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INTRASTATE MOTOR CARRIER IN INTERSTATE COMMERCE

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HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 2483 and S. 320

BILLS TO AMEND THE PROVISIONS CONTAINED IN
PART II OF THE INTERSTATE COMMERCE ACT CONCERN-
ING REGISTRATION OF STATE CERTIFICATES WHEREBY
A COMMON CARRIER BY MOTOR VEHICLE MAY ENGAGE
IN INTERSTATE AND FOREIGN COMMERCE
WITHIN A STATE

AUGUST 2, 3, AND 22, 1961

Printed for the use of the
Committee on Interstate and Foreign Commerce



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WASHINGTON : 1961

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INTRASTATE MOTOR CARRIERS IN INTERSTATE COMMERCE

WEDNESDAY, AUGUST 2, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 1310, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The subcommittee will come to order, please.

This morning the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce is beginning hearings on H.R. 2483 and S. 320, practically identical bills, to amend the second proviso of section 206(a)(1) of the Interstate Commerce Act, whereby a common carrier by motor vehicle operating within a single State may engage in interstate and foreign commerce within such State.

S. 320 has already passed the Senate.

A copy of H.R. 2483, together with agency reports, will be made a part of the record at this point.

H.R. 2483, S. 320, and agency reports referred to follow:)

[H.R. 2483, 87th Cong., 1st sess.]

A BILL To amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso to paragraph (1) of subsection (a) of section 206 of the Interstate Commerce Act is amended to read as follows: "*And provided further,* That on and after the effective date of this amendment, no certificate under this part shall be required for operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State and not controlled by, controlling, or under a common control with any carrier engaged in operations outside such State, if such carrier has obtained from the commission of such State authorized to issue such certificates, a certificate of public convenience and necessity authorizing motor vehicle common carrier operations in intrastate commerce and such certificate recites that it was issued after notice to interested persons through publication in the Federal Register of the filing of the application and of the desire of the applicant also to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted, that reasonable opportunity was afforded interested persons to be heard, that the State commission has duly considered the question of the proposed interstate and foreign operations and has found that public convenience and necessity require that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted. Such operations in interstate and foreign commerce shall, however, be subject to all

other applicable requirements of the Interstate Commerce Act and the regulations prescribed thereunder. Such rights to engage in operations in interstate or foreign commerce shall be evidenced by appropriate certificates of registration issued by the Interstate Commerce Commission which shall be valid only so long as the holder is a carrier engaged in operations solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Interstate Commerce Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights or the termination or restriction in scope of the intrastate certificate shall terminate, or similarly restrict, the right to engage in interstate or foreign commerce. Such rights shall be subject to suspension or termination by the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act governing the suspension and termination of certificates issued by the Interstate Commerce Commission. The Interstate Commerce Commission may impose reasonable requirements with respect to the filing with it of certified copies of such State certificates and other appropriate statements and data, and compliance with applicable requirements established by and under the authority of statutes applicable to interstate and foreign operations administered by the Interstate Commerce Commission, as conditions precedent to engaging in interstate and foreign operations under the authority of such State certificate. In accordance with such reasonable rules as may be prescribed by the Interstate Commerce Commission, any party in interest, who or which opposed in the State commission proceeding the authorization of operations in interstate or foreign commerce, may petition the Interstate Commerce Commission for reconsideration of the decision of the State commission authorizing operations in interstate or foreign commerce, and upon such reconsideration upon the record made before the State commission, the Interstate Commerce Commission may affirm, reverse, or modify the decision of the State commission, but only with respect to the authorization of operations in interstate and foreign commerce."

Sec. 2. Subsection (a) of section 206 of the Interstate Commerce Act is further amended by inserting at the end thereof a new paragraph as follows:

"(6) Any person who or which on the effective date of this paragraph was in operation solely within a single State as a common carrier by motor vehicle in intrastate commerce (excluding persons controlled by, controlling, or under a common control with, a carrier engaged in operations outside such State), and who or which was also lawfully engaged in such operations in interstate or foreign commerce under the certificate exemption provisions of the second proviso of section 206(a)(1) in effect prior to the effective date of this subsection, and has continued to so operate since that time (or if engaged in furnishing seasonal service only, was lawfully engaged in such operations on the effective date of this paragraph during the season ordinarily covered by its operations, and has so operated since that time), except in either instance as to interruptions of service over which such person had not control, the Interstate Commerce Commission shall issue to such person a certificate of registration authorizing the continuance of such transportation in interstate and foreign commerce if application and proof of operations are submitted as provided in this subsection. Such certificate of registration shall not exceed in scope the services authorized by the State certificate to be conducted in intrastate commerce, and shall be subject to the same terms, conditions, and limitations as are contained in or attached to the State certificate except to the extent that such terms, conditions, or limitations are inconsistent with the requirements established by or under the Interstate Commerce Act. If the effectiveness of the State certificate is limited to a specified period of time, the certificate of registration issued under this paragraph shall be similarly limited. Operations in interstate and foreign commerce under such certificates of registration shall be subject to all other applicable requirements of the Interstate Commerce Act and the regulations prescribed thereunder. Certificates of registration shall be valid only so long as the holder is a carrier engaged in operation solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Interstate Commerce Commission, but may not be transferred apart from the transfer of the cor-

responding intrastate certificate, and the transfer of an intrastate certificate without the corresponding certificate of registration, or the termination or restriction in scope of the intrastate certificate, shall automatically terminate or similarly restrict the certificate of registration. Such certificates of registration shall be subject to suspension or termination by the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act governing the suspension and termination of certificates of public convenience and necessity issued by that Commission."

All rights to engage in operations in interstate and foreign commerce under the provisions of the second proviso of subsection 206(a)(1) existing prior to the effective date of this paragraph shall cease and terminate, but any carrier lawfully engaged in interstate and foreign operations on the effective date of this paragraph, pursuant to such provisions, may continue such operations for 120 days after the effective date of this subsection and, if an appropriate application for a certificate of registration is filed within such period, such operations may be continued pending the determination of such application. The Interstate Commerce Commission shall prescribe the form of such application, the information and documents to be furnished, the manner of filing, and the persons to whom or the manner of giving notice to interested persons of such filings. Issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings. A notice of intent to engage in interstate and foreign operations accompanied by certified copies of State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the former provisions of the second proviso of section 206(a), shall be prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof.

Sec. 3. The effective date of this amendment shall be April 1, 1961.

[S. 320, 87th Cong., 1st sess.]

AN ACT To amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso to paragraph (1) of subsection (a) of section 206 of the Interstate Commerce Act is amended to read as follows: "*And provided further*, That on and after the effective date of this amendment, no certificate under this part shall be required for operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State and not controlled by, controlling, or under a common control with any carrier engaged in operations outside such State, if such carrier has obtained from the commission of such State authorized to issue such certificates, a certificate of public convenience and necessity authorizing motor vehicle common carrier operations in intrastate commerce and such certificate recites that it was issued after notice to interested persons through publication in the Federal Register of the filing of the application and of the desire of the applicant also to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted, that reasonable opportunity was afforded interested persons to be heard, that the State commission has duly considered the question of the proposed interstate and foreign operations and has found that public convenience and necessity require that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted. Such operations in interstate and foreign commerce shall, however, be subject to all other applicable requirements of the Interstate Commerce Act and the regulations prescribed thereunder. Such rights to engage in operations in interstate or foreign commerce shall be evidenced by appropriate certificates of registration issued by the Interstate Commerce Commission which shall be valid only so long as the holder is a carrier engaged in operations solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be

prescribed by the Interstate Commerce Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights or the termination or restriction in scope of the intrastate certificate shall terminate, or similarly restrict, the right to engage in interstate or foreign commerce. Such rights shall be subject to suspension or termination by the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act governing the suspension and termination of certificates issued by the Interstate Commerce Commission. The Interstate Commerce Commission may impose reasonable requirements with respect to the filing with it of certified copies of such State certificates and other appropriate statements and data, and compliance with applicable requirements established by and under the authority of statutes applicable to interstate and foreign operations administered by the Interstate Commerce Commission, as conditions precedent to engaging in interstate and foreign operations under the authority of such State certificate. In accordance with such reasonable rules as may be prescribed by the Interstate Commerce Commission, any party in interest, who or which opposed in the State commission proceeding the authorization of operations in interstate or foreign commerce, may petition the Interstate Commerce Commission for reconsideration of the decision of the State commission authorizing operations in interstate or foreign commerce, and upon such reconsideration upon the record made before the State commission, the Interstate Commerce Commission may affirm, reverse, or modify the decision of the State commission, but only with respect to the authorization of operations in interstate and foreign commerce."

SEC. 2. Subsection (a) of section 206 of the Interstate Commerce Act is further amended by inserting at the end thereof a new paragraph as follows:

"(6) Any person who or which on the effective date of this paragraph was in operation solely within a single State as a common carrier by motor vehicle in intrastate commerce (excluding persons controlled by, controlling, or under a common control with, a carrier engaged in operations outside such State), and who or which was also lawfully engaged in such operations in interstate or foreign commerce under the certificate exemption provisions of the second proviso of section 206(a)(1) in effect prior to the effective date of this subsection, and has continued to so operate since that time (or if engaged in furnishing seasonal service only, was lawfully engaged in such operations on the effective date of this paragraph during the season ordinarily covered by its operations, and has so operated since that time), except in either instance as to interruptions of service over which such person had no control, the Interstate Commerce Commission shall issue to such person a certificate of registration authorizing the continuance of such transportation in interstate and foreign commerce if application and proof of operations are submitted as provided in this subsection. Such certificate of registration shall not exceed in scope the services authorized by the State certificate to be conducted in intrastate commerce, and shall be subject to the same terms, conditions, and limitations as are contained in or attached to the State certificate except to the extent that such terms, conditions, or limitations are inconsistent with the requirements established by or under the Interstate Commerce Act. If the effectiveness of the State certificate is limited to a special period of time, the certificate of registration issued under this paragraph shall be similarly limited. Operations in interstate and foreign commerce under such certificates of registration shall be subject to all other applicable requirements of the Interstate Commerce Act and the regulations prescribed thereunder. Certificates of registration shall be valid only so long as the holder is a carrier engaged in operation solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Interstate Commerce Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of an intrastate certificate without the corresponding certificate of registration, or the termination or restriction in scope of the intrastate certificate, shall automatically terminate or similarly restrict the certificate of registration. Such certificates of registration shall be subject to suspension or termination by the Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act governing the suspension and termination of certificates of public convenience and necessity issued by that Commission."

All rights to engage in operations in interstate and foreign commerce under the provisions of the second proviso of subsection 206(a)(1) existing prior to the effective date of this paragraph shall cease and terminate, but any carrier lawfully engaged in interstate and foreign operations on the effective date of this paragraph, pursuant to such provisions, may continue such operations for 120 days after the effective date of this subsection and, if an appropriate application for a certificate of registration is filed within such period, such operations may be continued pending the determination of such application. The Interstate Commerce Commission shall prescribe the form of such application, the information and documents to be furnished, the manner of filing, and the persons to whom or the manner of giving notice to interested persons of such filings. Issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings. A notice of intent to engage in interstate and foreign operations accompanied by certified copies of State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the former provisions of the second proviso of section 206(a), shall be prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof.

SEC. 3. The effective date of this amendment shall be December 31, 1961.

Passed the Senate July 17, 1961.

Attest:

FELTON M. JOHNSTON, *Secretary.*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., July 13, 1961.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HARRIS: Your letter of February 9, 1961, addressed to the Chairman of the Commission and requesting an expression of views on H.R. 2483, introduced by you, to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

H.R. 2483 would modify the second proviso of section 206(a)(1) of the Interstate Commerce Act as to its future operation, and contains provisions preserving the rights of carriers now engaged in operations thereunder. Under the present provisions of this proviso, common carriers by motor vehicle operating solely within a State are not required to obtain from this Commission a certificate authorizing the transportation of passengers or property in interstate or foreign commerce between points within the State if they have obtained from the State a certificate of public convenience and necessity. They are, however, required by the Commission to file with it statements (sometimes called registrations) describing their operations.

The second proviso was originally included in the Motor Carrier Act of 1935 because the transportation by intrastate carriers of property moving in interstate commerce wholly within a State was considered as being merely incidental to and relatively unimportant in comparison with their intrastate operations. It has developed, however, that the interstate transportation performed by such carriers is frequently an important link in a route connecting cities in different States, and State certificates have therefore been obtained solely for the purpose of providing such links.

In exempting the institution of interstate operations wholly within a single State from the certificate requirements of the act, the intention of the second proviso also appears to have been that State authorities could better determine the need for such limited operations. This, however, has not proved to be the case. State commissions, in many instances, have had no opportunity to make such a determination. For example, many multiple-State carriers not eligible to operate under the second proviso already held, or subsequently obtained, intrastate certificates which they could and would ultimately transfer to persons who were eligible to operate thereunder.

Moreover, since the carriers operating under the proviso would otherwise be subject to the Commission's jurisdiction, many of them chose to obtain interstate certificates to which they were entitled under the various "grandfather" clauses. Subsequently, through separate transfers, the intrastate and interstate certificates came into different hands, and because the present proviso enabled the transferee of the State certificate also to engage in interstate operations, two interstate carriers were operating where there had only been one. The same result obtained where carriers operating under the proviso purchased from multiple-State carriers portions of their operations within a single State that were covered by interstate certificates to which the purchasers became entitled.

These transactions have created a multiplicity of interstate carriers whose entry into the field is beyond the effective control of either the States or the Commission under the present provisions of the act.

Under the amendments proposed in H.R. 2483, a State commission, in passing upon an application for an intrastate certificate, would be authorized to determine whether there exists a public need for the applicant's operation in interstate and foreign commerce within the scope of the granted intrastate certificate. Separate findings would be made by the State commission with respect to both the proposed intrastate and interstate operations. The State commission action in making the latter determination would be preceded by appropriate notice to interested persons in accordance with the usual Federal notice procedure in order to afford them an opportunity to appear and be heard. Any party in interest who opposed the grant of interstate rights before the State commission could petition this Commission for reconsideration of such grant.

Persons granted interstate authority through such State proceedings would be issued certificates of registration by this Commission within the limits of the intrastate authority. These would be valid only so long as the holder was operating solely within a single State and was not controlled by, controlling, or under common control with a carrier operating outside the State. Certificates of registration thus issued would be transferable subject to the limitations contained in section 5 of the act dealing with carrier unifications and mergers, but they could not be transferred apart from the intrastate rights. A transfer of the intrastate rights without a corresponding transfer of the certificate of registration would void the interstate rights. In addition, any subsequent termination of or restriction in the scope of the intrastate certificate would similarly restrict the interstate rights. The interstate rights would also be subject to revocation or suspension by this Commission for violations of the requirements of the Interstate Commerce Act in the same manner as certificates of public convenience and necessity issued by this Commission are subject to suspension or revocation.

As to persons presently engaged in interstate and foreign commerce under the existing proviso, the bill provides that they be issued a certificate of registration which, in general, would confer the same rights and privileges as would attach to future grants under the amended proviso. For example, the certificate would be transferable, subject to the restrictions respecting the separation of the interstate and the intrastate rights, and would be subject to suspension and revocation by the Commission for violations of the Interstate Commerce Act.

The scope of a certificate of registration issued to such persons would be limited to the operations being conducted under the State certificate, with appropriate provisions for seasonal operations and interruptions of service beyond the carrier's control. In determining this scope, an informal procedure would be used whenever practicable and permissible.

We are of the view that H.R. 2483 represents a much needed improvement over the present provisions of the second proviso in section 206(a)(1) of the act and that it will prevent the continued creation and multiplication of interstate rights without adequate consideration of the need for such rights. We, therefore, recommend that H.R. 2483 be enacted.

Editorially, it would appear that the proposed paragraph designation in line 18, page 4, of the bill be changed from "(6)" to "(4)". It also appears that the effective date of the bill should be changed from April 1, 1961, to possibly December 31, 1961.

Sincerely,

EVERETT HUTCHINSON,
Chairman, Committee on Legislation.
HOWARD G. FREAS,
KENNETH H. TUGGLE,

DEPARTMENT OF AGRICULTURE,
Washington, D.C., August 3, 1961.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. HARRIS: This will reply to your letter of February 9, 1961, inviting comments on H.R. 2483, a bill to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may be engaged in interstate and foreign commerce within a State.

Section 206(a)(1) of the Interstate Commerce Act presently provides that a common carrier by motor vehicle subject to the provisions of part II of the act, engaged in operations solely within a State, is not required to obtain a certificate of convenience and necessity from the Commission if such a certificate has been obtained by the carrier from the appropriate State board. As we understand the proposed bill, it would supplement the present provision by providing for procedural requirements to be followed in the issuance of certificates by such State authorities, the registration of such certificates with the Interstate Commerce Commission and the issuance by the Commission of certificates of registration. The bill would also authorize the Commission to suspend or terminate such operating rights and to reconsider, affirm, reverse or modify the decisions of the State authorities, and provide for grandfather rights for carriers operating under the present provisions.

It would appear that enactment of the bill would not adversely affect the transportation of farm products and supplies.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

MR. WILLIAMS. I would like to insert in the record at this point several communications which have been received by the committee for insertion into the record.

(The documents referred to follow:)

DOLWIG, BERLIN & O'GRADY,
Redwood City, Calif., March 3, 1961.

In re H.R. 2483.

HON. J. ARTHUR YOUNGER,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN YOUNGER: Many thanks for your prompt response to my letter of February 14. I was away on a brief vacation when your letter arrived and was pleased to find it upon my return. There are several matters I should like to bring to your attention with respect to this bill. Basically, there are two specific portions of the bill which I feel should be amended in order that the bill can best serve the purpose for which I am sure the committee intends it.

Under the Motor Carrier Act, a certificate of public convenience and necessity is now issued whereas in the proposed H.R. 2483 on page 5 at line 9 and following, there is provided a certificate of registration. It would seem to me that a certificate of public convenience and necessity should be issued of the same kind as is now provided for by the Motor Carrier Act.

There is a much more important proviso of the proposed act which should be changed and that is with respect to the type of proof that the intrastate common carrier is granted by the filing with the Commission evidence of his authority. Under the proposed enactment, the proof is merely "prima facie proof that the applicant is lawfully engaged in interstate and foreign operations." Whereas, it would seem to me that a far more equitable result could be achieved if this proof were made conclusive. I have in mind specifically a particular carrier in San Carlos, namely, Tri City Delivery Co. James Bloch of Atherton is the proprietor thereof. I am sure that you remember Mr. Bloch's father-in-law, the late Judge Deasy of San Francisco. Mr. Bloch desires to engage in the business of hauling furniture from freight cars in San Francisco to consignees on the peninsula. Since he is the end carrier in an interstate shipment he is, of course, engaged within interstate commerce in accordance with the terms of the law. Should a permit be granted to Mr. Bloch which is merely "prima facie proof," I can see where considerable litigation would result in the event he sought to take

up a shipment for an additional consignee or change his scope of operation even in the slightest. If, on the other hand, his certification by the Commission was "conclusive proof," then this would, of course, give the intrastate carrier an interstate certificate exactly as extensive as his intrastate certificate.

These two amendments would do much to modify the bill in favor of the small local carriers currently operating in California.

One further thing occurs to me and that is that I note on page 7, the concluding line of the proposed enactment, the effective date of the amendment is intended to be April 1, 1961. It would seem to me that since substantial changes can be effected by the enactment of this law that certainly the effective date thereof should be extended at least until the end of the year, if not until perhaps the middle of 1962; to give the local carriers a year to bring themselves under the act would seem to me to be a minimum of time which would be required because of the extensive changes and potential problems involved.

I very much appreciate your giving consideration to my thoughts on this matter. I am pleased that you should ask me to suggest to you any amendments which I thought might improve the legislation. If there are any further comments which you would desire from me on any specific portion of this legislation, you may, of course, feel free to call upon me.

My kindest personal regards.

Very truly yours,

SIDNEY L. BERLIN.

SAN FRANCISCO, CALIF., *February 10, 1961.*

HON. CLAIR ENGLE,

U.S. Senator, Washington, D.C.

HON. THOMAS H. KUCHEL,

U.S. Senator, Washington, D.C.

HON. WILLIAM S. MAILLIARD,

House of Representatives, Washington, D.C.

HON. JOHN F. SHELLEY,

House of Representatives, Washington, D.C.

DEAR SIRS: I am writing this letter to you as an attorney for numerous trucking concerns. I have participated in the representation of trucking companies before the California Public Utilities Commission and the Interstate Commerce Commission for more than 10 years past.

I write with reference to Senate bill 320 and House bill 2483, which are presently pending in Congress. These identical bills propose to amend the second proviso of section 206(a) (1) of part II of the Interstate Commerce Act.

Under the present provisions as now in effect, a local State carrier who has secured a certificate from the Public Utilities Commission may operate in interstate commerce by registering that certificate with the Interstate Commerce Commission and, of course, by publishing rates and otherwise abiding by the rules and regulations of the Interstate Commerce Commission.

Senate bill 320 and House bill 2483 would amend this section to prohibit any further registrations for newly certificated carriers, thus prohibiting them from operating in interstate commerce without a full showing on interstate commerce. These bills would further prejudice existing registrations in two respects, which are hereinafter set forth.

I am aware that the American Trucking Association has approved the bill. I should like to state that it is my considered opinion that the bill, if passed, would be generally detrimental to the medium and smaller sized carriers and, further, would be particularly detrimental to the local carriers in the State of California. The latter statement is made in the light of the peculiar transportation problems involved in our State.

I would hope to add my voice to the opposition to this bill by pointing out three particular defects in the proposed bill, two of which are of major importance, and one of lesser importance. These are:

(1) The bill provides in substance that a present registration will be *prima facie* proof of past interstate operation upon which the Interstate Commerce Commission may issue a certificate of registration. It is quite apparent from past history, present knowledge of the industry, and the attitude of the rail lines and larger carriers, that so long as the word "*prima facie*" stays in the bill, every new certificate of registration will be challenged by existing carriers when any local carrier seeks to secure his certificate of registration based upon

past operations. It is clear that each carrier will have to submit to the Interstate Commerce Commission past shipment studies for representative periods of time showing interstate movements; that the certificate of registration will be limited as much as possible by protesting carriers. May I candidly state that this will result in years of litigation, and great expense to the medium and smaller carriers in their attempts to prove their past operations. Such expense is completely unwarranted and unnecessary.

If the bill is to be passed at all, I respectfully urge that the word "prima facie" be changed to read "conclusive". Such a change would automatically result in these registered carriers obtaining comparable Interstate Commerce Commission registration certificates without expensive and prolonged litigation and proof.

(2) It is my understanding that the present bill includes a "Grandfather" date of April 1, 1961. I would call your attention to the fact that the Public Utilities Commission, pursuant to its regular jurisdiction, has issued numerous certificates in the past year, and that there are presently before that Commission numerous applications for certificates. Under the present statute, all of these carriers would be accorded the right to register with the Interstate Commerce Commission. This was the intent of the Congress in drafting section 206(a)(1). It is therefore apparent that the Public Utilities Commission cannot physically act on many of these applications by the proposed Grandfather date, and those carriers securing a State certificate would be prejudiced by being deprived of a same right accorded carriers recently granted certificates.

Again I would state that if the bill is to pass at all, it might be worded so as to curtail the future registrations of any carrier who filed his State application after April 1, 1961, or any other reasonable given date. Thus, if a local California carrier filed his application before the State commission before the Grandfather date and ultimately secured a certificate, he should be entitled to a certificate of registration regardless of when the State commission acts upon the matter.

(3) The present wording of the act indicates a hybrid jurisdiction. No carrier could secure any interstate authority as a result of his Public Utilities Commission application unless he indicated, in filing the application, that he intended to operate in interstate commerce; in such case, under the proposed act, the Public Utilities Commission would be delegated to hear evidence on interstate commerce and would be authorized to grant not only intrastate rights, but also interstate rights. Even after such grant by the California Public Utilities Commission, the act provides that the Interstate Commerce Commission may review such grant.

I first of all question the legality of the delegation of power by the U.S. Congress to the local regulatory bodies. The section now in effect is an exemption to the requirement of securing a certificate, whereas the proposed section is a delegation of authority to a local commission to act on interstate commerce where, by the Constitution, this is reserved solely to the Federal Government.

Putting aside the legal questions, however, based on my experience, there would be interminable delays in this dual procedure since all of the administrative processes of the Public Utilities Commission would have to be invoked, as well as all of the reviewing processes of the Interstate Commerce Commission. Possibly the larger carriers operating in more than one State would not be subject to this section. The medium sized and smaller carriers operating locally within each State, who have no spokesmen to register their protest of the bill, would be hard pressed financially to go through this process.

This bill favors the railroads and the larger carriers. It tends toward monopoly of the transportation system in interstate commerce. It means duplication of regulation of the interstate phase locally within a State, which was the exact opposite of the intent of the drafters of the original bill now in effect. The original intent was that the local commissions, being familiar with the transportation problems locally, were entitled to pass upon the intrastate needs and, as an incidental matter, these local carriers were entitled to haul interstate traffic within one State.

The present proposal does violence to this concept, tends toward monopoly and, under all circumstances, will make it practically and financially impossible for the medium and smaller carriers to compete with their larger brethren.

I sincerely hope that you will review this bill carefully. If, however, it develops that the pressures are so great as to demand passage, without any question the word "prima facie" should be changed to "conclusive," and the Grand-

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father date should be altered, as above suggested. Even with these changes, the structure of local California carriers and other carriers in other States will be changed to radically as to do irreparable harm.

Respectfully yours,

BERTRAM S. SILVER.

SAN FRANCISCO, CALIF., July 25, 1961.

Re H.R. 2483.

Hon. JOHN BELL WILLIAMS,
U.S. Congressman, Washington, D.C.

Hon. HARTLEY O. STAGGERS,
U.S. Congressman, Washington, D.C.

Hon. SAMUEL N. FRIEDEL,
U.S. Congressman, Washington, D.C.

Hon. TORBERT H. MACDONALD,
U.S. Congressman, Washington, D.C.

Hon. JOHN JARMAN,
U.S. Congressman, Washington, D.C.

Hon. WILLIAM L. SPRINGER,
U.S. Congressman, Washington, D.C.

Hon. HAROLD R. COLLIER,
U.S. Congressman, Washington, D.C.

Hon. SAMUEL L. DEVINE,
U.S. Congressman, Washington, D.C.

DEAR SIRs: I am writing this letter to each of the members of the Subcommittee on Transportation who will undoubtedly, in due course, conduct hearings on H.R. 2483.

Representing a large number of smaller and medium size truck clients, it is our belief that passage of this bill is against the interest of these carriers and the public. I am enclosing a copy of a letter which I forwarded to my two Congressmen and Senators which I believe is self-explanatory and to which I would ask that you refer.

Since the writing of this bill, the Senate has passed its version and the matter may soon come up for committee hearing before you.

I might point out that while this bill is backed by the American Trucking Association and the rail lines and would undoubtedly be favored by the larger carriers, it would not be in the interest of the smaller and medium sized carriers operating in one State.

If this bill is to pass, I would urgently and seriously recommend that at least one change be made. The third to last line of section 2, contains the words "prima facie". If this were amended to read, "conclusive", at least the certificates of the smaller carriers in the present form would be safeguarded. At least this change would prevent years of litigation and great expense by the smaller carriers in "proving" their certifications.

When the bill passed the Senate, Senator Kuchel posed certain questions to Senator Smathers concerning the effect of the bill and the intent of the bill. The questions and answers are contained in pages 11789 to 11790 of the 1961 Congressional Record. The answers to these questions indicate that the smaller carrier is going to have to prove up each and all of the commodities and points served in order to retain his certificate of registration with the Interstate Commerce Commission. The hardships involved are apparent to those of us in the industry. The rail lines and larger carriers will obviously protest each and every application for a certificate of registration and this will result in years of litigation and heavy expense to the numerous and smaller carriers involved.

I strongly urge that the bill be defeated, or, if this cannot be done, the words "prima facie" be changed to "conclusive".

Respectfully yours,

BERTRAM S. SILVER.

Mr. WILLIAMS. The first witness listed is Mr. McBride. However, Mr. McBride has requested that Mr. Roberts make the first presentation to the subcommittee.

We will be very happy to hear from you, Mr. Roberts.

**STATEMENT OF AUSTIN L. ROBERTS, JR., GENERAL SOLICITOR,
NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS**

Mr. ROBERTS. Mr. Chairman and members of the committee, my name is Austin L. Roberts, Jr., I am general solicitor of the National Association of Railroad & Utilities Commissioners, with offices at 5310 ICC Building, Washington, D.C. I appear on behalf of the association in support of S. 320, a bill to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State.

The National Association of Railroad & Utilities Commissioners is a voluntary organization embracing within its membership the members of the transportation and public utility regulatory commissions and boards of the several States of the United States. The Federal regulatory agencies, the CAB, the ICC, the FCC, the FPC, and the SEC are also members of the association, but the association does not presume to speak for the Federal agencies on matters of legislation. Our appearance is on behalf of the State commissions and boards represented in our membership, which State agencies are charged by law with the duty and responsibility of regulating the common carrier by motor vehicle, among other things, operating in their respective States.

S. 320 concerns the so-called second proviso to section 206(a) (1) of the Interstate Commerce Act. This proviso presently reads as follows:

And provided further, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between points within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

Under the second proviso, a motor carrier desiring to operate within a single State would apply to the State commission for a certificate of public convenience and necessity to engage in intrastate commerce. Having satisfied the requirements for a State certificate of public convenience and necessity, the motor carrier could then register this State certificate with the Interstate Commerce Commission and be able to engage also in interstate and foreign commerce within the State subject to the same restrictions and limitations as would be contained in the State certificate as applicable to intrastate operations.

There are several points which should be emphasized in considering the area with which this legislation deals. First, we are talking only about motor carriers operating entirely within a single State. The Motor Carrier Act was very carefully drafted to achieve a close accommodation and dovetailing between Federal and State regulation of motor carriers. The second proviso is part of this overall draftsmanship and indicates the desire to place initial responsibility as regards single State operators with the State commission, which is closer to the scene and has a more intimate knowledge of the transportation requirements and conditions in the State.

Also, many of the second proviso carriers are relatively small operators who render service to the smaller towns and communities in a State. This again is a situation more appropriate to initial handling by the local State commission than by the Federal agency.

Thus there is sound logic and judgment for the existence of the second proviso in some form.

A second point that should be emphasized is that we are dealing only with the method of certification—the authorization for initiation of motor carrier operation—in the second proviso and in this legislation. The second proviso carriers, once registered, are subject to all other provisions of the Motor Carrier Act. This includes regulation of rates, service, safety, et cetera, by the Interstate Commerce Commission. The only difference in the regulation of second proviso carriers and carriers which have obtained formal certificates of public convenience and necessity from the ICC is the manner in which authorization to initiate operation is obtained, and the justification for this is noted above.

Several years ago, legislation was introduced in Congress to repeal the second proviso. The justification for repeal was based on contentions that certain abuses had crept into the operation of this provision. It was contended that some motor carriers operating under the authority of the second proviso had become so only so as to provide a link in an interstate movement. It was contended that some second proviso carriers, once registered, had sold their intrastate certificates to another person, who then also registered under the second proviso, thus creating multiple operations where only one existed before. Many State commissions assiduously fought this splitting of operating rights, but were not always successful.

In any event, the NARUC felt that complete repeal of the second proviso was excessive medication to cure the alleged abuses. The association went on record by resolution opposing such repeal and established a special committee to confer with the Interstate Commerce Commission in an effort to work out satisfactory legislation that would cure the abuses and at the same time preserve the harmonious interlocking operation of Federal and State motor carrier regulation as was envisioned by the original draftsmen of the Motor Carrier Act.

The NARUC special committee to study interstate motor carrier operating authority was appointed under the chairmanship of the Honorable Jesse W. Dillon of the Virginia State Corporation Commission, and among its members the Honorable Walter R. McDonald of the Georgia Public Service Commission.

Commissioner Dillon of Virginia is here this morning and will testify following me. Mr. McDonald expected to be here this morning, but due to unfortunate circumstances was not able to come up last evening. He sends his apologies that he will not be able to be here as a witness.

I might add that this cooperative endeavor of the ICC and the State commissions was endorsed by Senator George A. Smathers, chairman of the Surface Transportation Subcommittee of the Senate Committee on Commerce, which subcommittee was at that time considering this legislation.

The succinct conclusion, which ignores proper recognition of the effort and work involved, discussion of which I leave to Mr. Dillon, is that substitute legislation was developed and agreed to by the State commissions, the ICC and the American Trucking Association. The substitute bill was passed by the Senate in the closing days of the 86th Congress, but not seasonably enough to be considered by the House. In this Congress the bill, S. 320, has been passed by the Senate and is now before this subcommittee.

Our association at its 1960 annual convention unanimously adopted a resolution supporting this amendment to the second proviso. The resolution reads as follows:

RESOLUTION SUPPORTING LEGISLATION TO AMEND THE SECOND PROVISOR OF SECTION 206 OF THE INTERSTATE COMMERCE ACT

Whereas this association at its 1959 convention established a special committee to study motor carrier interstate registration authority; and

Whereas said committee, in cooperation with representatives of the Interstate Commerce Commission and with representatives of the Regular Common Carrier Conference of the American Trucking Association, has developed legislation amending the second proviso of section 206 of the Interstate Commerce Act; and

Whereas such legislation, entitled S. 3228, 86th Congress, passed the Senate on September 1, 1960: Now, therefore, be it

Resolved, That the National Association of Railroad and Utilities Commissioners does hereby urge the 87th Congress to enact legislation amending the second proviso in the form of S. 3228 as it passed the Senate in the 86th Congress; and

Resolved further, That copies of this resolution be sent by the secretary to each member of the Committee on Interstate and Foreign Commerce of the Senate and the House.

Section 1 of S. 320 would rewrite the second proviso so as to establish new and specific procedures by which motor carriers operating within a single State could register their State certificates with the ICC.

First, upon applying to a State commission for an intrastate certificate of public convenience and necessity the applicant would have to indicate his intent to also seek interstate operating authority. In other words, the State commission would know when the application is made whether or not the applicant intends to subsequently attempt to register the State certificate with the ICC.

Second, when this intent is stated in the application, the ICC would be so informed and notice would be published in the Federal Register. Opportunity, then, would be afforded before the State commission for other interested persons to be heard not only on the matter of public convenience and necessity as it relates to the intrastate operations, but also as it relates to the interstate operations which would be accomplished by registration. This is to satisfy the requirements of "due process" of law—there would be notice and an opportunity to be heard.

Third, the State commission, after considering the question of proposed interstate operations within the limits of the State authority, would set forth its finding as to whether or not public convenience and necessity require that the carrier be authorized to engage in interstate operations. Any person who opposes the application before the State commission may petition the ICC for review of the State

commission's findings as to interstate operations, and the ICC upon reviewing the record, may affirm, modify, or reverse that finding.

And fourth, prior to actually engaging in interstate operations, the carrier would have to file with the ICC for registration of the State certificate, under appropriate rules to be prescribed by the ICC, and receive a certificate of registration from the Commission.

The ICC would also prescribe rules and regulations applicable to the transfer of such certificates, but the bill prescribes that such certificates may not be transferred apart from the transfer of the corresponding intrastate certificate. This is to prevent future "splitting" of certificates.

Having developed procedures for handling future registrations, the problem then arose as to the treatment of existing second proviso or registered carriers so as to protect and continue their existing rights. The answer to this is found in section 2 of S. 320, which provides "grandfather rights" for existing operators.

Such carriers upon application to the ICC would receive a certificate of registration. The form of application, the information to be furnished, et cetera, would be prescribed by the ICC. In this manner existing second proviso carriers would be protected and not lose their existing rights or authority.

The association feels that this legislation is far preferable to repeal of the second proviso and will enable the State commissions and the ICC to effectively handle the problems of intrastate carriers who desire to engage in interstate operations. We feel that this legislation is in the public interest and we urge your favorable consideration of S. 320.

Mr. WILLIAMS. Thank you very much, sir.

Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Yes.

Mr. ROBERTS. Mr. Chairman, I might add that the two bills, H.R. 2483 and S. 320, basically, are identical. The only difference is in the effective date which is contained in section 3 on page 7 of the printed bill. When these bills were first introduced that provided for an effective date of April 1, 1961, but it is rather obvious that it would be impracticable, and for such reason the Senate amended its bill S. 320 when it was passed, making the effective date December 31, 1961.

Mr. FRIEDEL. What would this bill do for you? Would you spell it out by giving me an example?

Mr. ROBERTS. I did not hear the last part of your question.

Mr. FRIEDEL. Can you give us an example of why you want this amendment—give me one example where it would be used.

Mr. ROBERTS. I would give the following as a hypothetical illustration. A carrier could apply to a State commission for a certificate of public convenience and necessity to engage in intrastate operation. In certain States the hearing before that State commission would be restricted to the matter of public convenience and necessity applied only to intrastate commerce. Then having received a certificate the carrier could register the certificate with the Interstate Commerce Commission under the second proviso. This was automatic.

The result of this was that there was no consideration given to the public convenience and necessity as it applied to the interstate operation.

Mr. FRIEDEL. Could you give me a hypothetical example, perhaps, as to X company, and so on, where it has been abused?

Mr. ROBERTS. Well, the abuses were first alleged by the trucking industry and the Interstate Commerce Commission when they proposed complete repeal. One example which they cited was where a carrier had obtained an intrastate operating authority, for example, to operate, say, in the State of Georgia, from a place like Thomasville to the city of Atlanta. Atlanta would be an interchange point, where they would connect with an interstate carrier. They then would engage in operations purely to the point of Atlanta, where they would connect with another carrier, and as part of this initial haul, they would get a split of the revenue which, in most instances, ran about 25 percent.

It was contended that in certain situations the manufacturing company, perhaps, making the shipment from Thomasville to Atlanta would stimulate the creation of this carriage so as, in effect, to get shipping at a somewhat lesser cost than if they paid the rate that had been previously in existence to the interstate carrier in operation to that point.

Mr. FRIEDEL. I am trying to find out how would this operate.

Mr. ROBERTS. It is pointed out, in the operation of this bill, that the carrier now applying to a State commission for a certificate of public convenience and necessity would have to indicate its intent that it intended to register that with the Interstate Commerce Commission if it was granted by the State. The State commission then could consider the matter of public convenience and necessity as it related to the interstate operation. In other words, other interstate carriers would be able to come before the State commission and show that they were adequately servicing that area and that there was no need for additional service.

Mr. FRIEDEL. You said that the carrier from Thomasville to Atlanta, Ga., was an intrastate carrier?

Mr. ROBERTS. Yes.

Mr. FRIEDEL. How will this bill stop that man from operating?

Mr. ROBERTS. Let me say this is purely hypothetical. The Georgia Commission in a number of instances did consider the effect on interstate commerce when they granted State certificates, but in certain States where this issue was raised the commission was limited in granting a State certificate and no consideration was given to need and convenience as to interstate operation. That is, as to that part of it, they did not consider the interstate effect. Now where this would be filed, hypothetically, with the Georgia Commission, notice would be given to the Interstate Commerce Commission and it would be published in the Federal Register. The interstate carriers could then come before the Georgia Commission and make a case, to show that the certificate should not be granted to that company, because they can render the service and there is not the necessary public convenience and necessity to require the issuance of the certificate.

Mr. FRIEDEL. The grandfather clause in here would not affect the operation today?

Mr. ROBERTS. That is covered in section 2.

Mr. FRIEDEL. Would it affect the intrastate carrier, in their dealings with other carriers, or does it prevent that?

Mr. ROBERTS. Yes. The procedures in section 1 are for the future; section 2 covers the present carriers by giving them grandfather rights.

Mr. FRIEDEL. Thank you.

Mr. WILLIAMS. Mr. Collier?

Mr. COLLIER. To your knowledge is there a wide variation at the present time in requirements within the several States for intrastate authority or certification? Perhaps I can clarify that.

Mr. ROBERTS. I am not so naive as to say that there is, probably, not some variation. State commissions, however, have a number of classifications of carriers. In some States they grant what they call a permit which is granted to a carrier on the basis of very little evidence. However, the so-called State permits are not registerable with the Interstate Commerce Commission under the second proviso.

The only type of State operating authority registering is where the State grants a certificate of public convenience and necessity, and the evidentiary showing for such a certificate is much greater than for the other types. The standards, I think, are relatively high, but not uniform in all of the States.

Mr. COLLIER. As a matter of fact, and without being specific, is it not true that the requirements in certain States are far mores stringent, shall we say, in securing a certification or authority than they are in other States?

Mr. ROBERTS. Yes, they vary. Some are more stringent than others.

Mr. COLLIER. Do I understand, and I am referring now to the last statement on page 8, that under the legislation before us the registered carrier that is now operating within the several States, which authority comes from the respective States, will not be affected if they choose at some future time to engage in interstate commerce?

Mr. ROBERTS. Well, any of the carriers that are now registered with the Interstate Commerce Commission, under the second proviso, would be granted grandfather rights under section 2 of this bill.

There is a time limitation in there, I believe, of 120 days in which to file with the Interstate Commerce Commission. At a subsequent date, if they have not obtained the grandfather rights or, if at a subsequent date they desire to change their operation, they would then have to go to the procedures which are set out in part I of the bill. The alternative would be to go to the Interstate Commerce Commission for a formal certificate of public convenience and necessity to be granted by the Interstate Commerce Commission.

Mr. COLLIER. So that this protection is provided only for those who have already made applications for the certificates before the Interstate Commerce Commission?

Mr. ROBERTS. Yes.

Mr. COLLIER. Those that are operating?

Mr. ROBERTS. Those already so-called second proviso carriers that have been registered with the Interstate Commerce Commission under this second proviso.

Mr. COLLIER. I just wanted to be clear on that point. I believe that is all I have, Mr. Chairman. Thank you.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. WILLIAMS. When you refer to the interstate operations of intrastate carriers are you referring to what might be termed feeder operations, primarily, that is, feeding goods to an interstate carrier as part of the interstate operation or from an interstate carrier and distributing them somewhere within the State?

Mr. ROBERTS. In large part it would either be feeder or distribution operations at one or the other end of the haul.

The problem the carrier would have when he had a shipment from the point of origin to the point of destination in the same State is whether or not that shipment is interstate commerce. This is a difficult problem to determine as to whether it is intrastate or interstate.

The Supreme Court has laid down a number of rules. It has said that such things as the bill of lading and other things are not conclusive proof of what type of commerce it is.

By having the carrier authorized to carry either one, he does not have to determine for each shipment whether this is interstate or whether this is intrastate commerce. All he has to worry about is whether it is from a point of origin to a point of destination in that State that he has authority to operate over.

Mr. WILLIAMS. That is, under both certificates?

Mr. ROBERTS. If he has a certificate from the State and has registered with the Interstate Commerce Commission.

Mr. WILLIAMS. If he has a certificate from the State, but does not have a certificate from the Interstate Commerce Commission, then he is in trouble if he delivers interstate goods within the State knowingly or unknowingly?

Mr. ROBERTS. He would not be authorized to do it. In some instances it would, probably, be a very difficult decision to make as to whether it was interstate or intrastate commerce.

Mr. WILLIAMS. Does the bill before us now grant an extension of the authority, or, rather, could they extend the authority or broaden the definition of interstate commerce in any way?

Mr. ROBERTS. No, it does not affect the definition of interstate commerce in any way. It is purely procedural as to the method of initiating the service by common carriers by motor vehicles.

Mr. WILLIAMS. Would it not be much more simple and a better solution to provide that any carrier who operates exclusively within a State could not be subject to any Federal regulation?

Mr. ROBERTS. Mr. Chairman, to be perfectly frank with you, let me say—

Mr. WILLIAMS. In other words, that it would not be a part of the interstate operation?

Mr. ROBERTS. Mr. Chairman, to be perfectly frank with you, let me say that there are people in our association who so feel. This bill is a compromise effort and is not entirely satisfactory to everybody in all of the organizations. I know in our own organization there are some of our commissioners who feel as you have just indicated and have taken exception to provisions in here or have some reluctance to go along with provisions in here providing for Interstate Commerce Commission review of State actions. However, that may be the test that this is good legislation in that it is completely satisfactory to nobody, but has been agreed on by the principal parties concerned.

Mr. COLLIER. Will you yield?

Mr. WILLIAMS. Yes.

Mr. COLLIER. If I understand your previous statement correctly the determination of interstate commerce as applied to this legislation depends entirely upon the point of origin of a given shipment and the final destination; is that correct, sir?

Mr. ROBERTS. The determination as to whether or not it is interstate commerce?

Mr. COLLIER. Yes.

Mr. ROBERTS. No, sir; it is much more complicated than that.

Mr. COLLIER. How much more complicated?

Mr. ROBERTS. Well, the issue has been involved in a number of proceedings before the Interstate Commerce Commission and before the courts. The courts, generally, have said that there is no single factor which determines whether it is interstate or intrastate commerce. They have indicated that it is the bundle of circumstances involved in the shipment, including such factors as the bill of lading, the continuity of movement, the intent of the shipper, changes in the shipping designation of the commodity, that is, if you vary it from barrels to gallons, in the case of oil, and so forth. In other words, the overall circumstances connected with the shipment—its essential character—are what determines whether it is interstate or intrastate commerce.

Mr. COLLIER. Let me ask you one further question, as to a hypothetical case. If a manufacturer ships a partially manufactured product into a given area and upon its arrival in that area the product is completed by a further processing manufacturer and is then shipped on to final destination—assuming that the completion of the product takes place within the State where the final destination exists—would it be construed as interstate?

Mr. ROBERTS. That is a highly debatable question. There are differences of opinion on it. In some instances it has been held to be interstate commerce.

There was a recent decision where there was further processing and it was held to be interstate commerce on the flow of commerce theory.

Mr. COLLIER. In such instances where the question has arisen, as I understand the law presently, the Interstate Commerce Commission would make this determination on this question as to whether or not it was interstate or intrastate commerce, is that correct? Or, let me put it this way, to whom would another shipper go for relief if in its opinion this constituted an interstate shipment, notwithstanding the fact that the completed product was shipped from a destination point? That is, from an originating point to a destination point within the given State—who makes that determination?

Mr. ROBERTS. Let me say this, I do not think that is affected by this bill. That goes more to the matter of enforcement of the operation. If a motor carrier were engaged in transporting an unfinished product from point of origin to point of destination in a State, and if the product was then finished off at the point of destination and shipped further outside of the State, across the State line, and if the initial movement were held to be interstate commerce by a commission or court decision, and if that motor carrier had only intrastate operating authority, he would then no longer be authorized to transport that product within the State.

That, of course, would be contingent upon the interpretation of what is interstate commerce. It would not be affected by this bill.

Mr. COLLIER. Thank you.

Mr. WILLIAMS. Would it be affected by the second proviso?

Mr. ROBERTS. No; it would not. There is exemption in the second proviso that does not apply to them now and it would not apply to them in the future.

Mr. FRIEDEL. We have, as an example, a factory on the eastern shore of Maryland, and if they wanted to deliver that to Baltimore City, that would be within the State of Maryland and that would be intrastate from the manufacturer to the customer. On the other hand, if they wanted to ship them to Hartford County, up on the Chesapeake Bay, this factory would have to ship it and go to Delaware to get to Hartford County. The point of origin is in Maryland. However, as I say, they would have to go through the State of Delaware to get to the point of destination. Would this affect them in any way?

Mr. ROBERTS. This bill would not affect that situation at all. That would come under the present definitions contained in the Interstate Commerce Act as to interstate commerce.

Mr. FRIEDEL. Thank you.

Mr. WILLIAMS. Any questions, Mr. Jarman?

Mr. JARMAN. Thank you, no questions.

Mr. WILLIAMS. Mr. Roberts, what objections would be raised to the proposition that all intrastate operations would be free from any regulation by the Interstate Commerce Commission and would be left entirely within the hands of the State commission—what objection would be raised to that?

Mr. ROBERTS. Being a representative of the State commissions, sir, I would much rather have you ask the Interstate Commerce Commission that question.

Mr. WILLIAMS. As you advocate legislation which does give the Interstate Commerce Commission certain authority—I think, perhaps, that you as a State commissioner would be in a much better position to answer that question.

Mr. ROBERTS. I would say that any number of States feel that they properly, based on the local nature of it and their own familiarity with the circumstances, should have jurisdiction over all the shipments within their respective States. Some of these shipments, however, as we were discussing before, are in interstate commerce, which authority the Congress has placed with the Interstate Commerce Commission in drafting the Motor Carrier Act of 1935.

Mr. WILLIAMS. That is why I am asking the question.

Mr. ROBERTS. In this particular legislation we are not trying to change the original dovetailing and interlocking of Federal and State regulation which was envisioned in the first drafting of the act.

In consideration of some of the points you have mentioned, and others, there are provisions in here for the use of joint boards and cooperation with the State commission in order to develop harmonious relations between the two. These things, as I say, we are not trying to disturb. We are attempting to carry forth the same principles that are presently in the Motor Carrier Act, but still revising it so as to be able to correct the abuses which it is felt have developed since 1935 when the Motor Carrier Act was passed.

Mr. WILLIAMS. Has it been suggested that the abuses are prevalent because of any laxity or any reluctance on the part of State commissions to enforce their prerogative?

Mr. ROBERT. No, sir. There are situations not envisioned in the original draft, for one thing. The other thing is the result of certain situations in which State commissions were not authorized to act.

Mr. WILLIAMS. Are there any further questions?

(No response.)

Mr. WILLIAMS. If not, we thank you very much, Mr. Roberts.

Mr. ROBERTS. Thank you very much, sir, for the opportunity to appear.

Mr. WILLIAMS. Our next witness is Mr. Jesse W. Dillon of the State Corporation Commission of Virginia, who is a constituent of our distinguished colleague, Congressman Tuck of Virginia.

We are delighted to have you here, Mr. Dillon. Would you please proceed?

STATEMENT OF JESSE W. DILLON, MEMBER, STATE CORPORATION COMMISSION OF VIRGINIA, RICHMOND, VA.

Mr. DILLON. My name is Jesse W. Dillon of Richmond, Va. I am a member of the State Corporation Commission of Virginia and am chairman of a special committee of the National Association of Railroad and Utilities Commissioners to study motor carrier interstate registration authority.

The regular common carrier conference and the Interstate Commerce Commission supported Senate bill 2417, introduced in the 86th Congress by Senator Warren Magnuson. This bill which did not pass the Senate, would have repealed the second proviso of section 206(a)(1) of the Interstate Commerce Act dealing with the registration of intrastate certificates. This bill did not have the support of the National Association of Railroad & Utilities Commissioners.

The National Association of Railroad & Utilities Commissioners adopted a resolution at its 1959 convention approving and ratifying the action of its executive officers in directing appearance in opposition to Senate bill 2417, and went on record as opposing the enactment of the bill. The resolution further provided that the association formally tender to the Interstate Commerce Commission its offer to cooperate in a study concerning any difficulties arising under the registration provision and directed the president of the association to appoint a special committee to represent the association in such cooperative study, the Committee To Study Motor Carrier Interstate Registration Authority." The president of the national association, acting under the direction of the resolution, appointed Commissioners Walter S. McDonald, of Georgia, Everett H. Krueger, Jr., of Ohio, Everett C. McKeage, of California, Alfred H. Reichman, of Illinois, and Jesse W. Dillon, of Virginia.

This special committee had its first meeting in Washington on February 3, 1960. The full committee was unable, at that time, to meet with Commissioners Howard G. Freas and Rupert L. Murphy of the Interstate Commerce Commission, who had been designated by the

Commission to meet with the special committee. However, the committee authorized Mr. Austin L. Roberts, Jr., general solicitor for the National Association of Railroad & Utilities Commissioners, and me to meet with Commissioners Freas and Murphy at a later date.

The representatives of the NARUC committee and Commissioners Freas and Murphy had several meetings and reached an agreement on the provisions of proposed legislation which we would seek to have introduced in the 86th Congress. Senator George A. Smathers, of Florida, introduced Senate bill 3228 which would accomplish the desired results. This bill passed the Senate in the 86th Congress, but the House of Representatives adjourned before it had had time to consider the legislation.

Senator Smathers introduced Senate bill 320 in the 87th Congress which is identical with Senate bill 3228 except as to the effective date. That was changed to December 1, 1961. This bill has passed the Senate. It is now before this subcommittee for consideration. I am not going to explain the provisions of the bill as that has been so ably done by our general solicitor, Mr. Austin Roberts.

The Interstate Commerce Commission Regular Common Carrier Conference and the special committee of the National Association of Railroad & Utilities Commissioners have given mature consideration to this matter and have unanimously agreed that while the bill may not be perfect in every respect, it will solve most of the problems arising under the registration proviso of section 206 of the Interstate Commerce Act, and it is hoped that you will see fit to recommend that the Interstate and Foreign Commerce Committee report the bill favorably.

Mr. WILLIAMS. Does that complete your statement?

Mr. DILLON. Yes, sir.

Mr. WILLIAMS. Would you like to comment on the question I posed to the previous witness with regard to the propriety of redefining the interstate commerce clause so as to specifically exempt those carriers whose operations are purely and exclusively of an intrastate nature?

Mr. DILLON. I would like to do it as a member of the Virginia Corporation Commission that regulates the Virginia trucking industry, rather than as a member of the committee; that is, the national committee, if I could.

As a member of the Virginia Corporation Commission I would not mind seeing it done.

Mr. WILLIAMS. I believe that is all. Thank you very much.

Mr. DILLON. Thank you.

Mr. WILLIAMS. As an accommodation to two witnesses we have here who, I understand, must get back home, we will call as our next witness Mr. Themis N. Anastos, who is general counsel for the Cartage Exchange of Chicago, Inc., and also Mr. Joseph D. Shelly, Jr., representing the North Shore & Central Illinois Freight Co.

Are you going to speak first?

Mr. ANASTOS. Mr. Shelly would like to make several remarks on his own, if he may.

Mr. WILLIAMS. We are sandwiching you in here as an accommodation to you gentlemen.

**STATEMENT OF THEMIS N. ANASTOS, GENERAL COUNSEL, CARTAGE
EXCHANGE OF CHICAGO, INC., CHICAGO, ILL.**

Mr. ANASTOS. Mr. Chairman and members of the committee, I do not have a prepared statement. My name is Themis N. Anastos. I am an attorney, and general counsel of the Cartage Exchange of Chicago, Inc., which is a local cartage association having as its membership approximately about 115 carriers, all domiciled in Chicago or its suburbs.

Most of these carriers have been in operation from 50 to 125 years. Many of them are considered as the prime carriers in the Chicago land area, engaged in local and shorthaul carrying.

Mr. WILLIAMS. Do these members of your association operate entirely and exclusively within the limits of the State of Illinois?

Mr. ANASTOS. I would say that 99 percent of them do. There are several carriers that may go into Wisconsin, but on limited operations. Most of the gentlemen who are testifying here in opposition to the bill have second proviso authority and they are objecting to the so-called certificates of registration which are proposed to be issued here. My problem is a little different.

My carriers, who operate in the so-called "commercial zone" of Chicago, which includes four towns in Indiana, Gary, Hammond, South Chicago, and Whiting, cannot get second proviso authority since they have over the years been primarily engaged in steel hauling. I would say that, probably, the steel that is distributed within the Chicago land area, 50 or 60 percent of that steel is distributed by my carriers. Consequently, they cannot afford to give up the operation in Indiana and get the second proviso authority.

By the same token the authority that they hold from the Interstate Commerce Commission is limited within the commercial zone of Chicago as defined by the Interstate Commerce Commission.

Indiana, as you well know, is now moving farther and farther out from these metropolitan areas. Consequently, my carriers cannot now follow that. And they have inherently distributed all of the freight brought in by the over-the-road haulers, all of the freight brought in by the railroads, and all of the freight brought in by barge and the shipping lines in the Chicago port. With the opening of the Chicago port and the great activity there, any freight that is destined outside of the commercial zone they cannot haul.

I say that they cannot, but there are, no doubt, a lot of the carriers who are hauling it illegally, because at times it is hard to distinguish what is interstate freight or what is intrastate freight, because once it is put on the trailer it is difficult to determine its point of origin, whether it originated interstate or intrastate.

Under these circumstances the present bill is completely inimical to my carriers because it will forever shut the door to the transportation which arises now and which will increase in the future which is of an interstate nature.

I would say that at least 50 of these carriers have a gross income of over \$1 million. They are in serious trouble, which is a different situation from that of some of the carriers who are here.

Mr. Chairman, as to your question you asked the other gentlemen about having the Interstate Commerce Commission get out of this field, let us say that a freight shipment out of New York which comes

to Chicago for distribution may go anywhere within the commercial zone or outside of the commercial zone. If the Interstate Commerce Commission were not to regulate that I would, certainly, be in favor, although I do not know what the other gentlemen's position would be, because that would solve my problem.

Of course, the way I would like to see the bill amended to protect these carriers, if it could be amended, would be that they should be able to register under the second proviso and get a certificate which is a good certificate. But primarily and more importantly than that is that they should not be forced to give up the Indiana operation.

The Interstate Commerce Commission does not regulate that traffic. It does not require that a carrier have a certificate. It does not require that it publish rates, or anything else.

The State line is actually a fiction, because that part of Indiana is an integral part of the commercial zone, and yet by the second proviso definition it says that we cannot go into another State. So we are bound; we are stifled in this territory. And that is the particular situation I speak of.

If no other change is made than contained in the bill which was introduced in the Senate in 1957, which was S. 1720, which was, incidentally, the Interstate Commerce Commission bill—it would solve all of my problems, because it would allow the carrier to go into the commercial zone—it would allow him to register his State certificate and get second proviso authority. That would solve the problem of these carriers who are operating in the Chicago area.

There has been testimony in the past which has been given that there are, practically, 14,000 carriers in the State of Illinois who could run rampant by registering these certificates. But history has proven only about 300 carriers have registered their Illinois authority and have second proviso authority, primarily in the Chicago land area. So that there would not be any breakdown of the enforcement or anything of that sort, if these changes were made.

MR. WILLIAMS. You mentioned that your carriers were unable to get second proviso authority. What is it that prohibits their applying for that?

MR. ANASTOS. They would have to give up the authority they have. They would have to stop going into the commercial zone of Indiana, Gary, Hammond, South Chicago, and Whiting, in order to apply for the second proviso authority.

MR. WILLIAMS. Those who do that already have interstate rights.

MR. ANASTOS. Those that abandoned the Indiana operation?

MR. WILLIAMS. No, no. The ones who operate across the State lines between Illinois and Indiana.

MR. ANASTOS. They have interstate certificates, but 99 percent of those only have certificates from the Interstate Commerce Commission authorizing operations within the commercial zone. They have no greater extent certificates. So they are bottled up in the commercial zone. The problem is that receivers of freight, manufacturing plants, and what have you, are moving out into the suburbs, outside of Chicago. And, consequently, these carriers cannot pick up this interstate freight which comes in, say, by railroad, trucklines, or barges, and cannot distribute it, because it goes outside of the scope of their authority.

MR. WILLIAMS. Let us take this case of a shipment of goods that goes to Gary, Ind., which is part of the Chicago area.

Mr. ANASTOS. Yes, it is called the metropolitan part of Chicago.

Mr. WILLIAMS. One of the carriers picked up those goods in Gary, Ind., and hauls them across the State line over into Chicago and out to the suburbs of Chicago. Is it necessary that he have an interstate certificate in order to do that?

Mr. ANASTOS. If he hauls it within the commercial zone of Chicago, as defined by the Interstate Commerce Commission, which is the city of Chicago and certain suburbs, he needs no certificate, although the Commission back in the old days did issue the certificate, but the certificate had no value because it is exempt, anyhow. Some of them they certificate, but they may as well not have it, because it is only a sheet of paper that does not mean anything.

Mr. WILLIAMS. In the event the other carrier desires to do that, to carry it from Gary, Ind., to one of the suburbs of Chicago, which is outside of the commercial area, what is to prohibit him going to the Interstate Commerce Commission and getting a certificate?

Mr. ANASTOS. He would have to prove public convenience and necessity. And as you well know if there are a dozen carriers who now have the certificate of that sort, they would immediately attack him and say that there is no public convenience and necessity and he, probably, would not get it.

Mr. WILLIAMS. I was a bit concerned over the extent to which the law gives authority to the Interstate Commerce Commission to regulate small carriers in particular. I had a case of a man in Natchez, Miss., who owns two pickup trucks, and is making his living out of those two trucks. He had an opportunity to get some work over in Louisiana in connection with hauling materials. They required this man to file and prove convenience and necessity in order to get an interstate permit.

Personally, I think the idea of a man making his living out of two pickup trucks being required to get a certificate of convenience and necessity, showing, among the other elements that are required, that the service is not available otherwise within the State, et cetera, by certified carriers, is going a little bit too far in placing a burden on a small businessman.

Would this legislation affect that kind of operation in any way?

Mr. ANASTOS. As to the question you asked the other two gentlemen, what they thought if the Interstate Commerce Commission abandoned this field?

Let us take this example of a shipment destined for a point in Illinois, regardless of where the point is, it is dropped off at a base point in Illinois, by an interstate carrier and then a distribution carrier will pick it up and distribute it wholly within that State—where exempt from Federal regulations—I would have no objection to that.

Mr. WILLIAMS. As to either of the suggestions I made, or the issue I raised as to intrastate carriers altogether, if that should be enacted into law, he would still have to go to the Interstate Commerce Commission to get the certificate to haul between Gary, Ind., and Chicago, would he not?

Mr. ANASTOS. I would like, of course, if that were enacted that the commercial zone operation be exempt, because the Interstate Commerce Commission says that it is a fiction, it does not recognize it as a State line—it is an integral part of the commercial operation; in other

words, Gary and Hammond are one, and because there is a State line there dividing them from Chicago, it should not create a problem—it should not be defined as interstate commerce. You only have, I think about 12 or 14 of those areas which are so bound up that way they have grown up commercially, imports, in river areas, which you cannot identify one from the other, and the mere fact that the river is a State line, should not be allowed to deter the operation which is integral to the welfare of all of the people surrounding that territory. So I should think that a carrier picking up within the commercial zone of Gary, Hammond, South Chicago, and Whiting, which is a very small area, should be able to pick it up in the area and take it anywhere in the State of Illinois. For example, there is one street—Independence Avenue which is the dividing line, and if he picks it up across the street, he cannot take it, but if he picks it upon the other side, he can take it anywhere in the State of Illinois. I think that fiction should be removed.

Mr. WILLIAMS. As to the suggestion I made a moment ago, if it could be carried out, and put into law specifically exempting it from any Federal jurisdiction over intrastate, that is, purely intrastate operations, would it not be possible for two States, where you had a situation such as has been mentioned in Indiana and Chicago, to come to the Congress and request an interstate compact for the purpose of providing authority for the local truckers operating within the trade area—would that not be an answer to the problem you are raising?

Mr. ANASTOS. It could readily be. You will always have diversity of opinion because of certain rights that some individuals may want to protect. You are going to have that problem, but I think that in the best interests of commerce these barriers to some extent should be removed in the small areas which are so commercially an integral part of both sides of a State line, so that the fiction of interstate commerce should be removed.

Mr. WILLIAMS. Pardon my interruption. Please go ahead with your statement.

Mr. ANASTOS. I have nothing further to add.

Mr. WILLIAMS. You have concluded your statement?

Mr. ANASTOS. Yes.

Mr. FRIEDEL. Would they be protected under the grandfather clause?

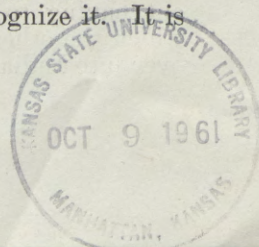
Mr. ANASTOS. No. They would not, sir, because my carriers do not have second proviso authority. They cannot get it by going into Indiana. They must go into Indiana if they are going to haul the commodities which are manufactured in Indiana and which are primarily steel.

Mr. FRIEDEL. In other words, this bill would not help or hurt you?

Mr. ANASTOS. Yes, it will hurt me, for this reason, it will forever shut the door because I have been warning my carriers they must try to make up their minds, in the event Congress changes this bill, to see that they must abandon this Indiana operation, because as the port of Chicago develops on the Chicago side, they will not be able to go outside the commercial zone. And since Indiana is moving out—

Mr. FRIEDEL. Don't they permit you to go into Indiana now?

Mr. ANASTOS. It permits us because it does not recognize it. It is an open territory.



Mr. FRIEDEL. Why do you think they would change it?

Mr. ANASTOS. Because it will shut the door for future second proviso filings. And since my carriers do not have second proviso authority now they will be forever barred from getting any authority.

Mr. FRIEDEL. I cannot see why if they do not have it and cannot get it, where does this bill help or hurt them? You are probably making an assumption I cannot foresee.

Mr. ANASTOS. It is a problem which faces my carriers now. They are being barred from transporting goods which they have transported for 50 or 100 years, because their consignees have moved outside of the commercial zone, as the Indiana area stands, so that they can no longer go there and deliver these goods. Once this bill is passed, and they have not decided to seek second proviso authority they will forever be barred from hauling this interstate freight.

Mr. FRIEDEL. You say that the Interstate Commerce Commission permits them to cross the border?

Mr. ANASTOS. To the Indiana portion.

Mr. FRIEDEL. They permit you now to go into the commercial area. Why do you think they will not keep on permitting it?

Mr. ANASTOS. Well, because this does have an effective date of eliminating the second proviso application.

Mr. FRIEDEL. You said this was not under the second proviso.

Mr. ANASTOS. That is correct. They do have the authority now. They have to make up their minds within the next 4 or 5 months and seek this authority and give up their Indiana operating authority. As I say, I do not like this bill at all. I would like to have it changed, allowing the carriers to seek second proviso authority and still operate in the commercial zone of Indiana. That is why this bill is completely inimical to me.

Mr. FRIEDEL. Thank you. That is all.

Mr. COLLIER. Do I understand from your previous statement that 99 percent of the members of the association do not enjoy the second proviso benefits?

Mr. ANASTOS. That is correct, sir.

Mr. COLLIER. And the mere fact that they are operating in this exempt area, so to speak, or the so-call commercial zone does not foreclose them from securing an Interstate Commerce Commission authority at the present time, does it?

Mr. ANASTOS. It precludes them, but if they go before the Commission to seek greater authority than the commercial zone, they must prove public convenience and necessity, and that is a rather difficult and expensive procedure before the Commission.

Mr. COLLIER. Of course, as a matter of fact these carriers who operate in the commercial zone have the ability of being able to operate interstate, whereas another carrier does not have that same advantage, is that correct or not?

Mr. ANASTOS. I am sorry, Mr. Collier, but I am afraid that I did not get the gist of your question.

Mr. COLLIER. A carrier operating strictly within this commercial zone, the Chicago-Gary-Hammond-Whiting commercial zone, presently has the advantage of doing business on an interstate basis without having to secure Interstate Commerce Commission authority, which the other man must get if he is operating from Decatur, Ill., over into Indiana.

Mr. ANASTOS. Yes.

Mr. COLLIER. Actually, then, this is a case, is it not, of having this advantage that another carrier does not have by the mere fact that a commercial zone has been established, so that it is a case, by reason of having this, that they have this special benefit?

Mr. ANASTOS. The fact is that all of these carriers hold authority from the Illinois Commerce Commission. They have been in this local- and short-haul cartage business since their existence. This interstate freight is a part of their intrastate operations. Of course, with the opening up of the port, with shipments coming in by that means, freight is increasing, and yet they are barred from going outside of the commercial zone because of the lack of authority.

Mr. COLLIER. Yet it would, certainly, seem to me—and I do not profess to being an expert in any sense in this business of motor carrier operations—that if this extension which you say will come, which I do not doubt will come—if this is going to take place, this expansion and moving out of business, would it not be advantageous for these carriers to secure Interstate Commerce Commission authority, so that they would not at some future time be restricted by the fact they are now operating within this zone?

Mr. ANASTOS. It would be to their interest to secure this authority, because there are other carriers who do have this authority. And, of course, they would oppose them to the full hilt.

Mr. COLLIER. Would it not be advantageous to your members to be in favor of this legislation, because as I understand the situation in this commercial zone area, unless I have been misinformed, this is a real cutthroat area, so far as steel hauling is concerned?

Mr. ANASTOS. Is it controlled, do you say?

Mr. COLLIER. No, I did not say it was controlled. I say that it was a very cutthroat situation that exists in this area.

Mr. ANASTOS. Very much so. They are destroying each other because of the cut rates of one carrier against the other. It is a very bad situation.

Mr. COLLIER. Would not this law then tend to eliminate some of this within this area?

Mr. ANASTOS. No, because there is nothing in this law which would establish or which would eliminate the so-called commercial zone. We still would have the commercial zone. And what is destroying these carriers are the ruinous rate structures. There is no rate regulation within the commercial zone. So, as a consequence, they haul it for any price they want to set. The Commission does not regulate the rate structure. That is why they are destroying each other by competition.

Mr. COLLIER. Within the zone?

Mr. ANASTOS. Within the commercial zone.

Mr. COLLIER. Those that you represent?

Mr. ANASTOS. If they go outside of the commercial zone, of course, they must publish rates which are compensatory rates which are regulated by the Interstate Commerce Commission. And they do get a fair return. But within the commercial zone there is no rate structure. Consequently, they haul it for any amount they set and, generally, one competes against the other. And with business conditions being on the downward trend, they are destroying each other. I think

there will be at least half a dozen carriers within the next 60 or 90 days who will go to bankruptcy because of this ruinous competition within the commercial zone. In fact, there is a concerted effort now to get rate regulation within the commercial zone of Chicago in steel hauling. I think a petition will be filed before the Interstate Commerce Commission within the next 30 or 60 days.

Mr. COLLIER. Probably, that will not be confined to steel, however.

Mr. ANASTOS. The initial petition will be on steel. If they are successful, no doubt there will be an effort made to eliminate the zone completely.

Mr. COLLIER. Those are all of the questions I have. I probably at the outset should have said that you are a constituent of a former colleague of mine. We are glad to have you appear before the committee.

Mr. ANASTOS. Thank you very much, sir.

Mr. FRIEDEL (presiding). Thank you very much.

Mr. ANASTOS. Thank you.

Mr. FRIEDEL. The next witness is Mr. Joseph D. Shelly, Jr., representing the North Shore & Central Illinois Freight Co.

STATEMENT OF JOSEPH D. SHELLY, JR., SECRETARY, NORTH SHORE & CENTRAL ILLINOIS FREIGHT CO., 5450 CENTER AVENUE, SUMMIT, ILL.

Mr. SHELLY. Mr. Chairman and members of the committee, at the outset I would like to express to the committee my appreciation of letting me speak out of turn.

I represent a second proviso carrier of fairly substantial size. We have an investment in equipment and terminals and miscellaneous assets, less depreciation, of more than \$400,000.

We are operating 97 trailers, 48 tractors. We serve hundreds of points in the State of Illinois. We have nine terminals in the State. One is in Chicago, of course, and another is 325 miles away, down in the West Frankfort, Ill., territory.

These hundreds of Illinois communities would not be served except for the second proviso carriers.

Our terminals are in communities such as Champaign and Peoria, Bloomington, and smaller towns of that size.

Our problem is that in order to justify the sizable investment it takes to operate our business, to obtain the financing we need from the banks and other institutions, in order to handle our equipment, we really need a property right in transferable certificates of public convenience and necessity.

There has been some talk here this morning about granting to carriers, such as ourselves, a grandfather certificate.

Without going into that matter in very great detail, because it will be covered by others, I would like to say that this is, at least, a novel grandfather certificate, so novel that 2 years ago Commissioner Murphy did not quite know what it stood for. No one has ever received a certificate of registration before. It is certain under the bill proposed here that we would have a certificate which is transferable only to another single-State carrier.

In other words, gentlemen, we would be forced to sell our business, if we wanted, to one of our competitors. We would be unable to sell

our business to an interstate company, a multi-State operator, but we would have to go to one of our competitors and say, "Would you like to buy our business—would you like to diminish the amount of service available in Illinois by consolidating these two companies?"

That is exactly what would be necessary under this bill.

I again wish to express my appreciation for the committee's time. I have tried to discuss only those features of the bill which are peculiar to our operation. The other matters will be covered more than competently by Mr. Macdonald and others.

Thank you.

Mr. FRIEDEL. Thank you.

Are there any questions?

Mr. SHELLEY. Thank you.

Mr. FRIEDEL. Our next witness is Mr. Robert J. McBride, director of legislative research, American Trucking Associations, Inc., Washington, D.C.

We will be glad to hear you now.

STATEMENT OF ROBERT J. McBRIDE, AMERICAN TRUCKING ASSOCIATIONS, INC., ACCOMPANIED BY ALBERT B. ROSENBAUM, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.

Mr. McBRIDE. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you as to this much misunderstood bill that is before you today.

My name is Robert J. McBride. My appearance here today is on behalf of the American Trucking Association, Inc., 1616 P. Street NW., Washington, D.C., an association representing the trucking industry of the United States. Its members include all of the State trucking associations and that of the District of Columbia. All types of motor carriers of property are members of these State associations.

Also present is Mr. Albert B. Rosenbaum, executive director of the Regular Common Carrier Conference, one of the natural divisions or conferences of ATA. I am retained by that conference as its director of legislative research.

I might observe in our former appearances in behalf of the second proviso bill, Mr. John Lawrence, the managing director of the American Trucking Associations has appeared with me. Many of you know him. Unfortunately, he is ill at this time. He just got out of the hospital a few days ago, so that he cannot be here today.

The bills would amend the provisions contained in section 206 of part II of the Interstate Commerce Act concerning registration of State certificates whereby common carriers by motor vehicle operating within a single State—I would like to place emphasis upon "a single State"—may engage also in interstate and foreign commerce within such State.

H.R. 2483 and S. 320 are identical except as to the effective date.

The House bill was introduced on January 12, 1961, and contains an effective date of April 1, 1961.

The Senate bill was passed by the Senate on July 17, 1961, and sent to the House on July 18, with an effective date of December 31, 1961.

The American Trucking Associations favors enactment of the principles set forth in these identical bills.

Section 206 of the act requires motor common carriers engaging in interstate or foreign operations to secure operating authority from the Interstate Commerce Commission. The second proviso of the section contains what amounts to an exemption, and reads as follows:

And provided further, That this paragraph shall not be construed as to require any such carrier lawfully engaged—

and I place emphasis on the words “lawfully engaged”—

in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

This proviso enables common carriers who confine their operations to the State of their domicile and who have secured intrastate operating rights from their State regulatory bodies to extend such operations into the interstate and foreign commerce fields.

After securing an intrastate certificate from his State board, the carrier may, for the first time, announce his intention to branch out into comparable interstate and foreign commerce movements.

He then files with the Interstate Commerce Commission a “form BMC 75 statement,” supported by certified copies of his intrastate certificate. The ICC then writes a letter giving the carrier authority to engage in interstate and foreign commerce. This decision is made on the staff level.

My exhibit No. 1 is a copy of a letter that the Commission invariably writes to the registered carrier giving him authority to operate in interstate commerce. That is the only paper the registered carrier holds at this time, unless he receives a certificate of registration as he did in the early days. I would like to come back a little later to that certificate of registration.

The Commission thus authorizes the carrier to engage in interstate and foreign commerce to the same extent the carrier is authorized to engage in intrastate commerce as described in the particular State certificate filed for registration provided no operations are conducted outside of such State. The validity of the certificate filed with ICC depends on its continued validity within the State.

I would like to place particular emphasis on that sentence, “the validity of the certificate filed with ICC depends on its continued validity within the State.” The validity granted by the grantor, namely, the State commission.

For several years the Interstate Commerce Commission has directed public attention to various abuses and newly created problems growing out of this exemption.

At the time of passage of the Motor Carrier Act of 1935, the Congress felt that interstate transportation of property wholly within a single State was merely incidental to the intrastate transportation.

Since that period, the motor carrier industry, through expansion and consolidation, has become stable. The interstate transportation services performed by holders of registered State certificates are generally important links in routes connecting cities in different States. Many State certificates have been obtained solely for the purpose of providing such interstate links.

In numerous jurisdictions, intrastate applications filed with State boards do not contain interstate issues, and under their rules of procedure the boards are not permitted to receive evidence from certificated interstate carriers bearing upon the competitive effect on interstate operations should an intrastate certificate be issued and later registered with the ICC. Generally speaking, in such proceedings the State board is not permitted to accept evidence tending to show that no need exists for additional interstate services.

I would like to add something there. We have a situation today in many States where a carrier files an application for intrastate rights. Under the rules of procedure in most of the States there is no interstate issue involved there, and that interstate carrier could not be heard by the commission—by the State commission. He is debarred from expressing any evidence or proof of the existence of the interstate service. Most of us who have practiced before the commission have had many cases of appearing before a State board involving the question of the intention of the man to engage in interstate commerce. In many instances the applicant says, "I do not intend to engage in interstate commerce." He gets a certificate on that basis, and within 24 hours he is registered with the Interstate Commerce Commission. There is nothing the Interstate Commerce Commission can do today but accept that for registration, and that man is in business in the interstate field. The existing interstate carriers, as I said, would have no status, because the board cannot go into interstate matters today. We hope to correct that by this bill.

Under provisions of their statutes, many State boards issue certificates authorizing intrastate transportation of "all freight" and between "all points in the State." Generally speaking, in such instances there is a total lack of showing of any public need for new and additional interstate services; nevertheless, the resulting State certificates are eligible for registration with the ICC.

The registration provisions of the second proviso have never been available to multiple State carriers, and such carriers frequently obtain intrastate certificates direct from their State boards. Later, the carrier sells the intrastate certificate to a single State carrier to whom the registration provisions are available.

So out of the original certificate issued by the Interstate Commerce Commission comes another additional line that has never appeared before the Commission—never made any showing of public convenience and necessity.

The ICC has repeatedly stated that the existing abuses have resulted in great multiplicity of interstate operations without consideration by the Commission.

We recognize that State regulatory bodies, being well acquainted with local conditions, have deep and continuing interest in the creation and maintenance of public transportation services designed to meet the public needs in their areas.

The bills before you contain three sections.

The first section relates to future applications and amends the second proviso so as to permit State commissions under a specific procedure to grant the right to motor common carriers operating within a single State to engage in interstate and foreign commerce within the boundaries of the State in which intrastate authority is being simultaneously authorized.

The second section relates to present operations and authorizes the Interstate Commerce Commission to issue certificates of registration to existing carriers engaged in interstate operations under the terms of the present second proviso.

The third section specifies the effective date of the bill.

The House bill must be amended. I know that there is no desire on your part to make the law retroactive.

This section of the bill outlines specific procedures under which a single State carrier seeking new or additional intrastate operating authority may, upon proper showing, also secure a certificate of registration from the ICC granting comparable interstate rights.

The prescribed procedure is substantially as follows:

(1) The intrastate application filed with the State board shall contain a statement that applicant seeks also interstate operating authority;

The existing carriers are then given their day in court.

(2) Notice of such desire will be published (by the ICC) in the Federal Register;

(3) Interested persons, including existing carriers in opposition, shall be afforded reasonable opportunity to be heard during the State board hearings;

(4) The State board, after duly considering the question of the proposed interstate operations, may find that public convenience and necessity require that the applicant be authorized to engage in interstate commerce within limits which do not exceed the scope of the authorized intrastate operations and may authorize such operations;

(5) As a condition precedent to engaging in interstate operations, the ICC may require the filing of certified copies of such State certificates, also compliance with applicable provisions (such as insurance or other security for protection of the public, and rate-filing requirements, et cetera);

(6) Any person who opposed the application in the State board proceeding may petition the ICC for reconsideration upon the record made before the State board and the ICC may affirm, reverse, or modify the State board decision with respect to findings on interstate operations.

Rights granted shall be evidenced by appropriate certificates of registration, subject to all applicable requirements of the act and valid so long as the holder is a single State operator. Rights may be transferred pursuant to ICC rules and regulations.

Section 2: In order to authorize and preserve continuance of existing single State operations, section 2 provides that the ICC shall upon application issue certificates of registration to carriers who on the effective date of the bill were in operation solely within a single State, and who have lawfully engaged in such operations in interstate commerce under the certificate exemption provision; such operations may be continued pending final determination of such ap-

plication. The Commission shall prescribe the form of application, as well as the manner of filing and the persons to whom notice is to be given. Issues shall be determined in an expeditious manner. The carrier's notice of intent to engage in interstate commerce, accompanied by certified copies of State certificates, shall be prima facie proof that applicant is lawfully engaged in interstate operations and the scope thereof.

If I may digress from the prepared statement, I would like to say that this is a compromise bill. It has been compromised and compromised. And I might give an instance of where Senator Kuchel, on behalf of his California carriers on September 2, on the floor of the Senate, had some amendment added, which added the word "lawfully." I think it helped it. And Senator Smathers felt it helped. And Senator Kuchel was satisfied.

There was, also, another amendment at that time, and that was a change in the effective date.

Certificates of registration shall be subject to other applicable requirements of the act.

As at present, the registered rights shall be valid only so long as the holder is a carrier engaged in operations solely within a single State; under conditions prescribed by the ICC they may be transferred, but may not be transferred apart from the transfer of the corresponding intrastate certificate. The transfer of an intrastate certificate without the corresponding certificate of registration, or the termination or restriction in scope of the intrastate certificate, automatically terminates or similarly restricts the certificate of registration is based on the original grant made by the State, I would like to point out there, so that the right to operate is based entirely on that basic operating authority. If the effectiveness of the State certificate is limited to a specified period of time, the certificate of registration shall be similarly limited.

The bills here under consideration are the end product of the joint efforts of the Interstate Commerce Commission and the National Association of Railroad and Public Utilities Commissioners to draft a bill that would embody sound regulation of intrastate carriers engaged in interstate commerce and, at the same time, promote the public interest. Most of the objections originally suggested by individual carriers holding registered State certificates have been met by the several amendments incorporated in the compromise bill by the two regulatory bodies.

The State boards will continue to deal with problems engendered by intrastate carriers wishing to engage in interstate commerce; the Interstate Commerce Commission is given authority commensurate with its position as the Federal regulatory body established to regulate interstate commerce; and by the present holders of State certificates registered under the second proviso are assured of continuance of their existing rights and privileges.

It is the view of the trucking industry that the two regulatory groups, after continued deliberations, are able to agree upon constructive legislation.

I would like at this time to refer to something I had not intended to bring up at this time. I make no reference to it in my prepared statement. I have seen dozens of notices and you will have witnesses before you who will tell you that the certificates of registration have

never been issued by the Interstate Commerce Commission, and that Commissioner Murphy so stated. That is incorrect.

When I came to Washington in 1920 I learned about various new forms that the Interstate Commerce Commission was using that I had not heard of where I had been in the trucking business in Chicago. I heard of so-called compliance orders that the Commission used at that time. I heard of "certificates of registration," which I heard of for the first time. I have seen dozens and dozens of certificates of registration. I do not know how many have been issued. I was in close touch with the various departments of the Commission and, as I say, I have seen dozens of these.

You will be told repeatedly that not one was ever issued.

I think for the benefit of the record I should ask permission to put in here an actual application for registration.

Mr. WILLIAMS. Without objection, it may be made a part of the record at this time.

(The document entitled "Certificate of Registration" follows:)

Rg. 402.

CERTIFICATE OF REGISTRATION

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D.C., on the 12th day of September, A.D. 1939

No. MC 54498

APPLICATION FOR REGISTRATION

HAROLD S. WHARFF, DOING BUSINESS AS WHARFF'S EXPRESS, OLD ORCHARD BEACH, MAINE

After due investigation:

It appearing, That applicant is a common carrier by motor vehicle operating solely within the State mentioned on the reverse side hereof, and in accordance with the second proviso of Section 206(a) Motor Carrier Act, 1935, has obtained authority in the nature of a certificate of public convenience and necessity issued by the State Board having authority to grant and approve such certificates, all as more specifically set forth and appended on the reverse side hereof and attached hereto, and made a part hereof; and the Commission so finding; therefore,

It is hereby certified, That said applicant may, by virtue of said second proviso of Section 206(a), engage in operations as a common carrier by motor vehicle in interstate or foreign commerce solely within said State, over the routes and within the territory and with the limitations described in said State authority so long as said authority remains in force and effect, subject to all applicable provisions of the Motor Carrier Act, 1935, as amended.

By the Commission, division 5.

W. P. BARTEL, *Secretary.*

(SEAL)

Rg. 402

Appendix to the order of the INTERSTATE COMMERCE COMMISSION, Division 5, dated the 12th day of September, A.D. 1939

No. MC 54498

APPLICATION FOR REGISTRATION

HAROLD S. WHARFF, DOING BUSINESS AS WHARFF'S EXPRESS, OLD ORCHARD BEACH, MAINE

Description of the routes and/or territory solely within the State of Maine over which and in which applicant is authorized to conduct motor carrier operations, in the transportation of commodities generally by virtue of State certificate of public convenience and necessity No. 129 issued by the Public Utilities

Commission of Maine and over which and in which the said carrier may engage in such operations in interstate or foreign commerce by authority of the second proviso of Section 206(a) of the Motor Carrier Act, 1935.

Portland-South Portland to Old Orchard serving to and/or from Portland-South Portland, Oak Hill, Dunstan, Pine Point, Old Orchard, and Cascade Lodge and Camp Ellis, both in Saco.

Mr. McBRIDE. There are many carriers registered today whose only operating authority from the Interstate Commerce Commission is a certificate of registration. So they have been issued and they are still used.

The Commission decided along about 1941 or 1942 that, perhaps, they were not using the right form, because the proviso that I read to you did not specifically refer to certificates of registration. And I know of conferences within the Commission at that time as to whether they should change it. So they changed to the form that is shown in my exhibit No. 1, which is a mere letter signed by a chief of the operating force. And I ask that that be made a part of the record at this point.

Mr. WILLIAMS. Without objection, it will be made a part of the record at this time.

(The document referred to follows:)

EXHIBIT No. 1

INTERSTATE COMMERCE COMMISSION,
BUREAU OF OPERATING RIGHTS,
Washington, D.C.

DEAR ———: The form BMC 75 statement, by which you propose to engage in operations in interstate or foreign commerce under the second proviso of section 206(a) (1) of the Interstate Commerce Act, has been accepted and assigned No. MC———.

Upon compliance with the applicable provisions of the Interstate Commerce Act, (insurance or other security for the protection of the public, rate filing requirements, and designation of agent for the service of process), this letter will be your authority to engage in operations in interstate or foreign commerce under the second proviso of section 206(a) (1) of the Interstate Commerce Act, to the same extent that you are authorized to engage in intrastate commerce as described in your State certificate filed with this Commission, provided no motor carrier operations are conducted outside such State.

The decision to accept your form BMC 75 statement is made on the staff level and is subject to a petition for reconsideration by Division 1 of the Commission.

Very truly yours,

Mr. McBRIDE. The form is provided in the new bill.

Commissioner Murphy did state that there were certain uncertainties existing in connection with the certificates of registration. That is true. And so he and Commissioner Freas sat down with the NARUC people. And I think the first thing they did was to specifically provide in the bill that there shall be applications of registration, so that all of the confusion that existed originally on these bills has been corrected by the action of the regulatory bodies.

I would like to talk for just a moment about the situation in my old hometown of Chicago, Ill. I used to be connected indirectly with the cartage people. They are a very fine group of men. Many of them have registered intrastate certificates.

If they are serving over in Indiana they are not eligible under the law for a registration certificate, because Congress in 1935 confined this to carriers confining their operations within a State.

I would like to point out there are in the Chicago area numerous Indiana towns, Hammond, Gary, Whiting, South Chicago, where there is no regulation, no operating authority needed for operation in the so-called commercial zone.

The local cartage people who operate within the commercial zone need no authority from anybody but the city of Chicago.

Mr. WILLIAMS. Who determines the commercial zone?

Mr. McBRIDE. The Interstate Commerce Commission has defined the Chicago commercial zone.

Now, then, there are many carriers who have the greater part of their business within the zone, but they do have to reach over into Indiana. They are still in the commercial zone.

I recognize there is expansion all over the country. We have plants in the commercial zone today who have found it to their advantage to move out to, say, Aurora, Ill., 125 miles away. The local cartage group would, naturally, like to continue to handle that business. They are handling it today. On a haul from Chicago to Aurora, that is just like a haul to San Francisco, so far as the exemption is concerned. The exemption is confined to the commercial zone area. And so where a plant has moved out it is the customary practice to file an application with the State authority and with the Interstate Commerce Commission for that.

Mr. COLLIER. To file it with the State or what?

Mr. McBRIDE. For intrastate service, and with the Interstate Commerce Commission for interstate service. There must be a line of demarcation somewhere.

The carriers today operating in the Chicago commercial zone, from Illinois to Indiana, do not need any authority from any regulatory body and they are unaffected by this bill. This bill does not affect any exempt area—nothing is taken away under this procedure from any motor carrier engaged in the general distribution business in Chicago.

There has been some question raised here about shipments transferred in Chicago. Is it intrastate or is it interstate commerce? This bill in nowise affects that. The law as it stands today—the rules of the Commission as they stand today—will remain identical.

I would like to give you an illustration I think will be helpful. Many motor carriers in Chicago have truckloads of freight consigned to them. Whether a shipment is intrastate or interstate depends on the intent of the shipper who signs the bill of lading. That is what governs whether it is State or interstate.

If the shipment is moving, say, from New York to Chicago, and moving from New York to Chicago it is necessarily interstate traffic. The truck is unloaded in Chicago.

A shipment coming to rest there to be stored, to be further processed or to be delivered is interstate commerce all the way through.

On the other hand, if it goes to the consignee in Chicago and is put in his warehouse, the transportation service has been completed right there. Should you later send that shipment out to Aurora, Ill., that is intrastate traffic from Chicago to Aurora, Ill., and the intrastate car-

riers would be, under the provisions of this bill, the one to haul it if he registered his rights. But it is not interstate commerce any longer, because it has lost its identity when the intention of the parties to send it there was completed.

I know there is much confusion about that. I had to deal with it many years out of Chicago. But the rule is very definite.

The same thing about the Illinois State line. Yes; there are some corrections that are needed there because there are some carriers holding registered State certificates in Illinois who happen to go over into Indiana to pick up some iron and steel articles going to some place in Illinois. When those carriers have interstate authority to haul shipments from the steel mills in the Calumet region in Indiana to Springfield, Ill., this does not affect them. If they have no interstate authority, but are still going over to pick it up, this bill does not affect them, because they are not operating lawfully.

I would like to read, if I may, a motion passed by the American Trucking Associations. I would like to say to you that we have a very excellent overall industry association, the American Trucking Associations. It is made up of all types of carriers—common carriers, contract carriers, long-haul carriers, short-haul carriers, private carriers. It is in the hands of a group known as the ATA Executive Committee. Every natural division of the industry has representation on the board. We have a substantial board of directors.

On June 17-18, 1959, the executive committee met and the following motion was adopted:

Moved; that ATA seek repeal of the second proviso of section 206(a)(1) of the Motor Carrier Act provided the present holders of registered State certificates of convenience and necessity (a) are assured of the maintenance and continuance of their existing rights, and (b) are given certificates of registration by the ICC, and (c) are given the right to transfer their State certificate to transferees lawfully engaged in transportation solely within such State. In the event of such transfer, the transferee shall be entitled to a certificate of registration from the ICC. The staff is directed to immediately proceed to develop and have introduced an amendment in harmony with the foregoing with a view of securing enactment during the present session of Congress.

And within a few days after that Mr. Neil Curry asked Senator Magnuson to introduce such a bill. And that was among the first bills. Hearings were held.

So you see it is the view of organized industry as represented by the ATA that this is the procedure which should be followed.

I direct your attention to the fact that sought to repeal the second proviso, and I think that our group would like to see the repeal of the second proviso. However, we have sat down with the regulatory bodies, and like everybody else, have yielded much in an effort to bring out a bill that represents the public interest and one that you can accept as the best possible bill under the circumstances.

I can certainly understand the views of the State commissions. I think they are right. Being on the ground they know more about what is going on in their States than the Interstate Commerce Commission could possibly know, but it involves interstate commerce and there must be some place for the Interstate Commerce Commission to have some voice in it.

Mr. WILLIAMS. What would be the effect of an outright repeal of the second proviso?

Mr. McBRIDE. If you merely repealed the second proviso, then the only approach or avenue of approach for a person wishing to engage in interstate commerce would be to appeal to the Interstate Commerce Commission under section 206. That would be that.

I assume, Mr. Chairman, you have in mind keeping in business those of our carriers who are already in there. You did not mean to shut them off.

Mr. WILLIAMS. I would not want to close the door to them.

Mr. McBRIDE. We have been very zealous in our efforts to guard the rights of our members who hold intrastate registered certificates today. And we have met the views of the great majority. If I may be permitted to say this, I have talked on the telephone, at meetings and in visits with dozens of carriers who hold intrastate rights, who have asked me about this bill and why we are trying to put them out of business. I think three-quarters of the time we have had conversations each of us looked at the bill, they told me they were going to withdraw their objections to the bill.

Mr. WILLIAMS. If you will pardon the interruption, I should like to ask you another question.

Mr. McBRIDE. Yes, sir.

Mr. WILLIAMS. I have one or two questions the answers to which I am sure will be elementary to you, but they will help our understanding of the legislation. Let us take the case of goods being shipped, that is, manufactured goods being shipped from Massachusetts to Chicago by rail and picked up in Chicago and carried to Springfield, Ill., by local carrier, a carrier operating entirely within the State of Illinois. Without the second proviso it would be necessary for this carrier to file with the Interstate Commerce Commission an application for a certificate; is that correct?

Mr. McBRIDE. Yes.

Mr. WILLIAMS. In other words, his hauling of these goods from Chicago to Springfield, Ill., even though it is within one State, is considered a part of the movement in interstate commerce; is it not?

Mr. McBRIDE. Yes, I would assume it is. I would assume this.

Mr. WILLIAMS. Under the law that would be a part of the interstate movement, would it not?

Mr. McBRIDE. You have to have additional factors, sir. If it is the intention of the consignor at the time he made out the bill of lading and tendered it to the carrier, the railroad, in your case, that traffic immediately is covered by the Interstate Commerce Commission—that is interstate commerce.

Mr. WILLIAMS. Where it was the original intention to go to Springfield, Ill.?

Mr. McBRIDE. Yes; if the destination on the bill of lading is Springfield, Ill., it having taken on the color of interstate commerce, that is carried through to delivery to the ultimate consumer or customer in Springfield, Ill.

Mr. WILLIAMS. The carrier who picks that up in Chicago and takes them to Springfield is subject to regulation by the Interstate Commerce Commission?

Mr. McBRIDE. Yes.

Mr. WILLIAMS. Under the second proviso, as I understand it—and I am certainly not sure that I understand it correctly, and please

correct me if I am wrong—under that this carrier who operates entirely within the State of Illinois may go to the Illinois commission or whatever is comparable to the Interstate Commerce Commission or the railroad commission or whatever name it has—

Mr. McBRIDE. Yes.

Mr. WILLIAMS. And get a certificate from them, and that certificate must be recognized by the Interstate Commerce Commission?

Mr. McBRIDE. That is correct.

Mr. WILLIAMS. For hauling of interstate goods within the State?

Mr. McBRIDE. That is right.

Mr. WILLIAMS. If they go across the State line into Wabash, Ind., then they must file a separate certificate with the Interstate Commerce Commission; is that correct?

Mr. McBRIDE. That is correct—they are under the general rules for certificates.

Mr. WILLIAMS. Does the Interstate Commerce Commission have any authority now under the law to refuse to grant a certificate which has been approved by a State commission?

Mr. McBRIDE. No, sir.

Mr. WILLIAMS. Is it the purpose of this act to give them reviewing authority, authority to deny the application, the certificate which has been granted by the State commission?

Mr. McBRIDE. Not as far as intrastate traffic is concerned, but as far as interstate is concerned, the Interstate Commerce Commission has the right to affirm, approve, or modify the finding of the State commission, based on the record at the hearing before the State commission.

Mr. WILLIAMS. Let us stop right there.

Mr. McBRIDE. On interstate traffic only.

Mr. WILLIAMS. In the case I mentioned of the goods coming into Chicago from the State of Massachusetts, picked up in Chicago, with a bill of lading to Springfield, Ill., by a trucking concern which operates entirely within the State of Illinois, that concern now has only to go to the Illinois Public Utilities Commission and get their certificate, file it with the Interstate Commerce Commission and they are in business?

Mr. McBRIDE. That is right.

Mr. WILLIAMS. As part of the interstate operation?

Mr. McBRIDE. Yes.

Mr. WILLIAMS. On the other hand, under your bill they could carry anything they wanted to within the State, so long as it originated within the State?

Mr. McBRIDE. So long as it was intrastate traffic, they can do anything they want.

Mr. WILLIAMS. With respect to the shipment, the interstate part of it, your bill would require that they not only prove public convenience and necessity before the State commission, but they, also, must prove that before the Interstate Commerce Commission?

Mr. McBRIDE. Well, if at the hearing—we are talking about the hearing—they establish public convenience and necessity as to the intrastate service, and if they have convinced the State commission there is a need for comparable interstate service, then the Interstate Commerce Commission shall approve that for interstate.

Now, then, nobody can object to that, except the person who appeared at the hearing and endeavored to make a showing of the overabundance of existing transportation services.

Mr. DEVINE. If I may interrupt, how can inter and intra be comparable?

Mr. McBRIDE. As to commodities, origin and destination.

Mr. DEVINE. Intra is wholly within the State.

Mr. McBRIDE. I do not mean it that way. I mean the authority to operate. This does not have anything to do with the physical goods. If the intrastate right is from Chicago to Springfield, the comparable interstate would be the same thing.

Mr. DEVINE. Thank you.

Mr. McBRIDE. May I say this, sir, very frequently the State commission attaches certain conditions in the grant they make. When the man registers his certificate and is given authority, those same limitations are placed on the interstate, so that the operating rights are comparable as to territory, commodity, et cetera.

Mr. FRIEDEL. Mr. McBride, if we adopted this bill he could not sell his business unless he goes to a competitor, is that true?

Mr. McBRIDE. No, sir.

Mr. FRIEDEL. I see on page 7 the rights may be transferred pursuant to Interstate Commerce Commission rules and regulations.

Mr. McBRIDE. Yes.

Mr. FRIEDEL. Could he sell to any other person?

Mr. McBRIDE. May I say this, sir, the present law in practice and the proposed law in practice are identical. He cannot today—an intrastate carrier with a registered certificate cannot sell that to a multiple-State operator operating through various States today. He cannot do it today. He cannot do it under this. All of the rights and privileges he has to sell today are extended over into the new act. It does not curtail in any way or in any respect, as far as I know, the right of doing it. There may be instances where a man wants to sell and he is offered by another line maybe \$50,000 for his outfit, the whole business, from an intrastate operator, but an interstate operator might be willing to pay him \$75,000. I cannot hate my friend for wanting to get the higher figure, but today he cannot sell to that interstate operator unless that interstate operator files an application for a certificate of convenience and necessity with the Interstate Commerce Commission.

In other words, this bill, I am confident, will in no wise reduce the right of sale. Those are things that were corrected through the compromises where a man might die and his widow took over the business. The original bill would not take care of that.

Mr. COLLIER. However, actually, the proposed legislation might foreclose a potential buyer by reason of this qualification?

Mr. McBRIDE. There would be nothing in the bill to create a different situation to cause that, sir.

Mr. COLLIER. Would not the regulation of the carrier in interstate commerce be such that he might be foreclosed from buying an interstate operation, whereas presently the interstate seller, let us say, may sell to another interstate with no prohibition?

Mr. McBRIDE. If he can do it today, he can continue to do it. I might say this: We have many cases where an intrastate carrier wants

to sell to a multiple today, and they do sell, and the purchaser then files an application and shows public convenience and necessity based on the previous tonnage, and gets it and that will continue.

Mr. WILLIAMS. I do not like to interrupt, but the bells have rung for a quorum in the House. The House is in session. The committee will have to adjourn now. We have a very important piece of legislation to be considered in the House this afternoon, an appropriation for aircraft, missiles, naval vessels, and Armed Forces and in view of the importance of the legislation, and the announcement by Mr. McCormack that there will be a rollcall on the legislation, I regret to have to inform you that it will not be possible for the subcommittee to sit this afternoon. I presently have quite a number of questions I would like to propound to you regarding this legislation. I am sure that other members of the committee will have questions. I believe you are located here in Washington?

Mr. McBRIDE. Yes.

Mr. WILLIAMS. And you will be available just about any time?

Mr. McBRIDE. That is right.

Mr. WILLIAMS. So if it is all right with you—and I am sure it will be—we will suspend your testimony until a later date at a time that is convenient.

Mr. McBRIDE. I will be very happy to cooperate. You have been very patient, sir.

Mr. WILLIAMS. The subcommittee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:20 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Thursday, August 3, 1961.)

INTRASTATE MOTOR CARRIERS IN INTERSTATE COMMERCE

THURSDAY, AUGUST 3, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1310, New House Office Building, Hon. Harley O. Staggers presiding.

Mr. STAGGERS. The subcommittee will come to order.

The subcommittee is met this morning to further consider H.R. 2483 and S. 320. As I understand it, Mr. McBride was before the committee as the witness at the time of the recess yesterday. Do you have any further statement you wish to make at this time, Mr. McBride? If so, we will be glad to hear you. I may say to you and to the others who are appearing that if you have statements, we would appreciate your putting those statements into the record and summarizing them. The statements will be made a part of the official record if you do that.

**STATEMENT OF ROBERT J. McBRIDE, DIRECTOR OF LEGISLATIVE RESEARCH, REGULAR COMMON CARRIER CONFERENCE, ON BEHALF OF AMERICAN TRUCKING ASSOCIATIONS, INC., ACCOMPANIED BY ALBERT B. ROSENBAUM, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE, WASHINGTON, D.C.—
Resumed**

Mr. McBRIDE. Thank you, Mr. Chairman. I had practically completed my statement yesterday when the bell rang and the chairman said that you had to go to the House, and he asked me if I would be available today, and I assured him that I would. He said that some of the members had some questions they wished to ask of me. They are not here as yet, as I see, because I know that they are busily engaged in other activities.

I would just like to say that this bill is the result of a cooperative effort of the National Association of Railroad and Utilities Commissioners and the Interstate Commerce Commission. Those two regulatory bodies assembled in conference, as I understand it, and gave consideration to all of the facts that have been expressed to them and came up with what was practically this bill. Certain amendments have since been accepted on the Senate floor. Senate Kuchel of California was able to secure some modifications on behalf of his people. The bill was passed by the Senate at the closing of the last session. It

has been delayed for some few weeks. As a result of that it could not get to the House in time for consideration by your committee.

I just want to speak about that cooperative effort between the two regulatory bodies. We have in the transportation industry today several groups, where the different groups are trying to get together to discuss their problems. We hope in many instances to avoid the necessity of asking for additional legislation on many items. There is in existence today a group known as the National Conference of State Transportation Specialists. They are men affiliated with the various State commissions. They meet with all interested parties. They have had some meetings in the last couple of weeks. What they were seeking through this conference method was to avoid taking up your time on many of these things, particularly where we are seeking uniformity of reporting requirements for motor carrier operation. And the question of taxes on fuel consumed. And many of us are familiar with a man from Florida by the name of Eddy D. Hammel, who started off investigations on the invasion of the common carrier field by pseudoprivate carriers. That work is going on there. And there is, also, work on insurance filing forms, uniformity of identity cards.

The American Trucking Associations are taking an active part in those deliberations. That is something that we are trying to work out. Bills have been introduced in this House which would require long hearings on matters that are now being handled by this committee. We hope this committee will not be discouraged in its efforts on this matter. So we hope the members of this committee will join us in expressing appreciation to the two regulatory groups in setting up another example of benefits to be derived through the earnest co-operation of State boards, represented by the National Association of Railroad and Utility Commissioners and the Interstate Commerce Commission and the regulated industry.

That completes my statement, Mr. Chairman. As I mentioned, the chairman said that there would be some questions, possibly, from committee members. I am available now, or I can come back at your convenience.

Mr. STAGGERS. Thank you very kindly. I have one question. In looking at your statement, I notice that you are appearing on behalf of the American Trucking Associations, is that correct?

Mr. McBRIDE. That is right.

Mr. STAGGERS. And you are in favor of the bill?

Mr. McBRIDE. Yes.

Mr. STAGGERS. That is, as now written—as it now stands—without amendment?

Mr. McBRIDE. As it passed the Senate; yes, sir.

Mr. STAGGERS. I wanted to get the basic philosophy.

Mr. McBRIDE. There is one observation I think you might like. You know Mr. Lawrence. In our previous hearings on these bills he has, also, accompanied me, standing by to answer any questions that might come up about ATA and its activities.

However, John just got out of the hospital a week ago. He is making good progress, but unable to be here. I know that you know John.

Mr. STAGGERS. Yes. Are there any questions, Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. STAGGERS. Any questions, Mr. Devine?

Mr. DEVINE. You say that you are in favor of the bill as it passed the Senate?

Mr. McBRIDE. That is right, because the effective date is now December 31. If there are any wrinkles that the holder of a State certificate has to iron out between now and the effective date, he has the rest of this year in which to do it. I am sure that many of them can and should take full advantage of the additional registration days, because there is no desire to shut off the right of any man to register who is eligible for registration. And then after the bill becomes effective, if enacted as passed by the Senate, there will be 120 days in which to register. So we would hope that all of our members who have been a little careless up to this time in making application for registration can step in and do it during the rest of the year.

Mr. DEVINE. Thank you.

Mr. STAGGERS. Thank you, Mr. McBride.

Mr. McBRIDE. Thank you.

Mr. STAGGERS. Our next witness will be Mr. David G. Macdonald, counsel for a group of second proviso motor common carriers, Washington, D.C.

Would it be satisfactory to you, Mr. Macdonald, to insert your prepared statement into the record and for you to summarize it?

**STATEMENT OF DAVID G. MACDONALD, COUNSEL FOR A GROUP
OF SECOND PROVISO MOTOR COMMON CARRIERS, WASHINGTON,
D.C.**

Mr. MACDONALD. I will be glad to take advantage of the chairman's offer to do that.

Mr. STAGGERS. Very well, we will put the entire statement in the record and you may summarize it.

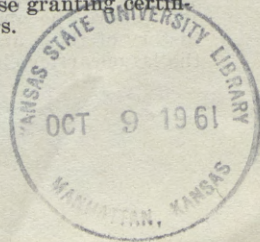
(The statement of David G. Macdonald follows:)

**STATEMENT OF DAVID G. MACDONALD, COUNSEL FOR A GROUP OF SECOND PROVISO
MOTOR COMMON CARRIERS ON H.R. 2483 AND S. 320**

Mr. Chairman and members of the Subcommittee on Transportation and Aeronautics, my name is David G. Macdonald. I am an attorney and member of the bar of the Interstate Commerce Commission, with offices in Washington, D.C. I am appearing on behalf of a group of 14 motor carriers, whose names appear in appendix A to this statement, with operations in Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and South Carolina. These carriers, representative of a total of approximately 2,665 such carriers, are relatively small carriers, conducting operations wholly within individual States, and using as operating authority the second proviso of section 206(a) (1) of the Interstate Commerce Act. For this reason they are commonly called second proviso carriers.

H.R. 2483 and S. 320 are concerned with the future status of the operating authority of those second proviso carriers. The group which I represent opposes this legislation in its present form because it fails to preserve their present rights and because it fails to provide for them the same character and kind of franchise which the Congress has provided for other classes of motor carriers.

This group of carriers does not oppose in principle section 1 of the bill, the proposed elimination for the future the authority of State commissions to create interstate operating authorities except under the limitations proposed. It does oppose section 2, which deals with the existing second proviso operations, primarily for its failure to provide a genuine "grandfather" clause granting certificates of public convenience and necessity to qualified operators.



The right of second proviso operators to such certificates rests on both historical and equitable grounds.

When the Motor Carrier Act was enacted in 1935 many of the present day second proviso operators were then engaged in such one-State operations. They were presented with a choice. The first proviso of section 206(a) guaranteed their receiving a certificate of public convenience and necessity from the Interstate Commerce Commission. The second proviso of that section—essentially an exemption—said that if they held a State-issued authority, they didn't need to acquire one from the Federal agency. Some chose to acquire the Federal franchise; others, to avoid expense, did not. No one then realized that certificates are a form of personal property, which for the interstate operations involved, would insure continuity of operation and the right of purchase and sale. As a consequence, some of the original one-State operators now hold certificates; some of them do not. Some of the uncertificated one-State operations of today were original "grandfather" operations having the right to certification; some have been created since 1935 and never had that right.

In every amendment to the Interstate Commerce Act since 1935 which has brought an additional element of transportation within the certificate provisions of the act, a genuine "grandfather" provision has been provided and certificates of public convenience and necessity have been authorized for qualified applicants. In 1940 the Water Carrier Act, now part III, was passed, and the "grandfather" clauses of section 309 required issuance of certificates of public convenience and necessity or permits coextensive with the "bona fide operations" of the then-operating carriers. In 1950 motor vehicle operations between the United States and its territories and possessions were brought within the purview of sections 206 and 209 of part II, and similar "grandfather" rights afforded. In 1957 a new definition of contract carrier by motor vehicle was provided and permit holders who could not conform to the new definition were given "grandfather" rights to certificates of public convenience and necessity. In this instance they were not required to prove "bona fide operations"; the mere holding of the permit was taken as conclusive of the fact that the applicant was fully operating the authority. In 1958 section 203(b)(6) was amended to bring under regulation the transportation of certain additional commodities which had been wholly exempt. The usual "grandfather" rights were granted.

The legislation proposed in H.R. 2483 and S. 320 would not confer "grandfather" rights to certificates of public convenience and necessity on existing second proviso carriers. Instead, it would create a so-called certificate of registration. Immediately after the passage of the Motor Carrier Act of 1935 the Commission started issuing certificates of registration to second proviso carriers; subsequently it decided to recognize their rights under the second proviso without the issuance of such pieces of paper. The new certificate of registration, whether or not it actually removes present rights, as I will subsequently show, certainly creates no greater rights and provides no improvement in status for existing second proviso operators.

Yet they would be required to file applications, submit to an extensive and expensive proceeding, provide evidence descriptive of the commodities they transport, the points and shippers they service for the examination of their competitors, among others, in order to be allowed to continue their present businesses. They must go through a "grandfather" proceeding and prove that they are conducting bona fide operations—not as the price of a certificate of public convenience and necessity, but as the price of continuing operations under a license no better than, and in our opinion, substantially less protective than the present status.

In our opinion, there is no adequate reasons for such discrimination. If the creation of interstate operating authorities is to be recognized as exclusively a Federal rather than as a State function through the elimination of the second proviso, these carriers should be brought within the scope of the existing Federal regulatory pattern. They should be given certificates of public convenience and necessity. Certainly there is no warrant for requiring this class of carriers to prove up the operations conducted under a "grandfather" procedure without granting such certificates of public convenience and necessity.

Why is it that the proponents seek both to deny certificates of public convenience and necessity to these carriers and at the same time require that their existing operating authorities be cut down to their present patterns of service? We believe the answer is fairly obvious and to be drawn from the legislative history of these and similar measures. In essence, it is a desire on the part of the large-carrier element of the American Trucking Associations, in competition

with the small, less vocal members, to eliminate registered franchises which they believe were created by various State boards without a showing of need for additional interstate service which registration under the second proviso permits. It is an attempt not only to stop the creation of such interstate operations; it is also an attempt to eliminate or substantially cut back such existing authorities. This policy is completely at variance with the announced purposes of the original sponsors of this legislative change.

The Interstate Commerce Commission was the original proponent of this type of legislative change. In its 1955, 1956, and 1957 annual reports to the Congress the Commission urged repeal of the second proviso of section 206(a), qualifying its recommendation by saying, "but with a provision preserving the rights of these carriers presently engaged in such operations under the proviso." S. 1720 (companion to H.R. 6084) was introduced by Senator Magnuson in the 85th Congress, 1st session, at the request of the Commission. This bill provided a genuine "grandfather" clause with issuance of certificates of public convenience and necessity for bona fide operations. Hearings were held in April 1957 on S. 1720 but a bill was not reported out. Attempts made at this time for agreement between the second proviso operators and the Regular Common Carrier Conference of the ATA, proved unavailing at this time. In July of 1959, S. 2417, 86th Congress, 1st session, was introduced by Senator Magnuson at the request of the American Trucking Associations, Inc. This bill evidenced the unwillingness of these large carriers to accept the status quo as the basis for legislative change, proposing for the first time the use of a certificate of registration, issuance of which to existing carriers would require proof of bona fide prior operation and which had important additional limitations.

That Senator Magnuson had not been fully advised of the significance of the bill was evidenced by his statement made when introducing the bill that since the existing proviso carriers had become an "integral part of the interstate common carrier system" it was proposed to preserve them through "certificates of registration" which would be issued "upon application and without further proceeding. * * *" At the hearing of S. 2417 on August 18, 1959, Commissioner Rupert L. Murphy, speaking for the Commission, criticized the use of the "certificates of registration" and suggested use of certificates of public convenience and necessity pursuant to a genuine "grandfather" clause as had been provided in the Commission sponsored bill, S. 1720. After hearing statements by Robert J. McBride for the ATA and David G. Macdonald for a group of second proviso carriers, Chairman Smathers of the subcommittee suspended the hearing to provide an opportunity for the development of an agreed bill. On the same day the two carrier groups met and agreed upon a bill. After conference with Commission personnel on August 21, 1959, final language changes were made. The bill, so agreed upon was subsequently introduced as S. 3228 on March 18, 1960 by Senator Smathers. It provided genuine certificates of public convenience and necessity to "grandfather" applicants on proof of bona fide prior operations. It also recognized the right of sale of such a certificate to multistate operators on a showing consistent with existing administrative standards. No further hearing was held, however, because of opposition expressed by a State commissioner, speaking for the National Association of Railroad & Public Utilities Commissioners.

From this point on, the representatives of the second proviso carriers, the carriers directly affected, were excluded from subsequent negotiations. We have since learned that a committee of the Commission and a committee of the State commissioners, with some consultation with the representative of the ATA agreed upon a completely new bill. First notice of this came on June 15, 1960, when S. 3228, with the agreed bill stricken and the joint commissioners' bill substituted for it was reported out by the Senate committee. The bill passed the Senate but was not considered in the House. The bill in substantially the same form was reintroduced as S. 320 (and H.R. 2483) in the present session. The Senate committee again reported it out without further opportunity for expression of or consideration of the views and interests of the second proviso carriers.

Unless the spokesmen for the American Trucking Associations have chosen to go back on their agreement with the second proviso carriers reached in the spring of 1960, evidenced by S. 3228 in its original form, the only interested group opposing the issuance of genuine certificates of public convenience and necessity to second proviso operators is NARUC. The State commissions apparently desire to retain a measure of control over the existing interstate proviso operations. At least until this hearing, no need has been shown for this

retention of jurisdiction. It would result in one of the major deprivations of right for the proviso operators.

On July 17, 1961, in presenting S. 320 on the floor of the Senate, Senator Smathers attributed the bill to the joint efforts of the Interstate Commerce Commission, the National Association of Railroad and Public Utilities Commissioners, and the Common Carriers Conference of the American Trucking Associations. He stated that most of the objections offered by NARUC and by the second proviso carriers had been overcome by several amendments incorporated in what he called the compromise bill (Congressional Record No. 11789).

Mr. Chairman, the bill is not a compromise bill insofar as the second proviso carriers are concerned. They have not been consulted and their interests have been completely ignored.

The specific changes desired by the second proviso operators, and the additional reasons for them, are as follows:

(1) Eliminate the words "of registration" wherever they appear in section 2 following the word, "certificate." This will permit the word "certificate" to refer to certificate of public convenience and necessity used elsewhere in the paragraph. This will give to "grandfather" proviso carriers the same status as that of other federally regulated motor carriers.

(2) In line 18, page 4, insert after "Any person" the words, "or predecessor in interest" in conformity with other "grandfather" clauses. This will permit one who purchases such a business shortly before the effective date to acquire the statutory protection intended to be given to the operation. The same change should be made in line 8, page 5.

(3) Eliminate the language in section 2 (lines 12, 13, and 14, page 6) reserving to the State commissions the right to terminate or restrict the scope of the interstate authority of the second proviso carrier under the new system. It is true that under the present provisions, the States may restrict or cancel the intrastate authority and such action has the effect of eliminating the interstate rights flowing from it. However, the restoration of that authority now requires only a proceeding before that State authority. Here section 1 imposes a two-level proceeding and the additional hurdle of proof of need for an additional interstate service before a canceled, restricted, or revoked authority could again authorize interstate service. In a word, make the "grandfather" certificate the same as all other certificates.

(4) Make it clear that second proviso operations under their new certificates of public convenience and necessity may be properly included in purchases, sales, or mergers involving multistate operations if they meet the proof requirements of existing case law as set forth in C. & D. Motor Delivery Co.—Purchase—Hubert C. Elliott, 38 M.C.C. 547,553.

(5) If State authorities having expiration dates are to result in interstate authorities similarly limited, provide an exception in section 1, permitting renewal of the interstate authority upon renewal of the State authority. Do the same for suspended authorities.

(6) Make provision for protection of second proviso operators conducting operations under lease of State certificates, so that the lessee would have the right to the interstate authority to be created.

(7) Eliminate the provision prohibiting separation of the new interstate authority from the intrastate authority. This is a limitation without a purpose, under the new legislation, and in some States, which prohibit ownership of intrastate franchises by foreign corporations, will effectively prevent the sale of interstate business which otherwise might meet the established test for sale to a multistate operator. Many second proviso operations have become predominantly interstate in nature because of the ratio of interstate freight to intrastate freight. When the operator of such a business dies or desires to sell for other reasons it is frequently the case that a multistate operator desires the interstate rights and will pay the best price for them while another small second proviso carrier could best provide the intrastate service. Under section 1 of the bill, the purchaser of the intrastate rights no longer can register them with the Interstate Commerce Commission and create a new interstate service. Therefore there is no need to require that the two authorities be stapled. At the very least, it should be made discretionary with the Interstate Commerce Commission whether such a separation should be authorized in the public interest.

In summary, the second proviso carriers for whom I speak oppose these bills and will continue to do so unless and until they are amended in such a way as to provide them with ordinary certificates of public convenience and necessity.

similar to other such certificates, in place of their registrations. They strongly oppose the idea that the creation and retention of their interstate authority should require the concurrent action of both Federal and State agencies. They believe that their interstate authorities should be regulated either by the State commissions, as at present, or by the Interstate Commerce Commission, but not by both. Dual jurisdiction may be adequate for new operations but not in relation to existing operations. They object particularly to having being subjected to a requirement to reprove their bona fide operations as the price of staying in business.

Basically, we favor the language of S. 1720, the original ICC bill, if this matter is to be made the subject of legislation at all.

I thank you.

APPENDIX A

SECOND PROVISO OPERATORS GROUP REPRESENTED BY DAVID G. MACDONALD

Mr. William H. Blakely, general traffic manager, Wilson Trucking Corp., Waynesboro, Va.

Mr. Glenn W. Brackney, Braddock Motor Freight, Inc., Columbus, Ohio.

Mr. Joseph D. Shelly, Jr., secretary, North Shore & Central Illinois Freight Co., Summit, Ill.

Mr. John H. Montgomery, president, Hill City Transfer, Inc., Lynchburg, Va.

Mr. Robert O'Nan, O'Nan Transportation Co., Carrollton, Ky.

Mr. Robert Estes, vice president, Estes Express Lines, Richmond, Va.

Mr. Don S. Piper, traffic manager, Mid-South Transports, Inc., Memphis, Tenn.

Mr. A. H. White, president, M. & M. Trucking Co., Akron, Ohio.

Mr. W. Hubert Reed, president, Skyline Transportation, Inc., Knoxville, Tenn.

Mr. G. H. Davis, vice president and general manager, R. D. Motor Express, Inc., Muncie, Ind.

Mr. James A. Skaggs, Skaggs Transfer, Inc., Louisville, Ky.

Mr. Gene Duff, Duff Truck Line, Inc., Lima, Ohio.

Mr. Cline A. Mundy, owner, General Motor Lines, Roanoke, Va.

Mr. L. B. Hammett, president, Greenwood Motor Lines, Greenwood, S.C.

Mr. MACDONALD. Mr. Chairman and members of the committee, I will take a few moments to discuss the background of this bill as it relates to the carriers whom I represent because this is the first opportunity that the proviso carriers themselves have had to speak with respect to this legislation since this present bill in any form has been before either the Senate or the House committees.

The legislative history is outlined in some detail in my opening statement. I would like to review it very briefly, to point out that the matter now before this committee is not one which can be considered to have been fully explored in the Senate committee, but it is, actually, one which requires complete examination in this committee as if the bill had never been passed by the Senate at all. The reason for that is that the Senate subcommittee was led to believe that this was an agreed bill, and that is not the fact. The 14 carriers whom I represent are the second-proviso-type carriers; there are other witnesses who will speak for others. There are 2,665 such carriers in the country. Of that number there are about 700 who participate actively in the transportation of interstate freight, to the extent that they participate in the Bureau tariffs. The group is not spoken for by Mr. McBride. They are members, many of them, of the ATA, but that group of associations, as it actually is, has a number of different viewpoints on almost everything that comes up. So I must respectfully, in my first comment, say when Mr. McBride states that he is speaking for the industry, he is not speaking for the second proviso carriers, some of whom I will speak for and some of whom Mr. Baker will speak for, and some of whom others will speak for.

The reason we have not yet had a hearing on this legislation involves this little recitation of the legislative history.

The Interstate Commerce Commission initiated the idea of an amendment to the bill dealing with the second proviso. In its 1955-57 annual reports to the Congress it requested a repeal of the second proviso, reciting briefly the types of evils that the Commission felt had developed since 1935, when this power was left in the States; that is, the power of the State by granting an intrastate authority to automatically create the right in the holder of that intrastate authority to register with the Commission to handle interstate freight. It was an exception to the licensing provisions provided in section 206.

I might digress by stating that in that licensing provision, section 206, these one-State operators then had a choice. The first proviso of section 206 entitled them to a certificate under grandfather clause if they were then in operation on that grandfather date. The second proviso made it unnecessary for them to follow that expensive procedure, by giving them automatically the right to handle that interstate freight but without giving them a certificate of public convenience and necessity.

In those days it was not known that a certificate of public convenience and necessity was a property right. It came in much later, in a case involving Rainbow in Chicago, when, for the first time the courts judicially held that this franchise was a property right. It becomes very valuable to a businessman to hold a certificate of public convenience and necessity, rather than to operate under an exemption. Consequently, many of these proviso carriers, including several of the 14 I represent, had the right in 1935 to a certificate of public convenience and necessity. They did not exercise that right, as I stated, because they, also, have the option of continuing to operate under an exemption.

When the Commission decided that certain abuses, which Mr. McBride has described very briefly, did exist, and asked for the repeal of that second proviso, a bill was introduced, which was S. 1720 and its companion bill in the House was H.R. 6084—in the 85th Congress, 1st session. Senator Magnuson introduced the bill in the Senate with a statement describing the purpose of it, and among other things both he and the Commission pointed out clearly that they wanted to make sure that if the second proviso was eliminated, that the rights of the existing carriers would be fully protected. He pointed out that the second proviso carriers are integral parts of the transportation system and that it was his intention in introducing the bill to permit such carriers to receive authorities which they would get by simply an application without further proceedings, which were his exact words. He did not envision a proposition where these carriers, in order to stay in business, would have to come in and prove their entire scope of operation, which the proposal presently in this bill envisions.

S. 1720, then the Commission bill, would have granted a certificate of public convenience and necessity to these carriers. It did not propose to give what has been called a certificate of registration, a document which no one quite knows the meaning of, because it does not exist in law today. The Commission's bill was to give these carriers certificates of public convenience and necessity, just as other carriers have, recognizing they are integral parts in the transportation system.

The regular common carrier conference, of which Mr. McBride was then manager, posed the idea of giving these carriers the full rights of a certificate. I do not know the reasons why the conference was then willing to go beyond the point that they chose at that time. I feel that it was because they felt that through these abuses that had existed there were second proviso operators who had secured rights that possibly the conference felt they were not entitled to and wanted to take them away from them by making it as difficult as possible for them to secure the rights to continue their operation, and by failing to give them a certificate of public convenience and necessity and giving them instead a certificate of registration.

Hearings having been held on S. 1720, but without a bill being reported out on the Senate side, the following year the ATA Regular Common Carrier Conference, having obtained consent of its executive committee, and a resolution which was read into the record yesterday by Mr. McBride, had introduced S. 2417, which was introduced by Senator Magnuson, at the request of the ATA. That bill was very restrictive as to the future rights which existing second proviso carriers would have. As a consequence, at the hearing which was held a year ago early in the spring that testified for the same group of carriers in opposition to that bill after Mr. McBride had testified.

Senator Smathers, who was conducting the subcommittee hearings, then stopped the hearings and said:

Gentlemen, there is no point in our proceeding with further hearings on this unless you can get to some agreement. Why do you not try to get to some agreement so that the industry will be satisfied, and you will have a bill that you will both agree will work and take care of everyone's right?

That afternoon we met in my office and drafted a bill. Later that week we met with representatives of the Interstate Commerce Commission which accepted our language with minor changes. That bill was introduced to take the place of S. 2417. It was introduced by Senator Smathers, as S. 3228, a year ago in March.

We had an agreement then with the Regular Common Carrier Conference of ATA, the two groups of carriers, the large regular route carriers, interstate carriers that their representatives would agree to, and what our group the small one-State carriers who provide distribution and pickup services within the States for those carriers, the rail carriers, the forwarders and all—what we agreed to.

At that time a telegram was received from the National Association of Railroad and Public Utility Commissioners, or one of its members, my friend Walter McDonald, from the State of Georgia, who was the one who sent the telegram in, asked for delayance so the association could be heard. We were advised there would be no further proceedings in the committee until something was worked out that would, also, satisfy that association of commissioners.

We never heard anything further, although the clerk advised us we would be kept advised. We had an agreement with the Regular Common Carrier Conference as to what the bill should be, so far as the industry was concerned. Instead of that the bill was reported out of the Senate's committee as an agreed bill which had entirely new language—everything after the enacting clause having been stricken and new language having been substituted, which is the language which has been developed by the committee of the Interstate Com-

merce Commission, Mr. Murphy and Mr. Freas, mentioned yesterday, and Commissioner Dillon, of Virginia, and others of the NARUC. As a consequence we have not been heard with respect to that bill.

We asked the Senate committee, "Why did you do this without having hearings, since it changed the agreed bill?"

We asked the ATA representatives, "Why did you go along with this thing, since it goes back on our agreement?"

And the answers we got I will have to describe simply as anything but satisfactory.

That is why we come to you and say that this is the first opportunity we have had to be heard. This is not an agreed bill, as far as the carriers that it deals with are concerned.

It is agreed to by the Interstate Commerce Commission and by the NARUC and by the large motor carriers. It is not agreed to by the carriers that it deals with.

When I say it is agreed to by those carriers, may I point out that the witnesses for the NARUC stated in response to questions from the chairman and other members of this subcommittee that they favored something different than what is in this bill. They favored not having registration of this type at all. They favored continuing the second proviso as it is.

I pointed out that the Interstate Commerce Commission had introduced Senate bill 1720 and in the hearings last year favored the granting of certificates of public convenience and necessity to existing carriers and not to try to keep them in a status of second-class citizenship as this present bill would do by giving them certificates, that is, so-called certificates of registration, rather than certificates of public convenience and necessity.

So neither of those organizations really favor this bill. Each would like something else.

The Regular Common Carrier Conference stated that this bill is a compromise bill. So far as it is concerned it really does not want this bill. It would like to go much further in the restrictive provisions on the second proviso carriers.

So it is not supported by any of the three groups whom you have been told actually support this bill. It is a so-called compromise bill on which our group has not been heard.

Four years ago there was a similar compromise bill when the Congress amended the definition of "contract carrier" in part II of the act. That was an agreement between Mr. McBride, acting on behalf of his association, and Mr. Todd, acting on behalf of the Regular Contract Carrier Conference of the ATA. And that agreement, which I think was reached after some discussion, became the bill simply because you were told or, perhaps, the Senate committee was told—I do not know which one actually held the hearings—that this is agreed legislation the industry has decided on, and therefore, you do not have to concern yourselves with it.

Well there have been 4 years of litigation. That provision is now before the Supreme Court. There are seven or eight cases tied up in the Interstate Commerce Commission because, instead of getting a bill which really dealt with the problem, a compromise agreed bill from the industry, without analysis; that is, it was accepted without analysis.

What is the fault in this bill?

We start with this proposition that a certificate which is the form of licensing that Congress adopted in 1935 serves a useful purpose. A certificate limits the amount of transportation to the available demand for transportation.

That is the scheme under which section 206 and the other licensing provisions of the act have been established.

An exception was made in the case of licensing one-State operators in deference to the desire of the States who had preceded the Federal Government in initiating regulation of transportation, to continue to exercise a measure of control, even in the Federal realm. It was an act of Congress in failing to fully occupy the field of Federal regulation of interstate transportation and leaving to the States this ability to create interstate rights.

At first, that worked all right, and then these abuses that you have had described developed. And, for example, there were questions yesterday as to one of these abuses that we talk about.

Well, one form of abuse is the carrier who operates, let us say, from New Haven, Conn., to Atlanta, Ga. And he does not have enough gathering area. He feels that he cannot prove a need for an enlarged certificate because there are other carrier services. So he has his brother or his cousin go out and buy an intrastate certificate, register it, and then working together they create what is tantamount to a new interstate service, covering not only New Haven, but the whole State of Connecticut. That is one form of these abuses that they are dealing with.

I cannot give personal knowledge as to this, but another is that some States have been too free in permitting these authorities to be created. They do not really limit it to those situations in which there is a need for the service, even on the intrastate basis.

And the third category of difficulty or abuse is the situation where a carrier, having acquired an intrastate certificate, registered it with the Interstate Commerce Commission and then in securing a certificate on the operation—once having by various methods which I will not go into now secured it—selling his intrastate operation, and that person registering it again, so creating two operations where one existed without a showing of public need.

These abuses are, to a degree, the responsibility of the State laws or State regulations. They are not something that the Federal agency can deal with.

So we start off with this proposition, there being these abuses which are in the control of the 50 States, should they be remedied in the States or should they be remedied by an amendment to the Interstate Commerce Act?

As a practical matter, you can see that it is impossible to assume that you can get all 50 States to change their laws, some of which are in their Constitutions controlling these matters. So this bill comes up.

The idea is good. We support the idea that the Interstate Commerce Commission came in with, in 1955, which was evidenced by S. 1720 in 1957 to eliminate the proviso and give the existing carriers the same status as other carriers with certificates of public convenience and necessity.

Unfortunately, the Commissioners who still represent those States are unwilling to give up that right. If they were, the easy way to do it would be to eliminate the second proviso and let the Interstate Commerce Commission occupy fully the field of Federal regulation of licensing.

It would make sense, because the only thing reserved to the States is the licensing. Beyond that there are economic controls, there are safety controls—all of these are in the hands of the Interstate Commerce Commission. None of them are in the hands of the States. It is only the creation of these operations which is a State right, and that is all the Interstate Commerce Commission was asking these States to give up with this bill.

There are two ways to do it. One would be to eliminate the second proviso as was proposed in S. 1720, and the compromise bill that we worked out a year ago S. 3228 in its original form before it was amended.

The State commissioners have objected to that on the ground that they want to preserve this right.

I did not hear yesterday why it is necessary to preserve the right, except on a historical basis.

So they worked out this compromise: Instead of eliminating the second proviso, letting the Interstate Commerce Commission assume this field of Federal regulation, they are going to give it to both of them. The carriers will have to go, first, to the State commission. Having completed that process, if there is any carrier who participated in this proceeding, who objects to the carrier having interstate rights, the proceeding then shifts to the Interstate Commerce Commission, in an appellate procedure, and they will have a crack at it, too.

In other words, this is doubling the regulation, because neither regulatory agency will concede that the other should have the entire function. Certainly, this is not good legislation.

The worst part of this bill is not, however, in section 1 where they create these two layers of administrative proceeding for a carrier to get a right as a one-State operator and have permission to handle interstate freight—it is in the second section where they say that they give a grandfather right to the carriers, but when you analyze it, they have not done it at all.

They have refrained from giving these carriers the same status as other carriers. And that is the status that they were entitled to in 1935. The only reason they have not been willing to give it is because of the development of these abuses which have led to the development of administrative policies by the Interstate Commerce Commission which has tried to restrict the carriers in certain ways.

And that policy is being continued in this section 2.

Mr. FRIEDEL. If I may interrupt, you say, as I understand you, that they would give the people of the second proviso class the same rights that they have had up to date?

Mr. MACDONALD. No, sir. They are giving them what they call—

Mr. FRIEDEL. I should like to have you clarify that. You said that in 1935 they had certain rights given to them. I want to know if this bill affects the second proviso as it is today.

Mr. MACDONALD. My statement was that in 1935 those of these second proviso carriers who were then operating were entitled to a grandfather certificate of public convenience and necessity.

They did not exercise it.

Mr. FRIEDEL. They did not exercise it?

Mr. MACDONALD. They did not exercise their right, but have continued to operate under the exemption of the second proviso. What I intended to suggest is that there is nothing in the act which suggests that these carriers were forever intended to be compressed into the narrow limits of a one-State operation, know that they should never get a certificate of public convenience and necessity, which is the position of the Regular Common Carrier Conference.

It is our position that if this bill is passed or any bill which eliminates the second proviso that a full certificate of public convenience and necessity, instead of a certificate of registration, should be had.

Mr. FRIEDEL. That is under the present law?

Mr. MACDONALD. We have that. That is exactly it. We could go in today and file for a certificate of public convenience and necessity for any one of these one-State operations. The act says that the Commission shall issue such a certificate if we prove there is a need for our service. The Commission has accepted that as evidence of our existing operations as adequate evidence of the needs for our service, but they will not give us the certificate because they say, "If we give you a certificate you can then sell your intrastate rights to somebody, he can register them and we will have two interstate rights where we had only one before."

And they say that this process can be continued, and so therefore the Commission refuses to give a certificate today to these carriers unless they get into a merger with a motor State carrier or they apply to extend out of one State, in which case they will give him a certificate for the entire operation. That is why this bill makes no sense at all when they propose to create this new form of authority which is not a property right—a certificate of registration—instead of giving us a bona fide certificate of public convenience and necessity. Because even if we had the certificate of registration, under the act we have the right, if it is administered properly, to go in and get the certificate. But why not give us the certificate if we are entitled to it at the start?

Mr. FRIEDEL. Under the present law you do not get a certificate of public convenience and necessity?

Mr. MACDONALD. I am sorry, I did not hear you.

Mr. FRIEDEL. Under the present law you do not get the certificate of public convenience and necessity?

Mr. MACDONALD. We do not now get it unless we change from one-State carrier status to multistate carrier status.

Mr. FRIEDEL. That is because of the law?

Mr. MACDONALD. That is the present administrative process. The present law does not draw any distinction. It simply says that the Commission shall issue a certificate of public convenience and necessity to qualified applicants, where it is shown that the applicant is fit, willing and able, and that the public and necessity is present, and as of the present and future requests the service.

Mr. COLLIER. Did I understand you to say that this is the practice and not the law?

Mr. MACDONALD. That is correct.

Mr. COLLIER. You are engaging in a process that is not covered by the law?

Mr. MACDONALD. That is correct. The Commission feels that it would be contrary to the general principles of the act, the national transportation policies, and other provisions of the act, to certificate the one-State operators because of the possibility that this abuse can be used, then selling the intrastate certificate to someone else who then will register it and we have two interstate services where we before had one. It is an attempt by the Commission to control a situation where they have no statutory authority to control it directly, because it is within the power of the States to grant the certificate.

Mr. COLLIER. Thank you.

Mr. MACDONALD. Why is it that we say that we are not getting what we now have, in response to Mr. McBride's statement, that the grandfather clause gives us everything we have today? The first reason is that their certificate of registration, which they propose to give us, gives us nothing more than we have. Our registration is evidenced by a letter that the Commission writes, whether you call it a certificate or whatever else you call it. This would not change the legal status of our operation which is operating in effect under an exemption. But to get the right to do just what we are doing now, to stay in business, what do we have to do? We have got to file an application and have a hearing, or if not a hearing, to submit the proof of it. And this proof will be submitted by thousands of waybills showing what our operation is and we have got to prove that we are fully doing what the State authority certificate says we are permitted to do. And if we do not fully prove it, if there is any route we are not operating, any point we are not serving, any commodity we are not handling as Senator Smathers described this bill on the floor of the Senate, then expects that the Commission will not give us the same authority that we now hold from the State. We will get whatever we can prove we are doing with substantiality, and that is all.

So the very first difficulty in this bill is that to stay in business we are now having to go back and prove our operations as all carriers did under the original grandfather act in 1935, and we get nothing for it. That is a very expensive process.

You know very well the reason the regular common carriers have been supporting this type of legislation is so that they can come into those proceedings and try to chop off as much as possible the operating authorities of these one-State carriers.

Mr. McBride made reference to certain States which grant certificates to transport general commodities between any two points within the State. One such State is the State of Massachusetts. I think, perhaps, that is the one he had in mind. Massachusetts has created quite a number of authorities of that type. A carrier will lose every bit of that authority which he now has unless he can prove that he has been handling traffic consistently and with substantiality between every two points in Massachusetts. That is point No. 1.

The second thing is that there are some States which have term certificates as the CAB does. Every 3 years the carrier comes in and, in effect, has to make a certain showing to renew his certificate. Michigan has similar provisions.

Under the grandfather clause we would get a 3-year certificate or a certificate limited to that term. When the term expired we would have to go back under section 1 and file an application before the

Interstate Commerce Commission and have two hearings that might occupy so long a period of time that we could not get the authority before our term certificate expired. We, therefore, would be out of business just through the cumbersome procedure involved, trying to get the renewal of an existing authority with the time limitation in it.

Mr. COLLIER. He would have to go out of business because he could not get the renewal from the Interstate Commerce Commission?

Mr. MACDONALD. Not after the passage of the Administrative Procedure Act, because section 9(a) of that act covers that, so far as the Interstate Commerce Commission is concerned. I argued that case in the Supreme Court, it was a very close question, and it was a question whether the Supreme Court would agree, that a certificate of the type we are dealing with then, which is a bona fide certificate of public convenience and necessity, could be terminated under those circumstances. We are not dealing here with a certificate of public convenience and necessity, but only with the so-called certificate of registration. I have not any idea whether or not the Administrative Procedures Act would be a protection in this instance or not. It was in the case of the bona fide certificate.

Another category where this certificate would be of more value to us would be in cases where the States, for some reason which might be a disciplinary reason or a reason of change in State policy or law, would restrict or eliminate a certificate. This bill would give us not something that we could count on, because we would still be subject to each of the 50 States having the right to eliminate our so-called certificate of registration. It says that if any subsequent action by the State takes away the authority or in any way restricts it, it shall immediately take away or restrict the certificate of registration. Well, it is true that if that happens today, but only today, all you have to do is go to the State Commission, under whatever its procedure may be, which is very often informal, to do whatever is necessary to restore the right, and we obtain it again. We cannot do that here. We have to go back under section 1, have the proceeding before the State Commission followed by appeal to the Interstate Commerce Commission, and again a tremendously cumbersome procedure before we could restore any right we have now.

Think of this, also. It has been argued that the sense of the bill is that the restrictions or the interpretation of the States are going to be incorporated in the certificates of registration. For example, in New York, the phrase "general commodities" has an entirely different meaning than it does in the Commission's certificates. For example, it does not include the right to transport refrigerated articles. The Commission today when that New York certificate is registered interprets that certificate under Commission law and under the interstate traffic the carrier can handle the refrigerated articles, even though New York does not let him handle refrigerated articles on the intrastate status. They want the certificates of registration to be interpreted in the light of the State law. That means every shipper who has terminal responsibility has to make sure that he does not use a carrier in an illegal movement, has got to have a law department or some source of information which would permit him to run down the State interpretations of each one of the certificates as they are created. In other words, to use your example, the shipper of canned

goods at Cambridge, who wants to make a shipment of this type—I guess that Maryland does not have this type of regulation so that does not fit—but if it were a shipper of that kind, a carrier of that kind, he would have to go to the Maryland law to know whether or not he had the right to transport, let us say, preserved vegetables or canned foods, including the right to transport commodities packed in glass, whether they are hermetically sealed or not—he would have to look to the State law, and not the Federal law.

Throughout the country it means there will be 50 jurisdictional questions on every interpretation of this type.

Let me conclude, because I think I have taken more time than, perhaps, I am entitled to, by saying this: we have supported the idea that it is desirable to limit the number of operations to those that the public can support. It is in this way that it is economically sound operations are developed. We feel there is a problem in the second proviso. We are perfectly willing to accept and go along with legislation which will eliminate it, and we are perfectly willing to accommodate the feelings of the State commissioners as to their rights or privileges if a reasonable way can be found for it to be accomplished. We do not feel, however, that we should be the patsies, that the Regular Common Carrier Conference, which has for years been trying and carrying on this fight with the feeling that they want to get back from some of these people who have gotten away with things they should not have been allowed to get away with, which does not include my people, that they, therefore, want a bill that ties these people down, makes them prove now their right to stay in the business. We feel this is unfair. If this is a problem deserving your attention, and the attention of Congress, to eliminate the second proviso, the carriers who are now operating under that proviso should be given a certificate of public convenience and necessity.

In 1940 you did that when you brought the water carriers under regulation.

In 1957 you did it when you brought the contract carriers into common carrier status by redefining that group.

In 1958 you did it when you brought the agricultural transportation of certain commodities under regulation.

In each instance, Congress has provided a bona fide certificate of public convenience and necessity under a bona fide grandfather clause. This is all we are asking if this bill is to go forward. And we, certainly, feel that there should be no hurry to accept what this bill, call it a compromise bill, call it an agreed bill, which it is not as far as we are concerned, which is certainly not favored by any of the proponents, but simply represents what they tacitly admit was the best they could come up with under the circumstances.

This is a very important measure so far as the livelihood of the future of these carriers is concerned that I represent. We earnestly hope that you will give this your complete attention and will not feel that this bill should be passed without examining it fully.

There is a great deal more I would like to go into in detail. If the committee staff would like to have any assistance or further suggestions from us, I will be glad to meet with them at any time.

Thank you.

Mr. STAGGERS. We thank you very much for your testimony, Mr. Macdonald.

I will say that your 14 carriers are represented by very competent counsel. And you have certain suggestions you have made to the committee you think should be taken into consideration.

Mr. MACDONALD. Basically, we would strike all of the language after the enacting clause and substitute the language of Senate bill 1720 which was introduced in 1957 as the bill sponsored by the Interstate Commerce Commission.

Mr. STAGGERS. I was going to suggest to you that if you had any amendments that you put them in writing—that is, suggested amendments—and give them to the committee for its consideration.

I think that might be the best procedure to follow. It will be considered by the committee; they will be considered seriously.

I have no questions of the witness. Do any of the members of the committee have questions?

Mr. FRIEDEL. Mr. Macdonald, as I understand it, this is a compromise bill, but no one seems to be in favor of it at all, but they are willing to get together and bring out something that will satisfy all of them. The only thing I gathered from your statement was this, that if you were given under the grandfather clause a certificate of public convenience and necessity you would be in favor of the bill.

Mr. MACDONALD. Yes, sir. That is what we agreed to a year ago.

Mr. FRIEDEL. Would that not create another problem? You would have your property rights for resale, and you would get two for one.

Mr. MACDONALD. No, sir. You see, I think that is part of the trouble here. Once this bill were passed or a bill which eliminated the second proviso or makes it difficult or impossible to create these authorities unless there is a need for them—having eliminated that problem there is no longer any need to keep these authorities from being transferred. You then have an interstate authority represented by a certificate of public convenience and necessity and it will be held by one person, no matter how many times it is transferred. And the underlying intrastate authority which led to its creation no longer can be used as a means to create an unneeded second interstate service. And the purchaser or the holder of that, whether it is the same or a different individual, seeks interstate authority, he will have to prove it.

Mr. FRIEDEL. Was this point discussed in the group when you were trying to work out a compromise bill?

Mr. MACDONALD. As I point out, there has been no attempt on the part of the proponents of this bill to get our agreement or any portion of it, since this bill went in the hopper, as Commissioner Dillon—or Judge Dillon—submitted it to Senator Smathers last spring, and I believe that maybe Senator Smathers felt that it was an agreed bill, but that was never shown to us. We have never been consulted with respect to the terms of this bill. We have never agreed to any portion of this bill and I might add that the members of the Interstate Commerce Commission who are on that committee have been somewhat apologetic over the fact that we were not consulted with respect to the bill, but there has been no change in the language of that bill which was originally S. 3228, as amended and reported out by the Senate since it was introduced. There has been no change in the language of that bill to accept any of our views. In fact, we have not been consulted or asked what our views were.

Mr. FRIEDEL. Will you briefly tell us what the difference is between the two Senate bills?

Mr. MACDONALD. S. 3228 that was introduced on March 18, 1960, by Senator Smathers was the bill that had been agreed to by our group, by the regular common carrier conference and by the Interstate Commerce Commission. That bill would have provided a certificate of public convenience and necessity, a bona fide certificate under the grandfather clause. It, also, would have repealed the second proviso.

After the State commissioners expressed their objection to that bill their committee met with the Committee of the Interstate Commerce Commission and S. 3228, as reported out, had stricken all of the language that represented the agreed bill and new language substituted.

Mr. FRIEDEL. You had nothing to do with that?

Mr. MACDONALD. I had nothing to do with that.

The original S. 3228 represented the agreement reached in my office. That was as introduced on March 18, 1960, in the 86th Congress, 2d session.

As I say, the committee, without holding hearings amended that bill by striking everything after the enacting clause and substituting what I call the commissioners' bill which was the agreement worked out between the Interstate Commerce Commission and the State commissioners. That is where the compromise comes in. Apparently, the regular common carrier conference, the big motor carriers went along with it. We were not consulted as to it at all, but the changes that they made between S. 3228, as introduced, and the same bill as reported by the Senate committee, instead of eliminating the second proviso, set up this procedure for publication in the Federal Register, and both agencies having to approve the matter before the interstate right could be created, and instead of giving us a bona fide certificate of public convenience and necessity, giving us what they call a certificate of registration which is no more than recognizing our present status and making us prove every bit of our operation before we can do that.

Mr. COLLIER. Is it a fair statement to say that under the existing law the second proviso carriers have, in fact, interstate rights?

Mr. MACDONALD. Yes, I think that is a fair statement.

Mr. COLLIER. In the closing part of your statement, you indicate that S. 1720 is acceptable to you, which embraces the seven recommendations which appear in your printed statement, is that correct?

Mr. MACDONALD. S. 1720 would have some greater limitations than I think my statement covers.

We would be willing to take S. 1720, although it does impose some restrictions on transferability. However, I feel that in the administration of that bill it would become apparent to the Commission they could permit transferability under the law in spite of that language.

Mr. COLLIER. You say that the Interstate Commerce Commission approved bill was substantially the same in language as in S. 1720. Is that correct?

Mr. MACDONALD. S. 1720 was the 1957 bill which was introduced at the request of the Commission.

Mr. COLLIER. Ever since that time have you or anyone else contacted the Interstate Commerce Commission to determine whether or not that legislation is acceptable to them at this time?

Mr. MACDONALD. Yes, sir. In the hearings last year, before the Senate subcommittee, before Senator Smathers, on 2417, Commissioner Murphy appeared as the witness for the Commission. The hearings are reported and have the statements made by Mr. Murphy which were to this effect that he described certain criticisms they had of this so-called certificate of registration and referred to S. 1720 and stated that he felt, perhaps, it would be better to use a certificate of convenience and necessity as they have suggested in S. 1720, rather than the certificate of registration which the ATA bill, S. 2417, provided. Following that testimony, as I have previously mentioned, an agreement was reached between the large carriers, the proviso carriers, and the Commission's representatives which led to S. 3228 in its original form as introduced on March 18.

That is the last statement of the Commission's feeling at that time. That again provided for a certificate of public convenience and necessity under a bona fide grandfather clause, similar to S. 1720.

Mr. COLLIER. Would you know whether the Interstate Commerce Commission at this time would take a position indicating a preference as to legislation in this area between S. 1720 and S. 320?

Mr. MACDONALD. Well, I cannot speak for the Commission. I have had informal discussions with Commissioner Murphy about it after I learned the Commission had had meetings with the State commissioners. That was after S. 3228 had been reported out in amended form. As I said earlier, the commissioners were somewhat apologetic over the fact that they had, in order to get some bill, to give in on this point which we were very much interested in.

Mr. COLLIER. At this point, Mr. Chairman, I would ask that we contact the Interstate Commerce Commission and have them state very clearly any preference, if they have any, between S. 1720 and the bill under consideration S. 320.

Mr. STAGGERS. Yes. I think that has been done. It will be taken care of.

Thank you very much, Mr. Macdonald.

Mr. MACDONALD. Thank you.

Mr. STAGGERS. I might ask you if you would put into the record a copy of S. 1720, so that when the staff reviews this record it will be in the record before them?

Mr. MACDONALD. Yes, sir.

(The following letter was received from Mr. Macdonald:)

MACLEAY, LYNCH & MACDONALD,
Washington, D.C., August 4, 1961.

Re hearings on H.R. 2483 and S. 320.

HON. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR SIR: During the course of my statement before the subcommittee on August 3, 1961, I was requested by the Honorable Harley O. Staggers, acting chairman, to furnish for the use of the staff of the committee, a copy of S. 1720, 85th Congress, 1st session. I believe that a companion bill to that bill is H.R. 6084, which you may have in your files. However, in order to conform to that request, I enclose a copy of S. 1720.

The chairman also suggested that I file any specific suggestions which we might have for changes or amendments in H.R. 2483 or S. 320. Following the close of the hearing, a conference was held among those who opposed this legis-

lation in its present form to determine what concrete suggestions should be made. This letter is for that purpose. I am sending copies to all other interested parties, in order that you may have their comments, if desired.

ISSUE NO. 1: REPEAL OR AMENDMENT

S. 1720 and its companion H.R. 6084, introduced in the 85th Congress, 1st session, at the request of the Interstate Commerce Commission, would have repealed the second proviso. Due to the opposition of NARUC, this was changed in the pending bills to a proposal to amend the second proviso to provide notice and hearing before State boards on the issue of need for interstate service and a review procedure by the Interstate Commerce Commission. My group of second proviso carriers believe that either proposal would be acceptable provided that a genuine certificate of public convenience and necessity is provided for existing carriers rather than a so-called certificate of registration. We believe, however, that if this reasonable protection is afforded, outright repeal of the second proviso would be preferable to the proposed amendment. In the language of S. 1720 and H.R. 6084, this would require striking the language of H.R. 2483 and S. 320 following the enacting clause and preceding section 2 and substituting the following:

"That paragraph (1) of section 206(a) of the Interstate Commerce Act, as amended (49 U.S.C. 306(a)), is amended by changing the colon at the end of the first proviso to a period and striking the rest of the paragraph."

We favor repeal rather than the proposed amendment of the second proviso because—

(1) The two agency procedures will cause additional delay and additional expense.

(2) Section 205(a) now requires that all license applications before the ICC involving not more than three States (which includes single-State applications) must be referred to State boards for appropriate proceedings. Repeal, then, would not divest State boards of their present right to initially decide such applications.

(3) There should be a single standard—not 50 standards—as to what constitutes an adequate showing of present and future public convenience and necessity sufficient to warrant creation of an additional interstate service. The real purpose of the legislation will not have been accomplished unless the ICC is given effective control over such licensing so as to be able to limit the number of such services to that which the available traffic can support.

(4) Carriers able to show a need for additional interstate service, even within a single State, will continue to be entitled to a certificate of public convenience and necessity under section 207(a). Either form of change in the second proviso will eliminate the cause for the Commission's present policy not to certificate one-State operations. The State board licensing procedure proposed, then, is duplicative, unneeded, and, since it will result in an inferior type of authority, will presumably be relatively little used.

ISSUE NO. 2: IF AMENDMENT RATHER THAN REPEAL, CHANGES ARE NEEDED IN SECTION

If your subcommittee should conclude that the function of issuing licenses to single-State operators authorizing them to engage in the interstate transportation of passengers or property should be placed under the proposed dual jurisdiction of State boards and the Commission, we suggest the following amendments with reasons therefor (references being to the print of S. 320):

(1) Page 2, line 3: Substitute "board" for "Commission" to conform to section 203(a)(2) definition and permit word "Commission" to refer solely to Interstate Commerce Commission.

(2) Page 2, line 3: Substitute "having authority to grant or approve" for "authorized to issue" to conform to present language of second proviso.

(3) Page 2, lines 7 and 8: Change "through publication in the Federal Register" to "by the Commission in the manner provided in section 20(a) of this part." The present practice of the publication in the Federal Register is pursuant to rule of the Commission. The duty to give notice is provided in section 205(e) and has been judicially interpreted; the manner and form of giving notice should be left as a rulemaking function.

(4) Page 2, lines 12 and 13: Change "Commission" to "board". (See item (1), above.)

(5) Page 2, lines 14 and 15: Change "that public convenience and necessity require" to "in accordance with the requirements of section 207 of this part." This change is to conform the statutory test used to the existing one since it has been administratively and judicially interpreted.

(6) Page 2, line 16: Insert "should" after "operations". (Language change required by item (5).)

(7) Strike the sentence beginning on page 2, line 19, beginning, "Such operations" and ending "prescribed thereunder", and substitute the following:

"Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part."

This is the language of the present section 206 second proviso and has been administratively interpreted. Also section 203(a)(3) defines the word "Commission" to mean the Interstate Commerce Commission. It is unnecessary to repeat the full title throughout, after the change in (1) above has been made.

(8) Strike the remainder of section 1, beginning at page 2, line 22, with the words "Such rights", and substitute the following, rewritten to cover review procedure in conformity with section 17 of the act and scope of authority:

(Review)

"In accordance with such general rules as the Commission may establish in conformity with section 17 of part I, any party in the State board proceeding who opposed the grant of authority to engage in operations in interstate or foreign commerce, may make application to the Commission for review of the same, or of any matter pertaining to such issue determined therein. The timely filing of such application shall stay the effectiveness of the order or decision of the State board to that extent pending disposition of the matter by the Commission. If after review of the order or decision of the State board, it shall appear that it is in any respect unjust, unwarranted, or otherwise not in accord with law, the Commission may revoke, change, or modify the same, insofar as it authorizes such operations in interstate or foreign commerce, accordingly. Such review by the Commission may be delegated by it to a division or to an individual Commissioner or a board subject to right to reconsideration by a division. Orders and decisions of the Commission made pursuant to this subsection may be made subject to judicial review as provided in section 17(9) of part I."

(Scope of Authority)

"The Commission may impose reasonable requirements with respect to furnishing evidence of the existence and scope of such certificate of public convenience and necessity so issued by a State board and of compliance with applicable requirements of this part and of the rules and regulations established pursuant thereto as conditions precedent to the right to commence operations in interstate or foreign commerce under such certificates. The right to engage in such operations may not be transferred apart from the transfer of the certificate issued by the State board evidencing the existence of such rights, and the transfer of any of the intrastate authority represented in such certificate, without the corresponding authority to engage in operations in interstate or foreign commerce, or the termination or restriction in scope of any of the intrastate authority in such certificate, shall terminate, or similarly restrict, the authority to engage in operations in interstate and foreign commerce."

(9) Add the following protective provisions to section 1, dealing with new authorities:

"Notwithstanding anything in this section to the contrary, (a) any authority to conduct operations in interstate or foreign commerce created as provided herein, which hereafter shall be terminated, or restricted as a consequence of termination or restriction imposed in the intrastate operating authority by action of State boards may be restored by such boards without further proceedings upon restoration of such intrastate operating authority; (b) any term authority to conduct operations in interstate or foreign commerce created as provided herein, may be renewed, extended or replaced upon renewal, extension or replacement of the corresponding intrastate authority by action of State boards without further proceedings; (c) no operation in interstate or foreign commerce conducted pursuant to term authority created as provided herein shall be required to be discontinued, if timely and sufficient application for renewal thereof has been made in accordance with agency rules until such

application shall have been finally determined; and (d) the holding by a carrier of a State board certificate authorizing interstate services shall not be a bar to the grant by the Commission to such carrier of an interstate certificate authorizing such interstate services pursuant to the provisions of section 207(a) of this part."

ISSUE NO. 3: TYPE OF NEW AUTHORITY IN SECTION 1

Under section 1, there is no need for the new "certificate of registration"—a form of license without statutory meaning. That is because, by the section's initial provisions, the State board creates the franchise by its action—a State certificate of public convenience and necessity which recites the additional interstate authority. The State certificate, when accepted by the Commission after compliance with its regulations, is the evidence of the existence and the scope of the interstate authority which exists, not because of a licensing activity of the Commission, but because of an exemption from the requirement for a Commission-issued license. This concept also makes it easy to "staple" that interstate authority to its intrastate counterpart, as shown above.

The protective provisions are designed to prevent injustices from occurring as a consequence of the procedural requirements of the dual agency system.

ISSUE NO. 4: GENUINE "GRANDFATHER" CLAUSE

Section 2 of S. 320 and H.R. 2483 deals with the future status of present second proviso carriers. At the hearing, I stated that the carriers which I represent favor the language of S. 1720, the original ICC bill, copy of which I enclose. That "grandfather" clause provided a genuine certificate of public convenience and necessity on proof of bona fide past operations and did not contain the restrictions of the proposed bills. Numerous changes have been made in the language of S. 1720 set forth below and which should be substituted for the new paragraph (6) beginning at line 18 of page 4 of S. 320 and H.R. 2483.

"(6) Subject to the provisions of sections 204(a) (4a) and 210, if any person (or its predecessor in interest) was in bona fide operations solely within a single State on the effective date of this paragraph, as a common carrier by motor vehicle engaged in the transportation of persons or property in interstate or foreign commerce between places within such State, but with respect to such carrier there was not required to be in force a certificate of public convenience and necessity issued by the Commission authorizing such operations by reason of the exemption in the second proviso in paragraph (1) of this subsection prior to its repeal (or "amendment") on the effective date of this paragraph, over the route or routes or within the territory for which application is made as provided in paragraph (b) of this section, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on the effective date of this paragraph, during the season ordinarily covered by its operations, and has so operated since that time) except in either instance as to interruptions of service over which such person or its predecessor in interest had no control, the Commission shall issue a certificate of public convenience and necessity without requiring further proof that the present or future public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section within 120 days after the date on which this paragraph takes effect. Pending the determination of any such application, the continuance of such operation without a certificate issued by the Commission shall be lawful. (*) Any person who, on the effective date of this paragraph, had an application pending before a State board for a certificate which would have authorized an operation of the character specified in the foregoing provisions of this paragraph and who receives such certificate within 180 days of the effective date of this paragraph, or who had received such a certificate from a State board but was not engaged in such operations on the effective date of this paragraph, may, under such regulations as the Commission shall prescribe, if application for a certificate is made to the Commission within 240 days after the effective date of this paragraph, engage in such operations without a certificate pending the determination of such application in accordance with section 207(a)."

Comment: Some protection is needed, as provided above, for proceedings now in process before State boards.

Comments on issue No. 4: Changes in section 2

The foregoing draft makes the following significant changes in section 2, the "grandfather" clause paragraph in S. 320 and H.R. 2483.

(1) Provides a certificate of public convenience and necessity to existing second proviso carriers in place of certificate of registration.

(2) Leaves it to the discretion of the ICC what State terms, conditions, and limitations, if any, should be incorporated, and what the scope should be under section 208, in order to permit there to be uniform rules of interpretation of certificates.

(3) Eliminates the requirement that the interstate authority remain tied or stapled to intrastate authority, an unnecessary limitation in view of elimination of ability to reregister the intrastate authority in case of separation.

(4) Eliminates provision that termination or restriction in scope of intrastate certificate shall automatically terminate or similarly restrict interstate authority.

These changes are those particularly desired by the second proviso carriers whom I represent.

ISSUE NO. 5: SCOPE OF "GRANDFATHER" PROOF

The Commission bill, S. 1720, uses conventional "grandfather" language leaving a requirement that each of the approximately 2,665 existing second proviso carriers be subjected to a proceeding in which the carrier would be required to produce evidence that he has engaged with substantiality ("bona fide operation") in the service he is authorized to perform. My group of second proviso carriers initially accepted that requirement. However, certain considerations have been presented by other groups of such carriers which suggest the need to change this concept and amend the standard of proof. These are:

(1) The stated purpose of the provisions of S. 320 to preserve the rights and privileges of the second proviso carriers. These include the right to handle in the future any type, kind or pattern of authorized traffic whether or not a sufficient enough volume has been recently available to constitute adequate proof of past operation.

(2) The statement by Senator Smathers when introducing S. 320 in the Senate that he expects the Commission to cut down the interstate authority of the proviso carriers under the "grandfather" clause to only those commodities actually handled with substantiality and between only those points served with regularity.

(3) The admitted need to have the interstate authorities and the intrastate authorities of these carriers coextensive as a service matter.

(4) The burden to the administrative processes of the ICC of having to take on an additional 2,655 "grandfather" proceedings in circumstances where the State boards have already certified the need for service.

Accordingly, we recommend the addition of the following language to the "grandfather" clause we have requested above to be inserted where the asterisk appears in parentheses, viz., (*):

"Such certificate so issued shall authorize the transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the certificate issued by the State board."

If this language is not desired by the Commission, the same language with the following addition is recommended:

"except to the extent that it shall be established that the carrier has abandoned or refrained on its own volition from providing the transportation of a distinctive class of commodities, a distinctive character of service, use of a special type of equipment, or service at a major geographic portion of its authorized service area."

I respectfully request that this communication be added to the record of the hearings.

Very truly yours,

DAVID G. MACDONALD.

[S. 1720, 85th Cong., 1st sess.]

A BILL To repeal the second proviso of section 206 (a) (1) of the Interstate Commerce Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 206 (a) of the Interstate Commerce Act, as amended (49 U.S.C. 306(a)), is amended by chang-

ing the colon at the end of the first proviso to a period and striking the rest of the paragraph.

SEC. 2. That subsection (a) of section 206 of the said Act is amended by adding at the end thereof a new paragraph (4) as follows:

"(4) Subject to the provisions of sections 204(a) (4a) and 210, if any person (or its predecessor in interest) was in bona fide operation solely within a State on January 1, 1957, as a common carrier by motor vehicle engaged in the transportation of persons or property in interstate or foreign commerce between places within such State, but with respect to such carrier there was not required to be in force a certificate of public convenience and necessity issued by the Commission authorizing such operations by reason of the exemption in the second proviso in paragraph (1) of this subsection prior to its repeal on , 1957, over the route or routes or within the territory for which application is made as provided in paragraph (b) of this section, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on January 1, 1957, during the season ordinarily covered by its operations, and has so operated since that time), except in either instance as to interruptions of service over which such person or its predecessor in interest had no control, the Commission shall issue a certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section within one hundred twenty days after the date on which this paragraph takes effect. Pending the determination of any such application, the continuance of such operation without a certificate issued by the Commission shall be lawful. Any person who, on the date this paragraph takes effect, is engaged in an operation of the character specified in the foregoing provisions of this paragraph, but was not engaged in such operation or had not obtained a certificate from such board on January 1, 1957, may under such regulations as the Commission shall prescribe, if application for a certificate is made to the Commission within one hundred and twenty days after the date on which this paragraph takes effect, continue such operation without a certificate pending the determination of such application in accordance with section 207 (a)."

SEC. 3. That section 212(a) of the said Act is amended by striking from the second proviso thereof the words "or by virtue of the second proviso of section 206(a)."

MR. STAGGERS. Due to the fact that we have had one of our colleagues here waiting for some time we will change the order of witnesses. I would like to call on him now to present a witness, a constituent of his. We will be glad to hear from our colleague, Mr. McCulloch, of Ohio. I understand that you would like to introduce the next witness.

STATEMENT OF HON. WILLIAM M. McCULLOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

MR. McCULLOCH. Mr. Chairman and members of the subcommittee: First, I want to thank you for taking me out of order. I appreciate it very much, in view of the fact that the Secretary of Health, Education, and Welfare is now before one of the subcommittees of the Committee on the Judiciary.

The next witness, L. Eugene Duff, comes from my district, the Fourth District of Ohio. He is the president of his company in Lima, Ohio. He is able, courageous, and successful. He is small business in America at its best.

Only a decade ago he had about 12 employees, as I recall and, probably, about the same number of vehicles. He now has more than 300 employees and a proportionate number of vehicles.

What he will say to you is from the bottom of his heart and from a successful business enterprise in the State of Ohio. I am glad that Eugene Duff is here today.

Mr. DUFF. Thank you very much.

Mr. STAGGERS. Thank you very much. With that magnificent introduction we expect a great deal of you, Mr. Duff.

Mr. DUFF. I only hope I can live up to it.

Mr. STAGGERS. Thank you, Mr. McCulloch.

Mr. McCULLOCH. Thank you.

Mr. STAGGERS. I might say to you, as I have said before to the other witnesses, if you wish to present your prepared statement for the record, you may do so, and you may summarize it, and we would appreciate the saving of time.

STATEMENT OF L. EUGENE DUFF, PRESIDENT, DUFF TRUCK LINE, INC., LIMA, OHIO

Mr. DUFF. Mr. Chairman and members of the committee, my name is L. Eugene Duff, of Lima, Ohio, and I am president of Duff Truck Line, Inc., one of the larger, if not the largest, registered irregular route carriers operating wholly within the State of Ohio.

Since I am presenting my prepared written statement for the record, I will skip the opening paragraphs of it and go to what I feel is the very important portion of this statement.

At pages 4 and 5 of the report it is suggested that the bill is acceptable to the National Association of Railroad & Utilities Commissioners, to the Interstate Commerce Commission, and to the American Trucking Association because, among other things—as stated in the sixth paragraph on page 5 of the report—the compromise bill would guarantee to present holders of State certificates registered under the second proviso that all their “existing rights and privileges” will be preserved. Clearly from the report the preservation of existing rights and privileges is the intended objective.

If this were so and it, of course, should be, then there could be little objection on the part of those of us who are already registered.

However, here there is uncertainty. Ofttimes at any particular period of certificate is not being operated at its full authorized potential. There are conditions which bring about intermittent interruptions in parts of the operations being conducted. As I read this bill, the rights would be coextensive with the operations; not with the rights and privileges.

For example, certain of our registered rights provide for movements to and from certain points in Ohio. At any particular time, in all likelihood, we would be serving a large number of points from and to these authorized points; but not all of them. Our right and “privileges” is to serve all of these points and this we feel should be preserved in accordance with the report. If we are to be guaranteed the continuance of all of our existing rights and privileges, then the certificate of all of our existing rights and privileges, then the certificate of registration should be coextensive with the rights and privileges contained in the State commission operating authority sought to be registered.

My company interchanges traffic in Ohio with approximately 225 multiple-State carriers operating under certificates of public convenience and necessity issued by the Interstate Commerce Commission. Our operations are conducted as a so-called distribution service.

For example, at the Lima terminal our company operates approximately 19 different peddle runs, which operate circuitous routes through the State. I might explain the term "peddle run." A peddle run is where the driver will leave his home terminal, his point of domicile, usually, in the morning and go out and pick up freight and return to his home terminal, usually, in the evening, encompassing anywhere from 30 to maybe 60 or 120 miles.

This traffic which we move is received from the connecting carriers and delivered to consignees. Outbound traffic is picked up from shippers out on these peddle runs for subsequent transfer to these multiple-State carriers, destined to points beyond the State of Ohio. This type of distribution service is not performed, as a general rule, by the multiple-State carriers for the obvious reason that the multiple-State carrier is contended to perform the long distance, over-the-road service where it is possible to utilize equipment more efficiently in the transportation of volume traffic.

Only last week a major multiple-State carrier came to us and made arrangements for the discontinuance of a so-called peddle run and is not exchanging this traffic with us in Akron, Ohio.

Obviously every proviso carrier is subject to the willingness of the multiple-State carrier to provide interstate traffic for the transportation within the scope of the registered carrier's operating rights. The multiple-State carrier may, if it so desires, cut off the movement of interstate traffic between a registered carrier and itself merely by the device of cancellation of concurrences, "concurrence" being a term of the industry, I might explain it. Concurrence is an agreement between two carriers authorizing them to publish joint through rates.

If we are to sit and wait for this traffic to generate on the inbound; and if we are to go out and seek it all over a vast network of interstate rights, there must be flexibility and at no particular time will we be serving all of the potential of our various certificates.

Take a small town near our terminal, Jackson Center, with a population of about 1,000 people, and I choose that town because it is filled mostly with small industry. We assemble the freight at our various terminals, move it from those terminals to the larger terminals during the night. In the morning the peddle run driver will leave Lima, go to Jackson Center, as well as other towns in that general area, deliver the freight, pick up the freight, return back to his home terminal. What I am saying is that we are equalizing the service in the smaller communities to that of the major gateways, because the outbound freight from Jackson Center will be moving on to other terminal gateways where we maintain terminals, like Toledo, Dayton, Cincinnati, Columbus, Akron, and Mansfield.

In connection with this distribution nature of our business, only as recently as July 31, 1961, there was a release by Commissioner Hutchinson, Chairman of the Interstate Commerce Commission, suggesting that ailing segments of the railroad industry could be helped by a program of cooperation with other types of carriers and by changes in regulatory and tax laws. He told the New York Society of Security Analysts that rails could score business gains by publishing joint freight rates with truckers in certain operations. He suggested that perhaps joint facilities could be a source of improved financial operations.

For a motor carrier to participate in joint rail traffic with the railroads, it would naturally be in interstate commerce in all likelihood.

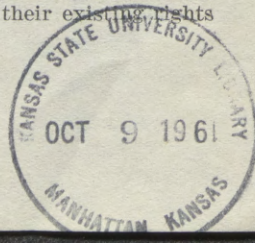
Therefore, the carrier of necessity would be, generally speaking, a registered carrier. Obviously the long distance line haul carriers would not be interested in competing with themselves by aiding and assisting railroads in making short haul distribution and pickup of their freight. There is only so much freight going between two points, whether by truck or by rail or by piggyback from the piggyback rail bulkhead. If the rails are to do what the Chairman of the Commission would like to see them do apparently, they would have to do it at break bulk points by interlining with the typical registered short-haul line carrier. These could be new points, something in future plans. Obviously they could not have that kind of relief from those who would be highly competitive over long distances with the railroads.

Recently your Congress passed a bill providing a redefinition of contract carriage and in it was the grandfather provision for conversion of certain contract carrier permits into common carrier authority. The problem was strikingly similar to what we have here. There was a well defined authority, a contract permit, and the object was to get it converted to a better type of operating authority. The Interstate Commerce Commission, in administering that bill which became a law, has been very careful to preserve the right to do what was contained in the permit and has been insistent that the common carrier authority granted in the conversion or substitution proceeding be no less broad than the right to perform service was in the existing permit.

The same idea should be continued here. In view of what is to be found at page 5 of the report that surely is the general understanding. It would be what we presume the NARUC, the ICC, and American Trucking Association expected. Section 2, subsection (a), is to be amended in a manner set forth on page 4 through page 7 of the bill. As I read this language, those operations which are actually being conducted on the effective date of the subsection are to be preserved. I believe this should be very simply put to provide that the certificate of registration shall be coextensive with the rights and privileges contained in the registered State certificate. The obvious result of this revised section would be to narrow the operating authority of these registered carriers to just what they were doing on the effective date of the law. The rights and privileges that a registered carrier today has are clear. The commodities and the area are defined in the presently registered State certificate. Preserving less than such rights and privileges would be a miscarriage of this legislation and would not be carrying out the purposes and intent of the report, as set forth in the sixth paragraph at page 5 of the report. I am not now speaking of the numbered paragraphs which do not run up to six but the sixth actual paragraph on page 5.

So that there is no misunderstanding, I think it would be well to read this into the record:

Finally, the compromise bill would guarantee to present holders of State certificates registered under the second proviso that all of their existing rights and privileges will be preserved.



Actually, the bill follows the language contained in the original grandfather clause of 1935 whereunder existing carriers holding no authority from anyone to perform interstate commerce were to be granted operating authority. In that instance, no effort was being made to convert existing specified authority granted in a formal document to a different form. There, there was an attempt to define the rights for the first time. This was the inauguration of common-carrier regulation.

The problem there was entirely different from the one your committee has before it now.

Once having registered we are fully regulated by the Interstate Commerce Commission in all respects.

Logically, this legislation should more nearly follow the pattern in the conversion section passed by your Congress in the last few years having to do with the conversion of certain specified contract-carrier rights issued by the Commission into common-carrier rights.

I have in mind section 212(c) of part II of the Interstate Commerce Act (U.S. Code title 49, sec. 312(c)). This contains this simple statement and we quote:

Mr. STAGGERS. Could you finish in 5 minutes? We have a gentleman from California who has a plane to catch and we should like to accommodate him.

Mr. DUFF. Yes, sir. I should like to read this quote:

Such certificate so issued shall authorize the transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the permit.

And I should like you to notice the words "authorized in the permit."

Mr. STAGGERS. You may proceed if you have anything further.

Mr. DUFF. According to our trade paper—Transport Topics, July 24, 1961 issue—this bill was amended from the floor by Senator Thomas Kuchel providing an effective date of December 31, 1961. I believe it highly undesirable that the grandfather deadline in this case be thus put off into the future. In the original act and in the contract carrier conversion, care was exercised to do nothing of the sort.

When one provides a grandfather clause with a deadline in the future, one invites a free-for-all struggle to obtain grandfather rights so that there might and probably would be speculation in them. I believe the setting of a future date as a deadline on the grandfather clause is to invite speculation and a wild scramble to get windfall rights. I do not believe that the Commissions, either State or interstate, would want to provide this invitation to speculation.

I believe, too, that such activity would be unjust to carriers who have established over a long period of time their business in a strong and sound manner than to find themselves only coming into competition with wild, last minute speculators. I do believe, to the best of my knowledge, that it has not been customary to have these future date grandfather deadlines.

I appreciate having the opportunity to appear before your committee. I would like to summarize my position thusly:

If this bill is to be passed, I repeat "if", I believe sincerely it should be modified in two ways:

One, to provide that the rights be coextensive with those registered, and;

Two, that the grandfather deadline date be the date of passage of the act.

Yesterday Mr. McBride referred to the point, when does an intrastate shipment become interstate. In my opinion, with this type of second proviso regulation this only highlights the need for this. It is all the more reason why second proviso carriers should have their authority coexistent with their intrastate certificates. It is true that many times it is difficult to determine whether a shipment is interstate or intrastate. In my belief, they should be coexistent with the interstate with the intrastate.

Mr. COLLIER. Will you be available for questions following Mr. Baker's testimony?

Mr. DUFF. I will be most happy to remain. I appreciate the opportunity of appearing before your subcommittee, and would like to make a statement at any time that you feel you would like to have me or to ask questions of me.

Mr. STAGGERS. Will you stand by until after Mr. Baker has finished? If so, thank you very much.

Mr. DUFF. Thank you.

(The prepared statement of Mr. L. Eugene Duff is as follows:)

STATEMENT OF L. EUGENE DUFF, LIMA, OHIO, ON H.R. 2483 AND S. 320

Mr. Chairman and members of the committee, my name is L. Eugene Duff of Lima, Ohio, and I am president of Duff Truck Line, Inc., one of the larger, if not the largest, registered irregular route carriers operating wholly within the State of Ohio.

My company is Duff Truck Line, Inc., operating 370 vehicles. Well over 50 percent of our gross business of approximately \$4 million annually is done under registered rights.

My company is drastically affected by this legislation now before your committee, as well as are the over 350 employees of our company.

When I was a mere boy I was active in this business with my father; subsequently I was active in a corporation formed by him; and now I actively manage and direct a corporation, owned principally by me.

My position here today is opposition to the bill unless certain very modest modifications are made. Since a large part of my industry appears to be reconciled to the bill, I have reconciled myself to it but I do feel there are two ways in which modification is very much in order in the general public interest, as well as in the interest of my company and the Interstate Commerce Commission.

At pages 4 and 5 of the report it is suggested that the bill is acceptable to the National Association of Railroad & Utilities Commissioners, to the Interstate Commerce Commission, and to the American Trucking Association because, among other things (as stated in the sixth paragraph on p. 5 of the report) the compromise bill would guarantee to present holders of State certificates registered under the second proviso that all their "existing rights and privileges" will be preserved. Clearly from the report the preservation of existing rights and privileges is the intended objective.

If this were so and it, of course, should be, then there could be little objection on the part of those of us who are already registered.

However, here there is uncertainty. Ofttimes at any particular period a certificate is not being operated at its full authorized potential. There are conditions which bring about intermittent interruptions in parts of the operations being conducted. As I read this bill, the rights would be coextensive with the operations, not with the rights and privileges.

For example, certain of our registered rights provide for movements to and from certain points in Ohio. At any particular time, in all likelihood, we would be serving a large number of points from and to these authorized points, but

not all of them. Our right (and privileges) is to serve all of these points and this we feel should be preserved in accordance with the report. If we are to be guaranteed the continuance of all of our existing rights and privileges, then the certificate of registration should be coextensive with the rights and privileges contained in the State commission operating authority sought to be registered.

My company interchanges traffic in Ohio with approximately 225 multiple State carriers operating under certificates of public convenience and necessity issued by the Interstate Commerce Commission. Our operations are conducted as a so-called distribution service.

For example, at the Lima terminal our company operates approximately 19 different peddle runs, which operate circuitous routes through the State. This traffic which we move is received from the connecting carriers and delivered to consignees. Outbound traffic is picked up from shippers out on these peddle runs for subsequent transfer to these multiple State carriers, destined to points beyond the State of Ohio. This type of distribution service is not performed, as a general rule, by the multiple State carriers for the obvious reason that the multiple State carrier is contented to perform the long distance, over-the-road service where it is possible to utilize equipment more efficiently in the transportation of volume traffic.

Obviously every proviso carrier is subject to the willingness of the multiple State carrier to provide interstate traffic for transportation within the scope of the registered carrier's operating rights. The multiple State carrier may, if it so desires, cut off the movement of interstate traffic between a registered carrier and itself merely by the device of cancellation of concurrences. If we are to sit and wait for this traffic to generate on the inbound, and if we are to go out and seek it all over a vast network of interstate rights, there must be flexibility and at no particular time will we be serving all of the potential of our various certificates.

In connection with this distribution nature of our business, only as recently as July 31, 1961, there was a release by Commissioner Hutchinson, Chairman of the Interstate Commerce Commission, suggesting that ailing segments of the railroad industry could be helped by a program of cooperation with other types of carriers and by changes in regulatory and tax laws. He told the New York Society of Security Analysts that rails could score business gains by publishing joint freight rates with truckers in certain operations. He suggested that perhaps joint facilities could be a source of improved financial operations.

For a motor carrier to participate in joint rail traffic with the railroads, it would naturally be in interstate commerce in all likelihood. Therefore, the carrier of necessity would be, generally speaking, a registered carrier. Obviously the long-distance, line-haul carriers would not be interested in competing with themselves by aiding and assisting railroads in making short-haul distribution and pickup of their freight. If the rails are to do what the Chairman of the Commission would like to see them do apparently, they would have to do it at break bulk points by interlining with the typical registered short-line carrier. Obviously they could not have that kind of relief from those who would be highly competitive over long distances with the railroads.

Recently your Congress passed a bill providing a redefinition of contract carriage and in it was the grandfather provision for conversion of certain contract carrier permits into common carrier authority. The problem was strikingly similar to what we have here. There was a well defined authority, a contract permit, and the object was to get it converted to a better type of operating authority. The Interstate Commerce Commission, in administering that bill which became a law, has been very careful to preserve the right to do what was contained in the permit and has been insistent that the common carrier authority granted in the conversion or substitution proceeding be no less broad than the right to perform service was in the existing permit.

The same idea should be continued here. In view of what is to be found at page 5 of the report that surely is the general understanding. It would be what we presume the NARUC, the ICC and American Trucking Association expected. Section 2, subsection (a) is to be amended in a manner set forth on page 4 through page 7 of the bill. As I read this language, those operations which are actually being conducted on the effective date of the subsection are to be preserved. I believe this should be very simply put to provide that the certificate of registration shall be coextensive with the rights and privileges contained in the registered State certificate. The obvious result of this revised section would be to narrow the operating authority of these registered carriers to just what they were doing on the effective date of the law. The rights and privileges that

a registered carrier today has are clear. The commodities and the area are defined in the presently registered State certificate. Preserving less than such rights and privileges would be a miscarriage of this legislation and would not be carrying out the purposes and intent of the report, as set forth in the sixth paragraph at page 5 of the report. (I am not now speaking of the numbered paragraphs which do not run up to 6 but the sixth actual paragraph on p. 5.)

Actually the bill follows the language contained in the original grandfather clause of 1935 whereunder existing carriers holding no authority from anyone to perform interstate commerce were to be granted operating authority. In that instance no effort was being made to convert existing specified authority granted in a formal document to a different form. There, there was an attempt to define the rights for the first time.

The problem there was entirely different from the one your committee has before it now.

Logically this legislation should more nearly follow the pattern in the conversion section passed by your Congress in the last few years having to do with the conversion of certain specified contract carrier rights issued by the Commission into common carrier rights.

I have in mind section 212(c) of part II of the Interstate Commerce Act (U.S. Code, title 49, sec. 312(c)). This contains this simple statement, and we quote:

"Such certificate so issued shall authorize the transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the permit."

Incidentally, the Interstate Commerce Commission has so administered the law as written and it has done so quickly, simply, and efficiently, having gotten rid of these grandfather cases of conversion with amazing skill and speed.

This simple provision would eliminate all problems of proof of operations. In other words, one could come in and show a State certificate that had been registered and then he would be granted a certificate of registration coextensive with it, both geographically and commoditywise. That simple language was workable for the conversion of contract carriers to common and it would be just as workable in this instance.

The Interstate Commerce Commission took many years to administer the original grandfather clause after which this bill is erroneously modeled in this respect. They have been at the job already over 20 years, and it took the greater part of that to get these grandfather cases out of the way, and still there is a straggler being called up. This is no criticism of the Commission because the job was simply colossal. This job will be colossal if we are to inquire into what the operations are and have to wade through reams of evidence of operation.

Incidentally, the cost of administering that grandfather clause to parties and to the Government itself ran into millions of dollars.

On the other hand, the Interstate Commerce Commission has administered this more recent conversion of contract carrier permits into common carrier certificates admirably, in a very short time and at a minimum of cost to all concerned. The process was simple. It was fair and it was workable, and it is the logical way to convert a specific document from one form of authority to another, as is proposed here.

I would speak to one more mild modification.

According to our trade paper (Transport Topics, July 24, 1961, issue), this bill was amended from the floor by Senator Thomas Kuchel, providing an effective date of December 31, 1961. I believe it highly undesirable that the grandfather deadline in this case be thus put off into the future. In the original act and in the contract carrier conversion, care was exercised to do nothing of the sort.

When one provides a grandfather clause with a deadline in the future, one invites a free-for-all struggle to obtain grandfather rights so that there might be speculation in them. I believe the setting of a future date as a deadline on the grandfather clause is to invite speculation and a wild scramble to get windfall rights. I do not believe that the Commissions, either State or Intrastate, would want to provide this invitation to speculation.

I believe, too, that such activity would be unjust to carriers who have established over a long period of time their business in a strong and sound manner then to find themselves only coming into competition with wild, last-minute speculators. I do believe, to the best of my knowledge, that it has not been customary to have these future date grandfather deadlines.

I appreciate having the opportunity to appear before your committee. I would summarize my position thusly:

If this bill is to be passed, I believe sincerely it should be modified in two ways—

1. To provide that the rights be coextensive with those registered, and
2. That the grandfather deadline date be the date of passage of the act.

Mr. STAGGERS. Our next witness is Mr. Daniel W. Baker of the law firm of Handler, Baker & Mastoris of San Francisco, representing various California trucking companies. We will be glad to hear you now, Mr. Baker.

STATEMENT OF DANIEL W. BAKER, SAN FRANCISCO, CALIF.

Mr. BAKER. Thank you very much, Mr. Chairman. I am here to represent a large number of carriers who are vitally interested in this legislation.

I know questions have arisen as to how are the carriers going to be harmed. I want to particularize as to how they will be harmed by the passage of this proposed act.

I would, first, like to mention the fact we have not been given any compromise in respect to this bill. We asked Senator Kuchel of California to make certain proposals. We are the ones who contacted him, but the proposal for which we offered him were not incorporated in the bill. The only one incorporated was the extension of the effective date. The Congressional Record sets forth the interpretation of this bill and clearly defines the burden which is going to be imposed upon the existing carriers many of whom have operated for 90 and 100 years in California and other States, and it is going to be critical to their operation to continue if this bill is passed.

Mention has been made of abuses, but in describing the abuses it is always with respect to interline freight. That is only one type of freight, interstate freight between points in the States.

There are four different types of freight.

As far as our carriers are concerned interline freight is of small consequence. I believe there are, approximately, 45 carriers in the list we represent. There are 635 certificated carriers in California, and about 400 will, probably, file applications under this amendment if it is enacted.

The four different kinds of freight are (1) the freight which is transported to or from another State by rail carrier. No mention is made of that. No mentioned abuses have been referred to involving that transportation.

(2) Freight moving to or from another State by motor carrier. With respect to a portion of that operation it refers to the so-called abuses.

(3) We have water carrier freight to or from another State, a foreign port or a territory.

We have the air carrier freight.

None of these other types of transportation have even been mentioned in these proceedings so far, but so far as our carriers are concerned with a substantial amount of freight moving from eastern points to California by rail it is a vital part of their operation.

This freight that is transported between points in California in interstate commerce is no different from intrastate freight. It is the

same color, it is the same size, it is the same weight, it is handled on the same trucks, it is distributed by the same drivers. There is no distinction and it is particularly vital to these carriers to be able to retain their rights so that they can continue to perform a complete service for their customers. This is vital, because shippers do not want one carrier to come in and handle one type of freight and another carrier to come in and handle another type of freight going to the same points.

Also, there are other disadvantages due to the fact that they combine this freight into a truckload that is intrastate and interstate freight. If a carrier does not have the full authority which he normally presently has, the shipper will have to pay a penalty to use that carrier. Obviously, he will not use that carrier, if you split it into two l.c.l. shipments, because the shipper will pay two l.c.l. rates which will be four times in excess of any truckload combined shipment. And if the carrier does not retain his full rights he will lose his customers and his freight.

We feel the alleged abuses are limited to a portion of one aspect of the interstate transportation picture. Normally, when you have a bad injury to your leg, you do not cut off the leg. We feel that is what is happening in this instance. This amendment will emasculate a bill which has been in existence since 1935. And so far California has had no complaint about it. If there are abuses, they are minor.

I might interject the question of a compromise bill. This is no compromise bill, because the carriers who are most vitally affected have not even been considered, have not even been heard. The bill that the ATA considered 2 years ago was a different bill. It was a bill not to amend, but to repeal the second proviso. This bill amends it. The ATA has not considered this amended bill. Also, in their general policy statement 2 years ago they agreed they would only support a bill if it did not have an adverse effect upon any of its carrier members. This bill, certainly, does.

Also, yesterday afternoon at 2 o'clock, which was 1 o'clock Pacific standard time, I telephoned the California Trucking Association, which is the largest trucking association in the United States outside of the American Trucking Associations, and the California Trucking Association is the largest member of the ATA, and asked them whether they had changed their position. And Mr. Richard Zeller, who is the assistant general manager, informed me that the executive board was meeting and was not considering S. 320. And that group in its past consideration, because of conflict among its member carriers, agreed not to take a position on this bill.

Incidentally, we attempted to secure a hearing on this bill, our California carriers and the other carriers we represent. We were not given a hearing on S. 320. This is our first opportunity to speak in our behalf. So far as we are concerned this is the initial hearing.

I think the physical characteristics of handling the various types of freight have been described.

You have the long-line by motor carriers. Someone mentioned a shipment to Springfield, Ill. The way it operates, the long-line carrier may have authority between Springfield, Ill., and the ultimate destination, New York. In such instance the single carrier will conduct the through transportation from Springfield, Ill., to New York

City. If a short-haul carrier is used it may have interstate freight authority granted by the Interstate Commerce Commission or second proviso authority. That carrier may transport that same shipment from Springfield, Ill., to Chicago, to the extent of its authority, and turn it over to a long-line haul carrier for transportation to New York.

The only instance where the abuses with respect to interline is involved would be a second proviso carrier making the initial pickup, but it is the line haul carrier who controls this. It is the line haul carrier who would control any abuses. Actually, those are the carriers that are the proponents of the bill.

I might, also, interject the reason why I mentioned the other types of transportation, being the fact that these small second proviso carriers are getting less and less of this interstate freight, because the major carriers as you, probably, are familiar with, such as the Pacific Intermountain, Transcon Lines, Watson Bros.—I could mention a long list of them—are buying local operations and conducting all of the initial pickup and all of the ultimate deliveries on their own trucks. They are buying the major carriers, both second proviso and interstate carriers in California and wiping out this abuse, because they are doing all of the transportation.

In the east there is one carrier purchasing a company that will get them down the Atlantic coast, I believe down around Georgia some place. All of these companies are doing the same thing. So this particular abuse is becoming less and less a problem, because the larger carriers are becoming bigger and bigger.

My most important statement, insofar as we are concerned, is respect to the prima facie proof. I have tried to set forth at length in my prepared statement, on pages 2 and 3, under paragraph 1, subparagraph A, continuing on through pages 2, 3, to the top of page 5, statements with regard to that. I would like to explain prima facie as it is to be applied in this bill.

Prima facie is merely to indicate, or, rather, it merely indicates or merely means that a case, apparently, has been established by evidence as adduced by the plaintiff in support of it. However, in the proposed bill prima facie is practically meaningless. All it takes to overcome this prima facie proof is for a carrier to come in who may have second proviso authority, may have interstate authority, and to say that it is going to be affected, and then prima facie immediately disappears and the carrier is put in the position where he has the tremendous burden of proving his operation as being commensurate with his intrastate authority or his existing interstate authority.

Those familiar with the old grandfather days know the hearings on grandfather rights are prolonged, expensive, and throw a tremendous burden upon the carrier. These carriers I am referring to are the middle-sized carriers, not the big ones, the carriers who are eking a little more than a living out of this business, but they do not have substantial resources with which to pursue these applications.

Congressman Friedel was asking about certain specific instances. I will give you an example of how this is going to affect the carriers.

First of all, I want to refer to a statement of Senator Smathers that is quoted at the bottom of page 4 of my statement. He was

asking about the proof that would have to be furnished if a carrier challenged the filing. And he stated:

I think the answer could be, generally, that while a carrier may have statewide authority—

and the question was whether he had statewide authority, and what showing they will have to make in order to retain such authority, and an authority which the carrier has in the Interstate Commerce Commission—

and has held itself out to haul all commodities between all points, its authority from the Interstate Commerce Commission would be limited to the commodities which have actually been hauled and to the points which have actually been served in past years.

In other words, even though a carrier is hauling general commodities and has for many, many years, he would still have to, to hold his services both in intrastate and interstate service, he would have to come in and prove something which in many instances they have had since the grandfather days in 1935, 1936, and 1937.

To give an example there is a carrier we represent by the name of Daniel Gallagher Teaming, Mercantile & Realty Co. The word "Teaming" in their name speaks for the length of time this company has been in existence. It has been in business 95 years in San Francisco, serving many of its customers well over 50 years, and one customer for over 92 years.

This carrier holds an intrastate certificate which has been registered with the Interstate Commerce Commission. It has Interstate Commerce Commission short-haul interstate authority in California. This carrier, also, has an application pending before the State commission which has not been decided. However, I just want to go into its existing authority to show how it would be affected by the grant or the passage of this particular amendment.

It holds its services out to transport general commodities in a limited area and it does transport general commodities under its State certificate. It, also, under the registered authority which is given through the State authority, holds itself out to transport general commodities.

I made a check on his operation in interstate commerce and even though he is holding his service out to haul the same commodities between the same points in interstate commerce as in intrastate commerce it is transporting, approximately, 10 to 12 different commodities in interstate commerce. If this carrier is forced to come in, after being in business for 95 years and prove its past operations in interstate commerce, he will get, according to Senator Smathers, a limited authority to transport 10 to 12 commodities between specific points. Here he has a general commodity authority to transport between all of the points, if this bill goes through, and under the grandfather provision and applied the same way in 1935 he is going to get 10 to 12 commodities in his authority and between limited points.

A carrier could come in and protest that application, that whole general commodity authority, but that carrier may have received that authority from the Interstate Commerce Commission. He can only be handling two commodities. He does not have to prove what he has

done. All he has to do is to come in and challenge and put the burden on that carrier who is applying under this proposed amendment. So, in other words, he has less of an operation, but he could cut down, severely cut down his competitor by this simple expediency of coming in, challenging the filing, and that authority will be cut down. It is a cheap way of cutting down competition and it is a very satisfactory way, because all of the burden is upon the applicant. In spite of the way the bill reads, the burden is on the applicant to prove past operations.

If you will refer to the interpretations by Senator Smathers, there is no question about it. That is the way the grandfather rights have been handled in the past.

Also, another specific example, we have a project which is started in California—not a small project over a billion dollars, the Oroville project. There is no transportation to that area at the present time, except sporadic movements. They have only built a couple of railroad bridges, relocated segments of the highway and the railroad rights-of-way. There will be tremendous dams, powerplants and relocation of highways, more bridges. It will be far in excess of a billion dollars.

Three carriers filed applications with the State authority the past year. They received their authority to serve this dam when work begins. They were supported by Peter Keywood & Co., Guy Acheson, American Bridge, and many others, all large companies in the United States, needing that authority in the future for this job.

If this bill passes, part of their authority will be completely cut out because they will not be able to show substantial operations to that point because they do not exist.

You say why not apply to the Interstate Commerce Commission to serve those points? If they applied to the Interstate Commerce Commission, and if the people who are handling the opposition to the case have any ability at all they could stall it for 2, 3, 4 years.

A particular instance of that type of thing about a year ago I filed a brief with the Interstate Commerce Commission on one aspect of an application proceeding. The other day I received an answer. It was just a simple one-page sheet that said, "petition denied." It took them 1 year to do that. That matter had been proceeding over a period of 3 years.

If I wanted to delay it further I would go to court and get an additional delay.

As a consequence, the dam will be built before the carriers do get that authority.

In that particular proceeding, Interstate Commerce Commission carriers participated in the PUC hearings. The State commission indicated that it does have jurisdiction to restrict a certificate against registration with the Interstate Commerce Commission, but it stated that the interstate carriers did not show that it was the public's best interest to restrict the certificates.

If this bill goes through and the carriers apply for authority under the grandfather rights, those same carriers who are opposed to the State proceeding will have another crack at these applications, except they will be able to stall it for such a long period of time that I do not think we will ever find out what happened.

Mr. COLLIER. This is a new project, as I understand it. An application must be made, whether they are made in the State of California or to the Interstate Commerce Commission. Now, if it took a year to make the decision, you pointed out that in this particular instance, it would leave this project without any service whatsoever, would it not?

Mr. BAKER. I would have to file an application before the service would be commenced. The application would have to be heard. The carriers would, in many instances, file trial briefs. Then you would have a proposed report by the examiner, in this case, sometimes a joint board, you would file exceptions to that report. You would file a reply to the exceptions. Then you would apply to Division 1 of the Commission for an order, Division 1 would issue an order, the parties would file exceptions and reply to the exceptions, and then it would go to the full Commission on a petition for reconsideration. So you could see how long it takes to ultimately get the right to operate.

Mr. COLLIER. And the Interstate Commerce Commission would take the position of being oblivious to the needs for service at this project through all of this time and everyone who came in to apply for it would be sitting around waiting for a decision?

Mr. BAKER. I am not speaking about the need. I am speaking about the time involved in applying for the authority. If there is a need, you could apply for a temporary authority. If there is any service of any kind or type offered, you cannot get that temporary authority. It can be deficient and the carrier can say that it will afford the service and that authority will be denied without a hearing.

I just want to speak for a moment about the effective date. We have applications pending in the State agencies, some have been pending, as in one instance for a year and a half, and in other instances for a lesser time. We expect decision in the near future. These carriers in many instances have been operating in California for many, many years. Therefore, if a decision is issued, it takes 3 to 5 months in order for the carrier to commence that operation due to tariff publication requirements and necessary delays in establishing the operation. Therefore, we respectfully ask that the effective date be made April 1, 1962. The bills as they presently read—the bill in the House—the Senate bill, I think, S. 3228 of last year, read April 1, 1961—that is the way it was introduced last year and that was changed in the Senate to December 31, 1961—however, we feel a fair time should be given these carriers in order to make the operation effective, if the amendment is enacted, and April 1, 1962, is a fair time to give these carriers the right to establish their operation.

So far as the certificate of registration is concerned, we are against it for the reasons indicated by Mr. Macdonald. It is a "pig in the poke." No one knows what it is. When they asked Commissioner Murphy what a certificate of registration was, he admitted he did not know, and no one knows. A carrier has, in many instances, millions of dollars invested in its operations and you, as a businessman, would not want to predicate your business on something like that.

You asked about the different standards, Congressman Collier, established in making findings of convenience and necessity, so far as State groups are concerned compared with the Interstate Commerce Commission.

There are many local problems involved. Therefore, they have to take that into account. That is why they have the differences of determination. These are local operations and they are predicated upon local problems.

Mr. COLLIER. Do you think it is entirely a case of taking care of these local problems?

Mr. BAKER. I am certain of it, because the public commissions look after their own areas. And these local areas are between two points in their States. They want to know what is going on in their States. They have the formula with which they apply to all application cases whether they are heard in Miami, Fla., or in San Diego, Calif.

Thank you very much for your indulgence, gentlemen.

Mr. STAGGERS. Thank you. The House will be in session in about 2 or 3 minutes. We hope that we have not delayed you too long. You want your written statement incorporated?

Mr. BAKER. I would like it to be incorporated in the record. I would like to be notified of any action that may be taken upon the bill or any future statements that may be required or hearings conducted.

Mr. STAGGERS. Very well, we thank you again very much, and your statement will be made a part of the record.

Mr. BAKER. Thank you, sir.

(The document referred to is as follows:)

SAN FRANCISCO, CALIF., July 31, 1961.

To the Honorable Oren Harris, Chairman, Committee on Interstate and Foreign Commerce, and the Chairman and Members of the Subcommittee on Transportation and Aeronautics.

GENTLEMEN: It is our understanding that H.R. 2483 and S. 320 are set for hearing before your subcommittee on August 2 and 3, 1961. This statement is submitted on behalf of numerous California trucking companies, clients of Handler, Baker & Mastoris and Bertram S. Silver, respecting their objections to the proposed legislation above referenced.¹

Since the passage of the Motor Carrier Act in 1935, carriers operating in a single State have been permitted by section 206(a) thereof to register their State certificates of public convenience and necessity, and thereby operate between the same points in interstate and foreign commerce as are authorized for intrastate commerce. All the carrier is required to do is to file a short application, an appropriate tariff, and evidence of insurance, and to appoint an agent for service of process. This method of providing equivalent interstate rights to single-State operators has worked very well in California and other States. California and other similarly situated States have ports through which interstate and foreign commerce flows. In addition to the port traffic, interstate freight also is distributed in a State from rail cars to ultimate destinations. This port and rail interstate traffic constitutes less than 10 percent of the total freight moving between points in California and, with very few exceptions, amounts to only a small percentage of the traffic tendered to carriers by shippers in California. It probably is less in States having no ports. By creating coextensive interstate and intrastate rights, the necessity of determining the often difficult question as to the character of traffic has been largely eliminated and local carriers holding intrastate and "second proviso" interstate rights are able to afford their customers a complete service.²

The proposal of the bill is to have the Interstate Commerce Commission issue certificates of registration based on current registrations of State certificates and thereafter to abolish the right to file State certificates with the Interstate Commerce Commission as presently provided for in the second proviso.

¹ A partial list is attached hereto.

² Second proviso refers to the second proviso of sec. 206(a)(1) of the Interstate Commerce Act which permits registration of State certificates.

I shall develop our views from two aspects. First, on the theory that a bill in some form to abolish registered rights is bound to pass; and, secondly, on the assumption that the entire bill may be defeated by reason of its deficiencies.

1. Specific objections to the form of the bill

A. Probably the most objectionable feature of the bill to the greatest number of smaller and medium sized carriers is the provision that the effectiveness of the registration of the State certificate shall be "prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof" (lines 19 to 21, sheet 7). The motor carriers of California, as well as in the rest of the United States, have had long and arduous experience proving their rights to grandfather certificates after the Motor Carrier Act was first adopted in 1935, and as the jurisdiction of the Commission has been increased from time to time. It is their view and ours that the certificate of registration proposed to be issued should specifically embrace all of the operating authority for interstate and foreign commerce as is contained in the State certificate with respect to intrastate commerce. To require proof of past operations would result in tedious and expensive proceedings and would attract opposing carriers into them who would attempt to cause the Commission to cut down the extent of the operating rights previously held by registration.

Your committee is well aware that the Interstate Commerce Commission carries a substantial workload and, with full respect to said Commission for the fine work that it has done, it is unfair to add an extensive amount of litigation, pleading, and hearings where the same is unnecessary. By providing a "prima facie proof," as the present bill proposes, every application (being scrutinized by the larger carriers and protested by the same) will undoubtedly result in hearings or verified statements, subsequent exceptions and petitions; the ultimate result will be that the appropriate division of the Interstate Commerce Commission must review the many thousands of applications to be filed. All of this litigation and burdensome work could be avoided by substituting the word "conclusive" for the present test of "prima facie." Furthermore, may we call to the attention of the honorable subcommittee that it is the smaller and medium-sized carriers that would be the subject of the pending bill. There is no question that the hearings (or verified statements), exceptions and petitions, applications, and other necessary legal work would be extensive and costly to these smaller numerous carriers that are already overburdened. This unnecessary expense can likewise be avoided by substituting the word "conclusive" for "prima facie."

Our clients believe with good reason that they should receive certificates of registration coextensive with their present State certificates. For example, nationwide we presently see the development of many construction projects for irrigation, power, etc., which involve shipments to areas where there have previously been only sporadic or no movements. Yet these areas may be within the sphere of operations of particular carriers. If a movement through the ports or by rail comes into the area for delivery to the jobsite, these carriers can presently perform the service under their registered rights. Should this act be passed, their ability to serve these new jobsites may well be terminated and destroyed.

The proposed bill provides that carriers lawfully engaged in interstate and foreign commerce on April 1, 1961, under second proviso registrations may file applications together with information and documents to be prescribed by the ICC. If the applications are in proper order and adequate proof of operations is furnished, certificates of registration shall be granted. Certified copies of State certificates registered with the ICC shall be "prima facie proof" that applicants are engaged in interstate and foreign commerce.

Thus, existing authorities can be used as evidence of past interstate operations but such proof is not conclusive. If a protesting carrier wants to challenge the showing of interstate service, the applicant will have to prove that he has operated to the full extent of the authority.

During the pendency of S. 320 before the U.S. Senate, a number of questions were asked by the Honorable Senator Kuchel to the Honorable Senator Smathers as to the intent and purport of the bill. The questions primarily concerned the language "prima facie proof." The questions and answers appear in the 1961 Congressional Record at pages 11789 through 11791. It is apparent that the burden is upon the smaller and medium-sized carrier applicants to establish the frequency of their operations under the prior registered rights, the numerous points that they serve and the commodities transported. The burdens upon these

carriers become apparent when we review Senator Smathers' answer as to the procedure to be followed by the Commission if an objection is interposed on an application. He stated as follows:

"However, as the able Senator from California has stated, if there is objection—if, in fact, the things the carrier claims he has done have really not been done—and someone files a protest or makes objection to the granting of the certificate, then, of course, the Commission would have to have more than a *prima facie* showing. It would have to have actual proof that the person who was seeking an application had done what he said he had done."

Obviously, the large carriers will protest every application and put the applicant to a severe test of proof.

As to commodity limitations, Senator Smathers indicated that limited certificates would be given rather than general commodity certificate authorization. He stated as follows:

"I would say to the able Senator from California that the Interstate Commerce Commission will not necessarily limit its investigation to the past year. The ICC will look at the history of the carrier within a reasonable period of time. If the carrier has carried mainly commodities within a specific class, such as hardware, electrical appliances, and so forth, then it probably will not be given general commodity authority. If the carrier has truly hauled, on the other hand, and has proven to be a general commodity hauler of, 20 different commodities which cover the general field, it would be given general commodity authority by the Interstate Commerce Commission."

* * * * *

"The intention of the bill is that the Commission shall continue to grant only specified commodities between specified points, as has been done in the past." [Emphasis added.]

In past "grandfather" cases the Commission has consistently held "a showing of substantial and consistent service as distinguished from incidental, sporadic, or infrequent service is required." (315 U.S. 475, 480; 305 U.S. 263, 266; 82 M.C.C. 153, 155; 82 M.C.C. 157, 159). Therefore, if the applicant cannot prove that it operated regularly to the full extent of the registered certificate, the carrier could possibly lose a portion or all of its existing interstate rights. Clearly, this is discriminatory as to the second proviso carriers, for at the present time the scope of their interstate authorities is equal to their intrastate rights. Such filings will result in prolonged and expensive administrative and, perhaps, court proceedings before a final determination is received, in spite of the fact that the bill provides that applications will be handled expeditiously and without formal hearing so far as practical and legally permissible. Those persons who have been involved in ICC proceedings, including "grandfather" application cases, can appreciate how complex and complicated they can be and the severe opposition which can be expected from interested carriers. The defect in the bill with respect to the "grandfather" provision could be easily cured by changing "*prima facie*" to "*conclusive*" so that a carrier would only have to prove the existence of a registered intrastate certificate to secure a certificate of registration.

This same theme of limiting the registrations was further evidenced when Senator Smathers stated in part as follows:

"I think the answer could be, generally, that while a carrier may have statewide authority and has held itself out to haul all commodities between all points, its authority from the Interstate Commerce Commission would be *limited to the commodities which have actually been hauled and to the points which have actually been served in past years*. The Interstate Commerce Commission will generally ask the carrier to give some proof of its past activities, which, in a case which might be presented, the carrier could well do. It could give such proof." [Emphasis added.]

The entire import of the pending legislation as it now reads, with the words "*prima facie*," is to limit the smaller carriers and, in effect, to revoke all or a portion of a right which many have held since "grandfather" days.

B. The next objection is to the date of the effectiveness of the act which is now specified in H.R. 2483 as April 1, 1961, and in S. 320, as amended, December 31, 1961. April 1 has, of course, already come and gone and we believe it would be unfair to make the provisions of the bill retroactive. The California Public Utilities Commission has in the last year and one-half or so evidenced a more lenient policy in the issuance of certificates of public convenience and necessity than had been applied prior thereto. As a result, numerous carriers filed applications for extensions of their certificates, or, in some

cases, for new certificates. Many of these have been granted either in full or in major part. But there are still pending a number of applications of the same character which have not been decided. Some have not even been heard as yet. We feel that the carriers with pending applications should be afforded the opportunity of registering rights which may be granted by the State Commission before the proposed legislation becomes effective. It takes 3 to 5 months after a decision is issued before operations pursuant thereto can be commenced. The carriers who have recently been granted rights and those with pending applications are generally of the same characteristics and entitled to the same treatment. It would, therefore, appear reasonable for April 1, 1962, to be the effective date if the act passed by the fall of this year. If not, then some later date possibly 6 months following its passage, might be properly prescribed.

2. *Objections to the bill in general*

It can with logic be argued that in general the provisions of the bill are so objectionable that it should either not be passed at all or should be completely rewritten. I shall not attempt to rewrite the bill but I will briefly point to some pertinent points that could well be raised in urging its defeat.

A. The bill provides for the insurance of a new kind of operating authority called a certificate of registration. What the characteristics of this type of certificate would be with respect to transferability and rights and duties are far from clear. This fact is supported by the testimony of Commissioner Rupert L. Murphy who testified before the Senate committee with reference to the original bill on August 18, 1959, in part as follows:

"* * * it is not clear under the provisions of the bill as to what many of its [certificate of registration] characteristics would be with respect to the rights, duties, and responsibilities attached thereto. * * *"

Commissioner Murphy suggested that the committee give consideration to the grant of a certificate of public convenience and necessity presumably of the kind similar to those it now issues. Commissioner Murphy's testimony was quoted by the Local Cartage National Conference which protested the wording of the proposed bill in its representations made to the Senate Interstate and Foreign Commerce Committee. This protest, including Commissioner Murphy's comments, were published in the magazine, *Traffic World*, dated July 9, 1960, at page 39.

Past history of motor carrier regulation clearly supports granting certificates of public convenience and necessity rather than some new, indefinite operative authority under which the scope and extent of rights and duties of carriers would be speculative and uncertain. Three statutes have been previously enacted in which "grandfather" interstate rights were involved. In each instance Congress authorized issuance of certificates of public convenience and necessity to qualified carriers.

(a) When the Motor Carrier Act was passed in 1936, all qualified carriers received certificates of public convenience and necessity.

(b) When the Agricultural Act was passed in 1958, all qualified carriers received certificates of public convenience and necessity.

(c) When the Motor Carrier Act was amended to permit contract carriers to concert their authorities, all qualified carriers received certificates of public convenience and necessity.

No one knows what a certificate of registration is. Obviously, a carrier does not want its interstate authority and operation jeopardized by having to accept something less than it already has. To do so is to buy a "pig in a poke," not knowing what will be the effect of the bill's passage on its business, investment, authority, and even ability to operate in the future.

B. The bill provides that, on and after the effective date of this amendment, an applicant before a State commission seeking intrastate authority shall indicate whether he is also requesting interstate authority. Should the State commission grant interstate authority, the Interstate Commerce Commission has the right of review (pp. 3 and 4 of the bill). Thus, a hybrid jurisdiction is created, the constitutionality of which may well be questioned, for the State commission is required to make findings respecting need for interstate service without any standards being specified. The delays which might result from petitions for review to the Interstate Commerce Commission which is already overburdened can well be imagined. Based upon our knowledge of the workloads of the Federal and State regulatory agencies involved, it is difficult to

understand how they will be able to properly handle the added work and responsibility which would result from passage of the proposed legislation.

Conclusion

We respectfully urge the subcommittee's sympathetic consideration of the objections above recited.

Yours very truly,

HANDLER, BAKER & MASTORIS,
BERTRAM S. SILVER,
By DANIEL W. BAKER.

A & B Garment Delivery of San Francisco, 2277 Shafter Avenue, San Francisco, Calif.

Alta Freight & Transfer, Inc., 690 Hegenberger Road, Oakland, Calif.

American Transfer Co., 2810 Jensen Avenue, Fresno, Calif.

Associated Freight Lines, 530 Brannan Street, San Francisco, Calif.

Associated Transportation Co., P.O. Box 469, Yuba City, Calif.

Bassco Drayage, 685 Delaware Street, Berkeley, Calif.

Brown Drayage Inc., 8220 Baldwin Street, Oakland, Calif.

F. J. Burns Draying, 516 Townsend Street, San Francisco, Calif.

C & M Trucking Co., P.O. Box 106, Mountain View, Calif.

Coast Drayage, 615 Cedar Street, Berkeley, Calif.

Mike Conrotto Trucking, P.O. Box 638, Gilroy, Calif.

Dalzell Corp., Park and Halleck Streets, Emeryville, Calif.

Doudell Trucking Co., P.O. Box 842, San Jose, Calif.

East Bay Drayage & Warehouse Co., Third and Addison Streets, Berkeley, Calif.

Frank's Trucking, 861 73d Avenue, Oakland, Calif.

Daniel Gallagher Teaming, Mercantile, & Realty Co., 2510 Wood Street, Oakland, Calif.

Haslett Warehouse Co., P.O. Box 3270, San Francisco, Calif.

Hawkey Transportation, P.O. Box 229, Redding, Calif.

George F. Lloyd Transportation Co., 605 15th Street, Sacramento, Calif.

Lodi Truck Service, P.O. Box 147, Lodi, Calif.

Matt Transfer & Storage, 1720 R Street, Sacramento, Calif.

C. H. Miller Transportation Co., P.O. Box 1027, Oroville, Calif.

Morris Draying Co., 190 98th Avenue, Oakland, Calif.

Pozas Bros. Trucking Co., 249 North Fair Oak Avenue, Sunnyvale, Calif.

Security Truck Line, 1600 South First Street, San Jose, Calif.

Tondo Trucking Co., 2189 Queens Lane, San Mateo, Calif.

Tri-City Parcel Delivery, 939 Center Street, San Carlos, Calif.

Universal Transport System, Inc., 2672 Bayshore Frontage Road, Mountain View, Calif.

West Transportation, Inc., 4060 Halleck Street, Oakland, Calif.

Winans Bros. Trucking Co., P.O. Box 933, Redding, Calif.

Milton J. Daly, Hawaiian Express & Dillon Drayage Co., 646 First Street, San Francisco, Calif.

W. A. Fraser Trucking Co., 1606 14th Street, Oakland, Calif.

Jack Hemsath Drayage, 1350 34th Street, Oakland, Calif.

Portola Drayage, 1467 Van Dyke Street, San Francisco, Calif.

Bonded Draying Service, 1445 Illinois Street, San Francisco, Calif.

A. M. Devincenzi Co., 1598 Carroll Avenue, San Francisco, Calif.

Donofrio Drayage-Record Express, 1440 Egbert Avenue, San Francisco, Calif.

R. E. Ellis Draying Co., 590 Townsend Street, San Francisco, Calif.

Faughn's Transportation, P.O. Box 417, 405 S. Abbie Street, Empire, Calif.

Griley Security Freight Lines, 9833 Adella Avenue, South Gate, Calif.

Henry's Freight Lines, P.O. Box 3068, Fresno, Calif.

Huddleston Drayage Co., 480 Ninth Street, San Francisco, Calif.

G. A. Hutchinson & Son Draying, 1515 Third Street, San Francisco, Calif.

Interlines Motor Express, 1239 Fifth Street, Oakland, Calif.

Johansen's Superior Truck Service, 1580 Jesse Street, Los Angeles, Calif.

Johnson's Trucking Service, P.O. Box 160, Hornbrook, Calif.

B. C. Lawson Drayage, Inc., 1311 22d Street, San Francisco, Calif.

L. D. S. Truck Lines, 95 North Livermore Avenue, Livermore, Calif.

McDermott Trucking, P.O. Box 87, Knights Landing, Calif.

Melhaff Trucking Service Co., P.O. Box 792, Galt, Calif.

Square Deal Trucking Co., 2850 South Alameda Street, Los Angeles, Calif.

United States Express, 1400 Seventh Street, San Francisco, Calif.

Mr. STAGGERS. Are there any other witnesses who would like to put their statements in the record at this point; if you will come up and identify yourselves, we will be glad to do that.

You may proceed.

STATEMENT OF MARTIN WERNER, COUNSEL, A GROUP OF SECOND PROVISO MOTOR CARRIERS, NEW YORK, N.Y.

Mr. WERNER. My name is Martin Werner, from New York City. I was called by the clerk of the committee to appear here today. I have a statement that I should like to have incorporated in the record.

Mr. STAGGERS. I would like to ask you this: If there are further hearings would you want to come back to testify?

Mr. WERNER. Most definitely.

Mr. STAGGERS. Are you for or against the bill?

Mr. WERNER. I am against the bill. I represent, primarily, small businessmen.

Mr. STAGGERS. All right, thank you very much. Your statement will be made a part of the record.

Mr. WERNER. Thank you, sir.

Mr. STAGGERS. Thank you.

(The prepared statement of Mr. Martin Werner is as follows:)

STATEMENT OF MARTIN WERNER, COUNSEL FOR A GROUP OF SECOND PROVISO MOTOR CARRIERS, ON H.R. 2483 AND S. 320

Mr. Chairman and members of the subcommittee, my name is Martin Werner. I am an attorney and member of the bar of the Interstate Commerce Commission, with offices in New York City. For more than 20 years I have specialized in representing trucking companies before the Interstate Commerce Commission and the New York Public Service Commission.

A number of the carriers I represent operate entirely within the State of New York and have registered their New York intrastate certificates with the Interstate Commerce Commission under the second proviso of section 206(a) of the Interstate Commerce Act.

Typical of such one-State operators are the four carriers listed in appendix A to this statement. These 4 carriers are small businessmen who operate from 7 to 30 vehicles, and have gross revenues of from \$12,000 to \$30,000 per month. Each of them serves a number of small communities in the daily pickup and delivery of shipments transported by various out-of-State carriers. The transportation of such interstate traffic forms a very substantial portion of the business of these carriers.

I wish to thank the subcommittee for setting a hearing on this bill thereby according to these carriers the first actual opportunity to be heard by the Congress on proposed legislation which would vitally affect their entire business and could have truly far-reaching effects thereon.

These carriers oppose H.R. 2483 in its present form and respectfully urge your subcommittee to not approve said bill.

The second proviso carriers' transportation services are an integral part of the national transportation system. They have been subject to all of the same requirements of the Motor Carrier Act, except for a certificate of public convenience and necessity. If the second proviso is to be eliminated from the act, as intended by this bill, these carriers ask that their right to continue their present services, and their recognition as a full member of the regulated transportation system, be confirmed by the grant to the proviso carriers of certificates of public convenience and necessity which are coextensive with the intrastate certificates that they now have registered with the Interstate Commerce Commission, to be granted without formal hearings or other proceedings, upon applications supported only by a notice of intent to engage in interstate or foreign operations accompanied by certified copies of State certificates filed with the Interstate Commerce Commission which shall be conclusive proof of the applicant's lawful interstate and foreign operations and the scope thereof.

The history of the Motor Carrier Act shows that every time a group of motor carriers was brought under regulation, the enactment contained a grandfather clause which granted a certificate of public convenience and necessity to such carriers. This happened in 1935, 1957, 1958, and 1960. In 1958 the Congress brought under regulation the transportation of bananas and certain other foods which had previously been exempt. Today, many carriers who had never been under any interstate regulation in their hauling of bananas, hold full grandfather certificates of public convenience and necessity therefor.

The second proviso carriers have been under regulation since 1935 and have had to comply with the insurance, rate, safety, report, and the many other requirements of the act. Surely, they should be accorded the same rights and recognition as were granted all other groups of carriers on every similar occasion since 1935. The proviso carrier for years has had all of the duties and obligations of the presently certificated carriers. Historically and in true justice, he should be accorded the same rights and status—which can be done only through the grant of a full certificate of public convenience and necessity.

One other point warrants careful consideration. A number of carriers located in New York City have been in the trucking business since the old horse-and-buggy days, predating the ICC motor carrier regulation. In those years they could lawfully operate in interstate and foreign commerce—not only in New York City, but also to and from the waterfront towns in northeastern New Jersey, which are separated from New York City solely by the Hudson River.

With the advent of the Motor Carrier Act in 1935, they continued exempt from interstate regulation because of the fact that their operations were confined to an area within the New York, N.Y., commercial zone as defined by the ICC which includes not only New York City and the adjoining New York communities, but also a number of New Jersey points bordering on the Hudson River. Later, when the State of New York enacted legislation to regulate motor transportation within the State and intrastate certificates were issued by the New York Public Service Commission the carriers were then confronted with the choice or necessity of having to make a choice between continuing to operate in interstate or foreign commerce solely within the confined limitations of the New York, N.Y. commercial zones as defined by the ICC, plus their intrastate service within New York State as authorized by their certificate; and/or registering their intrastate certificate with the ICC as second proviso carriers and completely discontinuing all operations to New Jersey, even though the New Jersey waterfront towns are an integral part of the New York, N.Y., commercial zone. Some of these carriers made the choice by registering their PSC certificate and discontinuing all operations to the commercial zone points in New Jersey.

In order that these carriers who are now registered with the ICC as second proviso operators may be accorded a fair measure of equity and justice and not again be confronted with an unfair choice, it is sincerely urged that these carriers who have certificates of authority for service in New York City be granted a certificate of public convenience and necessity which will include the right to serve the points in New Jersey that are in the New York commercial zone as presently defined by the ICC; also that if perchance some of these proviso carriers may have operated through New Jersey within the New York City commercial zone, such fact shall not be deemed in anyway to affect the determination by the ICC of the lawful conduct by such carriers of authority of the second proviso operators.

It is respectfully requested that any legislation enacted in this field should contain appropriate provisions on this point.

APPENDIX A

Byrnes L. I. Motor Cargo, Inc., 136 Allen Boulevard, Farmingdale, Long Island, N.Y.

John A. Jungermann & Son, Inc., 613 North Broadway, Amityville, Long Island, N.Y.

Oakwood Trucking Corp., 215 South 11th Avenue, Mount Vernon, N.Y.

Rosenberg & Cohen, Inc., 463 West 35th Street, New York, N.Y.

Mr. STAGGERS. You may proceed.

**STATEMENT OF CLINE MUNDAY, GENERAL MOTOR LINES,
ROANOKE, VA.**

Mr. MUNDAY. My name is Cline Munday, I am the owner and operator of General Motor Lines, Roanoke. And I should like to have my statement made a part of the record.

Mr. STAGGERS. I would like to ask you, too, if there are further hearings would you like to appear and testify?

Mr. MUNDAY. Yes.

Mr. STAGGERS. Are you for or against the bill?

Mr. MUNDAY. I am against the bill in its present form.

Mr. STAGGERS. In its present form?

Mr. MUNDAY. Yes.

Mr. STAGGERS. Your statement will be made a part of the record at this point.

Mr. MUNDAY. Thank you, sir.

Mr. STAGGERS. Thank you.

(The prepared statement of Mr. Cline Munday is as follows:)

STATEMENT OF CLINE MUNDAY ON S. 320 AND H.R. 2483

I am Cline Munday, owner and operator of General Motor Lines, Roanoke, Va. I am interested in this bill a great deal as it concerns my own personal welfare.

I operate a small motor freight carrier in Virginia serving over 50 points, a majority of which have a population of less than 5,000. Members of this committee have heard statements that this bill will not hurt anyone. Of course, and one might ask, who will it help? It does hurt in my particular case. In fact, it will take approximately half of my business from me.

In the great State of Virginia, an owner of a State certificate is allowed to lease a State certificate to another person or carrier.

In 1953, I leased all of the intrastate certificates of another carrier. The owner retired from the motor freight business. Following approval of the lease by the State Corporation Commission of Virginia, I then registered this lease with the Interstate Commerce Commission, thereby authorizing me to transport interstate traffic under the second proviso.

Now, under this bill, I would not qualify to obtain authority of any kind, since I own no State certificates to perform transportation services which are now conducted under the lease. Moreover, the original owner of these leased certificates also would not qualify to obtain authority under the so-called grandfather clause of the instant bill. Thus, neither the operator conducting transportation under lease, nor the owner of the certificate would qualify, under the second section of this bill. The net effect of this bill would curtail my business operations at least 50 percent, leaving me with a fleet of equipment which would not be completely utilized.

No small operator, such as I, could stay in trucking business following an immediate loss of 50 percent of business.

I interchange traffic with all large and small carriers in my territory. Many of these carriers depend upon my services, which are a natural extension of their transportation service. Furthermore, my services are needed by the general public located at these small towns. For these reasons I object to the language of the bill in its present form.

Mr. STAGGERS. Is there anyone else who has a statement?

Identify yourself for the record.

**STATEMENT OF WILLIAM H. BLAKELEY, WILSON TRUCKING CORP.,
WAYNESBORO, VA.**

Mr. BLAKELEY. My name is William H. Blakeley and I am here representing the Wilson Trucking Corp. of Waynesboro, Va.

Mr. STAGGERS. May I ask you whether you are for or against the bill?

Mr. BLAKELEY. I am against the bill in its present form.

Mr. STAGGERS. Thank you very much. Your statement will be made a part of the record at this point.

Mr. BLAKELEY. Thank you, sir.

Mr. STAGGERS. Thank you.

(The prepared statement of Mr. William H. Blakeley is as follows:)

STATEMENT OF WILLIAM H. BLAKELEY ON S. 320 AND H.R. 2483

Mr. Chairman, and members of the subcommittee, my name is William H. Blakeley, and my appearance here today is on behalf of Wilson Trucking Corp., Post Office Box 340, Waynesboro, Va. I have been employed by this company since May 15, 1948. I am appearing today to testify on my company's behalf on bill S. 320, which would repeal the second proviso in section 206(a)(1) of the Interstate Commerce Act.

Probably a brief outline of my company is in order. We operate in an area roughly described as one-third of the Commonwealth of Virginia, as a regular route common carrier. In this area, we serve over 500 small communities, many of which have no other freight service of any kind. One-half of our traffic is intrastate; the balance is interstate, which we receive from or give to long-line multistate carriers. Less truckload traffic constitutes over 99 percent of our traffic.

At the outset, I should like to say that my company has no objection to the repealing of this portion of the Interstate Commerce Act; however, we are greatly distressed by the suggested manner in which this is to be accomplished. Our principal concern deals with the second section of the bill—that portion which covers past operations.

Our first objection lies with the type of certificate to be issued. In 1935, prior to the enactment of part II of the Interstate Commerce Act, all motor carriers in the United States were free to operate between any two points in the United States. When they were placed under regulation, they were granted certificates of convenience and necessity after proving their past operations. When water carriers were brought under regulations in 1940, section 309 assured these carriers the same protection. In 1957, the contract carriers' obligations were redefined. This was accompanied in section 209(a)(3) by a grandfather clause that provided for a certificate of convenience and necessity. In 1958, another change in the Interstate Commerce Act provided certificates of convenience and necessity for carriers of certain food products which were exempt from Federal regulation. Even as late as 1960, under Senate bill 1509, the carriers of both Alaska and Hawaii were granted certificates of convenience and necessity after proving their past operations.

Under Senate bill 320, no such granting of a certificate of convenience and necessity is proposed. We, second proviso carriers, are to be issued, under this bill, a certificate of registration. We are rather at a loss to understand why we should not be afforded the same consideration that all other groups of carriers have been granted in prior legislation. The question arises in our mind, "Why are we being singled out for this unusual type of certificate?" Commissioner Murphy, in appearing before the Senate Committee on Interstate and Foreign Commerce on August 18, 1959, during a previous attempt to repeal the second proviso, stated: "As a possible alternative to the certificate of registration approach, the committee may wish to consider a provision authorizing the granting of certificates of public convenience and necessity under grandfather provisions similar to those set forth in section II of Senate bill 1720 (85th Con-

gress), introduced at the Commission's request, which also provided for the repeal of the second proviso." My company concurs with Commissioner Murphy's statement. We should receive a certificate of convenience and necessity with all of its benefits, not a certificate of registration with all of its uncertainties.

Our second objection to this bill lies in the portion which reads: "Or the termination or restriction in scope of the intrastate certificate, which automatically terminates or similarly restricts this certificate of registration." This short statement, in my opinion, creates considerable apprehension and spells doom for some of us second proviso carriers. We are all here today to reevaluate, on a national basis, part II of the Interstate Commerce Act. This has been done many times in the past several years. State legislatures also reevaluate their common carrier provisions; and to revoke or modify, or to change intrastate certificates with only limited power to reinstate them, places us small proviso carriers in financial jeopardy.

Many times a State legislature meets, regardless of the State, there is some legislation dealing with the State carriers. Some of this legislation would have adverse effect on the certificate holders. As previously stated, proviso carriers are totally dependent upon long-line multistate carriers for a large portion of their income; therefore, if, for instance, a bill in any State legislature, restricting the interchange of carriers operating in that State to only interchange with intrastate carriers were passed and became a law, it would automatically eliminate us from the greatest portion of our revenue. This is only a simple example. There are many such examples of potential changes that could be made by State legislatures that would have a tremendous impact on the operating authority of existing proviso carriers.

Presently, the Interstate Commerce Commission administers only the Interstate Commerce Act, in the policing and administering and the interpreting of the operating of motor carriers operating between the various States. By the adoption of this law in its present form, the Commission would be given an additional 50 different State laws to interpret, administer, and police. This will only lead to chaos.

There are many other facets of the bill which should be changed.

(1) Commercial zones were discussed to great extent yesterday. This bill does not provide for commercial zones for proviso carriers, yet the ICC Act does provide for commercial zones for multistate carriers. Commercial zones are extended by the ICC and an extension of a zone increases the multistate carrier's authority, even to the extent of encroachment upon the authority of a proviso carrier. For instance, recently in this area, it was attempted by a group to extend the commercial zone of Washington, D.C. to include Rockville, Md., Fairfax, Va., and even to Chantilly Airport.

Prior to the building of the Dulles International Airport, our company was the only carrier serving this community. Fortunately, the Commission saw fit to deny this application. However, other attempts will be made to open the case. If this is accomplished, 25 multistate carriers will have operating authority to the Dulles International Airport.

(2) This bill attempts to tie the intrastate certificate to the interstate certificate of registration. Many multistate carriers hold intrastate certificates of convenience and necessity. They are not restricted in any way or have the intrastate certificate tied to interstate certificates in any way.

As you can see this bill generally establishes another class of carriers. These carriers are restricted in such a manner that they do not fit into the pattern of other types of carriers. Our company believes that adequate legislation can be prepared, and in fact adequate legislation has been prepared, under S. 1720, written, introduced, and recommended by the ICC. We feel this is a fair bill and if at all possible, consideration should be given it at this time.

Mr. Chairman, I appreciate this opportunity to appear and testify and if the members of the subcommittee have any questions to ask, I shall be most happy to answer them.

Mr. STAGGERS. Is there anyone else?

You may proceed; identify yourself for the record.

**STATEMENT OF JOHN MONTGOMERY, PRESIDENT, HILL CITY
TRANSFER, INC., LYNCHBURG, VA.**

Mr. MONTGOMERY. My name is John Montgomery and I am president of Hill City Transfer, Inc., of Lynchburg, Va. And I am against the bill in its present form.

Mr. STAGGERS. Thank you, your statement will be incorporated in the record.

Mr. MONTGOMERY. Thank you, sir.

Mr. STAGGERS. Thank you.

(The prepared statement of Mr. John Montgomery is as follows:)

STATEMENT OF JOHN MONTGOMERY ON S. 320 AND H.R. 2483

My Name is John Montgomery. I am president of Hill City Transfer, Inc., of Lynchburg, Va.

My company operates 13 tractors, 22 trailers; our gross revenue in 1960 was \$265,000. This is a fairly large operation for a second proviso carrier. My operating authority extends from Lynchburg, Va., to Danville, Va., to South Hill, Va., as a regular route common carrier. We serve 30 small towns and communities daily, and interchange traffic with 15 long line multistate carriers. Four of these multistate carriers we interchange traffic with hold Virginia intrastate operating authority.

I am not opposed to the repeal of the second proviso. However, there are some aspects of this bill that do not take into consideration my property rights.

Bill S. 320 would give my company a certificate of registration. There have been many words written and spoken about certificates of registration. The ICC prior to 1942 issued this type of certificate. But stopped this practice. Why? Was this instrument issued unlawfully? Was it unnecessary? Or is it another piece of paper?

Frankly, I don't know, but I do know what Commissioner Rupert L. Murphy of the ICC stated on August 18, 1959, before Senator Smathers' Subcommittee on Surface Transportation. In his statement of a similar piece of legislation attempting to repeal the second proviso, and I quote verbatim:

"The certificate of registration proposed in this measure, is a new type of operating authority not heretofore provided in the Interstate Commerce Act, and it is not clear under the provisions of the bill as to what many of its characteristics would be with respect to the rights, duties, and responsibilities attaching thereto."

If Commissioner Murphy, one of our most respected Commissioners doesn't know what the rights, duties, and responsibilities are of a certificate of registration—it would be presumptuous on my part to attempt to interpret this type of certificate. This confuses me and many other proviso carriers.

However, I do not know what a certificate of public convenience and necessity is. I know the rights, duties, and responsibilities which are attached to this instrument.

In every case before Congress in the past the certificate granted motor carriers has been a bona fide certificate of public convenience and necessity and is a tangible asset. Bill S. 320 does not provide this protection.

I also seriously object to the marriage of the interstate certificate to the intrastate certificate as outlined in this bill.

As I mentioned previously, I interchange traffic with 15 multistate carriers, 4 of which hold Virginia intrastate certificates. These carriers are privileged to sell either their intrastate or interstate certificates as they see fit, bargaining for the greatest amount they can receive, as permitted under our free enterprise system. Gentlemen, I feel that my company should enjoy the same privileges. Any other action would be discriminatory to us second proviso carriers.

I appreciate the opportunity of speaking briefly to you and sincerely hope you will consider our property rights.

Mr. STAGGERS. Is there anyone else?
Identify yourself for the record.

**STATEMENT OF ROBERT O'NAN, O'NAN TRANSPORTATION CO.,
CARROLLTON, KY.**

Mr. O'NAN. My name is Robert O'Nan, owner and operator of O'Nan Transportation Co., of Carrollton, Ky. I would like to object to the bill in its present form. I would like to have my statement incorporated in the record.

Mr. STAGGERS. Very well, it will be made a part of the record at this point.

Mr. O'NAN. Thank you.

Mr. STAGGERS. Thank you, sir.

(The prepared statement of Mr. Robert O'Nan is as follows:)

STATEMENT OF ROBERT O'NAN ON S. 320 AND H.R. 2483

Mr. Chairman and subcommittee members, my name is Robert O'Nan, owner and operator of O'Nan Transportation Co. The O'Nan Transportation Co. is located in Carrollton, Ky., and operates pursuant to certain certificates granted by the Department of Motor Transportation of Kentucky and registered with the Interstate Commerce Commission so as to handle both interstate and intrastate freight within the State of Kentucky. O'Nan serves some 90 small towns and communities in north-central Kentucky.

Certificates of public convenience and necessity in the State of Kentucky are issued by the Department of Motor Transportation on a yearly basis subject to renewal upon submission of a renewal application, accompanied by a \$25 fee for each certificate. The purchase of the renewal application obviously is to obtain added revenue as it is processed, approved and administered without hearing.

The present bill provides that the certificate of registration authorizing the continuance of such transportation shall be subject to the same terms, conditions and limitations as are contained in the State certificates, except to the extent that such terms, conditions, or limitations are inconsistent with the requirements established by/or under the Interstate Commerce Act. The bill further provides that, if the State certificate is limited to a specific period of time, the certificate of registration so issued should be so limited.

The effect of the language in the bill would necessitate filing of a new application and proving a public need for each year following the expiration of the term certificate.

At present, the renewal application which I file with the Department of Motor Transportation each year, is handled administratively without hearing. A small carrier such as I could not absorb the costs of prosecution of a renewal application each year as contemplated by the language in this bill. And for this reason, I feel the language therein as it pertains to term certificates is completely objectionable and unfair.

As a second proviso carrier, I also believe that a certificate of public convenience and necessity should be issued under the so-called "grandfather" clause in H.R. 2483, rather than a certificate of registration. While it is true that certificates of registration were issued in the past by the ICC, the latter's action was subsequently reversed, and it discontinued issuing them. Apparently the ICC, at that time, questioned the validity of the certificate of registration, and the objections attendant thereunder.

These same questions present themselves here through the issuance of a certificate of registration, rather than certificate of public convenience and necessity. It is my further view that these features of the bill could be overcome by this committee adopting for consideration Senate bill 1720 which was submitted by the ICC and which we feel, was acceptable to the trucking industry.

Thank you for your courtesy and for the opportunity of presenting this statement.

Mr. STAGGERS. Is there anyone else who would like to have a statement incorporated in the record?

STATEMENT OF CHESTER A. ZYBLUT, COUNSEL, LOCAL AND SHORT HAUL CARRIERS NATIONAL CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. ZYBLUT. Mr. Chairman, I have a statement which is incomplete at this time. My name is Chester A. Zyblut, an attorney. I am representing Local and Short Haul Carriers National Conference of the American Trucking Associations, Inc. We are in opposition to this bill. I am hopeful that there will be a further continued hearing. In any event, I would like to submit a statement for the record of this proceeding.

Mr. STAGGERS. You will be afforded a reasonable time to do that. Submit your statement to the clerk of the committee to be incorporated in the record.

Mr. ZYBLUT. I will.

(The prepared statement of Chester A. Zyblut is as follows:)

STATEMENT OF CHESTER A. ZYBLUT, COUNSEL FOR LOCAL AND SHORT HAUL CARRIERS NATIONAL CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC. ON H.R. 2483 AND S. 320

Mr. Chairman and members of the subcommittee, my name is Chester A. Zyblut. I am a practicing attorney associated with the law firm of Dow, Lohnes & Albertson, and a member of the bar of the Interstate Commerce Commission, with offices in Washington, D.C. I am appearing on behalf of Local and Short Haul Carriers National Conference of the American Trucking Associations, Inc. Local and Short Haul Carriers National Conferences is one of the natural divisions or conferences of the American Trucking Associations, Inc. representing motor carriers engaged in local and short haul operations in the United States. The physical operations of this segment of the trucking industry are relatively small. Approximately 300 of its members conduct operations wholly within individual States, using as interstate operating authority the second proviso of section 206(a) (1) of the Interstate Commerce Act.

Present in the room is Mr. William E. Patterson, acting manager of Local and Short Haul Carriers National Conference. If there are any questions in regard to this conference's procedures and operations, Mr. Patterson will be glad to answer them.

While it appears that S. 320, which was introduced in the present session of Congress and subsequently was reported favorably from committee and passed by the U.S. Senate, has the full support of the trucking industry, I want to state at this time that one of the natural divisions or conferences of ATA; namely, Local and Short Haul Carriers National Conference, is unalterably opposed to the passage of this legislation in its present form for reasons hereafter stated.

S. 320 and H.R. 2483, which pertain to the status of second proviso carriers, do not have the full support of the trucking industry. The motion referred to by Mr. McBride and acted upon favorably by the executive committee of ATA on June 17, 1959, supported repeal of section 206(a) (1) of the Interstate Commerce Act. The bill before this committee does not provide for repeal of the second proviso section of 206(a) (1) but provides for its modification, retaining the proviso section of the act with the specified modifications proposed therein.

Immediately following the American Trucking Associations' executive committee meeting of June 17 and 18, 1959, this conference, which was then known as Local Cartage National Conference, notified the American Trucking Associations that independent action would be taken in opposition to the foregoing motion for the reason that we, the local and short haul carriers of the trucking industry, do not believe that adequate consideration was given to the effect the legislative proposal would have upon our membership and industry.

During consideration of S. 2417, 86th Congress, 1st sess., this conference requested to be permitted to testify before the appropriate Senate committee in opposition to this legislation. Even though time was assigned for a witness of this conference to testify, the hearings were recessed by Chairman Smathers of the subcommittee hearing statements of proponents and opponents of the

bill to permit all parties to compromise their positions. The conference, which as previously stated represents approximately 300 second proviso carriers which would be affected by this legislation, was neither consulted nor requested to participate in the formulation of legislation affecting the interests of its own members following the suspension of the hearing therein.

Following the suspension of the hearing on S. 2417, a so-called agreed bill was introduced as S. 3228. The only knowledge this conference had concerning this bill was the favorable reporting of it by the Senate committee. This bill passed the Senate, but was not considered by the House due to Congress adjournment.

In the current session of Congress, S. 320 was introduced. This bill is substantially the same as S. 3228. The conference again requested time to be heard by the Senate committee. The latter held no hearings on S. 320. The bill was subsequently reported from the committee and thereafter passed by the U.S. Senate. This hearings being held by this eminent committee gives this conference its first opportunity to express its objections to this onerous legislation and for which we are deeply grateful.

We are unalterably opposed to S. 320 in its present form for the reason that it fails to give existing second proviso carriers genuine grandfather authority similar to that granted existing certificated motor carriers presently operating in this country when the question of their status was in issue. Any time the status of any carrier or group of carriers furnishing transportation services in the United States has been affected through legislative enactment, the group or individual carriers so affected has been assured and guaranteed grandfather authority from the regulatory agency. And, in each instance a certificate of public convenience and necessity was issued. In this regard, the Motor Carrier Act of 1935 and the Transportation Act of 1958 provided that a certificate of public convenience and necessity would be issued to qualified applicants pursuant to a grandfather provision therein.

The proposed legislation does not accord second proviso carriers the same rights accorded motor carriers whose status was affected by amendments to the Interstate Commerce Act, notwithstanding the fact that they furnish the same character of service as carriers certificated by the Interstate Commerce Commission to handle traffic in interstate or foreign commerce, except for the fact that the second proviso carriers' operations are confined to one State. An example is a motor carrier which I represent and who is a member of Local and Short Haul Carriers National Conference. Central Storage & Transfer Co. of Harrisburg, Pa., is now and has been conducting operations as a common carrier by motor vehicle in the Harrisburg-York-Lancaster, Pa., area for approximately 30 years. It performs transportation services so ably described by the chairman of this committee as being a feeder-type or distribution-type service. This type of service is performed on behalf of line-haul motor carriers, railroads, and freight forwarders. It is a vital link in our national transportation complex. This carrier's operation in the Harrisburg-York-Lancaster area in handling freight in interstate and foreign commerce under the second proviso section of the act is competitive with line-haul carriers serving the same points. Nonetheless, it is called upon by the latter to render assembly and distribution service, pickup and delivery services and a so-called feeder service. In fact, this second proviso carrier's operations in handling freight in interstate or foreign commerce are an adjunct of line-haul motor service, rail service, and freight forwarder service. No good reason exists for according this class of motor carriers less favorable treatment than that accorded presently certificated motor carriers when the status of their operations was in issue as a result of legislative enactment. Central Storage & Transfer, and the group of carriers represented by it are entitled to and should obtain a genuine certificate from the Commission under the grandfather clause the same as their counterparts who have received a certificate of public convenience and necessity, particularly since the second proviso carriers are subject to all of the applicable requirements of the Interstate Commerce Act as are certificated motor carriers. There is no need to discriminate against the second proviso carriers by issuing to them certificates of registration rather than a genuine certificate of public convenience and necessity and thereby creating a new class of carriers.

Many cities and towns located on the borders of States such as New York, N.Y., and Jersey City, N.J.; Philadelphia, Pa., and Camden, N.J.; Cincinnati, Ohio, and Covington, Ky.; Louisville, Ky., and Jefferson City, Ind.; Chicago, Ill., and Gary and Whiting, Ind.; Kansas City, Kans., and Kansas City, Mo.; St. Louis,

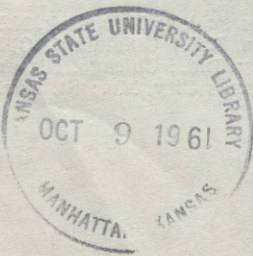
Mo., and East St. Louis, Ill.; Duluth, Minn., and Superior, Wis.; Washington, D.C., Alexandria and Arlington, Va., and Bethesda and Chevy Chase, Md., present an unusual problem which deserves brief comment. Local and short haul carriers now may lawfully operate in interstate or foreign commerce pursuant to the exemption provided for under section 203(b) (8) of the Interstate Commerce Act. This exemption affords motor carriers the right to operate in the commercial zone of these cities without the necessity of a certificate of public convenience and necessity. Many of these carriers conducting operations in the exempt commercial zone now hold authority from their respective State commissions to conduct operations in intrastate commerce. However, because their operations in the exempt commercial zone extend and overlap into another State thereby making them a multiple State carrier under Interstate Commerce Commission rulings, these carriers are prohibited from filing their one-State authority issued by a regulatory agency under the second proviso section of the Interstate Commerce Act. Many carriers finding themselves in this dilemma have filed form BMC-75 with the Interstate Commerce Commission qualifying them as second proviso carriers and further voluntarily refusing to conduct operations in the complete exempt commercial zone area which overlaps into another State as prescribed by the Interstate Commerce Commission. By this action these carriers have deprived themselves of revenue which the Interstate Commerce Act gave to them by virtue of the exempt commercial zone operation under section 203(b) (8) of the act.

If this honorable committee comes to the conclusion that the second proviso section of the Interstate Commerce Act has outlived its usefulness in establishing a strong national transportation system, our conference would not be opposed to repeal of section 206(a) (1) of the act as originally proposed by the Interstate Commerce Commission, provided, however, that the legislation repealing the second proviso section of the act simply protects motor carriers now engaged in conducting operations in interstate or foreign commerce pursuant thereto by granting them genuine grandfather rights. Moreover, a provision should be included to protect motor carriers which, for many years, have been unable to conduct operations in interstate and foreign commerce pursuant to the second proviso section of the act because their present exempt commercial zone operations extend into and overlap into adjoining States. This could be accomplished by substitution of S. 1720, the bill originally proposed by the Interstate Commerce Commission, for S. 320, with the suggested modifications.

I thank you for the opportunity of presenting this statement.

Mr. STAGGERS. The committee stands adjourned subject to the call of the Chair.

(Whereupon, at 12:05 p.m., the subcommittee was recessed, subject to the call of the Chair.)



INTRASTATE MOTOR CARRIERS IN INTERSTATE COMMERCE

TUESDAY, AUGUST 22, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 2:15 p.m., in room 1310, New House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The committee will be in order, please.

I submit for inclusion in the record a copy of a letter from the Interstate Commerce Commission in response to a question posed to them in a previous hearing.

(The letter referred to follows:)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 21, 1961.

HON. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN WILLIAMS: This is in reply to your letter of August 4, 1961, inquiring as to whether the Commission would prefer to see the enactment of pending bills H.R. 2483 (S. 320), dealing with the so-called second proviso motor carriers or a bill similar to S. 1720, 85th Congress, which dealt with the same subject matter.

Since, as a result of the recent hearings before your subcommittee on H.R. 2483 and S. 320, you are undoubtedly familiar with the problems that have arisen under the second proviso in section 206(a)(1) of the Interstate Commerce Act, I shall not attempt to review them here. Because of these problems, the Commission recommended in its annual reports for 1955 through 1957 that this proviso be repealed and that grandfather rights, in the form of ICC certificates based on past bona fide operations, be provided for those carriers operating under the proviso. Bills were introduced in the 85th Congress to give effect to this recommendation, including S. 1720 on which hearings were held before the Senate Interstate and Foreign Commerce Committee. No further action, however, was taken on this proposal.

Subsequently S. 2417 was introduced during the 86th Congress which also provided for repeal of the second proviso. However, enactment of this measure was strongly opposed at the hearing before the Surface Transportation Subcommittee of the Senate Commerce Committee because of the treatment proposed to be accorded the rights of those then operating under the proviso, i.e., through the issuance of certificates of registration, the validity of which would depend upon the continued validity of the State certificate. Following that hearing, and at the request of the chairman of the Senate subcommittee, industry representatives met with members of the subcommittee staff (at which members of the Commission's staff were also present) in order to attempt to reach agreement on the nature of the protection to be afforded existing operators. The parties agreed on a revised version of S. 2417, later introduced as

S. 3228. As originally introduced, S. 3228 was very similar to S. 1720 of the previous Congress, with certain refinements. At subsequent hearings, before the subcommittee, however, spokesman for the National Association of Railroad & Utilities Commissioners opposed repeal of the second proviso as contemplated in S. 2417 and S. 3228 (as originally introduced). The NARUC contended that the critical issue was whether S. 3228 should be amended to allow a State commission, on the scene, with full and extensive knowledge of transportation conditions within its own State, to determine the need for motor carrier services within its own State.

Thereafter, at the request of the chairman of the Senate subcommittee, representatives of the Commission and the NARUC met in an effort to reach an area of agreement respecting a solution to the problem. The compromise reached was reflected in S. 3228 as reported out by the Senate committee on June 22, 1960, and as passed by the Senate on September 1, 1960. This proposal was reintroduced in the 87th Congress as S. 320 and H.R. 2483.

The Commission's position on these proposals is, therefore, that we would prefer to see outright repeal of the proviso as provided in S. 3228, as originally introduced, which is a refined version of S. 1720, but if repeal is not to be had, we recommend enactment of H.R. 2483 or S. 320. A copy of S. 3228, as originally introduced, is enclosed for your information.

In connection with these proposals, we feel that we should point out to the subcommittee that under either of the alternatives the Commission would be required to process about 3,000 "grandfather" applications if all carriers presently operating under the proviso should file such applications. In order to process that number and to dispose of them over a 2-year period would, it is estimated on the basis of past experience, require the employment of at least 15 additional hearing examiners and 15 additional nonhearing examiners. In order to handle the additional and continuing workload that would result from the enactment of H.R. 2483 or S. 320, i.e., Federal Register publication and the processing of petitions for review of State action, it is estimated, assuming the filing of 3,000 such petitions per year, that at least 20 additional nonhearing examiners and about 5 additional clerical employees would be needed in our Bureau of Operating Rights. These estimates are exclusive of any additional personnel that may be required in other bureaus of the Commission to perform the mechanical functions of reproduction and service.

The Commission greatly appreciates this opportunity to express its position with respect to the various measures relating to the second proviso which are now being considered by your subcommittee.

Sincerely,

EVERETT HUTCHINSON, *Chairman.*

[S. 3228, 86th Cong., 2d sess.]

A BILL To amend the provisions of part II of the Interstate Commerce Act which authorize certain operations within a State as a common carrier by motor vehicle engaged in interstate or foreign commerce if State authorized

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 206(a) of the Interstate Commerce Act, as amended (49 U.S.C. 306(a)), is amended by changing the colon at the end of the first proviso to a period and striking the rest of the paragraph.

SEC. 2. That subsection (a) of section 206 of the said Act is amended by adding at the end thereof a new paragraph (4) as follows:

"(4) Subject to the provisions of sections 204(a)(4a) and 210, if any person (or its predecessor in interest) was in bona fide operation solely within a State on the effective date of this paragraph as a common carrier by motor vehicle engaged in the transportation of persons or property in interstate or foreign commerce between places within such State, but with respect to such carrier there was not required to be in force a certificate of public convenience and necessity issued by the Commission, authorizing such operations by reason of the exemption in the second proviso in paragraph (1) of this subsection prior to its repeal (on the effective date of this paragraph), over the route or routes or within the territory for which application is made as provided in paragraph (b) of this section, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on the effective date of this paragraph during the season ordinarily covered by its operations, and has so operated since that time), except in either instance

as to interruptions of service over which such person or its predecessor in interest had no control, the Commission shall issue a certificate authorizing such operations as were actually and lawfully being conducted on the effective date of this paragraph without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date on which this paragraph takes effect. Pending the determination of any such application, the continuance of such operation without a certificate issued by the Commission shall be lawful: *Provided, however,* That, pursuant to the provisions of section 208(a), in specifying the service to be rendered and attaching terms, conditions, and limitations in any certificate issued pursuant to the provisions of this paragraph, the Commission shall specify therein that such certificate shall not be construed to authorize any physical operations beyond the confines of a single State, nor shall it be construed to permit through consolidation, merger, transfer, or otherwise, under sections 5 or 212(b) the joinder of operations under such certificate with operations under other franchises which would result in combined operations beyond the confines of a single State without the Commission first having found that the operations conducted under such certificate is or will be required by the present or future public convenience and necessity and that the transaction otherwise conforms to the requirements of this Act: *And provided further,* That past lawful operations shall be considered as competent evidence in connection with any issue of public convenience and necessity arising under the provisions of this paragraph.

Sec. 3. That section 203(c) and section 212(a) of the said Act are amended by striking from section 203(c) the words "and in the second proviso in section 206(a) (1)."; and by inserting in section 212(a) the word "and" after the words "section 203(b).," and striking from the second proviso of section 212(a) the words "or by virtue of the second proviso of section 206(a)".

Mr. WILLIAMS. Our first witness this afternoon is Mr. Murphy, of the Interstate Commerce Commission.

We are continuing hearings on Senate bill 320 and House Resolution 2483.

STATEMENT OF RUPERT L. MURPHY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY HOWARD G. FREAS, COMMISSIONER, ICC; JAMES A. MURRAY, ASSOCIATE GENERAL COUNSEL, ICC; GEORGE A. MEYER, ASSISTANT DIRECTOR, BUREAU OF MOTOR CARRIERS, ICC; BERTRAM E. STILLWELL, DIRECTOR, BUREAU OF OPERATING RIGHTS, ICC; HIRAM H. SPICER, LEGISLATIVE COUNSEL, ICC; DALE W. HARDIN, CONGRESSIONAL LIAISON OFFICER, ICC

Mr. MURPHY. Thank you.

Mr. Chairman, I would like to say that I have with me my colleague, Commissioner Freas.

Mr. WILLIAMS. We are very happy to have Mr. Freas.

Mr. MURPHY. Also our Associate General Counsel, Mr. Murray, and the Assistant Director, Bureau of Motor Carriers, Mr. Meyer, and the Director, Bureau of Motor Carrier Operating Rights, Mr. Bert Stillwell. And of course you know Mr. Spicer and Mr. Hardin.

Mr. WILLIAMS. We are very happy to have you here.

Mr. MURPHY. Mr. Chairman and members of the subcommittee, my name is Rupert L. Murphy. I am the present Vice Chairman of the Interstate Commerce Commission and have served in that capacity since March 7 of this year.

I am appearing today to testify on the Commission's behalf on an act, S. 320, and a bill, H.R. 2483, companion measures which would amend the Interstate Commerce Act with respect to the registration of State certificates under which a common carrier by motor vehicle may engage in interstate and foreign commerce within a State.

Specifically, these two measures would modify the second proviso of section 206(a) (1) of the Interstate Commerce Act with respect to its future operation, with both measures containing provisions designed to preserve the rights of carriers now engaged in operations under the proviso.

As the second proviso now reads, common carriers by motor vehicle operating solely within a State are not required to obtain from the Commission a certificate authorizing the transportation of passengers or property in interstate or foreign commerce between points within that State if such carriers have obtained a certificate of public convenience and necessity from the State. The Commission does require, however, that these carriers file statements (sometimes called registrations) describing their operations.

Originally, the second proviso was included in the Motor Carrier Act of 1935 because the transportation by interstate carriers of property moving in interstate commerce wholly within a State was considered to be merely incidental to, and relatively unimportant in comparison with, their intrastate operations.

However, with the passage of time and the growth of the motor carrier industry, it has developed that the interstate transportation performed by such carriers frequently constitutes an important link in a route which connects cities in different States, with the result that State certificates have been obtained solely for the purpose of providing such links.

In addition to exempting interstate operations wholly within a single State from the certificate requirements of the act, it appears that the intent behind the second proviso was that State authorities could better determine the need for such limited operations. This has not proved to be the case, however.

In fact, State commissions, in many instances, have had no opportunity to make such a determination. Many multiple-State carriers, for example, ineligible to operate under the second proviso, already held, or subsequently obtained, intrastate certificates.

These multiple-State carriers, although not eligible to operate under the second proviso themselves, could, and would, ultimately transfer their State certificates to persons who were eligible to operate under the proviso.

In addition, since the carriers operating under the proviso would otherwise be subject to the Commission's jurisdiction, many of them chose to obtain interstate certificates to which they became entitled under the various grandfather clauses. Thereafter, through separate transfers the intrastate and interstate certificates passed into different hands, and because the present proviso enables the transferee of the State certificate also to engage in interstate operations, two interstate carriers began to operate where there had previously been but one.

The same general result obtains where carriers operating under the proviso purchase from multiple-State carriers portions of their oper-

ations within a single State which are covered by interstate certificates to which the purchaser became entitled.

Transactions such as these have created a multiplicity of interstate carriers whose entry into the field is beyond the effective control of either the States or the Interstate Commerce Commission under the present provisions of the Interstate Commerce Act.

Under the terms of the amendment proposed in S. 320 and H.R. 2483, a State commission, in passing upon an application for an intrastate certificate would be authorized to determine whether a public need exists for the applicant's operation in interstate and foreign commerce within the scope of the granted intrastate certificate.

Thus, the State commission would make separate findings with respect to both the proposed interstate and intrastate operations. The action of the State commission in making its determination as to the interstate operations would be preceded by appropriate notice to interested persons in accordance with the usual Federal notice procedure in order to afford them an opportunity to appear and be heard. Any party in interest who opposed the grant of interstate rights before the State commission could petition the Interstate Commerce Commission for reconsideration upon the record made before the State commission authorizing such grant.

Persons granted interstate authority through such State proceedings would be issued certificates of registration by the Interstate Commerce Commission. The scope of such certificates of registration would be within the limits of the intrastate authority, and would be valid only so long as the holder was operating solely within a single State, and was not controlled by, controlling, or under common control with a carrier operating outside the State.

Certificates of registration so issued would be transferable subject to the limitations contained in section 5 of the Interstate Commerce Act dealing with carrier unifications and mergers. They could not, however, be transferred separately and apart from the intrastate rights.

Transfer of the intrastate rights without a corresponding transfer of the certificate of registration would void the interstate rights. In addition, any subsequent termination of, or restriction in, the scope of the intrastate certificate would likewise restrict the interstate rights.

These interstate rights would also be subject to revocation or suspension by the Interstate Commerce Commission for violations of the Interstate Commerce Act in the same manner as certificates of public convenience and necessity issued by the Commission are subject to suspension or revocation.

These proposed measures further provide that those persons presently engaged in interstate and foreign commerce under the existing proviso may be issued a certificate of registration which, in general, would confer the same rights and privileges as would attach in the case of future grants under the amended proviso. The certificate of registration, for example, would be transferable subject to the restrictions relating to separation of interstate and intrastate rights, and would be subject to suspension and revocation by the Commission for violations of the Interstate Commerce Act.

While appropriate provisions would be made for seasonal operations and interruptions of service beyond the carrier's control, the

scope of a certificate of registration issued to such persons would be limited to those operations being conducted under the State certificate. An informal procedure would be used whenever practicable and permissible in determining the scope of such certificates.

As the members of the subcommittee may know, H.R. 2483 and S. 320 are the result of efforts made last year by the National Association of Railroad & Utilities Commissioners and the Interstate Commerce Commission to reach an area of agreement on a solution to the problems which have arisen under the second proviso.

The solution theretofore recommended by the Commission in its annual reports for 1955 through 1957 was outright repeal of the proviso, with a provision for grandfather rights in the form of regular ICC certificates for the protection of existing carriers.

S. 1720 and H.R. 6084 were introduced in the 85th Congress to give effect to that recommendation, and S. 3228, as originally introduced in the last Congress, represents a refined version of those bills. Thus, while we favor the repeal of the proviso as provided in S. 3228, as originally introduced in the 86th Congress, we would also favor the enactment of H.R. 2483 or S. 320 if repeal is not possible.

We also feel that we should point out to the subcommittee that under either of the alternatives the Commission would be required to process about 3,000 grandfather applications if all carriers presently operating under the proviso were to file such applications.

To process that number and to dispose of them over a 2-year period would require, according to estimates made on the basis of past experience, the employment of at least 15 additional hearing examiners and 15 additional nonhearing examiners. In order to handle the additional and continuing workload that would result from the enactment of H.R. 2483 or S. 320, such as Federal Register publication and the processing of petitions for review of State action, it is estimated, on the assumption that 3,000 such petitions would be filed each year, that at least 20 additional nonhearing examiners and about 5 additional clerical employees would be needed in our Bureau of Operating Rights. These estimates are exclusive of any additional personnel as may be required in other bureaus of the Commission to perform the mechanical functions of reproduction and service.

Mr. Chairman and members of the subcommittee, we appreciate this opportunity to appear before you today, and if there are any questions at this time, I will be glad to try to answer them for you.

Mr. WILLIAMS. Thank you very much, Mr. Murphy.

Mr. HARRIS?

Mr. HARRIS. Mr. Chairman, I have a few questions I would like to ask. But in the meantime, I see our colleague from California, Mr. Sisk has arrived. He has indicated to me his interest in this legislation. He has a very brief statement to make.

I would suggest that, if Commissioner Murphy does not object, Mr. Sisk be permitted to make his statement, because being a member of the great Rules Committee of the House, he could be called away from here right away.

Mr. MURPHY. I would be most pleased to stand aside.

Mr. WILLIAMS. The suggestion is excellent. If I understand it correctly, Mr. Sisk, in his testimony, will introduce a new issue which has not previously been introduced in this testimony.

I would like very much to have the Commissioner comment on it after he has made his statement.

**STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA**

Mr. SISK. Thank you, Mr. Chairman. I appreciate very much this opportunity to make a brief statement. I appreciate the other gentleman giving me this opportunity to break in here. I hope I have not upset your schedule by being late.

Well, Mr. Chairman, I wish to say in the very beginning that I am not expert in matters of this type. However, I have had a number of people in California, and especially in my own district, who have been somewhat concerned with some of the language in H.R. 2483, or I believe a similar bill, S. 230, which will be referred to also.

I would like, with your permission, to quote briefly from a letter I have here, which I think more ably explains the position of my people than I could probably put in my own words. I think I could do it more briefly this way.

With your permission, I would like to excerpt this letter.

Mr. WILLIAMS. We will be very happy to have the entire letter included.

Mr. SISK. Yes, Mr. Chairman, I think it would be well to place the letter in the record.

Mr. WILLIAMS. Very well.

(The letter referred to follows:)

TED PETERS TRUCKING CO., INC.,
Los Angeles, Calif., February 23, 1961.

Re S. 320 (Smathers), H.R. 2483 (Harris), (87th Cong., 1st sess.).

Congressman B. F. SISK,
House Office Building, Washington, D.C.

DEAR BERNIE: You will recall that last year we had considerable correspondence covering the foregoing referenced bills when they were introduced in the 86th Congress, 2d session, as S. 3228 (Smathers).

My feelings today are much the same as they were a year ago.

These bills are designed to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State.

(1) Specifically, the second proviso to paragraph (1) of subsection (a) of section 206 of the Interstate Commerce Act would be amended effective April 1, 1961. The two bills are identical. Moreover, except for the effective date, the two bills are identical with S. 3228 (Smathers) introduced before the 86th Congress, 2d session, as that latter bill was reported out and amended on the floor of the Senate. You will recall that S. 3228 failed of passage because of the adjournment of Congress.

(2) Your particular attention is invited to page 7 of S. 320 and H.R. 2483 and to the language contained on the lower half of the page reading as follows:

"A notice of intent to engage in interstate and foreign operations accompanied by certified copies of State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the former provisions of the second proviso of section 206(a), shall be prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof."

(3) S. 320 and H.R. 2483 should be amended by striking the words "prima facie" and substituting therefor the word "conclusive." This change is desirable and necessary in order that proceedings before the Interstate Commerce Commission under the grandfather clause of the two bills or either of them may be concluded promptly and without endless litigation. The words "prima facie

proof" are insufficient to prevent or even discourage prolonged and needless litigation. A mere sworn assertion by any party having an interest in an operating authority based on such "prima facie" proof that a given carrier had not actually been engaged in transportation, or if it had been so engaged that there had been an abandonment or interruption, would be sufficient to bring the matter to issue. Thereafter further proceedings would be necessary to take evidence for the purpose of establishing the existence of authority by virtue of prior filing under the second proviso of section 206 (a).

(4) Based upon the procedure the Interstate Commerce Commission has followed in past grandfather cases. I can assure you that the ultimate measure of proof would be what the carrier had actually done in the way of engaging in interstate or foreign commerce both as to actual commodities transported and specific points served. Based upon past experience it is estimated that the time lapse in fixing the scope, nature, and extent of an operative right might well run anywhere from 6 months to 3 years. This all for one carrier. There are several thousand registered State certificates now on file with the Commission under the second proviso of section 206 (a). Several years will lapse with continued and constant litigation before the Commission in order to conclusively determine the nature, scope, and extent of interstate or foreign commerce operating authorities under the proposed legislation with the words "prima facie" included in the bill.

(5) The timelag in reaching final determination under proceedings before the Interstate Commerce Commission is one of the considerations involved in a preliminary report issued by James Landis, Special Assistant to President Kennedy, in his study of regulatory agencies. One of the principal factors contributing to the timelag in final determination in litigated cases before the Interstate Commerce Commission is the staggering number of such proceedings forming an almost impossible workload.

S. 320 and H.R. 2483 as introduced will add to that workload by several thousand cases. More importantly, carriers, their stockholders, and the shipping public will not be aware of the nature and extent of the "grandfather" authorities under these bills for a matter of years. This unsatisfactory result can easily be avoided through the substitution of the word "conclusive" for the words "prima facie" as they appear in the portion of the "grandfather" clause quoted above.

(6) The members of the Interstate Commerce Commission and their staff are now more than sorely taxed to dispose properly of litigation before them and that which will normally arise. In satisfying the needs of commerce, this is a time to avoid needless and senseless litigation.

I suggest that you enter an objection to the handling of the referenced bills on the Consent Calendar thereby insuring the passage of ample time within which the Congress may carefully consider the proposed amendments involving, among other things, the grandfathering of carrier authorities involving the registration of State certificates which has now been going on for a period of some 26 years. The amount of money which could be expended in the determination of the nature, scope, and extent of such operating authorities could easily run into millions of dollars. This is an expenditure that will initially be borne by the carrier industry representing applicants and protestants. In the end, however, it is an expense, and a needless one, which the shipping public will have to bear.

I would appreciate your thoughts on this matter, especially in regard to the mechanics of making the proposed change in the bills. Do you think it would be possible and wise, to solicit the views of Mr. James Landis concerning the bills as introduced?

It is my understanding that you will be in the District during the first week of April. If the bill is not going to be reported out in the House prior to that time, I would appreciate discussing this with you at that time. If action is going to be taken before then, I would appreciate your letting me know so that I may write to you at further length or phone you.

Best regards.

Sincerely yours,

LOWELL N. PETERS.

Mr. SISK. Mr. Chairman, this specific subject has to do with certain language which I believe appears on page 7 of the bill, where the words "prima facie" are used.

Now, as I understand that particular language—and I am sorry I do not have a copy of the bill in front of me—it reads in this form, and I am quoting from page 7:

A notice of intent to engage in interstate and foreign operations accompanied by certified copies of State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the former provisions of the second proviso of section 206(a) shall be prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof.

Now, with reference to S. 320 and H.R. 2483, we recommend that they should be amended by striking the words "prima facie" and substituting therefor the word "conclusive." This change is desirable and necessary in order that proceedings before the Interstate Commerce Commission under the "grandfather" clause of the two bills or either of them may be concluded promptly and without endless litigation.

The words "prima facie" proof is insufficient to prevent or even discourage prolonged and needless litigation. A mere sworn assertion by any party having an interest in an operating authority based on such prima facie proof that a given carrier has not actually been engaged in transportation, or if it had been so engaged that there had been an abandonment or interruption, would be sufficient to bring the matter to issue. Therefore, further proceedings would be necessary to take evidence for the purpose of establishing the existence of authority by virtue of prior filing under the second proviso of section 206(a). Based upon the procedure that the Interstate Commerce Commission has followed in past "grandfather" cases, I can assure you that the ultimate measure of proof would be what the carrier had actually done in the way of engaging in interstate or foreign commerce both as to actual commodities transported and specific points served.

Based upon past experience it is estimated that the time lapse in fixing the scope, nature, and extent of an operative right might well run anywhere from 6 months to 3 years. This, all for one carrier.

There are several thousand registered State certificates now on file with the Commission under the second proviso of section 206(a). Several years will lapse with continued and constant litigation before the Commission in order to conclusively determine the nature, scope, and extent of interstate or foreign commerce operating authorities under the proposed legislation, with the words "prima facie" included in the bill.

He goes on at some considerable length, Mr. Chairman. This is a 3-page letter discussing the legal issues. But since you have granted me permission to have the entire letter included, I will conclude my remarks by just briefly saying this.

As I understand the concern of many of the intrastate trucking people in California, it is the fact that unless the certificates which have been granted by the State, are considered to be conclusive proof, they can be led into long litigation—that is, if the words "prima facie" are to be left in the bill, which would permit them to question and raise an issue—then long litigation could tend to break or bankrupt a number of these small truckers. And they are quite concerned.

They have indicated this, as I say, in a number of communications to me. As I say, this letter, which has been put in the record, rather adequately spells out their concern.

Further, their feeling that the word "conclusive" would not do injury to the bill.

Now, I understand, though, that there are those who may, for many reasons, have serious objections to the substitution of the word "conclusive." But the position of my people is that they feel that this would be a much better measure. In fact, I understand that their general position at the present time would be to oppose the legislation if the words "prima facie" were left in there, because of this fear of long litigation in which they might become involved.

Mr. WILLIAMS. Does that conclude your statement?

Mr. SISK. That concludes my statement, Mr. Chairman.

Mr. WILLIAMS. Mr. Sisk, your suggested amendment would be applicable only in the case of the issuance of "grandfather" rights, is that correct?

Mr. SISK. That is my understanding.

Mr. WILLIAMS. And not in the case of new applications?

Mr. SISK. No, it would have no bearing on new applications, as I understand it.

Mr. WILLIAMS. Do I understand your position to be that in the case of these carriers who have been operating under State certificate, that the ICC should, in your opinion, not be given any authority to revoke those certificates insofar as the interstate operations are concerned?

Mr. SISK. That is right.

Mr. WILLIAMS. Within the State of California?

Mr. SISK. That is right—or any other State. It just happens that I am familiar only with California.

Mr. WILLIAMS. Do you know what the position of the public utilities commission might be in the State of California?

Mr. SISK. I am sorry, I do not. Now, I have quite a file on this. I have not had an opportunity since discussing with the chairman, and having heard of this hearing, to even go through my file and see what other material I have. I simply grabbed up some specific material I had in mind. I do not know what their position is.

Mr. WILLIAMS. I might say I have a letter from them in which they offer their unqualified support of the legislation. The reason I ask you the question was, I did not know whether you had discussed that with them or not.

Mr. SISK. Since you mention it, I think I have been informed it was correct. But at the moment, I do not have the communication myself on it.

Mr. WILLIAMS. Mr. Harris?

Mr. HARRIS. I do not have any questions at this time, Mr. Chairman.

Mr. WILLIAMS. Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. WILLIAMS. Mr. Macdonald?

Mr. MACDONALD. I have no questions.

Mr. SISK. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Murphy will you return now.

I believe you had concluded your prepared statement and were ready to submit to questioning.

STATEMENT OF RUPERT L. MURPHY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY HOWARD G. FREAS, COMMISSIONER, ICC; JAMES A. MURRAY, ASSOCIATE GENERAL COUNSEL, ICC; GEORGE A. MEYER, ASSISTANT DIRECTOR, BUREAU OF MOTOR CARRIERS, ICC; BERTRAM E. STILLWELL, DIRECTOR, BUREAU OF OPERATING RIGHTS, ICC; HIRAM H. SPICER, LEGISLATIVE COUNSEL, ICC; DALE W. HARDIN, CONGRESSIONAL LIAISON OFFICER, ICC—Resumed

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, will the present common carriers that have a State certificate be affected in anyway by this new bill, S. 320, or H.R. 2483? Will it prohibit them from continuing their business?

Mr. MURPHY. I would have to answer that no, that it would not. I base that on a provision, reading in part beginning on line 24, page 6, of H.R. 2483, that—

any carrier lawfully engaged in interstate and foreign operations on the effective date of this paragraph, pursuant to such provisions, may continue such operation for 120 days after the effective date of this subsection, and if an appropriate application for a certificate of registration is filed within such period, such operation may be continued pending the determination of such application.

Now, without reading all of it, Mr. Friedel, I will say this: The bill includes, I think, a very simple, clear procedure for determining the grandfather rights, that is for the certificate of registration. So I do not think there would be any question for a single-State operator that has registered his interstate operation under the present proviso of losing his interstate authority to continue if he was in legal operation at the time the bill was passed.

Mr. FRIEDEL. That is my one great concern—that the present certificate holders would be affected. Reading this language: "such operations may be continued pending the determination of such application." Now, what do you mean by "pending"?

Mr. MURPHY. Well, when they file their application for the certificate of registration based on the grandfather rights, I think we have tried to provide there a very simple approach for getting a copy of the State certificate and their previous registration. And I do not see any real difficulty.

Mr. FRIEDEL. Because it is pending the determination of such application. If you say they would automatically get the new certificate, I would not object at all. I am only worried about the ones in business now. I am worried about—

Mr. MURPHY. If he has been in business and operating within the scope of the rights he has, I see no difficulty. Now, if he has quite a large authority that has not been operating, you might say abandoned for years, there would be some question, I think, because it says "in lawful operation." But I myself cannot see any difficulty or possibility of a man losing any rights he has and is using today under this, because we propose very simple procedures to be followed in getting rid of all those grandfather applications for the certificate of registration.

Mr. FRIEDEL. If it is that simple, if you feel that way, it clears it up in my mind that no one will be affected.

Mr. MURPHY. Reading one sentence I think will answer it better. Beginning on line 10 of page 7 of the bill:

Issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings.

Mr. FRIEDEL. That is all, Mr. Chairman.

Mr. WILLIAMS. Mr. Macdonald?

Mr. MACDONALD. No, thank you, Mr. Chairman, I have no questions.

Mr. WILLIAMS. Mr. Murphy, under the present law as it now stands, a person who has an intrastate certificate, after having proven a case of public convenience and necessity for the State commission, in order to carry interstate goods within the State is permitted to file a certificate or a statement of some kind with the ICC, and that is the only requirement that is made—is that not correct?

Mr. MURPHY. That is correct; yes, sir.

Mr. WILLIAMS. Now, just what does this bill do? As it presently stands, all he has to do is to give what might be termed notice to the ICC that he plans to carry interstate shipments intrastate.

Mr. MURPHY. Yes, sir; that he intends to or is going to. I do not think he has to say he plans to. I think he can just say "I am going to begin."

Mr. WILLIAMS. All right. Now, as a practical matter how does this bill change the situation?

Mr. MURPHY. Under the present procedure, as I understand—and I think Commissioner Freas and I both, along with our Associate General Counsel, in discussing this with the State commission committee that was appointed for the two groups to work together—the State commissions do not normally hear evidence to support a public convenience and necessity authority on interstate traffic. In some States, I understand, they cannot do it, or the commission actually prohibits that type of evidence being placed into the record, where an intrastate application is pending. As a result, the ICC has no control over it. So you have certain certificates within a State granted, and without any showing at all you can, overnight, have an additional competitor with one of the carriers who has established public convenience and necessity and has been in operation.

Mr. WILLIAMS. Now, maybe I am oversimplifying this thing. Under this bill a State commission which does not consider interstate requirements of public convenience and necessity in the granting of these intrastate certificates—in the case of a certificate issued under those circumstances, the Interstate Commerce Commission would be obligated, upon the filing of a certificate with you, to hold—well, to grant de novo consideration of an application for interstate operation with the State; is that correct?

Mr. MURPHY. Under the present provision or the proposed?

Mr. WILLIAMS. Under the proposed.

Mr. MURPHY. Under the proposed, the State commission would have authority to take evidence of the need for the additional interstate authority.

Mr. WILLIAMS. Of course, the State commission, as you say, would have that authority. But I am referring to the cases where you in-

licated that the State commission is not permitted, under State law, to give consideration to that phase of it.

Mr. MURPHY. I do not know of any State law that prohibited it. But since it is a matter that they do not have specific authority from Congress to require it, I think they have had different rules.

For example, Mr. Dillon, of Virginia, I think, gave us some specific instances of where a State commission said they did not permit any evidence being submitted. Others said they permitted it, but paid very little attention to it.

Now, under what is being proposed here, a carrier filing for an intrastate authority, would at the same time notify that commission and the Interstate Commerce Commission that he was seeking, in addition to the intrastate rights, the rights to handle interstate traffic.

It would be published in the Federal Register. Now, in the event the State commission were convinced that there were sufficient facts or evidence to support the grant of both the intrastate and the interstate authority, they could do so based on the record. You would have to have a record to support it.

Now, any carrier that went in and opposed the grant would have the right to appeal to the ICC for a review of that record. If it is denied, the applicant would not have authority to appeal to us on that record, but he could abandon his State application and come before the Interstate Commerce Commission with an application.

Mr. WILLIAMS. Now, in this review to which you referred, would the Interstate Commerce Commission be charged with the responsibility of reviewing all of the record, including the testimony of witnesses, the evidence taken and would they be in a position to question the decision of the State commission?

Mr. MURPHY. Mr. Chairman, I think—

Mr. WILLIAMS. Is this in effect providing an appeal from a State commission to the ICC?

Mr. MURPHY. Yes, sir; based on the record before the State commission, but only as to the interstate part of it.

Mr. WILLIAMS. Is it based on the whole record?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Including all the evidence?

Mr. MURPHY. It says "upon such reconsideration upon the record before the State commission."

Now, that wording there is—

Mr. WILLIAMS. In other words, this is not handled in the same fashion as appeals to the administrative—under the Administrative Procedure Act. That is the philosophy of it. The Interstate Commerce Commission would not be limited in its consideration to determining that the State commission had followed all the rules attendant to the conduct of hearings, issuance, determination of facts, and so forth.

Actually, what you would do is provide a means by which the ICC could go behind the decision of the State Commission; is that not correct?

Mr. MURPHY. Yes, according to the record that the Commission had before it.

Mr. WILLIAMS. Yes, sir.

Mr. HARRIS. But only as it affected interstate commerce shipments.

Mr. MURPHY. Only to the extent that interstate commerce was involved. In other words, if the State commission denied it, there would be no appeal to us.

Mr. WILLIAMS. Now, with respect to the grandfather rights, would you like to comment on the issue raised by Mr. Sisk?

Mr. MURPHY. Yes, sir. Now, I believe Congressman Sisk suggested that the term "prima facie" proof be eliminated, and provide that the applicants petition for the grandfather rights be conclusive.

There are just too many things that could happen in a situation of that kind. I think I can speak without qualification that the Commission would be opposed to that change. The Joint Committee considered that very suggestion before the bill was submitted by Commissioner Dillon of Virginia. I do not think it would be in the public interest to make the change—to just tie your hands where you could not correct anything that might be filed with you. And I say again I do not think that anyone who is in lawful operations, if and when the bill is passed need have any fear of being prevented or deprived of continuing the operation that he has been lawfully conducting up to that time.

Mr. WILLIAMS. Let us presume for a minute that the State commission feels that he is in lawful operation. What bearing would that have upon the action of the ICC?

Mr. MURPHY. I am sorry, I did not catch the question.

Mr. WILLIAMS. I say let us assume that in the case of some of these carriers who might otherwise be eligible for grandfather rights, the State commission feels that they have been operating within the law, according to the—I forget the term you used—but according to the rules and regulations.

In other words, operating properly. The question is raised before the State commission and the State commission rules against the intervenor, and the question is then raised before the ICC.

Does the ICC have a right to overrule that State commission?

Mr. MURPHY. I would not use the term "overrule." We would give great weight to what the State authority said constituted the certificate.

As a matter of fact, I think it would take some very strong evidence for the Interstate Commerce Commission to try to overturn a State commission's interpretation of a certificate that they themselves have granted to a carrier.

Mr. WILLIAMS. I can understand the basis for some of the objection to the words "prima facie" that were raised by Mr. Sisk in this particular bill, in view of the fact that his people who objected were 3,000 or 4,000 miles away from Washington. I recall a case that came up in my area this spring, where a man owned two pick-up trucks. He operated across the State line. That was his sole means of making a livelihood—two half-ton pick-up trucks. He was operating for some oil people over in Louisiana, but he lived in Natchez, and the course of his operations occasionally took him over the river bridge into Mississippi. It was necessary for him to file an application for a temporary permit of some kind from the ICC, which was granted, but was granted only after 3 or 4 months of, you might say, red tape, for lack of a better term.

Now, assuming that this man should be an intrastate carrier, and he had been granted an interstate certificate by the State commission to carry both intra and interstate goods—the thing that bothers me is that he might have to come to Washington and defend himself in a hearing before the ICC in the event the question was raised about his interstate permit. That is a thing that I think is bothering Mr. Sisk in this matter—that a lot of his little haulers out in California are going to run into a situation where the big carriers will file exceptions and will enter the case as an intervenor in order to prohibit his getting that certificate OK'd by Washington, with the result that he will have to come all the way to Washington from California to plead his case.

I think basically that is what he is objecting to in this.

I would like to have some comment on that. Do you think that would happen?

Mr. MURPHY. If I understand the example you gave, that he actually crossed over the State line—

Mr. WILLIAMS. No, I did not mean to use that. I brought that in just to show that it was an extremely small operator that was involved. And even in the case of getting a temporary interstate certificate, it required 3 or 4 months of communicating back and forth with the ICC.

Mr. MURPHY. Mr. Chairman, I am not familiar with the case, but we are carrying out the present provisions of the act which provide that to get temporary authority you have to show that there is a lack of service available to handle the particular traffic.

Now, in all frankness, the time that was consumed was possibly due to the fact that there were a number of carriers in the territory that claimed they were available and willing to handle that traffic. And of course we would, before we just issue a temporary authority, have to make some record in order to justify the grant.

Mr. WILLIAMS. I do not think the particular case I referred to—it was eventually approved. But the only purpose of raising that point is to show that you do have some extremely small carriers, small operators, fellows who may own just a couple of pick-up trucks.

Now, would they be put in the position of having to come to Washington to plead their case, in case someone should object to their being granted an interstate certificate?

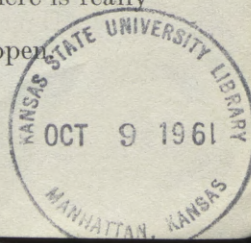
Mr. MURPHY. In my opinion, no sir, they would not, because we have tried to provide in this bill—beginning on line 10, sheet 7—

issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearing or other proceedings.

Now, in those cases where a hearing was necessary, the Commission has followed, in the past, and will continue to follow the practice of having written testimony submitted under oath, which can be mailed in, or we try to assign hearings at locations convenient to the parties. Now, I cannot conceive of a small carrier in California having to come to Washington to try to justify a grandfather application under this provision. I just can't conceive of it.

Mr. WILLIAMS. In other words, you don't think that there is really any validity to that objection.

Mr. MURPHY. No, sir; I don't think that would happen.



Mr. WILLIAMS. In your statement, on the last page, you assume that some 3,000 petitions will be filed each year. On what do you base that assumption?

Mr. MURPHY. Well, Mr. Chairman, I will have to state that that assumption was made by the Director of our Bureau of Operating Rights. My personal opinion is that the assumption is a little high. Commissioner Freas here might express his views on it. Then I would like for Mr. Stillwell to express his views, since it is a matter on which he was asked to give his views, based upon his experience as to what he thought it would be. Commissioner Freas might wish to add to that.

Mr. FREAS. The only thing I could add is that this is something on which there is no precise experience. So the only thing we can do is pass informed judgment. I share the view that Commissioner Murphy just indicated. In my judgment also it is very much on the high side. However, I might add also that in the event the second proviso were repealed in its entirety, as advocated in years gone by, we would have, I think it is fair to say, at least an equal amount of work. So I don't think that this statement here, indicating 3,000 petitions to be disposed of, should be taken as meaning that there would be that much of a burden involved here, which could easily be avoided.

Mr. WILLIAMS. I believe those are all the questions I have. I see Mr. Jarman is here.

Mr. MURPHY. Mr. Chairman, Mr. Stillwell may wish to add to that, if he may.

Mr. STILLWELL. We haven't had any factor or any experience that would give us any basis for making a good estimate on the number of petitions. We have just never had anything like this before. So I think the figure is high, and I estimated it high on the ground that at least at the beginning, there would be quite a number of petitions filed. Where now the carrier, when he goes and gets an intrastate certificate, the protestants cannot fuss about the interstate feature of it. He can file it here and nobody can stop him, provided he otherwise qualifies. But I feel that with the provision that an appeal can be made to the Commission, and the carriers that oppose it can protest before the State commission, that if they lose—and they probably will in many instances—they will appeal it to this Commission.

Mr. WILLIAMS. In other words, the figure of 3,000 refers to contested cases, or contested applications.

Mr. STILLWELL. That is from the—

Mr. WILLIAMS. Protested and filed.

Mr. STILLWELL. That is right. It is high. And it may be that if legislation is passed, that in a year or so that the petitions would fall off quite a bit. But I think at first there would be the inclination of the carriers to appeal—the protestant carriers to appeal it, until we had some sort of precedents established.

Mr. WILLIAMS. Thank you very much. Mr. Jarman.

Mr. JARMAN. I have no questions.

Mr. WILLIAMS. Are there any other questions?

Mr. HARRIS. Yes, Mr. Chairman, I have some.

In order that I might try to clear up in my own mind some of the questions that have been raised, let me ask a few questions. I don't want to engage in a lot of repetition. But I do want to see if I can clear up some of these things.

In the first place, this legislation has been considered for a number of years, has it not, Mr. Commissioner?

Mr. MURPHY. Yes—beginning in 1955 through 1957, the Commission recommended outright repeal of the provision.

Mr. HARRIS. Of the provision.

Mr. MURPHY. The second proviso—section 206(a)(1).

Mr. HARRIS. Now—

Mr. WILLIAMS. Will the gentleman yield at that point?

Mr. HARRIS. Yes.

Mr. WILLIAMS. An outright repeal of that section would have this result, if I am not mistaken—and please correct me if I am. And I am asking this as a question.

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. That is the case of intrastate carriers, they would not be permitted to carry any interstate shipments unless they came before the ICC and proved a case for interstate shipments within the State.

Mr. MURPHY. That would be correct, by passing the question of grandfather rights, but for the future that would be correct.

Mr. WILLIAMS. In other words, that would give the State commission absolute authority over the intrastate operations, and the ICC absolute authority over the interstate.

Mr. MURPHY. Yes, sir; and that is where the opposition on the outright repeal was encountered. The States did not want to see that action taken.

Mr. HARRIS. In other words, there has been growing constantly a continued overlapping of authority and responsibility between the State utility commissions and the Interstate Commerce Commission.

Mr. MURPHY. Mr. Chairman, I would say "Yes"; to the extent I mentioned it in my statement. It has developed to a point where it is a much more important matter than we felt was originally considered to be the situation. The result has been that these interstate rights are being made operative without any record before the State commission or before the ICC.

Mr. FRIEDEL. Will the chairman yield just on that point?

Mr. HARRIS. Let's get this thing—

Mr. FRIEDEL. It is a point that is important.

Mr. HARRIS. I know. But I just want to get this thing before us. In the first place, what is the second proviso?

Mr. MURPHY. Well, it is simply a provision in section 206 of the act which provides that where a single State operator—that is, a carrier operating within the boundary of one State—obtains from the State authority, whether it be a commission or however it might be designated, a certificate to operate within that State, all he has to do in order to participate in and handle interstate traffic which might be delivered from him within that State, is notify the Interstate Commerce Commission that he is going to handle interstate traffic.

Mr. HARRIS. In other words, to put it in even more simple language, anyone who is certificated to operate by the appropriate commission

within a State may, if he likes, engage in the transportation of property or goods in interstate commerce within that State only by filing a notice with the Commission.

Mr. MURPHY. That is correct.

Mr. HARRIS. And your commission has over the years recommended that that provision be repealed.

Mr. MURPHY. Yes, sir.

Mr. HARRIS. And should the commission prevail in its recommendation, then in order for an intrastate carrier, as Mr. Williams said a minute ago, to engage in the transportation within that State of interstate shipments, they would have to come to the ICC and obtain a certificate of convenience and necessity.

Mr. MURPHY. Yes, sir.

Mr. HARRIS. Now, because of that situation, as I understand the commission contends that there has developed a situation over which the commission has no control, and therefore cannot appropriately determine the convenience and necessity of interstate common carriers.

Mr. MURPHY. Yes, sir.

Mr. HARRIS. Well, there could be no other reason for changing the law unless it is a fact that the situation is out of your control, and therefore those engaged in interstate common carrier service cannot rightfully and appropriately give you information as to the extent of what their carriage is going to be if there are certain common carriers engaged within a State over which you have no control.

Mr. MURPHY. That is correct.

Mr. HARRIS. Well, is that the reason that you are asking that this provision be repealed?

Mr. MURPHY. Yes, sir; I think I said it a little differently. The importance of it has grown. It is different from what we felt was considered to be proper at the time the act was first enacted. Here you have carriers engaged in interstate commerce without ever having proved public convenience and necessity therefor to the ICC, and having actually received that authority through their State certificate, where there was also no showing of a need.

Mr. FRIEDEL. Mr. Chairman, would you yield?

Mr. HARRIS. Yes.

Mr. FRIEDEL. I think there was some testimony given to the committee where it was getting out of hand because one would have a certificate and they would sell it to another, thereby giving the buyer two instead of one. I would like you to clarify that. That is why it has been getting out of hand.

Mr. MURPHY. That is another reason for it, Mr. Friedel.

Mr. FRIEDEL. Will you explain that?

Mr. HARRIS. I was going to get to that.

If an interstate common carrier, who has a certificate of public convenience and necessity, delivers goods in interstate commerce to a certain terminal, is it then considered to be the business of the Commission to determine how that shipment will get from that terminal to the various other places within that State?

Mr. MURPHY. Yes, sir. If it is a through interstate movement, we would normally have to pass on it—other than for the fact that you have second proviso.

Mr. HARRIS. Say an interstate carrier is engaged in transporting property from—let's just use an example—Philadelphia to Little Rock, Ark. Now, when that shipment gets to Little Rock, Ark., what difference does it make to the Commission as to how that shipment is moved from Little Rock, Ark., to El Dorado and other places.

Mr. MURPHY. If it is a separate movement the Commission won't have any authority over it. But if when it left Philadelphia—and I think I am stating correctly what the Supreme Court has held in the past—if when the shipment left Philadelphia, the intent of the shipper, and for all intents and purposes it was to move through to some point beyond Little Rock, or whichever point might be used as an interchange, it would be an interstate shipment. You might use a bill of lading—for example, if it read Philadelphia to El Dorado, there you could not stop the shipment at Little Rock and have an intrastate carrier that had neither registered a certificate or—

Mr. HARRIS. In other words, if that shipment was going to stop at Little Rock, that would end the Commission's interest in it.

Mr. MURPHY. It would, unless it was published with the intent to avoid or evade the Federal statute.

Mr. HARRIS. Of course, that is true.

Mr. MURPHY. I mean you can get into that very easily—that is if you have a local rate that is prescribed by the Arkansas Commission, that you attempt to apply on an interstate shipment, there you have the situation confronting you.

Mr. HARRIS. Well, I suppose we are arguing semantics here, anyway, in view of the fact that that recommendation didn't prevail.

Now, since it did not prevail, did your Commission enter into discussions with representatives of the State utility commissions?

Mr. MURPHY. Yes. In fact the National Association of Railroad and Utilities Commissioners appointed a committee which consisted of Mr. Dillon, the commissioner of Virginia, and I forget the other gentleman, constituting their committee—asking that the Interstate Commerce Commission have someone designated with whom their committee could work and try to agree upon some satisfactory change.

Mr. HARRIS. With that interchange, some negotiations or discussions took place with the Senate committee.

Mr. MURPHY. No sir. That was before this committee was appointed, Mr. Chairman. There was not a Commissioner from the ICC who participated in the group discussions held as a result of Senator Smathers' request. I believe that group was made up on carrier people. We did not, as Commissioners, participate.

Mr. HARRIS. In other words, they modified this proposal of yours without you being consulted about it.

Mr. MURPHY. I believe I can state it this way, Mr. Chairman: When they came out with what that group had worked on, the State commission was not satisfied with it, and we did not take any official action at that time. But Commissioner Freas and I were appointed by Chairman Winchell to work with the State committee. That is how the present bill which is before you, and which has been before the Senate, was developed. It was submitted by the State committee through its chairman, Mr. Dillon, of Virginia.

Mr. HARRIS. Well, Commissioner Murphy, what I am trying to find out, and I think this committee should know, is what was it that prompted the Senate, in the last day of the session, which was the

final day of the Congress last year, and perhaps within the closing hour of that session—and I think, if I remember correctly, after the House had already agreed to an adjournment resolution, and in fact had adjourned and gone home—what was it that prompted the Senate to call up the bill under unanimous consent, and pass it, knowing, of course, there was no chance in the world of getting the bill through the House, since the House had already adjourned.

Mr. MURPHY. Mr. Chairman, I couldn't answer that. I would have no idea as to why it was called up, or the manner in which it was handled.

Mr. HARRIS. Well, there must have been some consultation with somebody who worked out a satisfactory bill, in order to get the issue resolved. And I would like to know just what it was.

Mr. MURPHY. The only answer I can give to you is the letter of transmittal by Mr. Dillon of the Virginia commission to the Senate committee, with a recommended bill that had been worked on.

Mr. HARRIS. Was that this year or last year?

Mr. MURPHY. Last year.

Mr. HARRIS. What is the date of the letter?

Mr. MURPHY. I don't have my letter with me, Mr. Chairman. I can furnish you the date.

Mr. HARRIS. Well, Senator Smathers stated on the floor of the Senate that day, which is in the Congressional Record of September 2, page 17690:

We now have agreement on the part of the Interstate Commerce Commission, the National Association of Railroads and Utility Commissioners, and the American Trucking Association for the trucking industry. All of them favor this measure as a desirable step insofar as it concerns the regulation of intrastate truckers who make it their business to engage in interstate and foreign commerce.

Mr. MURPHY. Who was that said by, Mr. Chairman?

Mr. HARRIS. Senator Smathers. That is the statement he made on the floor of the Senate.

Mr. MURPHY. Well, all I recall was that there was some objections raised by some interests in California, and I heard someone mention—I don't recall who that was—Commissioner Freas might be able to supply it—but that those objections were withdrawn or satisfied. I was not present. I did not attend any meeting with Senator Smathers on it.

As to what prompted him to go ahead and handle it in that manner I just cannot say, other than the objections from the California group had been satisfied or withdrawn.

Mr. HARRIS. Well, Mr. Dirksen, said at the same time—

Mr. President, let me say there is no objection to the bill, but I wished to note, for the record, the fact that the senior Senator from California, Mr. Kuchel was very instrumental in having the committee accept two amendments which appeared in the bill.

Are you familiar with those two amendments?

Mr. MURPHY. No, sir, I don't recall. Did one of them relate to a date—that the bill would become effective on a particular given date?

Mr. HARRIS. Well, later on Mr. Smathers explains further—

The amendments of the Senator from California provide the Commission additional authority, for which we had not provided. In addition to giving the bill an effective date of October 1, 1960, the amendments provide that certified

copies of State certificates filed with ICC as evidence of authority to operate in interstate and foreign commerce under the former provisions of the second provision of section 206 (a) shall be prima facie proof that the applicant is lawfully engaged in interstate and foreign commerce and the scope thereof.

Now, it would seem to me that from the record at that time that the California people under the auspices of Senator Kuchel had obtained what they were seeking.

MR. MURPHY. Mr. Chairman, that was my understanding last year. I am not too familiar with it, because I did not attend any of those conferences.

MR. HARRIS. Well, I just have notice that I have to go over to the floor. There are several things I want to develop in connection with this, in order to find out just how these agreements were reached.

MR. MURPHY. Well, Mr. Chairman, I certainly don't want to evade any question you have. But I was not at any conference, and did not participate in any conference on that question with anyone at the Senate. Neither did Commissioner Freas.

MR. HARRIS. But you are satisfied with the bill as it passed the Senate?

MR. MURPHY. Yes, sir, we are very much satisfied with it. And to answer a previous question you asked as to when it was transmitted to Senator Smathers, that was on June 7, 1960, by Mr. Jesse W. Dillon, chairman of the special committee to study motor carrier interstate registration authority, NARUC.

MR. HARRIS. And you think this bill will clear up a lot of the confusion that exists between the ICC and the State commissions?

MR. MURPHY. Yes, sir.

MR. HARRIS. I think that is all, Mr. Chairman.

MR. MACDONALD. I just have one question.

If, as stated earlier, this in some measure is an abrogation of some States rights, why are the States agreeable to give up this power? Why are they agreeable to be reviewed by you?

MR. MURPHY. Well, this legislation, which is here under consideration, is somewhat of a compromise as between the positions of the two, the Federal and the State commissions. I might say that the second proviso delegated to the States authority that normally would have been for the Federal authorities to exercise. This bill isn't taking it away from them, but permits the two groups to work together. It makes it possible for them to work together on the problem.

MR. MACDONALD. I thought it gave you the right to review what the States did. And it has been my experience that the States usually are not, shall we say, enthusiastic, about such an abrogation of their so-called rights.

MR. MURPHY. I will let Mr. Murray explain that.

MR. MURRAY. The States never had authority to authorize carriers to engage in interstate operations, that was always true, even before there was a Motor Carrier Act. The Supreme Court in a number of cases held that the States were without authority to pass on that.

MR. MACDONALD. I am familiar enough with the Constitution to understand the interstate commerce clause contained therein. But that wasn't my question.

MR. MURRAY. The present state of the law is that the State grants a certificate for the transportation of intrastate commerce, and the Interstate Commerce Act at the present time says that if a carrier oper-

ating solely within a State has obtained a certificate from the State for operations in that State in intrastate commerce, he can handle interstate commerce over the same routes without getting a certificate from us. So the States never really had any authority, and constitutionally they couldn't have it.

Mr. MACDONALD. Then why is it a compromise?

Mr. MURPHY. It is more a compromise between the carriers who are seeking to have these matters regulated, and the ICC thinking they should be regulated, and not leave interstate operation to arise solely by chance.

Mr. MACDONALD. Well, if the carriers want to be regulated, and you think they should be regulated, where is the compromise? You are both of the same mind.

Mr. MURPHY. These intrastate carriers are regulated now as to intrastate traffic. The exemption applies only to the need for a certificate of public convenience and necessity.

Mr. MACDONALD. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Jarman?

Mr. JARMAN. I have no questions.

Mr. WILLIAMS. Mr. Commissioner, I would like to know a little bit more about the background of this legislation.

Who was the first one to raise objection to the present situation? Was it the ICC or the State utility commissions?

Mr. MURPHY. The Interstate Commerce Commission, as far as I know, Mr. Williams. As I say, it started in 1955, the first year in which they recommended the repeal of the provision.

Mr. WILLIAMS. Who recommended that?

Mr. MURPHY. The ICC, in its annual report.

Mr. WILLIAMS. Now, that was before the State commissions expressed any interest in it whatsoever; is that correct?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Therefore, the initiative was taken by the ICC.

Mr. MURPHY. Yes, sir. Although I would not characterize it as an offensive.

Mr. WILLIAMS. And the ICC felt that they should be entitled to this expanded authority, which naturally would come to them at the expense of the State groups—of the State commissions.

Mr. MURPHY. Yes.

Mr. MURRAY. Surely not at the expense of the States, sir. The States had no authority.

Mr. WILLIAMS. The States had been granted—what I am talking about is this. Prior to that time, the State commissions had been passing on both inter- and intrastate carriers within the State.

Mr. MURPHY. No, sir. Actually the State was passing on the intrastate question, and as a result of their action, on the intrastate rights, a resulting interstate situation developed.

Mr. WILLIAMS. What practical problems have arisen from the present law that would indicate a need for a change in the law? Have there been abuses of any kind? Have there been abusive practices on the part of these intrastate operators with respect to interstate goods? Or is it simply—is this simply the result of the ICC's reaching out for more power?

MR. MURPHY. There is absolutely no intention on the part of the ICC to seek more authority. I think that there is an obligation, a duty on the Commission, if they see these situations of where you can have a multiplicity of carriers to come into being without having to prove public convenience and necessity—I think the Commission is obligated to come to Congress and call it to their attention, and make recommendations. And that is what we have tried to do in this instance.

MR. WILLIAMS. I quite agree with you. But it all has to be tied into the public interest.

MR. MURPHY. Yes, sir.

MR. WILLIAMS. Where is the public interest being damaged by the present situation?

MR. MURPHY. Well, I think you would have to take instances of where you have carriers separating their intrastate and interstate certificates and selling one, and as a result of it bring two carriers into existence where there was formerly but one, and without having to show a need to either the ICC or the State commission for the additional service.

MR. WILLIAMS. Could you give us specific examples of those cases, and how those actions actually damage the public interest?

MR. MURPHY. You mean—

MR. WILLIAMS. In other words, I am trying to find out why the bill is before us, other than a simple desire on the part of the Interstate Commerce Commission to regulate intrastate shipments of interstate goods.

MR. MURPHY. Mr. Chairman, may Mr. Stillwell explain? He is director of the Bureau of Operating Rights, and would be familiar with those.

MR. STILLWELL. I think one of the biggest difficulties we have had is where an interstate carrier holds both interstate and intrastate operating rights. They sell their interstate operating rights to someone else, retaining their intrastate operating rights.

Then they are able to set up—to register those, and set up another interstate service within the State, right over the same route they have already sold in interstate commerce.

MR. WILLIAMS. Well, perhaps I am naive, but how does that damage the public interest?

MR. STILLWELL. Well, there was only one interstate carrier operating there before. Now we have two over the same route. You can visualize it between Philadelphia and Pittsburgh. The carrier operating from New York City, down to Philadelphia, over to Pittsburgh, and on into Chicago—and he has along his routes concurrent intrastate operations—operating authority.

So he sells just the interstate rights, and retains the intrastate.

So then he can register that certificate between Philadelphia and Pittsburgh, and institute an interstate service in connection with the transportation of traffic moving mostly by interchange, but it could move by barge, I guess. But they have done that.

MR. WILLIAMS. If he is operating in several States, he already has to come before the ICC and give his certificate. He does not need an intrastate certificate if he is operating interstate, does he?

Mr. STILLWELL. Well, he can't operate under the second proviso as long as he is a multiple-State operator. But once he sells off his interstate rights and becomes a single State operator, then he can register those rights and engage in interstate commerce over the very route he sold.

And that is one thing the Commission has not been able to prevent—the creation of two interstate rights, where only one existed before.

Mr. WILLIAMS. Any further questions?

Well, there is a rollcall going on on the House floor. I think I will forgo any further questioning.

If there are no further questions—unless you would like to make a further statement—the committee will stand adjourned.

Mr. MURPHY. No, sir, I have nothing further, other than to say this: I don't want to leave and have you thinking that we have not answered your question.

Mr. WILLIAMS. No, no. We have not suggested that you have not answered the question. I am just suggesting that I am, I guess, maybe a little handicapped in that I am having some difficulty in seeing through this haze of regulation.

If there are no further questions, the committee will stand adjourned.

Mr. MURPHY. Thank you.

(The following material was submitted for the record:)

GEORGIA PUBLIC SERVICE COMMISSION,
Atlanta, Ga., August 11, 1961.

HON. JOHN BELL WILLIAMS,
Member of Congress,
Chairman, Subcommittee on Transportation and Aeronautics,
House Office Building, Washington, D.C.

DEAR MR. WILLIAMS: I am writing to urge that you favorably report and actively support the passage of H.R. 2483 (S. 320) which is now pending before your committee.

The 1935 Motor Carrier Act (now pt. II of the Interstate Commerce Act) was the product of the cooperative efforts of Congress, the National Association of State Regulatory Commissions, and the Interstate Commerce Commission and represents a monumental achievement in balancing State and Federal authority in the regulation of commerce over the highways. The act leaves to the States the certification and regulation of carriers operating locally within State borders and to the Interstate Commerce Commission the certification and regulation of carriers operating across State lines.

In order to permit single State operators to handle both interstate and intrastate traffic and to be properly subject to effective regulation at both the State and Federal levels, the second proviso of section 206(a)(1) was designed to permit, by the registration with the Interstate Commerce Commission of State authority, the participation by a local operator in interstate business within the geographical and commodity scope of his State authority—with the interstate operating rights of such "proviso operations" entirely dependent on the maintenance of the underlying State authority which was the basis for the granting of such interstate rights.

Most of the States, such as my own, the State of New York and others, have been diligent in preventing any abuse or undue extension of this authority, even to the extent of canceling the underlying intrastate authority where there have been shown abuses of the interstate registrations. A few of the States, however, have tolerated abuses by permitting owners or subsidiaries of industrial plants who can control captive commerce to obtain certificates and register them and

thus greatly hamper orderly regulation. This prompted the Interstate Commerce Commission, with the support of the American Trucking Associations, to recommend to Congress the outright repeal of this proviso, the effect of which would have been to greatly interfere with and hamper State commission regulation of motor carriers.

The National Association of Railroad and Utilities Commissioners, through the writer, its general solicitor, and others, made a showing before the Senate committee which resulted in the formation of a committee of our group and a committee of the Interstate Commerce Commission to cooperate in compiling a compromise bill—the two committees giving their unanimous approval to this substitute bill now before you. The bill as now drawn is thoroughly acceptable to the Federal and all of the State regulatory authorities and to virtually all of the motor carrier industry (as evidenced by the representations made to your committee by Robert J. McBride, director of legislative research of the American Trucking Associations) and to everyone else except those who are attempting to use this situation to acquire an advantage which they do not now have.

If you will review the objections presented to you, you will see that the objectors wish the language of the act so changed as to give them certificates of public convenience and necessity although they have nothing now in writing from the Interstate Commerce Commission since that Commission discontinued the practice of issuing registration certificates a number of years ago. Under H.R. 2483 these operators would retain exactly the same authority that they now have and would receive a formal certificate of registration evidencing full authority to continue the service that they are now rendering. Naturally that registration would be subject to the respective authorities of both Federal and State agencies—which is another ground for the objections as the objectors wish to remove the States from any authority. Then too, there are certain carriers, in one State particularly (represented at your hearing) who operate under lease arrangements and the language which they propose would vest in them, at no cost to them, the operating authorities which they are now exercising only as lessees.

I am sending a copy of this letter to the chairman of your State commission and trust that you will contact your commission if I have not made the matter entirely clear.

Cordially yours,

WALTER R. McDONALD.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., August 14, 1961.

Subject: H.R. 2483.

Hon. JOHN BELL WILLIAMS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: This supplements our letter of February 15, 1961, in regard to the above bill which would amend the second proviso of the Interstate Commerce Act.

Two identical bills—H.R. 2483 and S. 320—were introduced in January 1961.

S. 320 was passed by the Senate and sent to the House on July 18, 1961.

The Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee held public hearings on the bills on August 2 and 3, 1961.

It is the view of the National Association of Railroad & Utilities Commissioners, the Interstate Commerce Commission and the American Trucking Associations, Inc. representing the trucking industry, that the bill represents a much needed improvement over the present provisions of the second proviso in section 206(a)(1) of the Interstate Commerce Act and that it will prevent the continued creation and multiplication of interstate rights without adequate consideration of the needs for such rights.

We urge that the bill be enacted with an effective date of December 31, 1961, as passed by the Senate.

Respectfully yours,

R. J. McBRIDE.

HANDLER & BAKER,
San Francisco, Calif., July 24, 1961.

To the Members of the Subcommittee on Transportation and Aeronautics.

GENTLEMEN: The members of our firm are attorneys for many carriers in California who are much perturbed by the bill numbered H.R. 2483. The reasons for their concern are fully set forth in a letter, copy of which is herewith enclosed, previously addressed by me to our California Senators and two of our Congressmen. Since the Senate has passed this bill without affording opportunities for hearings (no doubt because the bill was passed by the Senate last year), there is a likelihood, I assume, that it will come before your subcommittee. I have previously been assured by the chairman, Congressman Oren Harris, that I would be advised of the time and place of hearings.

We are vitally interested in having the opportunity of expressing the views of our clients on this bill. Therefore, I respectfully urge that no affirmative action be taken unless an opportunity is afforded us to appear at such a hearing.

Any information you may be able to provide me will be appreciated, and, should you have any question, I will be pleased to respond thereto.

Yours very truly,

MARVIN HANDLER.

HANDLER & BAKER,
San Francisco, Calif., April 10, 1961.

Re Senate bill 320 and H.R. 2483.

HON. CLAIR ENGLE,
*U.S. Senator, Old Senate Office Building,
 Washington, D.C.*
 (Attention Miss Lonergan, legislative assistant).

HON. THOMAS H. KUCHEL,
*U.S. Senator, New Senate Office Building,
 Washington, D.C.*
 (Attention Mr. Steve Horn, legislative assistant).

HON. CHARLES S. GUBSER,
*House of Representatives, New House Office Building,
 Washington, D.C.*

HON. J. ARTHUR YOUNGER,
*House of Representatives, New House Office Building,
 Washington, D.C.*

DEAR SIR: I wish to express my appreciation for the courteous and cooperative treatment afforded me by each of you during my recent visit to Washington. Pursuant to suggestions which some of you gave me at the time, I am taking the liberty of writing you this letter on behalf of numerous California trucking companies, clients of this office, respecting their objections to the proposed legislation above referenced.¹

Since the passage of the Motor Carrier Act in 1935, carriers operating in a single State have been permitted by section 206(a) thereof to register their State certificates of public convenience and necessity, and thereby operate between the same points in interstate and foreign commerce as are authorized for intrastate commerce. All the carrier was required to do was to file a short application, an appropriate tariff, and evidence of insurance, and to appoint an agent for service of process. This method of providing equivalent interstate rights to single-State operators has worked very well in California, which is a large State with many ports through which interstate and foreign commerce flows. In addition to the port traffic, interstate freight also is distributed in California from rail cars to ultimate destinations therein. This port and rail interstate traffic constitute less than 10 percent of the total freight moving between points in this State and, with very few exceptions, amounts to only a small percentage of the traffic tendered to carriers by shippers in California. By creating coextensive interstate and intrastate rights, the necessity of determining the often difficult question as to the character of traffic has been largely eliminated and local carriers holding intrastate and second proviso interstate rights are able to afford their customers a complete service.²

¹ A partial list is attached hereto.

² Second proviso refers to the second proviso of sec. 206(a)(1) of the Interstate Commerce Act which permits registration of State certificates.

The proposal of the bill is to have the Interstate Commerce Commission issue certificates of registration based on current registrations of State certificates and thereafter to abolish the right to file State certificates with the Interstate Commerce Commission as presently provided for in the second proviso of section 206(a) (1) of the Interstate Commerce Act.

I shall develop our views from two aspects. First, on the theory that a bill in some form to abolish registered rights is bound to pass; and, secondly, on the assumption that the entire bill may be defeated by reason of its deficiencies.

1. Specific objections to the form of the bill

A. Probably the most objectionable feature of the bill to the greatest number of California carriers is the provision that the effectiveness of the registration of the State certificate shall be "prima facie proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof" (lines 19 to 21, sheet 7). The motor carriers of California, as well as in the rest of the United States, have had long and arduous experience proving their rights to "grandfather" certificates after the Motor Carrier Act was first adopted in 1935, and as the jurisdiction of the Commission has been increased from time to time. It is their view and ours that the certificate of registration proposed to be issued should specifically embrace all of the operating authority for interstate and foreign commerce as is contained in the State certificate with respect to intrastate commerce. To require proof of past operations would result in tedious and expensive proceedings and would attract opposing carriers into them who would attempt to cause the Commission to cut down the extent of the operating rights previously held by registration. Furthermore, the Interstate Commerce Commission would founder on this additional workload.

Our clients believe with good reason that they should receive certificates of registration coextensive with their State certificates. For example, in California, we presently see the development of many construction projects for irrigation, power, etc., which involve shipments to areas where there have previously been only sporadic or no movements. Yet these areas may be within the sphere of operations of particular carriers. If a movement through the ports or by rail comes into the area for delivery to the jobsite, these carriers can presently perform the service under their registered rights. Should this act be passed, their ability to serve these new jobsites may well be terminated and destroyed.

B. The next objection is to the date of the effectiveness of the act which is now specified as April 1, 1961. April 1 has, of course, already come and gone and we believe it would be unfair to make the provisions of the bill retroactive. The California Public Utilities Commission has in the last year and one-half or so evidenced a more lenient policy in the issuance of certificates of public convenience and necessity than had been applied prior thereto. As a result, numerous carriers filed applications for extensions of their certificates, or, in some cases, for new certificates. Many of these have been granted either in full or in major part, but there are still pending a number of applications of the same character which have not been decided. Some have not even been heard as yet. We feel that the carriers with pending applications should be afforded the opportunity of registering rights which may be granted by the State commission before the proposed legislation becomes effective. The carriers who have recently been granted rights and those with pending applications are generally of the same characteristics and entitled to the same treatment. It would, therefore, appear reasonable for December 31, 1961, to be the effective date if the act passes by the fall of this year. If not, then some later date, possibly 90 days following its passage, might be properly prescribed.

2. Objections to the bill in general

It can with logic be argued that in general the provisions of the bill are so objectionable that it should either not be passed at all or should be completely rewritten. I shall not attempt to rewrite the bill but I will briefly point to some pertinent points that could well be raised in urging its defeat.

A. The bill provides for the issuance of a new kind of operating authority called a certificate of registration. What the characteristics of this type of certificate would be with respect to transferability and rights and duties are far from clear. This fact is supported by the testimony of Commissioner Rupert L. Murphy who testified before the Senate committee with reference to the original bill on August 18, 1959, in part as follows:

"* * * it is not clear under the provisions of the bill as to what many of its (certificate of registration) characteristics would be with respect to the rights, duties, and responsibilities attached thereto. * * *"

Commissioner Murphy suggested that the committee give consideration to the grant of a certificate of public convenience and necessity presumably of the kind similar to those it now issues. Commissioner Murphy's testimony was quoted by the Local Cartage National Conference which protested the wording of the proposed bill in its representations made to the Senate Interstate and Foreign Commerce Committee. This protest, including Commissioner Murphy's comments, were published in the magazine, *Traffic World*, dated July 9, 1960, at page 39.

B. The bill provides that, on and after the effective date of this amendment, an applicant before a State commission seeking intrastate authority shall indicate whether he is also requesting interstate authority. Should the State commission grant interstate authority, the Interstate Commerce Commission has the right of review (pp. 3 and 4 of the bill). Thus, a hybrid jurisdiction is created, the constitutionality of which may well be questioned for the State commission is required to make findings respecting need for interstate service without any standards being specified. The delays which might result from petitions for review to the Interstate Commerce Commission which is already overburdened can well be imagined. Based upon our knowledge of the workloads of the Federal and State regulatory agencies involved, it is difficult to understand how they will be able to properly handle the added work and responsibility which would result from passage of the proposed legislation. These agencies are not presently able to process many matters brought before them without excessive delays, or what is generally described as "the regulatory lag." The additional work that would result from enactment of the bill would further delay determination of the proceedings brought under the existing jurisdiction of these commissions. As a widely recognized problem already exists with respect to the workload of the Interstate Commerce Commission, it does not appear wise or logical that it should be further aggravated until adequate provision is afforded for the proper processing of these new matters. Of course, the State agencies can refuse to carry out the responsibilities assigned to them by the enactment of the statute, thereby avoiding the additional work and responsibility, and nullify one aspect of the proposal.

I appreciate the fact that the Association of Public Utilities Commissioners has recorded its approval of the bill. In discussing this matter with representatives of the California Public Utilities Commission, I was unable to obtain a clear explanation as to how this was accomplished. I suspect that, with all due deference, our State commission did not fully analyze the bill, but rather acted affirmatively in order to support the position of the Interstate Commerce Commission.

Conclusion

I have attempted to confine my attention in brief form to the most objectionable features of the bill. Should the appropriate committees feel that a bill is necessary, I have indicated that our clients are willing to compromise by accepting amendments which will insure, as far as possible, their right to continue operations after the effective date of the act to the full extent that is then permissible under their registered authority. Please advise when committee hearings are set on this bill.

Yours very truly,

MARVIN HANDLER.

A. & B. Garment Delivery of San Francisco, 2277 Shafter Avenue, San Francisco, Calif.

Alta Freight & Transfer, Inc., 690 Hegenberger Road, Oakland, Calif.

American Transfer Co., 2810 Jensen Avenue, Fresno, Calif.

Associated Freight Lines, 530 Brannan Street, San Francisco, Calif.

Associated Transportation Co., P.O. Box 469, Yuba City, Calif.

Bassco Drayage, 685 Delaware Street, Berkeley, Calif.

Brown Drayage, Inc., 8220 Baldwin Street, Oakland, Calif.

F. J. Burns Draying, 516 Townsend Street, San Francisco, Calif.

C & M Trucking Co., P.O. Box 106, Mountain View, Calif.

Coast Drayage, 615 Cedar Street, Berkeley, Calif.

Mike Conrotto Trucking, P.O. Box 638, Gilroy, Calif.

Dalzell Corp., Park & Halleck Streets, Emeryville, Calif.

Doudell Trucking Co., P.O. Box 842, San Jose, Calif.

East Bay Drayage & Warehouse Co., Third and Addison Streets, Berkeley, Calif.

Frank's Trucking, 861 73d Avenue, Oakland, Calif.

Daniel Gallagher Teaming, Mercantile & Realty Co., 2510 Wood Street, Oakland, Calif.

Haslett Warehouse Co., P.O. Box 3270, San Francisco, Calif.

Hawkey Transportation, P.O. Box 229, Redding, Calif.

George F. Lloyd Transportation Co., 605 15th Street, Sacramento, Calif.

Lodi Truck Service, P.O. Box 147, Lodi, Calif.

Matt Transfer & Storage, 1720 R Street, Sacramento, Calif.

C. H. Miller Transportation Co., P.O. Box 1027, Oroville, Calif.

Morris Draying Co., 190 98th Avenue, Oakland, Calif.

Pozas Bros. Trucking Co., 249 North Fairoak Avenue, Sunnyvale, Calif.

Security Truck Line, 1600 South First Street, San Jose, Calif.

Tondo Trucking Co., 2189 Queens Lane, San Mateo, Calif.

Tri-City Parcel Delivery, 939 Center Street, San Carlos, Calif.

Universal Transport System, Inc., 2672 Bayshore Frontage Road, Mountain View, Calif.

West Transportation, Inc., 4060 Halleck Street, Oakland, Calif.

Winans Bros. Trucking Co., P.O. Box 933, Redding, Calif.

Milton J. Daly Hawaiian Express & Dillon Drayage Co., 646 First Street, San Francisco, Calif.

W. A. Fraser Trucking Co., 1606 14th Street, Oakland, Calif.

Jack Hemsath Drayage, 1350 34th Street, Oakland, Calif.

Portola Drayage, 1467 Van Dyke Street, San Francisco, Calif.

HANDLER, BAKER & MASTORIS,
San Francisco, Calif., August 17, 1961.

Re hearings on H.R. 2483 and S. 320.

Hon. JOHN BELL WILLIAMS,

Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR SIR: At the hearing on August 3, 1961, Hon. Harley O. Staggers, acting chairman, asked David G. MacDonald, Esq., to submit recommended changes or amendments to the considered H.R. 2483 and S. 320. In his letter of August 4, 1961, Mr. MacDonald submitted his suggestions to the Subcommittee on Transportation and Aeronautics and sent copies thereof to all interested parties so that they could comment on or respond to his proposals. This letter has been prepared pursuant to that invitation.

I appeared at the August 3 hearing on S. 320 and H.R. 2483 on behalf of 52 California carriers that are clients of Bertram S. Silver, Esq., or this office. These companies requested our participation because of the great harm that will result to their operations from enactment of the bills in their present form. As stated at the hearing, we do not feel the alleged abuses, which exist in only one aspect of the interstate commerce moving between points in single States, warrant such a drastic remedy as proposed. However, because so many interested parties support the repeal or amendment of the second proviso of section 206(a) of the Interstate Commerce Act, and our desire to reach a compromise so that all parties will be largely satisfied with the resulting legislation, we do not oppose such action.

What we do protest, and vigorously, is the failure of the bills to provide adequate protection for the existing rights and privileges of second proviso carriers. The proponents state that the considered bills will "guarantee to present holders of State certificates registered under the second proviso that all their existing rights and privileges will be preserved." (See sheet 5 of Rep. No. 528, Calendar No. 497, to the Senate in the 1st sess. of the 87th Cong.; sheet 1, vol. 107, No. 119, of the Congressional Record, dated July 17, 1961; sheets 8 and 9 of the statement of Robert S. McBride, director of legislative research of the Regular Route Common Carrier Conference of ATA.) Because no hearing was held on S. 320 during this 87th session of the Senate or on the almost identical bill, S. 3228, when it was considered and passed by the Senate during the 86th Congress (in spite of pleas of the second proviso carriers for a

hearing), the August 3 hearing of your subcommittee was the first real opportunity these carriers were afforded to present their views on the proposed legislation.

Mr. MacDonald, in his suggested amendments (sheet 8), recommended insertion of the following language to his proposed grandfather clause:

"Such certificate so issued shall authorize the transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the certificate issued by the State board."

This same proposal was offered by L. Eugene Duff, president of Duff Truck Lines, Inc., of Lima, Ohio, in his excellent statement submitted at the August 3 hearings (sheets 5 and 6), wherein he disclosed the harm that would be suffered by his business under the present language of the bills. Carriers represented by this office and Mr. Silver join in this recommendation.

The language suggested above is already a part of the Interstate Commerce Act (sec. 212(c) of pt. II, U.S. Code, title 49, sec. 312(c)) and was included therein when the act was amended in 1957 to give "grandfather" rights to interstate contract or permit carriers. All the rights and privileges of existing second proviso carriers will be preserved under the suggested language. Such carriers will thereby be authorized to continue to afford the public the same type and character of service they are presently able to render pursuant to existing authorities. Second proviso carriers, under this proposal, will receive no more than they presently have, and, conversely, no competitive transportation company will be adversely affected by the suggested change.¹

Mr. MacDonald, in his letter, describes the reasons for recommending the language quoted above as a substitute for the present proposed "grandfather" proviso in S. 320 and H.R. 2483 and I will not repeat them herein. Statements supporting this recommended change and the basis therefor are set forth in pages 2 through 5 of my prepared statement, as well as in my oral summation offered at the August 3 hearing to which reference is hereby made.

In my statement at the August 3 hearing, I asked that consideration be given to the establishment of an effective date that will protect carriers who have applications pending before State commissions. California is experiencing a substantial population growth and, in attempting to satisfy the resulting increased transportation demands, the State commission recently established a more lenient policy in granting certificates. A large number of applications were filed because of this policy and certificates have been granted. However, many of these applications have been heard by the Commission and are awaiting decision, and others have been only partially heard and have not, as yet, been submitted. The type of carriage and proof of need for service in these proceedings were generally similar. Carriers that received certificates, in most instances, have registered them with the Interstate Commerce Commission. It would be manifestly unfair to preclude carriers with pending applications from also similarly registering authorities they receive. Because it normally takes 3 to 5 months after a certificate is granted to commence a new service, an April 1, 1962, effective date would be more equitable and would protect those carriers with applications now pending before a State commission.

I respectfully request that this letter be made a part of the record of the hearings and that favorable consideration be given to the amendments to H.R. 2483 and S. 320 proposed above.

Very truly yours,

DANIEL W. BAKER.

¹ In the next to last paragraph of p. 8 of Mr. MacDonald's letter, a condition is proposed which, he suggests, if the Interstate Commerce Commission deems advisable, can be added to the language quoted above. We oppose this suggestion, which is an entirely new one, because its inclusion will complicate the simplified procedure initially suggested and will tend to bring into play the very issues we are trying to avoid. Furthermore, there is already appropriate relief available when a carrier abandons all or part of its authorized service. The condition, to which we complain, contained in said letter reads as follows: "except to the extent that it shall be established that the carrier has abandoned or refrained on its own volition from providing the transportation of a destructive class of commodities, a distinctive character of service, use of a special type of equipment, or service at a major geographic portion of its authorized service area."

SAN FRANCISCO, CALIF., August 14, 1961.

Re H.R. 2483 before the Subcommittee on Transportation of the Committee on Interstate and Foreign Commerce of the House of Representatives, Washington, D.C.

HON. JOHN BELL WILLIAMS,
U.S. Congressman, Washington, D.C.

HON. SAMUEL N. FRIEDEL,
U.S. Congressman, Washington, D.C.

HON. JOHN JARMAN,
U.S. Congressman, Washington, D.C.

HON. HAROLD R. COLLIER,
U.S. Congressman, Washington, D.C.

HON. HARLEY O. STAGGERS,
U.S. Congressman, Washington, D.C.

HON. TORBERT H. MACDONALD,
U.S. Congressman, Washington, D.C.

HON. WILLIAM L. SPRINGER,
U.S. Congressman, Washington, D.C.

HON. SAMUEL L. DEVINE,
U.S. Congressman, Washington, D.C.

GENTLEMEN: I wrote you earlier concerning the opposition of my clients to certain features of the above bill and I therein suggested either defeat of the bill or at least amendments thereto to protect the local, State, and registered carriers.

Since the conclusion of the preliminary hearings held on August 2 and 3 by your honorable committee. I have discussed the matter at length with various of my clients and take the liberty of now making the following comments concerning their interest:

(1) They do not oppose repealing the second proviso of section 206(a) of the Interstate Commerce Act so long as their present rights are protected.

(2) We have determined that the ATA did not approve this bill, but rather indicated enactment of the principles of repealing of the second proviso while protecting existing authority.

(3) The primary vice of the present bill (as outlined in my previous correspondence) is that every registered carrier would have to prove at length and in detail their past operations in order to preserve the rights which they now hold in interstate commerce by registration.

This major problem could be eliminated by Congress doing the same thing and using similar language to that used in 1957 when amending section 212(c) of the Interstate Commerce Act. In speaking of the contract permit (in existence at that time), Congress authorized the conversion of such permits by use of the following language:

"Such certificate so issued shall authorize the transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the permit."

By using similar language to amend the present H.R. 2483, as a result of the enactment of this proposed amendment, the present registered carriers would receive an authority equal to, and no greater than, that which they presently possess. The only change in the wording used in 1957 would be to replace the last word "permit" with "the intrastate certificate of public convenience and necessity registered with the Interstate Commerce Commission." This proposal would protect existing carriers, would not be detrimental to the transportation industry, and would avoid years of litigation and costly conversion proceedings.

The other suggestion, which I believe would be more practicable, would be to delete the reference to "certificate of registration" and substitute in lieu thereof "certificate of public convenience and necessity." The former language as proposed is a new type of authority which does not presently exist and is uncertain as to the rights and privileges available thereunder. On three former occasions (1935, 1957, and 1958), Congress "grandfathered" various carriers with the usual type of certificates of public convenience and necessity. To set up another category at this stage benefits no one and adds to the already overburdened regulatory problems.

We sincerely hope that accepting the principles of the present bill, it may be amended in the above particulars. We do not believe that such amendments would be controversial or detrimental in any respect, but rather would be beneficial to the industry and to the public.

Respectfully yours,

BERTRAM S. SILVER.

SKAGGS TRANSFER, INC.,
Bowling Green, Ky., August 3, 1961.

HON. JOHN BELL WILLIAMS,
*Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN WILLIAMS: This letter has reference to S. 320 and H.R. 2483 now under consideration by your group. I was in Washington on August 2 for the purpose of testifying before your group in opposition to certain aspects of this proposed legislation. Because of time limitations this was not possible. I am taking this method of giving you and your subcommittee the views of my company. I hope that you will make this letter a part of the record.

We are in substantial agreement on the general purpose and objectives of this legislation—we are, however, violently opposed to certain language, terms and procedures provided for in these bills.

Our most serious objection is to the term "certificate of registration" and to the proposed procedures for handling such "registration." We would like to see proviso carriers now operating lawfully in interstate commerce to be issued "certificates of public convenience and necessity" as now defined in section 206 of part II of the Interstate Commerce Act. To issue anything else would make "second-class citizens" out of proviso carriers.

We feel that the issuance of certificates of public convenience and necessity are justified on several grounds. The first is that when the Motor Carrier Act of 1935 was passed all carriers then lawfully in operation had the opportunity to secure a certificate of public convenience and necessity. This right was given under the so called grandfather clause. This applied to carriers that operated physically between two or more States and to those that had physical operations solely within a single State.

At that time our company chose to secure from the Interstate Commerce Commission a certificate of public convenience and necessity covering our interstate operations in Kentucky. Subsequent to that time we have secured additional authority from the Kentucky Department of Motor Transportation and registered such authority with the Interstate Commerce Commission. If it was right in 1935 for our company to receive a certificate from the ICC, then we feel it is right in 1961 for us to be granted certificates of public convenience and necessity to cover the rest of our interstate operations in Kentucky.

The second ground on which we suggest the issuance of a certificate of public convenience and necessity to cover existing interstate operations is that in Kentucky, State certificates are renewable each year on January 1. Under the proposed procedure proviso carriers would have to file a new application with the ICC each year in order to continue to hold a certificate of registration from the ICC. This would entail additional expense and time on the part of carriers and the Commission.

The third ground is in the ability of proviso carriers to sell to or buy multistate carriers—carriers already holding certificates of public convenience and necessity from the ICC. While there is a recognized procedure before the ICC for registered proviso carriers to sell to multistate carriers, such procedure is cumbersome and generally undesirable. In the case of proviso carriers buying multistate certificates there is virtually no way this can be done. Our company is interested in this latter proposition.

The statements contained in this letter are made to you with the fact in mind that about 90 percent of our total revenue is derived from shipments which are interstate in character. We urge your committee to not pass favorably on the proposed legislation, but to substitute in lieu thereof something more realistic and equitable to the carriers that will come under such economic regulation.

Respectfully submitted.

W. D. KIRKPATRICK, *Vice President.*

(Whereupon, at 3:40 p.m., the subcommittee adjourned.)

