge by the railroads to the express company for the line-haul transportation service in the movement of express traffic. This stated charge is expected to be made effective July 1, 1961, but there is serious doubt that this will be done unless the statutory provision referred to above is repealed.

The rates for rail transportation of mail are fixed as fair and reasonable by the Interstate Commerce Commission after full hearings. They would continue to be so fixed if the statutory provision referred to above is repealed. Adequate protection against excessive charges is provided by the Interstate Commerce Commission to the Post Office Department as it is to all other shippers and the statutory provision which would be repealed by H.R. 1986 is not necessary to the furnishing of such protection. Moreover, since the characteristics of service furnished are sufficiently different there is no compelling reason why rates for the transportation of mail should be based on express rates. If the present provision remains on the books the threat will be ever present that efforts will be made to have the rates charged by the railroads for transporting mail reduced to a lower level. Important as it is that the railroads maximize their revenues from express traffic, it is equally important that this result not be accomplished by the sacrifice of any of the revenues from the mail traffic. The railroads simply cannot afford to be subjected to the risk of this result. Accordingly, there is a very grave danger that the new plan for the operation of the express business will not be made fully effective. As stated above, this will mean that the anticipated increase in revenues from the express business will not be realized.

In July and August 1959 a number of railroad presidents and other railroad officials wrote to Congressman Tom Murray, chairman of the House Committee on Post Office and Civil Service, urging enactment of H.R. 7055, a bill introduced in the last Congress, similar in effect to H.R. 1986, and favorably reported by the subcommittee of the House Post Office and Civil Service Committee on September 9, 1960. I understand that these letters, which expressed views similar to those I am expressing, are available in the subcommittee's files. I respectfully request that they, together with this letter, be made a part of the record of the subcommittee's hearings on H.R. 1986.

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STATEMENT OF C. E. HUNTLEY, PRESIDENT, THE AMERICAN SHORT LINE RAILROAD ASSOCIATION

My name is C. E. Huntley. I am president of the American Short Line Railroad Association, with offices at 2000 Massachusetts Avenue NW., Washington, D.C.

The association is a voluntary, nonprofit organization of 266 common carriers by rail, operating in 44 States and the District of Columbia.

As of September 1, 1960, these railroads operated some 16,902 miles of track, employed 52,930 persons, paid approximately \$306.9 million to employees in compensation, and had an investment in excess of \$1,890 million. They paid more than \$76.1 million in taxes, not including transportation excise taxes.

Generally speaking, the term "short line railroad" embraces all line-haul railroads and all switching and terminal carriers class II having annual operating revenues of less than \$3 million.

At the 40th annual meeting of the members of this association held June 23, 1953, at Atlantic City, N.J., the members adopted resolutions against Government competition with private enterprise in the field of transportation and in favor of a Government policy of fair and equal treatment of all types of carriers. It is pursuant to these resolutions that I seek the privilege of filing with this subcommittee an expression of our support of H.R. 1986.

Because the members of our association represent the small business of the railroad industry, the harmful effects of Government interference in transportation can be most serious and far reaching to our member roads.

During 1960, 14 members of our association, operating under a separate short-line express operations agreement, were paid \$41,458. In addition, during 1960, 45 members of our association operating under the standard express



operations agreement were paid \$2,249,830. The total payment to 59 member lines amounted to \$2,291,288 in 1960.

The provisions of section 5 of the Railway Mail Pay Act of July 28, 1916, relate to the furnishing of information to the Postmaster General by the Interstate Commerce Commission. These are obsolete and serve no useful purpose because they are impossible of effective administration.

This section reads as follows:

"The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General."

Thus, under these provisions, previously codified as section 5, 39 Stat. 428; 39 U.S.C. 557, the Postmaster General is required to request, from time to time, from the ICC information as to the revenue received by railroad companies from express companies for services rendered for transportation of express matter. He is also authorized, in his discretion, to arrange for the transportation of other than first-class mail, at rates not exceeding those reported to him.

At the time these provisions were enacted there existed a number of competing express companies—each of which maintained separate contractual relations with the railroads:

(1) Reimbursement to the railroads was based upon a specific rate structure.

(2) The end of Federal control of the railroads and express companies in 1920 was followed by a series of changes in the status of the express companies, resulting finally in the establishment of a single express agency, the Railway Express Agency, Inc., under the ownership and control of a large number of railroads.

The Railway Express Agency, Inc., acts as the railroads' agent under the present single express agency agreement and the transportation of express matter over their lines is not now and has not, for many years, been performed under a system of rates. The rate structure utilized in determining the amounts paid to the railroads by the several separate express companies existing prior to the formation of the present single Railway Express Agency were discontinued when the single express agency came into existence.

The railroads now receive from the express agency, not a rate, but a share of the returns from a business with the amounts received varying with business conditions and the effectiveness of competition. In other words, for hauling express, the railroads receive monthly from their wholly owned single express agency only their pro rata share of the money remaining after the deduction of all of the single express agency's expenses.

The changes in the organization and operation of the express agency and in the relationship between the express agency and the railroads made the statutory provisions in question obsolete.

The report of the subcommittee of the Committee on Post Office and Civil Service of the House of Representatives, appointed to consider H.R. 7055, 86th Congress, 2d session, "Repeal of Provisions Relating to the Furnishing of Information to the Postmaster General by the Interstate Commerce Commission," states on page 2:

"These provisions have remained unaltered on the statute book for over 44 years, without ever having been placed in effect. To continue the provisions longer on the statute books would be merely to perpetuate surplusage in the law, since it is doubtful that the provisions ever can be applied and, therefore, they can be of no benefit to anyone.

"Moreover, in the judgment of the subcommittee, there is serious question with respect to the constitutionality, as well as the practicability. \* \* \* It would be unduly burdensome to attempt computations of comparable rates for mail and for express shipments, as contemplated by these provisions, because the services furnished by the rail carriers differ substantially."

Commencing July 1, 1961, the express company will make initial payments to the railroads for bare-bone line-haul transportation costs on a car-foot-mile basis. If there is any amount remaining after the initial car-foot-mile payments and other express company expenses, the balance will be divided evenly, with the express company retaining half for reinvestment and other normal business purposes and the express-carrying railroads receiving the other half as additional compensation for their services.



The above-referred-to subcommittee report states on page 2:

"Even under the payment arrangements proposed by the new express contract, only the preliminary amounts paid to the rail carriers will be fixed. Final determination of the amounts to be paid under the contract will depend, as in the past, on the results of actual express operations—results which cannot be ascertained prospectively and which, therefore, could provide no basis for the fixing of future mail-transportation charges by the Postmaster General rather than by the Interstate Commerce Commission."

Because of the additional payment, other than the car-foot-mile payment above referred to, the provisions just quoted are entirely inapplicable. Their retention seriously threatens the continued existence of the Railway Express Agency, Inc. The railroads will not take the risk of having these provisions applied. In fact, they have said in the new contract that they will not do so.

The new express agreement provides (art. 10, sec. 4) that " \* \* \* in the event that prior to the effective date of such provisions (car-foot-mile basis of payment effective July 1) section 557 of title 39 of the United States Code shall not have been repealed or amended so as to be inapplicable to railroad owned or controlled express companies, such provisions of sections 2 and 3 shall not

The subcommittee report above referred to further states on pages 2 and 3:

"The subcommittee believes it to be definitely in the public interest to keep a nationwide express service \* \* \* operating as a successful private enterprise transportation facility."

The Interstate Commerce Commission has urged repeal of this old law in their annual reports for the last 3 years, being No. 11 in the 1958 and 1959 reports and No. 8 in the 1960 report released February 8.

In his letter to Hon. Tom Murray, chairman of the Committee on Post Office and Civil Service of the House of Representatives, dated June 5, 1959, Kenneth H. Tuggle, then Chairman of the Interstate Commerce Commission, stated in part:

"Quite aside from obsolescence, the statute is basically unsound and wholly impracticable of operation. Express and the three lower classes of mail are identical only to a very limited extent. Because of size and weight limitations, as well as the numerous articles declared nonmailable by law there is a substantial difference in the two services. A fair mail rate could not be fixed on such an arbitrary basis. The Commission has the necessary jurisdiction and authority to fix equitable rates.

"Repeal of these provisions of section 5 would remove from the books an obsolete and unsound law under which the Commission is requested to make available information which it does not have and which it cannot feasibly obtain."

In the subcommittee report previously referred to, the subcommittee stated on page 2 that: "The subcommittee strongly concurs with the view expressed by the Interstate Commerce Commission. In the light of the record, it is clear that the provisions of section 557 which would be repealed by H.R. 7055 are completely nugatory."

The rehabilitation of the Railway Express Agency as provided and permitted under H.R. 1986 will give the express carrying member lines of the association an opportunity to continue to participate in the business of this agency.

We, therefore, respectfully request your favorable action on the passage of legislation deleting this obsolete and impractical statute prior to July 1, 1961.

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STATEMENT OF S. G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION

The Air Transport Association of America supports passage of H.R. 1986.

The Air Transport Association includes in its membership virtually all of the scheduled airlines of the United States. The scheduled airlines in turn, all have had contracts for many years with the Railway Express Agency for the joint operation of air express service throughout the United States.

Air express is an important segment of the scheduled airlines business and of this country's total transportation service available to the shipping public.

For these reasons, the Air Transport Association, therefore, has, on behalf of its scheduled airline membership, a definite and justifiable interest in keeping the express company in full operation as a private enterprise on a serviceable and profitable basis.



This bill proposes repeal of section 557 of 39 United States Code, section 5 of the Mail Pay Act of 1916, which provides that the Postmaster General shall, from time to time, obtain information from the Interstate Commerce Commission on revenues received by railroad companies from express companies, and may, at his discretion, arrange for the transportation of mail matter other than of the first class, at rates not exceeding those reported to him.

The proposed repeal has been urged by the Interstate Commerce Commission, as a part of its legislative recommendations in the Commission's last two annual reports.

It is further understood that the provisions of section 557 have never been applied and, in fact, have not been possible of application.

The Railway Express Agency operates as an agent for the owning and other contracting railroads, and as such does not pay rates for the transportation of express. Instead, the railroads share in the revenues remaining after all of the express company's own expenses have been paid.

Under the terms of its new express contract, the express company will pay an out-of-pocket cost rate for the transportation of express beginning July 1, 1961. In addition, the railroad carriers will receive additional payments through a share of the revenues remaining after the agency's express and carriers line haul costs are paid.

If section 557 remains in force, the Postmaster General will have authority to prescribe rates for the transportation of other than first class mail at the same rates as for express matter which, in effect, will give him control of both mail and express transportation rates.

Moreover, the Postmaster General would thereby be enabled to prescribe rates for the transportation of mail at less than full cost rates which would place an unjust burden on all other classes of rail transportation, or otherwise result in further and increased deficits.

The appropriate regulatory agency, in this case, the ICC, is the proper Government body to determine the fair and just compensation for the movement of mail. Otherwise the customer (the PMG) has complete control of the price of the service he buys.

Obviously, such a situation is incompatible with the principles of the act to regulate interstate commerce and the national transportation policy.

For these reasons, the Air Transport Association urges enactment of H.R. 1986 or similar legislation.

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#### STATEMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

The Chamber of Commerce of the United States urges adoption of H.R. 1986, to repeal the provision of section 5 of the act of July 28, 1916, which permits the Postmaster General to set rates for the transportation of second-, third-, and fourth-class mail by railroad at levels not exceeding those approved by the Interstate Commerce Commission for the transportation of express.

In other words, the Postmaster General is permitted to determine what he will pay the railroads for the transportation of mail, other than first-class mail, providing he does not pay more than the railroads charge for express.

The provision has been law for some years. However, since the creation of the Railway Express Agency, as a consolidation of express companies, it has been inoperative. As owners of the Express Agency, the railroads did not charge set rates for the transportation of express but rather divided any proceeds of the Express Agency annually. With the reorganization of the Express Agency, however, the situation will change and the railroads will charge set rates for the transportation of express, making this dormant section applicable. The Postmaster General will thereby be empowered to set transportation rates of mail other than first class.

The Congress in 1887 delegated the authority to regulate rail transportation rates by creating the Interstate Commerce Commission. In passing upon the fairness and reasonableness of a rate, the Commission is required to take into consideration many things other than the rate for a similar commodity. Important among these are cost of the service to be performed, value of the service to the shipper, rates of competing carriers, and adequacy of compensation.

If the paragraph in question remains in effect, the Postmaster General, rather than the ICC, will determine rates for mail transportation by rail and with only one criteria—that they not exceed those applicable on express matter,



He will not be bound, and probably could not even consider, all the other criteria in the Interstate Commerce Act by which the Commission is guided in setting other railroad rates. This would be contrary to the entire philosophy of transportation ratemaking as evolved over the years by the agencies of Government which have been assigned this important responsibility.

Such a departure from established ratemaking procedures could produce a rate structure which would not cover full costs of service and, consequently, place an undue burden on other users of rail transportation, or lead to deficits. The appropriate regulatory body, in this case the ICC, has a responsibility for protecting the interests of the public in the regulation of transportation charges. A comparable responsibility is not placed upon the Postmaster General.

For these reasons, the National Chamber urges adoption of H.R. 1986.

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STATEMENT OF HAROLD F. HAMMOND, EXECUTIVE VICE PRESIDENT,  
TRANSPORTATION ASSOCIATION OF AMERICA

The Transportation Association of America would like to go on record in support of H.R. 1986, which would repeal section 557 of title 39 of the United States Code. This section provides that the Postmaster General shall obtain information from the ICC on revenues received by railroads from express companies and may, at his discretion, arrange for the transportation of mail other than of the first class at rates not exceeding those reported to him.

TAA, for the information of your committee, is a national transportation policy organization composed of representatives from the users, investors, and carriers of all modes of transport, all of whom work together to formulate and implement policies to assure continuation of the strongest possible national transportation system under private ownership and operation. It also believes that the Government should not engage in any for-hire transport services where privately owned facilities are available. The association supports H.R. 1986 for the following reasons:

Section 557, while never being applied in the past, could be used in the future by the Postmaster General as a means of trying to obtain, without justification, reduced rates for the handling of other than first-class mail by the railroads. We understand he could apply to such mail the rates agreed upon by railroads and REA Express for the handling of express, even though services performed by the carriers for mail are much greater than that for express.

In such an event, as we see it, the costs of parcel post service would be reduced to the competitive disadvantage of privately owned and operated carriers who handle small package shipments. TAA has a specific policy position advocating that parcel post rates be adequate to cover all costs of the service to assure a fair opportunity for commercial carriers to compete. Through use of section 557, it could be possible for the Postmaster General to require the railroads to handle parcel post at rates below all costs of the service.

Section 557 also represents a roadblock in the path of the growth of any company operating express business, in any future efforts to establish rates for the handling of express by the railroads that will stimulate such traffic. We are reminded of the fact that in 1959 REA Express was faced with the threat of being taken over by the Post Office Department. Repeal of section 557 would help to prevent such a situation from occurring again.

We request that this letter be made a part of the official record of the hearings on H.R. 1986 and urge your subcommittee to give favorable consideration to this bill as soon as possible.

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STATEMENT OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES  
COMMISSIONERS

MARCH 8, 1961.

HON. THADDEUS J. DULSKI,  
*Chairman, House Subcommittee on Post Office and Civil Service  
House Office Building, Washington, D.C.*

DEAR CHAIRMAN DULSKI: At the 72d annual convention of this association in Las Vegas, N. Mex., the association unanimously adopted a resolution favoring repeal of section 557, title 39, United States Code.



Pursuant to the direction in the resolution, I am transmitting to you a copy of the resolution with the request that this resolution be incorporated in the official record of the hearings on the proposed repeal of section 557, title 39, of the United States Code.

Due to the recodification, the reference to section 557, title 39, United States Code, is no longer accurate, but for clarification the reference concerns section 5 of the Railway Mail Pay Act.

Yours very truly,

EVERETTE KREEGER, *Secretary.*

#### RESOLUTION FAVORING REPEAL OF SECTION 557, TITLE 39, UNITED STATES CODE

Whereas certain provisions of section 5 of the Railway Mail Pay Act of 1916, comprising section 557, title 39, of the United States Code, provide that the Postmaster General shall from time to time obtain information from the Interstate Commerce Commission on revenues received by railroad companies from express companies, and may, at his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those reported to him; and

Whereas legislation to repeal section 557 was drafted by the Interstate Commerce Commission and introduced in the 86th Congress by the Honorable Oren Harris as H.R. 7055 and by the Honorable Warren G. Magnuson as S. 1810; and

Whereas a subcommittee of the House Post Office and Civil Service Committee held full hearings during June 1960 and unanimously recommended that H.R. 7055 be favorably reported without amendment; and

Whereas section 557 is not required to insure reasonable railroad rates for the transportation of mail, and it has never been applied in 44 years and undoubtedly never will be applied as a practical matter for the reason that the railroads will not permit express rates to provide an excuse for reducing mail rates below the compensatory levels fixed by the ICC after full public hearings; and

Whereas the retention of section 557 will be of no benefit to anyone, but will seriously threaten the continued existence of the Railway Express Agency; and

Whereas it is in the public interest to keep a nationwide express company handling 70 million transactions annually and employing some 33,000 persons operating as a successful private enterprise transportation company; and

Whereas to do this it is imperative that legislation repealing section 557, title 39, of the United States Code be passed by the 87th Congress; and

Whereas the National Association of Railroad & Utilities Commissioners responsible to the total public interest in the field of private enterprise transportation services believes the shipping and receiving public of the United States as a whole will best be served by the repeal of section 557, title 39, of the United States Code: Now, therefore, be it

*Resolved*, That the National Association of Railroad & Utilities Commissioners urges the repeal of section 557, title 39, of the United States Code; and be it further

*Resolved*, That a certified copy of this resolution be directed to the chairmen of the congressional committees to which such legislation may be referred with a request that this resolution be incorporated in the official record of the hearings on the proposed repeal of section 557, title 39, of the United States Code.

Certified a true copy of a resolution duly adopted by the National Association of Railroad & Utilities Commissioners in convention at Las Vegas, Nev., on December 1, 1960.

EVERETTE KREEGER,  
*Secretary, NARUC.*

#### STATEMENT OF HOWARD D. POLLEN, PRESIDENT, ATLANTIC STATES SHIPPERS ADVISORY BOARD, NEW YORK, N.Y.

The Atlantic States Shippers Advisory Board through its officers heartily supports the repeal of section 557 of the Mail Pay Act of 1916 as we believe that section has been adjudged in our eyes to be antiquated.



STATEMENT OF C. L. WORNSON, GENERAL CHAIRMAN, MIDWEST SHIPPERS ADVISORY BOARD, CHICAGO, ILL.

Resolution supporting repeal of certain provisions of section 5 of the Railway Mail Pay Act of 1916:

"Whereas certain provisions of section 5 of the Railway Mail Pay Act of 1916 provide that the Postmaster General shall obtain information from the Interstate Commerce Commission on revenue received by railroad companies from express companies and may, at his discretion, arrange for the transportation of mail matter other than the first-class at rates not exceeding those reported to him; and

"Whereas the repeal of such provisions has been a part of the legislative program of the Interstate Commerce Commission recommended in its last two annual reports, being No. 11 in the 1959 report; and

"Whereas the Interstate Commerce Commission's recommendation for repeal was drafted as proposed legislation and introduced in the 86th Congress by the Honorable Oren Harris as H.R. 7055, and by the Honorable Warren G. Magnuson as S. 1810; and

"Whereas a subcommittee of the House Post Office and Civil Service Committee held full hearings during June 1960 and unanimously recommended that H.R. 7055 be favorably reported without amendment; and

"Whereas aforesaid provisions are not required to insure reasonable railroad rates for the transportation of mail, and have never been applied in 44 years and undoubtedly never will be applied as a practical matter for the reason that the railroads can never permit express rates to provide an excuse for reducing mail rates below the compensatory levels fixed by the ICC after full public hearings; and

"Whereas the retention of these certain provisions will be of no benefit to anyone, but will seriously threaten the continued existence of the Railway Express Agency; and

"Whereas it is definitely in the public interest to keep a nationwide express company handling 70 million transactions annually, and employing some 33,000 persons operating as a successful private enterprise transportation company; and

"Whereas to do this it is imperative that legislation similar to that proposed by H.R. 7055 and S. 1810 in the 86th Congress be passed by the 87th Congress; and

"Whereas the Midwest Shippers Advisory Board meeting in regular session and exercising its responsibility to the total public interest in the field of private enterprise transportation services, believes the interests of the shipping and receiving public of the United States as a whole will best be served by the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916: Now, therefore, be it

*"Resolved*, That the Midwest Shippers Advisory Board officially supports and urges the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916; and, be it

*"Resolved further*, That a certified copy of this resolution be transmitted to the chairman of the respective Post Office and Civil Service Committees of the U.S. Senate and House of Representatives with a request that this resolution be incorporated in the official record for the repeal of the aforesaid provisions of section 5 of the Mail Pay Act of 1916."

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STATEMENT OF LESTER W. BRANN, JR., EXECUTIVE VICE PRESIDENT, MILWAUKEE ASSOCIATION OF COMMERCE, MILWAUKEE, WIS.

The board of directors of the Milwaukee Association of Commerce yesterday approved the recommendation of our industrial transportation committee, that this association support the repeal of certain provisions of section 5 of the Railway Mail Pay Act of 1916.

This association believes that the best interests of shippers and receivers of both express matter and mail in the metropolitan area of Milwaukee and the State of Wisconsin, as well as the entire United States, would be served by the repeal of these provisions, and, therefore submits the attached resolution which urges such action by the 87th Congress.



It is our understanding that the subcommittee of which the Honorable Dale Alford was chairman, considered H.R. 7055 during the 86th Congress, and unanimously recommended the repeal of those provisions of section 5 relating to the furnishing of information to the Postmaster General by the Interstate Commerce Commission, with respect to revenue received by railroads from express companies for the transportation of express matter.

We respectfully request that this resolution be incorporated in the official record and urge favorable action by the committee and Congress before July 1 when the new contract between the Railway Express Agency and the railroads becomes effective.

Resolution of the Industrial Transportation Committee of the Milwaukee Association of Commerce supporting repeal of certain provisions of section 5 of the Railway Mail Pay Act of 1916:

"Whereas certain provisions of section 5 of the Railway Mail Pay Act of 1916 provide that the Postmaster General shall obtain information from the Interstate Commerce Commission on revenues received by railroad companies from express companies and may, at his discretion, arrange for the transportation of mail matter other than the first-class at rates not exceeding those reported to him; and

"Whereas the repeal of such provisions has been a part of the legislative program of the Interstate Commerce Commission and its recommendation for repeal was drafted as proposed legislation and introduced in the 86th Congress as H.R. 7055 and S. 1810; and

"Whereas a subcommittee of the House Post Office and Civil Service Committee held full hearings during June 1960 and unanimously recommended that H.R. 7055 be favorably reported without amendment; and

"Whereas aforesaid provisions are not required to insure reasonable railroad rates for the transportation of mail, and, have never been applied in 44 years and undoubtedly never will be applied as a practical matter for the reason that the railroads can never permit express rates to provide an excuse for reducing mail rates below the compensatory levels fixed by the ICC after full public hearings; and

"Whereas the retention of these certain provisions will be of no benefit to anyone, but will seriously threaten the continued existence of the Railway Express Agency; and

"Whereas it is definitely in the public interest to keep a nationwide express company, handling 70 million transactions annually and employing some 33,000 persons, operating as a successful private enterprise transportation company; and

"Whereas to do this it is imperative that legislation similar to that proposed by H.R. 7055 and S. 1810 in the 86th Congress be passed by the 87th Congress; and

"Whereas the Industrial Transportation Committee of the Milwaukee Association of Commerce believes that best interest of shippers and receivers of both express matter and mail in the metropolitan area of Milwaukee, as well as the entire United States, would best be served by the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916: Now, therefore, be it

*"Resolved,* That the Milwaukee Association of Commerce supports and urges the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916; and be it

*"Resolved further,* That a copy of this resolution be transmitted to the chairmen of the respective Post Office and Civil Service Committees of the Senate and House of Representatives with a request that this resolution be incorporated in the official record for the repeal of the aforesaid provisions of section 5 of the Mail Pay Act of 1916."

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STATEMENT OF R. F. TREPTOW, GENERAL CHAIRMAN, TRANS-MISSOURI-KANSAS SHIPPERS BOARD

MARCH 3, 1961.

HON. TOM MURRAY,  
*Member of Congress,  
House Office Building, Washington, D.C.*

DEAR MR. MURRAY: The Trans-Missouri-Kansas Shippers Board, a voluntary organization of shippers and receivers of rail freight in the States of Arkansas, Illinois, Kansas, Missouri, and Oklahoma, at their 127th regular meeting held January 19, 1961, at Kansas City, Mo., by means of the attached resolution, went on record in support of H.R. 1986, and urged repeal of the involved provisions of section 5 of the Railway Mail Pay Act of 1916.



It is our hope that after careful study of this proposed legislation that you will find it in the public interest that its provisions be enacted into law.

Sincerely,

R. F. TREPTOW,  
General Chairman.

RESOLUTION IN SUPPORT OF REPEAL OF CERTAIN PROVISIONS OF RAILWAY MAIL  
PAY ACT OF 1916

Whereas certain provisions of section 5 of the Railway Mail Pay Act of 1916 provides that the Postmaster General may at his discretion arrange for the transportation of mail matter other than the first class at rates not exceeding those paid by express companies to railroad companies; and

Whereas these provisions are not required to insure reasonable railroad rates for the transportation of mail: Now, therefore, be it

*Resolved*, That the Trans-Missouri-Kansas Shippers Board supports H.R. 1986 and urges repeal of the involved provisions of section 5 of the Railway Mail Pay Act of 1916; and be it further

*Resolved*, That a copy of this resolution be transmitted to the Post Office and Civil Service Committees of the Senate and of the House of Representatives with the request that it be incorporated in the official record for the repeal of these provisions.

CENTRAL WESTERN SHIPPERS ADVISORY BOARD,  
November 23, 1960.

HON. TOM MURRAY,  
Chairman, Post Office and Civil Service Committee,  
House of Representatives, Washington, D.C.

DEAR SIR: Attached is a certified copy of a resolution supporting repeal of certain provisions of section 5 of the Railway Mail Pay Act of 1916.

This resolution was adopted by the Central Western Shippers Advisory Board, comprised of 2,940 members residing in the States of Iowa, Nebraska, Wyoming, Colorado, Utah, Idaho, and Oregon, at its 82d regular meeting held at Salt Lake City, Utah, November 4, 1960.

It is respectfully requested that this resolution be incorporated in the official record for the repeal of these certain provisions of section 5 of the Railway Mail Pay Act of 1916; also, that you lend your full support to the adoption of action favoring repeal of these provisions.

Yours very truly,

ELLIS A. STOKER,  
General Secretary.

RESOLUTION SUPPORTING REPEAL OF CERTAIN PROVISIONS OF SECTION 5 OF THE  
RAILWAY MAIL PAY ACT OF 1916

Whereas certain provisions of section 5 of the Railway Mail Pay Act of 1916 provide that the Postmaster General shall obtain information from the Interstate Commerce Commission on Revenues received by railroad companies from express companies and may, at his discretion, arrange for the transportation of mail matter other than the first class at rates not exceeding those reported to him; and

Whereas the repeal of such provisions has been a part of the legislative program of the Interstate Commerce Commission recommended in its last two annual reports, being No. 11 in the 1959 report; and

Whereas the Interstate Commerce Commission's recommendation for repeal was drafted as proposed legislation and introduced in the 86th Congress by the Honorable Oren Harris as H.R. 7055, and by the Honorable Warren G. Magnuson as S. 1810; and

Whereas a subcommittee of the House Post Office and Civil Service Committee held full hearings during June 1960 and unanimously recommended that H.R. 7055 be favorably reported without amendment; and

Whereas aforesaid provisions are not required to insure reasonable railroad rates for the transportation of mail, and, have never been applied in 44 years and undoubtedly never will be applied as a practical matter for the reason that the railroads can never permit express rates to provide an excuse for reducing mail rates below the compensatory levels fixed by the ICC after full public hearings; and



Whereas the retention of these certain provisions will be of no benefit to anyone, but will seriously threaten the continued existence of the Railway Express Agency; and

Whereas it is definitely in the public interest to keep a nationwide express company handling 70 million transactions annually, and employing some 33,000 persons operating as a successful private enterprise transportation company; and

Whereas to do this it is imperative that legislation similar to that proposed by H.R. 7055 and S. 1810 in the 86th Congress be passed by the 87th Congress; and

Whereas the Central Western Shippers Advisory Board meeting in regular session and exercising its responsibility to the total public interest in the field of private enterprise transportation services, believes the interests of the shipping and receiving public of the United States as a whole will best be served by the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916: Now, therefore, be it

*Resolved*, That the Central Western Shippers Advisory Board officially supports and urges the repeal of the aforesaid provisions of section 5 of the Railway Mail Pay Act of 1916; and be it

*Resolved further*, That a certified copy of this resolution be transmitted to the chairman of the respective Post Office and Civil Service Committees of the U.S. Senate and House of Representatives with a request that this resolution be incorporated in the official record for the repeal of the aforesaid provisions of section 5 of the Mail Pay Act of 1916.

Dated at Salt Lake City, Utah, November 4, 1960.

I, Ellis A. Stoker, general secretary of the Central Western Shippers Advisory Board, do hereby certify that the above is a true copy of a resolution passed by the board during its 82d regular meeting at the Newhouse Hotel, Salt Lake City, Utah, November 4, 1960.

ELLIS A. STOKER.

PACIFIC COAST SHIPPERS ADVISORY BOARD,  
San Francisco, Calif., February 23, 1961.

HON. OREN HARRIS,  
*House of Representatives, Washington, D.C.*

DEAR SIR: Please be advised that the Pacific Coast Shippers Advisory Board, whose members number approximately 2,000 shippers and/or receivers of freight traffic in the States of California, Nevada, Arizona, and New Mexico, did go on record during the board's 37th annual and 114th regular meeting in Los Angeles, Calif., on January 18-19, 1961, to approve support of the following designated bills before Congress:

H.R. 12109—To amend the ICC Act to provide that transportation of bulk commodities by railroads shall be exempt from regulation.

H.R. 12768 and H.R. 12789—To amend the Federal Aviation Act so as to clarify the status of air freight forwarders and provide for their certification.

H.R. 1986—To repeal section 557 of the Railway Mail Pay Act.

Senate bill 3548—In September of 1960, the board voted to support this bill. Because of its importance, the board elected to again go on record as opposed to all make-work practices which exist on the Nation's railroads.

On behalf of the board and its members I extend thanks to you for your efforts to promote action on the legislation cited in line with the desires and objectives of our group in support thereof.

Respectfully,

E. J. DUNNE, *General Secretary.*

Mr. DULSKI. Thank you very much, gentlemen, for appearing here this morning, and we will adjourn until March 16.

(Whereupon, at 11:45 a.m., the hearing was recessed, to reconvene at 10 a.m., Thursday, March 16, 1961.)



INFORMATION TO THE POSTMASTER GENERAL BY THE INTERSTATE COMMERCE COMMISSION

## REPEAL OF PROVISIONS RELATING TO THE FURNISHING OF INFORMATION TO THE POSTMASTER GENERAL BY THE INTERSTATE COMMERCE COMMISSION

THURSDAY, MARCH 16, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met, pursuant to adjournment, at 10 a.m. in room 215, House Office Building, Hon. Thaddeus J. Dulski presiding.

Mr. DULSKI. The subcommittee will come to order.

Today we are continuing the hearings on H.R. 1986 and H.R. 5600. Hon. Oren Harris has sent in a letter to be put into the record. Is there any objection?

Mr. GROSS. No objection.

Mr. DULSKI. Without objection, it is so ordered.

(The letter is as follows):

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., March 15, 1961.*

Re H.R. 1986 and H.R. 5600.

HON. THADDEUS J. DULSKI,  
*House of Representatives,*  
*Washington, D.C.*

DEAR COLLEAGUE: I understand that the special subcommittee, of which you are chairman, of the House Committee on Post Office and Civil Service, is currently holding hearings on H.R. 1986. This bill, which would repeal certain provisions of the Railway Mail Pay Act of 1916 is similar to the one drafted by the Interstate Commerce Commission last year, and introduced by me at their request. It has the same purpose as my bill H.R. 5600, and I am in full accord with its principles and I support its enactment.

The House Committee on Interstate and Foreign Commerce through hearings before it during the last few years, is thoroughly familiar with the critical conditions of the railroads' passenger services, of which both mail and express are a part. It is vital that the passenger deficit of the railroads be substantially reduced. In the effort to reduce the deficit it is extremely important that the maximum revenues, which will be reasonable, be obtained from all branches of the passenger train service, including mail and express.

I am also aware of the crisis through which the Railway Express Agency has passed during the past 2 years. I believe the preservation of this nationwide business as a private enterprise is in the public interest, and, that the efforts of the railroads and of the express company management to accomplish this goal, should be encouraged.

The provisions of the Railway Mail Pay Act of 1916, with which this bill is concerned are not required to protect the Post Office Department from unreasonable high rates for the transportation of mail by railroad. The control of such rates is vested in the Interstate Commerce Commission. They are fixed by the Commission after full hearings in which the Department participates.



The Interstate Commerce Commission in its report, accompanying the recommendations that these provisions be repealed, pointed out the changed conditions of the express business since 1916 when the provisions were enacted. For this reason, and because of the fact that repeal is of great importance in the efforts to preserve and expand the services of the express company, as an integral part of our national transportation resources, I urge the enactment of this proposed legislation.

Sincerely yours,

OREN HARRIS,

*Member of Congress, Chairman.*

Mr. DULSKI. The first witness is Mr. William B. Henderson, executive vice president, Parcel Post Association.

**STATEMENT OF WILLIAM B. HENDERSON, EXECUTIVE VICE PRESIDENT, PARCEL POST ASSOCIATION, INC., WASHINGTON, D.C.**

Mr. HENDERSON. Mr. Chairman, and members of the subcommittee. My name is William B. Henderson. I am executive vice president of Parcel Post Association, Inc., with headquarters in Washington, D.C. Parcel Post Association was organized and incorporated under the laws of the District of Columbia in October 1953. Association membership comprises approximately 300 small and medium-sized businesses.

H.R. 1986 would repeal section 5 of the Railway Mail Pay Act (sec. 557, title 39, United States Code) which provides:

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

An identical proposal was made to the 86th Congress in H.R. 7055. Public hearings were held on H.R. 7055. The record was printed.

The previous record on H.R. 7055 stands as an essential reference in the discussion of this present H.R. 1986. Further information has become available since the making of the preceding record.

The additional evidence carries disturbing implications. In it is threat to the continued existence of thousands of businesses, mostly small businesses, and to the future of their hundreds of thousands of employees.

So this new testimony may be in proper perspective, it is desirable to review some salient points in the preceding record.

The Railway Mail Pay Act of 1916 (sec. 557, U.S.C., title 39) was enacted by the 64th Congress. Purpose of the law to prevent the U.S. Government from paying more than a private commercial enterprise for identical service. This law embodied the intent of the 64th Congress that the Government should not suffer by being discriminated against.

The record is clear that the 64th Congress had full awareness of the practicalities and potentialities of the problem it sought to resolve. The Congress apparently had no illusions as to the quarter from which attack on the Public Treasury might be expected. To the men in that 64th Congress, the depredations of the railroad barons were fresh and recent history. Today, to us, that chapter of American history has



faded back into the mists of time. But it is a chapter which carries clear and unmistakable warning to the Nation.

The 64th Congress resolved this particular problem involving the railroads, railway express traffic and the U.S. mails by placing responsibility in the Interstate Commerce Commission and the Postmaster General to jointly and cooperatively "police" the new law.

Theoretically, this "policing" should have worked as Congress planned. But it did not. For the 45 years section 557, U.S.C. title 39, has been on the books, the law has never been enforced.

One of the "policemen" appointed by Congress (the Postmaster General) made repeated and strenuous effort to do his duty. The other, the Interstate Commerce Commission, has manifestly avoided its responsibility.

In enacting section 557, in 1916, Congress established that railway express matter and non-first-class mail were similar in character as shipments in transport. For that reason, the Government should not be required to pay more to the railroads for the transport of non-first-class mail than the railroads received for transporting express matter receiving comparable service. The same condition holds true today and has throughout the intervening 45 years.

In attempts to comply with the law in section 557 and prevent discrimination against and overcharges to the Government by the railroads, Postmasters General have repeatedly requested the Interstate Commerce Commission to furnish rates of units of service common to the carriage of express and non-first-class mail with such adjustments therein as might be necessary to reflect differences, if any, in the character of service for these two classes of service.

The Interstate Commerce Commission has consistently refused to furnish the information requested, stating that the service rendered Railway Express by the railroads was not performed on a basis of rates, and that ICC therefore could not establish an equivalent for the service.

As evidence in previous records clearly shows, and as will again be established by testimony in this record, ICC was and is "begging the issue."

It is certain beyond doubt, and the record so indicates, that ICC, by using apportionment techniques it regularly employs, and by simple arithmetical calculations could easily have furnished Postmasters General, at any time, the rate information requested and needed in the public interest for enforcement of section 557. A formula was furnished by ICC by the Post Office Department in one of its briefs.

That the Interstate Commerce Commission has been and is apparently but an agent of the railroads in this situation was directly charged by the Post Office Department in its testimony in the previous record (H.R. 7055) when it said:

Although the Interstate Commerce Commission proposes the enactment of H.R. 7055, its real support stems from the railroads and the express agency who seek repeal of the existing law (sec. 557) prior for full disclosure of information relating to rates for express.

Substantiation of the validity of that charge comes from William B. Johnson, president of Railway Express. He testifies he cannot



conceive of any circumstances under which the railroads would permit enforcement of the law.

The Post Office Department stated, in the previous record on H.R. 7055, it—

is at a loss to understand why the railroads and the express agency persist in their attempts to conceal the rates received by the railroads for the transportation of express.

Then the Department answered its own question when it testified—the railroads and the express agency have also agreed that this disclosure of specific rates for the railway transportation of express will not be made unless the comparative provision of the Railway Mail Pay Act (sec. 557) is repealed.

Mr. Johnson again supplied confirmation when he assured you in his testimony on March 8 that “section 557 has not been and never will be applied,” and that “the railroads cannot afford to let such a situation come about and will not permit it to happen.”

But though ICC has refused to furnish Postmasters General with the information necessary for the enforcement of the law, there is much proof that the U.S. Government has been forced to pay twice as much as it should to the railroads because section 557 has not been enforced.

In 1955, according to Post Office Department records, the Department paid the railroads an average of approximately 71.7 cents per 100 assigned and apportioned car-foot miles for storage line haul of non-first-class mail. Railway Express in 1955 paid the railroads only approximately 42.5 cents per 100 assigned and apportioned car-foot miles. This rate basis is for the eastern district with the southern and western being slightly lower. These figures are based on testimony in ICC Docket 9200, “Verified Statements of Witness J. L. Haywood.”

Last year, in 1960, the Post Office Department paid the railroads between \$1.30 and \$1.40 per 100 assigned and apportioned car-foot miles for line haul transport of non-first-class mail while Railway Express was paying the railroads for similar service at rate of between 65 and 70 cents per 100 assigned and apportioned car-foot miles.

In ICC Docket I. & S. 7304, currently in process, involving Railway Express transport of wearing apparel shipment comparable to parcel post, C. W. Bock, Chief Cost Accountant for Railway Express gave testimony which, worked out on a mathematical basis, indicated Railway Express in 1959 paid the railroads for hauling this traffic a rate of 0.0232 cents per cubic-foot mile.

Reference to the Post Office Department 1959 Cost Ascertainment Report reveals that the Department paid the railroads approximately 0.0484 cents per cubic-foot mile for hauling parcel post, or a rate of 109 percent higher than Railway Express paid the railroads for hauling comparable railway express matter.

It is patently clear, from the instances given, and others which could be cited, that the Government is and has been paying twice as much as does a private commercial enterprise for identical service.

In the 8 years 1952 through 1959 (figures for 1960 not yet being available), the Post Office Department paid the railroads \$2,105,490,000 for the transport of non-first-class mail. As the Department is paying the railroads twice as much as it needs to, subsidy of Railway Express via its railroad owners has amounted to about \$1,052,730,000 in just 8 years. The total overpayment by the Government since



1916, because of the nonenforcement of section 557, is upward of \$3 billion.

Incidentally, the overpayment to the railroads in those 8 recent years for carrying parcel post (which Railway Express identifies as a competitor) totals \$750 million just in 8 recent years. So we have the somewhat ironic situation of an alleged competitor (parcel post) paying heavily to support Railway Express.

This committee will agree, I know, there is no man in the Halls of Congress with greater sense and practice of personal and public rectitude than the senior Senator from Illinois, Paul H. Douglas. Senator Douglas has little patience with breach of responsibility by any public servant, elected or appointed, in the discharge of official duties. The Senator is equally intolerant of business immorality betraying the public interest.

In 1957, Senator Douglas investigated the issues now before you—the nonenforcement of the law contained in section 557. The Senator found the railroads were thereby being overpaid approximately \$100 million a year by the U.S. Treasury.

Senator Douglas said (No. 79, vol. 103, of the Congressional Record, May 13, 1957):

The effect of this (the nonenforcement of section 557) is a direct, although hidden, subsidy to the railroads, which was not intended, but in fact expressly forbidden by law. There is no justification for this unwarranted subsidy.

The basic principle involved is that the Government should not be required to pay more for a particular kind or class of service than was charged to a private firm or individual for the same or comparable class of service.

The Post Office Department itself does not deny that it is paying more to the railroads for parcel post than the railroads charge themselves for comparable service of the Railway Express.

There is no question that section 557 is not being carried out and that the cost to the Government in terms of a subsidy to the railroads—a subsidy not provided by law and apparently expressly forbidden by law—is approximately \$100 million per year.

Basically there are two reasons why section 557 has not been enforced. The first is the absolute unwillingness of the ICC to furnish the required information under section 557. Further, their refusal appears to be based on the flimsiest of reasoning and is unwarranted in the light of section 557's clear language.

The basic refusal of the ICC to give the Postmaster General the information required by title 39, United States Code, section 557, was given in *Railroad Rates on Express Matter, 1949* (274 ICC 683, 687). This was a ruling which grew out of the 1947 petition of the Postmaster General and which was finally completed in 1951. In that petition the Postmaster General requested the ICC to furnish information as to the revenues received by the railroads from the express companies. This was to be stated in units of service common to the carriage of express and mail matter—excluding first class—and the information was to be given with adjustments to reflect the differences in services which were performed.

The ICC denied this request. It wrongfully and mistakenly claimed that section 557 did not impose any duty on the Commission to make an investigation and study of the operation of the railroads and the Railway Express Agency in connection with the transportation of express matter, and the revenues received therefrom, for the purpose of formulating rates, when the law, which I have read, specifically so provides.

The ICC, in denying the information, says: First. The law does not impose any duty on us to make a study and investigation.

Second. They then beg the point by stating that it does not impose the duty in connection with the transportation of express matter, and the revenues received therefrom, for the purpose of formulating rates; and

Third. They say that because the railroads do not perform their service for Railway Express by a system of rates, but rather by a system under which the



railroads receive their revenues, under operating agreements based on "variable net earnings," the ICC will not provide the revenue information or the comparable rates.

That is a clear refusal of the ICC to grant information and it gives the law a meaning it does not have on any clear reading of it. On the face of it it is absurd.

At best it shows an inability of the Commission to read; at worst it shows the Commission as a willing servant of the railroad industry.

As Mr. Frank, the former Associate Solicitor of the Post Office Department pointed out: Despite the fact that the railroads do not charge the Railway Express Agency a fixed rate for the transportation of express matter, revenues attributable to the different units of comparable service of mail and express matter can be determined by the Commission's apportionment technique which it exercises regularly.

The method by which this can be done was stated very simply in the brief in support of the 1949 petition by the Solicitor of the Post Office Department.

This is what it said: (*Railroad Rates on Express, 1949*, 274 ICC 68 (pp. 21-22)): The result will be a determination of (1) the service furnished to express which is also furnished mail:

That should be quite simple for the ICC, with its staff and experience, to do, and—(2) The revenues received by the carriers for such service.

That is equally simple and some, if not all, of that information is available in published sources. The statement continues: These two determinations, placed together will constitute a ratio of revenue to service, i.e., a rate for service. It will be a rate capable of application to non-first-class mail, being in terms of a unit of service common to both.

The more I look at the ICC refusal to give the information which the Department has requested, and which section 557 imposes on the ICC a duty to give, the more I believe the ICC is saying something like this: Sir, the information you request would require two simple calculations. We have not made those calculations. Therefore, we will not give you the information.

Mr. Chairman, the full text of the remarks of Senator Douglas on this matter, as reported in the May 13, 1957, Congressional Record, constitutes an essential part of the record of this hearing. I respectfully request that it be incorporated in this record as an appendix following my testimony.

Mr. DULSKI. How long is the text?

Mr. HENDERSON. It runs a little less than four pages.

Mr. DULSKI. We will see what the committee says in executive session.

Mr. HENDERSON. I will give it to the stenographer, Mr. Chairman.

Mr. DULSKI. All right.

(The document referred to is inserted as appendix A at p. 73.)

Mr. HENDERSON. Mr. Chairman, a thought occurs to me as to why didn't ICC ask for repeal or modification of section 557 years ago when the Postmaster General first requested the information essential to the enforcement of section 557 and ICC pleaded inability to comply because ICC felt the law was obsolete, inapplicable, and impossible of compliance.

It seems ICC waited until after it had approved the new contract between Railway Express and the railroads. That was fairly recently.

Article 10 of the new contract, which I submit for inclusion in the record, spells out in specific detail how the rate for service furnished Railway Express by the railroads shall be computed. That is the information which the Postmaster General has been attempting to obtain from ICC for many years and which ICC claimed was impossible for it to supply.



Incidentally, under the new contract, Railway Express will not pay the railroads even the railroads' out-of-pocket costs until 1963, and until then Railway Express will be given railroad service, and I am using Mr. Johnson's words.

When, if ever, Railway Express will pay the railroads fully allocated costs for service on the same basis as every other customer of the railroads, appears highly problematical.

I should like, Mr. Chairman, with your permission, to include in the record this copy of article 10 of the Railway Express contract with the railroads.

Mr. DULSKI. Any objection?

(No response.)

Mr. DULSKI. It is so ordered.

(The document is as follows:)

ARTICLE 10. PAYMENTS TO RAIL COMPANIES FOR SERVICES PERFORMED  
ON AND AFTER JULY 1, 1961

SECTION 1. The Express Company shall, on and after July 1, 1961, continue to pay the Rail Company for services performed and facilities furnished in the handling of carload express traffic as provided in Section 6 of Article 10.

SECTION 2. Except as otherwise provided in this agreement, the Express Company shall pay the Railroad Company for services performed and facilities furnished in the handling of other than carload express traffic during the period July 1, 1961, to December 31, 1962, in the following manner:

(a) The Express Company shall determine the amount of space in prescribed routes which it considers reasonably necessary for the economical and efficient handling of express business over the lines of the Rail Company. It shall notify the Rail Company of such determination and the Rail Company shall make such space available on the prescribed routes. The Express Company shall maintain a record of the number of car feet assigned and shall compute the car foot miles for the Rail Company on a monthly basis by multiplying the number of assigned car feet by the number of miles moved over the prescribed routes.

(b) The Express Company shall determine:

(i) the Rail Transportation Revenue per car-foot mile of space assigned to other than carload traffic in the various groups (as defined in Section 3 of Article 9) for the period July 1 to December 31, 1960 (hereinafter called the "first base period"), and for the period January 1 to June 30, 1961 (hereinafter called the "second base period"); and

(ii) the Rail Transportation Revenue per car-foot mile of space assigned to other than carload traffic on the Rail Company for the first and second base periods.

(c) For each month during the periods July 1 to December 31, 1961, and July 1 to December 31, 1962, the Rail Transportation Revenue for each group shall be determined by multiplying the car-foot mile rate of the group during the first base period by the number of car-foot miles assigned to other than carload traffic in the group for such month. For each month during the period January 1 to June 30, 1962, the Rail Transportation Revenue for each group shall be similarly determined except that the car-foot mile rate for the second base period shall be used.

(d) For each month during the periods July 1 to December 31, 1961, and July 1 to December 31, 1962, the unadjusted Rail Transportation Revenue of the Rail Company shall be determined by multiplying the Rail Company's car-foot mile rate during the first base period by the number of car-foot miles assigned to other than carload traffic on the Rail Company for such month. For each month during the period January 1 to June 30, 1962, the unadjusted Rail Transportation Revenue for the Rail Company shall be similarly determined except that the Rail Company's car-foot mile rate for the second base period shall be used.

(e) The percent by which the sum of the amounts produced in accordance with paragraph (d) hereof for each month for all rail companies party to this form of agreement in the group in which the Rail Company operates



exceeds or falls below the Rail Transportation Revenue, computed in accordance with paragraph (c) hereof, for such group for such month shall be determined. The Rail Transportation Revenue of the Rail Company, computed for such month in accordance with paragraph (d) hereof, shall be appropriately adjusted by such per cent so that the adjusted total amount for all rail companies in each group will equal the amount determined for the group in accordance with paragraph (c). The resulting sum shall be paid to the Rail Company as provided in Section 11 of Article 10, except that the final accounting for each month, other than the payment, if any, provided in paragraph (f), shall be completed within 120 days after the end of such month.

2(f) After the end of each six months during July 1, 1961, to December 31, 1962, there shall be determined the amount of Rail Transportation Revenue for other than carload traffic which would have been payable for such six months period to all rail companies party to this form of agreement under the method of ascertaining such revenue provided in Article 9. If such amount is in excess of the Rail Transportation Revenue for such six months period of all such rail companies computed in accordance with the foregoing paragraphs of this Section 2, such excess shall be divided equally between the Express Company and such rail companies. The rail companies' share of such excess, if any, shall be distributed to groups and to individual rail companies in the same proportion as the Rail Transportation Revenue computed in accordance with the foregoing paragraphs of this Section 2 for such six months period was apportioned."

Mr. HENDERSON. The Interstate Commerce Commission has stated in both the previous record and in this current record that section 557 is "obsolete." Yet the evidence in the record refutes the ICC contention. The relationship between express company operators and the railroads, both as to control and in the details of operation, is basically the same today as in 1916. Conditions existing in 1916, making the law an imperative need for the protection of the public, exist today as they have through the intervening 45 years. The only difference is that the need has grown more acute.

Interstate Commerce Commission states that the law is unenforceable. Yet evidence in the record makes quite clear the law is easily enforceable.

Railway Express and its railroad owners, who for many years have had lucrative benefits as a result of ICC's inaction, aggressively support ICC's position. That is natural. Why, if section 557 is obsolete and cannot be enforced, as Railway Express, its railroad owners, and ICC contend, why are Railway Express and the railroads so anxious that section 557 be repealed, removed from the statute books? If they believed their own contentions, it should make little difference to Railway Express and its railroad owners whether section 557 were repealed or not. The answer is clear and has been conceded in previous testimony by Mr. Johnson.

Section 557, enforced or not, while on the statute books, acts as a deterrent against unduly excessive charges by the railroads in setting postal transportation rates. While the law is on the statute books, Railway Express and the railroads would always have the fear that it could be enforced and would be enforced.

As Mr. Johnson testified, that is the reason the railroads do not wish to continue the new contract with Railway Express unless section 557 is repealed. With section 557 repealed, Railway Express and the railroads would be relieved of the fear that section 557 might be enforced and they could then proceed in their plans without restraint.



In contrast to the generalities and largely undocumented statements of Railway Express, its railroad owners and other associates in the record, Post Office Department testimony on the issues under review stand in sharp relief. The Department's evidence in the preceding record, presented by Herbert B. Warburton, General Counsel, and George M. Moore, Assistant Postmaster General, Bureau of Transportation, is clear, concise, documented. The Department's evidence is complete, accurate, and credible.

The Department outlines the conditions existing prior to 1916, which made urgently necessary the enactment of the Railway Mail Pay Act of 1916 (39 U.S.C. 557) to protect the U.S. Government against unwarranted price discrimination in its purchase of services.

The Department points out that conditions under which and for which the law was enacted in 1916, prevail today in essential similarity.

The Department demonstrates that the law is not obsolete, that reasonable facility exists for the law's enforcement. It emphasizes the reasons Congress entrusted ICC with joint responsibility for the law's enforcement.

The Department once again confirms the similarity of non-first-class mail and Railway Express matter as shipment traffic and the identical nature of the line haul service given both by railroad carriers. It reminds the committee, further, that the two forms of shipment usually travel by the same trains and frequently in the same railroad cars.

Department testimony notes the obdurate opposition of the Railway Express and its railroad owners against enforcement of section 557 through the years.

The Department recites and documents in detail its many attempts through the intervening 45 years to have the law enforced.

The Department's testimony has such essential bearing and sheds so much light on the proposal in H.R. 1986, which you are now considering, I request, Mr. Chairman, that the testimony of Mr. Warburton and Mr. Moore for the Post Office Department in the preceding hearing be made a part of this record. Such inclusion might well be in this record as an appendix immediately following my testimony.

Mr. DULSKI. How long is that, sir?

Mr. HENDERSON. I had it photostated, Mr. Chairman. It is on short printed transcript pages, I would judge about 10 pages or so.

Mr. DULSKI. You can place it there and we will have a discussion with the Joint Committee on Printing.

Mr. HENDERSON. I do feel, Mr. Chairman, this is a very essential base for the whole discussion. I hope the committee will approve its inclusion in the record.

Mr. JOHNSON (staff director). Mr. Chairman, the Postmaster General has sent a letter to the chairman stating he will submit a full report on this legislation in the very near future, and he asked that the record be kept open for the inclusion of that current report.

I believe that the current report will reflect the present policy position of the Post Office Department. I have no knowledge of whether it will be exactly like last year's or not, but, in any event, it would seem the current report of the Postmaster General included in this printed record would certainly possibly be a more desirable document to be included in the record.



There is a problem on printing anything which has already been printed in hearings, Mr. Henderson, and without the permission of the Joint Committee on Printing we would not be authorized to reprint last year's printed hearings.

Would that satisfy the gentleman, if the current report of the Postmaster General is printed in full as we have agreed?

Mr. HENDERSON. It would, Mr. Johnson, if the report of the Postmaster General contains the essential information as does the Department's previous testimony which I feel is so important to this matter now under review.

Mr. JOHNSON (staff director). This is primarily to avoid a repetition of printed material inserted last year. There is a rule in the House against reprinting of identical material.

However, Mr. Dulski has agreed to consult with the Joint Committee on Printing about it.

Mr. HENDERSON. All right.

(The testimony referred to is printed on pages 5-21 of the hearing on H.R. 7055, held June 15, 1960.)

Mr. HENDERSON. I did want to draw to your attention, Mr. Dulski, that Mr. W. B. Johnson's last year's testimony was included in the record of this current hearing.

Congressman HENDERSON. Mr. Chairman, I would like to point out, you will recall that I raised a question at that point in Mr. W. B. Johnson's testimony, that if it had been printed last year, I thought we should give consideration to printing it again this year.

Mr. JOHNSON (staff director). Yes; the same rules applies.

Mr. GROSS. If I may, Mr. Chairman, since the letter of the new Postmaster General has been brought up, I would go one step further and say as one member of the subcommittee I would insist the Postmaster General, or responsible officials in his office dealing with this matter, appear before the subcommittee and testify, rather than accepting from them a statement to be printed in the record.

I think this matter is of such a serious nature, the Department ought to come before the subcommittee.

Mr. DULSKI. As he states in the letter, Mr. Gross, he is taking this under advisement. We can inform him we would like one of his representatives to be here.

Mr. GROSS. Yes.

Mr. HENDERSON. Shall I proceed, Mr. Chairman?

Mr. DULSKI. Yes, sir.

Mr. HENDERSON. While the repeal of section 557 is of high importance to Railway Express and its railroad owners, that step appears to be but a part, though an essential major phase, of a much larger plan, a scheme holding long-range significance and promise of great profit for the railroads.

In such a plan lies danger for the American public—shippers, producers of goods, consumers, and a most immediate threat to small shipment carriers, to truckers, freight forwarders, shipment consolidators, buslines, specialized local and regional package distributors (for example, United Parcel), and others. Railway Express is no longer just a supplier of a premium shipment service, primarily via rail transport, as it was for so many years. Railway Express has been expanded far beyond that.



Indication of a plan to establish Railway Express as a practical nationwide monopoly for small shipments distribution now seems clear. This Railway Express/railroads trend toward monopoly is not new. But in this current apparent move toward monopoly, indications have not, until recently, been so closely integrated as to disclose the definite pattern. There were gaps.

Now W. B. Johnson, president of Railway Express, brings the various pieces of public knowledge and transport industry rumor into a whole picture, clearly in focus, in his January 12 address to the Atlantic States Shippers Advisory Board.

Decrying the competition of thousands of small shipments carriers as "wasteful" and not in the public interest, Mr. Johnson said (these pertinent excerpts being quoted from a report in the January 21 issue of Traffic World) :

We are confident that we know what to do, but the challenge lies in getting it done, and in time. Inflation and a confused oversupply of competing services, including the Government's own unfair competition, were two of the three basic causes of our difficulties. We think our management is now in a much stronger position to cope with these two basic difficulties, since the third, or organizational, problem has been largely met by the new freedoms given us.

REA has certainly made basic progress toward solution of its portion of the small-shipments problem. Given only a green light from regulators and legislators and a continued reasonable attitude by our labor leaders we will ultimately succeed if we stick to sound fundamentals.

\* \* \* \* \*

(4) The principle of coordinating the use of all forms of line-haul carriage through a national small-shipments network under single management is basic.

\* \* \* \* \*

Hence, my conviction that REA's future and the future of these businesses are interdependent and can mature productively only through the development and use of a nationwide private enterprise transportation system which is fully coordinated, which uses all forms of line-haul carriage, which enjoys the efficiencies and economies of a single and unified terminal plant and organization, and which is dedicated to public service at the lowest cost consistent with a reasonable profit.

My second conviction is that REA has a basic structure out of which such a system can grow, and moreover, is rapidly becoming this kind of a company.

I hope, Mr. Chairman, that this January 21 report from Traffic World may be included in the record of this hearing as an appendix following my testimony. It is a one-page news report, Mr. Chairman.

Mr. DULSKI. If there is no objection, it is so ordered. Of course as I said, we have to be judged by the Joint Committee on Printing.

Mr. HENDERSON. I quite understand, sir.

(The document is as follows:)

[From Traffic World, Jan. 21, 1961]

#### REA PRESIDENT TELLS ATLANTIC BOARD AGENCY'S ATTITUDE ON SMALL SHIPMENTS

Advisory board members are told by W. B. Johnson that business of small shipments is matched only by commuter service as the most challenging problem in transportation. New board officers elected.

William B. Johnson, president of REA Express, told members of the Atlantic States Shippers Advisory Board January 12 that he would say that in the last decade the small-shipments business had been matched only by commuter service as the most challenging economic problem in transportation.

Mr. Johnson spoke in the Commodore Hotel, New York City, at a joint luncheon of the board and the Traffic Club of New York, held in conjunction with



the board's 37th annual and 130th regular meeting. The luncheon closed the 2-day session.

Among actions at the meeting, H. D. Pollen, traffic manager of P. Ballentine & Sons, Newark, N.J., was elected president, heading a new slate of officers. The board adopted a resolution voicing disappointment at the recent action of the Association of American Railroads in curtailing some services of the car service division.

#### SMALL-SHIPMENT PROBLEM

Mr. Johnson, meanwhile, outlined first the REA's reorganization steps and then turned to his main subject, "Some Fundamentals in Small-Shipments Transportation."

"There are literally thousands of agencies or carriers which together comprise our country's small-shipments system," he said. "In fact, this is one of the basic causes of the problem. Practically all the large carriers of small shipments are in financial difficulty in this phase of their business. \* \* \*

"The railroads have seen 87 percent of their less-carload freight disappear since the war. Many of them will tell you that, in spite of drastic economies and a new \$4 minimum charge, they are now losing heavily on LCL and that something must eventually be done about it. \* \* \*

"In the small-shipments field, as in others, the public ultimately must, of course, bear the burden for any and all deteriorating service, carrier selectivity, limited coverage, obsolete methods, duplication of routes and functions, unused plant, waste effort in line haul, empty space in pickup-and-delivery vehicles, street congestion, costly billing, complex tariffs, oversupply of competing marginal services, taxpayer subsidy of parcel post—and also in the sheer confusion as to when, where and how the thousands of competing small-shipments carriers can best be used to meet the needs of a particular shipper.

"The public's problems are at least temporarily aggravated by the fact that today's competitive pressures on almost every business enterprise are compelling reduction of inventories, which in turn requires faster and more dependable service for small shipments."

The REA president said he was proud of his company's accomplishment of eliminating nearly three-fourths of the out-of-pocket express deficit in less than 2 years, but he said much remained to be accomplished.

#### THREE MAIN DIFFICULTIES

"We are confident," he said, "that we know what to do, but the challenge lies in getting it done, and in time. Inflation and a confused oversupply of competing services, including the Government's own unfair competition, were two of the three basic causes of our difficulties. We think our management is now in a much stronger position to cope with these two basic difficulties, since the third, or organizational, problem has been largely met by the new freedoms given us.

"REA has certainly made basic progress toward solution of its portion of the small-shipments problem. Given only a green light from regulators and legislators and a continued reasonable attitude by our labor leaders we will ultimately succeed if we stick to sound fundamentals.

"The fundamentals to which REA is dedicated are these:

"(1) We must make a profit in order to survive in private enterprise; the alternative would be nationalization. Experience with parcel post indicates that socializing the express company would but lead one after another of the other small shipments carriers into mounting financial trouble under the pressure of expanded Government competition—and nationalization of still other carriers then would be called for in the name of preserving essential services. With the Federal Government already competing in the field, a completely nationalized transport system will inevitably result if private enterprise carriers cannot make a reasonable profit. The shipping as well as taxpaying public would ultimately pay a high price for nationalization in the forms of deteriorating service, political interference, employee dissatisfaction, inefficiency and ever-higher taxes to meet ever-larger deficits.

"(2) Profits cannot be earned by REA or any other carrier unless it serves the public well and economically. The principle of public service is basic in REA's thinking—and, if the regulators let us, we will apply it wherever there is a substantial need, in the United States or internationally or from this country.

"(3) The principle of minimizing unit cost is also basic. To that end, our plant and equipment must be modernized as soon as possible, and must be utilized to a high percentage of capacity. Our billing and accounting costs must



and will be drastically cut and sound progress made in achieving the economies inherent in a workable container system, and in automated terminal operations.

"(4) The principle of coordinating the use of all forms of line-haul carriage through a national small-shipments network under single management is basic. The objective of this coordination is the use of each transport medium where, and only where, it does the best job for the public in both good service and low cost.

"(5) The principle of consolidating like functions is also sound; in the small-shipments field, it will greatly contribute to (a) a clear public understanding of services and prices available, (b) effective economic regulation and (c) minimum cost for dependable service."

#### 10-YEAR PICTURE

Then, looking in retrospect at the small-shipment picture of the last 10 years, Mr. Johnson expressed two convictions.

"The first," he said, "arises from the fact that there is a growing number of businesses which depend on reliable and economical small-shipments service and from the fact that REA's existence depends on the patronage of those who need such service. Hence, my conviction that REA's future and the future of these businesses are interdependent and can mature productively only through the development and use of a nationwide private enterprise transportation system which is fully coordinated, which uses all forms of line-haul carriage, which enjoys the efficiencies and economies of a single and unified terminal plant and organization, and which is dedicated to public service at the lowest cost consistent with a reasonable profit.

"My second conviction is that REA has a basic structure out of which such a system can grow and, moreover, is rapidly becoming this kind of a company. There are long-range factors favoring such growth; for example, our country's fundamentally strong economy, its growing population, and the national trend to smaller inventories and fewer middlemen, with new lines of direct distribution from plant to retailer. There are existing characteristics of REA which favor such growth. Perhaps one of the most important is the 32,000 people who work for REA, who have devoted an average of 21 years of their lives to the small shipments business, and who are professionally and sincerely dedicated to the further development and continuance of a national small shipments system.

"At REA we do not delude ourselves as to the difficulties of the long pull, but if our 53 regulatory agencies and our national and State legislators display the statesmanship and broad public interest that the 192 railroads and airlines did in 1959 when they executed new contracts with REA, we will increasingly become a great public service organization. I can confidently assure you that we hold no objective to be more important than serving the public well because only through the attainment of this objective can we flourish or even survive as a profitmaking carrier engaged in private enterprise.

"I know that you join me, our owners, our employees—even our competitors—in the belief and resolution that REA must not start a parade of carriers into Government ownership. We certainly do not propose any such program, nor need we, because I am convinced that vigor and determination can bring us success in the private enterprise system, and I am glad indeed to report that REA today is a vigorous and determined organization."

Mr. HENDERSON. Note Mr. Johnson's assertion that success of the plan he appears to outline to drive Railway Express to preeminence in the small shipments field is dependent on Railway Express being given a "green light" by regulators and by legislators.

As to the two problems identified by Mr. Johnson as "oversupply of competing services" and "Government unfair competition" (presumably meaning parcel post), Mr. Johnson confidently assured his audience, "We think our management is now in a much stronger position to cope with these two basic difficulties."



His was no idle boast, Railway Express has already made substantial strides toward neutralizing its actual and potential competition, as will be noted later in my testimony and as may be testified by other witnesses.

Mr. Johnson revealed something of the apparent ultimate objective of Railway Express and its railroad owners—

all forms of line-haul carriage through a national small-shipments network under single management; development and use of a nationwide private enterprise transportation system with a single and unified terminal plant and organization—and emphasized—

REA has a basic structure out of which such a system can grow and is rapidly becoming this kind of company.

There, gentlemen, in major outline, is blueprint for an apparent practical monopoly. First control or otherwise neutralizing of competition. Then, presumably, voiding of restrictive laws and enactment of favorable measures. Finally, it would appear, the establishment of a single, overriding business colossus.

Should such an ambition be permitted to prevail and a monopoly, or quasi-monopoly, come into being in small shipments distribution, the majority of the Nation's 15,000 regulated motor common carriers in the small shipments field (those not absorbed into the transport colossus) would be forced out of business; local small shipments truckers, many thousands of them, would disappear from the scene, freight forwarders and shipment consolidators would number but a small handful of enterprises permitted to exist only by railroad suffering; parcel post, an essential but already-dying service for the people, would have to be priced so far beyond the economic reach of the ordinary citizen as to practically disappear from our national life or be heavily subsidized instead of paying its way as law now requires.

A fantastic forecast? At first and cursory glance it may so appear. But not nearly so fantastic a conclusion after one reads, rationalizes, and logically digests the apparently clear indications.

Here we are considering the \$100-million-a-year annual subsidy to Railway Express and its railroad owners. That much money annually (and the payment already totaling upward of \$3 billion) is enough to actively concern both those who pay and those who receive. But, \$100 million a year is almost small change when compared to the potential profits which would accrue to Railway Express and its railroad owners in the apparent scheme to which your attention is directed. If it is valid assumption that they are playing for such tremendous potential stakes, small wonder Railway Express and its railroad owners drive so urgently for the repeal of section 557, a hurdle they must clear to have a "green light" and a straight drive to their target.

There is historic precedent. The procedures and pattern outlined in the blueprint have a ring of familiarity. Remember the mid-1800's when the railroad barons ruled much of America through vast and complex business empires? Their excesses finally brought public revulsion. Enactment of antitrust laws and other curbs on business came as a direct result.



It is curious coincidence that the foundation of the power of those men lay in their control and manipulation of railroads. From that basic stronghold, tentacles spread, sought out and seized control and power in other areas, each successful step affording firm footing for the next move.

But that is only history, fascinating history which we may feel cannot be repeated. Our laws are too strong, our people and their representatives in Congress too vigilant to permit repetition.

But I wonder? Human nature is stubborn against change. The habits and traits learned in childhood (for we, as a nation, and the railroads, as a practical transport monopoly, were young in the mid-1800's) are difficult to erase as thought and behavior patterns. That is so, no matter how old or sophisticated or wise we become.

How far has this apparent monopoly embryo developed? There is no determinable gestation period for such things. But "basic progress" is being made, Mr. Johnson assures us. Railway Express needs only a "green light from regulators and legislators."

No longer does Railway Express provide only a premium package distribution service vial rail and city truck pickup and delivery service. Today Railway Express is a freight forwarder, a shipment consolidator, has an over-the-road trucking operation of considerable size and has added other services. It has bought existing companies and organized others as operating subsidiaries. Railway Express is expanding its trucking operations into a nationwide network, fanning out all over the country from some 1,800 local and regional beachheads already established, subject only to Congress and ICC providing the "green light."

And I might mention, Mr. Chairman, at this point, that rarely a day goes by that one doesn't read in the Federal Register, and the issue I have in my hand is yesterday's, March 15, where Railway Express is petitioning for an expansion of facilities in various parts of the country. Here are two, under the heading "Applications in which handling without oral hearings is requested." I am reading from and referring to page 2208 of the Federal Register of March 15, 1961.

Remember Mr. Johnson's assertions in his testimony that Railway Express is and always has been "given" transportation by its railroad owners? Railway Express does not pay for service on a fully allocated cost-plus-reasonable-profit basis, as do all other customers of the railroads. If section 557 is repealed Mr. Johnson expressed the hope that eventually Railway Express would be able to pay the railroads their out-of-pocket costs, not their wholly allocated costs, their out-of-pocket costs, for furnishing Railway Express with rail transport. Not having to buy rail transport, a major item of cost is eliminated for Railway Express. So Railway Express has a big, competitive margin in this subsidy from its railroad owners.

The competitors of Railway Express who use rail transport (e.g., freight forwarders) and the Post Office Department (85 to 90 percent of non-first-class mail goes by rail) must pay the railroads a rate for service on the basis of the railroads' fully allocated costs plus a profit, as established by ICC.



The rates charged the public for Railway Express service are also subject to ICC regulation—again presumably cost plus. But with Railway Express basic costs brought so artificially low through the collaboration and subsidy of its railroad owners, Railway Express immediately is given a large competitive advantage, a manifestly unfair advantage.

Railway Express seems confident its competitors cannot long stand up under such economic pounding. That confidence seems justified. But to reach its objective more expeditiously, and with even more certainty, Railway Express offers substantially cut rates by using various devices.

As indication of this, the committee's attention is invited to an action covered in ICC docket I. & S. 7304, *Railway Express Agency, Inc.—Aggregate Rates on Wearing Apparel*. Here, documented in detail, is evidence of a Railway Express plan to damage its competitors who also use the railroads and who must pay to the railroads fully allocated costs plus a profit (as determined by ICC) for service. This Railway Express attack would not be effective, indeed would hardly be possible, without the railroads' subsidy of Railway Express.

While this particular instance refers only to wearing apparel traffic, as protestants' evidence notes and is common knowledge, the same tactics are being employed by Railway Express in other areas of commodity small shipments.

The Railway Express attack is carried to parcel post. Here is a typical Railway Express advertisement in *Women's Wear Daily* of February 6, 1961, which I exhibit to you here. In this advertisement Railway Express offers to transport wearing apparel, be it 10 pounds or 10,000 pounds, in one parcel or a thousand parcels, to one destination or a thousand different destinations, at one-half the parcel post rate.

I request, Mr. Chairman, this advertisement be included in the record. I will leave it with the reporter on the basis of our previous understanding.

(The document is as follows:)



# Now you can ship wearing apparel\*\* via the new R·E·A Express at half the cost of parcel post!

You get the lowest shipping rates in 25 years when you specify shipment by consolidator and R·E·A Express

That's right! You get the benefit of our lowest rates in 25 years, when you specify that your shipment be sent by a consolidator\*\*\* and R·E·A Express.

Here's how consolidators work! By pooling shipments to various consignees, they can ship at volume rates. Now, by using a consolidator whose forwarding volume is 10,000 pounds or more a day, you take advantage of R·E·A's new low rates. Your shipment moves at a cost that's considerably lower than parcel post, saving you as much as 50%!

For example, the parcel post rate for five 10-pound packages of wearing apparel from a manufacturer in New York to a store consignee in Salt Lake City is

\$10.80. The same packages, moved as lot shipments through consolidator and delivered by R·E·A Express, would carry total charges of only \$4.80. R·E·A Express rates save \$6.00!

Comparable savings can be made on shipments to many more U.S. destination points. Look at the chart and see how you save. (Of course, you can get these same low rates directly on any day's volume of 10,000 pounds or more.)

\*\*\* For example, FAST SERVICE SHIPPING TERMINALS, INC., 370 WEST 35TH STREET, NEW YORK, N. Y. Consolidators collect 15¢ per package collected by R·E·A Express. No minimum - no other charges.

COMPARE THE RATES... BANK THE SAVINGS:  
Five 10-lb. packages from New York  
(proportionate savings to your city).

| New York to:   | Parcel Post | R·E·A | Savings |
|----------------|-------------|-------|---------|
| Albany         | 10.80       | 4.80  | 6.00    |
| Buffalo        | 10.80       | 4.80  | 6.00    |
| El Paso        | 12.80       | 4.80  | 8.00    |
| Los Angeles    | 12.80       | 4.80  | 8.00    |
| Minneapolis    | 6.25        | 3.16  | 3.09    |
| Nashville      | 7.75        | 3.53  | 4.22    |
| Omaha          | 6.25        | 3.05  | 3.20    |
| St. Louis      | 7.75        | 3.59  | 4.16    |
| San Antonio    | 6.25        | 3.56  | 2.69    |
| San Francisco  | 10.80       | 4.80  | 6.00    |
| Seattle        | 9.30        | 5.51  | 3.79    |
| Salt Lake City | 10.80       | 4.80  | 6.00    |

\* Less nominal charge for consolidating service.  
\*\* Not including hats and millinery or wearing apparel on baggage, racks or in wardrobe-type containers.



Now Railway Express Agency has a new name for the most complete shipping service in the world **R·E·A EXPRESS**

WOMEN'S WEAR DAILY, MONDAY, FEBRUARY 6, 1961



Mr. HENDERSON. But how, it may logically be asked, can such destructive competition be permitted in the public transport industry, governed by specific law, policed by ICC in the public interest to assure a carrier charging rates justifiable as compensatory on a basis of the carrier's fully allocated costs? Here's how Railway Express does it. With the benefit of railroad subsidy, paid for in large measure by the Government through the nonenforcement of section 557, Railway Express publishes rates far below the ability of its ICC-regulated competitors to meet.

ICC has two alternatives in such a situation. Within 30 days of the publication of an amended tariff by a carrier, if there is objection filed (or even without objection) ICC may suspend application of the proposed lower tariff pending ICC investigation and ruling. Such procedure seems eminently fair and equitable.

Or, despite competitor or public objection ICC can allow (and has allowed) the lowered rates to go into effect subject to later ICC investigation and ruling. ICC may take a year or more to get around to investigating and making a ruling.

In the meantime, the rate cutter is well in the clear, enjoying its "accomplished fact." The rate slasher has thus done very well indeed for itself, even though ICC should finally rule against the rate cuts. Following such a pounding, the competitors, if they aren't dead, nurse injuries, perhaps irreparable injuries. A simple and effective process, isn't it?

That the Railway Express process moves right ahead is clearly set forth in detail in I. & S. docket No. 7304, now in process before ICC. The argument on behalf of protestants' preliminary statement, says initially:

The impact of the decision to be rendered herein, and its effect upon that segment of the transportation system which is devoted to the handling of small shipments, may not be confined to the movement of wearing apparel. That happens to be the single phase of the situation which is open to investigation, but similar rate provisions are already in effect on other commodities and respondent (Railway Express) in public statements by its president, has made it clear that Commission approval of these rates will lead to a complete overhaul of the express rate structure under the plan here involved. Similar adjustments have not received the attention they deserve either by way of the suspension or complaint process, and it is time now to explore and reappraise the entire theory.

The text of the preliminary statement gives such a comprehensive view of the apparent Railway Express plan that the whole preliminary statement should desirably be a part of the record. I respectfully request, Mr. Chairman, that it be made a part of the record as an appendix following my testimony.

Shall I hand it to the reporter with the same understanding we have had?

Mr. DULSKI. Yes.

(The document referred to is inserted as appendix B, p. 80.)

Mr. HENDERSON. It may be argued, in attempted justification of such widespread indiscriminate cutting of rates, that the consumer (the shipper) benefits. True, there may be temporary shipper benefit. But as soon as competitors are controlled, neutralized, disposed of in one way or another, rates, prices, start to climb. That has been the history, consistently repeated, of all cartels, monopolies and similar combines.



Mr. A. F. Arpaia, a former ICC Commissioner for 8 years, approves the Railway Express program. When the Railway Express program began rolling in high gear a year or so ago, Mr. Arpaia resigned from Interstate Commerce Commission to become a vice president of Railway Express.

Mr. Arpaia was speaker at a meeting of the Miami Valley Traffic Club in Dayton, Ohio, last February 16. It was an interesting address, not only from the viewpoint of what was said, but also because of what was left unsaid. On the subject of rate cutting and destruction of competition, Mr. Arpaia remarked:

We (Railway Express) do not publish rates designed to destroy competition. We are not interested in making rates that do not contribute to earnings. We cost them out—precisely and objectively. If other carriers can make lower rates, properly supported by costs, more power to them.

Mr. Arpaia did not tell his audience that Railway Express rates are based on artificially low costs granted in the railroad subsidy.

Again I request the committee to note that this whole Railway Express action against its competitors and against parcel post is made possible only through the \$100 million-a-year subsidy obtained through the nonenforcement of section 557.

Additional subsidy, obviously, is an estimated \$50 million a year the railroads gain through providing Railway Express its needed service at less than out-of-pocket cost. Such losses suffered through Railway Express are tax deductible to the railroads as business expense.

Those tax-deductible losses of the railroads over a long period of years have been tremendous. Said Arne C. Wiprud, rail transportation authority and currently director of the office of transportation of the State of New York:

The losses to the railroads from express traffic in the 25-year period (1929 through 1953) have been huge. No one knows the exact amount since the railroads have not kept books on the handling and transporting of express, but in no year have the railroads claimed before the Interstate Commerce Commission that their losses (from Railway Express) were less than \$125 million per year.

The railroads claimed a (Railway Express) loss of \$129 million in 1950 and the Commission found the loss in 1951 to be about \$145 million and the losses during the depression of the 1930's were very large.

Deficit operations resulting from such unsound principles and practices (of Railway Express operations) have drained the vitality of the railroads.

That is the end of the quote from Mr. Wiprud.

Kinsey Merritt, Railway Express vice president, confirmed. Under congressional questioning, Mr. Merritt admitted that Railway Express operations in 1950 fell some \$135 million short of paying railroad costs for services to Railway Express. A. L. Hammell, predecessor to Mr. Johnson as president of Railway Express, understated the railroads' huge losses when he told Congress:

Those sums (Railway Express payments to the railroads) for a long time have been much less, by about \$100 million a year, than the express costs of the railroads. (House Post Office Committee hearings on H.R. 3465, September 1951.)

I referred earlier in this testimony to parcel post as "an essential but already-dying service for the people."



That parcel post is dying as a carrier of packages for the public, you and I and the housewife, as well as the small businessman, is shown graphically on page 80 in the previous records, charts D and E.

Mr. Chairman, I brought some additional copies of those charts with me, in case the members of the committee should like to refer to them as we are discussing this particular point.

Note that in the 8 years 1951 through 1958, the weight of parcel post declined from a total of 7,480 million pounds to 5,420 million pounds, a drop of over 30 percent in 8 years. The number of parcels declined over the same years from 1,047 million to 964 million or about 12½ percent.

The total weight figure is a truer indicator of the decline in parcel post than the number of parcels for Public Law 199 (enacted by Congress at the urging of Railway Express as an experiment for the "protection" of Railway Express) forced shippers to greatly reduce the size and weight of their parcel post packages, making two or three or more packages out of the one which had formerly and for 20 years been permitted to be mailed. These revised and much lower maximum limits not only created decided inconvenience and added expense for the package shipper, but resulted in a direct net revenue loss to the Post Office Department of \$70 million in 1952, the first year Public Law 199 was in operation, and an annual net revenue loss estimated at \$100 million today.

Note how neatly Railway Express is disposing of parcel post by slowly bleeding it to death, first by forcing parcel post to contribute the largest part of the \$100 million a year subsidy under the unenforced law, section 557 (to which subsidy parcel post contributed \$750 million in just 8 recent years), but also by causing the Department direct net revenue loss (through Public Law 199) of another \$100 million a year through the operation of the Railway Express "protection" law—Public Law 199.

The almost \$200 million a year burden which Railway Express thus saddled on parcel post must be recouped by the Post Office Department from parcel post mailers in higher rates, for parcel post is required by law to be self-supporting. Whenever parcel post revenues are more than 4 percent below expenditures, rates, by law, must be increased to bring revenue-expenditure into approximate balance.

These higher rates drive more shippers from the use of parcel post. As parcel post volume diminishes, costs for the remaining traffic climb. Further losses occur. So another rate increase is required by law. As a result, volume drops further. Again another rate increase—and so the cycle, in ever more rapid rotation.

This economic pounding of parcel post by Railway Express has brought parcel post rate increases of 35 percent in 1951, 36 percent in 1953, and better than 20 percent in 1960—more than doubling parcel post rates in 10 years.

Mr. Gross. The Postmaster General yesterday suggested another rate increase in parcel post.

Mr. HENDERSON. That is so, Mr. Gross. It is another nail in the coffin of parcel post. It, the increase, is largely the result of the tremendous subsidy given Railway Express each year by parcel post throughout these many years.



The end of parcel post as a practical and essential service to the public would be further expedited with ICC approval of the Railway Express rates proposed in ICC docket I. & S. 7304. Page 15 of the protestant's preliminary statement shows, in tabular form, how Railway Express would be carrying parcel post-type packages at half present parcel post rates.

I mention once again that this would be made possible by the repeal of section 557 just as now it would not be possible if section 557 were enforced as Congress intended.

Mr. Johnson's testimony to you on March 8, as reported in the stenographic transcript, contains much that is contradictory and a number of inaccuracies. It would require pages of statement to bring all of these to your notice, and this I do not plan to do. But a few examples may be cited as illustrations:

Mr. Johnson insisted (p. 70) "no one gives us the use of facilities for free or at less than cost" and (p. 90) "we don't ask for any subsidy, and we are not getting anything free."

Yet (p. 77) Mr. Johnson asserts, "There is no transportation costs on our books—it's free as far as the railroads are concerned." And, on page 53, "The remainder was not enough to cover the railroads' cost for line-haul service for express." And, on page 78, "Our books only have part of the cost of doing business and we had no cost on our books for line-haul service."

On page 70, Mr. Johnson says, "I don't see how the express company can ever be regarded as receiving a subsidy," then quickly answered that query (p. 72) by saying, "They, the railroads had been underwriting the express company for so many years and their deficits were so large—there just had to be an end to the railroads' subsidy of the express business."

Mr. Johnson inferentially accuses the railroads of violating the law when, in answer to Mr. Gross' questioning on monopoly trend (p. 75) he says, "It is unlawful to create destructive competition by pricing the services at less than out-of-pocket costs." Yet Mr. Johnson had already stated that the railroads were "giving" Railway Express rail transportation at less than "out-of-pocket" costs and it is evident, under the contract, that Railway Express will not be required to pay the railroads' out-of-pocket costs until 1963.

Mr. Johnson repeatedly asserts in previous testimony and to you on March 8 (p. 41) "Repeal of section 557 will not cost the taxpayers a dollar." Obviously, if section 557 were repealed, the \$100 million a year subsidy would be continued in higher mail pay to the railroads. The railroads would continue their tax deductions resulting from their losses in giving Railway Express service below cost.

When Mr. Johnson told you (p. 61) that "such intrafamily contracts between the railroads and their wholly owned Railway Express do no harm to the public interest as represented by the Post Office" and that "it is in the public interest to permit the railroads and the express company freedom to contract between themselves" (meaning "freedom" from the explicit restraint of sec. 557), Mr. Johnson would have you forget the damage such agreements have already done the postal service through the billions of dollars of Government subsidy paid over the years by the Government to Railway Express because of the nonenforcement of section 557. Subsidy from the public



purse for Railway Express would continue in some other indirect form even if section 557 were repealed.

On page 87, Mr. Johnson reverts to what appears to be a dominant, underlying thought in this whole Railway Express drive for the repeal of section 557—the restriction of competition through a combine in the interests of Railway Express. Mr. Johnson again emphasizes, “There is just too much small shipment transportation available for the demand.” So Mr. Johnson reaffirms what he blueprinted in his January 12 address—the desirability of establishing a single, small shipments colossus, Railway Express being equipped to be such a colossus.

That line of thinking (the desirability of transport combine) is not confined to Railway Express. The thinking seems to be shared in some degree by railroad owners. Just 2 days ago, on March 14, the Washington Daily News headlined a feature story “Super Railroad Is Seen as the Key to Industry’s Ills.” Mr. Barriger, president of the Pittsburgh & Lake Erie Railroad, was reported at length as advocating merging the competing railroads of the country into two competing systems in each of three regions.

The large subsidy of Railway Express by its railroad owners and the taxpayers to keep Railway Express in business these past 30 years has reached such a total in billions of dollars as to be almost incredible. Even envisioning that much money is difficult, accustomed though we are to hearing about Government expenditures told in terms of billions of dollars. Incredible, too, when one thinks of such vast sums of money being poured down the insatiable Railway Express drain to no constructive purpose. Some have described Railway Express as “panhandling on the grand scale.”

Whether it be panhandling or not, in asking repeal of section 557, Railway Express, nevertheless, expects its tremendous subsidy to be continued.

Mr. Chairman, the balance of my prepared statement is a summation of the legislative and administrative record of section 557.

So the record may be reasonably comprehensive, I will restate some salient historical points concerning section 557, U.S.C. 39.

The purpose of Congress in enacting section 557 was to obtain for the public for the transportation of second-, third-, and fourth-class mail matter the same financial treatment as that received by the express companies from the railroads for comparable service. Long and careful investigation led Congress to the conclusion that such mail matter and express matter are physically identical, and that the transportation problems surrounding the one are comparable to those surrounding the other. This comparability was recognized by the Interstate Commerce Commission when it said, *In re Express Rates* (1913, 26 I.C.C. 132, at 139) :

\*\*\* Express service is radically different from the services performed by the railroads in the carriage of passengers and property, and is more precisely comparable with the service performed for the public by the Post Office Department.

This comparability is, of course, clearly recognized by Railway Express in its constant and successful attempts to substantially curtail the use of parcel post, for example, the Size and Weight Limitations Act, Public Law 199.

From its beginning, railway express service has been in competition with the non-first-class mail service. In their early days, the express companies even held themselves out as carriers of first-class mail, but



that attempt was stopped by court action. Congress was well aware of this competitive situation when it enacted the Parcel Post Act of 1912.

In the light of this competitive situation, Congress was of the opinion that neither the Post Office Department nor the express companies should have an advantage over the other with respect to transportation costs for equivalent services by the railroads. At the same time Congress recognized that it had the power to compel the railroads to carry mail matter at a lower compensation than that paid by commercial shippers if it decided that public policy so required (51 Congressional Record 13403). Congress well knew that because of the intimate relationship between the railroads and the express companies, the express companies would be adequately protected against discrimination. This relationship was set forth by Congressman Beakes, of Michigan, 53 Congressional Record 2464, when he said :

The railroads are in partnership with the express companies so far, at least, as their compensation for carrying express is concerned.

Congress was also fully aware that the public interest had to be protected against undue preference to express matter at the expense of mail matter. Congress believed it was providing such protection against undue discrimination when it enacted section 557.

Congressional fears that the protection rendered the express companies by the railroads would not be extended to the mail service were confirmed by the Interstate Commerce Commission in Express Contract (1920, 59 I.C.C., 518, 523, 552), when the Commission said :

The carriers are insistent that they shall be fully compensated for the cost of the mail service, including a 5.75 percent return upon investment. They are not insistent, however, upon the same result in the case of the other two services (passenger and express).

The contrast in this respect between the mail and express services is very sharp. These two services are to a considerable extent in competition with each other \* \* \*. In the case of the mails, as above indicated, they have been and are both insistent and persistent in endeavoring to obtain full compensation based upon a cost analysis. In the case of the competitive express service there has been no such endeavor. On the contrary, under their contract with the American Railway Express Co. the railroads in effect assumed the financial risks of the express business and agreed to compensation of an indefinite and uncertain character for their services without undertaking to ascertain or estimate the costs.

The unfairness of this practice was condemned by Commissioner Eastman of the Interstate Commerce Commission in his dissenting opinion in Railway Mail Pay (1928, 144 I.C.C. 725), when he stated, at page 727 :

It is not "fair" in my opinion for the railroads to demand full compensation from the Government for the carriage of the mails when they make no similar demand upon the competitive express service.

Section 557 has never been enforced. Postmasters General have, on repeated occasions, performed their statutory duty by requesting information from the Interstate Commerce Commission, but the Commission has just as consistently denied that it has any obligations or duties to perform under this section.

In an ancillary proceeding to Railway Mail Pay, 1951 (283 I.C.C. 503), commenced in 1947, the Postmaster General filed a petition with the Interstate Commerce Commission requesting that it furnish him with information as to the revenues received by the railroads from



express companies, stated in units of service common to the carriage of express and mail matter, other than that of the first class, with necessary adjustments to reflect the differences in services performed.

The Commission denied the petition, assigning as the reasons therefor:

(1) That section 557 did not impose the duty on the Commission to make an investigation and study of the operations of the railroads and the Railway Express Agency in connection with the transportation of express matter, and the revenues received therefrom, for the purpose of formulating rates; and (2) that since the transportation of express matter is not performed under rates or system of rates, any investigation and determination made by the Commission would be for a given period of time in the past and would have no prospective effect or application (Railroad Rates on Express Matter, 1949, 274 I.C.C. 683, 687).

The Postmaster General again made request for this information in Railway Mail Pay, 1954 (29 I.C.C. 101, 103), and in Railway Mail Pay, 1956 (I.C.C. Docket No. 9200).

Section 557 is not "obsolete" as both Railway Express Agency and the Interstate Commerce Commission contend. There has been no change in circumstances which renders the directive of Congress any less binding on the Commission today than in 1916. On the contrary, the constantly increasing rates of rail transportation of the mails, and the constantly increasing rates of parcel post transportation makes the statute more meaningful than ever.

The railroads' ownership of Railway Express Agency today is no practical change from the situation existing when section 557 was enacted in 1916. Control of the express business by railroad interests through interlocking ownership was found by the Commission in its 1912 investigation of the express service. *In re Express Rates* (24 I.C.C. 380) on page 435 thereof, the Commission said:

The system of interlocking directors and the mutuality of stockholding interests is shown, and it may fairly be said that the study shows conclusively that every express company herein named is closely related to, if not absolutely dominated by, railroad interests.

With respect to the method of express transportation payment to the railroads, the Commission said, on page 455:

Contracts between the express companies and the railroad companies covering express privileges provide various bases of payment to the railroads for their part of the transportation service, e.g., on a fixed daily, monthly, or per hundred-weight or at a fixed multiple of the freight rate, and on a percentage basis, whereby specified percentages, varying from 15 to 70 percent of the gross receipts of the express companies are paid to the railway companies.

Congressman Beakes, in discussing the payment to railroads by the express companies, said (53 Congressional Record 2464):

Most of the railroads divide with the express companies on a 50-50 basis. That is, the railroads transport the express for half the gross receipts of the express company.

These findings disprove and deny beyond doubt the statements of the Railway Express Agency and the Interstate Commerce Commission that at the time of the enactment of section 557:

The contracts provided for the carriage of express by the railroads for specified prices.

The only difference in the situation today as compared with 1916 is that today the railroads receive all the net income of the Railway Ex-



press Agency. Furthermore, although there were several express companies in 1916, and today there is only one (the Railway Express Agency), since the 1912 Express Rate case (24 I.C.C. 380), for all practical purposes there has been only one express company, as the Interstate Commerce Commission found in Express Contract, 1920 (59 I.C.C. 518).

In 1916, just as today, the revenue received by railroads for transporting express matter was fixed by contract between the railroads and the express company. In 1916, express revenue received by the railroads were called "express privilege payments," just as they are today.

Express revenues are treated by the railroads in the same manner as are mail revenues. Both are reported to the Interstate Commerce Commission as gross railroad transportation revenues and neither represent net operating income. There was no difference in 1916, and there is no difference today, between "express privilege payments" and "gross mail compensation" within the meaning of section 557. Furthermore, in the main, the express companies did not pay the railroad companies specific rates for the transportation of express matter any more than they do today.

The Commission, in its report to Congress proposing H.R. 7055, stated:

Even if an investigation were undertaken by the Commission to determine the amount of express matter carried by the railroads in any given period of time upon a space, weight, or other basis, and its relation, by unit of service or otherwise, to the revenue received from Railway Express, the information derived would only reflect, or be reportable as, the result of operations during a selected prior period, and would have no prospective application or effect. The data obtained, though it be related to amounts of service performed in selected units of service, would not result in an ascertainment of rates charged by the railroads for service on behalf of Railway Express.

When one considers the 1916 intent of Congress in enacting section 557, it is quite apparent that the Commission has overlooked or missed the salient point of the statute with respect to ICC's obligations thereunder.

The Commission's function under this act does not involve the making of transportation rates. The Commission's function is purely investigatory. The Postmaster General is required to determine whether discrimination against mail matter requires action by him. The Postmaster General's determination must be based upon information ascertained and furnished him by the Commission. The Commission's investigation and report is the first step which must precede the Postmaster General's exercise of his power. In the words of Congressman Lewis (52 Congressional Record 776-777)—

The Postmaster General, under this clause, would have a right to go to the Interstate Commerce Commission \* \* \*

and receive the desired information.

The Commission further stated in its report to you on H.R. 7055:

Quite aside from obsolescence, the statute is basically unsound and wholly impracticable of operation.

A common unit charge for mail and express services was found to be desirable by the Interstate Commerce Commission as early as 1918, *Increase in Express Rates* (51 I.C.C. 263). The objective of Congress in enacting section 557 was to compare railroad earnings from express and mail on the basis of a unit common to both mail and express



service. This was entrusted to the Interstate Commerce Commission by section 557. The Commission is the only governmental agency with the ability and personnel to ascertain such necessary information. Despite the fact that the railroads do not charge the Railway Express Agency a fixed rate for the transportation of express matter, revenue attributable to the different units of comparable service of mail and express matter can be determined without difficulty or delay by the Commission's apportionment techniques which it exercises regularly. And, as stated by the Solicitor (now General Counsel) for the Post Office Department in his brief in "Support of the Postmaster General's Renewed Request for Information," pages 21-22, *Railroad Rates on Express*, 1949 (274 I.C.C. 68) :

The result will be a determination of (1) the service furnished to express which is also furnished mail; (2) the revenues received by the carriers for such service. These two determinations, placed together, will constitute a ratio of revenue to service, i.e., a rate for service. It will be a rate capable of application to non-first-class mail, being in terms of a unit of service common to both.

In effect, the Interstate Commerce Commission said that the action of Congress in enacting section 557 was one without meaning or effect, an absurd action. This, of course, is an untenable position for the Commission, and one contrary to the Commission's own philosophy with respect to congressional action as expressed in *Railroad Commission of Nevada v. Southern Pacific Railway Company* (21 I.C.C. 329, at 334), when it said :

We are not inclined to any view which renders the act of Congress unconstitutional, much less do we look with kindness upon a construction which makes the act of Congress absurd.

Section 557 does not embody any new principles. It followed a basic legislative tenet that the Government should not be required to pay a higher price for similar services than does a private individual or a commercial concern. As early as 1864, in the act of July 2, 1864, Congress imposed the condition upon the Northern Pacific Railway Co. that it could not charge the Government higher rates for transportation and telegraphic service than it charged individuals. Passenger, freight, and baggage service is furnished the Government at the ordinary commercial rates. Neither logic nor congressional policy dictates that the Post Office Department should be charged on a basis higher than that charged Railway Express Agency or comparable service, particularly where non-first-class mail matter is carried on the same trains and in the same cars as express matter.

Much has been said that the service rendered to express matter is not comparable with the service rendered mail matter. Section 557 applies, of course, to comparable services. Certainly, it cannot be contended that there are no services performed for express matter which are not performed for mail matter. Leaving aside all other service rendered, the major and controlling factor in this situation is transportation, and that factor is comparable.

The ultimate result that Congress intended section 557 to accomplish was, of course, the elimination of all subsidy in connection with the railroad transportation of non-first-class mail matter.

Mr. Chairman and members of the committee, repeal of section 557, United States Code, title 39 as proposed in H.R. 1986 would be manifestly contrary to the public interest.



On behalf of the users of the U.S. mails, and particularly those who depend on parcel post, we request you disapprove the proposal contained in H.R. 1986.

Thank you for your consideration.

Mr. DULSKI. Are there any questions of Mr. Henderson?

Congressman HENDERSON. I don't believe so, Mr. Chairman.

Mr. GROSS. Going back to your statement, you say ICC passes upon rates of the express company?

Mr. HENDERSON. Yes, sir.

Mr. GROSS. Approves or rejects its rates. How do they know what they are doing with respect to rates, if it is impossible to regulate under section 557?

Mr. HENDERSON. As I understand it, Mr. Gross, ICC takes all the applicant's costs rates, and then sets up a formula whereby the rates it will permit the applicant-carrier to charge the public are at least compensatory. But, in the case of Railway Express, the costs are artificially low; as a result Railway Express is not paying for line-haul transport and other facilities, on the same basis as other customers of the railroads.

Mr. GROSS. I was just wondering how they can regulate any rates of the express company under the circumstances.

Mr. HENDERSON. I share your wonder, sir. The Post Office Department pays fully compensatory rates to the railroads for hauling mail. And the ICC tells the Department how much it will permit the Department to charge the public for handling fourth-class matter, particularly parcel post.

Mr. GROSS. I got quite a lesson a few years ago in the difference in rates. I didn't know until then that there was such a difference.

I shipped a movie camera to Davenport, Iowa, from Washington, D.C., for an overhaul. I shipped it out there by parcel post. It was insured, and it arrived safely. I didn't tell them how to return it, but they returned it via Railway Express, and I was absolutely shocked at the difference in the rate, the tremendous increase in the rate of that camera coming back to me via express. That is where I got my eyes opened as to what was going on.

I just don't understand it, in view of the fact that parcel post is supposed to be operating on a pay-as-you-go basis.

Mr. HENDERSON. An interesting sidelight, too, is that parcel post has been subsidizing Railway Express for a quarter century or more. It paid Railway Express, via the railroads, \$750 million in just 8 recent years, as noted in my testimony.

Mr. GROSS. I think you made that clear in your statement. I want some time to digest it. That is all, Mr. Chairman.

Mr. WALLHAUSER. I agree with Mr. Gross that I need time to digest this statement.

Just one or two questions occur to me. Is it impractical or impossible for parcel post to use other means of carriers than the railroads?

Mr. HENDERSON. Trucks do carry parcel post, Mr. Wallhauser.

Mr. WALLHAUSER. They do to some small extent.

Mr. HENDERSON. Trucks are used to a minor extent, but I might point out that the laws, the basic laws governing the carriage of mail, are weighted heavily in favor of railroad carriage.



As the Department will tell you, mail is going more to trucks, but that is mainly because of the unavailability of rail transport. But, as I said, current laws strongly favor the railroads carrying the mails.

Mr. WALLHAUSER. But the railroads are taking off trains regularly, most of them.

Mr. HENDERSON. Yes, sir.

Mr. WALLHAUSER. The service must be getting less efficient than it formerly was and as you point out, the Post Office Department does make large shipments of mail by truck.

I wonder just why the Post Office Department cannot ship more than 10 or 15 percent of parcel post by truck or some other means.

Mr. HENDERSON. There are restrictions in current law. I know considerable thought has been given to correcting those transport inequities. I don't know how far it has gone. The Post Office Department and possibly representatives of the trucking industry could give you more information.

Mr. WALLHAUSER. Yes. One other question. If a letter is mailed with an airmail stamp on it, it goes by airmail. However, the airlines do carry regular mail on a space-available basis.

In your statement you say that the Government should not be required to pay more to the railroads for the transport of non-first-class mail than the railroads receive for transporting express matter, receiving comparable service. Does not the mail receive preferential treatment?

Mr. HENDERSON. On second-, third-, and fourth-class mail, the service is almost identical to that given express. I notice it has been said in earlier testimony that if a train was ready to go and all the express wasn't off it or on it, the train left anyway. That may or may not be true. But I don't believe there is any difference of much consequence in the manner in which the two types of traffic are handled. Here I am speaking, Mr. Wallhauser, of line-haul; that is, the hauling of cars of mail and express from point A to point B. I am not particularly referring to the terminal operations. But when you compare mail and express on a line-haul basis, they receive identical treatment.

Mr. GROSS. Will the gentleman yield?

Mr. WALLHAUSER. Yes.

Mr. GROSS. Very briefly, what do you mean by line-haul?

Mr. HENDERSON. The shipment is put on a train at point of origin and line-haul starts at that point. Assume the shipment is from New York to Chicago. The service given in hauling that shipment, car or train from New York to Chicago is the line-haul. Complementary is the terminal service, the loading, unloading, storage, switching, and so forth. We are speaking of carrying the shipment from point to point. That is line-haul. Whether by air or truck or rail, the same term applies.

Mr. GROSS. Regardless of distance?

Mr. HENDERSON. Yes. It is the point-to-point haul.

Mr. WALLHAUSER. I may have missed the point, but I wonder who can enforce section 557? The Department of Justice or who is the moving party?

Mr. HENDERSON. The Department of Justice is the legal arm of the Government and enforcement might well be its responsibility.



Mr. WALLHAUSER. Do you have any knowledge as to why it has not been enforced?

Mr. HENDERSON. No more so, sir, than stated in my testimony.

Mr. WALLHAUSER. Or why it has not been attempted to be enforced by the Department of Justice?

Mr. HENDERSON. I have no knowledge of that, but I should think the complaint of no enforcement could logically come from the Post Office Department to the Department of Justice, because of their being discriminated against, through the nonenforcement of this law. I am a lawyer, I am stating it as something I understand is the process.

Mr. WALLHAUSER. Mr. Chairman, I think we need a little assistance from the Department of Justice in this matter.

Mr. DULSKI. Off the record.

(Discussion off the record.)

Mr. DULSKI. On the record. I have two short questions, Mr. Henderson.

First of all, your statement has been very informative. You keep on speaking of subsidy. Now the railroad has their own tangible assets, they have the terminals and all that. In the accounting that they have here, they have their assets, where they show the operation costs so much and so on. Now the Post Office, the parcel post service doesn't show that. That is part of the whole picture there. That is what I heard from Mr. Day yesterday in his testimony. The whole operation is in one and it is not divided as to how much to first-class mail and so forth, everything is made as one.

Now how can you determine the figure of how much it costs for the Railway Express to operate?

Mr. HENDERSON. As to the Post Office Department, Mr. Dulski, I think I am correct in saying that the costs of the Post Office Department's operations are definitely allocated in every item to parcel post, third class, second class, first class, whatever it may be. That is a very definite allocation in making up the cost ascertainment report, published annually.

Mr. DULSKI. It doesn't show any of the tangible assets. It shows distribution of labor and all the additions, but it doesn't show any capital investment.

Mr. HENDERSON. No. Now the question, as I understand it, Mr. Dulski, is how can Railway Express—

Mr. DULSKI. They already know what their assets are. And I imagine in their distribution of costs they have the capital investment as a part of their operating expense. Now the Post Office doesn't.

Mr. HENDERSON. On the Railway Express system of accounting, which I might state at this point has not been changed by ICC since 1914, it is impossible for anybody not on the inside to know what it does cover.

For example, for many years and presumably still continuing, many thousands of offices were furnished free of charge by the railroads to Railway Express, and also the labor in those offices. For example: the local agent who worked on commission, taking in and giving out packages. Whether that obtains today I can't say with assurance, but I know it has obtained in the past generally. There are many facilities the railroads give Railway Express free or at nominal cost.

For example, a case I heard of the other day. A lot, a city block



square, in downtown New York, is used as a Railway Express truck terminal. The ground is owned by New York Central Railroad. Railway Express pays New York Central—and this is the figure quoted to me—some \$90,000 a year for the rental of this city block of space in downtown New York. Yet on the open market, rental of that space—who can say what it would command. It would seem a reasonable open market rental could well be several hundred thousand dollars.

So it goes through the whole Railway Express/railroad relationship. A multitude of additional relatively minor subsidies which do not appear on the balance sheet. I did not mention such hidden subsidies in my statement. I only spoke of those clearly visible. It was the sum total of all these subsidies to Railway Express, the hidden and the visible, in addition to other things, that caused certain railroads, like New York Central, to call a halt to try to get out of the Railway Express picture; they just couldn't stand the gaff any longer. If that was true of New York Central, think of the many smaller railroads that were and are taking an even worse financial beating because of Railway Express.

Mr. DULSKI. As Mr. Gross stated, if you mail, regardless of how the mail goes out, whether by rail or parcel post, somebody has to foot that bill. If they pay for the camera through parcel post, and Railway Express, they are limited the same as anybody else on their profits. Who picks up the rest of the tab for parcel post?

Mr. HENDERSON. The mailer does. Here is what happens. Parcel post is required by law to pay its way. Every time expenditures or expenses exceed revenues by 4 percent, by law rates must be increased to bring the two into approximate balance. Consequently, those costs go, in the form of higher rates, right back to the parcel post user—you, me, the housewife, and the small businessman—Mr. Dulski, whoever mails a package.

That doesn't hold true for first-, second- and third-class mail. Congress sets the rates for those classes of mail. Fourth-class mail (parcel post) rates are established by the Postmaster General and the ICC. Have I even partially answered your question?

Mr. DULSKI. Very partially. That is the only reason we wanted the balance sheet, so we can find out the actual costs and distribution. Nobody has the figures yet.

Mr. Henderson?

Congressman HENDERSON. On page 14, I notice in your prepared statement, and in your answer to the chairman, you made the statement that parcel post would have to be priced so far beyond the economic reach of the ordinary citizen and would practically disappear from our national life, and would be heavily subsidized instead of paying its way—and I emphasize this—"as law now requires."

Is it your position that parcel post is now and does always pay its way?

Mr. HENDERSON. At the present moment, it is not, as probably Mr. Day told you yesterday, because, on the basis of fiscal 1960 cost ascertainment report, apparently parcel post is a hundred million dollars in the red for the period.

Congressman HENDERSON. Mr. Chairman, the suggestion was made that the Department of Justice testify on the enforcement of 557. I am not sure the committee would decide to bring them here, but if



they did, I think the question should be asked about their enforcement of the law requiring parcel post to carry its full share of the costs.

Mr. DULSKI. Any further questions?

Mr. WALLHAUSER. I have one more question. In your allocation of costs in the parcel-post department, are you charged with a portion of the rent in every post office for instance?

Mr. HENDERSON. I believe so.

Mr. WALLHAUSER. Everything is allocated out?

Mr. HENDERSON. Yes.

Mr. WALLHAUSER. That is all, Mr. Chairman.

Mr. DULSKI. Mr. Barry?

Mr. BARRY. On page 5, the third paragraph, you use a comparison of 0.0232 cent a cubic-foot mile as expressed by the Railway Express themselves, at least so far as their chief accountant is concerned. Is this possibly a comparable figure, so far as their accountant is concerned, to the figure which you also used in the following paragraph, 0.0484 cent per mile?

Mr. HENDERSON. I should think it would be, Mr. Barry, but—

Mr. BARRY. Excuse me. We can't speculate on a thing of that kind. It either is or is not.

Mr. HENDERSON. What I was going to say, Mr. Barry, is that accountants, like lawyers, are sometimes subject to disagreement. Here you have two accountants, working independently. Their methods and their thinking may have been identical, or may not have been. Assuming both are competent and objective, all we can go on is the evidence these two men produced. One, working on railway express costs, says Railway Express pays 0.0232 cents. The other, working on post office costs, says the Department pays 0.0484 cents. Both were costing the same item for their respective principals.

Mr. BARRY. I think it would be of interest, Mr. Chairman, if we could have the two accountants who prepared these two figures appear before this committee, because to me the most important telling feature in the entire report is page 5. I haven't heard the entire report, and I intend to read what I did not hear when I was out of the room. But there is a fact put before us and it is either right or it is not. If it is right, then it is controlling so far as I am concerned; if it is wrong, then it does not control. I would like to know whether it is right or wrong.

That is all, Mr. Chairman.

Mr. DULSKI. Any further questions?

(No response.)

Mr. DULSKI. Thank you very much, Mr. Henderson.

(The documents referred to in Mr. Henderson's testimony follow:)

#### APPENDIX A

SUBJECT—THE \$100-MILLION-A-YEAR OVERPAYMENT TO THE RAILROADS, BY THE POST OFFICE DEPARTMENT

[From the Congressional Record, May 13, 1957]

TREASURY AND POST OFFICE DEPARTMENTS APPROPRIATIONS, 1958

The Senate resumed the consideration of the bill (H.R. 4897) making appropriations for the Treasury and Post Office Departments and the Tax Court of the United States for the fiscal year ending June 30, 1958, and for other purposes.



Mr. DOUGLAS. Mr. President, I wish to discuss the Treasury and Post Office appropriation bill, which is now under consideration.

Mr. President, the amendment which I propose, is, as I have said, to reduce the Post Office appropriation for the transportation of mails by \$100 million. I am offering this amendment because such savings can easily be made, and they are not now made because of the failure of the Post Office Department and the Interstate Commerce Commission to carry out the clear intent of the law as provided in title 39, United States Code, section 557. That section provides:

"The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may"—Now, note these words—"may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General."

Mr. President, this clear and unquestioned provision of law has remained unenforced. There is an abundance of evidence that if it were enforced, it would result in a saving of at least \$100 million a year in transportation costs. In fact, that is a reasonable estimate of the amount of money which the Federal Government pays to the railroads for parcel post in excess of the amount of revenues the railroads charge themselves for the exactly comparable service of the Railway Express Agency.

I shall cite a few supporting sources of this estimate of \$100 million in a few moments, although that figure and the failure to apply the law are not in contention.

The effect of this, Mr. President, is a direct, although hidden, subsidy to the railroads, which was not only not intended, but in fact expressly forbidden by law. There is no justification for this unwarranted subsidy, and Mr. Summerfield and the Post Office Department, if my amendment is passed, would be required to act to stop it in fiscal 1958. In view of Mr. Summerfield's numerous complaints about the lack of money, his failure to act in this field at this time makes his protestations of lack of funds appear feeble indeed.

Mr. President, although this failure to enforce the law, as well as the amount of subsidy involved, are not in contention, I nonetheless wish to present some facts about these two aspects before getting to the heart of the argument.

First of all, Mr. President, the law has never been repealed and is still on the books. It is still a basic part of the Railway Mail Pay Act of 1916, and to my knowledge no one denies that. The basic principle involved is that the Government should not be required to pay more for a particular kind or class of service than was charged to a private firm or individual for the same or comparable class of service.

Second, Mr. President, the Post Office Department itself does not deny that it is paying more to the railroads for parcel post than the railroads charge themselves for comparable service of the Railway Express. This is not denied to my knowledge, and is emphasized by the fact that in an ancillary proceeding to the *Railway Mail Pay*, 1951, page 283, ICC 503, which began in 1947, the Postmaster General requested the information from the ICC, which section 557 imposes a duty on the ICC to furnish.

Now, Mr. President, a bit of historical comment is needed here. This action was instituted in 1949 when Robert Hannegan was Postmaster General. Mr. Hannegan has been attacked on many grounds, and I am not here to defend every act of his during his life. I do wish to say in this instance Mr. Hannegan was extremely brave in pushing the case before the Interstate Commerce Commission. A great deal of credit is due to him, and also to the Solicitor of the Post Office Department at that time and for some years thereafter, Mr. Frank J. Delany, who devoted himself with great efficiency, energy, and courage—and it required courage—to pushing this case.

The Postmaster General requested this information from the ICC, which section 557 imposes on the ICC a duty to furnish. Failing to get it, the Postmaster General requested the information again in October 1948. At that time I believe Mr. Hannegan was still Postmaster General.

The present Postmaster General requested the information again in 1954; and again in the *Railway Mail* case, 1956. ICC docket 9200, which is still pending before the Commission.



Thus there is no question that the Postmaster General believes he is entitled to the information which the ICC is required to furnish under section 557, 39th United States Code. Thus the Post Office Department itself, by its many actions, sustains the view that this section is now being enforced.

Third, the amount involved is estimated to be at least \$100 million a year. On page 36 of the "Report of the Citizens' Advisory Council of the Committee on Post Office and Civil Service," which our very esteemed colleague, the Senator from South Carolina [Mr. Johnston] set up as chairman of the Senate Committee on Post Office and Civil Service, the Council estimates the "subsidy" at \$100 million a year.

In a statement by Roy C. Frank, former Associate Solicitor of the Post Office Department, before the Postal Policy Subcommittee of the Senate Committee on Post Office and Civil Service, a figure of \$100 million was submitted as the estimate of the subsidy because of the failure to enforce section 557.

Further proof is given in the original transcript of the proceedings before the Senate Committee on Post Office and Civil Service, by the testimony of the Deputy Postmaster General of the United States, Maurice H. Stans, which appears on pages 60 and 61 of the transcript, which I hold in my hand and from which I now read. Mr. Stans was being questioned by Mr. Brawley, the very efficient executive director of the committee over which the Senator from South Carolina so ably presides. Mr. Brawley asked:

"Do you believe after working at this thing for 4 years that there is any substance of facts in this statement that they"—and "they" means the railways—"probably are overcharging the Post Office Department if you compare it to the charges they make to the railway express agencies?"

"Mr. STANS. I would like to answer in this way, that they are obviously getting more from us for carrying the mails."

I may point out here that this shows that section 557 is not being enforced, for under section 557 the Postmaster General is to arrange for the carrying of parcel post "at rates not exceeding those" charged to the express companies.

The questioning continued. I ask Senators to listen to this colloquy:

"Mr. BRAWLEY. If the Interstate Commerce Commission would grant petition how much do you think it would save the Post Office Department currently?"

"Mr. STANS. It would be considerable. I would have to make some computations, but it would be a very considerable amount of money."

"Mr. BRAWLEY. Apparently close to the hundred million?"

"Mr. STANS. I would not be surprised (p. 61)."

Thus, Mr. President, there is no doubt that section 557 remains unenforced. This is proven by the numerous requests of the Post Office Department to the ICC for the information by which section 557 could be enforced, as well as the testimony of those who are close to this matter.

Further, there is little question that the amount is in the neighborhood of \$100 million, that according to the Citizen's Advisory Committee the Post Office pays the railroads approximately 60 percent more for this service than the railroads charge to comparable customers—in violation of law—and that this is a pure subsidy to the railroads which is unreasonable and unconscionable, and expressly forbidden by law.

Finally, the Post Office Department's Cost Ascertainment Report of 1955—page 97, table 70, account 321—shows that the Post Office Department paid the railroads \$242,083,899 in that fiscal year for carrying non-first-class mail. It appears that in that year, without making adjustments for slight differences in service, the Post Office Department overpaid the railroads by some \$121,041,950. If adjustments are made for variation in service, and so forth, it would appear from the facts that the estimate of \$100 million made by the Citizen's Advisory Council and substantially concurred in by the Deputy Postmaster General, is as reasonably accurate and correct as can be estimated without specific figures from the ICC.

Thus, Mr. President, there is no question that section 557 is not being carried out and that the cost to the Government in terms of a subsidy to the railroads—a subsidy not provided by law and apparently expressly forbidden by law—is approximately \$100 million per year.

Now, Mr. President, no one, I believe, will deny the facts which I have presented thus far. I now wish to deal with two questions: First, why has section 557 not been enforced, and second, what can be done to see that it is enforced?

Basically, there are two reasons why section 557 has not been enforced. The first is the absolute unwillingness of the ICC to furnish the required information under section 557. Further, their refusal appears to be based on the flimsiest



of reasoning and is unwarranted in the light of section 557's clear language. Perhaps behind this basic reason is the fact, as we all know only too well that the commissions which we have set up from time to time to regulate a particular industry have come more and more to disregard the public interest and to actively and aggressively represent the very interests of those they were designed to regulate. This has been done in particular by packing the regulatory commissions with individuals from the industries they are supposed to regulate. It has also been done by a variety of other means, some of which are unethical and others of which come very close to, if they do not violate, the law. Among these are private representations to the members of the commissions by groups with cases before them; social activities by the industries for and on behalf of commission members, and the temptation to highly placed or key employees of the commissions of lucrative positions with the regulated industries. Mr. President, I merely state this for the record. I know of numerous instances in which such events have occurred, but as my main objective today is to argue the facts, I shall not dwell on these related matters.

Nonetheless, the first reason why section 557 has not been enforced is the abject refusal of the ICC to provide information. When compared with the statute, their reasoning is as flimsy as any could possibly be and, in my opinion, could not stand the test of judicial review.

Let me be specific.

The basic refusal of the ICC to give the Postmaster General the information required by title 39, United States Code, section 557, was given in *Railroad Rates on Express Matter*, 1949 (274 I.C.C. 683, 687). This was a ruling which grew out of the 1947 petition of the Postmaster General and which was finally completed in 1951. In that petition the Postmaster General requested the ICC to furnish information as to the revenues received by the railroads from the express companies. This was to be stated in units of service common to the carriage of express and mail matter—excluding first class—and the information was to be given with adjustments to reflect the differences in services which were performed.

The ICC denied this request. It wrongfully and mistakenly claimed that section 557 did not impose any duty on the Commission to make an investigation and study of the operation of the railroads and the Railway Express Agency in connection with the transportation of express matters, and the revenues received therefrom, for the purpose of formulating rates, when the law, which I have read, specifically so provides. The Commission claimed, secondly, that since express matter is not performed under rates or a system of rates, any investigation of and determination made by the Commission would be for a given period of time in the past and would have no prospective effect or application.

Mr. President, how absurd can one get? What the Commission said was that since the railroads get their express revenues from the Railway Express Agency under operating agreements based on the variable net earnings of the express agency, rather than on a formal system of rates, the ICC will not provide information as to the revenue received by railroad companies for services rendered in the transportation of express matter—section 557.

In other words, the law prescribes that the ICC furnish information as to the revenues received so that the Postmaster General can arrange for the transportation of parcel post "at rates not exceeding those so ascertained and reported to him."

The ICC, in denying the information, says:

First. The law does not impose any duty on us to make a study and investigation.

Second. They then beg the point by stating that it does not impose the duty in connection with the transportation of express matter, and the revenues received therefrom, for the purpose of formulating rates; and

Third. They say that because the railroads do not perform their service for Railway Express by a system of rates, but rather by a system under which the railroads receive their revenues under operating agreements based on "variable net earnings," the ICC will not provide the revenue information or the comparable rates.

That, Mr. President, is a clear refusal of the ICC to grant information and it gives the law a meaning it does not have on any clear reading of it. On the face of it it is absurd. At best it shows an inability of the Commission to read; at worst it shows the Commission as a willing servant of the railroad industry.



In fact, under this interpretation, if the railroads had been receiving revenues from the Railway Express under a rate structure all they would have needed to do to avoid the clear provisions of section 557 and to gain a substantial subsidy would have been to shift from a rate structure to a charge based on Railway Express net earnings.

I wish to repeat, Mr. President, that the refusal of the Commission would not stand the test in a court of law.

Now let me turn to the second reason why section 557 has not been enforced. This flows from the fact that the Post Office Department, in the face of the absurd ruling of the ICC, has been willing to roll over and play dead. The Postmaster General has merely accepted this ruling. He has done nothing to test its legality. He has accepted it and has used it as an excuse to perpetuate this unwarranted and unconscionable subsidy to the railroads in violation of the law.

In testifying before the Senate committee on March 21, Mr. Stans of the Post Office Department, criticized the contention of the Citizens' Advisory Committee that \$100 million in subsidies was being paid the railroads because section 557 was not being enforced on the following grounds; and I quote Mr. Stans' brief:

"Here the council, apparently confused regarding the contractual agreement between the railroads and the Railway Express Agency, believes that the Department is subsidizing the railroads by \$100 million by paying rates that are double those paid by that agency. The council intimates that it is the Department's fault that United States Code title 39, section 557, passed in 1916, has never been enforced."

Mr. Stans then continues by citing the various petitions of the Postmaster General to the ICC and the ICC rulings, and concludes:

"Under the law the ICC prescribes the rates of compensation to be paid the railroads. It has ruled twice that the contention adopted by the council on page 36 is not valid."

Mr. President, there is proof again that the Post Office Department merely rolls over and plays dead in light of the ICC ruling. Of course, it is the Department's fault as well as the fault of the ICC for the Department has failed to take legal action.

Of course, the ICC prescribes rates to be paid the railroads. What is wanted in this instance are the revenues which the railroads receive from the Railway Express Agency and the comparable equivalent rates which the ICC and the ICC alone is able to determine.

Here is another example of how the Post Office passes the buck to the ICC. There is no question that the ICC has refused to provide information which, by law, it is required to give. There is no question, further, that, notwithstanding its reasons, the ICC is quite capable of determining the revenues the railroads receive and what the equivalent rates would be for parcel post. As Mr. Frank, the former Associate Solicitor of the Post Office Department, pointed out:

"Despite the fact that the railroads do not charge the Railway Express Agency a fixed rate for the transportation of express matter, revenues attributable to the different units of comparable service of mail and express matter can be determined by the Commission's apportionment technique which it exercises regularly."

The method by which this can be done was stated very simply in the brief in support of the 1949 petition by the Solicitor of the Post Office Department. This is what it said—*Railroad Rates on Express*, 1949 (274 ICC 68, pp. 21-22):

"The result will be a determination of (1) the service furnished to express which is also furnished mail."

That, Mr. President, should be quite simple for the ICC, with its staff and experience, to do, and—

"(2) The revenues received by the carriers for such service."

That, Mr. President, is equally simple and some, if not all, of that information is available in published sources. The statement continues:

"These two determinations, placed together, will constitute a ratio of revenue to service, i.e., a rate for service. It will be a rate capable of application to non-first-class mail, being in terms of a unit of service common to both."

Mr. President, the more I look at the ICC refusal to give the information which the Department has requested, and which section 557 imposes on the ICC, a duty to give, the more I believe the ICC is saying something like this:

"Sir, the information you request would require two simple calculations. We



have not made those calculations. Therefore, we will not give you the information."

Of course, the ICC has to do some work to establish a comparable rate. They do this day in and day out. How else do they establish initial rates except to take the kind of service which is performed and fix a rate based on that service?

But what seems even more absurd than the ICC refusal is the willingness of the Post Office Department to accept this refusal and their rulings without a fight. I believe they are remiss in that and I shall now propose what can be done and what should have been done several years ago.

The Post Office Department should renew its petition immediately. As there is a rate case pending and as the information was requested there, it may be that the request does not have to be renewed—1956, ICC docket No. 9200, *Railway Mail Pay*.

But if it does have to be renewed, the Post Office could act within a matter of hours. Their previous briefs have been adequate and have stated the case. They must do so again, and it could be done quickly—this week if they really wish to do so.

Then, Mr. President, as we all know the Supreme Court has decided that rulings and decisions on petitions before the ICC are retroactive to the date of their filing. Thus, if successful, the savings of \$100 million could be made retroactive to the 1956 filing or the filing which could occur in a few days.

In the meantime, Mr. President, the Postmaster General should withhold from the railroads the \$100 million subsidy which his own deputy agrees is paid to the railroads. That would give a basis for a test in the Court of Claims.

The Post Office Department has had, in the past, exactly the same problem with the CAB over airline mail subsidies as it is now having with the ICC over railroad subsidies. The Post Office, failing to breach the industry-dominated CAB, has gone to court. They have claimed savings of literally millions of dollars by court action. From time to time they take credit for the airmail savings brought about by court action. Yet, Mr. President, when faced with an absurd ruling of the ICC, instead of going to court, as they should have gone years ago, and as in all probability they would have done had Bob Hannegan remained as Postmaster General, or instead of seeking the active aid of the Comptroller General, they throw up their hands and say nothing can be done.

The ICC and the Postmaster General have both said, in effect, that title 39, United States Code, section 557, is without meaning or effect. Now, who is the ICC to say that? Are they a court of law? Are they not required to carry out the statutes as passed by the Congress?

And who is the Postmaster General or his deputy to say that when the clear meaning of the law is not enforced by an independent agency, that the Post Office is required to sit back, roll over, play dead, and just take it?

Mr. President, I believe we should pass my amendment to cut out this subsidy for a variety of reasons.

In the first place, it would bring action by the Post Office in the courts, action which is far too long overdue. This would be done by withholding the \$100 million subsidy from the railroads.

Second. It would show both of these agencies that laws of the Congress are meant to be enforced and carried out. And since there is no question either about the intent or the meaning of the law, this should not take long to bring about.

Third. As we have seen on numerous other occasions, some quasi-judicial, administrative, or independent agency, such as the CAB, has overpaid carriers in violation of the law. When this has happened, millions have been recaptured in the public interest by court cases.

Fourth. The present situation gives a windfall profit, expressly forbidden by law, to the railroads. This is against the public interest, in violation of the law, and is special-interest administration at its very worst.

Fifth. The \$100 million which my amendment would cut out is not needed now and if, by some stretch of the imagination or because the Post Office failed to prepare its case adequately in the courts, a test case were lost, the Congress could then make up these sums, if necessary, at a later date.

Mr. President, when one views these outright abuses of the law on the part of independent agencies and departments of the Government, one is often moved to cynicism. This is a test of whether power and wealth are going to remain in the saddle, or whether Government activity is to be carried on in the interest of the public at large who now pay these absurd and illegal overcharges through excessive mail rates or through taxes.



Mr. ROBERTSON. Mr. President, the amendment offered by the Senator from Illinois [Mr. Douglas], although technically different from the previous amendment, is actually the same. The amendment would cut \$100 million from the overall amount for transportation. What is transportation? That is what we pay the railroads, the airlines, the trucks, and the rural carriers. It is assumed by the distinguished Senator from Illinois that we can make the railroads carry their part of the burden for \$100 million less. Suppose they refuse to do it? I hope the Senator from Illinois will be fair enough to pull down all the rural routes in Illinois before he pulls them down in Virginia.

What are the facts? We are giving the Post Office Department for this transportation item \$2 million less than it is actually spending this year. We are giving them \$9,737,000, which is less than they said would be necessary, and irrespective of the latest testimony that, instead of there being a 1½-percent increase in volume, there will be an increase of between 4 and 5 percent.

The greater the volume, the heavier the weight, and the more the railroads and the airlines and the other carriers will charge.

The Senator has a fine theory that someone can tell the ICC, "Quit being the tool of the railroads. We don't like it." That is a fine theory to be able to say to the ICC, "Come on, now; give us an enforcement of this section, and we will save \$100 million that the railroads are overcharging us."

What are the facts? The facts, testified to by the Department, are that pending right now are applications from the eastern and southern railroads for a rate increase of approximately 63 percent. It would amount to \$103 million more than is being paid now. That fact is not taken into consideration at all in any of the figures contained in the bill. We are giving the Department for this item, which it may not be able to control at all, \$2 million less than it is spending this year.

We are giving the Department \$9,737,000, without considering any further increase in volume. Yet the amendment proposes to say, "Let's cut them \$100 million."

In order to save the rural routes in Illinois and in Virginia, I ask that the amendment be defeated.

The PRESIDING OFFICER (Mr. Yarborough in the chair). The question is on agreeing to the amendment offered by the Senator from Illinois [Mr. Douglas].

Mr. O'MAHONEY. Mr. President, before the amendment is acted upon, I wish to ask the chairman of the subcommittee a question, which may have nothing to do with the pending amendment. I do not believe it has anything to do with it, but I wish to get this question into the Record.

I have been watching some of the activities of the Post Office Department and I am not at all adverse to the request of the Postmaster General that there should be an increase in post rates. I know that some reforms which are needed are not being carried out.

However, I became aware that the Post Office Department has undertaken the policy of transshipping by air 3-cent mail in large quantities. In other words, mail for the transportation of which the letter writer has paid 3 cents was placed upon airplanes and carried by the airplanes, thus giving it a preference over the mail for which the writers had purchased 6-cent stamps. This amounted to a preference right for the airplanes over the railroads for the transportation of this type of mail, and a defeat of the promise which the 6-cent airmail stamp makes to the person who buys it for the purpose of securing more rapid transportation.

I notice on page 55 of the House hearings on the Treasury-Post Office Department appropriation bill for 1958 that Mr. Gary, the chairman, when Mr. Stans was testifying, asked this question:

"What is the current status of the carrying of 3-cent mail by air?"

"Mr. STANS. Mr. Siedle?"

Apparently Mr. Siedle is one of the Post Office employees.

Mr. ROBERTSON. He is the transportation man.

Mr. O'MAHONEY (reading):

"It is the same, Mr. Chairman, as it was last year. We have not extended the operation. We continue to just about break even on it from a cost standpoint, when compared with the previous method of moving it by surface transportation."

That is all I find on this subject in the hearings in the House. I do not know whether anything was developed in the Senate hearings or not.

Mr. ROBERTSON. Nothing was brought out on that subject in the Senate hearings. We understood that such movement was an experiment and was in



connection with a recommendation of the Post Office Department that the first-class mail rate be set at 5 cents, and that such mail then would be carried either by plane or by train, whichever was quicker.

But the Department abandoned the proposal for 5 cents and went back to 4 cents for first-class mail, and proposed to set the airmail rate at 7 cents.

This was to be a limited experiment, to determine whether it would be very much more expensive, and to ascertain whether or not a great volume of mail would be carried at 5 cents.

In Great Britain and in Canada such mail is carried for 5 cents, and it is sent by the quickest means of transportation.

Mr. O'MAHONEY. Does the Senator from Virginia know what charge is made by the airlines for transporting 3-cent mail by plane?

Mr. ROBERTSON. As I recall, that figure is not broken down. The Government subsidizes the airlines. The chairman of the subcommittee, in his statement today, which was placed in the Record, included one of the things which he asked the Department to look into, namely, the charge which was made by the Committee on Post Office and Civil Service that the Post Office hires mail cars, dispatches them only half full, or a third full, or sometimes not filled at all, but pays the full rate on them, and in that way pays the railroads far more than the railroads are entitled to receive. We want the Post Office Department to investigate that matter. We cannot guess at what is happening. We cannot simply cut the budget by \$100 million and say, "You are getting \$100 million too much."

Mr. O'MAHONEY. The question I should like to have the Department answer is how much the Department is paying the airlines, in subsidies or otherwise, for the transportation of 3-cent mail by airplane, while on the same plane there are being transported hundreds of pounds of mail bearing the 6-cent airmail stamps, as against the ordinary 3-cent first-class postage stamps.

Mr. ROBERTSON. The first time I met my distinguished colleague he was an Assistant Postmaster General, and was doing a good job.

Mr. O'MAHONEY. The Senator from Virginia is very kind.

Mr. ROBERTSON. Someone said to me the other day, "I cannot recall when we had as good a Postmaster General as Jim Farley." The Senator from Wyoming worked with Mr. Farley, I believe.

Mr. O'MAHONEY. I did.

Mr. ROBERTSON. Mr. Farley had excellent morale in his Department, but he did not have some of the present-day problems. The pay of postal employees has increased, and the volume of mail has increased. Many other things have occurred.

If the distinguished Senator from Wyoming will submit his request in the form of a letter, the chairman of the subcommittee will do all he can to get the information and will place it in the Record.

Mr. O'MAHONEY. I shall be glad to comply with the Senator's request, and I hope we shall get an answer from the Department.

Mr. ROBERTSON. I hope so, too, but I cannot guarantee that we will.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois [Mr. Douglas].

The amendment was rejected.

## APPENDIX B

### BEFORE THE INTERSTATE COMMERCE COMMISSION

#### I. & S. Docket No. 7304

### RAILWAY EXPRESS AGENCY, INC., AGGREGATE RATES ON WEARING APPAREL

#### ARGUMENT ON BEHALF OF PROTESTANTS

#### PRELIMINARY STATEMENT

The impact of the decision to be rendered herein, and its effect upon that segment of the transportation system which is devoted to the handling of small shipments, may not be confined to the movement of wearing apparel. That happens to be the single phase of the situation which is open to investigation, but similar rate provisions are already in effect on other commodities and



respondent, in public statements by its president, has made it clear that Commission approval of these rates will lead to a complete overhaul of the express rate structure under the plan here involved. Similar adjustments have not received the attention they deserve either by way of the suspension or complaint process, and it is time now to explore and reappraise the entire theory.

At this point we shall merely indicate, in capsule form, just what type of rate and tariff structure the agency<sup>1</sup> is sponsoring: An individual shipment containing 100 pounds moves from New York, N.Y., to Dallas, Tex. From the moment it leaves the agency's dock at New York and is loaded in the car it receives precisely the same service as that accorded any other individual shipment of the same weight and content and moving in the same car. But merely because the shipment first mentioned was tendered at origin along with other *shipment of the same consignor*, totaling 300 pounds, or more, *but destined to other points*, as well as to Dallas, the consignee is charged a rate on one of four bases, graded according to weight, and running as low as 48.75% of first class.

In respect of the shipment illustrated, the consignee at Dallas who receives the benefit of a reduced rate has no way of knowing the precise rate charged on his shipment until after it has arrived at destination. As we shall show, this is entirely opposed to the rule that tariffs must be definite to the point of certainty and that a shipper is entitled to know *before* his shipment moves what rate he is to pay. Stated another way, there can be only one concept of a published rate and its application, and that demands that there must be a definite charge for transporting a certain amount of freight from one origin, on one day, to one destination, on one bill of lading. And every shipper or consignee is entitled to the benefit of that definite charge when shipping freight under the same circumstances.

Charges may, of course, differ if different *accessorial* services are rendered, but such differences must be based upon differences in the cost of performing such services and must be published and made fully known to the shipping public. Published rates which do not comply with these concepts are unlawful and discriminatory, *per se*.

The Commission has consistently condemned rates predicated upon an aggregation of tonnage, unless the total weight in such aggregation moves at *one time*, as *one shipment*, to *one consignee*.<sup>2</sup> The philosophy underlying such action is that it is obviously unjustly discriminatory to charge one *shipper* a *lower rate* than is charged another for the same service, simply because the tonnage of one of the shippers is part of an aggregate amount to be transported over a stated period or, as in this case, to multiple destinations. Significantly, the Commission has consistently applied this reasoning even to situations where all of the aggregated tonnage eventually *goes to one consignee at one destination*. Here, the vice inherent in the adjustment is aggravated because the aggregation upon which the reduced rate is predicated is broken up before the shipments even start in line-haul service and the broken-down lot may fan out to as many as 200 different destinations.<sup>3</sup>

Respondent will no doubt lean heavily upon the fact that in an earlier decision the Commission approved aggregate rates on wearing apparel,<sup>4</sup> so that the matter is *res adjudicata*. We shall deal *in extenso* with that decision in due course.<sup>5</sup> Suffice it to say here that the doctrine of *res adjudicata* has never stood in the way of effecting permanent justice. The protestants in that case "introduced no evidence to show the effect of the quantity rates upon their operations" but confined their evidence to the technical question of cost of service. Whatever may have happened in the presentation of evidence in the earlier proceeding it is crystal clear that the time has come for a second look in order to determine once and for all the *bona fides* of a rate structure which is completely fictional in its relation to the actual service rendered.

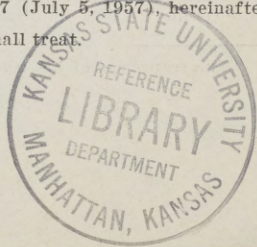
<sup>1</sup> Throughout this argument the Railway Express Agency, Inc., will be referred to as the agency, or as respondent, or as REA.

<sup>2</sup> *Forwarder Rates Conditioned Upon Aggregate of Tonnage*, 258 ICC 635; *Molasses From New Orleans, La., to Peoria and Pekin, Ill.*, 235 ICC 485; *Consolidation of Shipments By Freight Forwarders*, 256 ICC 305.

<sup>3</sup> For example, 200 shipments of 50 pounds each.

<sup>4</sup> *Wearing Apparel, Railway Exp. Agency, Inc.*, 301 ICC 177 (July 5, 1957), hereinafter referred to as No. 31862.

<sup>5</sup> There are various grounds of distinction with which we shall treat.





## THE TARIFF INVOLVED

The tariff provisions under investigation are in Supplement 36 to REA Tariff ICC 319, Item 70-K, effective February 7, 1960, which in its relevant parts provides:

"(a) 1. Straight or mixed shipments of Commodities listed in this Item between express stations indicated will be charged for as prescribed in paragraph (b) of this Item when the aggregate weight of one or more shipments is 300 pounds or more, tendered and receipted for *at one time from one shipper at one address* and consigned to one or more consignees at one or more destinations." [Emphasis added.]

| (b) When aggregate weight of shipment or shipments is— | Apply * * rates * * under columns listed below: |
|--------------------------------------------------------|-------------------------------------------------|
| 300 pounds to 1,499 pounds-----                        | Column 1                                        |
| 1,500 pounds to 2,499 pounds-----                      | Column 2                                        |
| 2,500 pounds to 9,999 pounds-----                      | Column 3                                        |
| 10,000 pounds and over-----                            | Column 6—* * *."                                |

The commodity description under paragraph (c) of the item reads as follows:

"Wearing apparel (see notes 1, 2, and 3), (Not including Hats and Millinery or Wearing Apparel when on hangers, racks, or in wardrobe type containers)."

"NOTE 1.—Will also apply from Los Angeles, Calif., on Handbags and Purses."

"NOTE 2.—Shipments moving under this item may be shipped either prepaid or collect."

"NOTE 3.—(Not important here)."

Parenthetically, it may be stated that the rates approved in No. 31862 applied only on "Prepaid" shipments, a fact which was given considerable prominence by the Commission.

#### THE STATUS OF PROTESTANTS AND THEIR INTEREST IN THE SUBJECT MATTER OF THE INVESTIGATION

With two exceptions, the freight forwarders, signatory to this presentation, hold nationwide operating permits. Chain Deliveries Express, Inc., holds operating authority in 32 States, but inasmuch as wearing apparel constitutes by far the major portion of its traffic it is perhaps more vitally affected than any other type of forwarder. Springmeier Shipping Company, Inc., holds operating authority on eastbound traffic originating at designated points in the Middle West. We believe that the rates here in issue are noncompensatory to the point of being sacrificial; that they reflect a blind desire to increase volume irrespective of results; that they amount to a direct subsidy on the part of the railroads which own the agency and which are its principal means of underlying carriage; and that the forwarders could not hope to meet these rates and at the same time maintain their transportation machine on a sound economic basis.

#### SOME VITAL STATISTICS AS TO RESPONDENT

In June 1960, respondent's President William B. Johnson gave some interesting statistics on the operation of his company at a hearing before the Post Office and Civil Service Committee of the House in H.R. 7053.<sup>6</sup> REA is a nationwide carrier of express matter regulated under Part I of the Act. It operates over approximately 158,000 miles of railroad, 54,000 miles of highway, 6,700 miles of water, and 132,000 miles of air routes. It maintained, at that time, 11,000 offices, serving 22,000 communities, and had 30,000 employees on its payroll.

REA is the agent of the railroads, whether the latter are co-owners or whether they handle express matter on an agreed basis of charges. The agency, which is owned by a group of some 64 railroads, pays no specific charge for its underlying transportation by rail. It collects its gross revenues from its shippers, deducts its expenses, primarily of a terminal nature, and turns over the balance if any, to the railroads it has utilized and they in turn divide it on a tonnage basis. In 1959, it was handling around 100,000,000 packages per annum. President Johnson stated to the aforesaid Committee that the railroads which handle express matter "have not recovered even their out-of-pocket costs incurred to haul our traffic."

<sup>6</sup> The transcript of his testimony is in evidence as Exhibit D, Witness Steiner.



Beginning in July 1961, the railroads and the agency plan to institute a new method of charge<sup>7</sup> under which the latter will pay for its transportation on a "car-foot-mile" basis. Inasmuch as the new basis will supplant one which "does not even cover 'out-of-pocket' rail costs" it is fair to assume that it is designed to increase the railroads' share of the agency's gross revenue. We are thus confronted with a strange process of reasoning. An agency which was responsible for "undistributed losses" of \$40,000,000 in 1958, is to pay the railroads on an increased basis of charge. But even this increased basis of charge which the railroads will levy, is so low that it will not become effective unless Congress shall have first amended the existing law so that the Postmaster General will not be in a position to demand a similar basis for the carriage of parcel post matter.

The Commission is asked to conclude and find that all of the above results, so natural as to be academic, will be avoided by an expected increase in volume. Respondent blithely glosses over the fact that this increased volume must come largely, if not primarily, from the present volume of parcel post.<sup>9</sup> President Johnson testified on June 22, 1960, that the Post Office Department was paying the railroads \$320,000,000 a year for handling mail matter, as compared with the \$116,000,000 the railroads were receiving from express. It is thus apparent that the increased volume will drain off the higher rated parcel-post traffic into express traffic, which latter concededly is to be carried at as low a charge as possible.

Thus, freight forwarders who must continue to purchase underlying rail transportation at full tariff rates, will be compelled to compete with an agency which is not only in position to and does provide a superior service—passenger vs. freight—but which will be allowed to purchase its underlying rail service on a basis so low that on its own admission the railroads could not afford to apply it to parcel post which latter supplies by far the greatest volume of small package freight.<sup>10</sup>

#### A SUMMARY OF THE EVIDENCE

In its decision in No. 31862 the Commission (Division 3) stated at page 193: "The protesting forwarding companies introduced no evidence to show the effect of quantity rates on their operations."

There is no such omission here. The record is replete with testimony as to the immediate and foreseeable effect upon the large and small forwarding companies; the motor carriers; and the independent freight consolidators not owned by REA.

Testimony on behalf of the nationwide forwarders is given by Witness Flynn for Acme Fast Freight, Witness Herr for Republic Carloading & Distributing Co., and Witness Blanck for Universal Carloading & Distributing Co., Inc. Testimony of the motor carriers will be discussed by their counsel, Mr. Bryce Rea. Testimony on behalf of the independent consolidating companies and Chain Deliveries, Inc., a forwarder specializing in the movement of wearing apparel, is given by Witnesses Taig, Erlichmann, and Hoffman, respectively. A preliminary discussion of respondent's cost presentation is contained in the testimony of Witness Steiner.

The story told in these statements is complete in itself and we shall endeavor to avoid useless repetition in this statement of "Argument."

#### THE EFFECT OF THE RATES ON REGULATED FREIGHT FORWARDERS

Respondent concedes that there is direct competition between its service and that of freight forwarders. Both are not, generally speaking, owners of the line-haul equipment used in the performance of the transportation services underlying their bill of lading undertakings. Both use rail carriers for that performance. But there the similarity ends. When the regulated freight forwarder utilizes the service of a rail carrier it is on the basis of the latter's published rates. In other words, the forwarder is placed in the same category as a regular "shipper."

<sup>7</sup> Contingent upon the repeal of a provision of law, later discussed, to the effect that the Postmaster General may demand the same basis of charge for the carriage of parcel post.

<sup>8</sup> As a matter of fact, the existing basis resulted in "undistributed losses" of \$40,000,000 in 1958.

<sup>9</sup> As a matter of fact, the Commission at page 195 of its decision in No. 31862, based its approval of the aggregate rates there in issue, on the fact that they were "necessary primarily to meet the competition of parcel post."

<sup>10</sup> President Johnson testified at the aforesaid hearing that "the Post Office Department is handling nearly 1 billion pieces a year," as against 100 million for the agency.



In sharp contrast, the respondent in utilizing rail service is in a privileged class. Its rail transportation is being performed by its owners.<sup>11</sup> It merely pays the railroad what, if anything, is left after its expenses are deducted from its gross revenues. The record shows that such a basis for compensation resulted in "undistributed losses" for the railroads of \$40 million in 1958.

Freight forwarders are at a complete loss to understand how the Commission could countenance such disparate charges for the rendition of underlying service, particularly when we remember that such service when performed for express companies is for the most part in passenger trains. Since both the respondent and the forwarders must maintain published charges which are competitive, it is obvious that forwarders could not hope to compete permanently with an agency which would be able to purchase underlying transportation at a level which would enable it to publish charges on the basis here in issue.

By reference to Exhibit A, Witness Steiner, it will be observed that for the movement of five 20-pound packages from New York to Miami, the Post Office Department must pay the railroads at the rate of \$7.95 per 100 pounds, under rates approved by the Commission. There is no way of ascertaining, except from it, what REA is presently paying the railroads for hauling 100 pounds of express matter in that movement. On the car-foot-mile basis under the new contract, to become effective in July, 1961,<sup>12</sup> the agency will pay the railroads at the rate of \$3.71 per 100 pounds at the 10,000-pound rate level. And the shipper of only 100 pounds by express will enjoy a rate constructed on that level if a freight consolidator, for example, forwards 10,000 pounds or more to the entire nation on that date.

Now if the ordinary shipper should ship 100 pounds, or even 10,000 pounds, as an individual shipment, he would pay the railroads \$5.72 per 100 pounds. Even if he shipped wearing apparel at the carload rate he would pay \$4.01 per 100 pounds, minimum 30,000 pounds. What special attributes does express matter have which entitle it to such preferential treatment?

The forwarding industry views this campaign for the approval of aggregate or quantity rates as part of an ambitious scheme which has for its final objective the centralization in REA of the handling of all small shipments. As corroborative evidence on the truth of this belief we need only refer to the public utterances of the agency's president. At an address on January 12, 1961, before the Atlantic States Shippers Advisory Board, he stated as number (4) in his platform, the following:

"The principle of coordinating the use of all forms of line-haul carriage through a *national small shipment's network under single management is basic*. The objective of this coordination is the use of each *transport medium* where, and only where, it does the best job for the public in both good service and low cost." [Emphasis added.]

While a liberal use of the art of semantics might open the way to varying interpretations of this statement, we, as forwarders, have no doubt that REA is the "single management" and the "transport medium" which President Johnson had in mind. In fact, Mr. Johnson removed all doubt by concluding his address with the assurance that "REA has a structure out of which such a system can grow and, moreover, is rapidly becoming this kind of company."

If the method of ratemaking here advocated is approved for REA, it follows that it must be approved for all agencies of transportation. To show the extremes to which such ratemaking would lead we have had prepared Exhibit 3, Witness Blanck, to show what rates would result if freight forwarders were to adopt the same type of ratemaking. Again using the movement from New York to Miami, as illustrative, it will be noted that the REA rate at the 10,000-pound level would be \$5.67. Our 100 percent or normal rate is \$5.88. But if we were to use the same formula REA is here using a rate so constructed as to us would be \$2.87. Of course, we could not hope to offer such a rate to the shipping public because the lowest rate we could possibly get from the railroads would be that on "freight, all kinds" of \$2.76, minimum 30,000 pounds. The illustration simply serves to point up the absurdity of the ratemaking scheme which is involved.

<sup>11</sup> When nonowning railroads perform express service they are compensated on the same basis as proprietary railroads.

<sup>12</sup> Always assuming, of course, that the law is changed so that the Postmaster General cannot demand the same treatment.



## THE EFFECT OF THE REDUCED RATES ON THE INDEPENDENT CONSOLIDATOR

The so-called "freight consolidator" functions as the agent of the consignee, and he has a definite place in the transportation scheme. For example, a department store in Charleston, W. Va., makes purchases from various suppliers in New York. It is to his advantage to channel his purchases through a common shipping agent in order to save transportation charges. Pursuant to this idea he instructs his vendors to deliver all of his purchases to a "consolidator." The latter aggregates them into one combined lot so as to secure the best possible transportation rate and avoid the possibility of having "minimum" charges apply on each separate purchase.

If all "consolidators" should operate on the same format there could be no complaint. But in this situation we have another example of where the gross-est sort of discrimination could result. To explain: It is virtually impossible for all "consolidators" to assemble as much as 10,000 pounds of wearing apparel on one shipping day. But REA is the owner of one "consolidator"—Fast Service Shipping Terminals, Inc.—and is conducting an extensive advertising campaign to urge shippers of small lots to use that particular "consolidator" in order to have the benefit of the 10,000-pound-rate level. Consignees will naturally gravitate to that particular "consolidator." Again, it must be remembered that the line-haul service accorded the *individual* components of the aggregation of freight tendered by Fast Service, etc., is the same as that accorded to the *individual* components of the freight tendered by the independent "consolidators." This is a clear violation of Section 2 of the Act. In other words, there is absolutely no justification to charge a shipment of 100 pounds to Dallas, Tex., as part of a consolidated lot tendered by Fast Service, a rate of \$6.00 per 100 pounds, and to impose a charge of \$9.00 per 100 pounds for a like shipment in the same car tendered by Broadway Packing & Shipping Company, simply because the former was one of many shipments to *many destinations* in an aggregation of 10,000 pounds, while the latter was part of an aggregation of only 3,000 pounds.

## THE PROPOSED RATES IN THEIR RELATION TO THE COST OF THE SERVICE PROVIDED

It is our contention, and we shall ultimately prove that these incentive rates are not only noncompensatory, under any standard, but that if the railroads were to be compelled to give them general application to all purchasers of rail transportation, they would be confiscatory. We have demanded, and will continue to demand, access to the underlying data upon which respondent's theoretical cost computations are based. In this discussion we shall deal only with defects which are apparent on the face of respondent's affidavits. A detailed discussion is contained in the affidavit of Witness Steiner to which attention is directed.

From the standpoint of end results it is believed that one or two inconsistencies in respondent's showing are sufficient to cast an unanswerable doubt on its validity. As a result of all of his purely theoretical hypotheses, Witness Bock arrives at a figure of .7463 cents per car-foot-mile as "a reasonable approximation of the rate which will be paid [the railroads] beginning July 1, 1961," always assuming, of course, that the existing law will be changed so that the same basis of compensation need not be extended to the handling of parcel post. Fortunately, we are not without a comparative medium by which to test the real worth of that estimate. In Docket No. 32035, *Increased Express Charges, Eastern Territory*, 300 I.C.C. 597 (May 31, 1957), it became necessary for the railroads to show the cost to them of handling express matter. A cost expert of national reputation<sup>13</sup> showed in his Exhibit 8, in that proceeding, that based on the April 1, 1956, level of costs,<sup>14</sup> the car-foot-mile cost to the railroads was .8287 cents. The Commission is now asked to believe that an appropriate cost figure for 1960, would be .0824 cents per car-foot-mile lower than in 1956, despite the fact that during the ensuing five-year period the railroads have on three occasions sought general increases in rates to compensate for increased costs of labor, material, and supplies.

<sup>13</sup> Mr. Heywood, then Asst. Comptroller of the Pennsylvania Railroad Company.

<sup>14</sup> Which included operating expenses, rents, and taxes, but which did not include any allowance for return on investment or federal income taxes.



But that is not all. If the car-foot-mile basis suggested by Witness Bock were to be reduced to a *cubic-foot-mile* it would result in a figure of .02318 cents. Since 1957, on the basis of Commission-approved rates, the Post Office Department has paid .04395 cents per cubic-foot-mile for the transportation of parcel post. Is it any wonder that the railroads find that the proposed REA contract basis would be so distasteful for application on parcel post? Please remember, also, that a 20-pound package of parcel post and a 20-pound package of railway express matter would be handled in the same general type of railway equipment, often in the same car, and always subject to substantially identical transportation conditions.

Witness Bock places the overall cost to the agency of handling express matter at \$1.11 per shipment, exclusive of overhead and purchased rail transportation. Using his own figures, this would amount to a cost of 4.52 cents per minute for both vehicle operation and maintenance cost, and the wages incident to vehicle and terminal services. Yet in another portion of his testimony he gives an average wage cost of 4.80 cents per minute for terminal services alone and 4.90 cents per minute for vehicle services alone. Thus, his figure of \$1.11 reflects a supposed average cost for *two* services which is lower than his own estimate for *each* service.

Moreover, Witness Bock's figures make no allowance whatsoever for the important item of maintaining facilities and buildings.

Cost computations such as these are completely self-serving and entitled to no credence. They merely emphasize the necessity for making a complete disclosure of underlying data.

#### THE PROPOSED RATES HAVE UTTERLY NO JUSTIFICATION AS A COMPETITIVE NECESSITY

We shall not unduly labor this point. We are confident that the Commission will not look with approval upon any rate reduction which goes far beyond the competitive necessities of the case. This is particularly true when the agency proposing the reduction is already engaged in a "red ink" operation. When the agency defended the very limited coverage of incentive rates considered in No. 31862,<sup>15</sup> and again when it advocated repeal of Section 5 of the Act of July 28, 1916, it gave as the primary reason for its position its competition with parcel post. In the Appendix at page 196 of its report in No. 31862 the Commission made the following comparisons between parcel post rates and the proposed REA quantity rates at the 2,500-pound level:<sup>16</sup>

*Rates in cents per 100 pounds from Los Angeles to Chicago*

|                | Rates                               |             | Express under parcel post |
|----------------|-------------------------------------|-------------|---------------------------|
|                | Railway Express (2,500-pound level) | Parcel post |                           |
| 10 pounds..... | 184                                 | 167         | 117                       |
| 15 pounds..... | 228                                 | 243         | 15                        |
| 20 pounds..... | 272                                 | 319         | 47                        |
| 30 pounds..... | 359                                 | 486         | 127                       |
| 40 pounds..... | 447                                 | 638         | 191                       |
| 50 pounds..... | 534                                 |             |                           |

<sup>1</sup> Over 17 cents.

Oddly enough, the report contains no comment as to why express service should have been priced as much as 191 cents per 100 pounds under parcel post. But whatever may have been the reason for that omission, it is clear that in this case the level of the proposed express charges in relation to those applying on parcel post has reached shocking proportions. Nothing makes that fact

<sup>15</sup> The rates there considered applied only on *prepaid* traffic, moving in one direction (eastbound) from 7 shipping points on the West Coast.

<sup>16</sup> Rates on a 10,000-pound level were not involved in that proceeding.



plainer than the agency's own advertising material which is in evidence along with the testimony of Witness Flynn. Below we show the amounts in dollars and percentages below parcel post reflected in the rates under investigation:

| From New York to—       | Rates for 5 20-pound packages |                               |                       |         |
|-------------------------|-------------------------------|-------------------------------|-----------------------|---------|
|                         | Parcel post                   | Express<br>(10,000<br>pounds) | REA below parcel post |         |
|                         |                               |                               | Dollars               | Percent |
| Atlanta, Ga.....        | \$11.25                       | \$4.58                        | 6.67                  | 58.4    |
| Boston, Mass.....       | 5.65                          | 3.08                          | 2.57                  | 47.0    |
| Chicago, Ill.....       | 11.25                         | 5.13                          | 6.12                  | 54.4    |
| Dallas, Tex.....        | 13.75                         | 6.52                          | 7.23                  | 52.5    |
| Denver, Colo.....       | 17.05                         | 7.12                          | 9.93                  | 58.2    |
| El Paso, Tex.....       | 19.80                         | 7.97                          | 11.83                 | 59.7    |
| Kansas City, Mo.....    | 13.75                         | 5.67                          | 8.08                  | 59.4    |
| Los Angeles, Calif..... | 19.80                         | 9.45                          | 10.35                 | 52.2    |
| Louisville, Ky.....     | 11.25                         | 5.13                          | 6.12                  | 54.4    |
| Miami, Fla.....         | 13.75                         | 5.67                          | 8.08                  | 58.7    |
| Minneapolis, Minn.....  | 13.75                         | 5.67                          | 8.08                  | 58.7    |
| New Orleans, La.....    | 13.75                         | 5.67                          | 8.08                  | 58.7    |
| St. Louis, Mo.....      | 11.25                         | 5.55                          | 5.70                  | 50.6    |
| Seattle, Wash.....      | 19.80                         | 9.63                          | 10.17                 | 51.4    |
| Tucson, Ariz.....       | 19.80                         | 8.64                          | 11.16                 | 56.3    |

Inasmuch as express service includes various and valuable elements not included in parcel post, such as free pickup and delivery, etc., it becomes readily apparent that REA is out to increase volume regardless of competitive necessity, needless sacrifice of revenue, or anything else. In other words, in its present thinking, increased volume is a panacea for all ills.

To show the extent to which REA has gone in its frantic urge to increase volume it is only necessary to compare what it pays the railroads with what the railroads demand for the transportation of parcel post matter. Details are to be found in Witness Steiner's exhibit A. But at this point, let us again refer to traffic from New York to Miami. For that movement the parcel post charge to the public is \$13.75 per 100 pounds for five separate packages of 20 pounds each. The Post Office Department pays the railroad at the rate of \$7.95 per 100 pounds. For the same weight REA is proposing a charge of \$5.67 per 100 pounds or 58.7 percent lower than parcel post. But it is paying the railroads only \$3.71 per 100 pounds, or *less than half the amount the railroads charge the Post Office Department*.

Illustrations such as these could be multiplied *ad infinitum*. But the forwarding industry can see no justification in compelling it to attempt to compete with a basis charge so unfair on its face.

THE RATES UNDER INVESTIGATION ARE UNLAWFUL AND ARE DIAMETRICALLY OPPOSED  
TO ESTABLISHED PRECEDENT

In making the above statement we are fully aware of the decision in No. 31862. But we are convinced that that decision was based not alone upon an insufficient record on the part of protestants, but that the Commission could not have been expected under the circumstances there presented to visualize the effect which an approval of this ratemaking theory would have upon transportation, if approved in perpetuity.

THE INVESTIGATION IN NO. 31862

The rates which were investigated in the above proceeding were published to become effective September 1, 1955. They were formally protested by five freight forwarders;<sup>17</sup> suspension was declined but on appeal the rates were

<sup>17</sup> Acme Fast Freight, Inc.; International Forwarding Co., Inc.; National Carloading Corporation; Pacific & Atlantic Shippers, Inc.; and Universal Carloading & Distributing Co., Inc.



placed under investigation. At the hearing the National Motor Freight Traffic Association, Inc., Eastern-Central Motor Carriers Association, Inc., and Central States Motor Freight Bureau, Inc., took "the position that the rates under investigation are unlawful, but they introduced no evidence." As stated, the rates had a very limited application in that they were published only from seven origins on the Pacific Coast and limited to eastbound traffic. Additionally, they were restricted to "prepay" shipments, and to aggregations of 2,500 pounds as a maximum.

The principal argument in justification of the rates was the competition with parcel post. For example, at page 180, the report states:

"Following 3 years of decline, the respondent's revenues rose rapidly in 1952, but declined again both in 1953 and 1954. It attributes this reversal in trend primarily to a change in practice *by shippers turning to parcel post* \* \* \*. A customer survey disclosed that users of rail express ranked it high in such factors as speed, coverage, dependability, and economy, but nonusers indicated that high rates were the chief reasons for using competitive transportation such as parcel post and motor trucks." [Emphasis added.]

And, again, at page 181:

"*Parcel post service is the principal competitor* for the light package traffic, and surveys made at Los Angeles and San Francisco indicated that shipments moving that way would be the predominant source of traffic to be attracted by the reduced rates." [Emphasis added.]

Parenthetically, the relation of first-class express rates and parcel post rates at that time was as follows:<sup>18</sup>

[Cents per hundredweight]

| From Los Angeles to Chicago | Rates                 |             |
|-----------------------------|-----------------------|-------------|
|                             | Express,<br>1st class | Parcel post |
| 10 pounds.....              | 283                   | 167         |
| 15 pounds.....              | 350                   | 243         |
| 20 pounds.....              | 418                   | 319         |
| 30 pounds.....              | 552                   | 486         |
| 40 pounds.....              | 685                   | 638         |

As we have stated, the report contains no discussion as to why, instead of simply meeting the parcel post rates, cent for cent, the agency should have found it necessary to undercut them. The advantages or disadvantages of the various competitive services were fully made known to the Commission. For example, at page 191 these statements appear as to parcel post:

"Parcel post is subject to size and weight limitations which require splitting of shipments over 20 pounds into 2 or more packages. This results in additional packing costs and customer dissatisfaction when arrival of a shipment is delayed. Shipments must be delivered to post office (no free pickup) and cannot be readily traced, unless insured. Despite these disadvantages, shipments of 20 pounds or less for the longer distances are generally made by parcel post." [Parentheses supplied.]

Surely the agency might, at least, have experimented on the basis of rates equal to those applying on parcel post.

On the subject of motor carriers the report recites at page 191:

"Motor carrier service is unsatisfactory for small shipments because the minimum charge, undependable and slow service, and difficulty in settling claims when connecting carriers are used, are said to be undesirable features of this service."

There would seem to have been no reason, in respect of motor carrier competition, for a rate cutting campaign.

As to freight forwarders, the report recites at page 191:

"As shown above, restricted coverage by freight forwarders, rate stops to or from off-line points, slow transit time, and difficulties in tracing are limiting factors. Package rates, when published, avoid minimum charges under regular rates, but generally provide inadequate coverage geographically."

<sup>18</sup> See appendix (p. 196) to the Commission report.



Again, there would appear to have been no basis for actually cutting rates.

In any event, the respondent in that proceeding apparently convinced the Commission that it needed additional tonnages, particularly on its eastbound movement, and that the charges they had proposed were at a "level \* \* \* which is necessary primarily to meet the competition of parcel post" (p. 195).

The Commission, however, made two observations in respect of the limitation as to "prepaid" shipments which are important here. First that limitation was a ground for distinguishing the situation from that considered in *Aggregating Express Shipments*, 192 I.C.C. 301 (1933), for the reason, among others, that due to the *prepay* requirement "the applicable charges are known with certainty when the shipments are tendered for transportation." It said, also, at page 195:

"The requirement that the charges be prepaid is necessary because their application is dependent upon the volume and other incidents of tender by the shipper." [Emphasis added.]

So let us attempt to square the two earlier decisions in which opposite conclusions were reached, with the rationale of the case now before us.

THE DECISION IN AGGREGATING EXPRESS SHIPMENTS, 192 I.C.C. 301 (1933)

In the above proceeding the tariff provision in question provided that:

"Two or more packages forwarded by one or more shippers, charges collect, from the same city, to one consignee at one local address, delivered, or offered for delivery, on the same date, must be charged for on the aggregate weight, as if one package \* \* \*." [Emphasis added.]

That rule, it will be noted, provided that the shipments of multiple consignors destined to a single consignee could be aggregated as to weight and charged accordingly. The tariff in the instant case requires that tender at origin must be from one shipper at one time, but the consignees and destinations are without limitation. Nevertheless, the reasons which led the Commission to disapprove the earlier adjustment are present and even more compelling here.

We appreciate that the Commission in No. 31862 distinguished the earlier decision in *Aggregating Express Shipments*, *supra*. Here is what it said at page 194:

"The (protestants) regard the adjustment (in No. 31862) as identical in principle to that found unlawful in *Aggregating Express Shipments*, 192 I.C.C. 301. The reduced rates there considered were predicated upon aggregation at destination of packages forwarded by 2 or more shippers in the same city and delivered or offered for delivery to 1 consignee on the same date. The adjustment differed in important respects from the instant one, including the possibility of abuse in making the reduced rates contingent upon circumstances at destination which were under control of the Express Agency." [Emphasis added.]

This, of course, should be coupled with the statement on page 195, previously quoted, that:

"The requirement that the charges be prepaid is necessary because their application is dependent upon the volume and other incidents of the tender by the shipper."

In other words, it was the "prepay" requirement, more than any other circumstance, that saved the adjustment considered in No. 31862 from meeting the same fate as that which befell the earlier adjustment. The requirement of "prepay" and the limitation of the tender to "one shipper" at "one time" made the charges certain at the time the shipment was offered, and did not leave their application in the air "contingent upon circumstances at destination which were under the control of the Express Agency."

It remains only to determine the nature of the "circumstances" under "control of the Express Agency" which disturbed the Commission so much in its first decision that it disapproved the rates. In discussing the rejected rule at page 309 of that decision the Commission stated:

"It is to apply on shipments 'delivered' or 'offered for delivery.' An offer of delivery is considered to be made when notice is given to the consignees, either by mail or by telephone, that the goods are ready for him, or when the driver goes to the street address with the shipment. Whether a shipment is 'offered' on a particular day, therefore, would depend upon the diligence or good faith of respondent's local employee in notifying the consignee, and upon such notification would depend whether the consignee would gain or lose the benefit of the



new rule. There is also the possibility that at the request of the consignee a package *might not be delivered or offered for delivery*, but held for aggregation with a package or packages expected to arrive at a subsequent date." [Emphasis added.]

It must be apparent that the arrangement here under consideration offers even a better chance for manipulation by local agents or employees. In the cited case, the express employee at *destination* had it within his power to hold back *deliveries* until the desired weight would accrue—even to assume that it would accrue and price the shipment accordingly. In the instant situation the employee at *origin* has the same opportunity to save toward—or to take for granted that—the desired weight will be accumulated, before making final *tender* of the traffic.

Moreover, under these tariffs we need not be limited to a consideration of the possible conduct on the part of respondent's station employees. We have no doubt that the greater portion of this traffic—particularly that out of New York—the recognized wearing apparel center of the country—will be handled through consolidators. Under that method there need be no pretense of tendering shipments to REA as they are offered. If the consolidator handles 10,000 pounds of freight over his platform each day—or even if he has reason to believe he will—the 10,000-pound rate will automatically apply. Respondent makes this crystal clear in its advertisement which is in evidence here. This contains a bold invitation to shippers which says in effect: "Take your 50-pound packages to the consolidator, particularly the one we own, and you will get the benefit of the 10,000-pound rate." To be exact, we quote directly from one of respondent's ads:

"Regardless of your own shipping weights, you can take advantage of the lowest possible rates, *maximum savings*, by using consolidators \* \* \* who have forwarding volume of ten thousand pounds or more a day. You can also get these low rates directly on any day's volume of 10,000 pounds or more." [The emphases are respondents.]

"\* \* \* For example, Fast Service Shipping Terminals \* \* \* (owned by REA)."

Additionally, in its decision in *Aggregating Express Shipments, supra*, the Commission was plainly disturbed by another phase of the rule which it discussed at pages 309, 310, where it stated:

"There would be no *physical aggregation* of packages under the new rule, such as in the case of the present rule (par. a).<sup>10</sup> While the packages would be regarded as a unit for ratemaking purposes, they would be handled from origin to destination as *separate and independent shipments*, billed and accounted for *individually*, and so regarded for claim purposes \* \* \*. A consignee receiving two or more packages from *several* shippers on any given date would pay less in express charges than *several* consignees receiving *identical* packages from *one* shipper, even though the transportation services rendered on the respective shipments were substantially similar." [Emphasis added.]

*Precisely the same vice is inherent in the rule here under consideration.* That is to say, two shipments of wearing apparel, each weighing 100 pounds, could move from New York to Chicago in the same car. They would receive *precisely* the same handling en route. At destination they could conceivably move in the same REA delivery truck to the Chicago Merchandise Mart. On one, the normal second-class rate (85 percent of first class) would apply. On the other, a rate of 48.75 percent of first class would apply if the shipment had been offered along with a conglomeration of shipments going to innumerable destinations, on the theory that it was part of a 10,000-pound aggregation.

It needs no labored argument to convince anyone that such an arrangement would clearly amount to undue prejudice against the shipper first named as a "person" and against a "particular description of traffic," within the meaning of section 3. And the Commission should not be swayed too much by the fact that no shipper is here complaining. It would be entirely too much to expect that shippers who are given the benefit of rates almost 60 percent lower than parcel post should complain of the rule which makes possible such preferred treatment.

<sup>10</sup> That paragraph reads as follows:

"Provided a lower charge is made thereby, two or more packages forwarded by *one shipper* at the same time upon *one receipt*, to *one consignee* at *one* local address, must be charged for on the *aggregate* weight, as if one package, etc."



There can be no question that without the intervention of No. 31862, the decision in *Aggregating Express Shipments, supra*, would be dispositive of this proceeding. For the reasons stated we submit that in the changed circumstances presented, and on the more complete presentation here made, No. 31862 should not be taken as overruling the principles so clearly expounded in the earlier case.

#### THE SECTION 2 VIOLATION

But when we come to Section 2, we need not be concerned with the fact that no shipper is complaining. When Section 2 is violated the carrier has committed a wrong *per se*. It makes no difference whether two hypothetical shippers which are treated differently are in competition with each other or whether they like or dislike the rule. Under the doctrine clearly established in *Wight v. United States*, 167 U.S. 512, different rates may not lawfully be applied under "substantially similar circumstances and conditions" of *physical carriage*. To quote from page 518 of that decision:

"It was the purpose of the section to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.

"It may be that the phrase 'under substantially similar circumstances and conditions' found in section 4 of the Act, where the matter of long and short haul is considered, may have a broader meaning or a wider reach than the same phrase found in Section 2. It will be time enough to determine that question when it is presented.<sup>20</sup> For this case it is enough to hold that that phrase as found in section 2, refers to the matter of carriage, and does not include competition." [Emphasis added.]

It is thus clear that the absence of a complaint or objection by the shipper affords no escape from a violation of Section 2. If the circumstances of "carriage" are "substantially similar" (in the illustration here given they are *identical*), the rate charged must be the same. The doctrine referred to merely gives effect to the age-old distinction at law as between a tort which is actionable *per se* and one which requires special proof.

#### THE VAGUENESS AND UNCERTAINTY OF THE TARIFFS

Still another circumstance which disturbed the Commission in *Aggregating Express Shipments, supra*, was the uncertainty attendant upon the application of the tariffs. On that point the Commission said at pages 313, 314:

"Moreover, the proposed rule would in effect set up a rate which would be dependent upon what several shippers might do, and the charges thereunder would be uncertain and their computation confusing. It would militate against that certainty and clarity in tariff publication which Congress and the Commission have been endeavoring to foster ever since the Act to Regulate Commerce became law. *Louisville & N. R. Co. v. Dickerson*, 191 Fed. 705; *National Wholesale Lbr. Dealers Assn. v. Louisville & N. R. Co.*, 46 I.C.C. 307. Under section 6 of the act tariffs must be so published that the shipper "may readily ascertain by an inspection of the schedules exactly what will be the cost to him of the transportation of his property." *United States v. Chicago & A. Ry. Co.*, 148 Fed. 646; affirmed 212 U. S. 563."

In the decision last above cited the court had said:

"The requirement of publication is imposed in order that the man having freight to ship may ascertain by an inspection of the schedules exactly what *will be* the cost to him of the transportation of his property; and not only so, but the law gives him another and very valuable right, namely, the right to know by an inspection of the same schedule, exactly what *will be* the cost to his competitor of the transportation of his competitor's property." [Emphasis supplied.]

Here again, those whom the law seeks so sedulously to protect are willing to come to respondent's rescue. Obviously, the consignee of a collect shipment can never know *until after a shipment is delivered* upon what particular basis he has been charged. But the consignees here favored insist that that makes no difference. They very frankly say that in any case they know they are getting

<sup>20</sup> And it was presented later in *Interstate Commerce Commission v. Alabama M.R. Co.*, 168 U.S. 146, in which the court reaffirmed in full the doctrine of the *Wight* case.



a reduction and that after the shipment arrives marked "Column 3" for example, there is no difficulty in checking the correctness of the rate charged.

Have we reached the point in regulation where the integrity and specificity of tariffs, always regarded as the keystone of the Act, may be bartered away by reductions?

We earnestly hope that the Commission will reexplore this matter and that it will not be deterred or influenced by the decision in No. 31862 which, at best, deals only with some, but by no means all, of the points we raise.

ACCEPTANCE OF THE AGGREGATION PRINCIPLE HERE PROPOSED WOULD BE TO IGNORE ALL OF THE ACCEPTED PRINCIPLES GOVERNING THAT PRACTICE

If there is one circumstance that threads itself through every major decision in the matter of basing rates on an aggregation of tonnage, it is this: There can be no lawful rate differentiation in favor of such an aggregation unless it moves as a single shipment, on a single bill of lading, from a single origin to a single destination. That principle makes complete sense. If increased quantity is to be accepted as a proper justification for a relatively lower rate it follows that such "increased quantity" must be preserved intact throughout its transportation. In other words, if the aggregation is broken down *before* its transportation begins it loses all added attraction as a transportation unit. If the carrier accords it a reduced rate, in spite of the fact, it runs afoul of the doctrine of the *Wight* case to the effect that only a difference in *physical carriage* can justify a difference in rate, under section 2. Let us examine some of the leading cases on the point.

Only four months after the passage of the original Act to Regulate Commerce in 1887, the Commission considered a tariff provision under which a receiver of coal at Providence, R.I., was offered a lower rate if he received tonnage in excess of a specified amount *over a stated period*. The Commission found the tariff unlawful. (*Providence Coal Co. v. Providence & N. W. Ry.*, 1 I.C.C. 107).<sup>21</sup> In commenting upon the philosophy of that decision in *Interstate Commerce Commission v. Delaware L. & W. R. Co.*, 220 U.S. 240 (1911) the Supreme Court said:

"Before the Act it was usual, first, to give reduced rates to persons who shipped quantities of merchandise and, second, to charge a proportionately less rate for a carload than was asked for a shipment in less than carload. After the act, lower rates to wholesale shippers were abandoned, it having been declared that to continue them was contrary to the act (Citing *Providence Coal Case*, 1 I.C.C. 107; 1 I.C.R. 363)."

We may dismiss from consideration the long-accepted distinction between the carload, on the one hand, and less-than-carload freight, on the other; the lower rate accorded to carloads is not because of the different *quantity* of freight but because of a different and less costly service.

From the time of the decision in the *Providence Case*, *supra*, any idea that trainload or multiple-car rates might properly be lower than rates on *single* carloads, for example, was uniformly rejected (*Anaconda Copper Mining Co. v. Chicago & E. R. Co.*, 19 I.C.C. 592, 596 (1910)) until the decision in *Molasses From New Orleans, La., to Peoria and Pekin, Ill.*, 235 I.C.C. 485 (1939). But even in the latter case the Commission made it clear that approval of such rates would be conditioned upon two circumstances; (1) that the tonnage making up the multiple-car consignment must move *at one time*, and under one bill of lading; but (2) that there must be a demonstrated saving in the cost of handling the quantity shipment. In this case, of course, the "aggregation" is not handled at one time and that circumstance, without more, destroys the validity of the considered adjustment. Furthermore, there is no possibility of proving any savings in line-haul costs. And even if there is a saving in pick up costs it would be a flat saving which would not graduate with distance.<sup>22</sup>

The requirement that any additional or combined weight advanced as a predicate for relatively lower rates, must be kept intact in a single shipment was emphasized in *Forwarder Rates Based Upon Aggregates of Tonnage*, 264 I.C.C. 225 (1945) in which a freight forwarder sought to accord a shipper reduced bases

<sup>21</sup> Also reported as 1 I.C.R. 363.

<sup>22</sup> For example, such savings, even if proved, could not justify rates made \$6.12 under parcel post, from New York to Louisville, Ky., and \$10.35 under parcel post to Los Angeles.



of charge if his annual tonnage amounted to certain stated amounts. At page 231 of its decision the Commission stated:

"It is settled that difference in the quantity shipped as a single shipment may justify a fair and reasonable difference in transportation rates. This difference is usually justified by a showing of a lesser cost of service for a larger than for a smaller shipment, other things being equal. Whether under the freight forwarder method of operation quantity rates based on a single bill of lading consignment of a specified minimum amount of freight are justified is not the question before us. The mere fact that a single patron offers a transportation company a specified amount of freight in varying quantities and at different times during a period of 1 year cannot under the cost of service theory justify a basis of rates different from those applied to a single shipment, for the aggregate amount shipped or to be shipped in the 12-month period has no relevant bearing on the cost of a particular shipment. Congress did not establish any different rule in rate making for freight forwarders from that applicable to common carriers subject to the act, other than to make sure the Commission would give due consideration, among other factors, to the inherent nature of freight forwarding." [Emphasis added.]

Distinguishing the situation from that encountered in the *Molasses Case*, the Commission stated further, at page 233:

"In *Molasses* from New Orleans, La., to Peoria and Pekin, Ill., supra, the Commission found, among other things, that there was nothing unlawful in the establishment of railroad rates on a quantity larger than a carload, (minimum shipment of 1,800 tons, or 38 carloads) when moving as a single shipment, and where they were designed to meet competition from other modes of transport whose unit of transportation was not limited to single carloads, provided a just and reasonable relation in rates as between the larger and smaller quantities of the same traffic was maintained. While this was a departure from the findings in previous cases respecting trainload or carload rates, the Commission did not depart from its long-recognized principle that no shipper may receive a reduced rate based upon the volume of his business, except to the extent that the movement of such a large volume as a unit enabled the carrier to effect operating economies which were properly reflected in the respective rates. We repeat, these volume rates are not made dependent on the movement of any specific amount of traffic as a single shipment, nor do they reflect differences in the cost thereof. The particular shipments may be large or small, steady or sporadic, economical or costly. The only test is the aggregate annual tonnage. As stated, all traffic moving under these rates receive the same service, and involves the same operating cost as any other traffic moving in respondent's service, at differing rates." [Emphasis added.]

It is true that in this case the lower rates are not contingent upon the amount of tonnage offered over an extended period of time. But the fact remains, just as in those instances, that the components of the aggregated lots are handled as individual shipments due to the "multiple consignee" provision. It is the fact that the shipments are handled as individual ones rather than as a single lot which forms the basis for disapproval. And it is immaterial whether that individual handling is brought about because of provision for the lapse of a protracted period of time or because of the fact the shipments may be consigned to multiple destinations.

In *Southern Pac. Co., Ownership of Atlantic S.S. Lines*, 43 I.C.C. 168, the Commission considered and rejected a tariff provision to the effect that anyone who notified the steamship company in advance that he would have consigned to him at Galveston or New Orleans at least 20,000 pounds of mixed dry goods, within any given week, would receive special rates. The Commission said at 178:

"While a rule permitting the concentration at the point of origin of numerous small shipments belonging to different shippers into one large shipment for transportation to one consignee by a steamship line may or may not be proper, there appears to be no justification for applying a special rate on small shipments which are aggregated at destination after the transportation has been completed. In other words, if small shipments by different shippers move independently from New York to Galveston, then it seems clearly discriminatory to subsequently apply a rate to such shipments lower than the rate which other shippers of similar packages are charged." [Emphasis supplied.]

The principle, of course, can be no different where, as here, the aggregation is broken down before the shipments start.



A similar finding was made in *Peanut Butter From Montgomery, Ala., to Georgia*, 22 M.C.C. 375, in which the Commission stated at 378:

"Yet, we believe that all rates subject to a minimum weight should be restricted to apply only when the shipments which equal or exceed the minimum weight are actually tendered to the carrier for transportation \* \* \* and are transported from the point of origin in one day and on one bill of lading." [Emphasis supplied.]

In still another decision—*Consolidation of Shipments by Freight Forwarders*, 256 I.C.C. 305, the Commission considered the proposed rules of a freight forwarder which sought to confer special rates upon shipments aggregated at point of origin into large lots. The Commission found several defects in the proposed rules, one of which was set forth as conditions precedent number 5 relating to respondent's failure to provide specifically that the aggregations in question, in order to qualify, must move as follows:

"(From) one consignor, (to) one consignee, (on) one bill of lading used at point of origin on the day of forwarding, and delivery to one address at one destination, or if respondent wishes to provide for delivery to more than one address, a reasonable extra charge for each additional delivery." [Parentheses added for clarity.]

The Commission made a further comment in that case which is significant here. At page 323 it said:

"So far as is known, neither railroads nor motor carriers act as consolidators of shipments at point of origin. Obviously, for them to engage in such services would create important possibilities of discrimination and it might be difficult to draw policing rules that would prevent abuses." [Emphasis added.]

In other words, the Commission saw grave danger of possible "abuses" in the consolidation or aggregation of freight by agencies other than forwarders, which latter effected consolidation as an integral part, their operation. It may be stated, however, that in a subsequent decision (287 I.C.C. 27) the Commission disapproved the rule even under the conditions imposed in the first decision.

Moreover, respondent can derive no comfort from its theory that an increase in overall volume would reduce its costs. Even if true, such a reduction would bear upon all traffic whether handled as aggregate tonnage or as individual shipments so that the condemned discrimination would still be practiced.

In *Consolidation—Great American Transport Co., Inc.*, 66 M.C.C. 423 (1956) the Commission condemned an aggregating rule which accorded lower rates on combined l.t.l. shipments from different consignors, or from interline carriers, and billed to one consignee. The Commission found the rates unduly prejudicial even though no shippers complained. In the course of its opinion the Commission said:

"The respondent points out that the charging of lower rates for greater quantities is implicit in the process of ratemaking, and maintains that a consignee who orders a sufficient number of l.t.l. shipments to load a truck when consolidated is likewise entitled to the benefit of lower rates than would apply on the individual shipments. The point of paramount importance, however, is that the reduced charges paid by the consignee who is able to take advantage of the proposed consolidation rules are based on the fact that he offers the carrier a larger volume of traffic "in the aggregate" than other consignees who receive the same or less service on individual shipments which are alike in kind and amount to the individual shipments of the preferred consignee prior to their consolidation." [Emphasis added.]

In *Toilet Preparations to Middle Atlantic Territory*, 308 I.C.C. 513 (1959), respondent sought to justify a tariff provision by virtue of which reduced rates were accorded on multiple shipments aggregating 14,000 pounds or more at the time they were tendered for shipment at Springfield. The Commission condemned that rule, even though the combined weight of the shipments was apparently to be kept intact. Among the grounds relied upon by the Commission were the fact that two identical line haul shipments of the same commodity might be moved to the same destination under different rates, and that the arrangement was "fraught with potential unjust discrimination." There, again, there was no claim of undue prejudice by individual shippers. (See also *Paper Articles Metuchen, N. J., to New York City*, 308 I.C.C. 793 (1959).)

In respondent's argument memorandum (p. 5) statement is made that the rule here in question is of the same type as that approved in *Consolidation of Freight Forwarder Shipments*, 310 I.C.C. 191 (1960). The cases are completely distinguishable. In the first place the shipments covered by the rule involved



in that case were to a single consignee and at a single destination. Secondly, the smaller and larger shipments were charged at the same "terminal-to-terminal" rate. The only difference in the assessment of charges in the last analysis arose from the imposition in the one case of an "off-line arbitrary" and the grant in the other case of a "stop-off privilege" which the Commission found justified due to the greater weight. At page 194 of its second decision the Commission specifically stated:

"It follows that shipments covered by the proposed schedules *are not like* shipments to other destinations and *smaller shipments to the same destinations*, and the difference in treatment here proposed is fully justified."

The rule here in question is markedly different. Here, there could be as many as 200 *different destinations* for shipments of 50 pounds each, to make a total of 10,000 pounds. Here, the individual shipments are not given the same basic or "terminal-to-terminal" rate, as though they moved without consolidation. Here, a 50-pound shipment from New York to Dallas, Tex., for example, could be accorded a rate predicated upon a fictional movement of 10,000 pounds.

There is not a word in the decision last discussed to indicate any intention on the part of the Commission to depart from its well-charted course. If it had so intended it would have surely so stated.

#### CONCLUSION

In the light of the record here made and under the well-established principles referred to, the Commission should reject the plan of ratemaking here under consideration. We so pray.

Respectfully submitted.

Acme Fast Freight, Inc.,  
Chain Deliveries Express, Inc.,  
Republic Carloading & Distributing Co., Inc.,  
Springmeier Shipping Co., Inc.,  
Universal Carloading & Distributing Co., Inc.,  
*Protestants.*

By HARRY C. AMES,  
*Washington, D.C.*  
JAMES L. GIVAN,  
*Washington, D.C.*  
GEORGE H. LEONARD,  
*New York, N.Y.*  
W. C. MITCHELL,  
*New York, N.Y.*  
T. R. SCHNEIDER,  
*St. Louis, Mo.*  
*Their Attorneys.*

#### CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing document have this day been served upon parties of record, including seven copies to Mr. W. Q. Keenan, Law Department, Railway Express Agency, 219 East 42d Street, New York 17, N.Y.

Dated at Washington, D.C., this 23d day of February 1961.

HARRY C. AMES.

Mr. DULSKI. The next witness is Mr. Aaron Hoffman, president of Chain Deliveries Express, Inc.

#### STATEMENT OF AARON HOFFMAN, PRESIDENT, CHAIN DELIVERIES EXPRESS, INC.

Mr. HOFFMAN. Mr. Chairman, my name is Aaron Hoffman. I am president of Chain Deliveries Express, Inc. My company is a small independently owned freight forwarding company, doing less than a half million dollars a year in business and inasmuch as this is my first experience as a witness before a congressional body, I may not have followed the general format and language, and I will welcome



any interruptions from members of the committee for questions, if any point in my statement is not clear.

My business address is 54 Broad Street, Red Bank, N.J. Chain Deliveries Express holds permit FF-34 as a freight forwarder subject to regulation by the Interstate Commerce Commission. My company's principal business presently consists of the handling of small shipments from New York, N.Y., and Boston, Mass., and our operating authority covers destinations in some 32 different States.

We are in direct competition with the Railway Express Agency (hereinafter called REA) in respect of every pound of freight which we handle and, as I shall show, our business will be subject to destruction by passage of H.R. 1986.

It is commonly known that REA has, in recent years, come under new and aggressive management. In 1959 REA was threatened with liquidation. It was then that the present management took over to see if REA could not be saved. Now when a dying man (or company) is faced with liquidation it is expected that this individual would try anything, even the wildest scheme, in order to survive. This is exactly what REA under its president, William B. Johnson, has been attempting. The proposed passage of H.R. 1986, which would repeal the provision whereby the Postmaster General may require the railroads to haul second-, third-, and fourth-class postal matter at rates no higher than the railroads receive to haul express matter, is only one of many schemes that are presently or will be undertaken by REA. This is no secret because Mr. Johnson has made numerous public statements in which he clearly advocates that REA should be the one transportation company, under single management, to handle all small shipments throughout the Nation.

On January 12, 1961, in a speech before the Atlantic States Shippers Advisory Board, Mr. Johnson said, among other things:

We are confident that we know what to do, but the challenge lies in getting it done and in time. Inflation and a confused oversupply of competing services including the Government's own unfair competition, were two of the basic causes of our difficulties. We think our management is now in a much stronger position to cope with these two basic difficulties, since the third or organizational problem has been largely met by the new freedoms given us.

Given only a green light from regulators and legislators and a continued reasonable attitude by our labor leaders we will ultimately succeed if we stick to sound fundamentals.

In other parts of the very same speech Mr. Johnson said:

The principle of coordinating the use of all forms of line-haul carriage through a national small shipment network under single management is basic.

REA has a basic structure out of which such a system can grow and, moreover, is rapidly becoming this kind of company.

In view of what Mr. Johnson has been saying for the public record, it should be obvious to everyone that passage of H.R. 1986 is one of the most important things that must be accomplished in order to make REA's dream of eliminating its competitors a reality. Before commenting further, I wish to state a fact that we all know. It is fundamental that where competition does not exist there is no incentive or reason to keep charges low and quality of service high. Every citizen who has ever had occasion to make a purchase knows about the law of supply and demand.



In the same speech just quoted, Mr. Johnson commented that the small shipment field will grow larger because of the trend of business toward smaller inventories. The mere fact that there will be a greater demand in the future for good small shipment transportation is, in my opinion, the strongest argument in favor of having competing services so that the public may choose to do business with those companies which will give it the best service at the lowest possible cost. It is well known that good service at low cost in the field of transportation is not a fact where a monopoly exists. Passage of H.R. 1986 could help bring about monopoly.

We have only to read the report of the hearings before this same committee of the 86th Congress when this same legislative action was proposed in H.R. 7055. The purpose of H.R. 1986 is identical with that of H.R. 7055, before the 86th Congress. At that time the Honorable Howard Freas, a member of the Interstate Commerce Commission, stated the Commission believed the express agency occupies a useful place in the transportation industry in this country and its continuance should be encouraged. He also stated that the Commission thought that "the express agency should be given the fullest opportunity to develop a sound basis of payment for the railroads."

I have no objection to giving the express agency the fullest opportunity to develop a sound basis of payment to the railroads, but it should not be at the cost of sacrificing hundreds of independent freight common carriers. It should be done on the basis of the express agency continuing as an express agency.

This is not what is planned by REA and the railroads. Their plans apparently call for REA to become a gigantic freight forwarder in the field of general freight as a corporation operating for profit rather than an agency. Anyone who has studied the actions of REA, during the past 2 years, knows that REA has embarked on a program of getting any kind of freight traffic it can by cutting rates without reasonable regard to cost or the railroads' compensation for carrying express matter. There is presently a very important battle going on between REA and the motor carrier and freight forwarder industries. It is known as investigation and suspension docket 7034 before the Interstate Commerce Commission. This case involves the protest of freight forwarders and motor carriers against a cut in express rates for the transportation of wearing apparel amounting to as much as 47 percent below the rates that REA had formerly charged for the transportation of wearing apparel. These rates went into effect in June 1960 but remain under investigation. They will be the subject of public hearings in the near future. If any interested persons desire to read the statement of my company (and others) in protest of these low rates, I will be happy to supply copies because I know it would help them to more fully understand what is at stake with regard to H.R. 1986 and how REA and the railroads seem very clearly bent on a monopolistic and destructive plan, which, if successful, would leave shippers throughout our great Nation with no choice as to how they wish to ship less-than-carload freight.



In 1958 the stated estimated loss of the railroads with relation to the hauling of express matter was \$40 million. I have been advised that the new contract between REA and the railroads which will go into effect on July 1, 1961, provided that H.R. 1986 has been passed by that time, provides for rates based on the operations of REA and the railroads in 1958, the very year in which the railroads lost \$40 million handling express matter. It is also a clearly admitted fact that these rates are below the out-of-pocket cost of the railroads for handling express matter in 1958 and the railroads say their cost of doing business has increased sharply since then. It is also a widely known fact that the current system of charges by the railroads for the transportation of postal matter is such that it guarantees the railroads a profit on the handling of parcel post. Why then, are the railroads so desirous of keeping alive REA, as an unprofitable and money-draining creature?

In my opinion, it can only be because the railroads appear willing to perpetuate and guarantee their losses in the handling of express matter for reasons of destructive competition. The freight forwarders, who use rail transportation and pay the railroads a profitable rate for hauling freight forwarder traffic, now find themselves directly in competition with REA which is owned by the railroads. So what have we except an unbusinesslike situation wherein the railroads are fostering their own company, which is a financial drain on them, to compete with parcel post and freight forwarder traffic on which they are realizing a good profit.

There has been much said about the undesirability of having REA nationalized and operated by the Government. I wish to go on record that I am in favor of free enterprise and no unnecessary nationalization in any type of industry. But looking at it from the point of view of the railroads, would not the railroads be better off financially if the express traffic on which they now lose money were given to them via freight forwarding industry and the Post Office Department? Apparently the railroads would prefer to have their own company if it can operate without competition. For what reason other than to eliminate competition would any well-financed business organization or group of organizations deliberately set out on a program which may lose millions of dollars over a period of years (and further cut the rates and charges and their revenue) except for purposes of destructive competition? (Which, incidentally is clearly in violation of the National Transportation Policy.)

The great dislike the railroads have for the motor carrier industry in this country is well known. The establishment of REA as the one carrier in the small shipment field would automatically eliminate hundreds upon hundreds of motor carriers. There are in excess of 175 railroads now participating in express traffic. It would be a small price for them to pay, if over the next several years they, collectively, would pay even several hundred millions of dollars to eliminate motor carrier competition. Along with the destruction of motor-carrier competition, the freight-forwarding industry would disappear 100 percent. Again I wish to emphasize that no great imagination is required to realize what will happen to these low, unprofitable and uncompensatory express rates when REA is no longer faced with



competition. And by "express rates" I refer to rates REA has offered to the shipping public.

Possibly the most ironical, and if it were not so serious, the most humorous aspect of such a vicious plan would be that, if it should succeed, the competitors of REA and the railroads would have helped finance their own destruction.

It is clear that: (a) The railroads presently realize a profit on parcel post and freight forwarder traffic; (b) the railroads presently do, and will continue for many years to lose money on REA express traffic; (c) the Post Office Department is losing in the neighborhood of \$80 to \$100 million a year on parcel post; (d) the handling of parcel post and express matter is generally the same to the railroads with regard to cost; (e) it is common knowledge that express and parcel post matter are sometimes handled in the same car at the same time.

When we review these facts it is obvious that the Post Office Department is subsidizing REA Express. It is further common knowledge that the Post Office Department is subsidized by the taxpayers. The taxpayers include the general public as well as motor carriers, and freight forwarders. So here we have a plan, if it succeeds, whereby the general public as well as REA's own competitors will, by subsidizing parcel post losses (which are due to the fact that parcel post must subsidize REA) be helping to finance their own destruction.

To support my contention let us consider examples of the revenue the railroads would receive on the basis of the present rates of compensation to the railroads for the handling of parcel post and rates on the basis of the new REA contract that is to go into effect on July 1, 1961, subject to passage of H.R. 1986. The information is from the verified statement of Delbert N. Steiner before the Interstate Commerce Commission, I & S Docket No. 7304. It should be noted that the rate of compensation to the railroads for hauling parcel post has recently been increased. My examples are based on the 1957 level.

Examples are for identical service, that is line-haul service, to Miami, Fla., on five 10-pound packages. Parcel post payment to the railroads is \$3.99, REA's is \$1.85; New York to Los Angeles, Calif., parcel post pays the railroads \$8.30, REA for the same shipment would pay \$4.13. The above examples are on the basis of five 10-pound packages; for five 20-pound packages; New York City to Boston, Mass., parcel post would pay the railroads \$2.22, REA would pay 69 cents. To Chicago, Ill., parcel post would pay \$5.61, REA \$2.48.

The foregoing examples are from exhibit A of Mr. Steiner's verified statement. The complete tabulation, in my view, would be a helpful addition to the record. I request, Mr. Chairman, your approval in making it a part of the record of my testimony. I submit it to you for that purpose.

Mr. DULSKI. If there is no objection, it is so ordered.

(The document is as follows:)



Comparison of parcel post rate and railway mail payments with railway express rate and railway payment for the movement of express

| Line No. | From New York City to—<br>(a) | Railway short line miles<br>(b) | 5 10-pound packages  |                                                   |                                   |                                           | 5 20-pound packages  |                                                   |                                   |                                           |
|----------|-------------------------------|---------------------------------|----------------------|---------------------------------------------------|-----------------------------------|-------------------------------------------|----------------------|---------------------------------------------------|-----------------------------------|-------------------------------------------|
|          |                               |                                 | Parcel post service  |                                                   | REA express service               |                                           | Parcel post service  |                                                   | REA express service               |                                           |
|          |                               |                                 | Charge to public (c) | Post Office payment to railroads <sup>2</sup> (d) | Charge to public <sup>1</sup> (e) | REA payment to railroads <sup>3</sup> (f) | Charge to public (g) | Post Office payment to railroads <sup>2</sup> (h) | Charge to public <sup>1</sup> (i) | REA payment to railroads <sup>3</sup> (j) |
| 1        | Boston, Mass.                 | 247                             | \$3.65               | \$1.12                                            | \$2.24                            | \$0.84                                    | \$5.65               | \$2.22                                            | \$3.08                            | \$0.69                                    |
| 2        | Grand Rapids, Mich.           | 767                             | 6.25                 | 2.49                                              | 3.03                              | 1.07                                      | 11.25                | 4.97                                              | 4.87                              | 2.13                                      |
| 3        | Louisville, Ky.               | 834                             | 6.25                 | 2.67                                              | 3.16                              | 1.16                                      | 11.25                | 5.32                                              | 5.13                              | 2.32                                      |
| 4        | Atlanta, Ga.                  | 866                             | 6.25                 | 2.75                                              | 3.19                              | 1.20                                      | 11.25                | 5.49                                              | 4.98                              | 2.41                                      |
| 5        | Chicago, Ill.                 | 890                             | 6.25                 | 2.82                                              | 3.19                              | 1.24                                      | 11.25                | 5.61                                              | 5.13                              | 2.48                                      |
| 6        | Nashville, Tenn.              | 969                             | 6.25                 | 3.00                                              | 3.33                              | 1.39                                      | 11.25                | 6.09                                              | 5.55                              | 2.80                                      |
| 7        | St. Louis, Mo.                | 1,040                           | 6.25                 | 3.07                                              | 3.33                              | 1.45                                      | 11.25                | 6.41                                              | 5.67                              | 2.89                                      |
| 8        | Minneapolis, Minn.            | 1,188                           | 7.75                 | 3.60                                              | 3.49                              | 1.79                                      | 13.75                | 7.16                                              | 6.80                              | 3.30                                      |
| 9        | Kansas City, Mo.              | 1,233                           | 7.75                 | 3.80                                              | 3.49                              | 1.85                                      | 13.75                | 7.73                                              | 6.87                              | 3.59                                      |
| 10       | Miami, Fla.                   | 1,333                           | 7.75                 | 3.90                                              | 3.33                              | 1.85                                      | 13.75                | 8.01                                              | 6.67                              | 3.74                                      |
| 11       | New Orleans, La.              | 1,344                           | 7.75                 | 4.01                                              | 3.42                              | 1.87                                      | 13.75                | 8.08                                              | 5.67                              | 3.74                                      |
| 12       | Oakland, Calif.               | 1,353                           | 7.75                 | 4.05                                              | 3.39                              | 1.89                                      | 13.75                | 8.08                                              | 5.67                              | 3.74                                      |
| 13       | Dallas, Tex.                  | 1,644                           | 7.75                 | 4.81                                              | 3.76                              | 2.29                                      | 13.75                | 9.59                                              | 6.52                              | 4.57                                      |
| 14       | San Antonio, Tex.             | 1,859                           | 9.30                 | 5.37                                              | 4.00                              | 2.59                                      | 17.05                | 10.72                                             | 7.12                              | 5.17                                      |
| 15       | Denver, Colo.                 | 1,887                           | 9.30                 | 5.45                                              | 4.06                              | 2.62                                      | 17.05                | 10.87                                             | 7.00                              | 5.25                                      |
| 16       | El Paso, Tex.                 | 2,222                           | 10.80                | 6.33                                              | 4.48                              | 3.09                                      | 19.80                | 12.64                                             | 7.97                              | 6.18                                      |
| 17       | Butte, Mont.                  | 2,262                           | 10.80                | 6.44                                              | 4.60                              | 3.15                                      | 19.80                | 12.85                                             | 8.21                              | 6.29                                      |
| 18       | Salt Lake City, Utah.         | 2,377                           | 10.80                | 6.74                                              | 4.60                              | 3.31                                      | 19.80                | 13.46                                             | 8.21                              | 6.61                                      |
| 19       | Tucson, Ariz.                 | 2,528                           | 10.80                | 7.14                                              | 4.81                              | 3.52                                      | 19.80                | 14.25                                             | 8.64                              | 7.03                                      |
| 20       | Seattle, Wash.                | 2,914                           | 10.80                | 8.15                                              | 5.22                              | 4.05                                      | 19.80                | 16.29                                             | 9.45                              | 8.11                                      |
| 21       | Los Angeles, Calif.           | 2,970                           | 10.80                | 8.30                                              | 5.22                              | 4.13                                      | 19.80                | 16.58                                             | 9.45                              | 8.26                                      |
| 22       | San Francisco, Calif.         | 3,119                           | 10.80                | 8.70                                              | 5.31                              | 4.34                                      | 19.80                | 17.37                                             | 9.63                              | 8.68                                      |

(Footnotes on p. 101).



Mr. HOFFMAN. Both REA and parcel post move in passenger train service. It is inconceivable to see where there is any practical difference in the cost of hauling "X" amount of parcel post and "X" amount of REA between the same two points usually in the same train and frequently in the same car.

The very fact that the new contract between REA and the railroads is dependent on enactment of H.R. 1986 should be more than sufficient for this entire proceeding to be eyed with great suspicion.

I think consideration should be given to what is express service. The shortest definition I know is that an express service is a premium service at premium rates for shipments which, by their nature, require and justify the paying of a premium rate for a premium service. I believe even the management of REA will agree it is this type of service for which express companies were formed. Now we find that times have changed. The inexpensive slow mover of freight is no longer slow. Because of technical improvements, the general freight carrier now offers the public a service that is generally equal to, and in many cases better than the service offered by REA express. Just because these freight forwarders and motor carriers have developed a system of transportation which the public prefers to that of REA express, should they be eliminated? Is it justified grounds for taking the Railway Express Agency and making it over into a gigantic freight forwarder without any of the restrictions of a freight forwarder just because the day of the express company's great popularity has passed? What REA and the railroads are attempting to foist on the general public appears to me to be on a level with a labor union's imagined request to make it illegal to install automation in industry. When the electric refrigerator came along and put most of the ice-selling companies out of business, the Government did not pass a law requiring all electric refrigerators to be manufactured and sold by the ice companies in order to save the ice companies. In essence this is what REA and the railroads are asking the Government to do for them.

<sup>1</sup> Based on Railway Express charges under incentive rates where the shipper forwards 10,000 pounds or more a day.

<sup>2</sup> Based on the 1957 Railway mail payments as introduced by Witness Edmund J. Walsh, on behalf of the Post Office Department, exhibit F to statement No. 7, in ICC Docket No. 32158.

|                           | Piece         | Pound         | Cubic foot  | Cubic-foot-mile |
|---------------------------|---------------|---------------|-------------|-----------------|
| Railway mail payments:    |               |               |             |                 |
| Transportation.....       | \$2,694,255   | \$1,077,688   | \$4,849,601 | \$149,815,069   |
| Terminal.....             | 2,059,162     | 16,473,298    | 22,653,787  |                 |
| Total.....                | 199,619,830   | 4,753,387     | 17,550,986  | 27,500,388      |
| Service units (nonlocal): |               |               |             |                 |
| Pieces.....               | 1,136,405,296 |               |             |                 |
| Pounds.....               |               | 5,712,229,784 |             |                 |
| Cubic feet.....           |               |               | 557,465,156 |                 |
| Cubic-foot-miles.....     |               |               |             | 340,877,801,841 |
| Unit cost (cents)         |               |               |             |                 |
| Total.....                | 0.41828       | 0.30725       | 4.93311     | 0.04395         |

Railway mail payments for traffic having an average density of 8.30 pounds per cubic foot:

Per cubic-foot cost of 100 pounds=59.19732 cents; 50 pounds=29.59866 cents.

Per cubic-foot-mile of 100 pounds=0.52740 cent per mile; 50 pounds=0.26370 cent per mile.

<sup>3</sup> REA payments to railroads based on level of "rate which will be paid beginning July 1, 1961" (verified statement of Charles W. Bock (p. 31)):

0.7463 cent per car-foot-mile; 0.02318 cent per cubic-foot-mile at 8.30 pounds per cubic foot.

100 pounds would require 12 cubic feet; 50 pounds would require 6 cubic feet.

REA payments per 100 pounds per mile 0.27816 cent; REA payments per 50 pounds per mile 0.13908 cent.



According to the Interstate Commerce Act, a freight forwarder is defined in section 402(5) :

the term "freight forwarder" means any person which (otherwise than as a carrier subject to Part I, II or III of this Act) holds itself out to the general public as a common carrier to transport or provide transportation of property, or any class or classes of property, for compensation in interstate commerce, and which, in the ordinary and usual course of its undertaking (a) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break bulk and distributing operations with respect to such consolidated shipments, and (b) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (c) utilizes for the whole or any part of the transportation of such shipments, the service of a carrier or carriers subject to Part I, II, or III of this Act.

The transportation service presently offered to the public by REA Express is accurately defined above. Except that REA is subject to part I instead of part IV, there is no basic difference between a freight forwarder as defined in section 402 of the Interstate Commerce Act and the operation of REA.

It should be known that part I refers to carriers by rail, part II refers to motor common carriers, and part III refers to carriers by water. Express companies are subject to part I of the act. A definition of an "express company" is not found in the Interstate Commerce Act. At numerous places in the act express companies are mentioned but only with respect to the fact they are subject to part I of the act. It is obvious then that express companies are essentially and directly related to rail express transportation.

As long as the express company operates strictly as an agency for the railroads, I agree that the express company should be subject to part I of the act. However, now we find the express company engaged in the forwarding of shipments by all modes of transportation. By nature of their practical operation and methods of forwarding and distributing shipments there is no difference between the present-day operations of REA Express and that of any large freight forwarder except that a freight forwarder, subject to part IV of the act, may use as underlying carriers only carriers by rail, common carriers by motor, and/or water carriers. Freight forwarders, subject to part IV of the act, may not operate their own motor vehicles beyond the terminal areas or commercial zone of a given metropolitan area as does REA. Freight forwarders subject to part IV of the act are required to pay the railroads for underlying transportation on the basis of regularly established tariffs.

In other words, freight forwarders must pay the railroads the same as any other public shipper. In order to earn a rate from the railroads that is less than the rate the freight forwarder charges his customer, he must fill a rail car to a given destination. REA Express may give any quantity to the railroads and even under the new proposed contract will only have to pay for that small amount of freight per destination that it happens to give to the railroads without regard to the amount of cubic feet it may occupy in the car, let alone fill a car. Further, REA traffic moving by rail moves in passenger train service. Freight forwarder traffic by rail is required to move in freight service.



It is clear to me that the law intends that an express company shall be an appendage or arm of a rail carrier. I think it also clearly intends that an express company shall provide an express service. This is why we have separate sections of the act regulating freight forwarders and express companies.

There can be no doubt to anyone who is familiar with interstate commerce law, and the history of the transportation industry in this country, that express companies, including REA, have always been closely identified with the railroads. I am sure it was for this purpose that express companies were made subject to part I of the Interstate Commerce Act. But, since up to now, REA has failed to make money for the railroads in the express business, they seem bent on getting into the general freight forwarding field.

As I have said before, speaking for myself, and I believe for all other freight forwarders, we do not fear competition if that competition is subject to the same rules and regulations to which we are subject.

I am not familiar enough with legal proceedings to know just how to go about getting legislation that would make REA Express subject to part IV, but I would certainly appreciate suggestions as to how to proceed with such a project, especially in view of the fact that, in 1959, the freight forwarding industry paid the railroads approximately \$260 million on which the railroads made a real profit, whereas the express company paid the railroads \$116 million for service which cost the railroads many millions of dollars more than they received.

Much ado has been made of the fact that the railroads wish to establish REA Express as a "for profit" corporation.

As of now, REA is ostensibly an agency of the railroad—at least with respect to that traffic which is carried by the railroads. REA Express is the terminal operation of express shipments by rail.

As was previously stated, it has year after year turned over to the railroads those moneys which were left each month after REA paid its own operating expenses.

While I do not agree this system of payment to the railroads is just, I do not object at this time because it clearly indicates that REA was operating and is operating as an agency of the railroads.

Now let's take a look at what they propose to have if H.R. 1986 is passed. REA Express will cease to become the agent of the railroads and become a customer of the railroads. Railway Express Agency, Inc., will be a "for profit" corporation engaged in the business of forwarding shipments via any mode of transportation. It will no longer act as the agency of the railroads but will be a separately managed corporation owned by the railroads and operating for a profit as a freight forwarder in practice. Yet the railroads are willing to lose money on express traffic which will be afforded passenger train service; and REA would be in a legal position to negotiate with the railroads for an even lower rate than they now publicly announce they intend to attempt to live with.

If H.R. 1986 is passed what would stop the railroads and REA from agreeing to cut the proposed rate in half if the railroads were willing to underwrite the loss in order to eliminate a great portion of its motor carrier competition? In my opinion, nothing. This would



place REA in position to drastically reduce rates for destructive competitive purposes and claim them to be compensatory.

By nature of their plans, their questionable rate-cutting practices and the insistence that section 557 of the Railway Mail Service Pay Act be repealed before the new contract goes into effect, it is obvious, to me, that the success of their overall program depends upon the elimination of competitive carriers.

Again I say, "when a business has no competition, there is no reason to keep rates and prices low and quality of service high."

It is my sincere belief that passage of H.R. 1986 will perpetuate the myth that REA operates as an express company. It is only right that all freight forwarder operations (REA's included) be subject to the same Government regulations. Repeal of the subject provision which would make it legal for the railroads to establish specific rates applicable only to one freight forwarder, namely REA, is intolerable. If the railroads want to establish REA as a general freight forwarder I believe it is imperative that legislation be enacted that would specifically declare REA as a freight forwarder subject to part IV of the Interstate Commerce Act as are all other regulated freight forwarders. I know that, in speaking for myself, as well as other large and small freight forwarders, we do not fear competition if that competition is subject to the same rules and regulations to which we are subject. I think it is necessary to our free economic system that REA Express operate as an express company or become a bona fide freight forwarder subject to all the regulations to which other freight forwarders are subject.

Mr. DULSKI. Mr. Hoffman, I am sorry to interrupt you, but we cannot meet while the House is in session.

Do you want to come back or insert your statement in the record?

Mr. HOFFMAN. I would be very happy to come back, Mr. Dulski, if I may.

Mr. DULSKI. We have not set a date as yet for the next hearing.

Mr. HOFFMAN. Any date you set would be all right with me, because if H.R. 1986 is passed, I might not be around very long as a freight forwarder. So I am willing to spend as much time as necessary to state my case.

Mr. DULSKI. We will inform you of our next hearing date and you will be our first witness.

Mr. HOFFMAN. Thank you.

Mr. DULSKI. We have a letter from the Post Office Department saying they need some more time to study the matter, so they will have something for us in the next few weeks. They would like to have this letter inserted in the record.

Is there any objection?

[No response.]

Mr. DULSKI. It is so ordered.

OFFICE OF THE POSTMASTER GENERAL,  
Washington, D.C., March 14, 1961.

HON. THADDEUS J. DULSKI,  
Chairman, Subcommittee, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the bill H.R. 1986, which would repeal one of the provisions of the Railway Mail Pay Act of 1916.

Hearings were conducted by your subcommittee on March 8, 1961, at which time witnesses in support of the bill appeared before your committee. At the close of



the hearing on March 8, you stated that the hearing would be continued on March 16, 1961, to hear officials of the Post Office Department.

In the short time that has elapsed since I assumed the duties of Postmaster General, I have been unable to formulate a policy with respect to this legislation. The Post Office Department has not yet filed a report on this bill. It will not be possible for the Department to file a report on the bill prior to March 16.

I respectfully request that the time for presenting the views of the Department on this legislation be extended or that the record remain open for the receipt of a formal report by the Department on this bill. I will attempt to formulate a policy with respect to this bill as soon as possible.

Sincerely yours,

J. EDWARD DAY, *Postmaster General*.

Mr. DULSKI. The subcommittee will now adjourn.

(Thereupon, at 12 noon, Thursday, March 16, 1961, the committee was adjourned, to reconvene upon the call of the Chair.)







# REPEAL OF PROVISIONS RELATING TO THE FURNISHING OF INFORMATION TO THE POSTMASTER GENERAL BY THE INTERSTATE COMMERCE COMMISSION

WEDNESDAY, MARCH 29, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 215, House Office Building, Hon. Thaddeus J. Dulski presiding.

Mr. DULSKI. The subcommittee will come to order.

The subcommittee is meeting this morning to continue hearings on H.R. 1986. The subcommittee will also consider H.R. 5600, an identical bill introduced by Chairman Oren Harris of the Committee on Interstate and Foreign Commerce, which has been referred to this subcommittee.

Our first witness is Mr. Aaron Hoffman, president, Chain Deliveries Express, who is appearing to complete his testimony. We are sorry to have inconvenienced you so that you had to come back.

Mr. Hoffman, I imagine, will be probably the only witness we have, because we have to go back to the House at 11, and we will probably have to continue our hearings. I am sorry to inconvenience you, but we cannot meet while the House is in session.

## STATEMENT OF AARON HOFFMAN, PRESIDENT, CHAIN DELIVERIES EXPRESS—Resumed

Mr. HOFFMAN. I completed testimony on the first 13 pages of my prepared statement on March 16, and also the first line on page 14.

An additional fact to indicate, beyond a doubt, that "express companies," including REA, are intended by the Interstate Commerce Act to be an appendage, and not a customer, of the railroad industry is that section 1, paragraph 7, of the act, provides that—

Officers, agents, employees and their families of other common carriers subject to the provisions of this part—

may receive passes from railroad companies. Those freight forwarders, who are subject to part IV, may not receive passes from railroads even though they might happen to be railroad owned.

Ample historical data tells us that express companies have, since their beginning, been agents of railroads. Whether they were independently owned express companies, or partially or completely owned and controlled by railroads, they operated as agents for rail-



roads. The present Railway Express has a status with the railroads that is no different than the status of the several express companies prior to the establishment of the present Railway Express Agency as the sole and exclusive monopoly in the railway express business. This monopoly was born on August 1, 1938, when the Railway Express Agency Inc., acquired the Southern Express Co., which was the only other express company operating at that time. It should be noted that the Southeastern Express Co. was a company formed by interests allied with the Southern Railway. Comparatively speaking, the Southeastern Express Co. was a young company in that it had commenced business as recently as May 1, 1921. It was certainly no accident that express companies were made subject to Part I of the act, which is the part that regulates railroads.

The present Railway Express Agency is not only a monopoly in the express business, but it also operates as a trucking company, domestic freight forwarder, international freight forwarder, air freight forwarder, transportation equipment leasing company, freight consolidating company, etc., and still maintains that it should be regulated as an express company subject to part I of the act. REA has more operational privileges than any other transportation company in our Nation's history. And to further substantiate this I would like to call to this committee's attention a double-page advertisement that appeared in the March 25, 1961, issue of *Traffic World*. I have several copies here if the members of the committee would like to examine it. But in essence it shrieks—

Now Railway Express agency has a new name for the most complete shipping services in the world—REA Express. New name—new methods and equipment—new low rates—new spirit. That's REA Express—the national and worldwide truck-plane-ship-train service of Railway Express. It's the simplest way to ship: with just one carrier—REA—all the way.

Ship anything, anywhere, any time via the REA domestic and oversea network. You ship many commodities at rates comparable to—often lower than parcel post and so-called low cost carriers.

And now I make special emphasis on the next and last line on this page:

No other organization can match REA—world's most complete shipping service.

And then with illustrations they show their own equipment over the highways, tractor-trailers; they also illustrate airplanes, ships, and railroad cars as means by which they move freight.

I don't believe there has ever been any other company in the history of our country that has had as many privileges as REA enjoys today.

REA is competitive with every other mode. It does not have to pay its own way. Yet this is not enough. Now they are begging to be eligible for Government guaranteed loans.

Earlier this month—March 1961—William B. Johnson, president of REA, appeared before the House Interstate and Foreign Commerce Committee which was conducting hearings concerning legislation to lengthen the rail loan guarantee program. Mr. Johnson said, "We ask that we—REA Express—as part of the railroad family—be included." There you have it. During the hearing on H.R. 1986 Mr. Johnson joyously told of how REA is now able to operate more freely since the railroads no longer dictate to REA with respect to how and when express traffic shall be moved. He seemed proud and happy to



report that the railroads had given REA permission to move their freight anyway they want; even if it means withdrawing all express traffic from the railroads. Even its name was changed from Railway Express Agency to REA Express. REA apparently is trying to create an "image" for the general public. REA seems to be trying desperately to have the public disassociate it with the railroads. At the same time REA appeals to have Congress associate it with the railroads when it is to REA's advantage, such as in the case of Government guaranteed loans.

This seems to be the modern way to play the old game of "hide and seek" on a high corporate level.

As an operator of an independent freight forwarding company, I charge the lowest possible rates consistent with good service and our ability to pay our underlying carriers compensatory rates for line-haul carriage. I am not an attorney; I am not an expert on parcel-post costs; I only know the obvious and how certain conditions can affect my company and other companies like it; I have a generally clear understanding of business practices and the law of supply and demand. I know there is no need to knock yourself out to provide good service to the public where no competition exists.

My previous statements regarding the subsidy of Railway Express Agency by the postal department, which in turn is subsidized by the taxpayers, is much better described in a public letter from Senator Olin D. Johnston, chairman of the Senate Post Office and Civil Service Committee, addressed to Mr. J. Edward Day, the new Postmaster General. This letter was made public January 26, and was reproduced, in major substance, in the February 4 issue of Traffic World magazine. Senator Johnston's letter states:

The record is quite clear that overpayments to the railroads resulting from the nonenforcement of this law—section 557—amount to \$100 million a year \* \* \* I feel that a repeal of the law at this time would only admit the subsidy.

I request, Mr. Chairman, this publication of Senator Johnston's letter to Postmaster General Day be incorporated in the record, and I submit it to you for this purpose.

Mr. DULSKI. Has it been printed in the record before?

Mr. HOFFMAN. No, sir, I think this is the first mention of it.

Mr. DULSKI. Is there objection?

(No response.)

Mr. DULSKI. It is so ordered.

Mr. GROSS. The letter was made public on January 26 of this year?

Mr. HOFFMAN. Yes, the letter was made public on January 26 of this year. The actual letter was written previously to that. I don't know the date.

Mr. GROSS. The letter has not appeared in any other hearings?

Mr. HOFFMAN. That is correct.

(The document referred to is as follows:)

[From the Traffic World, Feb. 4, 1961]

#### SENATE COMMITTEE HEAD SUGGESTS WAYS TO CUT POSTAL SERVICE COSTS

Until a clear picture of such public service costs of the postal system as transportation costs is achieved, it will not be possible to set future postal rates intelligently, the chairman of the Senate Post Office and Civil Service Committee, Senator Johnston of South Carolina, has declared.



In a letter to J. Edward Day, Postmaster General, made public January 26, Senator Johnston said such costs should be fully ascertained before the possibility of a postal rate increase, as President Eisenhower requested in his final budget message (Traffic World, Jan. 21, p. 21).

Senator Johnston referred to the section of the Postal Policy Act of 1958 detailing the public services to be costed out on a "total loss" basis and to be paid from the general funds of the Treasury Department, and then said:

"I have seen varying estimates concerning the postal deficit for 1961. Assuming a deficit of approximately \$900 million, I would urge that at least \$300 million of this amount be set aside as a public service pursuant to law and so presented to the Appropriations Committees of the Congress. Without a clear resolution of this controversy involving public services, the setting of future postal rates is impossible because we wind up with nothing but confusion compounded insofar as basic costs and the rate formula in the 1958 law are concerned. \* \* \*

"Once the matter of full adherence to the 1958 law is accomplished, I would urge you to give some careful consideration to other well-known subsidies existing in the postal service, as well as economics that might be achieved in the near future. There are at least \$200 million in subsidies which should be spelled out and recognized for what they are and should not constitute a charge against the various mail users.

#### ATTACK ON ICC

"I have in mind, first of all, the subsidy arising from the refusal of the Interstate Commerce Commission to enforce the Railway Mail Pay Act of 1910. The law is unequivocal in its requirement that the Postmaster General need not pay the railroads a higher rate for carrying second-, third-, and fourth-class mail than the railroads receive for carrying railway express matter.

"The record is quite clear that overpayments to the railroads, resulting from the nonenforcement of this law, amount to about \$100 million a year. In all fairness, it should be pointed out that former Postmasters General have attempted to comply with this law but their efforts have been consistently nullified by the ICC. I feel that a repeal of the law at this time (as ICC proposes) would only admit the subsidy. I doubt very much if the railroads, in their present economic plight, could withstand this kind of downward adjustment. I certainly would not support it. Nevertheless, this annual subsidy to the railroads should be set aside, so identified, and not be imposed as an additional charge on mail users.

"The second subsidy involved is that to Railway Express Agency (wholly owned by the railroads), involving the unwieldy limitations on parcel post weight and size. Public Law 82-199, enacted in 1951, substantially curtailed permissible weight and size of parcel post. This was done in an endeavor to bolster the sagging volume of Railway Express shipments. Early in 1954 the Post Office Department testified that its net loss in revenue directly resulting from this new act amounted to \$73 million annually. I am confident that, with the postal pay increases enacted since that time, this subsidy has risen to at least \$100 million annually.

#### "LAW A FAILURE

"One has only to consult the recent record before the House Post Office and Civil Service Committee on H.R. 7055 to know that the weight and size limitation (Public Law 82-190) has been a failure. Fourth-class mail prices have been more than doubled since 1951. Parcel post volume has declined. Similarly, the volume and revenue to the Railway Express Co. have continued to diminish. The volume of Railway Express shipments reached a peak of 235 million in 1946 and declined to 82 million in 1951.

"After the enactment of Public Law 82-199, in 1951, the volume increased slightly to around 92 million shipments, but today it is less than 64 million shipments. If unwieldy limitations on weight and size of parcel post are continued, as is a probability, then this annual \$100 million subsidy to Railway Express should be clearly identified as a subsidy and not included as part of the total deficit to be recovered from mail users."

Senator Johnston suggested four possibilities to cut costs of the postal service. One was possible elimination of postmarks, using instead self-canceling stamps. Another was a speedup in the use of machines and more modern facilities in large post offices. The third was a possible system of credits for differential pricing in second- and third-class mail.



CHANGE IN TRANSPORTATION

The fourth had to do with transportation, about which the Senator said:

"It has long been a matter of concern to me that the Post Office Department has apparently been unable to utilize the Nation's several transportation facilities to reasonably adequate advantage.

"American business has fully realized that each means of transportation has its own peculiar value and advantage. Business has dovetailed the various transport media into a competitive and correlated distribution pattern of high efficiency and economy. I do not believe the Post Office Department has given its problem of mail distribution similarly businesslike analysis.

"Better utilization of transport facilities by the department would undoubtedly reduce the alleged postal deficit and such subsidies as may be currently involved."

Mr. HOFFMAN. I hesitate to add additional material and take the time of the committee, but day by day so much new information comes forth that some of it was too late to be included in my prepared statement.

This newspaper article was brought to my attention too late for inclusion in my prepared statement, and it has an interesting bearing on the testimony of Mr. William B. Henderson, of the Parcel Post Association, on March 16, 1961. At that time he indicated, because REA losses were being subsidized by the Postal Department, parcel post was being squeezed out of existence. To further substantiate this, it should be noted in this record that Postmaster General J. Edward Day personally advised the House Appropriations Committee that parcel post might be priced right out of the market if extremely drastic increases were made effective. In my opinion, an extremely drastic increase in parcel post rates would be necessary to offset the \$100 million a year subsidy REA is presently receiving, if parcel post were to be placed on a pay-as-you-go basis as required by law. It seems to me that if this situation gets out of hand, our legislators could be faced with a choice of whether or not the parcel post service should be discontinued. I believe it is obvious that should it be necessary to make a choice between the continued existence of parcel post and REA, there would be no doubt that the public interest would be best served by preserving parcel post, because there are more than sufficient numbers of motor carriers, freight forwarders, railroads, et cetera, who would, in conjunction with parcel post, offer the public a more complete coordinated transportation service than could be offered by REA, even if REA were granted all the legislative help it would have us believe it needs.

Mr. GROSS. Mr. Hoffman, is that a quotation from the Postmaster General, or from the hearing record of the Subcommittee on Post Office and Civil Service?

Mr. HOFFMAN. No, sir, this is not a direct quote; it is information taken from a newspaper article that appeared in Women's World Daily, the issue of March 21, 1961, which describes what happened at the hearings.

I have stated in detail that I am opposed to passage of H.R. 1986 because of the destructive effect it will have on freight forwarders and motor carriers. However, the President of REA has in his testimony before this subcommittee on March 8, 1961, given us all the clearest, and easiest to understand, reasons why it is not necessary to pass H.R. 1986 in order to give the express agency the fullest op-



portunity to develop a sound basis of payment to the railroads and to "free the hands of the railroads and the express agency."

Most businessmen have always believed that what REA has always needed is not special legislation and preferred treatment, but good management. REA has had good management ever since William B. Johnson became its president in March of 1959. Mr. Johnson is a very capable administrator and executive. He has made tremendous strides in reducing REA's overhead and the railroad's deficit. It should be noted for the record that he did it with the subject provision still on the books. This new, efficient, able management, according to Mr. Johnson, has cut the railroads' out-of-pocket express deficit by \$30 million—from \$40 million—over a period of less than 22 months. I say, "Why change an arrangement that is working so well?"

To further emphasize the significance of the admirable job that REA's new management under the guidance of Mr. Johnson has performed, it should be noted that the New York Central Railroad alone lost \$11 million carrying REA's freight in 1958. One railroad, the New York Central, lost \$11 million carrying REA freight in 1958, and now for the year 1960 the total overall out-of-pocket deficit on express of all the railroads in the country was only a little over \$10 million. Personally, if my business had been able to show such marked progress in 22 months, I would not make any changes in my management setup. Imagine, after reducing the railroads' out-of-pocket express deficit by \$30 million over a period of 22 months, the railroads and REA wish to change this well-working arrangement.

I can think of no reason other than to engage in illegal destructive competition to eliminate freight forwarders and trucking companies that they would urge passage of H.R. 1986.

I know the managements of REA and the railroads are capable. I seriously doubt they would deliberately change a well-working arrangement except for an ulterior motive. It appears obvious that if REA, under its present arrangement with the railroads and the continued existence of the subject provision on the books, can continue in the next 12 months to make the same average gain it has made in the past 24 months, the railroads and REA will be well in the black. REA has in the past 2 years reduced its deficit by \$30 million, or an average of \$15 million per year. In 1960 the railroads experienced a deficit of only \$10 million. This means that with the same rate of progress the railroads will realize a minimum profit in 1961 of \$5 million for the hauling of express freight on the basis of the present working arrangement, and with section 557 still on the books.

At the present rate of progress it is clear that REA will be a "profit-making agency of the railroads" in less than a year even if section 557 remains on the books.

It is a significant fact to my argument that the present low rate policy of REA to the public is a "gimmick" and has been put into effect only as a means to take traffic away from competitors, regardless of cost; that only 6 months after the contested so-called incentive rates on wearing apparel—the subject of I. & S. Docket 7304—went into effect, REA added a surcharge of 20 cents per shipment to all less-than-carload shipments. REA apparently has gone all the way



"down the ladder" in reducing its rates and charges, but intends to gradually increase them again to the point where they will be compensatory to REA and the railroads. In the meantime, the reductions are so drastic that many of its competitors will be forced out of business and will be financially unable to get back into the transportation business when REA's rates are finally raised to a compensatory level.

It should be of interest to this committee that previous to REA's drastic reduction of charges on wearing apparel, my company had the lowest charges available—except for parcel post—from New York, N.Y., to points south of Washington, D.C., and north of Atlanta, Ga. Then REA made reductions amounting to 47 percent, which in some cases amount to as much as \$1.50 less on a single 50-pound shipment than my company's rates which had previously been the lowest available. Gentlemen, my company does not make \$1.50 on 50-pound shipments to these points. It is not possible for us to even attempt to meet this unrealistic competition. Unrealistic because REA presently is not required to pay the railroads anything at all for line-haul transportation.

One might suppose this arrangement is less preferable to me and other REA competitors than the one which they desire; which will ostensibly require REA to pay a specified rate to the railroads whether REA "has it or not." If this provision of the new contract goes into effect it will be no protection to freight forwarders whatsoever, because there is no guarantee that REA and the railroads will not agree on even lower rates than they announce and propose to put into effect on July 1, 1961. This could come about if the railroads are willing to invest in the destruction of their competition.

I ask, "Does this sound like free private enterprise?" I repeat, I do not fear competition by large or small companies provided that competition is subject to the same rules and regulations to which I am subject.

There have been comments in this proceeding that it is desirable to have a nationwide small shipment service under one management. Apparently it is hoped that members of this committee will believe REA is the only company which could provide this nationwide service. A number of large freight forwarders have nationwide authority and operate in private enterprise. Economics have prevented them, as well as REA Express, from being able to provide a regular service to every point in the country. I believe it is a fact that parcel post is the only transportation service that is providing service on a nationwide basis. REA does not provide pickup and/or delivery service to thousands of communities in the continental United States. I am sure the freight forwarding companies who have nationwide authority would not hesitate for a moment to expand their scheduled service to all points now covered by REA if they were to be accorded the same preferred service, rates, and privileges as are presently available to REA. It is also a fact that many motor common carriers offer joint service with through rates to virtually every point in continental United States.

Mr. Johnson mourned that REA can no longer fall back on the treasury of the railroads. Who then will make up the difference to the railroads between what REA will pay them and what it will cost them to haul express freight?



I would also like to correct Mr. Johnson's testimony with regard to the impression that he conveys that his company is 122 years old. The Railway Express Agency, the corporation we know today, is only 33 years old and was organized in 1928. It is true that other express companies existed previously to 1928.

Witnesses testified previously on behalf of the 32,500 employees of REA. I doubt that any REA employees will lose their jobs if H.R. 1986 is not passed, but a tremendous number of employees of freight consolidators, warehousemen, trucking companies and freight forwards will lose their jobs if H.R. 1986 is passed and REA's plans succeed.

We might note here that if the 19,000 motor carriers—and the 19,000 figure is Mr. Johnson's—have an average—if they have an average of 10 employees per company, including office employees, clerical, drivers, et cetera, we are then pitting 190,000 jobs against 32,500 jobs.

Much was said about the trouble REA is having in trying to compete with parcel post. It was stated that parcel post rates were so low that they cannot compete. Then I ask for an explanation of the advertisement REA has been running in newspapers with headlines announcing

Now you can ship wearing apparel via the new REA Express at half the cost of parcel post.

A reproduction of this advertisement has previously been put into the record of this hearing.

There was also comment before this committee regarding Public Law 199, which is known to have been passed for the express purpose of helping the express agency. Is Congress to be the benefactor to whom REA can come and cry whenever past favors do not live up to expectations?

Now I will comment on a phase of this situation which, were it not so serious, would be amusing. Mr. Johnson stated on March 8 that since October 1, 1959, his company has been vigorously reducing its rates but "always keeping them at a compensatory level." Compensatory to whom? To the railroads? To REA? When these reduced rates went into effect, as at present, REA had, and has, no underlying cost with regard to transportation via rail. Mr. Johnson stated that under the present arrangement with the railroads REA can neither lose nor make money. How then can anyone determine what is a compensatory level for REA's rates and charges, especially when it is common knowledge that the higher rates were \$40 million less than compensatory?

Mr. Johnson further stated:

it's unlawful to create destructive competition by pricing transportation services at less than out-of-pocket cost.

Yet the REA ratemaking department went ahead and reduced its rates knowing that the rates they already had in effect were not compensatory. Gentlemen, in my opinion Mr. Johnson has very clearly admitted that his company is engaged in unlawful destructive competition.

It is true that under the present working arrangement between the railroads and REA, a regional vice president cannot be disciplined or praised for producing a loss or profit as such. However, a simple mathematical procedure can determine the ratio of a region vice presi-



dent's expense with relation to the amount of traffic moved through his region. Competition between various regions and districts could easily be set up on an incentive basis with regard to which region can operate on a lower ratio of expense to traffic. Bonuses, promotions, salary increases, etc., could easily be based on this type of ratio competition. This method of creating incentive is presently widely used in business throughout the country.

I also take exception to statements made previously before this subcommittee regarding the threat of "nationalization" of REA. I do not believe the express agency would need to be nationalized if the railroads would decide to discontinue its operation. Back in 1959 when it was thought the railroads would cease to operate the express agency, several business organizations made bids to buy the express agency. One was headed by a large New York City investment company, and the other was, and is, active in the freight forwarding business. Nevertheless, I am sure the express company will continue to be operated by the railroads whether or not H.R. 1986 is passed. I am equally sure that should the railroads want to give up operating the express company, it would not be difficult to find someone other than the Government willing to operate it, in view of the fact that it has been proven that the only thing REA has lacked over the years was good efficient management. In my opinion, the threat of "nationalization" is to be taken lightly.

I was not sure of the number of motor common carriers in the United States, and I appreciate Mr. Johnson's fixing that figure at 19,000 carriers. I agree that at least 75 percent of the 19,000 motor common carriers haul small shipments. I will wager that at least 75 percent of that 75 percent will quickly go out of business if they must depend on REA's benevolence for small shipment traffic. Benevolence is exactly what they will be dependent on if REA's plan for a single management to handle the small shipments in this country succeeds.

Also, the 87 freight forwarders who handle small shipments will, without a doubt, be immediately put out of business if REA is successful in setting itself up as the "single management" referred to in the speech of January 12, 1961, before the Atlantic Shippers' Advisory Board. Actually, if REA can set itself up as a successful general freight forwarder, I can see no need for the continued existence of the presently acknowledged freight forwarder industry, as far as the railroads are concerned. Why should the railroads want to do business with independently owned freight forwarders if they can have a successful freight forwarder of their own?

I was happy to hear Mr. Johnson state for the record that he has no interest in monopoly. Unfortunately, I was not relieved, because whether or not it was the original plan to create a monopoly, it appears obvious that a monopoly will result if H.R. 1986 is passed and REA and the railroads are successful with their plans regarding the "oversupply of competing services."

It can be said that the courts of this country will most certainly break up such a monopoly if it comes into being. This is true. However, by the time the courts get around to breaking up a monopoly



in the transportation business, thousands of companies will have been forced out of business and will be unable to raise the necessary finances needed to resume operations after such a monopoly has been broken up by the courts. This is why I maintain that by not passing H.R. 1986 the Congress of the United States will have helped to prevent this threatened catastrophe.

A spokesman for REA stated that section 557 could be implemented only by "looking backward"; that any determination would have to be retroactive. There is nothing impractical about such a determination. Retroactive determinations are common, everyday practice in business and government. When the railroads recently received an increase for handling parcel post, the increase was retroactive. I can see no reason why the provisions of section 557 could not or should not be applied retroactively if desired. Also too recently to be included in my prepared statement is information that only became public on Monday, March 27. I have here a prepared comparison showing what the Post Office Department and REA are paying the railroads. It indicates the Post Office Department is paying the railroads at least twice as much as REA Express for similar railroad transportation service. Now this is strictly line-haul from point to point, and it is my understanding that where terminal operations are required by the Post Office Department, additional revenue is given to the railroads for such terminal services.

The information compiled herein is from statements made by C. W. Bock, chief cost accountant of REA Express, in ICC Docket I. & S. 7304, and also by Mr. Robert A. Navin, assistant comptroller of REA Express, in ICC Docket I. & S. 7304.

In essence, on the basis of a 60-foot car, REA's payment is 44.78 cents per mile, whereas the Post Office Department is paying the railroads, on the basis of a 60-foot car, 101.93 cents per mile in the East, and 93.11 cents per mile in the South and West. Incidentally, I understand that 93.11 cents per mile is the maximum rate that the ICC has prescribed. The ICC normally prescribes a maximum rate between the Post Office Department and the railroads, and the Postmaster General then has the privilege of negotiating in the attempt to get a lower rate.

Since I am not an expert in statistics like this, I am sure someone from the Post Office Department would be able to explain the technicalities of this comparison better than I, but we have here that on an average lading per thousand cubic foot miles, REA's payment to the railroads is 23.18 cents; the Post Office in the East pays 52.76 cents, and in the South and the West, 48.19 cents.

I request permission, Mr. Chairman, to have this comparison chart made a part of the record.

Mr. DULSKI. Any objection?

(No response.)

Mr. DULSKI. It is so ordered.



(The document referred to follows:)

*Comparisons showing Post Office Department is paying the railroads at least twice as much as REA Express for similar railroad transportation service (line haul of storage cars)*

| Service unit           | REA payment                             | Post Office Department payment |                                    |
|------------------------|-----------------------------------------|--------------------------------|------------------------------------|
|                        |                                         | East                           | South and West                     |
| 60-foot car.....       | 44.78 cents per mile.....               | 101.93 cents per mile.....     | 93.11 cents per mile. <sup>1</sup> |
| Per car foot mile..... | .7463 cents.....                        | 1.6988 cents.....              | 1.5518 cents.                      |
| A <sup>2</sup> .....   | 23.18 cents per 1,000 cubic foot miles. | 52.76 cents.....               | 48.19 cents.                       |
| B <sup>3</sup> .....   | 11.85 cents per 1,000 cubic foot miles. | 26.97 cents.....               | 24.63 cents.                       |

<sup>1</sup> Post Office payments based on rates of payment under space-used rules, Sept. 1, 1960. Verified statement of witness Robert A. Navin (REA Express) ICC Docket I. & S. 7304. ICC Docket No. 33549 prescribed a rate of 93.11 cents per mile for 60-foot storage cars.

<sup>2</sup> Assuming 32.2 cubic feet per foot of car, a 60-foot car has 1,932 cubic feet. (Reference: C. W. Bock, chief cost accountant, REA Express, in ICC Docket I. & S. 7304, states that 32.2 cubic feet per foot of car is "average lading" of a car, and that, starting July 1, 1961, REA will pay the railroads on the basis of .7463 cents per car foot mile.)

<sup>3</sup> Assuming 63 cubic feet per foot of car, a 60-foot car has 3,780 cubic feet. (Reference: Verified statement of Robert A. Navin, assistant comptroller of REA Express, ICC Docket I. & S. 7304.)

NOTE.—The figures on each line are comparable and the only figures comparable. To be comparable the basis of comparison must be the same.

Mr. HOFFMAN. One further comment on this: This evidence, inasmuch as the information in this comparison was provided by the Railway Express Co., proves there is no reason why the rate paid by REA to the railroads cannot be easily determined and applied, and I think REA has given us evidence that negates the comments that section 557 could not be implemented.

I found it most revealing in Mr. Johnson's testimony that a set of facts regarding compensation by REA to the railroads under the present agreement would never be made available because the railroads can't afford to add to their present deficit and haul mail for less than rates fixed by the Commission. To me this appears to be withholding evidence, to say the least, especially in view of this comparison chart.

With regard to the cry that repeal of this provision won't cost the post office or, for that matter, anybody a nickel. I maintain that it will cost thousands of transportation companies their entire business, and their employees their jobs.

It has been stated that, since the railroads own the express company, it should be a matter of their own business what they will charge their own company for transportation. It should be noted for the record that there are several large nationwide freight forwarding companies that are either owned outright or controlled by railroads. The law requires that these railroads charge their own freight forwarding companies the full tariff rate they are required to charge any other freight forwarder or private shipper. This is one more unfair privilege that REA has over other freight forwarder operations.

I believe it is contrary to the public interest to allow one company, because of special privilege, to become such a giant as to be able to force competitors out of business. Again I reiterate that freight forwarders can compete with other freight forwarders if they are



all subject to the same rules and regulations. By nature of its operation REA express is clearly a freight forwarder without the restrictions of a freight forwarder.

In summary, I repeat that William B. Johnson, president of REA Express, has stated the best reasons for not passing H.R. 1986. In less than 2 years his management team has reduced the railways' deficit for hauling express freight by \$30 million, from a deficit of \$40 million in 1958 to a deficit of only \$10 million in 1960. If this rate of progress is continued the railroads will experience a profit of \$5 million on express traffic in 1961—all this under the present arrangement between REA and the railroads.

There is clearly no need for passage of H.R. 1986, for the reasons stated. It will not do anything to help REA to realize and develop a practical method of payment to the railroads. Also, as I previously stated, employee incentive on the basis of a ratio of expense to traffic handled, easily can be set up with the present arrangement.

It is apparent that it is in the best interest of REA and the railroads, as well as the general public, that H.R. 1986 not be passed. The railroads, after 33 years of losing millions on express traffic, should not be permitted to destroy the arrangement that has nearly eliminated the deficits in fewer months than they have continued in number of years.

In closing, let me add that with the provisions of section 557 remaining on the books, and with REA's present rate of progress, REA may soon be paying to the railroads greater revenue than that which the railroads presently receive for hauling parcel post. This cannot happen if H.R. 1986 is passed.

Mr. DULSKI. Thank you, Mr. Hoffman. As you know, the House is meeting today at 11 o'clock, and there are quite a few questions that I have listed to ask you. You have a long statement, and I have made some notations, but as long as the House will be in session at 11, we will have to have another meeting, and I would like to ask some questions of you at a later date, at the call of the Chair.

Mr. HOFFMAN. I would be very happy to come back and answer any questions.

Mr. DULSKI. Thank you very much, and I am sorry. Well, I need not make any apology; I think you know that the House meets at 11 o'clock, so the meeting is adjourned.

(Thereupon, at 10:50 a.m., the committee was adjourned, to reconvene upon the call of the Chair.)



## REPEAL OF PROVISIONS RELATING TO THE FURNISHING OF INFORMATION TO THE POSTMASTER GENERAL BY THE INTERSTATE COMMERCE COMMISSION

FRIDAY, APRIL 14, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 215, House Office Building, Hon. Thaddeus J. Dulski presiding.

Mr. DULSKI. The subcommittee will come to order.

This morning the subcommittee is convened for the fourth day of hearings on H.R. 1986 and H.R. 5600.

The chairman of the full committee has been informed that the Postmaster General will send an official recommendation for postal rate adjustments to the Congress in the immediate future. As previously announced by the chairman in executive session on March 7, hearings will be scheduled on the official recommendation as soon as possible. The hearings undoubtedly will require the full time and attention of the committee, and the use of the committee room, for a considerable period of time.

Under these circumstances, it is imperative that subcommittees presently considering individual bills, including this subcommittee, proceed with dispatch to complete public hearings on the bills before them. Therefore, this subcommittee will conclude its public hearings with today's session and then adjourn subject to the call of the Chair.

Witnesses scheduled in the regular order, pursuant to timely request, will be heard first. They are Mr. Frederick C. Freund of the American Trucking Associations, Inc.; Acting General Counsel Louis C. Doyle of the Post Office Department, and Mr. William B. Johnson of the Railway Express Agency. If time then permits, we will also receive testimony from Mr. William E. Hastings of the Greyhound Corp. and Mr. Warren A. Goff of Transcontinental Bus System, Inc., representing the National Trailways Bus System, whose requests to be heard were received only within the last 48 hours. To conserve time in the interest of accommodating all witnesses so far as we can, it is suggested that the witnesses be allowed to complete their prepared statements without interruption, subject to such later questions as the members may have.

If time does not permit completion of the statement of any witness, the remainder, without objection, will be inserted in the printed record of these hearings.



I also have statements to be inserted in the record. One is from Hon. Jacob H. Gilbert, Member of Congress; Mr. A. W. Koehler, secretary-manager of the National Association of Motor Bus Owners; Mr. William F. Chase, president of the Chamber of Commerce of Greater Pittsburgh, Pa.; and Mr. Robert E. Vantine, chairman of the National Retail Merchants Association Transportation Committee, New York City.

(The statements follow:)

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., March 21, 1961.

HON. THADDEUS J. DULSKI,  
Chairman, Special Subcommittee,  
House Post Office and Civil Service Committee,  
Washington, D.C.

DEAR TAD: I wish to express my interest in H.R. 1986 which I understand is now before your special subcommittee. I believe this is identical in intent to H.R. 7055 which was the subject of extensive hearings last year, when I was a member of the House Post Office and Civil Service Committee.

I am in favor of H.R. 1986 and trust that it will receive favorable consideration.

Thanking you for your kind attention, and with kindest personal regards, I am,

Sincerely yours,

JACOB H. GILBERT, *Member of Congress.*

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,  
Washington, D.C., March 30, 1961.

Re H.R. 1986.

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
House Office Building,  
Washington, D.C.

GENTLEMEN: The captioned bill would repeal section 557 of title 39 of the United States Code. The National Association of Motor Bus Owners is opposed to repeal of section 557. Since the association will not be presenting a witness to appear at the hearings on this legislation, which we understand closed on March 29, 1961, it is respectfully requested that this letter be incorporated in the record in lieu of testimony.

NAMBO is the national trade association for the intercity motorbus industry. It serves as spokesman for nearly 1,000 carriers which account for about three-fourths of the intercity motorbus transportation in the United States. The intercity bus industry serves all of the major cities in this country. It furnishes the only means of public passenger transport in thousands of communities which, for economic reasons, the railroads and airlines do not serve. The bus industry also supplies the only package express and first-class pouch mail service in many of these communities.

Section 557 empowers the Post Office Department to ascertain the costs to rail carriers of the transportation of express by express companies. It authorizes the Postmaster General to scale down mail payments to railroads where they exceed express costs. The statute assumes that the transportation of express is comparable to the transportation of non-first-class mail. The experience of NAMBO's members confirms the fact that these services are comparable.

The effect of this statute is to require mail rates to approximate express costs. This enables the Post Office Department to protect itself from making payments for mail transportation by the railroads which are used to subsidize express companies.

The U.S. Government should not be in the position of making mail payments to railroads which may be used to subsidize express operations by the Railway Express Agency or any other express companies. Such subsidization would



be contrary to the national transportation policy (49 U.S. Code preceding secs. 1, 301, 901, and 1001) and would place an improper burden on the budget of the Post Office Department.

The bus operators forming the membership of NAMBO compete with the Railway Express Agency for express traffic. This express business furnishes the revenues to the bus companies which are essential to their survival. The fares paid by passengers on regularly scheduled bus operations are insufficient to meet expenses on most of the routes operated by bus companies. For this reason continuation of essential regular route service, often the only public transportation service available in smaller communities, depends upon revenues from express as well as mail and charter operations. These revenues would be jeopardized by any device which would enable the Railway Express Agency to cut its rates below cost and uneconomically extend its operations to communities not now served. The agency could engage in such unfair competitive practices if its losses were underwritten by the railroads through the use of mail pay. The result would be that many essential bus operations would be forced out of business and the public deprived of needed passenger and charter services.

For the foregoing reasons NAMBO urges this committee not to approve any legislation which would open the door to possible subsidization of the operations of the Railway Express Agency by mail payments made to railroads. Since H.R. 1986 would remove one of the safeguards against such unfair competition and misuse of mail revenues, it is vigorously opposed by NAMBO.

Very truly yours,

A. W. KOEHLER,  
*Secretary-Manager.*

PITTSBURGH, PA., April 3, 1961.

HON. TOM MURRAY,  
*Chairman, Post Office and Civil Service Committee,  
House Office Building, Washington, D.C.*

Greater Pittsburgh Chamber of Commerce, representing members throughout western Pennsylvania, urges prompt support H.R. 1986, repealing certain obsolete provisions of Railway Mail Pay Act pertaining to furnishing revenues derived from express service. Without prompt enactment of this legislation future of REA Express would be seriously jeopardized to detriment of members of shipping public this area and entire United States.

WILLIAM F. CHASE,  
*President, Chamber of Commerce of Greater Pittsburgh.*

NATIONAL RETAIL MERCHANTS ASSOCIATION,  
*New York, N.Y., April 11, 1961.*

HON. THADDEUS J. DULSKI,  
*Chairman, Subcommittee Post Office and Civil Service Committee, House of Representatives, Washington, D.C.*

DEAR CHAIRMAN DULSKI: The Traffic Group of the National Retail Merchants Association, which association represents some 11,500 department and specialty stores, at their meeting on January 9, 1961, voted to approve the elimination of section 557 of the Railway Pay Act of 1916 as proposed by H.R. 1986.

These stores represent the largest users of railway express service in the country and feel that this particular provision of law militates against the continuance of railway express service to its members. We urge passage of H.R. 1986.

Sincerely yours,

ROBERT E. VANTINE,  
*Chairman, NRMA Transportation Committee.*



**STATEMENT OF FREDERICK G. FREUND, DIRECTOR OF TRAFFIC,  
AMERICAN TRUCKING ASSOCIATIONS, INC., AND EXECUTIVE  
DIRECTOR, NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION,  
INC.**

Mr. FREUND. My name is Frederick G. Freund. I am director of traffic, American Trucking Associations, Inc., and executive director, National Motor Freight Traffic Association, Inc. I have been employed by American Trucking Associations for approximately 12 years.

I appear here today for the American Trucking Associations, Inc., a federation of State trucking associations, representing all forms of motor transportation of property.

I appear in opposition to H.R. 1986 which would repeal the provisions of section 557, title 39, United States Code. This provision reads:

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

In enacting section 557 the purpose of the Congress was to obtain for the public for the transportation of second-, third-, and fourth-class mail matter the same treatment, pricewise, as that received by the express companies from the railroads for a comparable service.

Long and careful consideration led the Congress to the conclusion that such mail and express traffic are physically identical, and the transportation problems surrounding the one are comparable to those surrounding the other. This comparability was recognized by the Interstate Commerce in its decision in *Re Express Rates*, 1913—26 I.C.C. 132, at page 139.

\* \* \* express service is radically different from the service performed by the railroads in the carriage of passengers and property and is more precisely comparable with the service performed for the public by the Post Office Department.

This comparability and the competitive nature of the two services has long been recognized by the Railway Express Agency.

From the very beginning railway express service has been in competition with non-first-class mail service. At one time the express companies held themselves out as carriers of first-class mail but that attempt was stopped by court action. Congress was well aware of this competitive situation when it enacted the Parcel Post Act of 1912.

Congress was also fully aware that the public interest had to be protected against undue preference for express matter as against mail matter. Congress believed that it was providing such protection against undue discrimination when it enacted section 557. The Interstate Commerce Commission recognized this in *Express Contract* (1920, 59 ICC 518, 523, 552) where the Commission said:

The carriers are insistent that they shall be fully compensated for the cost of the mail service, including a 5.75-percent return upon investment. They are not insistent, however, upon the same result in the case of the other two services (passenger and express).



The contrast in this respect between the mail and express services is very sharp. These two services are to a considerable extent in competition with each other \* \* \*. In the case of the mails, as above indicated, they have been and are both insistent and persistent in endeavoring to obtain full compensation based upon a cost analysis. In the case of the competitive express service there has been no such endeavor. On the contrary, under their contract with the American Railway Express Co. the railroads in effect assumed the financial risks of the express business and agreed to compensation of an indefinite and uncertain character for their services without undertaking to ascertain or estimate the costs.

Commissioner Eastman in his dissenting opinion in *Railway Mail Pay* (1928, 144 ICC 725), also commented on this practice when he stated at page 727:

It is not "fair" in my opinion for the railroads to demand full compensation from the Government for the carriage of the mails when they make no similar demand upon the competitive express service.

Despite the fact that postmaster generals have on a number of occasions performed their statutory duty by requesting information from the Interstate Commerce Commission, section 557 has never been complied with. As a matter of fact, it is our understanding that the Commission has consistently denied that it has any obligations or duties to perform under the section.

The Interstate Commerce Commission in its testimony in connection with H.R. 7055 on June 15, 1960, before the Committee on Post Office and Civil Service, House of Representatives, 86th Congress, stated, in effect, as reason for declining to grant the request of the Postmaster General, that section 557 does not place upon the Commission either the duty or mandate to make an investigation and study of the present operations of the railroads and the Express Agency in connection with the transportation of express matter and the revenue derived from such transportation for the purpose of formulating rates and, further, that the section—557—does not contain any direction to the Commission from the Congress to do so.

This reasoning is difficult to follow. The statute reads that the Postmaster General shall request information from the Interstate Commerce Commission. It must be assumed that Congress was not performing a vain act in directing the Postmaster General to make the request, and it must necessarily follow that they intended the Interstate Commerce Commission, which is an arm of Congress, to comply with the request. Any other interpretation would render the statutory provisions nugatory.

The Commission witness at the June 15, 1960, hearing in commenting on the feasibility of furnishing the information required by section 557, at pages 3 and 4 of the printed hearings, said:

Even if an investigation were undertaken by the Commission to determine the amount of express matter carried by the railroads in any given period of time, upon a space, weight, or other basis, and the relation of that amount, by units of service or otherwise, to the revenue which the railroads received from Railway Express, the information developed would only reflect, or be reportable as, the result of operations during a selected prior period, and business conditions change. Hence, they would have no prospective application or effect. The data thus obtained, even if related to amounts of service performed in selected units of service, would not result in an ascertainment of rates charged by the railroads for service furnished the Express Agency. A legal rate must at least cover out-of-pocket costs, and there has been a heavy deficit for years. An



investigation of this type would be a major undertaking, would require considerable time, and the information developed would be useless for the contemplated purpose.

This statement is most difficult to understand, and if accepted on its face it makes the cost studies of the Interstate Commerce Commission of railroad and motor carrier operations suspect. These studies are made on the basis of operations during a selected period and not in the prospective. The most recent cost study made by the Cost Finding Section of the Interstate Commerce Commission of rail operations is dated November 1960.<sup>1</sup>

It is based on the rail operations during the year 1959.

Studies of this nature are updated and given current application by the ICC, to reflect so-called business changes since the time of making the study by a cost-finding technique designed to reflect, for example, changes in wage rates or other changes that would affect the validity of the previously made study.

These costs so developed are used almost daily by the Interstate Commerce Commission in determining whether or not proposed rates, rail or motor, satisfy the requirements of the act. We are at a loss to understand why a similar application could not be made to Railway Express Agency operations.

From information available it appears it can be. In I. & S. No. 7304, Railway Express Agency, Inc.—Aggregate Rates on Wearing Apparel, a proceeding involving reduced rates on wearing apparel, Mr. Charles W. Bock, chief cost accountant of the Railway Express Agency, at pages 30 and 31 of his verified statement in this case said:

4. Railroad out-of-pocket line-haul cost: The REA express cost per shipment of \$2.92 for wearing apparel traffic includes an estimated \$1.51 per shipment for out-of-pocket line-haul expense of railroads in hauling shipments from origin to destination.

This line-haul cost was computed for the traffic potential from each of the 47 shippers in the study using the average weight per shipment, average weight density, and average shipment mileage from origin to destination determined by the analysis of each shipper's traffic discussed above.

The railroad out-of-pocket cost factor used in our calculations was \$0.007463 per car foot-mile. A car foot-mile is the movement of the cubic space represented by one linear foot of an express car 1 mile. It should be understood that under the terms of the standard express operations agreement with the rail companies. REA express does not, until July 1961, pay for line-haul rail services at a rate per car foot-mile. Therefore, the cost factor used in the study is an estimate of railroad out-of-pocket cost for hauling express traffic. It is a reasonable approximation of the rate which will be paid beginning July 1, 1961, under the terms of the standard express agreement which will then obtain. This agreement was explained and approved by the Commission in Express Contract, 1959, 308 ICC 545.

Another factor used in the computation of the rail line-haul cost per shipment is an average lading per car-foot of 32.2 cubic feet. This figure is based on loading tests of express traffic which reveal minimum capacity loading to be 14 pieces per car-foot. The average piece size of express is 2.3 cubic feet and the multiplication of pieces per car-foot by the average piece size produces 32.2 cubic feet per car-foot. This figure is approximately 50 percent of the actual cubic dimensions of a rail-car-foot.

He estimated the rail line-haul cost to be 0.7463 cents per car-foot-mile or 0.02318 cents per cubic-foot-mile.

In *Increased Express Charges Within Eastern Territory*, 300 I.C.C. 597, decided May 31, 1957, Mr. J. L. Heywood, the assistant comptrol-

<sup>1</sup> Rail Carload Cost Studies by Territories for the year 1959, Statement No. 5-60.



ler of the Pennsylvania Railroad, undertook to show the cost of operating railway service for the transportation of REA traffic.

Mr. Heywood's costs were based upon the operating expenses, rents, and taxes (excluding Federal income tax) of 16 eastern district railroads for the year 1955 (exhibit No. 8). The out-of-pocket cost (80 percent of the operating expense level) was increased to reflect the railway wage and price level of April 1, 1956. Mr. Heywood determined the rail out-of-pocket line-haul cost to be 0.8287 cents per car-foot-mile.

No attempt will be made to reconcile the disparity in the figures of the two experts but the data cited are sufficient to show that the information required under section 557 can be furnished and has been furnished when it suits the purpose of the railroads or the Railway Express Agency.

Since the unit cost of 0.7463 cents per car-foot-mile purports to be a current cost and the figure of 0.8287 cents is based on the year 1955, the discrepancy is substantially greater than indicated by a mere comparison of the figures.

The Commission would seem to have an obligation under section 557 to resolve this wide variation as well as its normal obligation under the Interstate Commerce Act. However, as pointed out earlier, the Commission witness at the June 15, 1960 hearing, stated that the Commission was incapable of executing a function required by section 557.

Below is a table showing a comparison of parcel post rates, post office payment to railroads, railway express charges to the public, and REA payment to the railroads under the condition indicated. This information was taken from the verified statement of Delbert M. Steiner in I. & S. 7304.

(The table follows:)

*Comparison of parcel post rate and railway mail payments with railway express rate and railway payment for the movement of express*

| From New York City to— | Railway short line miles | 5 20-pound packages                          |                      |                               |                                       |
|------------------------|--------------------------|----------------------------------------------|----------------------|-------------------------------|---------------------------------------|
|                        |                          | Parcel post service Post Office <sup>1</sup> |                      | REA express service           |                                       |
|                        |                          | Charge to public                             | Payment to railroads | Charge to public <sup>2</sup> | REA payment to railroads <sup>3</sup> |
| Boston, Mass.-----     | 247                      | \$5.65                                       | \$2.22               | \$3.08                        | \$0.69                                |
| Atlanta, Ga.-----      | 866                      | 11.25                                        | 5.49                 | 4.58                          | 2.41                                  |
| St. Louis, Mo.-----    | 1,040                    | 11.25                                        | 6.41                 | 5.55                          | 2.89                                  |
| Miami, Fla.-----       | 1,353                    | 13.75                                        | 7.95                 | 5.67                          | 3.71                                  |
| Dallas, Tex.-----      | 1,644                    | 13.75                                        | 9.59                 | 6.52                          | 4.57                                  |
| Seattle, Wash.-----    | 2,914                    | 19.80                                        | 16.29                | 9.45                          | 8.11                                  |

<sup>1</sup> Based on the 1957 railway mail payments as introduced by witness Edmund J. Walsh, on behalf of the Post Office Department, exhibit F to statement No. 7, in ICC No. 32158.

<sup>2</sup> Based on railway express charges under incentive rates where the shipper forwards 10,000 pounds or more a day.

<sup>3</sup> REA payments to railroads based on level of "rate which will be paid beginning July 1, 1961" (verified statement of Charles W. Bock) (p. 31): 0.7463 cents per car-foot-mile; 0.02318 cents per cubic-foot-mile.



The purpose of the tabular information is to show the disparity in payments of the Post Office vis-a-vis the Railway Express Agency to the railroads for a comparable service based on the sources indicated. The provisions of section 557 are comparable to the provisions of section 3(1) of the Interstate Commerce Act, which provides in effect that it shall be unlawful for any common carrier subject to the provisions of part I to make, give, or cause "any undue or unreasonable preference or advantage, to any particular person, company, firm, corporation \* \* \*." This provision of the act is designed to prohibit and make unlawful any undue preference or unreasonable advantage being given any particular person, firm, etc. The question is why should not the Post Office have the same protection.

Much has been said in the testimony of the witnesses for the Railway Express that if section 557 is not repealed as they advocate, the continued existence of the Railway Express Agency would be, to say the least, put in jeopardy.

The new contract to which the express representatives refer in their testimony provides a section 4, which reads as follows:

SEC. 4. Notwithstanding the provisions of sections 2 and 3 of this article, in the event that prior to the effective date of such provisions section 557 of title 39 of the United States Code shall not have been repealed or amended so as to be inapplicable to railroad owned or controlled express companies, such provisions of sections 2 and 3 shall not take effect.

And I call your attention to the last sentence:

"In that event—" that is, in the event of nonenactment of this legislation—"the board of directors of the express company may prescribe a temporary basis of payment producing comparable results."

The provisions of this section would appear to dissipate the fears expressed by the REA representatives.

As previously stated, the provisions of section 557 were enacted to secure equality of treatment between the Post Office Department and express companies where a comparable service is provided by the railroad for the Post Office Department and the Railway Express Agency. There certainly should be no objections to the Post Office receiving the same treatment as the Railway Express Agency does for a comparable service, particularly so when the same service, in many instances in the same car in the same train, is provided for both.

In 1959, 538 class I common carriers of general commodities reporting to the Interstate Commerce Commission transported a total of 219,490,457 shipments in intercity service. Of this total 5,948,516 shipments or 2.71 percent of the total were truckload shipments, that is, shipments weighing 10,000 pounds and over according to the statistical standards set by the Interstate Commerce Commission for this type shipment. During the same period it transported 213,541,941 less-than-truckload shipments which constituted 97.29 percent of the total. (Source: ICC Transport Statistics in the United States, pt. 7—Motor Carriers—Year 1959. Class I motor carriers are those whose gross revenues are \$1 million or more per year.)

The trucking industry is primarily a transporter of less-than-truckload shipments, in rapidly growing competition with REA. The repeal of section 557 would permit the railroads to subsidize their satellite, the REA, through the medium of charging the Post Office higher rates than the Railway Express Agency for like units of service.



This subsidy, in turn, would enable REA to cut its rates on traffic for which it competes with independent motor carriers. Such a rate cut, if made because of an inherent advantage possessed by REA would be one thing; but where, as here, its only justification would be a subsidy paid by the Post Office for the transportation of mail, any saving to the public would be an illusion and constitute destructive competition prohibited by the National Transportation Policy.

Repeal of section 557, particularly if it implies an acceptance of the helplessness expressed by the Commission witness at the June 15, 1960 hearing, will create an unprecedented situation in the regulatory functions of the Commission.

The Post Office Department does not have primary access to railroad cost data and would not be in position to make any demonstration of unreasonable relationships between the charges for mail service and for railway express service performed by the railroads. The unfairness is even more striking in the case of motor carriers.

For many years the Cost Finding Section of the Commission has been issuing territorial cost releases setting forth the results of detailed analyses of motor carrier costs which facilitate determination of the motor carrier costs of handling the traffic which is basically competitive with Railway Express. In 1961 alone five such territorial cost studies were issued by the Commission's Cost Finding Section.

By contrast, the last analysis of the cost of handling express traffic made by the Cost Finding Section on its own initiative, constructed on very sketchy bases, was for the year 1951 and appeared as Statement No. 3-53 of the Bureau of Accounts and Cost Finding.

Thus, the costs incurred by motor carriers in handling traffic competitive with Railway Express are spread on a public record while the railroad cost of handling express traffic is an internal secret, details of which are to be revealed only when it suits the purposes of the railroads and Railway Express.

The Commission witness at the June 15, 1960, hearing stressed the burdensome nature of the studies necessary to comply with section 557. In Docket No. 33316, Railway Mail Pay, 1960, decided November 17, 1960, the Commission concluded its opinion with the following statement at sheet 15:

Experience in prior proceedings has shown that adjustments in compensation and rates of pay for mail services have necessitated large expenditures for carrier cost studies. We are led to believe that such studies cannot be avoided in developing adequate records in future proceedings of this character. However, such expenditures can be substantially curtailed if the Post Office Department and the railroads cooperatively undertake the joint development of feasible sampling methods to be periodically employed during representative calendar-year periods for the purpose of obtaining current information reflecting refined mail costs. To this end, we shall expect representatives of the parties herein to meet with the Chief of our Cost Finding Section within 60 days from the effective date of our order herein.

The above recommendation is an admirable one. If it can be established as a proper procedure for the determination of the costs of handling railway mail, there is no conceivable reason why the same principles do not apply with equal force to the determination of Railway Express costs, since to a considerable extent the mail and the express costs are either of a common or a joint nature.



Mr. Johnson, of the Railway Express, in his statement before you dated March 8, 1961, candidly admits that the Railway Express operation has been a deficit operation. At the same time he also states that since the beginning of 1960 they have invested or committed over \$14 million in borrowed or depreciation funds for equipment and facilities.

Obviously the Express Agency cannot continue to be a deficit operation and at the same time make added investments in a deficit enterprise. The transportation trade journals contain information from time to time as to the expansion of the activities of the Railway Express. It would appear from these trade journals that Railway Express Agency is contemplating, in addition to other things, being a consolidator, a freight forwarder operation, including an unrestricted operation by motor carrier as the primary and certificate-holding carrier.

The funds to support such an operation must come from some source. The question is: Is the deficit to be eliminated and the added investment made up, through added costs for the transportation of mail?

The Post Office Department should have afforded to it the same type of protection that is afforded other shippers under section 3(1) of the Interstate Commerce Act. The information required by section 557 is available from the parties; the Interstate Commerce Commission has the authority to require its filing and should do so in order that the Postmaster General have available to him the information so that he may, in the public interest, intelligently negotiate railway mail contracts.

Section 557, therefore, rather than being repealed, should be strengthened and clarified to spell out the responsibilities of the regulating agency in this area.

Gentlemen, I thank you.

Mr. DULSKI. I have only one question, sir.

On page 3 of your statement there is a quotation taken from the pay act. It says:

It is not "fair" in my opinion for the railroads to demand full compensation from the Government for the carriage of the mails when they make no similar demand upon the competitive express service.

What do you have reference to there?

Mr. FREUND. Sir, it says—in other words—

Mr. DULSKI. It is a quotation you took out of context. Where does that apply in this case here?

Mr. FREUND. Well, Mr. Eastman was pointing out in this case that the railroads demanded full compensation from the Post Office Department for the carriage of mails. However, in the case of the express services, the railroads did not demand full compensation from the Railway Express Agency, which is operated as a different organization for the railroads.

Mr. DULSKI. Thank you.

Any questions?

Mr. GROSS. On page 8, Mr. Freund, I wonder if you have any opinion as to what is meant by comparable results, in section 4 of the proposed contract between the railroads and the express company?



Mr. FREUND. Sir, I can only construe that in the event that this legislation does not pass and section 557 of title 39 is not repealed, then instead of doing what they would do in the event that this section were repealed, then they will meet and arrive at some other arrangements, which will affect a comparable result as compared to what they originally contemplated if this legislation were passed and the statute repealed.

Mr. GROSS. I thought that is what must be meant. You apparently don't think the Express Co. is going to go out of business if this section of the law is not repealed?

Mr. FREUND. I don't think so, sir; that's my honest opinion.

Mr. GROSS. Was it July 1, 1960, if 7550 had been repealed, whatever the number of it is, the bill 7055, the bill we had last year—was the date July 1, 1960?

Mr. FREUND. July 1, 1961, as I understand it, sir.

Mr. GROSS. 1961.

Mr. FREUND. This is the year.

Mr. GROSS. The contract would have taken effect, had the law been repealed, as a result of congressional action last year. Is that correct?

Mr. FREUND. Sir, as I understand it, the contract is to become effective July 1, 1961.

Mr. GROSS. Yes, had the law been repealed last year, it would have been effective then in July of this year.

Mr. FREUND. That is right. That is my understanding, sir.

Mr. GROSS. That is all.

Mr. DULSKI. Thank you very kindly, sir.

The next witnesses are the gentlemen from the Post Office, Mr. Louis Doyle, Acting General Counsel, accompanied by Mr. Paul Meininger, Associate General Counsel, Mr. Frederick Batrus, executive assistant to the Assistant Postmaster General, Bureau of Transportation, and Mr. Edmund J. Walsh, Acting Assistant Comptroller, Bureau of Finance.

Mr. DULSKI. The next witnesses are the gentlemen from the Post Office, Mr. Louis Doyle, Acting General Counsel, accompanied by Mr. Paul Meininger, Associate General Counsel, Mr. Frederick Batrus, executive assistant to the Assistant Postmaster General, Bureau of Transportation, and Mr. Edmund J. Walsh, Acting Assistant Comptroller, Bureau of Finance.

**STATEMENT OF LOUIS J. DOYLE, ACTING GENERAL COUNSEL, ACCOMPANIED BY PAUL MEININGER, ASSOCIATE GENERAL COUNSEL, FREDERICK E. BATRUS, EXECUTIVE ASSISTANT TO THE ASSISTANT POSTMASTER GENERAL, BUREAU OF TRANSPORTATION, AND EDMUND J. WALSH**

Mr. DOYLE. I am Louis J. Doyle, Acting General Counsel. On my left is Mr. Walsh, and, to his left, Mr. Batrus, executive assistant to the Assistant Postmaster General, Bureau of Transportation, and on the extreme left, Paul Meininger, Associate General Counsel, who will be the principal witness appearing this morning.



We also have with us, to provide the committee with such information as it may need, the Deputy Assistant Postmaster General, Lindsley Noble, on my right, and present in the room also is Mr. Lewis Hicks, director of the cost ascertainment system.

Mr. DULSKI. You are well prepared.

Mr. DOYLE. Yes, sir.

At the outset, Mr. Chairman, I would respectfully request the letter of the Postmaster General dated March 29, 1961, be made a part of the record.

Mr. DULSKI. There being no objection, it is so ordered.

(The letter follows:)

OFFICE OF THE POSTMASTER GENERAL,  
Washington, D.C., March 29, 1961.

HON. TOM MURRAY,  
*Chairman, Committee on Post Office and Civil Service,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for a report on H.R. 1986, a bill to repeal the provisions of section 5 of the act of July 28, 1916, as amended, relating to the furnishing of information to the Postmaster General by the Interstate Commerce Commission with respect to revenue received by railroads from express companies for the transportation of express matter.

This Department opposes the enactment of this bill.

The statute sought to be repealed was enacted as a part of the Railway Mail Pay Act of July 28, 1916, which embraced a comprehensive plan for regulation of the transportation of mail by railway common carriers. That act authorized the Postmaster General to prescribe service requirements applicable to the transportation of mail by such carriers, and also authorized the Interstate Commerce Commission to fix fair and reasonable rates and methods of compensation for the service required by the Post Office Department.

This provision of law which H.R. 1986 proposes to repeal was enacted by the Congress to protect the Post Office Department from discriminatory charges applicable to the transportation of mail by railroad, and to provide a mechanism under which the Postmaster General could, in his discretion, arrange for the transportation of mail other than first-class mail at rates no higher than those received by the railroads for services rendered in the transportation of express matter.

The records of the Department show that extensive efforts have been made in the past to implement the principles and objectives of this statute. For example, starting in 1947 the Department initiated requests upon the Interstate Commerce Commission to furnish the information required by the provision. These requests led to the filing of a formal request on October 22, 1948, in I.C.C. Docket No. 30177. This request was denied by the Commission by its decision and report of July 29, 1949, *Railroad Rates on Express Matter*, 274 I.C.C. 683. The Commission ruled that the request for an ascertainment and report of rates for the transportation of express matter could not be complied with and that the provision of the statute relied upon did not require the Commission to make the investigation requested. Although denying the Department's request, the Commission did arrange to provide information which it had in its possession and certain other information to be furnished by the Railway Express Agency which was readily available.

Similar requests were made in railway mail pay reexamination proceedings initiated by railway common carriers in 1953 and thereafter; however, these requests were not pressed by the Department in those proceedings. However, in its 1954 decision in *Railway Mail Pay*, 292 I.C.C. 101, the Commission concluded that it should not make any different findings or conclusions from those made in its 1949 decision.

The latest request by the Department to obtain information required by this provision was initiated on February 12, 1958, in docket No. 32380. This request was considered by the Commission as recently as May 20, 1959, and denied on the basis of its 1949 decision.



In these circumstances, the Department cannot support the proposal to repeal a provision of law designed by the Congress to provide a means for avoiding discriminatory rates for the transportation of mail by railroad which are in excess of those applicable to comparable commercial shipments.

Sincerely yours,

J. EDWARD DAY,  
Postmaster General.

Mr. DOYLE. With respect to that report, I have this to say: We have been advised by the Bureau of the Budget from the standpoint of the administration's programs there is no objection to the presentation of this report to the committee.

With that, sir, I would like to have Mr. Meininger read his prepared statement.

Mr. MEININGER. Mr. Chairman and members of the subcommittee. I wish to thank you for allowing an opportunity for representatives of the Post Office Department to appear today on behalf of the Postmaster General and to explain his position with respect to the measure under consideration.

At the outset, Mr. Chairman, I should like to ask permission to submit at this time a document entitled "History of Prior Efforts of the Post Office Department to Implement Section 557." As its title implies, this statement explains what efforts have been made in the past by the Post Office Department to enforce the principles and objectives of that portion of the Railway Mail Pay Act of July 28, 1916—39 Stat. 428, formerly codified as 39 U.S.C. 557—which is sought to be repealed by H.R. 1986. The statute in question will be referred to in my statement as section 557. It is requested that this exhibit be included in the record at this point as part of my testimony.

Mr. DULSKI. There being no objection, it is so ordered.

(The document follows:)

#### HISTORY OF PRIOR EFFORTS OF THE POST OFFICE DEPARTMENT TO IMPLEMENT SECTION 557

There is set forth below a brief history of the efforts of the Post Office Department to secure a meaningful implementation of that portion of section 5 of the act of July 28, 1916 (39 Stat. 428), which reads as follows:

"The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General."<sup>1</sup>

The Railway Mail Pay Act of July 28, 1916, 39 Stat. 412, 419, 425-431, of which section 557 was a part, embraced a comprehensive scheme for the regulation of transportation of mail by railway common carriers. The act authorized the Postmaster General to prescribe service requirements applicable to the transportation of mail by railway common carriers; and authorized and directed the Commission to fix fair and reasonable rates and methods of compensation.

1919

In 1919, the first railway mail pay proceeding was decided by the Interstate Commerce Commission,<sup>2</sup> *Railway Mail Pay*, 56 I.C.C. 1 (1919). The Department made no formal request for information pursuant to section 557, as was

<sup>1</sup> Hereinafter referred to as sec. 557.

<sup>2</sup> Hereinafter referred to as the Commission.



done in later proceedings described hereinafter. It is of interest to note, however, that the railroads in their brief filed in that proceeding pointed out that the great preponderance of the mail is directly competitive with freight or express service and then argued that:

"\* \* \* It is the view of the railroad companies that it should be a matter of indifference to them whether a given parcel of merchandise moves by less than carload freight, by express, or by parcels post, and that their revenue should be so adjusted that, if it moves by parcels post instead of by one of the other two means of transportation, they may obtain for its transportation by that agency a rate commensurate with the rate for the transportation of less than carload freight, or of express matter" (brief of Railroads, pp. 24-25).

The railroads contended in their brief that the revenue from parcels post was much less than from the movement of the articles embraced therein when moving by express or less than carload freight. They proposed rates for the transportation of mail said to be "fairly related to the revenue derived from the movement of the same or analogous articles by freight or express." They proposed a basic weight rate described by them as the "irreducible minimum below which storage mail should not be carried, if the compensation therefor is to be determined with any reference to revenue received from express and freight with proper allowance for the difference in service and cost" (brief of Railroads, pp. 111-123; 221-225).

Similarly, the Department urged upon the Commission its view that, having charged to the mails the full estimated cost of carrying them, the fair and reasonable proposition to charge to the mails in addition thereto would be the same relative net income which the railroads received for the carriage of express. It also submitted certain exhibits to the Commission showing payments to the railroads per ton-mile for express matter for the several classifications as applied to the ton-miles performed in the several units of mail service as a basis for approximating the annual compensation for the carriage of mail (Department's brief, pp. 716-718, 732).

These applications of the principle of equality of mail and express revenue on the part of the railroads and the Department produced divergent results. However, both expressed accord with the underlying principle of section 557—that mail rates should be fixed on the basis of the comparative standard of reasonableness reflected by the revenues received by railroads in the carriage of express. In its report the Commission recognized the principle that compensation for the mail "should bear some relation to what the railroad can earn by using space required by the Department for some other purpose." The Commission considered express revenue per 60-foot-car-mile, per ton-mile, and per car-mile, regarding the car-mile basis as "more nearly proper in comparing mail and express payments to the railroads" (56 I.C.C. 1, at pp. 44-45, 64).

#### 1928

Over 30 years ago, in 1928, in what may be characterized as the second general railway mail pay case, *Railway Mail Pay*, 144 I.C.C. 675 (1928), the Department again sought to invoke the principle underlying section 557. Although recognizing the proceeding was not one in which the Postmaster General had specifically requested an ascertainment for the purpose of himself fixing mail rates under section 557, the Department urged the Commission to give effect to the principle that mail rates should not exceed those which would produce revenue no greater than produced by express for like units—in other words, the revenue should be equal. Accordingly, it argued that rates for mail service should be subject to a differential so that the car-mile rate of revenue for mail other than first class, when designated and offered by the Postmaster General as such, should be at a rate not higher than the car-mile revenue for express received by the railroads (Department brief, pp. 358-362; 418-419). In prescribing an increase in rates of about 15 percent in that proceeding, the Commission noted this contention without giving it effect (144 I.C.C. 675, at p. 694). It is of interest, however, that Commissioner Eastman considered the application of the principle of section 557 as essential in order to meet the statutory criteria of "fair" rates. His dissent stated in part as follows:

"Finally, I call attention to the fact that it is our duty to fix 'fair' as well as 'reasonable' rates for the carriage of the mail. It is not 'fair', in my opinion, for the railroads to demand full compensation from the Government for the carriage of the mails when they make no similar demand upon the competitive express service" (p. 727).



## Year 1947

In the third general railway mail pay proceeding initiated in February 1947, *Railway Mail Pay*, 269 I.C.C. 357; 279 I.C.C. 633; 289 I.C.C. 503, which was finally decided November 13, 1951, the Department made intensive efforts to invoke section 557. The Commission allowed increases in mail pay in the neighborhood of 95 percent, effective on and after January 1, 1951, and readjusted compensation for the retroactive period on and after February 18, 1947, by increasing compensation by about 48 percent. The Commission also prescribed extensive changes in methods of compensation for future application involving, among other things, the separate statement of line-haul and terminal charges, and the elimination of full payment for empty return movements.

After a preliminary informal request upon the Commission in 1947 for information in accordance with section 557, as a result of which the Commission furnished data showing merely the revenue of railroads from express service, the Postmaster General, on May 18, 1948, filed a formal request for such information in docket No. 9200. The petition requested the Commission to furnish information pursuant to section 557 which would enable the Postmaster General to arrange for the transportation of non-first-class mail at rates not exceeding those received by the railroad companies for service rendered in the transportation of express matter. By order of July 23, 1948, the Commission denied this request on the following grounds: that information as to the revenue received by railroad companies from express companies had theretofore been furnished the Postmaster General and that "like information" would be furnished in the future; that the request of the Postmaster General if granted would unduly broaden the issues in the pending proceeding; and that the information requested would not be of substantial value in determining the issues before the Commission in that proceeding. Accordingly, the Postmaster General formally filed before the Commission on October 22, 1948, a renewed request for information to equalize mail and express rates. This latter request was filed independently of the proceeding pending in docket No. 9200 and, in support thereof, the Postmaster General alleged that the information previously supplied by the Chairman of the Commission did not meet the requirements in section 557 because it did not permit him to arrange for the transportation of non-first-class mail as provided therein. The Postmaster General's petition specifically requested the Commission to—

(1) Furnish him information as to the revenues received by the railroad companies for services for the transportation of express matter, including rates paid to the railroads for transporting express by units of service which will enable the Postmaster General to apply such rates to the transportation of non-first-class mail.

(2) Require by order that the railroads and the Railway Express Agency report to the Commission, and maintain currently, all the information, facts, statistics, and data essential to compliance with section 557.

(3) Take such further action by order or otherwise, as may be necessary and appropriate to enable the Postmaster General and the Commission to comply fully with section 557.

A brief submitted in support of the formal request contended, among other things, that section 557 required the Commission to furnish rates for units of service common to the carriage of express and non-first-class mail with such adjustments therein as might be necessary to reflect differences, if any, in the character of the service for these two classes of traffic. After a reply was filed by certain railroads in opposition to the petition, the matter was orally argued before the Commission on May 6, 1949.

In a report in docket No. 30177, entitled "*Railroad Rates on Express Matter*," 274 I.C.C. 683 (July 29, 1949), the Commission expressed the opinion that section 557 did not place upon it a duty or mandate to make an investigation and study of present operations of the railroads and the express agency in connection with the transportation of express matter, and the revenues derived therefrom, for the purpose of formulating rates; and that such section did not contain any direction to the Commission from Congress that it should do so. The Commission also made the following observations:

"The transportation of express matter by the railroads is not now and has not for many years been performed under any rates or system of rates. If an investigation were undertaken by us to determine the amount of express matter carried by the railroads for the express agency in any given period of time upon a space, weight or other basis, and its relation, by units of service or otherwise,



to the revenue received therefor from the express agency, the information derived would reflect, or be reportable only as, the results of operations in the period selected, and would have no prospective effort or application. The data obtained, even though they should be related to amounts of service performed in selected units of service, would not result in an ascertainment of rates charged by the railroads for service furnished the express agency."

The Commission ruled that the request of the Postmaster General for an ascertainment and report of rates for the transportation of express matter and for the entry of an order as described in the petition could not be complied with and was not granted. However, the Commission then concluded that the Postmaster General was entitled to any information the Commission had as to the revenues received by the railroads from the Railway Express Agency for the transportation of express matter, and any other information reported to it by the agency or the railroads with respect to such transportation. The Commission stated that, in addition to what was then reported there was other information in possession of the agency "which apparently is readily available and can be furnished without undue expense." The Commission initiated the procedure necessary to require the agency to prepare and report to the Commission quarterly and annually the following information:

1. The express privilege payments to the railroads separated as between carload and less-than-carload traffic.
2. The amounts paid by the express agency to motor carriers, carriers by aircraft and to miscellaneous carriers (carriers by water, electric lines, ferries, et cetera) for transportation service.
3. The car-foot miles of registered express space on common carriers by railroad, other than electric railroads.
4. The number of shipments of express matter handled by common carriers by railroad, other than electric railroads, stated separately for carload traffic and less-than-carload traffic.

The Postmaster General sought reconsideration and modification of the Commission's decision on the ground that the disposition of the request failed to provide information necessary to implement section 557. Reconsideration was opposed by the Railway Express Agency, Inc., and the railroads and denied by the Commission February 6, 1950. On March 14, 1950, Division 1 of the Commission ordered the express agency to file quarterly and annual reports of selected operating statistics in accordance with a form of report attached to the Commission's order. A request of the Postmaster General for modification of this order was denied May 18, 1950.

In proceedings entitled *Express Earnings, Plan and Method of Division*, 278 ICC 505 (1950), the Department intervened in 1949 in investigation proceedings instituted by the Commission in 1947 to determine whether practices of the express agency in the pooling and distribution of express revenues were lawful and reasonable. This intervention was a companion activity related to the objectives of the Department in docket No. 30177. Under investigation by the Commission was the so-called economy plan amendment of July 1, 1938, which changed the existing uniform operating agreement in respect to the apportionment of revenues between the agency and participating rail carriers. The economy plan provided, among other things, for the compilation and maintenance of car-foot miles of express transportation effort. In that proceeding the Department sought by motion to persuade the Commission to require the agency and participating railroads to furnish evidence with respect to express revenues, express car-foot miles, and express privilege payments; and also petitioned the Commission to compel the production of certain records in an arbitration proceeding under the express operations agreement effective March 1, 1929, and the economy plan amendment thereto, effective July 1, 1938, heard in the offices of the board of directors of the Railway Express Agency in New York City in January 1948. On September 23, 1949, the Commission denied the requests of the Department, and its participation terminated at that point.

#### 1953

In its reply to an application for increased rates filed in June of 1953, the Department made a new request upon the Commission to furnish to the Postmaster General the amount of payments received by the applicants from the Railway Express Agency for transporting express. This information was requested in such manner and form as to permit the Postmaster General to arrange for the transportation of mail at rates not exceeding those ascertained and reported to him by the Commission.



As a result of its studies of the relevant considerations the Department did not contest, for the purpose of the proceeding, a request by applicants for an increase of 10 percent in lieu of the full amount of 45 percent sought in their application. Accordingly, the Department did not press its request under section 557. However, the Commission, referring to the similar request filed in docket No. 30177, described briefly certain findings made in its prior decision, and, noting that no additional facts or arguments were presented at the hearing, concluded there was nothing, therefore, to warrant further consideration to determine whether it "should make any different findings or conclusions from those made in the decision referred to." *Railway Mail Pay*, 292 I.C.C. 101, at 102-3.

1959, docket No. 32380

The latest action by the Department to invoke the machinery of section 557 was initiated by a request filed by the Department on February 12, 1958, in docket No. 32380. The Association of American Railroads (AAR) requested that the Commission deny or dismiss this request. On May 15, 1958, the Postmaster General moved that the Commission institute an investigation to comply with his request and moved to strike the reply of the AAR.

Following the filing of a reply to the motion for investigation by 10 large railroads and a reply by the AAR to the motion to strike, the Commission entered an order September 29, 1958, denying the Postmaster General's request. In doing so the Commission adverted to requests filed by the Postmaster General in the proceedings previously described in 1948 and 1953 in docket Nos. 30177 and 9200, respectively. Its order of denial recited that the request and motion for institution of an investigation and the arguments in support thereof were in substance the same as those previously made in docket Nos. 30177 and 9200 and presented no facts or matters in addition to those presented in those dockets. The Commission then ordered that the Department's request for information and its motion be denied and overruled for the reasons stated in the reports in docket Nos. 30177 and 9200.

On December 17, 1958, the Department petitioned the Commission to reconsider its order of denial of the Postmaster General's request, and filed a comprehensive supporting memorandum. The Commission denied the Department's petition for reconsideration by order of May 20, 1959, which recited that information similar to that sought was considered and denied in docket Nos. 30177 and 9200 and that the petition for reconsideration presented no facts or matters in addition to those previously presented in docket No. 32380 or the proceedings in docket Nos. 30177 and 9200 that would warrant the Commission granting reconsideration of its prior order of September 29, 1958.

The pleadings and orders filed and entered in docket No. 32380 embrace a rather substantial number of typewritten pages (about 175). The documents filed in this docket are a matter of public record in the files of the Commission. A complete set of the principal pleadings in that docket was made available to the subcommittee appointed to consider H.R. 7055 at the June 1960 hearings.

Mr. MEININGER. In a report on H.R. 1986, dated March 29, 1961, the Postmaster General advised the chairman of the Committee on Post Office and Civil Service, House of Representatives, that the Department was opposed to the enactment of this measure. Pointing out that section 557 had been incorporated in the Railway Mail Pay Act of July 28, 1916, to protect the Department against discriminatory transportation charges for the transportation of non-first-class mail by railroad, the report stated that the Department could not support this proposal to repeal a provision of law designed by the Congress to provide a means for avoiding discriminatory rates for the transportation of mail by railroads which are in excess of those applicable to comparable commercial shipments.

Since legislative recommendations to repeal section 557 have been carried in recent annual reports of the Interstate Commerce Commission, and since H.R. 1986 has been supported by the Commission in the prior hearings held by the subcommittee, I wish to discuss briefly certain comments presented to the subcommittee by the Commission



and views reflected in the Commission's prior decisions with respect to section 557.

At the outset it is noted that testimony submitted in behalf of the Commission properly recognizes that section 557 was enacted by the Congress in 1916 "for the purpose of preventing rate discrimination by the railroads against the Government in the transportation of the mails."

The Department agrees with this expression of the purpose of section 557. However, the testimony presented by the Commission clearly implies that significant changes have occurred in the conduct of the express business by the railroads which now render the statutory provision obsolete. Thus, it is said that the railroads do not "now" receive a rate determined or agreed upon as reasonable for the service, but, rather, a share of the return of a business wholly owned by them, the amount of which varies with business conditions and the effectiveness of competition.

The testimony implies that in 1916 the situation was essentially different in that at that time the railroads were compensated on the basis of a system of rates, or, in other words, a specific rate structure.

As contended by the Department in prior proceedings before the Commission, no change of legal significance has occurred since enactment of section 557 in 1916 which affects the basic duty of the Commission to make an ascertainment of rates under the statute or which impairs its ability to do so. Prior reports of the Commission show that in 1916 railroads were compensated for the carriage of express on the basis of contracts between express companies and railroad companies. Although several bases of compensation were specified in these contracts, the prevailing basis was the percentage basis under which the railroads received varying percentages of the gross receipts of the express companies.

At present the railroads are similarly compensated for the carriage of express on a contractual basis. In 1916 the railroads were not compensated for this transportation service on the basis of a specific rate structure or system of rates, and they are not so compensated today.

The existence today of a single express agency having contractual arrangements with all express-carrying railroads would seem to represent a circumstance which would facilitate the rate ascertainment by the Commission in comparison with the situation existing when there were several express companies.

The investigation of the subject of mail pay, as shown by the Bourne Commission report (H. Doc. 1155, 63d Cong., 2d sess., p. 86) had demonstrated to the Congress prior to the 1916 act that "no reliable information exists as to the railroad earnings from express traffic on the basis of any unit common to the mail and express service." Therefore, section 557 was enacted with knowledge of this condition, which explains the reason why Congress entrusted the necessary rate ascertainment to the expertise of the Commission.

Mr. GROSS. If I may be permitted an observation at this point, it was made mandatory by the Congress that the Postmaster General seek this information under section 557. Is that not correct? The pertinent language reads:

The Postmaster General shall from time to time request information from the Interstate Commerce Commission.



Mr. MEININGER. That is right. It speaks in terms of command upon the Postmaster General and, as indicated by the Department's position in relation to requests previously filed on the Commission, we view the statute as, in effect, commanding the Commission to provide this information. Otherwise it would be somewhat meaningless.

Mr. GROSS. Yes. It was not discretionary, not permissive; it was mandatory legislation.

Mr. MEININGER. May I proceed, Mr. Chairman?

Mr. DULSKI. Yes.

Mr. MEININGER. Another observation in the testimony presented on behalf of the Commission is that, if an investigation were made to determine express matter transported by railroads in any given period of time upon a space, weight or other basis and the relation of that amount, by units of service or otherwise, to the revenue which the railroads received from the Railway Express Agency, the information developed would only reflect the result of operations during a selected prior period, and, since business conditions change, would have no prospective application or effect.

If this condition were considered an obstacle today to the enforcement of section 557, the same condition must have been an obstacle in 1916 when Congress enacted that section. We say this because it is well known that determinations with respect to rates and fares for future application invariably must utilize studies covering a base period antecedent in point of time to the period in which a future rate prescription becomes applicable.

Frequently, appropriate adjustments or projections are applied to the ascertained results of a study period to reflect current conditions as nearly as practicable. However, the rate ascertainment contemplated by the Congress in 1916 necessarily had to be predicated on the actual experience of a past period. The same condition prevails today.

The Commission's testimony also refers to the position expressed in its 1949 decision in the proceeding entitled "Railroad Rates on Express Matter," 274 ICC 683, July 29, 1949, discussed in more detail in Post Office Department exhibit A. This position was that the statute does not place upon the Commission the duty or mandate to make an investigation and study of the operations of the railroads and the Railway Express Agency, Inc.—REA—in connection with the transportation of express matter, and the revenues received from such transportation, for the purpose of formulating rates; and that the statute does not contain any direction to the Commission from the Congress to do so.

The Department submits that the conclusion in this respect reached by the Commission in 1949, and reiterated before this subcommittee, is contradicted both by the language of the statute and the legislative history of section 557.

The legislative history requires the conclusions that a rate ascertainment was required in 1916 to implement this law just as it is required today. This is shown by the fact that no rate structure or system of rates existed in 1916, and none exists today.

As stated in the last paragraph of my exhibit A, the Department made available to the subcommittee appointed to consider H.R. 7055, 86th Congress, a complete set of the principal pleadings filed with the Commission in the very latest proceeding in which the Depart-



ment sought to invoke the machinery of section 557 to secure the benefit of the Commission's rate ascertainment. These pleadings, particularly those filed by the Department, discuss the pertinent legislative history of section 557 at considerable length. That history leaves little room to question that the Congress intended to charge the Commission with responsibility to make the required rate ascertainment.

In the prior testimony before this subcommittee, reference has been made to the present standard express operations agreement between REA and railroads engaged in the transportation of express, effective October 1, 1959, setting forth conditions applicable to the transportation of express traffic by participating railroads. The Commission approved the continued pooling and division of traffic, service, and earnings under this agreement on September 21, 1959.

EXPRESS CONTRACT, 1959, 308 I.C.C. 545

In its report the Commission concluded that the pooling of service and earnings involved in the proposed plan does not differ essentially from that underlying previous express contracts approved by the Commission.

Under this agreement the present method of determining rail transportation revenue from other-than-carload shipments would be replaced by a plan for purchasing rail transportation on the basis of a car-foot-mile rate related to rail costs effective July 1, 1963. The transition to this new plan is to be gradual, and a temporary arrangement, effective July 1, 1961, would employ car-foot-mile rates applicable to each of the territorial groups of railroads as a part of the formula for determining the payments to individual railroads for transporting express.

The effectiveness of these new compensation arrangements is expressly made contingent upon repeal of section 557 or amendment of that section so as to make it inapplicable to railroad owned or controlled express companies. The contract also provides that, if section 557 is not so repealed or amended, the Board of Directors of REA may prescribe a temporary basis of payment "producing comparable results." These features of the present agreement indicate a desire on the part of mail-carrying railroads to avoid any situation which would possibly facilitate the implementation of section 557.

This position is consistent with earlier opposition on the part of mail-carrying railroads to efforts of the Department to enforce section 557 in proceedings before the Commission, as described in exhibit A. It is also consistent with the statement contained in REA's exhibit No. 24, as submitted in the arbitration of disputes between rail carriers and REA which arose out of REA's administration of the 1929 express operations agreement and the economy plan amendment thereto, effective July 1, 1938. This exhibit contained, among other things, a history of express car-foot miles which included the following statement:

On October 20, 1937, the general chairman of committee D advised the chairman of the contact committee that after several lengthy discussions committee D had not been able to agree upon a report. Some members of committee D felt that if express car-foot miles were developed the Post Office Department might make comparisons of express and mail factors and attempt to adjust the mail pay to the basis of express earnings where less than the prevailing mail rate, disregarding differences in services given and space ascertainment methods.



It will be noted also that the computation of car-foot miles of express service, as contemplated by the present operations agreement, is not a new development, since the ascertainment of carrier car-foot miles was initiated in 1938 under the economy plan amendment of the 1929 agreement.

At the prior hearings on H.R. 1986, the contention was made that section 557 should not be applied because of differences between services performed by railroads in the case of mail and express traffic. It should be stated that the legislative history of section 557 reflects the various contentions made by the railroads as to differences in the conditions of the services. In the light of this background, the enactment of section 557 reflected the judgment of the Congress that these services were so similar as to require legislation which would permit the Postmaster General to avoid any discrimination in rates in favor of express traffic.

In view of the objectives of section 557 and the history of the Department's prior efforts to secure the rate ascertainment called for by the statute to implement those objectives, and for the reasons stated in the Department's report to the chairman of the Committee on Post Office and Civil Service, the Department opposes the enactment of H.R. 1986.

Mr. DULSKI. On page 6 of your report it says: "The earnings under this agreement on September 21, 1959 \* \* \*." Does this contract run out in 1963?

Mr. MEININGER. No, sir. On July 1, 1963, under the contract, a new method of compensating the railroads becomes effective, and it is described in the agreement in terms of a rate related to out-of-pocket costs. There is a temporary method, which is somewhat involved, but which is explained in section 2 of article 10, and applies beginning July 1, 1961.

But there are differences between the specific method of compensation which becomes effective July 1.

Mr. DULSKI. In other words, between 1959 and now, is it an arbitration process?

What figures do you use between the period of 1959 and 1963?

Mr. MEININGER. In general—I might say that the provisions of this contract are quite complex—but in general, prior to July 1, 1961, the system that prevailed for many years before that time is continued in that the earnings from express are distributed to various groups of carriers, and the express agency does not retain any profits.

As the Commission said, the pooling under the current contract does not differ essentially from that underlying previous express contracts approved by the Commission. That appears in the Commission's decision in express contract, 1959, which I cited, I believe.

Mr. DULSKI. Thank you.

Mr. Gross?

Mr. GROSS. Mr. Meininger, as I understand it, and as the Department previously testified, identical railroad service for which the Government is allegedly being overcharged is a full-destination car moving intact from point of origin to point of destination; in other words, storage car line haul service. I want to ask you, is the Department in your opinion paying the railroads more for identical



service than the railroads received from REA express for storage car line haul service, for example?

Mr. MEININGER. Mr. Congressman, I think from the various statements that have been made before this subcommittee indicating the deficits which have been incurred in express operations, that is, in relation to the amount incurred by the railroads for the service. I am unable to indicate any precise amount; but it certainly indicates the Post Office is paying more for comparable services.

Mr. GROSS. Then your answer would be yes?

Mr. MEININGER. Yes.

Mr. GROSS. Would you say that the Department is paying twice as much as the REA?

Mr. MEININGER. Well, I am not familiar enough—I think probably that question should be dealt with by somebody else on the staff. I don't believe that there are figures available which would permit us to answer that question precisely. But we do know there is a substantial difference.

Mr. GROSS. Did you hear the testimony of Mr. Hoffman representing the freight forwarders?

Mr. MEININGER. Yes, sir; I did, and I am aware he made certain 2-to-1 comparisons, and I believe if you wish to hear the comments, perhaps of Mr. Walsh, on that, he may be able to shed some light on that.

Mr. GROSS. I would be delighted, because this, in my opinion, involves a lot of money.

Mr. WALSH. Of course, we don't have figures in the Post Office Department that would indicate the range there. We have reviewed the figures that have been used in the previous testimony and they are mathematically correct. The thing that might require some qualifications are the assumptions that are underlying the figures. And it is very difficult to say exactly what the relationship is between the return from express business and from the mail-carrying business to the railroads.

Mr. GROSS. You couldn't give this committee an educated estimate or a horseback estimate?

Mr. WALSH. No, sir. We haven't made any study of that in the Post Office Department, and I doubt if we could do it now from the information we have.

Mr. GROSS. It seems to me this is important because if, as I understand it, the Post Office Department is coming to this committee for substantial rate increases—you have a deficit in the Post Office budget of some \$831 million; I believe that is approximately correct—and you are coming before this committee for a rate increase bill. Now, if there is this overcharge, I think the committee ought to know it, because it obviously is a part of the cost of the operation of the Post Office Department and is, therefore, part of the deficit that now exists in the Post Office Department.

Mr. WALSH. The basis on which these 2-to-1 calculations was made, the source of the bases, are matters of record, and the 2-to-1 calculations can be followed through mathematically.

Mr. MEININGER. Mr. Congressman, I might suggest this: that really we will never know the answer to your question with precision until we obtain this ascertainment from the Interstate Commerce Commission.



Mr. GROSS. Is it your opinion, then, instead of repealing this law the committee ought to be considering legislation to provide that the Interstate Commerce Commission come up with some figures?

Mr. MEININGER. Mr. Congressman, I am not prepared to—

Mr. GROSS. Let me put it another way. I don't expect you to come here and give direction to this committee as to what the committee ought to do.

Let me rephrase the question: Do you think that legislation ought to be enacted to provide that the ICC come up with some figures in this respect?

Mr. MEININGER. From our standpoint, in effect this legislation is now in existence, and we have, as our exhibit shows, sought rather vigorously over the last 10-year period to attempt to implement this thing. The legislation is there which we believe calls upon the Commission to furnish information.

Mr. WALLHAUSER. Will the gentleman yield?

Mr. GROSS. Yes.

Mr. WALLHAUSER. Has any effort been made by the Post Office Department, over the years, to strengthen this section by adding some very simple words, perhaps to the effect that, "and shall direct the Interstate Commerce Commission to furnish information."

In other words, the Post Office Department now expresses great concern about its inability to secure the information. But over the years, has the Post Office Department, to the best of your knowledge, made a suggestion to this committee or any other committee, about strengthening legislation to be introduced?

Mr. MEININGER. I am pretty sure no specific action has been taken in that direction.

Mr. WALLHAUSER. So in other words is it fair to assume, in spite of your concern now, it has not been strong enough to suggest that remedial action be taken?

Mr. MEININGER. You mean the law hasn't been strong enough?

Mr. WALLHAUSER. Yes. Apparently it has not been strong enough. There is no penalty involved in the section, is there?

Mr. MEININGER. We do not believe, Mr. Congressman, that the purpose of this law is so doubtful that we were not justified in making the requests which we have made over the past 10 years. I am not prepared to say that the statute is defective in respect to its intent, or anything of that sort. And as far as I know, the Department has not adopted that position and has not, up to this time, sought amendatory language to eliminate any doubts that some people may think exist.

Mr. WALLHAUSER. My point is, the Department must have been disappointed, shall we say, at the refusal of the Interstate Commerce Commission to furnish the information, and if it were sufficiently disappointed, it seems to me the Department, or previous Postmasters General, might have made a recommendation that this section be implemented and it could easily have been done with the addition of a few words.

Mr. MEININGER. That could well have been considered but I am unable, as far as I know, to say—it never reached the stage of being developed into any specific proposal or request for legislation.



Mr. GROSS. Mr. Meininger, I think in reading the statement of the Department in last year's hearings, it is implicit throughout the statement the suggestion that the law be fortified rather than repealed.

Mr. MEININGER. I believe there was a suggestion in the testimony.

Mr. GROSS. Yes.

Are you through, Mr. Wallhauser?

Mr. WALLHAUSER. Yes.

Mr. GROSS. I note the Department's previous testimony, going back to last year, this quotation, page 18 of the hearings:

Although the ICC proposes the enactment of H.R. 7055, its real support stems from the railroads and railway express who seek repeal of the existing law, prior to full disclosure of information relating to rates for express.

This was the statement of Mr. Moore, who was then with the Post Office Department.

Now the implication seems clear the ICC is serving as the willing agent for the railroads and railway express in this matter.

Am I correct in drawing such an inference from the Department's statement?

Mr. MEININGER. I do recall that testimony.

Mr. GROSS. Would you agree it is implicit in that statement, that the ICC is performing as something of an agent in that matter for the railroads and express company?

Mr. MEININGER. I am not prepared to agree with that, Mr. Gross. We, of course, have indicated—and I indicated today—that we don't feel the reasons given by the ICC stand up. But that is the thrust of our position.

Mr. GROSS. That is all, Mr. Chairman.

Mr. DULSKI. In this statement the Postmaster General issued, in the fourth paragraph, it says, "This provision of law which H.R. 1986 proposes to repeal" and so on; "to protect—"

Still we don't have any figures of what protection we are taking.

Now I think I asked some witness in the last hearings, Do you keep a separate accounting of the capital investment as far as the postal things are concerned? What I have reference to is a separate budgetary item; when your entire budget is submitted by the Postmaster General, does he include the operating costs, the facilities that are to be replaced, or to be bought for that particular item of operation?

Mr. DOYLE. Mr. Chairman, Mr. Walsh or Mr. Noble will respond to that question.

Mr. NOBLE. Mr. Chairman, we have always identified in the budget estimates the items of a capital nature. For the fiscal year 1962, for the first time, we have requested a separate appropriation for plant and equipment, and the House has approved that in its action on our appropriation bill.

Mr. DULSKI. But that is in the total operation; or just for that specific function?

Mr. NOBLE. In passing the entire appropriation bill, they approved a separate appropriation for plant and equipment for the entire postal establishment, which would identify our capital requirements as distinct from our operating requirements.

Mr. DULSKI. That figure, as put into the overall, is to get foot-miles in determining the costs, like you have. There were certain percent-



ages used. Is that determined by that cost, or is that an overall function?

Mr. NOBLE. In determining the costs under our cost ascertainment system, we have in the past allocated capital items, along with operating items, to the various classes of mail and services.

In determining the cost of payments to railroads, obviously, there would be no capital items allocated; it would be a matter of distributing our payments to the railroads, to the classes of mail.

Mr. DULSKI. Thank you.

Mr. ADDABO. Mr. Meininger, do you know whether the Post Office receives any preferential treatment in the availability of space on the railroads?

Mr. MEININGER. I can answer your question in this way, Mr. Congressman. The Post Office Department has published in the Federal Register—I can't recall at this moment the citation—but we have published in the Federal Register a so-called comprehensive plan of the Postmaster General of the United States. That plan specifies in broad terms the basic service requirements of the Department in relation to railroads.

At one time, you might recall, there was a somewhat elaborate authorization system under which the Post Office authorized all types of railway mail service. Some few years ago that was abandoned and we now have a system under which we request service when it falls in the category of storage service. By that I mean mail which moves in ordinary baggage cars or freight cars equipped for operation on passenger trains. We request service. And the gist of our rule is that the carriers furnish, be required to provide space sufficient to take care of what our normal requirements are. The precise language of the rule I can't recall; but it is published and I can give it to you later on.

The situation is quite comparable to that that you have under the express operations agreement of the railroads. If you will bear with me a minute, I will find that. There is a similar provision under which the—it appears in article 3, on page 6. I am now referring to the standard express operations agreement, effective October 1, 1959.

The rail companies shall furnish for the transportation of express traffic, space in cars adequate to meet express loading requirements on the rail company's lines and suitable for use in passenger, mail, express or other trains in which express traffic is transported under this agreement.

So you have a situation here where we request service and the express company requests service.

We do have a rule that if we need service in addition to the normal amount, we are entitled to a priority, and in application this means we do not require the railroads to actually unload other traffic which already has been loaded, or to get cars out of a train which have already been installed in the train. But there is that priority in relation to service which exceeds our normal requirements.

In the case of the Railway Post Office Service, this is dedicated equipment, suitable only for Post Office needs, and it is regularly authorized and paid for in both directions.

Mr. ADDABO. Would you say, Mr. Meininger, the same protection the Post Office has under section 557 could be given under section 3, subdivision 1 of the Interstate Commerce Act?



Mr. MEININGER. No, sir; because the substantive standards relating to—in other words, the Interstate Commerce Act itself deals with persons and property. And the laws in it, except as they are incorporated by specific reference, would not apply to mail traffic where we have special statutes. On mail traffic, they wouldn't apply unless they are mentioned.

However, the situations are parallel to this extent. Under the Interstate Commerce Act basically the requirement is that all freight rates be just and reasonable. Coupled with that you have the admonition in section 3, which I believe you cited, against undue preference and against discrimination. That may be in another section.

Similarly, here in the Railway Mail Pay Act, Congress gave the Commission the responsibility to prescribe fair and reasonable rates for the transportation of mail by railroad and they coupled with that an antidiscrimination feature.

Mr. ADDABBO. Would you suggest that possibly the Interstate Commerce Act be amended to also cover the Post Office operations?

Mr. MEININGER. Well, the Railway Mail Pay Act, which I cite in my statement, does have a provision which incorporates, I might say, procedural provisions which the Commission had at the time the Railway Mail Pay Act was enacted, but it, generally speaking, is comprehensive and complete within itself and to my knowledge there wouldn't be any occasion to attempt to mix up the two regulatory schemes.

As you know, railroads in the general freight field have the right to initiate rates themselves. We don't have that right in the Post Office Department; the rates are prescribed by the Interstate Commerce Commission, and have been since the first case under the 1916 act, and I believe that decision was rendered in 1919 and made retroactive.

Mr. ADDABBO. Thank you.

Mr. DULSKI. Mr. Olsen.

Mr. OLSEN. Do I understand from your answer to Mr. Gross that the recommendation of the Post Office Department with reference to this legislation is something less this time than it was a year ago?

Mr. MEININGER. I don't think so.

Mr. OLSEN. You acknowledged to Mr. Gross you were recommending a year ago that there be some strengthening of this section 557, or at least that was implied in the testimony of a year ago, but now you won't acknowledge that you are going that strong today in your recommendations?

Mr. DOYLE. Mr. Olsen, I believe Mr. Meininger is in the situation where he is not a policymaker, nor am I. It is obvious that if Congress wishes to adhere to this principle in this law that we need additional legislation because the Commission will not utilize this law.

I could provide for the record at this point a policy statement after conferring with the Postmaster General on this.

Mr. OLSEN. I think that would be in order.

Mr. Chairman, I move they be permitted to provide this committee with a policy statement.

Mr. DULSKI. Without objection, it is so ordered.



(The statement follows:)

OFFICE OF THE POSTMASTER GENERAL,  
Washington, D.C., April 20, 1961.

HON. THADDEUS J. DULSKI,  
*Chairman, Special Subcommittee on H.R. 1986,  
Committee on Post Office and Civil Service,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: At the hearings of April 14, 1961, before a subcommittee on H.R. 1986, it was ordered that the Post Office Department be permitted to state whether it recommends strengthening that portion of section 5 of the act of July 28, 1916, as amended, relating to the furnishing of information to the Postmaster General by the Interstate Commerce Commission with respect to revenue received by railroads from express companies for the transportation of express matter.

As shown by the Department's report and testimony on this measure, extensive efforts have been made in the past to implement the objectives of this statute. In addition, the Department has requested the Attorney General of the United States to institute an action to cause the Interstate Commerce Commission to perform its statutory duties under the existing statute.

Consistent with these prior actions, the Department believes the statute as presently drafted places an affirmative duty upon the Interstate Commerce Commission to ascertain and report to the Postmaster General rates received by the railroads for the transportation of express matter. However, since the Department is interested in obtaining the benefits of the rate ascertainment contemplated by this statute, it would, of course, support an amendment to the statute which is designed to emphasize the statutory duty now placed upon the Commission to take action to ascertain and report rates received by the railroads for the transportation of express matter.

Sincerely yours,

J. EDWARD DAY, *Postmaster General.*

MR. DULSKI. Do you have any other questions, sir?

MR. OLSEN. I don't follow this discussion for not being able to tell us why you can't give an estimate on the difference in rates charged the Post Office Department and the express companies.

I haven't read all of these things at the previous hearings, you understand, and I want you to explain a little more clearly why you can't give us a ratio of the difference of rates.

MR. WALSH. I think basically the reason is that the Post Office does pay specific rates for carrying the mail but the express company does not pay specific rates. The comparisons that have been made in the past have generally been calculated figures based on other facts that were taken out of another context and calculations made.

MR. OLSEN. Then there have been calculations of a kind made?

MR. WALSH. Calculations were presented to the committee.

MR. OLSEN. You are talking of what years?

MR. WALSH. Some of the years in the 1950's. Some of the calculations were based on figures that were in ICC cases between 1955 and 1958.

MR. OLSEN. What was the ratio that was determined?

MR. WALSH. No calculation was made by the Commission nor the Post Office Department. The calculations were made with respect to this hearing and they showed the 2-to-1 ratio, in that neighborhood.

MR. OLSEN. Who made the calculations then?

MR. WALSH. I think Mr. Hoffman.

MR. OLSEN. You are speaking of Mr. Hoffman. Am I to understand the Post Office never did make any determination, comparing figures?



Mr. WALSH. No, the Post Office has not had sufficient information as to the rates paid for the carriage of express to make a calculation.

Mr. OLSEN. But you had the same information Hoffman had?

Mr. WALSH. That is correct.

Mr. OLSEN. Did you think that information was insufficient to make this calculation?

Mr. WALSH. I think it would be, yes, to make that extensive conclusion on this specific point. It does show relationships per car-foot-mile.

Mr. OLSEN. What are those?

Mr. WALSH. Of about 2 to 1.

Mr. GROSS. But you do say that you are paying more, don't you? Your opinion—call it whatever you want—you are paying more for comparable service. Is that correct?

Mr. WALSH. I think that is generally agreed, primarily because the Post Office Department pays for carrying the mail rates that include, are based on fully distributed costs. I think it is generally conceded the express rates would be lower if they were calculated as rates.

Mr. GROSS. They are lower, are they not?

Mr. WALSH. I think so, except they are not calculated as rates and stated as rates. But taking the amounts that were paid, it could be termed lower.

Mr. GROSS. Yes.

Mr. OLSEN. You do know, then, that the railroads were paid something less for express than they were paid for mail?

Mr. WALSH. I think so. I think that is generally agreed by all parties.

Mr. OLSEN. Generally agreed as an opinion or is it a fact?

Mr. WALSH. To the extent that, or with the understanding that rates for express are not paid as such, as rates.

Mr. OLSEN. Let's throw the word "rates" out. Is less money paid for mail service than is paid for express service? Or is less money paid for express service than for mail service? Less money, never mind rates.

Mr. WALSH. More money is paid for mail service. The volume of service rendered is greater, but I think that is generally agreed that the level of the rates would be higher if the rates were calculated.

Mr. OLSEN. Have you calculated it then on a rate—what is it, car-foot-mile—the rate that is being paid for mail would be greater than the rate or the amount paid per car-foot-mile for express?

Mr. WALSH. We have checked the figures that have been presented here on that point. They were rates presented on a per car-foot-mile basis, or cubic-foot-mile basis. They do show that the rates paid for mail are higher than the rates paid for express on those car-foot-mile calculations.

Mr. OLSEN. When were those figures presented here?

Mr. WALSH. In the previous hearings this year.

Mr. OLSEN. Oh, yes, I missed that meeting.

Mr. WALSH. Yes, the last meeting of the committee.

Mr. ADDABBO. Would the comparison be similar to the comparison on page 7 of Mr. Freund's statement this morning, comparing the parcel post rates and railway mail payments where it shows parcel



post pays the railroad \$2.22 from New York to Boston and Railway Express pays 69 cents?

Mr. WALSH. Well, the relationship in that particular rate would be, or the difference would be a little bit greater than the figures that we have previously seen. But generally, in the figures that we have seen, the Post Office payment per unit was greater than the payments by the express company.

Mr. DULSKI. Mr. Gross, do you have any further questions?

Mr. GROSS. Yes, Mr. Chairman. Mr. Meininger, I believe you have heard practically all the testimony pro and con on this issue.

Mr. MEININGER. Yes, sir, I attended the earlier meetings.

Mr. GROSS. You were here last year when the hearings were held on this same bill?

Mr. MEININGER. Yes, sir.

Mr. GROSS. I presume you heard, as I heard, Mr. Johnson's testimony that the express company would probably be nonexistent unless this legislation was repealed, go out of business. Do you think that will happen? Do you have any opinion as to whether that will happen?

Mr. MEININGER. Well, no, I would prefer not to express an opinion on that. I would say that, of course, we have had this statute on the books for something like 40 years, but it has never been implemented up to now.

Mr. GROSS. The express company is still in business; that is correct, isn't it?

Mr. MEININGER. Yes, sir.

Mr. GROSS. Assuming that the express company went out of business by reason of failure to approve this bill, would the Post Office Department be able to take over the parcel post business that is now going to the express company by virtue of Public Law 199?

Mr. MEININGER. I regret, Mr. Congressman, I wouldn't be able to answer that question.

Mr. GROSS. Can anybody else answer that?

Mr. DOYLE. We would have to accommodate it up to the allowable weight limits and size.

Mr. GROSS. You would be able to handle the parcel post traffic that went to the express company by virtue of Public Law 199?

Mr. DOYLE. If presented to us, we would have to take care of it.

Mr. GROSS. You would.

Now I believe it is well established that the Government is not supposed to be paying a higher price for anything than an individual or commercial organization. Isn't that the basis which we operate in Government or try to operate in Government?

Mr. DOYLE. It certainly is true in this area.

Mr. GROSS. But you are paying more.

Mr. DOYLE. The opinion has been expressed here that we are, and I believe that is sound.

Mr. GROSS. I want to say this to you, that as one member of this committee, either the Post Office Department or the ICC, some Government agency, had better come in here with some figures when the postal rate bill comes in, to dispute or to substantiate the allegations already made that the Post Office Department is paying a hundred million dollars a year, approximately that, to the railroads—more than the railroads are getting from the REA for comparable service.



I just suggest to you somebody had better get busy and dig in and produce some figures to substantiate that allegation or throw it out. There is big money involved, in my opinion, in the legislation presently before this committee. There is a gray area here I don't seem to be able to get at. I couldn't last year and can't this year.

I say to the committee now, as far as I am concerned, I am not in favor of repealing this law. I will go on record before the whole committee.

Mr. DULSKI. Mr. Olsen.

Mr. OLSEN. I was present when Mr. Hoffman testified. I know about those figures, but did the Post Office present any figures at any earlier hearing?

Mr. MEININGER. Not on this bill, sir.

Mr. OLSEN. Then I misunderstood you, Mr. Walsh. You were not talking of figures you presented in a hearing.

Mr. WALSH. No, sir.

Mr. OLSEN. I want to correct the record. I was present when these figures you were referring to were presented by Mr. Hoffman. The Post Office is not presenting any figures at all to support their opinion that the mails are paying more than express?

Mr. WALSH. No, sir.

Mr. GROSS. In other words, what I would like to say if there is a subsidy here, if there is a subsidy being paid by the Post Office out of the pockets of the taxpayers of this country—postal rates are an indirect tax upon the public—if there is a subsidy here involved, let's get it out to the table where we can see it.

Let's not continue to cover it up. Then let's charge it off as a public service, as far as I am concerned. Let's take it out of the rate structure.

Mr. DOYLE. We believe if we can get the information that we believe we are entitled to under this law, we could make the computation you request.

Mr. GROSS. I am sure you could. That is why I think the law ought to be implemented rather than repealed. I want to see the Railway Express Agency continue in existence, too. I am not in favor of running it out of business, and I don't think it will be run out of business.

Mr. OLSEN. I would like to say for the record I would like to have the Post Office Department bring figures, certainly they must have some, to substantiate this opinion they express. They ought to have something. It would help out, especially a brandnew member, to either rely on your opinion or reject it. It is hard to just take an opinion and not have figures offered to support it.

Thank you, Mr. Chairman.

Mr. DULSKI. Thank you very much gentlemen.

Mr. OLSEN. It was previously announced by the Chair the order of witnesses would be that Mr. Johnson would follow the Post Office witnesses and thereafter we would hear Mr. Hastings and Mr. Goff and we will proceed as the Chair previously announced.

Mr. Johnson, please take the stand.



**STATEMENT OF WILLIAM B. JOHNSON, PRESIDENT, RAILWAY  
EXPRESS AGENCY—Resumed**

Mr. JOHNSON. Thank you, Mr. Chairman. I realize that the subcommittee wishes to close the record today, and since everybody knows that deadlines are running out on us, it is very greatly to our interest that would be done and I would not want to be the instrument for not closing it.

Could I inquire of the Chair how much time I could have and still not jeopardize your desire to close the record?

Mr. OLSEN. Mr. Johnson, I talked to the other members here. They think we can finish this morning and hear the other two witnesses too. But in the event you are prolonged on the stand, we are prepared to continue with the hearings this afternoon and finish up with all the witnesses.

Mr. JOHNSON. Thank you so much.

Mr. OLSEN. I think everybody can feel that way, that they can have their say and we will hear it.

Mr. JOHNSON. Mr. Chairman, I would first like to express my thanks, because of the great importance of this bill to us, for the privilege of correcting the record and answering some of the charges that have been leveled against me personally, against our company, the stockholders, the railroads, ICC, and anybody else apparently who is in favor of this bill.

Some of these charges, in my judgment, have been intemperate and absolutely without any foundation of fact whatever. I don't believe I will read my statement, although this was prepared with great care. If I may, with the indulgence of the subcommittee, I would like to just comment on the statement and ask you to turn from page to page. I have some exhibits here which I hope will be helpful to the subcommittee. A great deal has been said and a great many generalizations made. I think it is important to get some facts in the record, in place of some of these generalizations.

I would first like to comment, as the statement does, in the first two pages, on who is opposing this bill? Well, the Post Office is; the Post Office did last year.

I understand the position of the Post Office is reluctance to go along with repeal of any bill which was designed to give the Post Office a measure of protection. The other opponents of the bill have been one freight forwarder, Mr. Hoffman, Chain Deliveries Express, the American Trucking Association, Parcel Post Association, and now Motor Bus Operators, as I understand it, including Greyhound. Of course, opponents tend to oppose anything which will help their competitors. We are a competitor of the trucklines. We are competing with Mr. Hoffman, and in the l.c.l. freight field, I suppose we are competitive with the buslines to some extent. We have been in business a long time. The corporation was formed in 1928, under Government instigation and pressure. But the express business has been conducted for 122 years.

As you all know, as time went on, the express deficits became so tremendous that 2 years ago, when I took the presidency, we were



confronted with liquidation. It wasn't a joke, it was a fact. There is a liquidation plan in my office right now; I hope we never have to use it.

Mr. GROSS. Now, Mr. Johnson, before you leave the subject, who is for this bill aside from the railroads and the express company? You have spoken of those who were against it.

Mr. JOHNSON. Yes, sir. I want to make this comment. Most of the people opposing the bill are our competitors and personally I think they are quite shortsighted in doing this. I think on principle, they are probably making a mistake in their own self-interest. But I suggest it is principally obstructionism and has very little gain for them. If we should be nationalized they certainly are going to suffer the same fate as we eventually and I think they are playing in fire and temporizing with socialism.

Now who is for the bill, Mr. Gross. Well, Mr. Alford, he was chairman of the subcommittee last year, which voted unanimously for the bill. Congressman Harris—there have been charges made against the ICC—Congressman Harris is for the bill. He has given a statement in support of it. The National Retail Merchants Association, which I believe includes about 11,500 department and retail stores in the United States, they cover the whole country. They are strongly in favor of the bill, because they are strongly interested in preserving express service and giving the company a chance to operate on an efficient basis.

Mr. GROSS. Pardon me for interrupting. I am talking about those who have come before this committee and testified. There may be others who want to testify against it, I don't know, or would if they had the opportunity. We can all read lists. But I am talking now about the people who have testified before this committee on the bill. I assumed that was what you were talking about when you started.

Mr. JOHNSON. I am talking about the people who have adopted resolutions after thoughtful consideration of the bill, and this is a list of the ones that are for the bill.

As to who has testified, the ICC has testified. They recommended repeal 3 years ago, on the ground the law was obsolete, unenforceable, and inoperable, and they have repeated that recommendation in their annual reports to the Congress every year.

The Brotherhood of Railway Clerks, which represents 25,000 of our employees, are for the bill, because they realize unless the company can find a way to be successful and stand on its own feet and pay its full way eventually, although we can't do it today, that their jobs are at stake and they don't want to be forced into the status of Government employees, however attractive that might be.

I would assume that one of the reasons why our employees are not in favor of being nationalized, and seeing the company liquidated, is that they have collective-bargaining rights in private enterprise.

The National Industrial Traffic League testified, Mr. Gross. That is the largest shipping association in the United States, and I think the most representative; 17,000 and some of the largest shipping companies in the United States are represented there. This is not just a casually considered thing. This was debated, discussed in committee, considered by the league and a resolution adopted on the floor of their convention this year. I think if there is any group in the United



States that represents the general shipping public—these people use parcel post and they use express—but if there is any shipping group in the United States that is representative, that is it, National Industrial Traffic League. The Association of American Railroads, Short-line Association, the airlines, are in favor of it. They haul mail, the railroads haul mail, but they are all in favor of giving the express company a chance to survive on its own feet. That is what this bill is designed to do.

MR. OLSEN. Mr. Johnson, let me interrupt a minute. These people have all filed statements, have they not?

MR. JOHNSON. Yes, sir.

MR. OLSEN. I think we have that. Let us get on.

MR. JOHNSON. Yes, sir, but I just wanted to show you this list, because I think these are the people who are most concerned and I call your attention that they are so broadly diversified. You have the Commission, which understands this measure and all the complexity surrounding it, which has lived with it for a long time and you have the employees, organized labor, and you have the management, and you have the airlines and railroads, the carriers, and you have a long list of shipper advisory boards and in that group you have the great American public.

Now on the other side, the opponents are 300 people who make up the Parcel Post Association. It is obvious what all these people want in opposing this bill. They want us to fail. There is no question about that. The competitors would then have a wide-open opportunity. We have been revitalized in the last 2 years. I have certainly done my best to do it. But for the first time in some 15 years, we have begun to be a competitive factor. We have begun to do a good job for the public. That is why the public is for us. That is why our competitors are against us. They don't like this idea of competition. And this is the big problem which brings them here to oppose anything that will give us a chance to survive and do a real job.

I don't apologize for efforts we have made to reduce our prices, on a compensatory basis, subject to regulation. I don't apologize for competition. It is my understanding that the failure to compete is frowned on by governmental policies. That is why we have antitrust laws. But we are subject to regulation by 54 commissions, more than any one of these competitors, more than anybody. Every State regulates us and four Federal bodies regulate us. I submit there is no danger, to our competitors, from honest competition, which we are trying to perform, subject to regulation by 54 bodies. Parcel Post Association's objective is perfectly clear, I think, and has been all along. They know we can't live under the application of 557, on a rate basis. They would like to see us die. If we die, then everything goes into the Post Office Department, and, personally, I don't think they can handle it. They can't begin to handle it.

There is mail being handled all over the streets in New York City today, stacked up on the sidewalks. They couldn't begin to take over our traffic and moreover they found a long time ago, they can't handle live creatures and bees and watercress and other commodities that need icing en route, and perform the variety of services we do.

We perform a service the post office can't duplicate, they have no facilities. But the Parcel Post Association really hopes we will go into Government ownership and they will get the benefit of low



taxpayer-supported rates, which is a form of subsidy. I will get to that point later. But I would like to make it clear the people against this bill really hope we will fail. We really hope we won't fold up or go into Government ownership and that is why we are for the bill and that is why the great American public is for the bill.

Now if you have any doubt about it, Mr. Hoffman, of Chain Deliveries Express, who attacked me so vigorously, who charged me and the railroads with all kinds of monstrous intentions, similar to those Mr. Henderson leveled, sent a letter to all his customers and he says in effect that he thinks maybe we will fold up, if this bill is not passed. He did this sometime ago. And he warns his customers not to use express service, because he says they may fold up unless this bill is passed. And then after he does that, he comes down here and helps make sure it isn't going to be passed, just because he wants us to fold up.

And he tells them at the same time his business has grown 400 percent since 1956 and I will show you what has happened to ours. We had 130 million more shipments in 1947 than we had in 1960. We would be back where we were 14 years ago, if we had a 200-percent increase in traffic.

His business has increased 400 percent since 1956, according to his letter. But he wants to keep on. He doesn't want us to compete. He and the truckers and everybody else resent the fact that the Express for the first time in many years is doing a job and we are competing and they don't want to see this happen and they know if they can defeat this legislation, maybe we will fold up. And the Parcel Post people know if they can defeat this legislation, we will probably either fold or go into Government ownership and either way then they will get the benefit of low parcel post rates, supported by the taxpayers of the country. That is what they are for.

Now there have been three big charges leveled against us. I would just like to comment briefly on them. This is taken from page 3 and a few subsequent pages in my testimony.

First they have charged that we are trying to become a monopoly, we are trying to put everybody out of business. I think it was Hoffman who said, or maybe it was Henderson—I think it was Hoffman—said that 75 percent of all the truckers would fold up, the freight forwarders would go out of business, and so forth. That just isn't true and there certainly isn't a shadow of truth in the statements that we are about to become a monopoly.

Our competitors are trying to evoke fears and prejudices and make you think of the robber baron days when the railroads had a monopoly, when this bill was passed some 45 years ago, and appealing to those old prejudices and the things you read in the schoolbooks about the Commodore Vanderbilt days. Now, are we about to become a monopoly?

Fact No. 1. We have 18,000 to 20,000 competitors. I don't know how many, but this includes the Federal Government itself, parcel post.

The second fact, we have a \$20 million equipment debt. We have practically no equity. We have some obsolete terminals which need replacement. We have much overage equipment. We have no corporate surplus because we have never been permitted to accumulate



a nickel. All the money we have ever had has gone to the railroads and it still has not been enough to pay the costs. So there is certainly no prospect of being able to ride along with deficits like parcel post has been able to do.

The third fact, we lost out of pocket \$10 million last year. That does not suggest we are about to become a monopoly. If we assume the obligation to stand on our own feet, and that is why we want the bill, we know we have to assume it in the long run, you can't escape economics.

Fourth, we are a small-shipments carrier, an average weight of 48 pounds. This is the toughest business in the United States in the transportation field, except maybe commutation. There is never going to be a monopoly in the small-shipments business and all these people who are telling you how terrible a monopoly would be are the people who have told the Commission again and again that they have trouble handling small shipments at a profit. The motor carriers are now pushing \$1 surcharges on every shipment. We are trying to live with the small-shipments business and do a job.

This is a problem which has not been solved for the people or carriers, and in the last 10 years it has become worse and worse. Nobody is going to make a killing or be a monopolist in the small-shipments field. It is too tough. There are too many people in it, including the Federal Government.

How near are we to being a monopoly? Just 2 years ago we were ready to fold and there was a resolution to nationalize us.

In addition, as I pointed out, we are only handling one-third of our present volume now. That is the purpose of that chart there. How much of a monopoly were we in 1947 when we had 189 million shipments. Today we are down to less than 60 million for the first time in our history. If we had a 200-percent increase, which is fantastic and impossible for years, if we had everything going our way, it would be years before we could even get back to where we were in 1947. That was the first postwar year.

Prior to the war we were doing just about the same amount of business, 167 to 180 million. We would have to have about 300 percent of the business we have now to be back where we were before World War II.

Look at the employees we have lost. Some 44,000 people have been discharged in the last 14 years because of lack of business. Is this consistent with all this talk about a big monopoly, putting the Government out of business? Ridiculous, fantastic.

Also, we can picture the thing this way. How big a factor are we in the small-shipment field? This field covers traffic of less than 10,000 pounds, and the motor carriers have 82.4 percent of it, the freight forwarders have 6.1 percent, the l.c.l. freight system of the railroads has 5.6, parcel post has 3.7 percent—these are tons—here is the monopoly, express with 2.4 percent. It is a long way from 1½ million tons to domination of a 69.2 million ton field.

I wish I could visualize the day when we could bring that up just two or three times what it is. But I certainly don't visualize the day, under regulations by 54 commissions in the public interest and you can't just forget them, gentlemen. We live with them. I can't visualize the day when anybody will say the express company has a



monopoly. It is not even that good. We actually don't have 2.4 percent of it because I was not able to put in here the rapidly growing airfreight business or the business of the bus operators who have grown by leaps and bounds in the last 4 or 5 years, while we have slipped downhill.

We are just fighting to stay alive, not for a monopoly. All this talk about monopoly and robber baronism and a great many of the other assertions made before this subcommittee are designed to blind you and cover up the real facts of life, which are simply this—if this country wants an express business this legislation is necessary. I don't say right now and I will never say that I am going to deliberately participate in folding up the express company if this bill is not passed. That is not true. I am going to always do whatever I can and devise any plan I can to keep the express business operating, and to keep these 32,000 employees in a job, whether you approve the bill or not.

But I am telling you, because I know, that there is the biggest gamble in the world if you don't give us a chance to stand on our own feet by passing this bill, because we have been through it; we know. I have lived with it for 10 years and if we can't get the express company on a self-sufficient basis, we are going to fold. Why? Because the railroad industry does not have the money to pay our debts and they are not going to do it, because they just don't have it. They have told us that the end comes January 1963 and if we are not on a self-supporting basis—finish. Then the Government can have it.

If that is what you want, then you will defeat the bill. All we ask by this bill is a chance to have the railroads charge express what it costs them, and we will take our chance on bankruptcy. I am not a bit sure that we can make it. But I am sure that we have got to try. If the trucklines and all the other competitors want us to stand on our own feet and pay what the actual cost is, they ought to be supporting the bill. That is what the bill provides. It provides that the express company shall be charged by the railroads for line haul service, instead of being given the service free.

Does it make any sense for the truckers and the forwarders and the others to come in here and say, "We don't want the express company to be competing and reducing rates because it is unfair," and then to say, "We would rather have the railroads give them transportation free of charge"? That is what Hoffman said. I can't understand where they think their interest lies. Their interest obviously lies in putting us on a businesslike basis, where we have to pay our way. That is what the contract says we have got to do, and we are simply trying to apply the contract.

The difficulty is that you can't get blood out of a turnip. If we have to pay as much as the U.S. Government can pay out of the Federal Treasury, we are going to fold for we can't meet that inflexible standard. The Post Office couldn't pay those rates if they had to do it out of their revenues. They can only do it out of the Federal Treasury.

Why don't we pay the same rates as the Post Office? Well, we just don't have it. We have given the railroads, for 30 years, every cent we could get out of the business. How can you charge us more? What is the result going to be? Where are we going to get it?



Mr. GROSS. What are you saying, Mr. Johnson, that Congress ought to keep the Railway Express Agency in business?

Mr. JOHNSON. No, sir.

Mr. GROSS. Well, I don't understand you.

Mr. JOHNSON. I am saying this. You ought to eliminate a 45-year-old inflexible restriction that says to us in effect, "You have to pay the same rates as parcel post."

If you eliminate that, under the contract, approved by the Commission, we will then have to pay just as much as we can, but the minimum will be an out-of-pocket cost, to reimburse the railroads. But we don't ask for any subsidy. What we ask for is a chance to make a deal with the railroads on the best basis that they can afford to make it, so that we can stand on our own feet and live by those obligations.

You see, the railroads have said we won't give you transportation free of charge any more as long as it costs us more than you are going to pay us. Now we are going to give you a fixed obligation, it is up to you by good management to meet it. I think maybe we can.

The only thing I ask from the Congress and this subcommittee is that you clear away this old restriction that tries to make us do something we can't do. Give us a chance to stand on our own feet. That is all. I don't ask you for 5 cents. That is all this law would do.

I can't understand why the competitors don't love it. Would they rather have the railroad industry give us transportation for nothing? Or would they rather have us be obligated to pay? We are willing to be obligated. The railroad says we must. The trouble is our competitors wants to use section 557 to force us to pay an amount we don't have. Suppose we paid the railroads a hundred million dollars in 1960, \$120-some million in 1959, we don't have any more. Suppose you take this crazy figure of a hundred million dollars, which has been dreamed up, because it was dreamed up. Suppose you took that as a valid figure. Just suppose, under section 557, if you try to apply it, we try to stand on our feet, we have to pay another hundred million dollars to the railroads.

Where are we going to get it? Does anybody have any idea? Raise the rates? We have raised them enough now. As you pointed out, Mr. Gross, some of our rates are ridiculously high. We haven't been competitive for 15 years.

Mr. GROSS. You would pay a lower rate, would you, for comparable service?

Mr. JOHNSON. I don't understand you, sir.

Mr. GROSS. Using the hypothetical figure of a hundred million dollars, just assume, and I don't say it is correct, I don't know, we can't find out, but suppose it is correct, suppose that figure is lower—the rate to the Post Office Department is lower than your rate is, correspondingly lowered.

Mr. JOHNSON. There is no way section 557 can reduce rates to the express company. Section 557 can make us pay as much as parcel post pays and they say that is a hundred million dollars more. We don't have it.

Mr. GROSS. Suppose we get the comparison and then the ICC is confronted with comparing rates?



Mr. JOHNSON. The only way the law will operate is take money away from the railroads.

Mr. GROSS. That is my point.

Mr. JOHNSON. That can't help me in the express business, Mr. Gross.

Mr. GROSS. Well, I don't know who the club is being used on here, but there is a club somewhere in this deal. I would like to find out.

Mr. OLSEN. Will the gentleman yield.

Mr. JOHNSON. There is no club anywhere.

Mr. OLSEN. Before we get off that point, why would a reduction in rates paid by the Post Office to the railroads, why would that hurt you people now? I want you to discuss that.

Mr. JOHNSON. Well, I said it wouldn't help us. It can't possibly.

Mr. OLSEN. I want to know why it hurts you. Is that your point, Mr. Gross?

Mr. GROSS. Yes.

Mr. JOHNSON. Let me say this first: What are we reducing? If you reduce the money being paid the railroads for hauling mail, you are reducing a rate which the ICC has fixed on the basis of hearings. Those rates are fixed to return to the railroads what they spend in hauling mail for the Government, plus a 3-percent return on investment.

Mr. GROSS. For my information, is it 5¾ percent or 3 percent?

Mr. JOHNSON. Three percent.

Mr. OLSEN. Here it says 5¾.

Mr. JOHNSON. Who said that?

Mr. GROSS. Go ahead. I will find it.

Mr. JOHNSON. I have been in all these mail cases. The maximum that the ICC has ever fixed a mail rate at is fully distributed costs plus 3-percent return. That is what the Post Office is paying the railroads.

Now if that is reduced, it simply means you are forcing the railroads to haul mail for less than they spend to haul mail. Is there any justice in that?

Mr. OLSEN. You have avoided the question.

Why would this hurt you, whatever went on between the Post Office and the railroads, why would that hurt you?

Mr. JOHNSON. Well, to answer your question, I think it would hurt us in this way: Rather than be confronted with the possibility of being forced to haul mail for the Government at a hundred million dollars less than they spent and the hundred million dollars is a phony figure, no truth in it, but rather than being confronted with that possibility the railroads will decline to continue the express business because they can't afford to be forced to haul mail for the Government at a hundred million dollars less than the ICC has said is fair on the basis of what they spent to haul the mail. So they will say to me, you are finished because we can't afford—they have already been confronted with paying our loss.

On top of that, they can't afford to have us cost them or be the means of costing them another hundred million dollars of enforced subsidy against the Post Office.

Does that answer the question, Mr. Olsen?



Mr. OLSEN. It doesn't quite answer it because we are all admitting this hundred million dollars is not the right figure. But that aside, why would determining rates between the Post Office and the railroad have a direct effect on your being denied continuing service by the railroads?

Mr. JOHNSON. If the railroads can get a fair price from the Government, it has no effect. But if section 557 is going to be the means by which they can't get paid adequately for hauling mail and are forced to haul it at a loss of a hundred million dollars, the express is not worth it.

Mr. OLSEN. Now, then, one more step.

Why does the railroad insist on hauling your produce or your goods cheaper than the Post Office?

Mr. JOHNSON. What could they do? Here is what they could do. They could say to us, "You have to pay the same rate as the Post Office."

That is the only alternative, isn't it? We just don't have the money. We give them all the money we have. If they were to tell us to pay the same rate as parcel post—

Mr. OLSEN. Are you telling me you are insisting the railroads have to lose money hauling for you?

Mr. JOHNSON. No, I am telling you the railroads ought to be permitted to charge us an out-of-pocket cost, with no return on investment, and still to collect a fully distributed cost, with a 3 percent return from the Post Office, if the Commission thinks that is fair.

That is what I am saying. I want to buy at an out-of-pocket basis, a lower price than parcel post, because this is the most we can pay. Out of pocket we don't have that by \$10 million. We would be short of that.

Mr. OLSEN. Then you are asking for the railroads to make no money at all on the service given your organization?

Mr. JOHNSON. No, the contract price, Mr. Olsen, that we will be initially obligated to pay out-of-pocket costs, reimbursement of the actual cash dollars out of hand, if we have any money left over, after making those initial payments, we divide that 50-50 with the railroads and they get 50 percent of whatever is left, as additional payment.

Mr. OLSEN. You are saying you cannot do that, though, right now?

Mr. JOHNSON. Today we can't do it.

Mr. OLSEN. You have no source for this kind of revenue?

Mr. JOHNSON. That is right. We are getting all we can.

Mr. OLSEN. You are getting all you can and you are short how much?

Mr. JOHNSON. \$10 million now. I want the chance to try to pay them \$10 million more, plus 50 percent of something in addition to that. I think we have taken on a big enough obligation but I am darn sure I cannot take on the obligation to pay as much as the Post Office does out of the Federal Treasury.

If we give them all the money we have, how are they going to make us pay another hundred million dollars?



How are we going to do it? You can't do it. The alternative then is for them to lose a hundred million dollars, in hauling mail.

Mr. OLSEN. A hundred million dollars is the difference between—

Mr. JOHNSON. A hundred million dollars is nothing except a dream-boat that somebody figured up.

Do you want the facts on that? In 1959 we paid the railroads \$123 million for hauling express. In fiscal 1959 the Post Office paid them \$149 million, for line haul service of parcel post.

Now these figures are on pages 8 and 9. Obviously, if you just talk about dollars, right away the hundred million dollars is wrong, because there is only a difference there of \$26 million.

We paid within \$26 million of what the Post Office did. As I just pointed out, our express volume is 1½ million tons, parcel post is 2.6 million tons.

We paid \$123 million, they paid \$149 million for line haul service.

Suppose you take this \$100 million figure, which is phony, and subtract it from what the Post Office paid, \$149 million.

That means the Post Office would have paid the railroads only \$49 million for handling 2.6 tons of parcel post, whereas we would pay them \$123 million for hauling 1.5 million tons of express which shows the \$100 million has to be silly. And if we did that, since the rates that produced the \$149 million are based on railroads' cost of serving the Government, the result would be you would be forcing the railroads to subsidize the Post Office to the extent of a hundred million dollars, by compelling them, under this old law, to haul mail at a hundred million dollars less than they spent to do the job.

This is why the law is ridiculous.

Mr. WALLHAUSER. Mr. Johnson, I want to get those figures more clearly in my mind.

In last year's hearings, there is an amount of \$320 million a year the Post Office Department pays and you pay \$116 million. There is a total there, is there—

Mr. JOHNSON. Those figures are not comparable, Mr. Wallhauser. There are so many differences between mail and express and this is one problem, Mr. Gross. The services are not the same. They never have been the same and are not the same. The method of computing it is not the same.

Mr. Gross. But there are comparable services rendered by the two, is that correct?

Mr. JOHNSON. No, none.

Mr. Gross. None at all?

Mr. JOHNSON. No, sir, in my opinion there is no exactly comparable service between the two. Let's take one fact alone and I will get back to your question, Mr. Wallhauser. Take one fact alone. The Post Office has a space priority on all trains. This is very valuable. We do not have that. We come after the mail.

Mr. OLSEN. Could I interrupt there?

Have you ever been kicked off the train?

Mr. JOHNSON. Yes, sir; not kicked off, Mr. Meininger said they don't force the railroads to unload traffic, that is right, they don't.

That would be impossible, they would never get the mail hauled on that basis, it would take too long. But they do leave express, when they don't have space and they always haul mail and the Post



Office has the right to fine any railroad for leaving mail on the station platform if it can haul it and they do fine them.

That space priority is very valuable and it applies to all mail.

Mr. OLSEN. When was the last time you had this experience, they left your material in the station?

Mr. JOHNSON. Well, there are so many of them, I can't give you—

Mr. OLSEN. Is there a recent thing?

Mr. JOHNSON. This happens every month. Railroads have been forced to cut their trains down. Let's start with the \$320 million figure—

Mr. OLSEN. They are cutting their space down and denying you space?

Mr. JOHNSON. Certainly.

Mr. OLSEN. This is not the Post Office's fault, is it?

Mr. JOHNSON. No; I don't say that.

Mr. OLSEN. It is the railroads' fault. I mean your trouble is with the railroad, not with the Post Office?

Mr. JOHNSON. Well, I will just tell you this—

Mr. OLSEN. Isn't that so, I mean, isn't that where your trouble is, with the railroads? For goodness sake, it is not the Post Office's fault you get your stuff left in the station.

Mr. JOHNSON. I am not saying this is their fault. But I am saying it is their advantage they have the statutory right to the first space on the train.

Mr. OLSEN. You need some more advantages against the railroads, rather than against the Post Office.

Mr. JOHNSON. You are talking about advantages; I have a story on that. But let's get back to this \$320 million. That includes the terminal charges, which the Post Office pays the railroads for loading and unloading cars and sorting mail.

We do all that ourselves. You can't compare that figure. That is a total figure for all mail. And we are just talking about a comparison between parcel post and express.

If you get down to what is paid per line-haul service for express, line-haul service for parcel post, the comparison is \$149 million versus \$123 million in 1959.

Mr. WALLHAUSER. Thank you for the clarification.

Mr. JOHNSON. I would like to go on to the second thing which they have said. The first charge made is we are going to be a monopoly. I have answered that. The second charge is that we have concealed information from the Post Office and from ICC and this results in inability to enforce the law.

Mr. Olsen, you and Mr. Gross were interested in how to get this information from the ICC. I can understand the confusion from some of the answers here. In this decision, which is not secret, is a published report of the Commission, docket 30177, where the Commission said there is no way you can apply section 557, the Commission said at the end you can't apply the law, because there aren't any rates for hauling express, which the railroads charge the Express Co.

You know it is all a family, the railroads own the company and we have this old pooling arrangement, where we give them all the money, whether that is too little or too much. If they charged us any more we would be broke, out of business in about 6 weeks. But the Com-



mission said we can't apply the law. The Postmaster General is entitled to obtain any information that we can get or that we have. We will order the Express Co. to provide it (274 I.C.C., pp. 687, 688).

So they issued an order on us dated March 14, 1950, and they said to the Express Co., you provide this information, put it on public file. All right. They prescribed a form, which we had to use, as they prescribe all the other forms. This is a sample of it. Here is the information which we furnished, the amount paid, carload, and other traffic, the amounts which went to the electric lines, the amounts paid to carriers other than railroads, motor, air, miscellaneous, car foot miles of space, number of express shipments handled, these reports were filed from 1950 until 1955, every quarter. They were available and I suppose they were sent to the Post Office. Anyhow, all they had to do was walk through the alley and get them at the Interstate Commerce Commission, if they wanted them.

Those reports were filed for 5 years, on a quarterly basis, in response to a Commission order. That is all we had to give them. The information is all there. It was submitted under requirements of the Commission. The Post Office asked for it and they got it for 5 years.

What happened? On March 15, we got a letter from the Commission that said—

Mr. GROSS. What year?

Mr. JOHNSON. Excuse me; 1955, after 5 years. It said, "This has reference to our order of March 14, 1950," and so forth, in exchange of correspondence with the Post Office, "Postmaster General has advised Chairman Mitchell they have no objection to discontinuing the reports, they serve no purpose." And so on, to get rid of unnecessary reporting and paperwork, the new order was issued—

Mr. GROSS. That was ICC, did you say?

Mr. JOHNSON. Yes, sir; 1955. The reports were discontinued and the Post Office agreed to it. It isn't the fault of the railroads, the Commission or Express Co. or Post Office or anybody else. You can't identify a rate that doesn't exist. That is the problem. But all the information was there. There has been no concealment of information. Any information we have that they want, we provide. We did it in 1948, in subsequent years, and ICC mail cases. We filed these reports for 5 years and by common agreement of everybody, they were discontinued. They didn't serve any purpose. The Post Office has all the facts.

Mr. GROSS. I have to respectfully disagree with you that one or the other of the departments and agencies couldn't have come up with some figures.

Mr. JOHNSON. Mr. GROSS, you can take those figures—

Mr. GROSS. I am talking about the Post Office Department or the Interstate Commerce Commission and particularly the ICC.

Mr. JOHNSON. There is no problem at all in concluding what we are paying the railroads for car-foot-mile of service on the average. That can be done from those figures. You can divide them. I have no doubt the Post Office did that. But that doesn't create a rate that doesn't exist. As far as the cost finding is concerned, in 1916, when this law was passed, there was practically no cost-finding technique available on railroad passenger train service. Today there is plenty. I will tell anybody what the out-of-pocket cost is for hauling express,



as near as I can figure it. The Commission figured it, published it in reports, and the Post Office knows how to figure it; they have a very good man, Jim Reilly, probably in the room. He knows all about it, as much as the railroad accountants do.

There isn't any secret about all this. The question before the ICC was, what is the rate charged the Express Co. for hauling express? The answer is "None," there wasn't any. It was a pooling arrangement under which we gave them all the money we had, every penny, and there was no rate charged.

Let's ask what about H.R. 1986, do you want to know what our rates are, do you want to see rates charged, do you want a basis of comparison, does the Post Office want it, do our competitors want it? We want it and that is why we need H.R. 1986 to clarify this muddled situation.

If this bill is passed for the first time the Post Office will get a basis of comparison. I think it would be a faulty comparison and somebody will have to make a lot of allowances for differences in service and methods of computation. I can detail a long list of differences. But I am saying this, if they want to see a rate charged for express they ought to support H.R. 1986, because that is the only way we can ever get it. This will work, and it probably will help the Post Office.

If the bill is passed, the railroads have already agreed, they are under contract, to charge us a rate and we will file that information with the Commission. We give the Commission anything they want, and we will give it to the Post Office if they want it, and then the Post Office will have a rate. That is the way to get it, if they want a basis of comparison. But there has never been one before. We would like to see one.

Mr. GROSS. In the light of how the ICC has approached this problem in the past, I don't know just how meaningful that would be. But you would, by your own testimony, be operating on a much lower rate than the Post Office Department. You would have to in order to survive, is that true?

Mr. JOHNSON. Somewhat lower. I think we will get to it some day. I hope so. But we will certainly be somewhat lower today. I think we will be somewhat lower in 1963. But I don't know. I am hopeful we can do a good enough job where we can pay fully distributed costs plus a 3-percent return. But you can't convert a \$40-million loss to a profitable enterprise that can pay fully distributed cost plus a 3-percent return overnight. And everybody knows it.

This is why our competitors come in here and say make them do it. The answer is that puts us out of business. We can't do it. We have done everything we can. And they couldn't do it, either. The Post Office couldn't do it either, if they didn't take the money out of the Federal Treasury.

Mr. OLSEN. Mr. Johnson, we will have to suspend at this time and resume this afternoon. How much longer will you be?

Mr. JOHNSON. Mr. Olsen, that is why I inquired about the time before I started.

Mr. OLSEN. We will have to terminate this hearing this afternoon and there will only be Mr. Gross and myself left to take this into the record. We can't be here too long this afternoon. We will have to come to some terminal point here.



I want to be as liberal minded as I can, but I will be the only member here and we can't continue under the rules then.

Mr. JOHNSON. I will take just as long or as short a time as you permit me.

Mr. OLSEN. We have to be able to finish at about 2:30 and there are two other witnesses.

Mr. Hastings, how long will you need?

Mr. HASTINGS. I won't require over 15 or 20 minutes.

Mr. OLSEN. And Mr. Goff?

Mr. HASTINGS. He is not present. I think he will take about the same time.

Mr. OLSEN. Would it be unreasonable to restrict you to about 30 minutes, Mr. Johnson?

Mr. JOHNSON. That is fine. Whatever you can allow me.

Mr. OLSEN. I want you to be happy about this. About 30 minutes and if something unusual comes up, we can change it a little bit. Try and make it 30 minutes, and you, Mr. Hastings, 15 or 20 minutes and that will get us through in about an hour.

We will reconvene at 1:30.

(Thereupon, at 11:56 a.m., the subcommittee was recessed, to reconvene at 1:30 p.m., this same date.)

#### AFTERNOON SESSION

Mr. OLSEN. The committee will come to order.

Mr. Johnson, will you resume the stand?

#### STATEMENT OF WILLIAM B. JOHNSON—Resumed

Mr. JOHNSON. Thank you, Mr. Chairman. I understood it would be well for me to complete in 30 minutes and I will do that.

Mr. OLSEN. I requested, Mr. Gross, that Mr. Johnson try to complete his testimony in 30 minutes and then we have one other witness who says he can finish in 15 or 20 minutes.

Mr. GROSS. There were two other witnesses, weren't there?

Mr. OLSEN. No, just one.

Mr. GROSS. That is fine.

Mr. OLSEN. Proceed, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

I would like to refer to my written statement. I think I covered the original—the first three points and that is that there certainly can be no basis for thinking that the express company is about to become a monopoly, because of the very small proportion of the business we are now handling.

The second point, there has been no concealment of information, we have made all we have available to the Commission and to the Post Office. Our reports to the ICC were discontinued after 5 years, with agreement by the Post Office. And the fact that no application has been made of the law does not signify failure on anybody's part because there has never been any express rates for line haul transportation.



The fact is that the passage of the bill would result in an express rate under the provisions of the contract. This kind of action, passage of this bill, would produce a basis from which the Commission and the Post Office might proceed to get a comparative figure.

I think it would be very difficult, because there are many differences between mail and express, in fact when the Post Office applied to the Commission, in 1949, for the application of the law, as the Commission report shows the request was for information in common units of service, with necessary adjustments to reflect differences in services performed, because there are differences and many of them.

But it is complicated to go into and I think only a body such as the Commission can evaluate for the many different units of service, what these differences are, because they are extensive.

I could go into it and would be glad to, but it would use too much time.

On the subsidy point, which is covered in my statement at pages 7 to 9, I have used the figures from the year 1959, which show, first, that the hundred million dollar figure is fantastic and has no possible relation to the facts. Secondly, that if there were an application of 557 to reduce the pay to the railroads for hauling mail, it would mean the railroads would be hauling mail at less than the cost they incur to haul the mail. Since the Supreme Court has held the right to recovery for this compulsory service is a constitutional right, it is our opinion this would make the statute unconstitutional.

I think it is unconstitutional now. But if the law were applied, it would mean the railroads would get less than the rate fixed by the Commission as fair and reasonable, since the commission fixes that on a cost basis.

It would mean the railroads would get less than they spend to haul the mail. They are getting less than their cost for hauling express. That is simply because the express company has been unable to do as well on a private enterprise basis and we are doing and have done for years everything possible to produce as much compensation as possible.

Very few carriers have found it possible to earn full costs and a 3-percent return in the small shipments business in private enterprise and neither has the Post Office, because they have always run deficits.

So I want to conclude with this review.

On page 9 I have underlined the sentences which I think are very important.

It is self-contradictory to talk of a Government subsidy to railroads by reason of payments computed by the Government as merely reimbursing the railroads for costs incurred by them in providing a compulsory service. There can be no subsidy in that and that is all the Post Office is paying, they are simply paying what it cost the railroads to serve them.

Whether the express service can be made to pay its full way or how near it can come to that objective has nothing whatever to do with fair pay to railroads for transporting mail and this is why section 557 is unsound and obsolete under today's conditions, whatever its merits may have been back in 1916.

I can come rather quickly to the remaining points.



Page 9, I have a heading, ICC recommendation, 3 years ago. This is in response to a point made by one of the other witnesses, that the Commission had done this to help the express company. The Commission concluded before we even had our crises, before we had a new contract, before we knew what its terms would be, that 557 was an unsound obsolete law and I just want to make the point here that the Commission reached this conclusion before the express company's problem ever arose, because we did not have a new contract, we were operating under the old agreements then.

The second point, beginning at the bottom of page 10, there is broad public support for the law. I have shown in exhibit form that regulators, all the State commissions are for the bill, because they understand the situation, they do not think the railroads should have their mail pay cut in order to reorganize the express company. They think the Express Co. should provide the best service it can at the lowest rates it can.

I think the State commissions understand very well what we are trying to do to revive the Express Co. I think they are sympathetic with our efforts to improve service and reduce rates, because this is the way to do a good job. So the regulators, the State commissions, and the shipping public strongly support our reorganization effort. I think we have given them new hope in the small shipments field.

I think they are for the bill because they realize if they were to attempt to make us pay more money than we have, it would mean we would go bankrupt or out of existence, into Government ownership and we would be back in the same old crisis as before. And the only alternative is to force the railroads to haul mail at less than cost. So we have public support and all the airlines and the railroads, who haul our traffic and who also haul parcel post, have an interest in this bill. They support it along with many shippers advisory boards. I think it is a very broad public representation.

On the other side, the principal opponents, are our competitors, who I think are somewhat shortsightedly interested only in blocking our reorganization. But they ought to be for it, because after this old law is repealed we will have to stand on our own feet. They don't like the fact the railroads have subsidized us in the past. That is true, but there is nobody else to subsidize us, and as the express company is owned by the railroads and somebody had to meet the express losses or quit, the railroads did it.

But the railroads do not have the money any more. Besides it is not sound business. So the railroads said under the new contract, stand on your own feet, pay us a price, we will give you as low a price as we can until 1963, then you have to pay the out-of-pocket costs. But our competition should like the fact that we will be forced in the future to buy our transportation and pay for it. We will have to run the ordinary risks of a private enterprise, stand on our own feet and risk failure. I think this is the way to run the business. I think it is a great shame it was not tried a long time ago.

However important and desirable this principle is, if the facts do not support our ability to pay a fully distributed cost, if we can only pay an out-of-pocket cost in the initial days at least, we have to have a rate we can pay. There is no other way.



But this approach to end the railroad support of express losses, is certainly in the public interest. I would think the competitors would want that and I would think that everybody would who has an interest in a soundly operated private enterprise.

Now on page 12 I have a heading, the "Wearing Apparel Rates."

The only point there is, there has been a lot of discussion about our rates on wearing apparel. We reduced the rates because we thought we could and still make money on it. Our competitors do not like it. It is in issue before the Commission. I don't know how long it will be before it is decided but I will say this, we put in all the costs, the railroad costs and our costs, and I do not think the wearing apparel case has anything to do with H.R. 1986.

The trucklines and forwarders and we, the railroads, and a lot of people have a lot of cases pending before the Commission. But I don't think they have anything to do with this law.

The only real point of the wearing apparel rates is that we made them as low as we could in the hope we could win back into private enterprise some of the business that has gone to our competition and some that has gone to the Government's parcel post and our effort is to do a better job at the lowest possible rates.

I think that is a good idea. Because that is the way a business has to survive, in private enterprise. But naturally, competitors have a right to object to these rates, they are doing it, the Commission will decide the case.

But I do not think it has anything to do with this law.

Mr. Gross. Except as it may be a guide to the future.

Mr. JOHNSON. If it is, Mr. Gross, and it may be, it would indicate for the future that the express company will make the lowest compensatory rates it can, provide the best service it can.

That is what it means for the future. If that is a pattern. That is all. No matter what we do, we have got to show the 54 Commissions, that regulate us, what our costs are when we file our rates.

We do not make any rates without knowing what our costs are. To do otherwise would be foolhardy. That is what we are going to do in all cases, and what we are doing in this case. I do not see anything wrong with that.

Now on page 13, I say the logical position for our competitors is to support the bill. I just made that point. The bill would put us in a position where we have to pay our way. And we are going to get to that point as fast as we can.

It is scheduled for January of 1963, and I would think they would like that. Certainly I would think they would like that much better than having the railroads continue to underwrite express losses and give us transportation free of charge, rather than charging us a rate.

So I really cannot understand why they do not go along with this bill, unless they think it will result in such poor management of the express company or our necessity for going to the railroads to seek a new reorganization plan and perhaps our failure, that the railroads will throw up their hands at the whole thing and force it into Government ownership or liquidation.

I would hope to avoid that. I will say this, we tried 13 different plans, before we got the one the railroads all agreed to sign. That was a terrible effort. If this bill is not passed the contract says the board



can prescribe a different plan, but what is it? We tried 13 of them before. I don't know. It would be an awful risk to try to devise a plan which will solve the problem of 557 and at the same time put us on our own feet.

I don't know what it is.

If any of our opponents have the answer, I would be grateful to hear it.

Mr. GROSS. Mr. Johnson, when did the express company first come to Congress asking for repeal of this law?

Mr. JOHNSON. Last year.

Mr. GROSS. And the law has been in effect since 1916?

Mr. JOHNSON. Yes, sir.

Mr. GROSS. Why this interest now? I mean, if the law was inoperative, if it was obsolete, if it served no useful purposes, why weren't you in long ago?

Mr. JOHNSON. Well, the law has always hung as sort of a sword of Damocles in recent times over the heads of the railroads. But the railroads were convinced there were no rates for express because—well, there just weren't any. So certainly it would have been an irresponsible thing to try to apply the law; it contemplates rates for express and there were not any. So why worry about it?

The trouble is, unless there can be rates for express, there is no way the express company can ever achieve any profitmaking status, any independence from the old agency principle. We are in a position where every year we have to give back all the money we have. I can't put any money back in the company. There hasn't been a new dollar put in the company for 30 years. We borrowed some money on the credit of the railroads. But until the new contract was signed, everybody thought the express company could operate as an agent of the railroads and the railroads could take the losses. But they reached the point where they want to say: You stand on your own feet; we don't take any more express losses. You have to manage this and find a way to do it. That means there has to be a rate.

As soon as we approach a plan where there has to be a rate, then there is a new danger that 557 may be applied. And that is why it became very important to us as soon as the reorganization plan was developed, because the reorganization plan contemplates we stand on our own feet and pay a rate whether we have the money or not.

It is just putting us on the same basis as any private enterprise business that has to pay its bills. And this has been a great fault of the organization of the express company in the past: we never had a clear-cut responsibility to pay so much money for railroad transportation. But as soon as we get that, Mr. Gross, there is a new fear and danger that 557 might be used to take away part of the mail compensation which is equal only to the mail cost anyhow. So then they might be forced to haul mail at a loss.

Mr. GROSS. You say it is equal; you say that. I am not convinced, with all respect to you, that that is entirely true.

Mr. JOHNSON. That is what the Commission reports say, Mr. Gross. They do. And I think that is right.

Mr. GROSS. That is one of the big flies in the ointment of this proceeding here.



Mr. JOHNSON. I would say this: all the mail rates today, Mr. Gross, have been—all the mail rates by railroads that are in effect today have been approved by the Commission on the basis of costs. And they also, all those in effect today, have been agreed to by the Post Office Department.

Mr. GROSS. That cost includes the losses sustained by the express company and operation of the railroads—

Mr. JOHNSON. Oh, no, sir. The cost includes only the costs incurred in hauling mail. None of the express losses are charged against the Post Office. And the rates in effect today were actually agreed to by the Post Office, the rates for hauling mail, on the basis of costs, were agreed to by the Post Office and jointly submitted to the Commission for review and approval, if it found the costs supported it.

So actually all the mail rates today have the agreement of both the Post Office and the railroads, and the endorsement of the Commission, after a public hearing and investigation.

Mr. GROSS. The Post Office had nothing else to go on, did they?

Mr. JOHNSON. They had very extensive information, Mr. Gross.

Mr. GROSS. They didn't evidence that here this morning, nor last year.

Mr. JOHNSON. They had information—the people in the Post Office are very competent, Mr. Gross.

Mr. GROSS. There is no question about that.

Mr. JOHNSON. They understand the costmaking principles very well.

Mr. GROSS. Incidentally, I think you are very competent, too.

Mr. JOHNSON. I thank you for that.

Mr. GROSS. I am glad to say it in the presence of the people with whom you are associated.

Mr. JOHNSON. I am glad you feel that way, and I would like you to help me keep my job, because one of my jobs is to get this company on a self-supporting basis, but I don't have any standards by which to do it, because I don't have a unit cost. I need a unit cost from the railroads and they can't give it to me if it is going to cost them a half or a third or an eighth of the mail pay because then they would be forced to subsidize the Post Office, and they can't do that.

Mr. GROSS. If I remember correctly, there is a provision in the Interstate Commerce Act that provides there will be no discrimination as between individuals and things in the service performed by the railroads.

What are you going to do when you run up against that? You want us to repeal that section of the law too?

Mr. JOHNSON. No, sir; I do not. I have a couple of others I would like to have you repeal, but not that one.

Mr. GROSS. Discrimination in rates as between persons and things.

Mr. JOHNSON. Mr. Gross, in the ratemaking field it is very complicated. There are many commodities which pay all of their costs; some pay all of their out-of-pocket, plus 30, 40, 60 percent of the overhead; some pay even less than out-of-pocket.

Here is a document released by the Commission, statement No. 460, called distribution of the rail revenue contribution by commodity groups. This shows in the whole range of freight transportation there are varying degrees of ability to pay in relation to fully distributed or out-of-pocket costs. From out-of-pocket, fully dis-



tributed, there is a margin called the margin of reasonableness by the Supreme Court, where you don't expect each commodity to pay precisely the same contribution to overhead. It can't. It would stifle trade if you tried to do that.

You have here from 90 percent of out-of-pocket to 300 percent. But you take into consideration the differences in the characteristics of the traffic. If you remember, there is no other carrier that has a law like 557 applicable to him. Only express. This is a hangover from the old days when the railroads had a monopoly. We don't have those days any more. This law has been obsolete for years, in my opinion.

But you don't have, in the transportation field—and you can't have—ironclad hitching of one rate to another without regard to differences and there are differences. I will get to the solution of that problem in a minute.

I make this point here at the bottom of page 13, that we are the only company that has a law like 557. There is no law that says that any other carrier has to pay the same rate as anybody else with respect to merchandise. If you had that kind of a law you could, for instance, say to the freight forwarders, you can't have railroad transportation except at the price the Post Office pays. If you said that to the freight forwarders they would be out of business like that.

They don't have that law. The motor carriers don't have that kind of law. There is no other carrier that has a law like 557, an inflexible, so-called antidiscrimination provision.

The way it has to work is you have to have an administrative agency, such as the Commission, in a position to evaluate the different cost levels—and there are certainly plenty of them—in relation to the differences and characteristics, ability to pay of different traffic, and all traffic could contribute the maximum it can. But you can't make express contribute any more money than the total we have. If you try to raise rates too much, we lose our business to the competition and we contribute less. If you cut the rates below the out-of-pocket costs you get in trouble; you go bankrupt.

Our effort is to contribute and pay every cent we can, but at the same time to stand on our own feet without any railroad support of any express losses in the future.

If you are going to have a passenger train system in this country, we better get about correcting the express and mail portion of the problem. But you make it worse if you talk about paying the railroads less than they spend for hauling mail, because then you have a worse passenger train problem. If you talk about the express company going out of business and we contribute nothing to the passenger system, you have a worse problem.

The best thing to do under these circumstances is let the Government, the Post Office, continue to pay the rates fixed by the Commission on the basis of what the railroads spend to haul the mail. There is nothing unfair about that. They have the right to contract at less than that, if competition will give it to them; and they are using trucks today and the trucks aren't subject to this kind of law. And let us try to reestablish our company and pay as much as we can under this contract. But if you put too great a burden on us overnight, we fail.



Now on page 14 I have a heading, "Competitive Advantages of Parcel Post over REA." There has been some suggestion that maybe it was unfair for us to compete with the Government. I want to say this: We have been in business a long time. Express goes back 122 years. Just a few years ago, 40-some years ago, parcel post was started. The Government went into the transportation business, small package business, in competition with us and all express companies. One or two express companies folded right away. The others didn't. We have tried to survive in spite of this Government competition.

Now in 1913, when parcel post was established, the weight limit was 11 pounds, and a law was passed saying that parcel post will pay its way. Now those two premises are very important and they gave hope to the express companies, the private enterprises, that they could stay in business in spite of the fact the Government was going into this field. But the situation is different today.

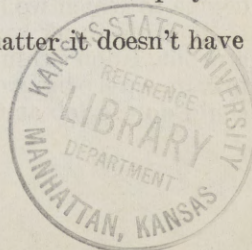
It is a tough life. Look at the advantages the Post Office has over us as private enterprise. They pay no taxes of any kind; they pay no fees for licenses, permits; they have a Government retirement plan which costs them less than railroad retirement costs us. The difference is nearly \$6 million a year. They pay no interest in debt. That costs us \$2,500,000 a year. The Post Office doesn't pay any charge for vehicles they borrow from other Government departments. We paid over a million dollars for leased vehicles last year. They do not need to obtain truck rights. We have to go to the 50 State commissions to get authority to operate a truck. It takes a long time, and are difficult to get. Sometimes you don't get them. But the Post Office doesn't have that problem, and anybody that hauls mail for them doesn't have that problem.

You don't need to get certificates to haul mail for the Government. The Post Office is not regulated by 50 States like we are. They don't have all this staff to maintain. The Post Office is not subject to strike or work stoppages. If I could get rid of that one problem, it would be a great help. But that is a big advantage, when you are trying to run an enterprise. They have space priority on all the railroad trains. They have the right to tell the railroad how to perform their service. Do I do that? No, sir; I can't do that. And I don't blame the railroads for not giving me the right to tell them how to run the trains. I don't blame the railroads for going along with the law that says mail comes first, even though it is competitive with our service. I don't blame anybody. But I simply point out that the Government and parcel post has a big advantage over us and it makes life tough for us.

Then, the Post Office makes no payment for loss and damage except on insured parcels. We have loss and damage coverage, without any extra charge, up to \$50 a shipment. This cost us \$6 million last year.

The Post Office doesn't handle a great many commodities that we do: explosives, chemicals, bees, watercress, iced traffic, perishables—a lot of things. The Post Office has no worries about bankruptcy or liquidation, a big problem for us.

In spite of what the law says, as a practical matter it doesn't have to operate without a loss.





You see, we are trying to live, in spite of this. So we have a hard time. We can't pay much money. Is it fair, then, for the Government to say to express companies, Because you can't pay as much money as we can out of the Federal Treasury, we should get the mail transportation at less than railroad costs?

Here is another big advantage for the Government. Here are the parcel post deficits from the books of the Post Office. The law says parcel post shall be self-supporting at all times. You heard Mr. Henderson say that. Well, here are the annual losses, from the books of the Post Office: 1960, \$113 million. The deficit in these 4 years alone was \$420 million, and from the date they started keeping the books, 1926, it is a billion six hundred and thirty-nine thousand and some dollars. That is a big advantage to have, the ability to go to the Federal Treasury and get them to pay your losses. If we had the advantages of the Government, the advantages of Parcel Post, I can pay more than the Post Office rates, without any worries, and 50 percent more on top of that.

This is one of our problems. We are a private enterprise, trying to pay the taxes, subject to regulation, dealing with our unions on a fair wage scale, and in spite of the Government operating alongside us. We were here first. The Government is competing with us.

But these things—here is the significance of this bill. These are problems which make it difficult for us to make money, difficult for us to avoid losses. The Government is in the field with big advantages operating against us.

Now it has always been my thought that a Government business was supposed to do what private enterprise couldn't. We can do this work. Everytime we raise our rates, 10, 15, or 20 cents, we lose business to parcel post.

I don't blame the Postmaster General for the fact that he always has a timelag and losses. The procedures are very cumbersome. He finds it very difficult to get his rates up from the Commission. The last case took 2 years and 10 months. But they can, nevertheless, live. But if I can't get them up, as soon as the costs hit me, I have to go to the authorities and get a rate increase, and every time I do that our traffic goes over to parcel post where the rates are lower.

See that rate comparison. If I didn't have these problems I wouldn't worry so much about 557. But in the face of these difficulties, I think it is unfair for people to say to me, You have to pay as much as parcel post. That is what 557 does. Parcel post is not in danger of liquidation. Here are their rates.

I don't have time to go over these but I will say this, our basic rates are first class. On every single one of those figures, you will find parcel post far cheaper than we are. Now we have some wearing apparel rates which were discussed here. They are the lowest we have, I think, and you will find only two or three instances in that whole chart, up to 3,000 mile hauls, 70 pounds, you will find only two or three instances where we are lower than parcel post. That is the only degree to which we have been able to compete with the Government.

But I do think we have a right to try. If we can do it and make a profit, I don't think it is immoral. I would think people who like private enterprise would think it was wonderful, if private enterprise could do the job at the same cost as the Government, in spite of the



fact the Government doesn't have these obligations, charges, and expenses.

The important thing to 557 is I just don't think it is reasonable to expect private enterprise, which has to live with Government competition, to pay the same price that the Government pays when it can take the money out of the Treasury and I have no treasury to go to. Therefore, I think it is unreasonable to expect us to do that and I think it would be unfair to expect to apply 557 through the medium of forcing the railroads to sustain losses on mail.

Going on, I think I covered the point on pages 15 and 16 and that is about the end. I might say that all these exhibits, which I have shown you here, are attached to this statement, for you to read and see at your leisure. I would just like to close with this one thing: Where does the public interest lie?

I know that is what you, Mr. Olsen, and you, Mr. Gross, are interested in. Where does the public interest lie on H.R. 1986? Does the public interest require the old law 557 to be retained? Well, I say it doesn't, because—the statement shows all these sections of law—the law is more than adequate, in protecting the Government, parcel post, and Post Office Department, from excessive charges for hauling mail.

Other sections of the law, which are detailed in here, provide the Commission shall fix the rates as fair and reasonable on the basis of hearings. The Post Office has all the information which the railroads can use, they have a right to check it and eventually the Commission comes out with a decision. One of these cases took 5 years, and nationwide field studies, cooperatively with the Post Office participating.

Recently the costs have been compared together and the Post Office agreed to the rates, and the Commission investigated and approved. But as long as the Post Office never has to pay the railroads more than the railroads spend in hauling mail, it seems to me that the public interest is fully protected.

In addition, today—which you didn't have in 1916—the Post Office has resort to competitive means of transportation, the motor carriers and so forth. In addition, since 1940, the Transportation Act of 1940 gave them the right to contract with railroads below the rates fixed by the Commission. So I submit there is plenty of protection of the public interest there. I think certainly 557 can't protect it because it cannot operate.

Mr. OLSEN. Mr. Johnson, you have consumed 30 minutes.

Mr. JOHNSON. Thank you.

On the other hand, if the bill is not passed, I will try to avoid liquidation, the experience of the past indicates that our company and our 32,000 employees will run the gravest risk of nationalization. I will certainly do everything to prevent it. But I think the plan which is embodied in that contract, filed with you, considered by the Commission and approved, is reasonable and fair. There is no unfairness involved. It is a way out for us.

I think the Post Office will be much better to have us paying a rate to the railroads, because then they will have something to start with, they can go to the Commission and the Commission has said that they will consider comparative rates. And they can evaluate the differ-



ences. And the Post Office has gotten nowhere with 557 under the old plan, but under the new plan, if this bill is passed, they will have a better chance.

(The complete statement of Mr. Johnson follows:)

#### FURTHER STATEMENT OF WILLIAM B. JOHNSON

I have previously presented a statement to this subcommittee and I appear a second time simply to supplement that statement with answers to certain charges made by those opposing the passage of H.R. 1986.

Aside from the Post Office Department, the opponents of this bill have been the Parcel Post Association, one freight forwarder and the American Trucking Association.

The truckers and the forwarder are, of course, among our many competitors. The Parcel Post Association is supported by business users of the Government's small package transportation service, which also competes with us. The common sentiment which brings these three opponents here is their resentment of both REA's rescue from its recent crisis, and its progress thus far in reorganization and rebirth as an active, competitive carrier. They try now to use these hearings to stop us in midair, thereby returning REA to the old days of a slow but sure death as a private enterprise.

We were not then a competitor of any concern; our rates were quite high and our service was steadily deteriorating. The forwarder and the trucks could ignore us. Today, while we have recovered very little of our 130 million shipments lost in the last 14 years, we are fighting, and are competing with lower rates, new techniques and improved services. Naturally our competitors want this stopped.

The some 300 members of the Parcel Post Association remember that REA's near death just 2 years ago caused serious consideration of Senate Resolution 8. This resolution would have nationalized us, made us part of the Post Office through Federal acquisition. For many years now those business users of parcel post have profited from a taxpayer subsidy in the form of money-losing Government rates for parcel post service. Naturally they like this, and they know that REA's death, would force an even larger Government transportation business, leading to even more subsidy through more money-losing Government rates.

These objectives of less competition and a bigger taxpayer-subsidized Government transportation business are contrary to the healthy principles of competition and self-reliance which are fundamental in our private enterprise economy, but they are nonetheless the real objectives of these three opponents of H.R. 1986. They have no real concern for fair railroad rates for hauling parcel post, because they know that this is already assured by the laws under which these rates are fixed by the Government itself, the ICC. And they know that section 557 has had no effect whatever on those rates during the 45 years it has been on the law books. They also surely know that even if it were to remain law for another 45 years, its only effect on transportation would be to handicap REA's management and 32,000 employees in their fight for survival and stability of the long-established express business, standing on its own feet.

Accordingly, I am grateful for the opportunity of briefly correcting the record and answering any and all questions which you may have. I would also like to bring the issue back into perspective, which may understandably be distorted by some of the irrelevancies introduced into the record.

#### I. THREE FALSE ASSERTIONS

Opponents can easily make charges in great number and with great irresponsibility. A patient and thorough correction of the record is tempting, but would be time-consuming when prompt action is vital to our own interest. I will, therefore, deny and discuss just three of the false assertions by the opponents:

First, the ridiculous charge that REA is seeking a monstrous monopoly of all small shipments, along with the implication that this might occur; second, the incorrect claim that for years we have concealed facts from the ICC so that it has helplessly or willfully refused to apply the 45-year-old section 557; and, third, the false assertion that the Post Office Department has thus over-



paid and subsidized the railroad and REA by billions of dollars. None of these charges is true.

First, the monopoly charge: This is a good example of a baseless "big smear," the appeal to emotion, fear, and old prejudices. Is REA about to become a monopoly? Why not look at the facts? The facts are—(1) REA has about 18,000 to 20,000 competitors, including the Federal Government itself; (2) we have a large equipment debt, many obsolete terminals, much overage motor equipment, no corporate surplus and practically no equity capital; (3) the express business lost—out-of-pocket—\$10 million last year; (4) we are in the small shipments business, which for 15 years has been recognized as one of the toughest in the whole transportation field, for both the public and the carriers; (5) just 2 years ago we were preparing to liquidate (and actually have a detailed plan ready for implementation); (6) we are handling less than one-third of our 1947 volume, and since then have had to furlough some 44,000 employees (exhibit A); (7) our rates to the public are generally far higher than those of our competitors (although we are trying to correct this, for history has proven the error of pricing ourselves totally out of the market); and (8) we are handling less than 2¼ percent of the total available business (exhibit B).

Does this sound like a monstrous monopoly, abusing the public and putting the Government itself out of business? We would need more than a 200-percent shipment increase today in order to be back merely where we were 14 years ago, with no allowance for the growth of transportation in this country in the interim. And let us again remember, insofar as the public interest is concerned, that REA is regulated from stem to stern by 54 State and Federal commissions.

This ridiculous charge by Mr. Henderson of the Parcel Post Association was presented through selected, partial quotes from a speech I made in New York. The speech was a public expression, made at the request of important shipper groups, of my views on what might be done about the historically difficult and important small shipments problem. For years there has been discussion—largely from the Post Office—of creating a so-called single agency to handle all the small shipments of the country. In the New York speech I argued against this, on the ground that it would inevitably mean a nationalized transport system. As to mergers or acquisitions, my one and only suggestion was that it would be logical for the railroads ultimately to combine their less-than-carload lot freight system with their wholly owned express system, each of which is now losing money. I also urged to these important shippers that they could secure the benefits of a nationwide system, policy, and procedure, of co-ordination and consolidation of services—and without socialization—by simply using REA, which must indeed find a future in greater public use of the costly nationwide system which we have long maintained for the public. But neither greater public use nor the fact that we long have employed all modes of transportation gives rise to any implication whatsoever of monopoly. From 2 percent of the available traffic to monopoly would be a long stride indeed.

Secondly, the charge of concealing information under 557, and a willful ICC refusal to enforce the law: The ICC fully explained its decision in docket No. 30177, *Railroad Rates on Express Matter*, 274 ICC 683, decided July 29, 1949. Copies of this decision, which speaks for itself, are available to the whole world. I will gladly supply a copy for the record or for any member of the subcommittee. On the merits of the Commission's decision, I will simply point out that not since 1928 has there been any charge or rate for railroad transportation of express. No matter what information has been or might be furnished, or computations made, neither the Commission nor anyone else could validly or honestly identify something that has not existed.

The Commission did say in its decision that it would require REA to furnish all pertinent information (274 ICC, at pp. 687, 688). We did that for about 5 years. These reports were made quarterly and I submit a copy of a typical one as exhibit C. They showed the total amount paid by REA to the various classes of carriers, the number of car foot miles of registered express space on railroads parties to the express agreement, and the number of express shipments. All information was shown for the system and for each section of the country. The reports were discontinued in 1955 with the consent of the Post Office Department.



To charge concealment under these circumstances is fantastic. The people in the Post Office have never been in any doubt as to the facts. The non-existence of rates has not been the fault of anyone—there is no blame to be fixed. Our opponents' charges of concealment and refusal of duty are simply a cover-up, a lever, a talking point to arouse the uninformed.

Transportation authorities have recognized for years that not all commodities can or should pay the same proportion of transportation overhead expense. For example, in September 1960, the ICC's Bureau of Accounts issued statement No. 4-60, entitled "Distribution of the Rail Revenue Contribution by Commodity Groups—1958." This 69-page report shows that many commodities paid less than 90 percent of their out-of-pocket cost, and many paid as much as 300 percent—with many others ranging in between. If the unsound principle of 557 were applied for an individual shipper, he would be privileged to secure data from the Commission on a similar commodity and then to compel the railroads to haul his traffic at the same price, regardless of differences in conditions and service. The Commission exists to give due weight to related rates, evaluating the differences and working toward the best overall result.

If H.R. 1986 is passed, REA will be able to buy transportation from the railroads on an initial price basis by which it has a chance to live, under a contract approved by the ICC. The facts will be readily available, as they always have been. In fixing mail rates, the Commission will be in position to give such weight to the express price basis as it deems fair and sound, considering differences in service and other pertinent matters. If H.R. 1986 is not passed, there will probably be no such price basis; certainly there will be no use of 557 in any event; possibly there will be no express company in private enterprise, although, of course, I will always seek a way to avoid both nationalization and liquidation. The clear way is to pass H.R. 1986.

The third accusation, the charge that the Post Office has been subsidizing the railroads and REA by millions of dollars a year because 557 has not been applied: This is absurd.

Not one penny of subsidy has been paid REA by the Post Office. The railroads have been given all the money which REA has had available after paying its own expenses. And, as already pointed out, every effort has been and is being made to reduce express losses. Certainly we have had a long succession of rate increases. The railroads are adamant that by January 1, 1963 the historic underwriting of express will be ended, even if it means our bankruptcy. Thus, H.R. 1986 is pointed squarely to the end of any rail subsidy to REA—even if the rails do own the company. This places the strong incentive of survival behind REA's obligation to pay its way, and is the big hope of ending our subsidy from our owners.

If Mr. Henderson and our truck and other competitors really wanted the end of any underwriting of REA by the railroads, they would favor H.R. 1986, not oppose it. Both the railroads and REA want it ended, and indeed it will be, either by gradual assumption of self-support, which we here seek the opportunity to try, or by discontinuance of the business or nationalization, which we here seek to avoid.

As to the so-called Post Office subsidy to the railroads, there is none. Under 39 United States Code, section 6203 the Postmaster General may compel rail services, in accordance with his regulations. Under section 6208(a), the ICC is required to fix fair and reasonable rates for those services, and the rates continue until changed after notice and hearing of evidence. Under section 6209 the Postmaster General is required to pay the rates fixed by the Commission, except that he may make special contracts at lower or higher prices under section 6215, and may seek special rates from the ICC under section 6210. All of this in itself would make section 557 unnecessary, even if it were practicable. In addition, a special proviso in the Transportation Act of 1940 authorizes the Post Office to contract with any railroad for mail transportation at rates lower than fixed by the ICC—and this provision has been used extensively by the Post Office.

The Post Office can also make special contracts with motor carriers under the so-called star route laws.

Can there be any serious thought that the 45-year-old 557—never used—is really necessary to protect the public interest? There is no provision anywhere for any Post Office payment or anything other than a service rate for service



performed—no cash is ever paid just to help a railroad stay alive, serve the public, or meet its financial needs. Any railroad can be required to serve the Post Office, but under no circumstances can the Post Office ever be required to use rail service or to pay more than the rate fixed by the ICC. And the ICC has never fixed a mail rate at more than full cost plus a 3 percent return. With the Government (PMG) controlling the service, and the Government (ICC) fixing the rates on the basis of cost, there is certainly no need for the old 557 in order to protect the public interest.

In 1959, the Post Office paid the railroads \$149 million for line-haul service for parcel post. By definition the railroad costs, including 3 percent return, of doing the job for the Government were at least that much—\$149 million. Did the payment, then, include a subsidy of \$100 million, as Mr. Henderson says, because the express company only paid \$123 million in 1959—or \$26 million less—for line-haul express service for a lesser volume? It obviously would be ridiculous to answer such a question in the affirmative.

If the \$149 million of rail compensation were reduced to only \$49 million—as Mr. Henderson would have it—the railroads would have received for less work \$74 million more from the express company than from the Post Office. And by definition, they would have been paid at best \$100 million less than the cost they incurred, plus 3 percent return, to serve their Government. They would then be subsidizing the Post Office—and forced to do so under penalty of fine for the peculiar reason that the express business of the railroads was conducted at a loss in spite of all efforts to prevent this.

It is self-contradictory to talk of a Government subsidy to railroads by reason of payments computed by the Government as merely reimbursing the railroads for costs incurred by them in providing a compulsory service. Whether the express service can be made to pay its way, or how near it can come to that objective, has nothing whatever to do with fair pay to railroads for transporting mail and this is why section 557 is unsound and obsolete under 1961 conditions, whatever its merits under the totally different transportation conditions of 1916.

## II. PERSPECTIVE

### (a) ICC recommendation 3 years ago

The ICC first recommended repeal of 557 in its 72d annual report to the Congress on December 1, 1958. The express company was then operating under the old 1954 contract with the railroads. The new contract, which makes repeal of 557 important to our reorganization, was not then even thought of, outlined or discussed. It was first agreed upon on July 2, 1959. Contrary to Mr. Henderson's assertion, therefore, the Commission recommended repeal before the express company even faced liquidation or nationalization in 1959 and long before even a word of the reorganization plan was formulated or written into the new contract.

Why? I quote from pages 186-188 in the Commission's 74th annual report to Congress: (1) "The relationship between the express agency and the railroads" and the "organization and operation of railway express" have "changed" since 1916. (2) These changes render section 557 "obsolete." (3) "The transportation of express matter by railroads is not performed under any rates or system of rates." (4) Nonetheless the law compels the Postmaster General to "request from the Commission \* \* \* rates \* \* \* for services rendered in the transportation of express matter." (5) This compulsory request is futile, wasteful and meaningless because "it is impossible for us to arrive at any practical determination of what would be the underlying rates." These are the same reasons the Commission gave 3 years ago in its 72d annual report. The public interest in sound, up-to-date legislation will be served by repeal. To think otherwise is to ignore conclusions which the members of the Interstate Commerce Commission have reached annually since December of 1958.

### (b) Broad public support for H.R. 1986

Since the new express contract took effect on October 1, 1959, we have striven hard to eliminate the \$40 million out-of-pocket express deficit. Three-fourths of it is gone in less than 2 years. This has been a heroic, painful but lifesaving accomplishment by our 32,000 people. We have done it solely by concentrating on doing a good job for the public as cheaply as we can. I see nothing wrong



with that—and neither do the shippers, regulators and general public in the 50 States which we serve. This is why H.R. 1986 has such broad public support.

If we were a threat to the shipping public, rather than a useful private enterprise fighting to stay alive by good, reasonably priced public service, H.R. 1986 would certainly not be supported by so many shipper and public groups, and other organizations, all of which have adopted resolutions supporting the bill. Some of these more important groups are:

- The Interstate Commerce Commission.
- The Brotherhood of Railway Clerks.
- The National Industrial Traffic League.
- The National Retail Merchants Association.
- The Association of American Railroads.
- The American Short Line Railroad Association.
- The Air Transport Association.
- The National Association of Railroad and Utilities Commissioners.
- The Transportation Association of America.
- The Milwaukee Association of Commerce.
- The Atlantic States Shippers Advisory Board.
- The Central Western Shippers Advisory Board.
- The Mid-West Shippers Advisory Board.
- The Pacific Coast Shippers Advisory Board.
- The Southwest Shippers Advisory Board.
- The Trans-Missouri-Kansas Shippers Advisory Board.
- The Allegheny Shippers Advisory Board.

If the ICC's endorsement of H.R. 1986 were anything but sound in the light of modern transportation principles and regulation, Congressman Oren Harris, chairman of the Interstate and Foreign Commerce Committee, would hardly support H.R. 1986. If the bill were not important in our fight to survive and save their jobs, our thousands of employees would not be here expressing their concern. And the support of the National Association of Railroad and Utilities Commissioners—representing the regulators in all the States—would not be forthcoming if we were a threat to sound, progressive transportation service for the people. The broadly representative Transportation Association of America is dedicated to preserving free enterprise in transportation, and thus supports H.R. 1986. The Nation's airlines and the railroads haul mail as well as express—but they all support H.R. 1986.

*(c) The wearing apparel rates*

Over the last 2 years we have been engaged in a constant effort to serve the public better by simplifying tariffs and reducing rates to a realistic and competitive, but always compensatory, level. In every instance we have made careful studies in advance and only two of our many rate adjustments have been assigned for ICC investigation. One of these is the wearing apparel tariff which has so preoccupied Messrs. Henderson, Hoffman and Freund in their testimony before this subcommittee. Moreover, on the basis of extensive affidavits and pleadings, the ICC has made a preliminary finding that there is so little likelihood that our wearing apparel rates will need regulatory modification that it has allowed us to put them into effect while the investigation has been going on.

The wearing apparel case has no bearing on H.R. 1986, any more than have the several hundred ICC investigations now pending concerning the rates of the ATA for whom Mr. Freund speaks, or the similar such investigations of the rates of freight forwarders such as Mr. Hoffman's Chain Deliveries Express. Nevertheless, I would just like to deny that these wearing apparel rates constitute unfair competition. They were published only after detailed cost studies showed that they will cover the costs of both REA and the railroads on the particular traffic involved. We believe that this will be conclusively shown in the ICC proceeding. In any event, it is not relevant to H.R. 1986.

*(d) The logical position for our competitors is to support H.R. 1986*

It is strange that Mr. Hoffman and Mr. Freund pretend to favor our continuing to receive transportation from the railroads without fixed charge, rather than have us obligated to pay for it in stipulated amounts and stand on our own



feet, with the attendant risk of financial failure. We are willing to take the risk, and indeed must do so. This is the object of H.R. 1986. Our competitive efforts should be easier for Messrs. Hoffman and Freund to cope with if we have an obligation to pay a transportation rate to the railroads for service. Such an obligation will contribute greatly to sound management, will force us to meet our expenses like any other business and also give us a profit incentive. On the merits, our competitors should welcome this change. Actually they seem to hope that by opposing everything we do or seek REA will be forced back to the old days of slow death and ultimate liquidation, as was recently threatened.

*(e) REA only carrier subject to law such as section 557*

None of our competitors is subject to section 557 or any similar provision of law. This old law was passed when railroads had a virtual monopoly of transportation in this country. It applies only to railroad transportation of express and is another example of a discriminatory restraint based on conditions long since gone. Section 557 is typical of many provisions of transportation law which have not been eliminated or changed as conditions in the industry have changed. Our competitors are not subject to such a law but want us to remain subject to it, presumably to hamper us, and discriminate against us.

*(f) Competitive advantages of parcel post over REA*

Mr. Henderson, of the Parcel Post Association, referred to the old 557 as a law to protect the Government against discriminatory pricing by the railroads. What about Government discrimination against express? Parcel post has been given big advantages over us. They inevitably mean a big handicap for us in staying alive, much less in paying the same transportation rates as parcel post (exhibit D). It is ridiculous for anyone to talk of requiring us to assume equality of payments to the railroads—after the Government has given its own competing mail service the special advantages over us of space priorities, lower costs, governmental powers over service, freedom from labor disturbances, and a never ending supply of taxpayer dollars to use in meeting deficits. And it is unfair for the Government to use its special powers and taxpayer dollars to compete us into poverty and losses and then for anyone to suggest under 557 that our poverty is a reason why it should pay less for mail transportation than Congress own regulatory agency has found to be fair.

*(g) Parcel post deficits average \$90 million annually*

In this connection I also want to supply a list of Post Office figures showing parcel post deficits (exhibit E). Government competition is bad enough when the Government's rates are compensatory; it is impossible when the competition has all the advantages of a Government business and still operates at an average annual deficit of \$90 million a year (last 12 years) or over a billion dollars in the last 12 years. Incidentally, it is estimated that parcel post costs have increased about \$55 million, on an annual basis, since the end of fiscal 1960, further aggravating the problem. These figures show how hollow is Mr. Henderson's repeated talk about the law requiring parcel post to break even. The law requires it, all right, but it doesn't happen.

*(h) The change in parcel post premises since 1916 makes section 557 unfair and unrealistic today*

The scare talk of a "dying" parcel post is ridiculous. It is true that REA has tried hard to find a way, by better service and lower but compensatory charges, to compete with parcel post. We have had very little success, but we do assert the right to try. Mr. Henderson seemed to suggest that competition with a Government transportation business is immoral or unfair. I see nothing wrong in trying to persuade the American people to use a private enterprise service rather than a Government service. I should think such efforts would be cheered by all Americans, certainly by all shippers and businessmen who can look beyond the lure of today's taxpayer-supported profits. REA is fighting for its life—under the handicap of a competing Government. The proper function of parcel post is to do what private enterprise can't do in a free, competitive economy, not simply to provide cheap service. I would like to point out that the express business was here first—122 years ago. Parcel post is not yet 50 years old—and it certainly



is in no danger of liquidation. Parcel post was established in 1913 on two fair-dealing premises: first, that it would always be self-supporting, and, second, that it would compete to the least extent possible with private enterprise. The apparent abandonment of these premises alone makes section 557, which was passed in 1916, unfair and unrealistic under present conditions.

(i) *Parcel post rates are generally far lower than express rates*

In this connection I submit a comparison of our rates with those of parcel post (exhibit F). Only where we are tendered 10,000 pounds of traffic in a day by a single shipper can we undertake to compete pricewise with the Government, and even then only on a certain kind of business, and on certain sizes of packages for certain distances. The Government's charges are generally far lower than ours, and the Government attracts nearly nine times the pieces of traffic we do. The parcel post deficit problem is simply that the adjustments in parcel post rates to the public have been permitted to lag far behind the increases in parcel post costs over the last 10 to 12 years. And this does not include the parcel post share of costs charged to departments other than the Post Office, nor any interest on past losses. Of course, it is only a Government business which can follow such policies.

### III. THE OVERALL PUBLIC INTEREST

The real test of H.R. 1986 is whether it serves the public interest in repealing 557. The Government is guaranteed fair and reasonable mail transportation rates, *without 557*, by ICC regulation, by competition between carriers under modern conditions, and by freedom to contract with railroads for service at less than the ICC rates. Section 557 is thus unnecessary to protect the public interest in fair mail rates. Going further, it is now actually an instrument of positive harm to the public interest in threatening to block the chance for an efficient, private enterprise, self-supporting and taxpaying express service.

Our competitors may shortsightedly think it better for them if H.R. 1986 is not passed, if the REA reorganization plan collapses, and our company dies or is nationalized. But they, and Mr. Henderson's businessmen who enjoy subsidies through low Government rates for parcel post, should know that compromises with socialization are dangerous. There is more threat to them all from that quarter than from regulated competition and service by us. The great shipping public, the State regulators, and our employees understand this. We hope the subcommittee shares the same conviction.

### EXHIBIT A

| Year      | Rail less-than-carload express shipments | Number of employees | Year      | Rail less-than-carload express shipments | Number of employees |
|-----------|------------------------------------------|---------------------|-----------|------------------------------------------|---------------------|
| 1947----- | 189,320,951                              | 75,117              | 1954----- | 75,760,093                               | 42,357              |
| 1948----- | 141,748,167                              | 66,340              | 1955----- | 78,238,660                               | 41,703              |
| 1949----- | 106,113,341                              | 55,162              | 1956----- | 80,710,438                               | 41,931              |
| 1950----- | 87,192,444                               | 49,134              | 1957----- | 68,430,224                               | 37,315              |
| 1951----- | 77,684,716                               | 44,803              | 1958----- | 67,424,617                               | 36,305              |
| 1952----- | 92,020,344                               | 46,754              | 1959----- | 63,774,573                               | 32,948              |
| 1953----- | 85,785,786                               | 44,679              | 1960----- | 159,744,174                              | 31,401              |

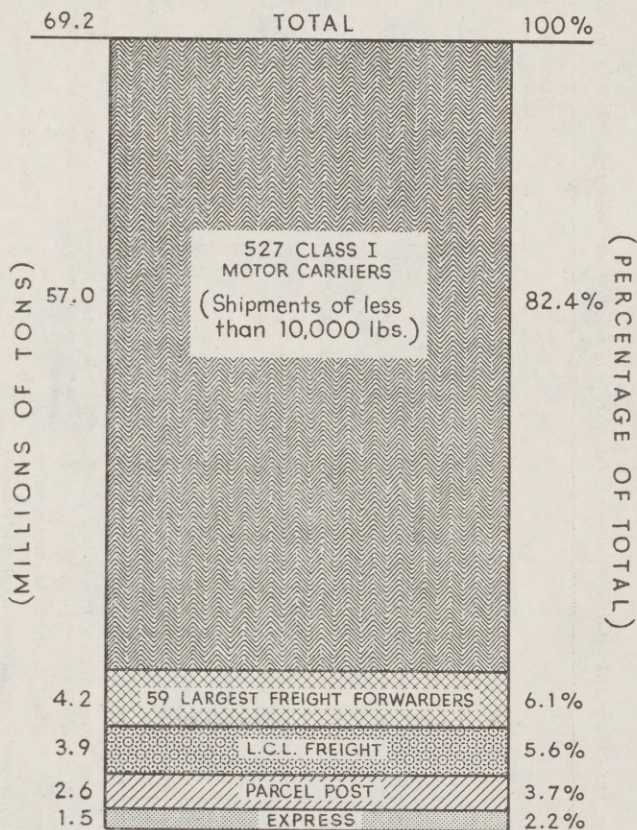
<sup>1</sup> 2 months estimated.



EXHIBIT B

TONNAGE OF SMALL SHIPMENTS BY VARIOUS CARRIERS

Year 1959 (Parcel Post is Fiscal 1959)



NOTE: THESE FIGURES DO NOT  
INCLUDE SHIPMENTS BY:

- Small Freight Forwarders
- A few Class I Motor Carriers
- Smaller Motor Carriers
- Bus Express
- Air Freight
- Private & Exempt Carriers

SOURCE:

REA records for express tonnage; 74<sup>TH</sup> Annual Report of ICC, pp 34 and 35 for tonnage of other carriers



## EXHIBIT C

*Report of Railway Express Agency, Inc., to the Interstate Commerce Commission of selected operating statistics for quarter year ended Mar. 31, 1950*

| Item                                                                                                                                                                                                                                                                                                                                                                                            | Express groups                              |                                            |                                           |                                             |                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|--------------------------------------------|-------------------------------------------|---------------------------------------------|------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                 | Eastern                                     | Southern                                   | Western                                   | Mountain Pacific                            | Total                                          |
| 1. Amount of express privileges payments to railroads, other than electric railroads:<br>(a) On carload shipments on railroads parties to express operations agreement consigned from 1 consignor to 1 consignee at 1 destination, moving under rates which exclude vehicle service<br>(b) On shipments by railroads other than electric railroads, not parties to express operations agreement | \$411,581.85<br>\$6,723.24                  | \$172,959.69<br>\$6,426.14                 | \$322,730.70<br>-----                     | \$174,980.13<br>\$10,178.75                 | \$1,082,252.37<br>\$23,328.13                  |
| 2. Amounts distributed to railroads (other than electric) parties to express operations agreement except on shipments included in 1 (a) and 1 (b)                                                                                                                                                                                                                                               | \$3,407,097.79                              | \$2,718,458.73                             | \$5,044,098.64                            | \$1,728,053.90                              | \$12,897,709.06                                |
| 3. Amounts paid to carriers other than railroads for transportation services:<br>(a) Motor carriers<br>(b) Aircraft carriers<br>(c) Miscellaneous carriers (carriers by water, electric railroads, ferries, etc.)                                                                                                                                                                               | \$76,077.35<br>\$1,196,029.29<br>\$7,836.13 | \$23,145.39<br>\$338,876.34<br>\$17,787.81 | \$37,012.86<br>\$559,846.38<br>\$3,866.66 | \$76,983.37<br>\$375,084.76<br>\$109,086.23 | \$223,218.97<br>\$2,409,836.77<br>\$138,576.83 |
| 4. Number of car-foot-miles of registered express space on common carriers by railroad (other than electric railroads) parties to express operations agreement, exclusive of those relating to carload shipments moving under rates which exclude vehicle service and railroads not parties to express operations agreement (see 1 (a) and 1 (b) above)                                         | 1,963,280.710                               | 1,004,274.746                              | 1,618,947.593                             | 685,705.866                                 | 5,272,208.825                                  |
| 5. Number of express shipments handled by common carriers by railroad:<br>(a) Carload shipments (see 1 (a) above) terminated<br>(b) Less-than-carload shipments (see 1 (b), 2, and 3 above) terminated                                                                                                                                                                                          | 1,199<br>11,636,939                         | 152<br>3,689,810                           | 249<br>5,619,149                          | 207<br>2,206,752                            | 1,807<br>23,212,650                            |

<sup>1</sup> Balance of gross express revenues and all other income remaining after deducting all operating expenses and other charges of Railway Express Agency, Inc., including items 1 (a), 1 (b) and 3 (see Article V, Express Operations Agreement, effective March 1, 1929), sometimes called "express privileges payments."

<sup>2</sup> Includes car foot miles for a small number of carload shipments of express matter moving under rates which include vehicle service.

<sup>3</sup> Includes a number of shipments by motor and water carriers and electric railroads which have no rail haul and which it is impracticable to separate.

Verification: The undersigned says that he is vice president, accounting, of the Railway Express Agency, Inc.; that he has carefully examined the foregoing report and that to the best of his knowledge and belief all statements of fact contained in the said report are true and correct.

W. A. BENSON,

Post Office address: 230 Park Avenue, New York 17, N. Y.

July 26, 1950.



EXHIBIT D

LIST OF ADVANTAGES, PARCEL POST OVER PRIVATE ENTERPRISE  
TRANSPORTATION OPERATIONS

The Post Office Department pays no taxes of any kind.

The Post Office Department pays no fees for licenses or permits.

The Post Office Department is in the Federal Government retirement plan, rather than the more costly social security or railroad retirement.

The Post Office Department pays no interest on debt.

The Post Office Department pays no charge for borrowed vehicles.

The Post Office Department does not need to obtain truck rights.

The Post Office Department is not regulated by the 50 States.

The Post Office Department is not subject to strikes or work stoppages interrupting the service.

The Post Office Department has space priority and can control rail service.

The Post Office Department makes no payment for loss and damage except on insured parcels, for which an extra charge is made.

Parcel post does not handle certain costly commodities.

The Post Office Department has no worries about bankruptcy or liquidation. In spite of what the law says, as a practical matter, it does not even have to operate without a loss.

EXHIBIT E

*Amounts by which 4th class parcel post revenue failed to meet post office expenditures<sup>1</sup>*

| Fiscal year | Deficit       | Deficit for period | Accumulative deficit | Fiscal year | Deficit        | Deficit for period | Accumulative deficit |
|-------------|---------------|--------------------|----------------------|-------------|----------------|--------------------|----------------------|
| 1926.....   | \$2, 959, 733 |                    |                      | 1944.....   | \$14, 462, 477 |                    |                      |
| 1927.....   | 4, 479, 586   |                    |                      | 1945.....   | 2 688, 018     |                    |                      |
| 1928.....   | 7, 059, 930   |                    |                      | 1946.....   | 42, 415, 365   | \$74, 099, 411     | \$356, 060, 526      |
| 1929.....   | 19, 778, 707  |                    |                      | 1947.....   | 56, 083, 873   |                    |                      |
| 1930.....   | 15, 570, 731  |                    |                      | 1948.....   | 96, 619, 890   |                    |                      |
| 1931.....   | 20, 031, 600  |                    |                      | 1949.....   | 130, 789, 471  |                    |                      |
| 1932.....   | 32, 716, 267  | \$69, 860, 287     | \$69, 860, 287       | 1950.....   | 105, 111, 193  |                    |                      |
| 1933.....   | 32, 014, 402  |                    |                      | 1951.....   | 131, 140, 928  | 519, 745, 355      | 875, 805, 891        |
| 1934.....   | 19, 057, 955  |                    |                      | 1952.....   | 153, 735, 441  |                    |                      |
| 1935.....   | 20, 886, 924  |                    |                      | 1953.....   | 151, 497, 033  |                    |                      |
| 1936.....   | 18, 007, 550  | 122, 683, 098      | 192, 543, 385        | 1954.....   | 23, 290, 554   |                    |                      |
| 1937.....   | 14, 057, 323  |                    |                      | 1955.....   | 2 1, 938, 362  |                    |                      |
| 1938.....   | 16, 969, 837  |                    |                      | 1956.....   | 15, 006, 265   | 341, 680, 931      | 1, 217, 486, 822     |
| 1939.....   | 17, 488, 641  |                    |                      | 1957.....   | 58, 590, 272   |                    |                      |
| 1940.....   | 21, 809, 870  |                    |                      | 1958.....   | 116, 930, 234  |                    |                      |
| 1941.....   | 19, 092, 069  | 89, 417, 740       | 281, 961, 125        | 1959.....   | 133, 063, 119  |                    |                      |
| 1942.....   | 17, 909, 587  |                    |                      | 1960.....   | 113, 000, 000  | 421, 583, 625      | 1, 639, 070, 447     |
| 1943.....   | No report     |                    |                      |             |                |                    |                      |

<sup>1</sup> Source: Post Office Department Cost Ascertainment Reports. (Figures do not include taxpayer losses on parcel post represented by costs of other Government agencies and Federal debt interest costs on accumulated losses. These items are now estimated to total over \$80,000,000 annually.)

<sup>2</sup> Surplus.



## EXHIBIT F

*Comparison of REA charges and parcel post charges in cents*

|                                    | Miles |     |     |       |       |       |       |       |
|------------------------------------|-------|-----|-----|-------|-------|-------|-------|-------|
|                                    | 100   | 300 | 500 | 1,000 | 1,400 | 1,600 | 2,500 | 3,000 |
| 10 pounds:                         |       |     |     |       |       |       |       |       |
| Parcel post.....                   | 73    | 83  | 98  | 125   | 155   | 186   | 216   | 216   |
| REA 1st class.....                 | 295   | 320 | 339 | 374   | 400   | 415   | 436   | 450   |
| Wearing apparel <sup>1</sup> ..... | 190   | 195 | 206 | 223   | 238   | 245   | 256   | 258   |
| Do. <sup>2</sup> .....             | 210   | 210 | 210 | 223   | 238   | 245   | 256   | 258   |
| 20 pounds:                         |       |     |     |       |       |       |       |       |
| Parcel post.....                   | 113   | 138 | 168 | 225   | 275   | 341   | 396   | 396   |
| REA 1st class.....                 | 325   | 375 | 414 | 481   | 537   | 564   | 627   | 664   |
| Wearing apparel <sup>1</sup> ..... | 198   | 224 | 244 | 280   | 309   | 324   | 358   | 372   |
| Do. <sup>2</sup> .....             | 220   | 234 | 254 | 290   | 319   | 334   | 368   | 382   |
| 40 pounds:                         |       |     |     |       |       |       |       |       |
| Parcel post.....                   | 193   | 276 | 336 | 450   | 550   | 682   | 792   | 792   |
| REA 1st class.....                 | 386   | 485 | 561 | 699   | 807   | 863   | 1,008 | 1,092 |
| Wearing apparel <sup>1</sup> ..... | 214   | 253 | 283 | 338   | 389   | 492   | 457   | 485   |
| Do. <sup>2</sup> .....             | 264   | 303 | 333 | 388   | 430   | 452   | 507   | 535   |
| 70 pounds:                         |       |     |     |       |       |       |       |       |
| Parcel post <sup>3</sup> .....     | 346   | 497 | 602 | 800   | 980   | 1,209 | 1,404 | 1,404 |
| REA 1st class.....                 | 477   | 648 | 784 | 1,024 | 1,215 | 1,312 | 1,582 | 1,733 |
| Wearing apparel <sup>1</sup> ..... | 219   | 287 | 340 | 435   | 508   | 546   | 652   | 705   |
| Do. <sup>2</sup> .....             | 264   | 303 | 340 | 435   | 508   | 546   | 652   | 705   |

<sup>1</sup> Charges on single shipments when forwarded from 1 shipper to 1 or more consignees in aggregations of 10,000 pounds or over.

<sup>2</sup> Wearing apparel charges effective Apr. 24, 1961, in ICC \$499 for single shipments when forwarded from 1 shipper to 1 or more consignees in aggregations of 10,000 pounds or over.

<sup>3</sup> A constructed charge based on the charges for individual packages of 20 pounds, 20 pounds, 20 pounds, and 10 pounds, totals 70 pounds between 1st class post offices.

Traffic Department, Pricing Division, New York, N. Y., Mar. 13, 1961.

Mr. OLSEN. Thank you, Mr. Johnson.

Our next witness is Mr. Hastings.

Mr. HASTINGS. Mr. Olsen, if you have no objection, we would like to have Mr. Goff, of Continental Trailways, take the stand first. I will follow him.

Mr. OLSEN. He wasn't here this morning. I didn't know he was here. Thank you.

Mr. Goff?

**STATEMENT OF WARREN A. GOFF, ASSISTANT GENERAL COUNSEL,  
TRANSCONTINENTAL BUS SYSTEM, INC., DALLAS, TEX., ON  
BEHALF OF NATIONAL TRAILWAYS BUS SYSTEM**

Mr. GOFF. Mr. Chairman and members of the subcommittee, there are two representatives of the bus industry here today, myself and Mr. Hastings. We have prepared statements which I believe complement each other and we feel the two statements should be considered together in their entirety, in order to give to you the position that the bus industry occupies in this particular hearing.

It won't take more than 15 or 20 minutes to read both of them and we would like for them to be considered together, so that together they might present a complete picture.

I am Warren A. Goff, assistant general counsel of Transcontinental Bus System, Inc., Dallas, Tex., and testifying in behalf of National Trailways Bus System. National Trailways is an organization composed of some 45 independent intercity bus carriers serving 48 of the 50 States. National Trailways opposes passage of H.R. 1986.



One of the basic questions which the bus industry feels must be resolved, and a question of first importance is why are the Nation's intercity bus carriers interested one way or another in H.R. 1986, since it obviously has nothing to do with passenger traffic. It is that very passenger traffic, or more specifically the lack of it, that has caused the conditions which prevail in today's bus industry and which spark our opposition to this bill.

For a number of years it has been common knowledge that the railroads have suffered a steady decline in passenger traffic and revenues. The result of this decline has been the loss of passenger train after passenger train. The ultimate result is that today's intercity bus carriers are the sole surviving mass transportation media in thousands upon thousands of communities in every corner of this Nation which no longer have passenger train service and which are too small to support local air service. Were it not for bus carriers, these communities would be isolated from the rest of the world insofar as public transportation is concerned. Intercity bus carriers serve over 40,000 cities, towns, and communities in the United States, which are served by no other form of public transportation, insofar as the movement of passengers is concerned.

Unfortunately, the discontinuance of the passenger trains did not mark a new day for the bus carriers. The same competition from the airlines and the private passenger vehicle, which exacted its toll on the railroads, set about to make similar inroads on the revenues of the bus carriers. The result was a downward plunge of passenger revenues.

The figures which I will give to you are taken from investigations which I have made with respect to a bus system which is the second largest in the United States, Continental Trailways. While the actual figures and percentages will vary to some degree from busline to busline depending upon its geographical location, size, and related factors, I know of no bus carrier in the United States whose experience has not paralleled that which I will relate. In the case of some smaller bus operators, the trends shown by this investigation are even more severe.

In 1949, Continental Trailways derived some 93 percent of its total gross revenues from passenger traffic. In 1950 that percentage slipped slightly. In 1951 it slipped again. The intervening 10 years have seen a steady downward trend in these revenues until in 1960 they comprised only 72 percent of the total gross revenues. Gross revenues rose to some extent during the period, mostly attributable to rate increases.

It requires no degree in higher mathematics to understand that when any business loses such a large percentage of revenues derived from its principal source, something must be done. The alternatives are relatively simple. Either other sources of revenue must be developed to take the place of those which have been lost or the service rendered to the public drastically curtailed.

Bus carriers, being a semipublic utility having a duty to provide service to all the public, set about to develop other sources of revenue so that the service level could be maintained, not only between major cities but throughout the Nation. They had at their disposal two incidental sources of revenue, those being charter coach service to special parties and the transportation of package express. Both of



these sources of revenue have been developed in the past 10 years at about an equal rate, and together they bridge the gap left by falling passenger revenues. It is the express business which here interests us today.

Bus operators historically have handled small shipments of package express. Until recently, however, the volume of such express was relatively small. In 1949, for example, the same bus system whose figures I quoted in relation to passenger business derived only 2 percent of its total gross revenues from express. This has been developed to the point that in 1960 express comprised almost 14 percent of the total gross revenues.

It must be borne in mind that a bus company must maintain all of its facilities, that is, terminals, buses, drivers, et cetera, regardless of whether express is handled or not, in order to transport its passengers. Many is the local schedule in areas which are not main line territory, where no train or air service is available, on which the passenger revenues do not pay the cost of operation, let alone a profit, but on which the express revenue means the difference between submarginal and profitable operations. Many is the busline that finds its revenues from express equals or exceeds net profits after taxes. The blunt truth of the matter is that without present express revenues, the bus industry cannot survive in its present form.

Today's bus express business is a multimillion-dollar business, exceeding \$35 million last year, carried on fast, frequent bus schedules throughout the United States, many of which have been preserved and exist today only because of that same express traffic. The jobs of some 55,000 persons directly employed by buslines and the many other thousands of small businessmen who also act as commission agents for the buslines depend on the retention by the bus carriers of their present express revenues and the development of even more in the future.

Today's bus operator wants no more than his fair share of the small package express business which the excellent service to the public which he now provides will bring to him in the regular course of business. He knows that this share will increase as time goes on. He is not afraid of competition for so long as that competition does not have an unfair advantage. No advantage could be more dangerous in the hands of a major competitor than that of a Government subsidy. Bus operators receive no subsidy of any sort. They must build their own terminals in the heart of every major city at tremendous expense. They pay heavy vehicle and fuel taxes to support better highways.

Every bus carrier considers REA to be one of its prime competitors and I have no doubt REA considers the motorbus industry to be a formidable competitor. Competition is keen from a service standpoint and since the establishment of low incentive rates on commodities where a tremendous volume exists such as auto parts or clothing, the competition hits home ratewise.

National Trailways feels that REA is being involuntarily though indirectly subsidized by the Post Office Department. While section 557 of the Railway Mail Pay Act (39 U.S.C.A. 557)—which H.R. 1986 proposes to repeal—has never functioned to do so, as previous testimony indicates, its proper function and use could help to bring payments made by the Post Office Department to the railroads for



the transportation of mail into proper balance, thus ending the involuntary and indirect subsidization already shown to exist.

The independent carriers composing National Trailways Bus System must protect their present express revenues, and in order to help insure that conditions in the future will be such that this revenue may be retained and expanded, respectfully offer the foregoing testimony in opposition to the passage of H.R. 1986.

Mr. OLSEN. Do you have any questions, Mr. Gross?

Mr. GROSS. Yes, one or two.

Mr. Goff, how is your express business handled? That is, do you have your own express setup? You don't get your business from Railway Express, do you?

Mr. GOFF. No, sir; we do not derive any business from Railway Express. We have our own express setup. We are highly competitive with Railway Express.

Mr. GROSS. You may or may not derive business from Railway Express; is that correct? Do they channel any business through you?

Mr. GOFF. Railway Express does not channel any business through us, with the exception that we are a carrier who has recently begun a new type of service, called a bus-back service, in which we have, in two instances, been a line haul carrier for the Railway Express Agency, for express in areas where the passenger trains have come off and we are the only means of transportation that exists in those particular areas.

This is very small—in fact, there are two routes on which this is true. Other than that, we receive no business from the Railway Express. We are competitive with the Railway Express for traffic.

Mr. GROSS. In other words, in a small town in Iowa, through which you operate a bus, you would have a merchant or someone operating the bus station, wherever the stop was, and they would receive we will say a part for an automobile or a motor, something of that kind, they would be the receiving station for it; is that it?

Mr. GOFF. Our business is carried on in the main in this fashion: We have terminals of course in the major cities. However, obviously in the small towns, there is not enough business to support a terminal. We have what is known I think in parlance of the Railway Express Agency, a merchant agent, which we call a commission agent. This person is a—perhaps he owns a drugstore, perhaps he owns a grocery store or filling station—he is a small businessman. He does our business, both as far as the selling of passenger tickets is concerned, on a commission basis.

Mr. GROSS. Your stations are also operated out of small hotels and restaurants in our part of the country. Then they would be the agents to handle whatever express business you have?

Mr. GOFF. That is correct.

Mr. GROSS. How do you establish your rates?

Mr. GOFF. Rates are established on a first-class basis. We do not have what are generally termed commodity rates. We charge the same rates on every commodity. The only difference is that it is broken down in mile increments. But as far as there being commodity rates, to us, every commodity is the same. We charge the same rate on every commodity, with the exception that there are a few items which are so bulky that they are rated on what we call a density factor.



However, I think as a general proposition, it is a true and correct statement to say the rates in the bus industry are the same for every commodity we handle.

Mr. GROSS. On the basis of weight, girth, and so forth?

Mr. GOFF. That is correct, sir. Obviously, since we handle this traffic in our passenger-carrying vehicles, we have a limitation on the space which is available, and we have certain size limits which limit us to smaller sized packages and shipments.

Mr. GROSS. Thank you.

Mr. OLSEN. If there isn't any room, does the package have to wait for another bus?

Mr. GOFF. Normally, we will find that if there is no room, it is because the bus is full with passengers and their baggage and generally we find that in such a situation, we are required to run what we call a double. That is, we will be required to put on a second section to a given schedule, wherein we will haul whatever overflow of passengers or baggage and express there is, which of course doubles the room we have for express. We normally find we are able to clean up most of our express on any given schedule, because usually if there is an overflow, it is because there are too many passengers and we put the extra passengers on a second section and we also put the extra express on a second section.

Mr. GROSS. Do you carry first-class mail on buses?

Mr. GOFF. We do carry first class mail. The bus lines have what are known as area contracts, and we carry pouch mail. We do have some star route contracts and we do carry some volume of first class mail.

Mr. GROSS. Do you carry parcel post?

Mr. GOFF. On our star route contracts, we do.

Mr. GROSS. On your star route contracts?

Mr. GOFF. Yes.

Mr. GROSS. Thank you.

Mr. JOHNSON (staff director). Mr. Goff, in pursuance of Mr. Gross' question, is there any law or any regulation or requirement for the Post Office Department which would have the effect that section 557 has on REA, that is, which prevents you charging more under your star route contracts or otherwise for that service than you charge for carrying express packages for the public?

Mr. GOFF. There is not. However, I think it is fair to state that our present mail contracts are derived at a rate which is cheaper than our express rate.

Mr. JOHNSON. That was on a voluntary basis. There is no requirement?

Mr. GOFF. That was on a voluntary basis and there is no requirement such as 557 which would apply to a bus company.

Mr. JOHNSON. Would you be able to express an opinion as to whether your system or the bus systems generally would object to having such a requirement written into the law to apply to the bus companies?

Mr. GOFF. Of course I cannot speak for the bus industry in general. However, so far as I know, we would not.

Mr. JOHNSON. Thank you.



Mr. OLSEN. How do you manage to serve localities that are not your lines?

Mr. GOFF. Of course the bus carriers are regular route carriers. We obtain certificates of public convenience and necessity from the ICC, which are practically in all instances regular routes. We serve all cities, towns, and communities, which are on our regular routes. Now I would not say to you that every small city, town, or village in the United States has bus service, because this not true.

Mr. OLSEN. How would you forward something to a town and community that was not on one of your routes?

Mr. GOFF. If it is not served by some bus company, we would not be able to accept the shipment. Now all of the bus companies, I might say, that we have, of course, tariffs on file with the ICC, which provide for an interchange between bus companies. That is, we will interline freight as will any other common carrier. Practically all of the bus companies are members of these tariffs and will interchange freight with each other and for so long as there is a bus company serving the particular town in question, we will accept, at the point of origin, a shipment for that town and will interline it with whatever bus company serves that point. If, of course, no bus company serves it, we cannot accept it since we do not interline with other media.

Mr. OLSEN. Do you ever attempt to forward through parcel post or express service?

Mr. GOFF. Not to my knowledge.

Mr. OLSEN. That is all I have.

Mr. GROSS. You are a private enterprise operation, aren't you?

Mr. GOFF. Very definitely, sir.

Mr. JOHNSON (staff director). Is there any law, Mr. Goff, which requires a bus company to accept and transport mail matter for the Post Office Department?

Mr. GOFF. There is not.

Mr. JOHNSON. I would assume there would be no law that requires any priority be given, so in entering into your contracts or agreements for carrying the mail, you are truly dealing across the table with the Post Office Department?

Mr. GOFF. We are dealing across the table with them. I think Mr. Hastings can testify with a little more clarity on this subject. But as I understand it, the area contracts which presently have been made with the Post Office Department, require that 25 percent of the available space in the bus bins be given to the transportation of mail. However, there is no law which would require this be done and when this particular thing was negotiated, it was strictly an arm's-length transaction across the table.

Mr. JOHNSON. It is not a comparable situation to that which exists under the Railway Mail Service Pay Act of 1916?

Mr. GOFF. There is not.

Mr. GROSS. But it is just about as effective, isn't it, in that if you don't provide the service, according to the terms of your contract, you are not going to be beneficiary of that revenue?

Mr. GOFF. I think as a practical matter, if we don't do these things, we are not going to get the contract and not haul the mail and therefore we will not have the revenue. So we wind up at the same place.



Mr. JOHNSON. There is no law though; you don't have to do it?

Mr. GOFF. That is correct; there is no law.

Mr. OLSEN. Is there any penalty in your contract for failure to provide this space?

Mr. GOFF. I will have to defer to Mr. Hastings on that question. I do not know offhand.

Mr. OLSEN. Is that all you have?

Mr. GOFF. Yes, sir.

Mr. OLSEN. Thank you very much.

Mr. Hastings, would you take the stand.

### STATEMENT OF WILLIAM E. HASTINGS, DIRECTOR OF RATES AND TRAFFIC, THE GREYHOUND CORP., CHICAGO, ILL.

Mr. HASTINGS. Mr. Olsen and gentlemen, I have a prepared statement which I would like to read and I would, if I may have a few moments, like to elaborate just a little on that statement.

Mr. OLSEN. Proceed.

Mr. HASTINGS. My name is William E. Hastings. I am director of rates and traffic of the Greyhound Corp., which has its headquarters in Chicago, Ill.

I have been authorized by Mr. F. W. Ackerman, president of the Greyhound Corp., to appear at this hearing on behalf of the Greyhound Corp.

The Greyhound Corp. is engaged in the intercity transportation of passengers and package express by buses. It operates over 100,000 miles of routes throughout the United States. The Greyhound Corp. has more than 24,000 employees and over 82,000 stockholders.

The Greyhound Corp. opposes H.R. 1986 which would repeal section 5 of the Railway Mail Pay Act (sec. 557, title 39, United States Code), which now provides:

The Postmaster General shall from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

The purpose of section 5 of the Railway Mail Pay Act is to enable the Post Office Department to protect itself from making payments for mail transportation by the railroads which exceed express rates charged by the railroad. Section 5 of the Railway Mail Pay Act assumes that the cost of the transportation of express and the cost of transportation of non-first-class mail are about the same. The Greyhound Corp., from its experience in the operation of its package express business, is of the opinion that the cost of transportation of express shipments and the cost of transportation of non-first-class mail shipments are the same.

The net effect of the passage of H.R. 1986 will be to use payments for U.S. mail shipments to subsidize Railway Express Agency and other express companies using the railroads. The railroads will be in a position to carry express at an uneconomical low rate and pass this cost to the Post Office Department in the form of high rates for U.S. mail. The Post Office Department should not be placed in a



position in which it is forced to subsidize Railway Express Agency and other private express carriers.

Greyhound is in competition with Railway Express Agency for express shipments throughout the country. In 1960, total revenues realized by the Greyhound Corp. from express shipments totaled about \$21,400,000. The net income of the Greyhound Corp. after taxes was also about \$21,400,000.

The importance of express revenue to Greyhound is therefore readily apparent. Loss of short-haul passenger traffic by Greyhound to the private automobile in recent years has magnified this importance.

Greyhound and other bus carriers furnish regularly scheduled passenger transportation to hundreds of points throughout the United States which are not served by any other means of public transportation. In recent years, the number of points served only by Greyhound and other bus carriers has increased as the railroads have reduced their passenger service. A substantial part of the revenues realized by Greyhound in serving these points is from package express shipments carried on its buses. A great many of the passenger schedules now operated by Greyhound would be unprofitable and could not be operated except for revenues realized from carrying express shipments. Loss of package express revenues by Greyhound would therefore mean that a great many points would be left without any public transportation whatsoever, either for passengers or for express shipments.

Greyhound believes that passage of H.R. 1986 will open the door to involuntary subsidization by the Post Office Department of Railway Express, and that this will have a drastic effect upon its package express business and passenger service. Such subsidization will give Railway Express an unfair competitive advantage with far-reaching consequences. Railway Express Agency will, in effect, be able to cut its rates below actual cost. It will also be in a position to extend its service to communities which it does not now serve, even though such extensions might otherwise be uneconomical. Indeed, Railway Express Agency is already engaged in such an expansion program unrelated to rail movements which will put it in direct competition with the motor freight carriers and buslines.

In a pending application before the Interstate Commerce Commission, for example, Railway Express Agency seeks to operate as a common carrier, by motor vehicle, over regular routes, transporting general commodities, moving in express service, between Chicago, Ill., and Green Bay, Wis., MC-66562 (Sub No. 1748).

If Railway Express Agency is subsidized in its rail shipments, it will be in a position to operate as a motor carrier between points like Green Bay and Chicago at less than cost and charge rates lower than the competing motor carriers.

The possible subsidization which will result from the passage of H.R. 1986 will be in direct conflict with the broad aims of the national transportation policy, which are as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economi-



cal, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discrimination, undue preferences or advantages or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions:—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as the other means, adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy" (act Sept. 18, 1940; ch. 722, title I, sec. 1; 54 Stat. 899).

Greyhound respectfully submits that passage of H.R. 1986 will have long-range effects which will be detrimental to the public interest. Greyhound, therefore, respectfully opposes passage of H. R. 1986.

Mr. OLSEN. Mr. Gross, do you have any questions?

Mr. GROSS. I don't believe so.

Mr. OLSEN. I have one question, Mr. Hastings, concerning transportation of goods by Railway Express from Chicago to Green Bay.

What is the basis for your presuming or saying that Railway Express could transport at less than cost?

Mr. HASTINGS. Mr. Chairman, in that particular case I would like to point out, from time to time Railway Express has filed applications with the ICC, for substitute truck service, but in connection with all of those applications with which I am familiar, they have stipulated that they will transport express shipments having a prior or a subsequent move by rail.

In the case of the Chicago-Green Bay application, Railway Express has asked for unlimited or unrestricted motor carrier, common carrier rights, between Chicago and Green Bay.

In other words, they are now getting away from the railway express aspect and going into the straight intercity regular route truck carriers.

Mr. OLSEN. I see that. They are getting away from being an agency and they are going to be just primarily a small package carrier?

Mr. HASTINGS. In direct competition with Greyhound, who has performed service in that area for years.

Mr. OLSEN. And anyone else?

Mr. HASTINGS. Yes.

Mr. OLSEN. But I want to know why you presume they would do it at cheaper than cost.

Mr. HASTINGS. Our opinion is this, and it is borne out first of all by the *Wearing Apparel* case, which was mentioned earlier this morning, and by a statement made by Mr. Johnson this morning, that he did not apologize or would not apologize for rate cutting.

We feel that if Railway Express continues to move its express shipments by rail at less than cost to the railroads, they are put in a very favorable position competitively, and they would well be put in a position where, in order to freeze their competitors out of the field, they might well, in a competitive area such as Chicago-Green Bay, cut rates to a point where we could not meet them, and still be able to exist because of their low cost of handling their express shipments in connection with the railroads.



Mr. OLSEN. I am not arguing with you, please understand that. I have not any fixed opinion at all on this subject.

As a matter of fact, I am still in confusion. But assuming that they do want to have different rates for different commodities and different sizes of packages, determined, of course, by some peculiar cost method that they determine, and they can then wind up with a profit at the end of each year, would you quarrel with the Railway Express Agency then?

I mean would you quarrel with their right to do business their own way?

Mr. HASTINGS. No; not so long as the Post Office Department and ultimately the taxpayers, are not put in a position of paying excessive rates to the railroads, so the railroads may in turn offer low rates to Railway Express, in its major operation.

Mr. OLSEN. I see. Then we understand each other.

Assuming that the railroad does not subsidize the Railway Express Agency and assuming, of course, that the Post Office does not subsidize the railroads, if the Railway Express Agency is just plainly in direct competition with you and other carriers, you do not quarrel with that system?

Mr. HASTINGS. No. Except, Mr. Olsen, I would say that if Railway Express attempted or any other carrier, attempted to invade a field which we felt was adequately served by Greyhound, we would, of course, exercise our right to oppose such an application.

Mr. OLSEN. You would quarrel with whether or not there was public convenience and necessity, sufficient to justify their entering that field?

Mr. HASTINGS. That is correct. Under the ICC regulations it is contingent upon the applicant to prove, and we would hope to prove, that such a condition did not exist.

Mr. OLSEN. But you do not charge then, in applying for this, to be immoral or wrong fundamentally, do you?

Mr. HASTINGS. We contend that anyone has a right to apply anywhere, sir.

Mr. OLSEN. The thing you do not like is that there be any chance that the Railway Express Agency be subsidized by the railroads, or the Post Office or the public or anyone else?

Mr. HASTINGS. That is correct. We have no quarrel with legitimate competition. We do quarrel with being faced with competition which is provided by Railway Express or any other agency, which is subsidized directly or indirectly.

Mr. OLSEN. Whatever happens in this committee, you want to be sure there are safeguards against the Railway Express Agency being subsidized by the Government, directly or indirectly?

Mr. HASTINGS. That is correct. And we feel if this bill before this committee is repealed, such a condition will result.

Mr. OLSEN. This bill, or this law, section 557, has not, of course, prohibited the Railway Express Agency from being subsidized by the railroads to date?

Mr. HASTINGS. But we hope it will be enforced to a point where it will block the subsidy of the Railway Express.

Mr. OLSEN. Maybe you want to voice the view that section 557 should be amended so that it would further guarantee the Railway Express Agency would not be subsidized?



Mr. HASTINGS. We would very much favor such a move.

Mr. OLSEN. Would you submit your own organization to similar restrictions?

Mr. HASTINGS. To provide that we would not charge the Government more for the transportation of mail than we do for package express?

Mr. OLSEN. Yes.

Mr. HASTINGS. We would be very happy to handle all the mail we can get on our buses, at our package express rates. In that connection, I might point out that we now have mail contracts, Greyhound has area mail contracts covering the whole United States for the transportation of first-class mail. And our rate per pouch, for the transportation of U.S. mail, is 75 cents per pouch.

Our minimum charge for a 2-pound package express shipment is \$1. So if the U.S. Government will pay us our package express rate for the transportation of mail, we would be very happy. And that would run even to parcel post, which we are not handling except on star route contracts.

Mr. GROSS. Somewhere, Mr. Chairman, if I may—somewhere I gained the impression, in either the hearings last year or this year, that the rate paid by the Government is \$1.30 or \$1.40. Would that be right?

Mr. HASTINGS. For the transportation of mail by bus?

Mr. GROSS. Not by bus, by rail?

Mr. HASTINGS. Pardon?

Mr. GROSS. By rail.

Mr. HASTINGS. I am not sure what the rail rate is. I do know our contract.

Mr. GROSS. I might be wrong in that figure. I am hazy about it.

Tell me this: Is there presently passenger service between Chicago and Green Bay?

Mr. HASTINGS. Yes, sir.

Mr. GROSS. So the entry of REA into the over-the-road hauling is supplementing rail service, is that correct?

Mr. HASTINGS. That is right. There is rail service, there is bus service and Railway Express has entered the picture now as a truck carrier.

Mr. GROSS. It is paralleling the rail service?

Mr. HASTINGS. That is correct.

I have one more point—

Mr. OLSEN. Let me hear your rates again, would you, comparing the mail pouch and your package rates?

Mr. HASTINGS. Our charge, under our contract—this is Greyhound, I am not speaking for the other bus carriers, but Greyhound's pouch rate for first-class mail is 75 cents.

That applies regardless of weight or distance the pouch is handled. And our minimum rate—

Mr. GROSS. Regardless of weight or distance?

Mr. HASTINGS. That is correct.

Our minimum rate, in our package express, is \$1, except on the west coast, it is 85 cents. And that minimum applies to 2-pound shipments, and I believe the maximum distance is a hundred miles. I am not positive of the distance.



Mr. OLSEN. On the west coast that is 85 cents?

Mr. HASTINGS. Yes, sir.

Mr. OLSEN. You are a private enterprise operation, you do have to contend with strikes and so on and so forth, don't you?

Mr. HASTINGS. We are subject to all of the problems and dangers that Mr. Johnson so ably pointed out with regard to Railway Express.

We are not under 54 regulatory bodies, but we are under 49 and we are subject to regulation in 48 States, and, of course, the ICC. So we have the same problems, we have unions, we have had strikes, we have all of the problems that Railway Express has.

Mr. GROSS. Are you the largest bus operator in the country, Greyhound?

Mr. HASTINGS. Greyhound is the largest in the United States; yes, sir. I have just one more point, if I may have a moment, which I would like to bring out.

Quite a point was made of the fact, in Mr. Johnson's opinion all opponents of the passage of this bill are out to put Railway Express out of business.

We are not out to put Railway Express out of business. We do not hope to, and that is not our desire. But we are out to protect ourselves, and to try to keep ourselves alive.

Railway Express is definitely a competitor of Greyhound. And if there was any question in our mind as to how serious a competitor they thought we might be, or what their attitude toward Greyhound's continued expansion of package express service might be, it was somewhat dissipated at a hearing before the Michigan commission in a case in Marysville, Mich., where an investigation of Greyhound's handling of package express was held.

Railway Express intervened in the case, and in a brief filed with the Michigan commission, they urged the commission to set forth or to pass regulations or statutes, which would curtail the handling of package express by bus.

Such restrictions were proposed as the buslines could not handle any shipment except one which could be classified as an emergency shipment.

I believe they went so far as to suggest the package has to be wrapped a certain way, that we could handle only so many pounds express on any one bus, that there had to be a definite relationship between the number of passengers handled on the bus and the number of package express shipments handled on that particular bus.

If the commission, seriously, took serious consideration of the recommendations made by Railway Express, every bus carrier in the United States would be out of the package express business and all of the buslines in the United States would be out of business, period.

Mr. GROSS. What reason did they give for imposing any such conditions as that?

Mr. HASTINGS. The details I don't recall. It was in an effort to block us from handling volume shipments of one of the automobile factories in the Marysville area. And they requested the commission definitely describe what could be handled under Michigan law, in package express service and the limitations, if they were considered by the commission, would put us out of business.

Mr. GROSS. I take it the petition was not granted?



Mr. HASTINGS. It is still under consideration.

Mr. OLSEN. Is that all, Mr. Hastings?

Mr. HASTINGS. I believe that is all I have, sir.

Mr. OLSEN. Thank you, Mr. Hastings.

Mr. HENDERSON. Mr. Chairman, might I make a request?

Mr. OLSEN. What is it?

Mr. HENDERSON. My name is Henderson, W. B. Henderson of Parcel Post.

I invite the committee's attention to the fact that Mr. Johnson has been the beneficiary of two appearances totaling more than 3 hours of the committee's time. This is very considerably more than has been granted any other witness.

In his testimony today, Mr. Johnson made numerous accusations against the association I represent, accusations quite without foundation in fact.

Further, Mr. Johnson made statements for the record which are patently erroneous as to fact.

While I do not request additional time for verbal statement in which to invite the committee's attention to misstatements made by Mr. Johnson, I do feel and hope the committee will agree that, both in equity and in the interests of maintaining a clear and factual record, opportunity should be permitted me to include a supplemental statement in the record of this hearing.

I hope the committee will authorize holding the record open for 10 days to permit my preparation of such supplemental statement for inclusion.

Mr. OLSEN. How long will your statement be, in length?

Mr. HENDERSON. I should imagine 10 pages would cover it amply.

Mr. JOHNSON. Mr. Chairman, could I say something to that?

Mr. OLSEN. Yes.

Mr. JOHNSON. The express company has a deadline of July 1. The board of directors asked me just recently at a meeting what would happened if the Congress doesn't repeal section 557 by July 1, and I don't know.

Mr. OLSEN. Would 10 days be too great a time here?

Mr. JOHNSON. In my opinion, sir, it is, for this reason: It is not for me to say how long it would take Mr. Henderson to prepare a statement, but I do think that normal procedure—I realize this is not a court, but normally the other side gets a chance to answer the proponents and the proponents get a chance for rebuttal, and that ends it. But we have no bill in the Senate and there is a long way to go, and we are just fast approaching another crisis in the express business, and it seems to me that any one day—now we have had three hearings here, and it seems to me that that is cutting it awful close.

Mr. GROSS. Mr. Johnson, as a practical matter, I don't see how the full committee could possibly take up this bill—I am not trying to speak now for the subcommittee chairman or the chairman of the committee, but I don't see how they could possibly, as a practical matter, take up this bill within 10 days.

Mr. OLSEN. I am advised, Mr. Johnson, that the full committee just couldn't take it up within 10 days. The subcommittee may, but I doubt that very much. I only say to Mr. Henderson that he may not get his statement before the subcommittee, because we may have



met in the 10-day period; but there is no objection, and in the absence of objection you may file your statement within 10 days for inclusion in the record.

Mr. HENDERSON. Thank you, Mr. Chairman.  
(Mr. Henderson's supplemental statement follows:)

SUPPLEMENTAL STATEMENT OF WILLIAM B. HENDERSON, EXECUTIVE VICE PRESIDENT, PARCEL POST ASSOCIATION, INC., WASHINGTON, D.C.

That REA Express operations have been and are being substantially subsidized by the U.S. Government through excessive mail payments to the railroad owners of REA Express is the consensus in this record on H.R. 1986.

This \$100 million-a-year subsidy provides the base from which REA Express has operated and is operating to emasculate parcel post as a service to the people of the United States. This Government subsidy provides large advantages and foundation from which REA Express moves aggressively against its nonsubsidized free-enterprise competition, express-carrying buslines, freight forwarders, truckers, specialized package carriers, and others.

Crux of this controversy is the Government subsidy of REA Express. Is there such a subsidy? What is the approximate annual amount of the REA subsidy? Why and how does the U.S. Government pay the REA subsidy? How does REA Express use the subsidy?

I. Is there subsidy of REA Express? W. B. Johnson, president of REA Express, told the committee on April 14, "Not 1 penny of subsidy has been paid REA by the Post Office." True. The Post Office Department has made no subsidy payments direct to REA Express.

A direct subsidy requires a specific appropriation that is beyond the authority of the Postmaster General. The Department has been required to subsidize and is subsidizing REA Express through the device of excessive mail payments to REA's railroad owners. This is contrary to the law in section 557, U.S.C. 39.

Mr. Johnson freely admitted in testimony that REA Express has been and is heavily subsidized by its railroad owners. Reference is the stenographic transcript pages 55, 72, 77, 78, 79, 288, 292, 312, 314, 315, 317, 325. The record contains such REA Express statements as, "The railroads will not again give us the blanket underwriting of losses such as we have had in the past"; "They (the railroads) have been underwriting the Express Co. for so many years"; "Our (REA's) books have only part of the cost of doing business and *we had no charge on our books for line-haul transportation*" [italics added]; "The railroads were always paying the bill whatever it might be \* \* \*"; "They (the railroads) can't afford to have us (REA Express) cost them or be the means of costing them another hundred million dollars of enforced subsidy"; "They (REA competitors) don't like the fact that the railroads have subsidized us (REA) in the past. That is true, but there is nobody else to subsidize it."

After his frank admissions that REA Express operations have been and are being subsidized, Mr. Johnson asserts confusing contradictions such as (p. 70), "Nobody pays us a dollar for free. That would be subsidy but we don't get it"; "Nobody gives us the use of any facilities for free or at less than cost. We provide our own"; and (p. 91), "We are not getting anything free"; and (p. 288), "The railroads have said we won't give you transportation free of charge any more \* \* \*." Mr. Johnson inferentially accuses REA's railroad owners of violating the law when he states (p. 76), "It is unlawful to create destructive competition by pricing transportation services at less than out-of-pocket costs."

For over 30 years the railroads have been giving REA Express transport services at far less than the railroads' out-of-pocket costs.

Clearly, it is agreed, on the record, by both proponents and opponents of H.R. 1986, that REA Express operation has been and is being substantially subsidized.

The record also notes at numerous points that REA Express will not pay the railroads even their out-of-pocket costs for furnishing REA with rail transport service until at least 1963. Other railroad customers (including the Post Office Department and REA's competitors) must pay the railroads for like service on a rate basis of full costs plus a profit.

II. What is the approximate annual amount of the REA Express subsidy? Authoritative sources indicate the annual subsidy of REA Express from the U.S. Government and paid to REA Express via its railroad owners approximates \$100 million a year.



Mr. Johnson, president of REA Express, in testimony, derides this conclusion in statements reported in the stenographic transcript as (p. 288), "Suppose you take this crazy figure of a hundred million dollars, which has been dreamed up, because it was dreamed up \* \* \*"; and (p. 291), "The hundred million dollars is a phony figure, no truth in it \* \* \*"; and (p. 295), "A hundred million dollars is nothing except a dreamboat that somebody figured up."

Objective viewpoints, on the record, are in categorical disagreement with Mr. Johnson's appraisal of the \$100 million-a-year Government subsidy of REA Express.

Early in 1957, the subject of the Government's subsidy of REA Express under section 557, U.S.C., 39, was discussed in the Senate Post Office Committee. The following comment, as reported in the record, took place at that time between H. W. Brawley (then director of the Senate committee staff and now Deputy Postmaster General) and Maurice H. Stans (then Deputy Postmaster General and later Director of the Bureau of the Budget) :

"Mr. BRAWLEY. Do you believe after working at this thing for 4 years that there is any substance of facts in this statement that they (the railroads) probably are overcharging the Post Office Department if you compare it to the charges they make to the railway express agencies?"

"Mr. STANS. I would like to answer in this way, that they are obviously getting more from us for carrying the mails.

"Mr. BRAWLEY. If the Interstate Commerce Commission would grant petition how much do you think it would save the Post Office Department currently?"

"Mr. STANS. It would be considerable. I would have to make some computations, but it would be a very considerable amount of money.

"Mr. BRAWLEY. Apparently close to the hundred million?"

"Mr. STANS. I would not be surprised."

Paul H. Douglas, senior Senator from Illinois, confirms the figure of \$100 million. The statement of Senator Douglas to the U.S. Senate, on May 13, 1957, as recorded in the Congressional Record, No. 79, volume 103, was that the overpayment by the Post Office Department to the railroads for the transport of non-first-class mail amounted to about \$100 million a year.

A tabular comparison of rates paid the railroads for the transport of non-first-class mail by the Post Office Department and rates paid by REA Express for identical storage-car line-haul service was entered in testimony by Witness Hoffman in this hearing. The comparison is based on testimony of REA Express witnesses to ICC and on official ICC data. This comparison indicates the Post Office Department is paying the railroads at least twice as much as REA Express for identical service, i.e., storage-car line-haul service.

The Post Office Department, in this present hearing, testified the Department is paying the railroads more than the railroads receive from REA Express for similar service. In the absence of information from ICC needed to make an exact calculation as to how much more the Department was paying, the Department declined to testify as to the specific amount or percentage of overcharge.

Significantly, in commenting on the tabulation introduced by a previous witness (Hoffman) which demonstrated that the Department was paying twice as much as REA Express for identical rail service, Witness Walsh for the Department did not dispute the figures on Department payments used in that tabulation. From Department records for which he has responsibility, Mr. Walsh would know what the Department is paying for rail transport of non-first-class mail. Had Mr. Walsh been willing to accept what REA Express witnesses had testified under oath (in docket I & S 7304) as its per car foot-mile payments to the railroads, he could easily have made the verifying comparison.

Thus there is agreement, from competent and authoritative sources and on the record, that the Department is overpaying the railroads for the transport of non-first-class mail. There is agreement that the overpayment has been and is approximately \$100 million a year.

Mr. Johnson confused the record on this point by erroneous use of figures. He says (p. 295) that REA Express paid its railroad owners \$123 million in 1959. He does not affirm, however, that this \$123 million is the amount REA Express paid the railroads for storage-car line-haul service in that period.

Mr. Johnson then proceeded to compare that unspecific REA Express figure with the quite specific and published \$149 million figure of payment by the Post Office Department to the railroads for storage-car line-haul service in 1959. He said (p. 295), "They [the Post Office Department] paid \$149 million for line-haul service. We [REA] paid \$123 million. There is only a difference of \$26 mil-



lion." But Mr. Johnson neglected telling you that, in making the comparison, he was not including \$43 million the Department paid the railroads for hauling non-first-class mail other than parcel post in storage cars. Thus, the true total payment by the Post Office Department to the railroads, for all non-first-class mail line-haul service in storage cars, was \$192 million—not the \$149 million figure Mr. Johnson gave you. This \$43 million inadvertence by Mr. Johnson could clearly be misleading to the committee.

III. Why and how does the Government pay the REA Express subsidy? The Government pays the \$100-million-a-year subsidy to REA Express with the railroads acting as the "middleman." This is a result of ICC refusal to cooperate with the Post Office Department in the enforcement of section 557. As Mr. Johnson has testified, the railroads have not permitted and will not permit that law (sec. 557) to be enforced. ICC's refusal to participate in the enforcement of this law tied the Government's hands. Thus the Government has been forced to make the \$100-million-a-year overpayment to the railroads for the transport of non-first-class mail.

As the record indicates, railroad losses in supplying REA Express with service throughout the 30 years of REA's existence have been huge. The losses ranged in excess of \$100 million a year for many years. Clearly, through the years and now, Government overpayments to the railroads for the hauling of non-first-class mail compensated the railroads for losses the railroads suffered from REA Express operation. Practically, therefore, the Government has been and is subsidizing REA Express operations.

Principal contributor to the Government subsidy of the railroads for REA Express has been parcel post. Parcel post has contributed over \$950 million in subsidy money to the railroads for REA Express in the past 10 years. Parcel post contribution to the subsidy has been through increased parcel post rates.

The Post Office Department now seeks a further \$90-million-a-year parcel post rate increase. This is substantially the result of parcel post contributions to the railroad-REA Express subsidy. A similar \$90-million-a-year rate increase was loaded on parcel post users in 1960.

Parcel post volume (by weight) has steadily declined. Parcel post volume is now only 65 percent of what it was 10 years ago. Parcel post contributions to the railroad-REA Express subsidy forced successive large parcel post rate increases. These combined with REA Express attacks on parcel post through REA's Public Law 199 (parcel post size and weight) cause parcel post's decline.

IV. How is the railroad-REA Express \$100-million-a-year Government subsidy used? First, the subsidy is used to cripple parcel post as just noted. REA Express advertises it will transport and deliver parcel-post-size packages at one-half the cost of parcel post. Yet, in apparent contradiction, Mr. Johnson testified that low parcel post rates are serious competition for REA Express.

As noted by Witness Freund (pp. 224-225) in this record, Railway Express pays its railroad owners 69 cents for a specified package transport while parcel post pays the railroads over three times as much—222 cents—for similar service.

The Government subsidy to the railroads for REA Express also allows REA Express to compete unfairly with its unsubsidized free-enterprise competitors in the transport of small shipments. That the Government subsidy is used as a weapon to inflict damage on nonsubsidized competitors has been testified in this hearing by express-carrying buslines, by the trucking industry, and by a representative of the freight forwarding industry.

These unsubsidized free-enterprise competitors have told you they do not fear open-market competition provided all compete on essentially equal terms. That is basic and elemental in America's democracy.

Secure in its Government subsidy, REA Express is vastly expanding operations, far beyond the area in which it served shippers for many years as a premium service package carrier. REA Express is rapidly becoming less and less of an "express agency." More and more it grows and shapes its course as a motor carrier, as a freight forwarder, as an aggregator and consolidator.

As a freight forwarder, REA Express is beneficiary of below-cost rail transport while other freight forwarders must pay the railroads full costs plus a profit.

REA Express is rapidly expanding its motortruck operations into a vast national network. REA Express has over 1,700 applications now before ICC for approval for further expansion of trucking operations. As Witness Freund of the American Trucking Associations testified, the future of 15,000 small-



shipments truckers is gravely threatened by the expansion of REA's Government-subsidized operations.

The express-carrying bus industry, with its over 50,000 employees and the more than 30,000 small businessmen (grocers, druggists, butchers, barbers, florists, electricians, plumbers, filling station, restaurant, and hotel proprietors, etc.) in small cities, towns, and villages throughout the country, who earn a portion of their livelihood as commission agents for the buslines, are potential victims of expanding REA Express subsidized competition.

Mr. Johnson repeatedly emphasized to you that REA Express is a "free enterprise" operation facing and fearful of the Government competition of parcel post. On the facts, Mr. Johnson's assertion is without merit. REA advertises package service at half the price of parcel post. REA forces parcel post rates to be constantly increased. REA's Public Law 199 has made the use of parcel post inconvenient and expensive. Parcel post volume shrinks further and further, year after year.

With its large Government subsidy via its railroad owners, REA can hardly be termed a "free enterprise business." REA Express has become obviously accustomed to and accepts Government subsidy and protection as a right, a right peculiarly reserved for REA. It constantly seeks to broaden its blanket of special privilege for further advantage over its free enterprise competitors. Recent examples:

REA Express sought Government guarantee of its loans a month or so ago, contending REA was part of the railroad industry "family" and so entitled to such special Government assistance. The REA proposal was approved by a Senate committee. The REA scheme was finally voted down in the U.S. Senate on March 30.

REA Express seeks further competitive advantage through special exemption from the long and short haul restrictions (sec. 4, pt. 1) of the Interstate Commerce Act. Proposal is in H.R. 4272 and S. 319. REA's free enterprise competitors are and would continue to be bound.

Mr. Johnson reiterates the possibility of Government nationalization of REA Express or its liquidation if the proposal in H.R. 1986 is not adopted. Mr. Johnson knows, or should know, in making such statements he is pounding a "strawman" substantially of his own creation. He knows, or should know, there is little danger of either REA liquidation or nationalization.

Well publicized in the news and trade press was word that at least two groups of responsible capital were and presumably still are ready, willing, and able to purchase REA Express from its railroad owners and operate it for profit in open-market competition without Government subsidy.

REA Express is a property of special value to any transportation organization. The worth of the more than 1,700 motor-carrier-operating authorities REA Express has currently in process before ICC, plus the motor carrier and other rights it already has—the value of these operating authorities alone may possibly exceed the value of all the tangible assets of REA Express.

However, the railroads could well be unwilling to sell REA Express even at a substantial and attractive price. Note this ICC reference, docket 33104, express contract 1959 (303 ICC 546): "However, the agreement is generally regarded as the only one which could have received the necessary support, stemming from a unanimous desire to retain railroad control of express transportation."

Railroad ownership of REA Express could provide a vehicle for railroad entry into the trucking industry.

Mr. Johnson levels false accusations at Parcel Post Association when he testified (pp. 279-280): "Parcel Post Association wants REA Express to fail"; and "Parcel Post Association would like to see REA die, then the whole thing goes into the Post Office Department"; and "Parcel Post Association really hopes we will go into Government ownership." Mr. Johnson then broadens his accusation (p. 280) to include all opponents when he claims, "The people against this bill really hope we will fail."

Mr. Johnson's statements apparently indicate a degree of consternation over the thought of REA Express losing its special privileges.

Parcel Post Association represents small businesses substantially dependent on parcel post for the distribution of their goods in commerce. Parcel Post Association is convinced that the \$950 million parcel post users have contributed in just the past 10 years to maintain REA Express in operation represents an unconscionable burden and a needless drain on these small business free enterprises. For them the question of business survival has long been a critical one.



Today, faced with a further \$90 million-a-year parcel post rate increase levy, (the second such in 2 years) the need for easing the heavy and increasing burden from the shoulders of small business is urgent. That is the purpose of Parcel Post Association's appearance and pleading before you in this hearing.

Nor do the free enterprises who have testified in this hearing (the bus operators, the freight forwarder, the motor transport operators) seek abolition of the express service, I am sure. They properly and rightfully ask of you only that REA Express competition be fair open-market competition, not Government-subsidized competition.

In the aggressive expansion of REA Express into their fields of operation, in REA's attempted duplication of existing service, in REA's rate slashing, in REA's acquisition of competing companies and the creation of new operating subsidiaries—in these and other competitive harassments made possible through Government subsidy of REA Express—the free enterprise competitors of REA Express clearly see a growing combination in restraint of trade. They see the possibility of ultimate monopolistic control of the Nation's small shipments business.

Subsidized competition, such as REA Express, is deadly to free enterprise. That they know, and that these free enterprises fear. For them it would be the end.

Mr. OLSEN. A supplemental letter has been received from Mr. Aaron Hoffman, president of Chain Deliveries Express, Inc., which will be inserted in the record at this point.

CDX MERCHANDISE EXPRESS,  
Red Bank, N.J., April 20, 1961.

Hon. THADDEUS DULSKI,  
*Chairman, Subcommittee on H.R. 1986, Post Office and Civil Service Committee,  
U.S. House of Representatives, Washington, D.C.*

DEAR MR. DULSKI: You will recall that, on March 29, 1961, I completed reading my prepared statement on H.R. 1986. At that time you requested that I return at a later date to answer questions of members of the subcommittee, including yourself.

I understand that additional witnesses wished to testify and time was not available for me to be cross-examined. Although I understand the reasons I sincerely regret not having had the opportunity to remove any uncertainty concerning my remarks and motive for opposition to H.R. 1986.

Inasmuch as the Chair expressed a desire for additional information from me I request this letter and accompanying exhibit to be made a part of the record of this hearing. I have read the "Further statement of William B. Johnson" before the subcommittee on April 14, 1961, and believe it is imperative that the following brief statement of the basic underlying reasons for my opposition to passage of H.R. 1986 be made part of the record:

The railroads and REA have agreed that, subject to repeal of section 557, REA will be required to pay the railroads a specified rate for transportation of express matter, effective July 1, 1961. It has been agreed this rate shall be based on what REA has been paying the railroads during an agreed period prior to July 1, 1961.

The agreement further specifies that commencing July 1, 1963, the railroads shall receive from REA not less than the railroads out-of-pocket cost for hauling REA freight.

## I

The terms of the contract between REA Express and the railroads is one of mutual agreement. Therefore, if H.R. 1986 is passed, without amendment, the present contract could be completely scrapped and replaced by a new one more favorable to the railroads in their ever-increasing battle with the motor carriers and freight forwarders. Witnesses for REA have never disputed this possibility.

## II

REA Express is rapidly abandoning the express business and rapidly increasing its freight-forwarding business. REA presently has tremendous advantages and privileges over other freight forwarders and passage of H.R. 1986 would give it the greatest and most unfair advantage of all because of reasons stated



above. If REA Express desires to be a freight forwarder it should be subject to the same rules and regulations to which all other freight forwarders are subject (see exhibit A).

#### SUMMARY

It is obvious, in my opinion, that REA Express considers freight forwarders and motor carriers their arch competitors. Mr. Johnson does not deny that REA Express desires to spread out into the general freight transportation business. He also does not deny that express companies originally started business to provide an express service. It is obvious that Mr. Johnson is leading REA Express into the field of general freight rather than express.

I understand Mr. Johnson commented on the 400 percent growth that my company has experienced since 1956. It should be noted in the record that the present management of CDX assumed control in 1956. CDX was dormant until 1956 and did no business in 1955. I previously mentioned our growth to indicate that CDX is a "live" company and experienced steady and progressive growth until growth was completely stopped and reversed by REA's destructive practices commencing in June 1960.

I know that members of the committee must wonder why other freight forwarders did not join me in protesting passage of H.R. 1986. It should be noted in the record that CDX is one of the very few, if not the only, class A freight forwarder that does not purchase underlying transportation from railroads. It is my opinion that other freight forwarders, both large and small, fear to openly oppose the railroads because they are dependent on railroad facilities and service for their very existence and fear recriminations. CDX purchases its underlying transportation from motor carriers and pays them a compensatory and profitable rate, in compliance with the law.

Please accept my sincere thanks for your consideration in making this letter and exhibit a part of the record.

Respectfully yours,

AARON HOFFMAN.

#### EXHIBIT A

#### LIST OF ADVANTAGES OF REA EXPRESS OVER OTHER COMPANIES ENGAGED IN DOMESTIC FREIGHT FORWARDING

REA Express is not, nor will be (whether or not H.R. 1986 is passed), required to pay railroads a compensatory rate for underlying carriage.

REA Express is permitted to operate its own motor vehicles beyond terminal and commercial zones.

REA Express is permitted to operate its own motor vehicles over the road in intercity, intrastate, and interstate commerce.

REA Express is subject to part I of the Interstate Commerce Act and not to part IV as are all other domestic surface freight forwarders.

In addition to REA Express getting a rate from the railroads which is not compensatory to the railroads, REA may ship via rail in any quantities and, even under the new contract will be required to pay the railroads only for that small portion of traffic which it gives the railroads to a destination. Other freight forwarders must pay the railroads the same rate that any private shipper pays the railroads and in order to get a rate low enough to operate must give the railroads not less than carload quantities to a destination.

REA Express is permitted to be a forwarder of freight via all modes of transportation including rail, motor, air, and water. Freight forwarders subject to part IV of the act may ship only via the facilities of carriers subject to parts I, II, and III of the Interstate Commerce Act. (This excludes air.) It should also be noted that air freight forwarders, subject to CAB regulations, may not engage in surface freight forwarding or carriage wholly by motor.

REA Express is the only freight forwarder whose freight moves in express passenger train service. Other freight forwarder's freight may be moved only in freight trains.

REA Express is the only freight forwarder that has had piggyback flatcars specially provided with fast passenger-type wheels for regular scheduled transport between New York and Chicago of REA trailers on flatcars in regular scheduled passenger train runs.



REA Express requires a shipper to pay an additional charge when shipments are valued at more than \$50 or 50 cents per pound. Most other freight forwarders must be responsible up to full value for shipments which are lost or damaged while in their possession.

REA Express enjoys a monopoly in the express business.

REA Express has been successful, so far, in preventing other freight forwarders from making arrangements with railroads to provide express passenger train service for freight forwarders subject to part IV of the act.

Mr. OLSEN. There being no more witnesses on this matter, the subcommittee is adjourned.

(Whereupon, at 2:50 p.m., Friday, April 14, 1961, the subcommittee was adjourned.)





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1. The first part of the book is devoted to a general survey of the history of the subject. It begins with a discussion of the early attempts to explain the origin of life, and then proceeds to a more detailed examination of the various theories which have been advanced in the course of the last century.

2. The second part of the book is devoted to a more detailed examination of the various theories which have been advanced in the course of the last century. It begins with a discussion of the early attempts to explain the origin of life, and then proceeds to a more detailed examination of the various theories which have been advanced in the course of the last century.

3. The third part of the book is devoted to a more detailed examination of the various theories which have been advanced in the course of the last century. It begins with a discussion of the early attempts to explain the origin of life, and then proceeds to a more detailed examination of the various theories which have been advanced in the course of the last century.



