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# EXPRESS COMPANY EXEMPTIONS

## FREIGHT FORWARDER CONTROL

GOVERNMENT

Storage

### HEARING

BEFORE THE

### COMMITTEE ON

### INTERSTATE AND FOREIGN COMMERCE

### HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

#### H.R. 4272

A BILL TO AMEND PART I OF THE INTERSTATE COMMERCE ACT IN ORDER TO PROVIDE THAT THE PROVISIONS OF SECTION 4(1) THEREOF, RELATING TO LONG AND SHORT HAUL CHARGES, SHALL NOT APPLY TO EXPRESS COMPANIES

#### H.R. 12201

A BILL TO CLARIFY CERTAIN PROVISIONS OF PART IV OF THE INTERSTATE COMMERCE ACT AND TO PLACE TRANSACTIONS INVOLVING UNIFICATIONS OR ACQUISITIONS OF CONTROL OF FREIGHT FORWARDERS UNDER THE PROVISIONS OF SECTION 5 OF THE ACT

JULY 20, 1962

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



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1962



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EXPRESS COMPANY EXEMPTIONS  
FREIGHT FORWARDER CONTROL

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## EXPRESS COMPANY EXEMPTIONS

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## FREIGHT FORWARDER CONTROL

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FRIDAY, JULY 20, 1962

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

The committee met, pursuant to notice, at 10:10 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. Let the committee come to order.

This morning the Committee on Interstate and Foreign Commerce is conducting hearings on two bills amending the Interstate Commerce Act.

H.R. 4272, introduced by our colleague, Mr. Williams, amends section 4 to provide that the provisions of the section relating to long- and short-haul charges shall not apply to express companies.

H.R. 12201, which I introduced at the request of the Interstate Commerce Commission, amends section 5 to provide that this section relating to combinations and consolidations of carriers shall apply to freight forwarders as well as to those carriers under parts I, II, and III of the act.

Copies of these bills along with various agency reports will appear at this point in the record.

(The bills, H.R. 4272, H.R. 12201, and agency reports follow:)

[H.R. 4272, 87th Cong., 1st sess.]

A BILL To amend part I of the Interstate Commerce Act in order to provide that the provisions of section 4(1) thereof, relating to long and short haul charges, shall not apply to express companies

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(1) of the Interstate Commerce Act (49 U.S.C. 4(1)) is amended by inserting before the period at the end thereof a colon and the following: "And provided further, That the provisions of this paragraph shall not apply to express companies subject to the provisions of this part".*

[H.R. 12201, 87th Cong., 2d sess.]

A BILL To clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Interstate Commerce Act, as amended (49 U.S.C. 5), is amended—*

(1) by substituting the words "Subject to section 410 of part IV of this Act, it" for the word "It" at the beginning of subparagraph (a) of paragraph (2) thereof:

(2) by changing the language following the colon in the first sentence of paragraph (3) thereof to read: "Section 20 (1) to (10), inclusive, of this part, sections 204(a) (1) and (2) and 220 of part II, section 313 of part III, and section 412 of part IV (which relate to reports, accounts, and so forth, of carriers), and section 20a (2) to (11), inclusive, of this part, and section 214 of part II (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions.";

(3) by adding at the end of paragraph (4) thereof the following new sentence: "Any such transaction or control or management in a common interest involving a freight forwarder subject to part IV which was lawfully accomplished or effectuated prior to the effective date of the amendment of paragraph (13) to embrace freight forwarders within the meaning of the term 'carrier' as used in paragraphs (2) to (12), inclusive, of this section, or the continuance thereof, shall not be deemed a violation of the provisions of this paragraph."; and

(4) by changing paragraph (13) thereof to read: "As used in paragraphs (2) to (12), inclusive, the term 'carrier' means a carrier by railroad, an express company, and a sleeping-car company subject to this part; a motor carrier subject to part II; a water carrier subject to part III; and a freight forwarder subject to part IV."

SEC. 2. Subsection (c) of section 404 of the Interstate Commerce Act, as amended (49 U.S.C. 1004(c)), is amended to read as follows: "It shall be unlawful for any common carrier subject to part I, II, or III of this Act to make, give, or cause any undue or unreasonable preference or advantage to any freight forwarder, whether or not such freight forwarder controls, is controlled by, or is under common control with such carrier, in any respect whatsoever; or to subject any freight forwarder, whether or not such freight forwarder controls, is controlled by, or is under common control with such carrier, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

SEC. 3. Section 410 of the Interstate Commerce Act, as amended (49 U.S.C. 1010), is amended—

(1) by changing the semicolon in the second sentence of subsection (c) thereof to a period and by striking the rest of the sentence;

(2) by substituting the words "Except as provided in section 5 of this Act, any" for the word "Any" at the beginning of subsection (g) thereof; and

(3) by changing subsection (h) thereof to read: "No person holding a permit issued under this part shall be authorized to engage in any direct railroad, water, or motor-carrier operations subject to parts I, II, or III of this Act, except motor-vehicle operations in transportation which, pursuant to the provisions of section 202(c) (1) of this Act, is to be regulated as service subject to this part."

SEC. 4. Section 411 of the Interstate Commerce Act, as amended (49 U.S.C. 1011), is amended—

(1) by deleting subsections (a) and (g) thereof;

(2) by redesignating subsection (c) thereof as subsection (b) and by changing the subsection as redesignated to read: "After the expiration of 6 months from the date of enactment of this amendatory paragraph, it shall be unlawful for any person affiliated with any carrier subject to part I, II, or III, within the meaning of section 5(6) of part I, to hold the position of officer or director in any freight forwarder subject to this part, or hold any stock in such a freight forwarder, unless, upon due showing, in form and manner prescribed by the Commission, it shall have been authorized by order of the Commission finding that neither public nor private interests will be adversely affected thereby: *Provided, however,* That if the position or stock was or could have been lawfully held on the date of enactment, such holding may continue pending determination of an application for such order filed by or in behalf of such person prior to the expiration of such period."; and

(3) by redesignating subsections (b), (d), (e), and (f) thereof as subsections (a), (c), (d), and (e), respectively, and by substituting the words "provisions of subsection (a) or (b)" for the words "provisions of subsection (a), (b), or (c)" wherever they appear in redesignated subsections (c) and (d).

MISCELLANEOUS BILLS

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., July 19, 1962.

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

DEAR MR. CHAIRMAN: This is in reply to your request for comments on H.R. 4272, a bill to amend part I of the Interstate Commerce Act in order to provide that the provisions of section 4(1) thereof, relating to long- and short-haul charges, shall not apply to express companies.

H.R. 4272 would amend section 4(1) of the Interstate Commerce Act to exempt express companies, as common carriers under part I of the act, from the long- and short-haul and aggregate-of-intermediate rates provisions thereof. The Department of Commerce in its report on this proposed measure, states that section 4 serves a rather limited purpose in its application to express companies and that express companies would still be subject to provisions of the act relating to destructive competition, undue discrimination, and preference or prejudice.

The Bureau of the Budget would have no objection to enactment of this legislation.

Sincerely yours,

PHILLIP S. HUGHES,  
Assistant Director for Legislative Reference.

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THE SECRETARY OF COMMERCE,  
Washington, D.C., July 20, 1962.

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

DEAR MR. CHAIRMAN: This is in further reference to your request for the views of this Department with respect to H.R. 4272, a bill to amend part I of the Interstate Commerce Act in order to provide that the provisions of section 4(1) thereof, relating to long- and short-haul charges, shall not apply to express companies.

H.R. 4272 would amend section 4(1) of the Interstate Commerce Act so as to exempt express companies, as common carriers under part I of the act, from prohibitions against a greater charge for a shorter than for a longer haul over the same direct route, and against the establishment of a higher through rate than the aggregate of intermediate rates.

This Department understands that no complaints under section 4 have been filed against the Railway Express Agency, Inc., the only express company utilizing rail carriers, since 1922. The Department also understands that since such date very few applications for relief from the provisions of the section have been filed by the express agency.

It would appear, therefore, that section 4 serves a rather limited purpose in its application to express companies. Furthermore, even though exempt from the provisions of section 4, express companies would still be subject to provisions of the act relating to destructive competition, undue discrimination, and preference or prejudice.

The Department of Commerce would not, therefore, object to the enactment of H.R. 4272.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,  
Secretary of Commerce.

INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, D.C., March 20, 1961.

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

DEAR CHAIRMAN HARRIS: Your letter of March 7, 1961, addressed to the Chairman of the Commission and requesting an expression of views on a bill, H.R. 4272, introduced by Congressman Williams, to amend part I of the Interstate Commerce Act in order to provide that the provisions of section 4(1) thereof, relating to long- and short-haul charges, shall not apply to express companies, has been referred to our committee on legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

The provisions of section 4 of the Interstate Commerce Act are applicable to common carriers subject to part I or part III. Under section 1(3)(a) of the act express companies are specifically included in the term "common carrier," and are, therefore, subject to the provisions of section 4. On July 11, 1957, section 4 was amended (71 Stat. 292) by making the section self-operating with respect to circuitous routes. Section 4 now prohibits a greater charge for a shorter than for a longer haul over the same direct route. It also prohibits the establishment of a higher through rate than the aggregate of intermediate rates. The Commission, upon application and after investigation, however, is authorized, in special cases, to grant relief from the provisions of section 4.

H.R. 4272 would amend the fourth section by specifically exempting express companies subject to part I of the act from the long- and short-haul and aggregate-of-intermediate rates provisions thereof. The Railway Express Agency, Inc., is the only express company now in operation which utilizes rail carriers. Except for instances involving point-to-point commodity rates, the majority of express rates and charges are established on what is known as the block system. Under this form of ratemaking, the country is divided into approximately 950 geographical blocks formed by the parallels of latitude and the meridians of longitude. Rates apply from block to block, with each block being uniformly 69 miles long and from 45 to 62 miles wide. Thus, the same rate would apply to all express stations within the same block.

The so-called block system makes it extremely difficult to see what the direct route is between two points with any degree of certainty. Moreover, since the express company, under its agreement with the rail carriers, may transport a shipment over the more direct route or over a circuitous route, the shipper, for whose protection section 4 was designed, in fact has no knowledge as to whether a violation will occur. This undoubtedly accounts for the fact that no complaints under this section have been filed against the Railway Express Agency since 1922, the year of its inception. In actual practice, express rates and charges under the block system generally conform to section 4, with the result that the express agency, since 1922, has filed only 20 applications for fourth section relief. Even the majority of these applications related to general increased rate proceedings. Any departures that occur are, for the most part, technical in nature, as, for example, when a direct route traverses a higher rated intermediate block to reach a lower rated block.

Under these circumstances, we recognize that section 4 presently serves a very limited purpose in its application to express companies. It must also be recognized that their exemption from the provisions of section 4 would in no way relieve them from the operation of the other ratemaking provisions contained in the Interstate Commerce Act. The Commission would still have authority under the provisions of sections 1, 2, and 3 of the act to order the removal of any destructive competition, undue discrimination, preference, or prejudice.

For these reasons, we would have no objection to the enactment of H.R. 4272.

Sincerely,

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

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., July 25, 1962.

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

DEAR MR. CHAIRMAN: This is in response to your request for our comments on H.R. 4272, to amend part I of the Interstate Commerce Act in order to provide that the provisions of section 4(1) thereof, relating to long- and short-haul charges, shall not apply to express companies. The Department of Justice favors enactment of this measure.

Under the existing provisions of section 4(1) of the Interstate Commerce Act (49 U.S.C. 4(1)) rail carriers (including rail express companies) are prohibited from establishing higher rates for transportation for a shorter distance over the same line or route in the same direction than are charged for a longer distance. This so-called long- and short-haul provision was incorporated in the Interstate Commerce Act at a time when railroads had little or no competition. It was designed to afford shippers protection against a particular type of discrimination arising from the charging of higher rates on shorter than on longer traffic movements of the same commodity over the same line. The usual cause of long- and short-haul discrimination was the existence of competition on the longer haul and the absence of such competition on shorter movements.

H.R. 4272 would exempt rail express companies from the prohibitions of the long- and short-haul section of the Interstate Commerce Act. Neither motor carriers nor airlines are currently subject to the long- and short-haul rate restrictions. In consonance with the President's transportation message of April 5, 1962, which called for equal competitive opportunity under diminished regulation and for greater reliance upon competition, it is believed that rail express companies should be freed of restrictions under which they alone labor so that they may compete more flexibly with motor carriers and airlines. The latter now offer serious competition.

For the foregoing reasons, the Department of Justice favors enactment of H.R. 4272, which would put rail express companies on an equal competitive basis with express operations in other modes of transport.

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

Sincerely yours,

NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General.*

INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, D.C., June 28, 1962.

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

DEAR CHAIRMAN HARRIS: I have your letter of June 26, 1962, enclosing copies of a bill, H.R. 12201, introduced by you, to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act, and requesting a report and comments thereon.

This proposed measure would give effect to legislative recommendation No. 5 in the Commission's 75th annual report. Copies of the statement of justification were transmitted to you with my letter of June 14, 1962, requesting introduction. Additional copies of that transmittal are enclosed for convenience of reference.

Your assistance in introducing this proposed measure is very much appreciated.

Sincerely,

RUPERT L. MURPHY, *Chairman.*

## RECOMMENDATION No. 5

This proposed bill would give effect to legislative recommendation No. 5 of the Interstate Commerce Commission as set forth on page 187 of its 75th annual report as follows:

"We recommend that those provisions of part IV of the act relating to ownership, control, and operation of freight forwarders in common with carriers of other modes be revised and clarified and, to this end, that future transactions involving such relationships be made subject to the provisions of section 5 of part I."

## JUSTIFICATION

The present provisions of part IV of the Interstate Commerce Act concerning ownership, control, and operation of freight forwarders are extremely confusing and, in some instances, apparently conflicting. The attached draft bill would clarify this situation by making freight forwarders subject to the provisions of section 5 of the act.

Section 411(a) of the act prohibits a freight forwarder or any person (defined in sec. 402 as including an individual, firm, and corporation) controlling a freight forwarder from acquiring control of a carrier subject to parts I, II, or III of the act. Expressly excepted from this prohibition is the right of any carrier subject to parts I, II, or III to acquire control of any other carrier subject to those parts in accordance with the provisions of section 5 of the act. In addition, under section 411(g) it is lawful for a common carrier subject to parts I, II, or III or any person controlling such a common carrier to acquire control of a freight forwarder.

Taken together these three provisions lead to the following confusing results: a person who initially gains control of a common carrier can subsequently acquire control of a freight forwarder, but a person cannot first acquire control of a freight forwarder and then acquire control of a common carrier; a person who acquires control of a common carrier and a freight forwarder, in that order, cannot later acquire control of another common carrier, although the common carrier controlled by such person can acquire control of another common carrier.

To add to the confusion, section 411(c) precludes any director, officer, or employee of a common carrier subject to parts I, II, or III from directly or indirectly owning, controlling, or holding stock in a freight forwarder in his personal pecuniary interest. This leads to the rather unusual result that under section 411(g) a person may control both a carrier and a freight forwarder but, in view of section 411(c), this control must be exercised in some manner as not to include being an officer, director, or employee of the carrier.

It may therefore readily be seen why it is so difficult, if not at times impossible, to reconcile the language in the various sections discussed, and give them meaning. If opportunity to engage in objectionable practices exists, it seems clear that it is a product of the common control of a carrier and a forwarder rather than the form whereby such common control is accomplished.

The draft bill would remove uncertainty and confusion about the meaning of the language in question by amending section 5 so as to place thereunder all acquisitions of control, mergers, consolidations, or unifications involving freight forwarders. The number of freight forwarders is so small that the increase in section 5 proceedings would be insignificant compared to the benefits to be derived from clarification of the law.

Four amendments to section 5 are necessary. Paragraph (13) would be changed to embrace freight forwarders subject to part IV within the definition of the word "carrier" as used in paragraphs (2) through (12). Paragraph (3) would also be modified to make the reporting and accounting provisions of part IV applicable to a noncarrier person authorized under section 5 to acquire control of a freight forwarder. A new sentence would be added to paragraph (4) in order to preserve the legality of existing common control relationships involving freight forwarders. Finally, paragraph (2)(a) would be amended to preclude approval, under revised section 5, of a common carrier, subject to part I, II, or III, holding a permit as a freight forwarder. This is in keeping with the retention of the present prohibition in section 410(c) of such unification of operating rights in a single entity. Otherwise substantial confusion would result among shippers as to the capacity in which the carrier was serving.

Several changes also are required in part IV in order to make it comport with amended section 5. The prohibition in section 404(c) respecting a common carrier giving undue preference or advantage to any freight forwarder would be reworded so as to be applicable to a freight forwarder controlling or under common control with such carrier as well as to one controlled by it.

As previously noted the proscription in the second sentence of section 410(c) against issuance of a freight forwarder permit to any common carrier subject to parts I through III would be retained. However, the language immediately following, beginning with the words "but no application," would become unnecessary as a result of the other amendments, and would therefore be deleted.

Subsection (g) of section 410 would be changed by addition of the following phrase at the beginning thereof: "Except as provided in section 5 of this act." This language would preserve the existing law respecting transfers of freight forwarder permits in transactions which will not be subject to the provisions of amended section 5—for example, the transfer of a freight forwarder permit to a person which is neither a carrier nor a forwarder, and is not affiliated therewith. Similar provisions are applicable to transfers of motor carrier and water carrier operating rights in sections 212(b) and 312 of parts II and III, respectively.

In order to complement the prohibition in subsection (c) of section 410 against a common carrier holding a freight forwarder permit, subsection (h) would be amended so as to make it clear that a person holding a permit under part IV could not be authorized to engage in carrier operations under parts I, II, or III.

Section 411 would be amended by striking subsection (a), whose provisions have been superseded, and by redesignating subsections (b) and (c) as (a) and (b), respectively. Redesignated subsection (b) would be revised to empower the Commission to approve the holding of stock in a freight forwarder by a person affiliated with a carrier subject to parts I, II, or III. Subsections (d), (e), and (f) would be redesignated as subsections (c), (d), and (e) respectively. Finally, subsection (g) would be deleted as no longer being necessary.

The Commission believes that the attached draft bill would accomplish a much needed clarification of part IV of the Interstate Commerce Act and recommends its favorable consideration by the Congress.

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U. S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D. C., July 25, 1962.

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

DEAR MR. CHAIRMAN: This is in response to your request of June 29 for the views of the Department of Justice on H. R. 12201, a bill to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act. It is understood that the bill is to be considered by the committee in executive session on July 26.

This legislation, introduced at the request of the Interstate Commerce Commission on June 19, would amend section 5 of the Interstate Commerce Act to require prior Commission approval of unifications, mergers, or acquisitions involving freight forwarders. It would also repeal so much of section 411 of the Interstate Commerce Act as now prohibits freight forwarders from acquiring control of carriers.

This legislation relates to an important segment of the transportation industry, and may be expected to have a considerable impact on the operations of organizations in that industry and on the public.

In the time which has been afforded the Department to consider the effect of the legislation on competitive relationships within the transportation industry and on shippers, it has not been possible to evolve recommendations which would be of assistance to the committee. To permit us an opportunity to inquire further into the subject, and to confer with interested Government agencies, and to afford us an opportunity to carry to conclusion related inquiries, it is suggested that consideration of this legislation be deferred.

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

Sincerely yours,

NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General.*

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. We will first hear the Chairman of the Interstate Commerce Commission, Mr. Murphy.

STATEMENT OF HON. RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ABE MCGREGOR GOFF, COMMISSIONER; IRVING J. RALEY, ASSISTANT DIRECTOR, BUREAU OF FINANCE; RAYMOND KREBILL, ASSISTANT DIRECTOR, BUREAU OF WATER CARRIERS AND FREIGHT FORWARDERS; ROBERT NEWEL, ASSISTANT DIRECTOR, BUREAU OF TRAFFIC; AND HIRAM H. SPICER, LEGISLATIVE COUNSEL, INTERSTATE COMMERCE COMMISSION

The CHAIRMAN. Mr. Murphy.

Mr. MURPHY. Mr. Chairman, I have with me this morning Commissioner Goff.

The CHAIRMAN. We are glad to have you with us, too, Commissioner.

Mr. MURPHY. And, if you like, I can give you the names of the staff who are here.

The CHAIRMAN. Yes, I wish you would.

Mr. MURPHY. Mr. Irving J. Raley, Assistant Director of the Bureau of Finance; Mr. Raymond Krebill, Assistant Director of the Bureau of Water Carriers and Freight Forwarders; Mr. Robert Newel, Assistant Director of the Bureau of Traffic; and Mr. Hiram H. Spicer, our legislative counsel.

The CHAIRMAN. You may proceed.

Mr. MURPHY. Mr. Chairman, and members of the committee, my name is Rupert L. Murphy. I am the present Chairman of the Interstate Commerce Commission and have served in that capacity since January 1 of this year. I am appearing today to testify on the Commission's behalf on two bills, H.R. 4272 and H.R. 12201. H.R. 12201 was introduced at our request to give effect to legislative recommendation No. 5 in our 75th annual report.

H.R. 4272 would amend part I of the Interstate Commerce Act to provide that the provisions of section 4(1), relating to long and short haul charges, shall not apply to express companies.

The provisions of section 4 are applicable to common carriers subject to parts I or III. Under section 1(3)(a), express companies are specifically included in the term "common carrier," and they are, therefore, subject to the provisions of section 4. On July 11, 1957, section 4 was amended (71 Stat. 292) by making the section self-operating with respect to circuitous routes.

Section 4 now prohibits a greater charge for a shorter than for a longer haul over the same direct route. It also prohibits the establishment of a higher through rate than the aggregate of intermediate rates. The Commission, upon application and after investigation,

however, is authorized, in special cases, to grant relief from these provisions.

H.R. 4272 would specifically exempt express companies subject to part I of the act from the long-and-short haul and aggregate-of-intermediate rates provisions. REA Express is the only express company now in operation which utilizes rail carriers. Except for instances involving point-to-point commodity rates, the majority of express rates and charges are established on what is known as the block system. Under this form of ratemaking, the country is divided into approximately 950 geographical blocks formed by the parallels of latitude and the meridians of longitude. Rates apply from block to block, with each block being uniformly 69 miles long and from 45 to 62 miles wide. Thus, the same rate would apply to all express stations within the same block.

The so-called block system makes it extremely difficult to see what the direct route is between two points with any degree of certainty. Moreover, since the express company, under its agreement with the rail carriers, may transport a shipment over the more direct route or over a circuitous route, the shipper, for whose protection section 4 was designed, in fact has no knowledge as to whether a violation will occur. This undoubtedly accounts for the fact that no complaints under this section have been filed against REA Express since 1922, the year of its inception. In actual practice, express rates and charges under the block system generally conform to section 4, with the result that the express agency, since 1922, has filed only 20 applications for fourth section relief. Even the majority of these applications related to general increased rate proceedings. Any departures that occur are, for the most part, technical in nature, as, for example, when a direct route traverses a higher rated intermediate block to reach a lower rated block.

In some instances, commodity rates are in effect, but even in those circumstances the shipper has no right of routing. Accordingly, insofar as REA Express is concerned, it would make no difference under section 4 whether the movement involves the block system or commodity rates. The shipper is still unable to determine whether there will be a departure.

Under these circumstances, we recognize that section 4 presently serves a very limited purpose in its application to express companies. It must also be recognized that exempting them from the provisions of section 4 would in no way relieve them from the operation of the other ratemaking provisions contained in the Interstate Commerce Act. The Commission would still have authority under the provisions of sections 1, 2, and 3 of the act to order the removal of any destructive competition, undue discrimination, preference, or prejudice.

For the reasons I have stated, we have no objection to the enactment of H.R. 4272.

Mr. Chairman, would you want me to go ahead and complete the statement?

The CHAIRMAN. Yes.

Mr. MURPHY. H.R. 12201.

The present provisions of part IV of the Interstate Commerce Act concerning ownership, control, and operation of freight forwarders are, in some instances, confusing and apparently conflicting.

H.R. 12201 proposes to clarify certain provisions of part IV and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

Section 411(a) of the act prohibits a freight forwarder or any person (defined in sec. 402 as including an individual, firm, and corporation) controlling a freight forwarder from acquiring control of a carrier subject to parts I, II, or III of the act. Expressly excepted from this prohibition is the right of any carrier subject to parts I, II, or III to acquire control of any other carrier subject to those parts in accordance with the provisions of section 5 of the act. In addition, under section 411(g) it is lawful for a common carrier subject to parts I, II, or III or any person controlling such a common carrier to acquire control of a freight forwarder.

Taken together these three provisions lead to the following confusing results: A person who initially gains control of a common carrier can subsequently acquire control of a freight forwarder, but a person cannot first acquire control of a freight forwarder and then acquire control of a common carrier; a person who acquires control of a common carrier and a freight forwarder, in that order, cannot later acquire control of another common carrier, although the common carrier controlled by such person can acquire control of another common carrier.

To add to the confusion section 411(c) precludes any director, officer, or employee of a common carrier subject to parts I, II, or III from directly or indirectly owning, controlling, or holding stock in a freight forwarder in his personal pecuniary interest. This leads to the rather unusual result that under section 411(g) a person may control both a carrier and a freight forwarder but, in view of section 411(c), this control must be exercised in some manner as not to include being an officer, director, or employee of the carrier.

A recent proceeding aptly illustrates the difficulty, if not the impossibility, of reconciling and giving meaning to the language in the various sections in part IV respecting common control of common carriers and freight forwarders. In MC-F-7096, Calore Express Co., Inc. (Rhode Island corporation)—control and merger—Carole Express Co., Inc. (Massachusetts corporation) (decided May 29, 1961, a person controlling a motor carrier later acquired control of a freight forwarder through ownership of its stock. Subsequently, the motor carrier acquired control of another motor carrier and an application for authority to merge the two motor carriers was filed under section 5 of the act. Since section 411(g) states that nothing in the act shall be construed to make it unlawful for any motor carrier subject to part II, or any person controlling such a common carrier, to acquire control of a freight forwarder, the person's acquisition of the freight forwarder was lawful. However, when the first motor carrier acquired control of the second motor carrier, a question arose as to what provision in part IV should be controlling:

- (1) the prohibition in section 411(a) against a freight forwarder or any person controlling a freight forwarder acquiring control of a motor carrier;

- (2) the exception in section 411(a) permitting a motor carrier subject to part II to acquire control of another motor carrier subject to part II;

(3) or the provision in section 411(g) that I have just mentioned.

This case has convinced us that, in reality, there is no practical difference between a common carrier controlling a freight forwarder, a freight forwarder controlling a common carrier, or a person who controls either acquiring control of the other so long as the relationship amounts to control or management of the two in a common interest. In other words, if opportunity to engage in objectional practices exists, it is by reason of the fact of common control of the carrier and forwarder and not the form whereby the common control exists or is accomplished.

H.R. 12201 would remove uncertainty and confusion about the meaning of the language in question by amending section 5 so as to place thereunder all acquisitions of control, mergers, consolidations, or unifications involving freight forwarders.

I wish to point out, in this connection, that approval under section 5 is not now required for a common carrier subject to parts I, II, or III, or any person controlling such a common carrier, to acquire control of a freight forwarder. The number of freight forwarders is so small that the increase in section 5 proceedings would be insignificant compared to the benefits to be derived from clarification of the law.

Four amendments to section 5 are necessary. Paragraph (13) would be changed to embrace freight forwarders subject to part IV within the definition of the word "carrier" as used in paragraphs (2) through (12). Paragraph (3) would also be modified to make the report and accounting provisions of part IV applicable to a noncarrier person authorized under section 5 to acquire control of a freight forwarder. A new sentence would be added to paragraph (4) in order to preserve the legality of existing common control relationships involving freight forwarders. Finally, paragraph (2) (a) would be amended to preclude approval, under revised section 5, of a common carrier, subject to part I, II, or III, holding a permit as a freight forwarder. This is in keeping with the retention of the present prohibition in section 410(c) of such unification of operating rights in a single entity. Otherwise substantial confusion would result among shippers as to the capacity in which the carrier was serving.

Several changes also are required in part IV in order to make it comport with amended section 5. The prohibition in section 404(c) respecting a common carrier giving undue preference or advantage to any freight forwarder would be reworded so as to be applicable to a freight forwarder controlling or under common control with such carrier as well as to one controlled by it.

As I have indicated, the proscription in the second sentence of section 410(c) against the issuance of a freight forwarder permit to any common carrier subject to parts I through II would be retained. However, the language immediately following, beginning with the words "but no application," would become unnecessary as a result of the other amendments, and would therefore be deleted.

Subsection (g) of section 410 would be changed by the addition of the following phrase at the beginning of that subsection:

"Except as provided in section 5 of this Act."

This language would preserve the existing law respecting transfers of freight forwarder permits in transactions which will not be subject

to the provisions of amended section 5—for example, the transfer of a freight forwarder permit to a person which is neither a carrier nor a forwarder, and is not affiliated therewith. Similar provisions are applicable to transfers of motor carrier and water carrier operating rights in sections 212(b) and 312 of parts II and III, respectively.

In order to complement the prohibition in subsection (c) of section 410 against a common carrier holding a freight forwarder permit, subsection (h) would be amended so as to make it clear that a person holding a permit under part IV could not be authorized to engage in carrier operations under parts I, II, or III.

Section 411 would be amended by striking subsection (a), the provisions of which will have been superseded, and by redesignating subsections (b) and (c) as (a) and (b), respectively. Redesignated subsection (b) would be revised to empower the Commission to approve the holding of stock in a freight forwarder by a person affiliated with a carrier subject to parts I, II, or III. Subsections (d), (e), and (f) would be redesignated as subsections (c), (d), and (e) respectively. Finally, subsection (g) would be deleted as no longer being necessary.

The Commission believes that H.R. 12201 would accomplish a much needed clarification of part IV of the Interstate Commerce Act and recommends its enactment.

Mr. Chairman, we appreciate the opportunity to appear and present our views on these measures. If there are any questions, I would be glad to try to answer them.

The CHAIRMAN. Thank you, Mr. Murphy.

In other words, H.R. 12201 would bring into conformity part IV, with reference to freight forwarders, on control, as is now provided by parts 1, 2 and 3?

Mr. MURPHY. Yes, in section 5 of the act.

The CHAIRMAN. All of this that you have explained, which is somewhat complicated and somewhat technical at first blush, is necessary to bring this into conformity?

Mr. MURPHY. It is; yes, sir. It is rather confusing, trying to follow through on it, but the purpose of it is to place such transactions under section 5 so that all four parts of the act will generally conform in this connection.

The CHAIRMAN. So they would not only be in conformity, so far as the authorization is concerned applicable to the various modes, but in the administration of it insofar as the act is concerned also?

Mr. MURPHY. That is correct.

The CHAIRMAN. Well, is your Commission unanimous in its recommendation of this bill, H.R. 12201?

Mr. MURPHY. I believe it was, Mr. Chairman. It was unanimous, yes, sir.

The CHAIRMAN. And from the standpoint of the Commission, the Commission thinks it is entirely desirable?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Now, with reference to H.R. 4272, having to do with the long and the short haul, as applicable to express companies. I guess there is only one express company, is there not?

Mr. MURPHY. There is only one operating using the rail facilities.

The CHAIRMAN. Yes.

Mr. MURPHY. Yes, sir.

The CHAIRMAN. And your Commission has no objection to it?

Do I understand that this bill would merely adjust the present procedure to make it more appropriate for the Commission's administration of the program and clear away some of the bureaucracy or red-tape insofar as the Railway Express is concerned?

Mr. MURPHY. I think that sums it up, yes, sir.

We actually do not find a need for it and, over the period of time that it has been in effect, the record indicates that we have had no complaints filed since 1922.

We have had no complaints filed under it since that time and we have had only approximately 20 applications for relief filed, and that was to meet technicalities brought about by these permissive general increases of revenue.

The CHAIRMAN. In other words, whatever made this provision of law necessary, it has served its purpose and long since has served no purpose at all?

Mr. MURPHY. That is our feeling; yes, sir.

And I might say that the position on that, Mr. Chairman, was unanimous also.

The CHAIRMAN. All right.

Any questions?

Mr. Williams?

Mr. WILLIAMS. I have one question, Mr. Chairman.

I notice in your statement, Mr. Chairman, you state that with respect to H.R. 12201 the Commission recommends its enactment.

With respect to H.R. 4272, The Commission states that they have no objection to the enactment of the bill.

Is there any difference in the Commission's position with respect to these two bills? In other words, your statement to the effect that you have no objection to the enactment of the bill is apt to be construed as an endorsement of the legislation and a recommendation that the bill be enacted.

Mr. MURPHY. Yes, sir. I think the only distinguishing feature there is that H.R. 12201 was introduced at our—

Mr. WILLIAMS. I see.

Mr. MURPHY (continuing). Request as a legislative recommendation; whereas the other one was introduced at someone else's request.

Mr. WILLIAMS. All right. Thank you, sir.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

In regard to the express companies on the block system, is that the only traffic that uses the block system in determining rates?

Mr. MURPHY. It is the only carrier that I know of that uses it. It was developed and designed specifically for what we have called Railway Express and the express companies, and that is the only one that I know of using it. Yes, sir.

Mr. YOUNGER. In determining rates?

Mr. MURPHY. Yes, sir.

Mr. YOUNGER. That is the only one that you know of that uses the so-called block system?

Mr. MURPHY. Yes, sir.

Mr. YOUNGER. And, as I understand the bill, it would eliminate the block system?

Mr. MURPHY. No, sir.

Mr. YOUNGER. It would not?

Mr. MURPHY. What the bill would do, Mr. Younger, would be to eliminate long- and short-haul provisions in section 4 with respect to express companies. Today it not only applies to the railroads and the water carriers, but also the REA Express.

And what this would do is eliminate the Railway Express from being subject to the provisions of section 4 of the act.

Mr. YOUNGER. Well, would you want to comment on that fact?

It is not clear to me as to why the rates on express should be fixed on a so-called block system, and you do not fix rates for freight or passengers on the same system?

Mr. MURPHY. Well, about all I can say on that, Mr. Younger, is that it was developed many years ago, and it was for the purpose of serving a particular type of traffic which is predominantly small package traffic. You might say that it is similar to your parcel post.

Mr. YOUNGER. Compared to the zones of the parcel post?

Mr. MURPHY. Zones; yes, sir. I think that would be the nearest way that I could relate it to some other type of operation, both being primarily in the field of small packaged freight.

Mr. YOUNGER. Now, in regard to the freight forwarders, are all freight forwarders corporate entities?

Mr. MURPHY. I could not answer on that. I have never had any occasion to check—

Mr. YOUNGER. In granting permits, can you grant a permit for a freight forwarder to an individual?

Mr. MURPHY. Yes. I think you could grant a permit to an individual.

Mr. YOUNGER. If you had a permit to an individual, how do you acquire control of the individual?

You refer here to control of the freight forwarder. That is the point that is not clear in my mind.

If you have individuals that get permits, how can you get control of the freight forwarder who is an individual and not a corporate entity?

Mr. MURPHY. Well, the purpose, I assume, is that you would have to say that you get control of the business that he is operating.

Of course, you could not get the individual himself, but as far as the—

Mr. YOUNGER. Well, the business is in the individual's name.

Mr. MURPHY. Well, I will have to answer in this way: We have not had that question arise.

So I would say that we would try to work it out in some way should it ever come up.

Mr. YOUNGER. Now, one other question. You raised a number of points in here about the changes that are necessary.

Now, are all the changes that are suggested in your testimony incorporated in H.R. 12201?

Mr. MURPHY. Yes, sir.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Does anybody else have any questions?

Thank you very much, Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. William B. Johnson, president of the Railway Express Agency.

STATEMENT OF WILLIAM B. JOHNSON, PRESIDENT, RAILWAY EXPRESS AGENCY, NEW YORK, N.Y.

\* The CHAIRMAN. You may proceed, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Chairman, and members of the committee, my name is William B. Johnson. I am president of REA Express, with offices at 219 East 42d Street, New York 17, N.Y.

I speak in support of H.R. 4272, which amends section 4 of the Interstate Commerce Act to exclude this section's application to the rates of express companies.

The corporate name of our corporation is, actually, Railway Express Agency, but we use REA as a trade name.

The Chairman of the Commission has explained the fourth section. The second paragraph of my prepared statement paraphrases the section and attempts to state how it operates.

As actually applied it can become a tremendously complex and technical provision of rate law. I will not endeavor, although I have a traffic manager and commerce attorney here who can answer any of the technical questions that might arise with respect to circuitous routes and so forth, I will not endeavor to volunteer an explanation on those.

I think for this purpose the main thing is that the present operation of section 4 is such as to require any changes in rates whether up or down to be of precise corresponding magnitude to all points on a given route.

In other words, under section 4 no one rate stands alone. The rates are presumed to be related to distance on fixed routes and any change in the rate must be, and is inflexibly required, under section 4 to be related to the distance on a particular route.

This is very important because we are talking about express shipments, and the average weight of an express shipment is 46 pounds.

We handled about 60 million of those last year with the average weight of 46 pounds. The average weight per piece is only 30 pounds, and the average revenue is a little over \$5.

When you start applying the provisions of section 4 to traffic of that kind, an individual shipment, on the theory that it moves over a fixed route, and you are only talking about \$5.30 of revenue, you can easily get into complexities which are burdensome to the carrier in its effort to serve the public, burdensome to the employees, and burdensome to the public.

And that is, in substance, why we hope that we will be relieved from the operation of section 4 on express rates.

Stated more specifically, perhaps, we think the section is unnecessary for the protection of the public and we think, in fact, it is unfair to apply it to express companies. I am now at the bottom of the first page of the testimony, trying to put this in, perhaps, more direct language.

We do not have any competitors who are subject to this law. We are the only carrier in the small shipments' business who is subject to the fourth section, the long and short clause and the aggregate of intermediates.

Our competition in the small shipments' business is primarily parcel post, the Government's business, the motor common carriers, the freight forwarders, the bus companies, the co-ops, and consolidators, and air traffic, and we have an air express service of our own, but none of these other services are subject to section 4. Our surface express service is the only one in this small shipments business regulated under section 4 except the railroads l.c.l. freight service.

I think the reason for this, as I say later in the testimony, is that it is a historical analogy. We are very old. We were in existence in 1897 when the act was passed.

We and the railroads were about the only carriers that were. There were no airplanes, virtually no highways, and no motor carriers.

So when the act was passed, quite naturally we fell under it like everybody else, and we have lived under it with increasing difficulty and complexity all these years.

But to illustrate, the motor carriers, who are tremendously active in this field, have been regulated since 1935. They have never had a section 4. The freight forwarder industry has been regulated since 1942. They have never had a section 4.

The Government's own business, parcel post, does not have a section 4. In fact, we are the only one who does have a section 4, and I will illustrate why it is so burdensome but, statistically, I think it is uncontroversial that the public interest cannot require this old and rather flexible provision to be applied on these particular movements, 60 million of them last year or almost 60 million—on which the rate was only 46 pounds and the pay \$5.30.

Our tonnage is  $1\frac{1}{2}$  million tons a year. The motor carrier industry, in the small shipments field, l.t.l., have  $64\frac{1}{2}$  million tons; the forwarders 4 million tons; the post office has  $2\frac{1}{2}$  million tons, and you could go on from there, but, to sum it all up, in the l.t.l.-l.c.l. business I would say there is about 70 million tons of business moved by carriers who are not subject to a section 4.

If our  $1\frac{1}{2}$  million tons has to be subject to section 4, because of the public interest, you would think the other 70 million tons would. But 70 million moves without regard to section 4 and without harm to the public interest, and so we suggest that our  $1\frac{1}{2}$  million could also.

The Chairman of the Commission has pointed out that there is adequate protection in section 1 against unreasonable rates and charges and in section 2 against discrimination and in section 3, against prejudicial preference to any territories or areas.

So the Commission concurs in our belief, and they are certainly the responsibility authority that the public interest is fully protected without the addition of these very technical and flexible provisions of section 4.

Mr. Younger asked about the block system. I think Greyhound uses something like a block system, Mr. Younger, and parcel post has the zoning system.

We have the block system because in 1912 the Interstate Commerce Commission found that there were many express companies and that

the rates were chaotic and should be put on a simplified basis, and they established the block system.

There are about 950 blocks, I think, and since that time that is the way we have operated.

That became, in conjunction with section 4, particularly burdensome because the main point is that section 4 presumes that each shipment moves on a particular route and it relates the through rate to the aggregate of the intermediate rates; or the long haul through rate to the level of the through rate to an intermediate point of a common origin.

Now, under a block system you do not have a rate prescribed for a route in express service. You have a rate between one block and another block.

There is no route and our traffic is not routed by the public. We route it. The routes change.

We use all forms of transportation and there is no logic in trying to apply section 4 which presumes a particular shipment will be routed by a particular movement or by a particular means of carrier.

It really has no application under the block system. So for that reason we think it is illogical.

But I would like to illustrate very briefly the biggest and most important reason why we are before you today asking you to pass this law.

We serve the whole United States, all 50 States, and many foreign countries. All of our traffic is primarily moved under first- and second-class rates under the block system.

Prior to 1957 all of our first- and second-class rates were contained in this tariff, I.C.C. 8300, which had 23 pages. It weighed 2 ounces.

In 1957, as costs went up under the postwar inflation, the Commission found that the rates in the eastern territory, with the costs high, could specifically and properly be raised to reflect the higher cost in the eastern territory.

This meant, however, that a point just beyond that territory might have a lower rate than a shorter haul point within the territory. This is where it gets technical.

So we had to ask for relief from section 4. The Commission concluded under the law they could not give us the relief, and so we had to reduce the rates within the eastern territory and lose the revenue which the Commission had already found we were entitled to, or, we had to extend the rate increases outside of the eastern territory and put it on traffic and on customers which the Commission had not found justified by the costs. We did not want to raise those rates, but it was the only way that we could comply with section 4.

Well, we tried to back the rates up in the eastern territories to meet section 4, and we lost about three-fourths of the revenue which the Commission found we were entitled to.

So then we tried the other method and we put the rate increases on traffic which we really did not want to put them on, in order to protect the revenue which the Commission found that we had to have, but then it gets even worse.

In order to apply the rates under the block system you had to figure the rate to the gateway, at the edge of the territory, the so-called border point and then compute the rate on that little 46-pound ship-

ment to a point beyond, compare the two rates, and find out which was higher, and under section 4 you are legally required to charge a higher rate.

Well, that required two rate computations on all these shipments; the employees soon got—our truckdrivers figure a lot of our rates, and they found they could not figure the proper rate and the public could not either.

So we had to do something about it. So we took this simple little 2-ounce tariff, that nobody could live with under section 4, and we republished it and there it is. That one weighed 2 ounces, and this one weighs 2 pounds, I think, or 1 ounce short of 2 pounds, actually.

That one cost us \$5,400 to print and distribute to customers all over the United States.

Because of section 4, under the Commission's decision, and I think they were right under the law, we had to go to this tariff and this one instead of costing \$5,400, cost us \$83,000 to print, and instead of a 2-ounce tariff we have a 2-pound tariff.

Now, 245 pages of this tariff can be taken out and thrown away if you pass this bill. I had the pages marked with a rubber band. There they are. We could take those out and throw them away if we did not have section 4 and nobody really cares about section 4.

The public has never complained to us about section 4. Of course, we have tried to comply with it but, as the Chairman of the Commission said, they have not had a complaint since 1922 under section 4, and there really is not any need of it on a 46-pound shipment.

But if we could do away with that much of this tariff think how much simpler our paperwork would be. We figure we spend about \$35 million a year in paperwork on these 60 million transactions. It would be tremendously helpful to everybody and harmful to nobody if we could take those 245 pages and throw them away.

To illustrate the same point, here is an important commodity rate tariff of ours, ICC 8510. This has 58 pages. We could take 26 pages out of this tariff and throw them away if we did not have section 4, and nobody would care. Everybody would be delighted. I do not think anybody would have any complaint about it. They are only in there because of the inflexible provisions of section 4. The Commission has no alternative. We have no alternative, but what good does it do?

Some 50 percent of that tariff could be thrown away if we do not have section 4.

Here is one; ICC 8499. These are our three most important tariffs, and that is why I brought them.

Out of this one, which is 212 pages, we could throw away 101 pages, again almost 50 percent, and these pages are in here just because people could not make the double rate check to the border points that were required.

We tried to solve the problem so we could live with it, and the result is that we have not these terrible tariffs.

I think everybody knows the small shipments problem has been a great problem for the post office and for all carriers since World War II. We have tried to be imaginative and helpful to the public, because this is where our future lies. This is our job, trying to simplify our tariffs.

I pledged to the Commission in 1959 when I became president of the company, when we were trying to reorganize it and keep it from

going out of business, that we would endeavor to simplify our tariffs, but you see, in order to live with section 4 and avoid bankruptcy we have had almost to go in the opposite direction.

We did give it a try in ICC 8498 in the Bruceton tariff, and out of one point, Bruceton, Tenn., we put rates to every point in the United States in one little space at the bottom of one page. Now, that is a wonderful tariff.

Today 17 or 18 percent of the shipments are misrated and we have undercharges and overcharges. It is virtually impossible to comply with the law and make the proper charge. Everybody is burdened. So we thought that this tariff would be a great thing, and it would, because any employee could put it in his pocket and he could not make a mistake and neither could the public.

But our competitors complained that that violates section 4. Of course, they do not have the law but still they protested on it.

And so they were right, I guess. Anyhow, it was suspended.

So we tried again with a little more complex tariff. They made other objections, too, and, of course, I do not know why the Commission suspended it. Maybe it was section 4 or some other reason.

Here is another more complex tariff, ICC 8514, which simply refers you to block numbers in other documents, and that is much more complex than—and they claim that that violates section 4, too, and that is in hearing before the Commission and I do not know when it will ever be decided.

It is not the Commission's fault. It is the fault of the law. But that shows you how section 4, with its technicalities, stands in the way of tariff simplification.

Now, finally, I would just like to close by saying this: the President, in his transportation message, made a strong pitch for simplification of tariffs, and I think there is nothing in the world so beneficial to the public as an imaginative step to simplify the tariffs, if we can do it, but, gentlemen, we cannot do it under this inflexible provision and very technical section 4.

The contents of the President's message, in our opinion—and he did not say anything about section 4 in his message and I do not want to suggest that—but I think the whole tenor of the message, and particularly that section of it which asks for simplification of tariffs to escape useless paperwork—is entirely consistent with this and so I really think the President's transportation message supports our bill.

That is my view of it, and I will just close with this:

We have a lot of very loyal, hard-working employees and customers, and this is burdensome to them as well as to management. It is an inefficient law. It is unnecessary to protect the public. It never has been necessary.

None of our competitors have it, and I think it will materially aid in solving the small shipments' problem.

We have, literally, hundreds of letters in our files where our employees write and beg for some way to simplify the tariffs. You cannot expect a truckdriver to make the right charges under these complicated tariffs. I mean, it just cannot be done.

I brought along a letter from an employee, W. E. Manning, who is a driver with 10 years of service, 45 years old, and a very good employee, and he is eager to help us get business. He wrote Mr. O. G.

Swenson, the director of our pricing section, this letter begging for some relief from the technicalities of our tariffs, and this is a common view with all of our employees.

I think it would be good for everybody if we got rid of this law which only applies to the express company in the small shipments field. I would not want to say whether it should be applied to others, but in the small shipments field it only applies to us today.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Johnson, we are glad to have your testimony on this, as president of the Railway Express Agency interested in this problem. Your personal appearance here, I think, clearly demonstrates your interest, and you have pointed out the need for the consideration of that which you proposed.

Are there any questions by any member?

Mr. FRIEDEL. Mr. Chairman, I would just like to commend Mr. Johnson for a very fine statement, and I would like to have it noted that you are also president of the National Defense Transportation Association.

Mr. JOHNSON. Yes, sir; I am glad to say that I have that honor.

Mr. FRIEDEL. And the passage of this bill would just simplify your problems in the REA?

Mr. JOHNSON. Yes, it would, very definitely.

The CHAIRMAN. Any further questions?

Mr. YOUNGER. Just one: You are not confronted with this same provision in your air transport?

Mr. JOHNSON. Oh, no, it is not subject to it. It is not in the Civil Aeronautics Act.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Mr. Johnson, how do your rates for comparable packages compare with the postal rates when you operate under this section 4?

Mr. JOHNSON. Their rates are based on packages, Mr. Curtin. Ours are based on shipments.

So you would have to make an assumption as to how many packages of what size are in one of our shipments.

Now, if you take our package size, our first- and second-class rates are much higher than the Post Office, because we cannot operate at a loss and the Post Office can, and does, I might say.

But we have only one tariff which can operate to be lower than parcel post rates. If we can get some efficiency here I would like to get our rates down to that level, provided the Post Office would get their's up to an even basis, but at the present time I think the general conclusion would be that our rates are much higher than the parcel post.

Mr. CURTIN. Thank you, sir.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Johnson, if the express companies are exempted from section 4 are they otherwise covered as to a requirement that the rate be compensatory?

Mr. JOHNSON. Yes, sir; they are. Section 1 would have that effect, in my opinion, and we would be subject to a prohibition against destructive competition, a prohibition against excessive charges, a prohibition against discrimination, and a prohibition against prejudice.

All of the sections of the law would still be there.

The CHAIRMAN. Thank you very much.

Mr. JOHNSON. Thank you, sir.

(Mr. Johnson's complete statement follows:)

STATEMENT OF WILLIAM B. JOHNSON IN SUPPORT OF H.R. 4272

My name is William B. Johnson, I am president of REA Express with offices at 219 East 42d Street, New York 17, N.Y. I speak in support of H.R. 4272, which amends section 4 of the Interstate Commerce Act to exclude this section's application to the rates of express companies.

The fourth section is an unbelievably complex and technical provision of rate law which could require a very lengthy and technical statement to explain in all its ramifications. So far as H.R. 4272 is concerned, however, the fourth section can perhaps be described as requiring a carrier, when decreasing or increasing a rate to any point, to make corresponding decreases or increases to all other points on the same route. In other words, under the fourth section no rate stands alone, and rate adjustments are assumed to be made by route, and not on a point-to-point basis.

It is unnecessary, unfair, illogical, and inefficient to apply the fourth section to an express company.

It is unnecessary and unfair because the fourth section has never applied to the common carriers who compete with REA Express for small shipment business; namely, motor carriers and freight forwarders. The former became subject to regulation in 1935 and the latter in 1942. Ever since they have been allowed to publish long-haul rates lower than their short-haul rates, and the aggregate of their intermediate rates has often been lower than their through rates;<sup>1</sup> both of these situations are forbidden to REA Express by the fourth section, and as a result REA is unable to compete on a parity with motor carriers and forwarders for small shipment traffic. If there were reason to protect small shipment traffic with fourth section strictures, they surely would have been imposed on motor carriers since 1935 and on forwarders since 1942.

As the Chairman of the Interstate Commerce Commission advised the chairman of the Senate Committee on Interstate and Foreign Commerce on October 12, 1960, concerning the bill under discussion today, the fourth section is not needed for proper regulation of express companies, among other reasons, because "their exemption from the provisions of section 4 would in no way relieve them from the operation of the other ratemaking provisions contained in the Interstate Commerce Act. The Commission would still have authority under the provisions of sections 1, 2, and 3 of the act to order the removal of any destructive competition, undue discrimination, preference, or prejudice." Express shipments average 46 pounds in weight and \$5.31 in express charges. No shipper or receiver of such traffic needs protection against discrimination beyond that available in sections 2 and 3 of the Interstate Commerce Act.

I have suggested that the fourth section is unnecessary and unfair insofar as REA Express is concerned. It is also illogical, because it assumes the routing of traffic through predetermined intermediate points, and express traffic and rates are unrouted. There have been no express routes since 1912 when, in *In re Express Rates, Practices, Accounts and Revenues 24 I.C.C. 380*, the ICC reformed the express rate structure by prescribing what the Commission described as "a simple schedule which will give the same rate from point of origin to destination, no matter by what route the shipment may travel and without reference to the number of carriers that may participate in the haul" (24 ICC at 391).

REA makes use of all surface forms of carriage in moving express traffic from one point to another. Under its contracts with railroads REA Express is free to use any route in moving express traffic. Therefore it is neither sensible nor useful to pretend for purposes of fourth section compliance that there are intermediate points on express routes through which shipments will always travel when moving from their origin to destination. The fourth section assumes that rates are made via routes, and REA makes rates under a so-called block

<sup>1</sup> For example, see *Class Rates, Chicago, Ill., to Texas*, docket 32021 decided by the ICC Nov. 11, 1960, where the Commission noted that both forwarders and motor carriers are exempt under the fourth section and, assuming their rates are otherwise lawful, are free to "maintain the same rates at the more distant points as well as at the intermediate points."

system between all points in the United States; these rates remain the same regardless of the physical route of movement via which traffic might reach these points. Therefore no accurate application of the fourth section can be made to REA's rates and service.

The most important reason for enactment of H.R. 4272 is the inefficiency of subjecting an express company to the fourth section. Our costs vary from one territory to another and our rates vary accordingly. If we pretend, as we must under the fourth section, that interterritorial shipments always move via the same routes through the same interterritorial border points, we must compare the through rate with the short-haul rate to the hypothetical border point on every interterritorial shipment to determine the lawful charge. During 1961 our average shipment charge was \$5.31. The expense of double rate checking such charges is entirely disproportionate to any changes in them which can be produced by the double check. To avoid this expense we have departed from the simple schedule which the Commission prescribed in 1912 by publishing in many of our tariffs a large volume of material grouping the 912 express rate blocks involved in interterritorial traffic, and setting out individual rate tables which apply between each of these rate groups. As a result, instead of using 23 pages in our class tariff to set out 82 rate scales, in 1960 we had to reissue the tariff (No. ICC 8500) in 313 pages setting out several thousand rate tables. This caused the class tariff to increase in weight from 2 to 31 ounces, and in cost of printing a tariff issue from \$5,397 to \$83,334.

Like expansions of all of our other tariffs have either taken place, or will be required soon in order to avoid double rate checking. Unless the law is changed to permit simplifying the auditing of express rates and charges, their complexity will continue to have a serious effect on our traffic volume, because customers have complained to us bitterly about the difficulty they encounter when checking our rates and as a result much traffic has been diverted to our competitors. Our application to the ICC to obtain relief from the fourth section in order to avoid the tariff complexities, described above, was turned down in docket 31985, and is reported in 300 I.C.C. at 595. Fourth section relief is confined to special cases according to the statute, and only 1 of the 11 Commissioners noted his opinion in a dissent that "the higher handling costs within the east constitute a special case justifying fourth-section relief in connection with interterritorial movements." Therefore when these higher handling costs caused the Commission to grant an intraterritorial rate increase in 1957 in docket 31985, the refusal of fourth section relief compelled REA to apply the increase to interterritorial traffic and to institute first the system of double rate checking, and then the program of issuing massive and complex tariffs which obtains today.

It is particularly appropriate to enact H.R. 4272 at this time because it implements important elements of the President's message on transportation to the Congress of the United States, dated April 4, 1962. The message urges "the enactment of such additional legislation as may be necessary to encourage experimental rates and services, to explore every promising simplification of rate structures, and to encourage the development of systems that will make rate ascertainment and publication less costly and more convenient." H.R. 4272 is legislation which aims precisely at these results. The message notes that "the management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative." The application of section 4 to express transportation and rates is regulatory supervision of this nature. Because of the inflexibility of section 4 the small shipment public is actually burdened rather than protected by this provision of law. H.R. 4272 accords with the expression in the President's message of the desirability of eliminating damaging inflexible regulation.

Finally, the President's message commends to Congress the regulation of carriers and the various modes of carriage on the basis of parity and fairness. Because among small shipment carriers only REA Express is hobbled by section 4, its application to express companies conflicts with this policy. Section 4's application to express companies is a historical anomaly stemming from the last century when all intercity transportation was via rail, and via routed tariff routes. Through the accident that motor carriers came under part II of the Interstate Commerce Act and freight forwarders under part IV they escaped the onus of the fourth section while REA, subject with the railroads to part I of the act since its original enactment, remained under section 4. H.R. 4272 is needed to correct this oversight, and to repair the damage which it has caused.

The CHAIRMAN. Mr. Bailey?

Mr. BAILEY. Thank you, Mr. Chairman.

The CHAIRMAN. You may identify yourself, Mr. Bailey, and proceed.

**STATEMENT OF C. B. BAILEY, NATIONAL SPECIAL REPRESENTATIVE, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS, AND STATION EMPLOYEES**

Mr. BAILEY. Thank you.

My name is C. B. Bailey. I am the national special representative of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express, and Station Employes.

My office is at 400 First Street NW., Washington, D.C. The chief executive officer of our brotherhood is Mr. George M. Harrison, grand president, with offices at 1015 Vine Street, Cincinnati, Ohio.

Our brotherhood represents approximately 25,000 express employes, about 75 percent of the total number. I appear before you in full support of H.R. 4272.

Mr. Johnson has given a most realistic appraisal of why this bill should be passed so I will not repeat but will confine my statement to the reasons why our brotherhood supports passage of H.R. 4272.

Our interest is in the welfare of REA Express and in the preservation of the jobs of our members presently employed. We are interested in the conditions of their employment and the efficiency of the tools with which they work. A very large number of our member employes are required to quote express rates to customers and for other purposes day in and day out and, therefore, have a justifiable concern with the efficiency of the tariffs in which the rates are published.

For years, and due in a large measure to the old and restrictive requirements of section 4 of the Interstate Commerce Act, REA's tariffs have grown increasingly complex and voluminous through the continuing attempt to publish realistic rates for the public in the small shipments transportation field. As a result of this increase in volume and complexity, the tariffs, with which so many of our member employes must work in their daily job, have become difficult to read and understand.

This has resulted in frustration for many of our members and it also has caused grievous concern because of the member employes' desire to do their job in a prompt and efficient manner so as to attract additional business to REA Express service and thereby enhance the possibility of additional employment.

It is the considered position of our brotherhood that passage of H.R. 4272 will be a major factor in the ultimate simplification of express rate tariffs, and will ultimately enable our members to do their job in a more efficient and creditable manner.

Express companies are the only small shipments carriers subject to such a law and it seems only fair that they be placed on a basis of equality with their competitors. This will improve the job opportunities of our express employes. Therefore, I strongly urge immediate enactment of H.R. 4272.

That completes my statement, Mr. Chairman.

I want to thank you and the members of the committee for giving me the opportunity to express our support to H.R. 4272.

The CHAIRMAN. Thank you, Mr. Bailey, for your presentation.

Any questions?

We are glad to have your views.

Mr. Lester J. Dorr.

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

Mr. DORR. Thank you, Mr. Chairman.

My name is Lester J. Dorr and my appearance today is in my capacity as executive secretary of the National Industrial Traffic League. I will describe the league and then go on to both bills, if I may, Mr. Chairman.

The league is a nationwide voluntary, nonprofit organization of shippers. Included in its more than 1,600 members are companies of all sizes, the very large corporations, and many small business concerns. Also included in its membership are chambers of commerce, boards of trade, and similar commercial organizations who, in turn, represent their members on transportation matters.

There are no carriers holding membership in the league. League policies and statements express the interests of those who actually ship and receive freight and pay the transportation charges. Membership is drawn from all areas of the United States and includes practically every line of industrial and commercial activity. League members use all forms of transportation—rail, motor, water, air, pipeline, and express companies.

Now, I think I can shorten up on my presentation by simply saying that the league heartily endorses H.R. 4272 for the many reasons which have been stated here this morning, and I don't think I need read the rest of that statement, but would ask that it be incorporated in the record as if read.

The CHAIRMAN. We will let your statement be included in the record.

Mr. DORR. Yes, it is in support of H.R. 4272.

The CHAIRMAN. Very well.

(The statement referred to follows:)

#### STATEMENT OF L. J. DORR ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is L. J. Dorr. My appearance today is in my capacity as executive secretary of the National Industrial Traffic League and will be in support of H.R. 4272, to amend part I of the Interstate Commerce Act in order to provide that section 4(1) thereof, relating to long- and short-haul charges, shall not apply to express companies.

The National Industrial Traffic League is a nationwide voluntary, nonprofit organization of shippers. Included in the league's more than 1,600 members are companies of all sizes—the very large corporations and many small business concerns. Also included in its membership are chambers of commerce, boards of trade and similar commercial organizations who in turn represent their members on transportation matters. There are no carriers holding membership in the league. League policies and statements express the interest of those who actually ship and receive freight and pay the transportation charges. Membership is drawn from all areas of the United States and includes practically every line of industrial and commercial activity. League members use all forms of transportation—rail, motor, water, air, pipeline, and express companies.

League members are very much interested in and use railway express as a

transportation media. For a number of years the league has had a standing committee to consider and handle express problems. In 1959, the league, acting upon the recommendation of its express committee, strongly supported the reorganization program of the Railway Express Agency.

As far back as 1952 the league considered modification of section 4. A specific policy was adopted at that time. This policy, which represents the majority opinion of the league's membership, was ratified at the 1955 and 1960 annual meetings. It provides that section 4 of the Interstate Commerce Act should be repealed and the following provisions enacted in lieu thereof:

"Sec. 4. Whenever in any proceeding before the Commission under this part, part II, part III, or part IV, there is brought in issue a through rate, fare, or charge, which exceeds the aggregate of the corresponding intermediate rates, fares, or charges subject to this Act, or where there is brought in issue a higher rate, fare, or charge for transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction the shorter being included within the longer distance, the burden of proof shall be upon the carrier to justify the rate, fare, or charge against any claim that it is for that reason unreasonable, unjustly discriminatory, unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act."

The policy of the league is to amend section 4 of the act so that rates of all carriers which are higher for a shorter than a longer distance over the same route or line in the same direction, or which are greater for the through route than the aggregate of the intermediate charges, shall be prima facie unreasonable. In other words, the carrier publishing these rates must, if an appropriate complaint proceeding is brought, bear the burden of supporting them. This is an enactment of the legal precedent established prior to the enactment of section 4. As explained by the Supreme Court in *Patterson v. The L & N Railroad*, 269 U.S. 1, 10-11, the Commission had firmly established that rates of the character prohibited by the section 4 were, prima facie, unreasonable. Section 4 made them per se unreasonable, unless relief from section 4 were granted by the Commission. The league's policy is an enactment of the decision law prior to section 4.

If express rates are exempted from the fourth section they will remain, as do motor carrier, freight forwarder, and circuitous rail rates, subject to all of the rules and criteria of ratemaking in the Interstate Commerce Act, including the requirements that rates remain reasonable, compensatory, and not destructively competitive under section 1, that they do not create undue preferences and prejudices among shippers and receivers under section 2, and that they do not unduly discriminate among persons, places, and localities under section 3.

Since the shippers will be protected against unreasonable prejudice and discrimination in the making of the rates, by sections 2 and 3, it seems unnecessary to the league to continue section 4, which makes it difficult to establish rates compelled by competition to specific points.

The prohibitions of section 4 apply only to carriers subject to part I and part III. Motor carriers and freight forwarders have no such restrictions. Under modern transportation conditions there is no reason why express companies, railroads and water carriers should be subjected to the cumbersome section 4 proceedings while their competitors, regulated under part II and part IV, are not.

Repeal or modification of section 4 prohibitions have been urged for a number of years. President Eisenhower's Cabinet Committee on Transport Policy and Organization, in April of 1955, recommended repeal of section 4. Although this repeal was not accomplished, the recommendation led to a modification in the transportation bill of 1957. This modification eliminated the necessity of securing prior approval by the Interstate Commerce Commission for publication of rates over circuitous routes which are equivalent to the going rates of a direct route, H.R. 4272, if enacted, would be a further step in removing these onerous prohibitions by relieving express companies from its application. The league urges that your committee favorably consider enactment of this proposal.

Mr. Dorr. Now, turning to H.R. 12201, I dislike very much being the first discordant voice being heard this morning in this otherwise pleasant party but the league is not in support of 12201.

I will not read the description of the league. I have already done that. As we see it H.R. 12201 purports to carry out legislative rec-

ommendations No. 5 of the Interstate Commerce Commission in its 75th annual report, page 187. The Commission there recommended—that those provisions of part IV of the act relating to ownership, control, and operation of freight forwarders in common with carriers of other modes be revised and clarified, and, to this end, that future transactions involving such relationships be made subject to the provisions of section 5 of part I.

ICC Chairman Murphy has already pointed out all of the things which are covered on page 2 of my statement, and I don't think that that need be reread at this time.

If you will turn at the top of page 3, the league is certainly sympathetic with any effort to clarify apparent inconsistencies such as cited by the Commission in the previous quotation.

However, H.R. 12201 is designed to accomplish much more than this. The league believes that the heart of the bill is found in section 4 which repeals section 411(a) of the act, and I then spell out what section 411(a) provides.

This section is eliminated by section 4 of H.R. 12201, thus legalizing control by a freight forwarder of a common carrier subject to parts 1, 2, or 3 of the act. The league is strongly opposed to any such control and, therefore, to section 4. In 1956, the 84th Congress had before it a proposal, S. 3367, to change section 411(a) and to authorize freight forwarder control of an underlying common carrier under parts 1, 2, or 3.

The first paragraph of S. 3367 read in part as follows:

Section 411(a) (1) notwithstanding any other provision of this Act, it shall be lawful, with the approval and authorization of the Commission, as provided in paragraph (2) of this subsection, for a freight forwarder subject to this part to acquire control of one or more common carriers subject to part I, II, or III of this act, through ownership of stock or otherwise; \* \* \*.

The league vigorously opposed the bill at hearings before a subcommittee of the Senate Committee on Interstate and Foreign Commerce—see the printed hearings before that subcommittee on April 9 and 10, 1956, particularly the printed statement presented on behalf of the league beginning on page 44 thereof.

The league contended then, and contends now, that freight forwarders must not be allowed to acquire control of underlying carriers.

The historical forwarder function which brought about the development of freight forwarding business, since before the forwarder regulatory act and before the Motor Carrier Act, is the provision of a service of consolidating small shipments, of reshipping that consolidated lot as a larger shipment, usually as a carload or truckload in a terminal-to-terminal movement, and of distributing again of the original small shipments from the break-bulk point.

Before the advent of the motor carrier, the consolidation and distribution services were each largely limited to the cartage area of the consolidation and break-bulk terminal points; thus freight forwarding service was largely limited to places affording sufficient volume to make up a consolidated carload.

As motor carrier service developed, both before and after motor carrier regulation, freight forwarding reached out farther and farther from the terminals until today assembly and distribution traffic covers large areas of the country.

All of the actual physical transportation service, other than purely local pickup and delivery service in local cartage areas, was then and is now performed by underlying carriers with operating authority under parts I, II, or III of the act, and as to all of this traffic, the freight forwarder was and is today in direct competition with the same underlying carriers who can and do perform the same consolidation and distribution service on their own lines, with their own facilities, and within the limits of their own routes and operating authorities.

If freight forwarders, however, are permitted to acquire any substantial number of direct carriers, particularly motor carriers, this open competition is going to be lost—the character of competition changes.

The forwarder and the controlled motor carrier or carriers no longer deal with each other at arm's length. Rather, the rates are established to favor their combined interest, possibly to the competitive disadvantage of other motor carriers. The traffic volume of the controlling forwarder may be diverted to the controlled carrier, and the control of routing of tonnage not only of the forwarder but of the controlled carrier to and from connecting lines increases the economic influence of the forwarder far beyond its normal sphere.

Equitable competition between carriers and between agencies, and maintenance of reasonable rate levels, demand the continued separation, as it now exists, of freight forwarding and underlying carrier service.

In 1956 the Interstate Commerce Commission was opposed to removal of the prohibition against forwarders acquiring control of underlying carriers.

In a letter dated April 6, 1956 (a complete copy of which is attached hereto as it appeared beginning on p. 6 of the printed record of the 1956 hearings on S. 3367) to the Honorable Warren G. Magnuson, chairman, Committee on Interstate and Foreign Commerce, Commissioner J. M. Johnson, the then Acting Chairman of the Interstate Commerce Commission's Committee on Legislation, stated among other things:

The basic considerations which governed Congress in the enactment of section 411(a) have not changed in any material respect. In its relations with the carriers which it utilizes for underlying transportation services, the freight forwarder is a shipper, and as such it routes or controls the movement of large amounts of freight. To permit forwarders to acquire control of carriers subject to the act would, in our opinion, open the way to opportunities for discrimination not only with respect to rates and charges, but also in respect of practices which would be difficult to control.

As I said the whole letter is reproduced as an attachment, Mr. Chairman.

In considering the propriety of legislation such as here proposed, the dual character of freight forwarders regulated under part IV of the act might be kept in mind. As to their relationship with shippers, they are carriers; there is no doubt of that fact, it is a time-honored relation recognized by the Commission and the courts, and the statute so provides.

In their relationship with carriers regulated under parts I, II, or III of the act, or with other carriers, by air for example, they are shippers;

the relationship between the forwarder and those other carriers is a shipper-carrier relationship.

To our way of thinking, the Commission's current concern about provisions of part IV relating to acquisition and control being confusing and in some instances conflicting, does not overcome, as Chairman Johnson put it, "the basic considerations which governed Congress in the enactment of section 411(a)."

We respectfully urge that the present provisions of section 411(a) be retained.

Thank you.

The CHAIRMAN. I assume you desire the letter referred to to become part of your statement and placed in the record?

Mr. DORR. Yes, sir; please.

The CHAIRMAN. Very well, it shall be received.

(The letter referred to follows:)

INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, D.C., April 6, 1956.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Interstate and Foreign Commerce,  
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: Your letter of March 6, 1956, addressed to the Chairman of the Commission and requesting comments on a bill (S. 3367) introduced by you (by request) to amend section 411 of the Interstate Commerce Act, as amended, with respect to relationships between freight forwarders and other common carriers, has been referred to our committee on legislation. After careful consideration by that committee, I am authorized to submit the following comments in its behalf:

Section 411(a) of the Interstate Commerce Act, which S. 3367 would amend, now makes it unlawful for a freight forwarder, or any person controlling, controlled by, or under common control with a freight forwarder, to acquire control of a carrier subject to part I, II, or III of the act. The proposed measure would remove this prohibition by rewriting section 411(a) so as to permit a freight forwarder to acquire control of one or more such common carriers, through stock ownership or otherwise, if approved by this Commission after reasonable opportunity for interested parties to be heard. Before approving any such proposed transaction the Commission would be required to find, subject to such terms and conditions and such modifications as it shall find just and reasonable, that it would be within the scope of amended paragraph 411(a) (1) and would be consistent with the public interest. In passing upon such transactions the Commission would also be required to give consideration to the effect thereof upon adequate transportation service to the public, and where appropriate, to the interest of carrier employees affected. As a prerequisite to its approval the Commission may require a fair and equitable arrangement for the protection of such employees.

While section 411(a) (1) prohibits a freight forwarder, or any person controlling, controlled by, or under common control with a freight forwarder, from acquiring control of a carrier subject to part I, II, or III of the act, it should be noted that section 411(g) permits such carriers to control or acquire control of a freight forwarder or freight forwarders.

When S. 210 (77th Cong.), which, as finally enacted, became part IV of the act, was under consideration by Congress, the question arose as to whether or not carriers subject to part I, II, or III should be prohibited from having or acquiring control of freight forwarders, and conversely as to whether freight forwarders should be prohibited from acquiring control of such carriers. In commenting on this question, former Chairman Joseph B. Eastman stated in a letter dated March 12, 1941, to Senator Burton K. Wheeler, chairman of the Senate Committee on Interstate and Foreign Commerce, as follows:

"The conclusion that the public interest requires that the forwarder be an agency independent of carrier control is reinforced by the finding made in the freight forwarder investigation, mentioned earlier in this report (229 I.C.C. 201) that the control and domination of certain large forwarders by railroad com-

panies resulted in violations of the act. The same considerations which preclude carrier control of forwarders also preclude forwarder control of carriers."

Congress failed to adopt Chairman Eastman's suggestion that carriers subject to part I, II, or III be prohibited from having or acquiring control of freight forwarders. This apparently resulted from the practical realization that forwarders had become necessary adjuncts to carrier operations and that among the former were wholly owned subsidiaries, affiliated corporations, or forwarders directly controlled by the carriers. An analysis of the statements and remarks of the committees and various Members of Congress concerning the provisions of the bill which ultimately became section 411 of the act (H. Rept. No. 1172 (p. 14), 77th Cong., 1st sess., Aug. 13, 1941; 77 Congressional Record 8218 and 8220, Oct. 23, 1941; and 77 Congressional Record 4067, May 11, 1942), indicates that Congress was impressed with three considerations in permitting carrier control of freight forwarders. These considerations, as reiterated by Congressman Wolverton in reporting the bill approved by the conference committee back to the House, were as follows:

"First. The two largest forwarding operations in the country were developed under railroad affiliation, and no complaint of their service appears to have been made by the shipping public.

"Second. Because of the universality of the service which railroads are required to perform, as among persons, localities, and as to different kinds of freight, their control of forwarding operations would tend to be more universal and less discriminatory than forwarder service conducted by individual operators having narrower rights and obligations.

"Third. The investments made by rail, motor, and water carriers in transportation properties, facilities, and equipment furnish a substantial incentive on their part to provide and maintain for the public a permanent and stable service, and as a result their control of forwarding operations should insure to the public a greater permanency of service than if forwarding operations were only in the hands of those who have no real substantial investment in the properties and facilities which make such forwarding operations possible" (77 Congressional Record 4067, May 11, 1942).

This reasoning obviously would not apply to forwarder control of carriers.

Several of the larger forwarders continue to be subsidiaries or affiliates of major railroad systems, and they apparently continue to so operate under the permissive provisions of section 411(g) without complaint. We are also unaware of any general complaint relative to the present provisions of section 411(a) prohibiting forwarders from acquiring control of carriers.

The basic considerations which governed Congress in the enactment of section 411(a) have not changed in any material respect. In its relations with the carriers which it utilizes for underlying transportation services, the freight forwarder is a shipper, and as such it routes or controls the movement of large amounts of freight. To permit forwarders to acquire control of carriers subject to the act would, in our opinion, open the way to opportunities for discrimination not only with respect to rates and charges, but also in respect to practices which would be difficult to control.

Editorially, it appears that the letter "(a)" in line 1, page 3, of the bill should be changed to "(1)".

For the reasons hereinabove stated, we believe that enactment of S. 3367 would be contrary to the public interest and, therefore, recommend against its adoption. If, however, the bill should receive favorable consideration by your committee, we suggest that in view of the broad language of the bill which would permit the acquisition of control "through stock ownership or otherwise" consideration be given to amending the bill so as to incorporate therein the pertinent provisions of section 5(2) of the Interstate Commerce Act, entitled "Combinations and Mergers of Carriers."

Respectfully submitted.

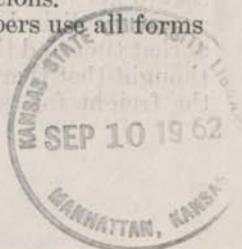
J. M. JOHNSON,  
Acting Chairman, Committee on Legislation.  
OWEN CLARKE.

The CHAIRMAN. Any questions, Mr. Younger.

Mr. YOUNGER. Yes, I would like to ask a few questions.

Mr. Dorr, you make the statement that your members use all forms of transportation, all the modes?

Mr. DORR. Yes, sir.



Mr. YOUNGER. And I take it that you are in favor of maintaining all the modes.

Mr. DORR. Yes, sir.

Mr. YOUNGER. In good shape and condition?

Mr. DORR. Yes, sir.

Mr. YOUNGER. And you believe they should remain under regulation?

Mr. DORR. I think—yes, the answer to that is generally yes, but we will be before you next week on another bill which might be a little bit different.

Mr. YOUNGER. You want us to relieve them from a little regulation there?

Mr. DORR. That is right.

Mr. YOUNGER. In other words, whatever happens to fit the occasion of the day?

Mr. DORR. No; I don't mean that at all. I didn't want to foreclose the statement which will be presented next Friday on the two major transportation bills, 11583 and 11584.

Mr. YOUNGER. I don't get the significance of your statement here that if a freight forwarder acquired an underlying carrier that it would constitute a monopoly, and that is what your statement infers, isn't it?

Mr. DORR. I don't think I go quite that far, Mr. Younger. We are afraid of the undue influence which might be exercised if a freight forwarder were to acquire control of any sizable number of small motor carriers, for example.

Mr. YOUNGER. Well, the acquisition of one doesn't relieve them of being under supervision of the ICC as to monopoly or rates and everything else, does it?

Mr. DORR. No, they would still be under the ICC regulation, that is right, but it seems to us, that if the freight forwarder controls the carriers, well, they certainly would have a friend at court in negotiating rates or arranging for rates, and so forth.

Mr. YOUNGER. Well, do you think that would prevent some other carriers getting into the field and competing with them?

Can you imagine a monopoly from any gathering point on the part of a freight forwarder?

Mr. DORR. No, we don't go so far as to fear a monopoly. But we are afraid of the undue influence which a freight forwarder might be able to exert.

Mr. YOUNGER. If you didn't have a monopoly how in the world can he control rates, if he is under competition and also under supervision? I can't see the logic of your reasoning.

Mr. DORR. Well, maybe I had best refer to the fact that going back to the original bill on this subject, the freight forwarder bill.

At that time, Commissioner Eastman thought there should be no control of either, freight forwarder by a carrier or a carrier by a freight forwarder.

But we were confronted there by the fact that freight forwarding sort of got its start, railroads controlling freight forwarders, so it was an accomplished fact. You couldn't rule that out. But Eastman at that time and the Commission at that time, and we agree with them, thought that there should be no control of the underlying carriers by the freight forwarders, and that is our position, Mr. Younger.

We believe it is right, and are advocating it here today.

Mr. YOUNGER. That isn't the present law, is it?

Under the present law a freight forwarder can acquire an underlying carrier.

Mr. DORR. No, 411(a) says they can't.

Mr. YOUNGER. I thought the testimony of the ICC said that you could acquire a carrier if you acquired a carrier first. It is a question of whether the egg precedes the chicken or the chicken the egg was the point that he made.

Mr. DORR. I understand that. But here is a specific prohibition which says the freight forwarder may not control an underlying carrier and that is our concern.

Mr. YOUNGER. You disagree with the ICC?

Mr. DORR. Yes, sir. We think that Colonel Johnson was right and that the ICC was right back in 1956.

Mr. YOUNGER. You know we have many changes in transportation now.

Mr. DORR. That is right.

Mr. YOUNGER. And that is why we are holding the hearings. They want to remove some of these regulations and allow the transportation people some freedom of operation.

Mr. DORR. That is right.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Dorr, on page 3 of Mr. Murphy's statement, the last paragraph I quote him "it must always be recognized that exemption from the provisions of section 4 would in no way relieve them from the operations of other ratemaking provisions contained in the Interstate Commerce Act. The Commission would still have authority under the provisions of sections 1, 2, and 3 of the act."

Do you differ with that?

Mr. DORR. No, sir.

Mr. FRIEDEL. Do you agree with this?

Mr. DORR. I think that is right.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. No questions.

The CHAIRMAN. Mr. Dorr, you do concur with the present policy authorized by law that another mode may acquire a freight forwarder?

Mr. DORR. I tried to answer that, Mr. Chairman, in response to Mr. Younger's question.

If this could be started over I would say "No." But we were confronted with the fact that railroads already controlled freight forwarders when the freight forwarder legislation was passed and that is treated in Colonel Johnson's letter, so it was a fait accompli.

We prefer it the other way.

The CHAIRMAN. But I am asking the question, though, it is a matter of law today, isn't it?

Mr. DORR. That is right.

The CHAIRMAN. And you concur with it?

Mr. DORR. Yes, sir.

The CHAIRMAN. And you think it is good policy?

Mr. DORR. We don't think it is good policy. It is in the law. I would say if we had it over again we would have opposed it.

The CHAIRMAN. You are not here recommending that it be repealed?

Mr. DORR. No, sir. We recognize it is in the law and we are living with it.

The CHAIRMAN. Yes, but you don't think it is good policy?

Mr. DORR. No, sir.

The CHAIRMAN. Why don't you come here and recommend it be repealed then?

Mr. DORR. Well, Mr. Chairman, I thought we were appearing on this particular bill and stating our objection to it as we have in the past. We are not going that far as to recommend repeal of those other provisions.

The CHAIRMAN. How can you justify a position where there is an operation that is under the law considered a common carrier operation, how can you justify a position in saying that that particular mode should not have equal treatment under the law with other modes?

Mr. DORR. I would answer that this way: While the freight forwarders are termed a common carrier in the statute, and in the relationships with shippers, they are carriers.

In their relationship with the underlying carriers they are shippers, not carriers.

The CHAIRMAN. Well, of course, to me that isn't any argument because you can take the same principle and apply it to the airlines, with the railroads, or with motor operation of the railroads or vice versa, that doesn't give any explanation in my judgment at all.

To me, I would like to know how we can explain the fact that it is good business, if it is, for a railroad or a motor carrier to obtain, develop an operation, or purchase a freight forwarding operation and that is permitted under the law?

Mr. DORR. That is right.

The CHAIRMAN. But at the same time we say a freight forwarder cannot. What is the difference between the common carrier operation where the common carrier owns or acquires or owns and operates another common carrier in conjunction with it, and yet that common carrier could not acquire and operate the other common carrier?

If you understand what I mean.

Mr. DORR. Well, I think I get the point you are making, Mr. Chairman. It does point up an inconsistency but I go back to my original statement we think in terms of the freight forwarder as a shipper. We don't think that in this instance—

The CHAIRMAN. Of course, that is the reason you arrive at your position.

Mr. DORR. That is right.

The CHAIRMAN. I am trying to develop in these hearings as to whether or not your position is reasonable in my judgment.

Mr. DORR. Well, of course, that is for you to decide. We think it is reasonable, Mr. Chairman.

The CHAIRMAN. Yes.

I can't see a difference between a railroad, as an example, acquiring and utilizing part of its operation of a freight forwarder so far as the service to the public is concerned as compared with a freight forwarder being given the authority in connection with this operation to acquire a railroad. I don't think many freight forwarders are going to be acquiring many railroads.

Mr. DORR. I don't think so, either.

The CHAIRMAN. But I just can't see the justification of the argument in that respect.

Mr. YOUNGER. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. YOUNGER. It seems to me that you take the position that one is sinful, but because it is in the law you want to continue to live with sin.

Mr. DORR. I don't know that I could subscribe to that, Mr. Younger. It is in the law, and we have been living with it.

Mr. YOUNGER. But you want to continue to live in sin?

Mr. DORR. I tried to make my point. We are concerned with the undue influence that may be exercised if a freight forwarder were to control a group of underlying motor carriers, that is our principal concern.

The CHAIRMAN. Suppose a group of underlying motor carriers controlled a freight forwarder?

Mr. DORR. I don't think it works the same way, Mr. Chairman.

The CHAIRMAN. Why?

Mr. DORR. Well, by the very nature of the operation, the common carriers themselves publish their rates, they are there, the freight forwarder would be more an adjunct of supplying traffic for routing via their groups.

The CHAIRMAN. Don't the freight forwarders file their tariffs?

Mr. DORR. Yes, sir, but in connection—

The CHAIRMAN. Thank you very much.

Mr. DORR. I would like to make one point that they do, so far as railroads are concerned, they do so far as truck lines are concerned, pay established rail and truck rates. They do have contracts with the motor carriers or may have, I should say, for distances under 450 miles.

The CHAIRMAN. I think Congress wisely provided for it.

Mr. DORR. Well, it permits it; that is right.

The CHAIRMAN. Yes. Thank you very much.

We are glad to have your statement, Mr. Dorr.

Mr. Giles Morrow, general counsel of the Freight Forwarders Institute, is our next witness.

Mr. Morrow, you may proceed.

#### STATEMENT OF GILES MORROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE, WASHINGTON, D.C.

Mr. MORROW. Mr. Chairman, I have a rather brief statement. I think I can save time by reading it, and—

The CHAIRMAN. Let your statement be included in the record.

(Mr. Morrow's statement follows:)

#### STATEMENT OF GILES MORROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE

My name is Giles Morrow. I appear today as spokesman for the Freight Forwarders Institute, of which I am general counsel. The institute is the national organization representing freight forwarders subject to part IV of the Interstate Commerce Act. Its offices are located at 1012 14th Street NW., Washington, D.C.

The freight forwarding industry, as represented by the institute, unanimously endorses bill H.R. 12201, which comes before your committee under the sponsorship of the Interstate Commerce Commission. We understand that the bill was drafted by the Commission to carry into effect its legislative recommendation No. 5, contained in the 75th Annual Report of the Commission to Congress.

We are confident that the Commission's views and recommendations in this matter will be given great weight by your committee. The Commission has had long experience in undertaking to administer the present law with regard to the relationships between freight forwarders and other carriers. It has statutory duties and obligations with regard to freight forwarders and other carriers which, based on its experience, the Commission has concluded it cannot properly discharge unless the present defective and contradictory law is amended.

The Commission has adequately explained and fully justified the bill, and I shall add only a few comments. It is a very simple bill. Its principal objective is clarification, but at the same time it provides for equality of regulation of all common carriers subject to the act.

The bill does two things. It brings freight forwarders under the terms of the general law, found in section 5 of the act, which govern acquisitions and the common control of two or more carriers of the same or a different class. And it removes the present conflicting, confusing, and inequitable provisions of section 411 which now govern the relationships between forwarders and other carriers.

Section 5 of the act, which the bill would make applicable to forwarders, need not be explained or justified. It was adopted, in its present form, in 1940. It already applies to all other carriers subject to the act—rail, motor, water, express, and sleeping car companies. The meaning of section 5 is well settled, by administrative and judicial interpretation. One of its cardinal requirements is that in approving any transaction proposed under its terms the Commission must consider the effect upon adequate transportation service to the public. If section 5 represents wise public policy as applied to other carriers, it is only reasonable and just that the section be applied to acquisitions which involve freight forwarders.

In sharp contrast to the fair and equitable provisions of section 5, the present law governing acquisitions where freight forwarders are concerned is conflicting, self-defeating, and without rational basis. Neither the committee reports nor the congressional discussions attending passage of the original Freight Forwarder Act, in 1942, afford any clue as to why freight forwarders were singled out for separate and unequal treatment. Section 411, governing the relationships between forwarders and other carriers, condemns itself when analyzed.

Paragraph (a) of section 411 makes it unlawful for a freight forwarder, or any person controlling or controlled by a forwarder, to acquire a part I, II, or III carrier. Paragraph (g) of the same section makes it lawful for a part I, II, or III carrier, or any person controlling such a carrier, to have or acquire control of a forwarder. The Commission is given no authority in the matter. Both the grant of authority to other carriers and the withholding of authority from freight forwarders are arbitrary. The results are capricious.

In its justification of the bill the Commission illustrated the absurdity and inequity of section 411. Let me add just a few words by way of emphasis. Suppose an individual with some money to invest decides to go into the transportation business. Looking around, he decides to buy a freight forwarder operating between New York and Chicago, and a motor carrier operating between Texas and California. If he buys the motor carrier first he can then buy the freight forwarder and operate both of them. But, if he buys the forwarder first, he is absolutely barred from buying the motor carrier. The result in each case would obviously be exactly the same, but the right to buy both properties would depend on which contract was signed first.

Now let us take the illustration a step further. Suppose that the individual involved did acquire the motor carrier and the freight forwarder in that order, which would be lawful. He then decides to round out his operation by buying another motor carrier. Section 411 absolutely prohibits him from doing so. But while he, as an individual, could not buy a second motor carrier in his own right, his wholly owned motor carrier, which he first purchased, could buy any number of additional motor carriers, subject to Commission approval.

We can take the illustration one step further. While it is perfectly lawful for the individual to maintain 100 percent ownership and control of both the forwarder and the motor carrier, so long as he acquired the latter first, yet he

must exercise his control over the motor carrier in some manner other than as an officer, director, employee, or agent. For paragraph (c) of section 411 prohibits an officer or a director, employee, or agent of a part I, II, or III carrier from owning, controlling, or holding stock in a freight forwarder.

Thus, under section 411 the common ownership of a freight forwarder and a carrier of another type is made to depend upon who is the moving party, or which carrier is acquired first—the truck line or the forwarder. The law obviously does not condemn the result, for the result is exactly the same in either event. This is both ridiculous and unfair.

If it is ever in the public interest for a freight forwarder and a carrier of another type to be commonly controlled, it is the clearest kind of unjust discrimination to grant authority to effectuate such common control only to other carriers and withhold it from freight forwarders. If the opportunity for objectionable practices exists, it arises from the fact of common control, and not the form by which the control was accomplished. At all events, the Commission has the power and the duty to restrain objectionable practices, no matter how the common ownership is brought about.

It is unconscionable and contrary to simple justice to permit a motor carrier to buy a forwarder and prohibit a forwarder from buying a motor carrier. I use a motor carrier to make my point because motor carriers have been and are buying freight forwarders at an increasing pace. Since Commission approval of such transactions is not now required, it is not possible to determine at any given time just how many forwarders have been acquired by motor carriers. However, from news carried in the public press we know that more than half a dozen forwarders, including some of the largest in the country, have been bought by motor carriers in the last several years.

I do not argue that bad practices have resulted from these acquisitions of forwarders by motor carriers, nor contend that they have not served the public interest. But I do say, without fear of refutation, that the privilege should work both ways and that in either event the Commission should be authorized and required to pass upon the transaction before it is consummated, just as in all other cases of common ownership.

All that this bill does is to lay down the same rules for freight forwarders that already apply with respect to common ownership in the case of all other carriers. No one who favors regulation can logically oppose fair and equal regulation. If anyone should come before your committee and oppose this bill I imagine you will want to find out whether he opposes the rules of the game which it establishes, or the anticipated application of the rules. If he opposes the anticipated application of the rules, then his forum is the Interstate Commerce Commission, which would have the responsibility of applying the rules equally to all carriers.

Because the Interstate Commerce Commission has obviously given a great deal of thought and study to this matter, and has carefully worked out the details of the legislation, we hesitate to suggest any change in the format of the bill. However, there is one provision of the bill which seems to us unnecessary, and while it probably would not materially affect the beneficial results of the legislation, it would result in needless proceedings before the Commission.

I refer to paragraph (2) of section 4 of the bill, beginning on line 9 of page 4. That paragraph proposes to amend section 411(c) so as to give the Commission authority to approve the relationships prohibited by such section. Section 411(c), as previously pointed out, now prohibits an officer or a director, employee, or agent of a part I, II, or III carrier from owning or holding stock in a freight forwarder. The bill would change this provision so as to prohibit "any person affiliated with any carrier subject to part I, II, or III, within the meaning of section 5(6) of part I" from being an officer or director or holding stock in a freight forwarder, except with specific approval of the Commission.

The Commission, in its justification of the bill, was critical of section 411(c). It pointed out that the section leads to the unusual result that while an individual may own both a forwarder and a motor carrier, he must exercise his control over the motor carrier in some manner as not to include being an officer, director, or employee of such carrier. By the changes recommended by the bill the Commission has recognized the necessity to provide machinery for the authorization of the prohibited relationships. But it has not explained why the section is necessary at all. We do not think that it is. The Commission would have authority to disapprove the application for common control in the first instance if it thought there was an opportunity for undesirable practices inherent in the arrangement. Why it should be necessary to have a separate proceeding

to determine whether some individual should be barred from being an officer or holding stock in one of the companies is not clear to us.

Accordingly, we recommend that paragraph (2) of section 4 of the bill be eliminated, and that paragraph (1) of such section be changed to read:

"(1) by deleting subsections (a), (c), and (g) thereof;"

It would then be necessary to change paragraph (3) to conform to the above. We do not think this in anywise alters the purposes of the intent of the bill.

There is one additional respect in which we suggest that the bill be changed. Section 3(1) of the bill, appearing on page 3 thereof, proposes to delete certain language from section 410(c) of the act. Section 410(c) establishes the standards for granting permits. The second sentence of that section reads as follows, the italicized portion indicating matter which the bill would strike out:

"No such permit shall be issued to any common carrier subject to part I, II, or III of this Act; *but no application made under this section by a corporation controlled by, or under common control with, a common carrier subject to part I, II, or III of this Act, shall be denied because of the relationship between such corporation and such common carrier.*"

The Commission, in its statement of justification, said that the italicized language would become unnecessary as a result of the other amendments. We are afraid that it would not become unnecessary. At all events if the language is to be omitted only because it is considered to be no longer necessary, it can do no harm to retain it in the law as a matter of caution. By negative inference, the deletion of this language might, at some future date, be construed as reflecting a congressional intent that applications for forwarder permits be denied simply because the applicant was under common control with a carrier of another class.

To give one example of the possible effect of the elimination of the italicized language, suppose that forwarder A and forwarder B each file an application to extend their operating rights. If forwarder A should have acquired a motor carrier—even a very small one—and forwarder B was not affiliated in any way with another carrier, the applications might be judged by different standards. The application of A might be denied simply because of the affiliation with another carrier. We doubt if this is the intent but it might work out that way.

Accordingly, we suggest that subparagraph (1) of section 3 of the bill be eliminated, and that subparagraphs (2) and (3) be renumbered accordingly.

With the slight changes which I have suggested, we heartily endorse and recommend the speedy enactment of this corrective, clarifying, and equitable legislation.

Mr. MORROW. My name is Giles Morrow. I appear today as spokesman for the Freight Forwarders Institute, of which I am general counsel. The institute is the national organization representing freight forwarders subject to part IV of the Interstate Commerce Act. Its offices are located at 1012 14th Street NW., Washington, D.C.

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I think it may be helpful to an understanding of the rest of this if I comment on a question that Mr. Younger asked of Chairman Murphy.

There are some forwarders owned by individuals and some by partnerships, but the term "person" is used in this law and throughout the act in a very broad sense.

The term "person" is defined in section 402 this way:

The term "person" includes an individual, firm, partnership, corporation, company, association, or joint stock association, and includes a trustee, receiver, assignee, or personal representative thereof.

So that the term "person" does not necessarily mean an individual at all places here, but if someone wanted to buy a company that was individually owned he would simply buy the assets.

He would buy the business but that would not do him any good unless he got the permit. So he would have to go to the Commission to have the permit transferred to himself, and then he would have control of that company.

Paragraph (a) of section 411 makes it unlawful for a freight forwarder, or any person controlling or controlled by a forwarder, to acquire a part I, II, or III carrier. Paragraph (g) of the same section makes it lawful for a part I, II, or III carrier, or any person controlling such a carrier, to have or acquire control of a forwarder. The Commission is given no authority in the matter. Both the grant of authority to other carriers and the withholding of authority from freight forwarders are arbitrary. The results are capricious.

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Now let us take the illustration a step further. Suppose that the individual involved did acquire the motor carrier and the freight forwarder in that order, which would be lawful. He then decides to round out his operation by buying another motor carrier. Section 411 absolutely prohibits him from doing so. But while he, as an individual, could not buy a second motor carrier in his own right, his wholly owned motor carrier, which he first purchased, could buy another number of additional motor carriers, subject to Commission approval.

We can take the illustration one step further. While it is perfectly lawful for the individual to maintain 100 percent ownership and control of both the forwarder and the motor carrier, so long as he acquired the latter first, yet he must exercise his control over the motor carrier in some manner other than as an officer, director, employee, or agent. For paragraph (c) of section 411 prohibits an officer or a director, employee, or agent of a part I, II, or III carrier from owning, controlling, or holding stock in a freight forwarder.

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I do not argue that bad practices have resulted from these acquisitions of forwarders by motor carriers, nor contend that they have not served the public interest. But I do say, without fear of refutation,

that the privilege should work both ways and that in either event the Commission should be authorized and required to pass upon the transaction before it is consumed, just as in all other cases of common ownership.

All that this bill does is to lay down the same rules for freight forwarders that already apply with respect to common ownership in the case of all other carriers. No one who favors regulation can logically oppose fair and equal regulation. If anyone should come before your committee and oppose this bill I imagine you will want to find out whether he opposes the rules of the game which it establishes, or the anticipated application of the rules. If he opposes the anticipated application of the rules, then his forum is the Interstate Commerce Commission, which would have the responsibility of applying the rules, equally to all carriers.

I have two amendments to suggest.

Because the Interstate Commerce Commission has obviously given a great deal of thought and study to this matter, and has carefully work out the details of the legislation, we hesitate to suggest any change in the format of the bill. However, there is one provision of the bill which seems to us unnecessary, and while it probably would not materially affect the beneficial results of the legislation, it would result in needless proceedings before the Commission.

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And I detail a slight change here which I will not read because it is technical.

There is one additional respect in which we suggest that the bill be changed. Section 3(1) of the bill, appearing on page 3 thereof, proposes to delete certain language from section 410(c) of the act.

Section 410(c) establishes the standards for granting permits. The second sentence of that section reads as follows, the italicized portion indicating matter which the bill would strike out:

No such permit shall be issued to any common carrier subject to part I, II, or III of this Act; *but no application made under this section by a corporation controlled by, or under common control with, a common carrier subject to part I, II, or III of this Act, shall be denied because of the relationship between such corporation and such common carrier.*

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Accordingly, we suggest that subparagraph (1) of section 3 of the bill be eliminated, and that subparagraphs (2) and (3) be renumbered accordingly.

With the slight changes which I have suggested, we heartily endorse and recommend the speedy enactment of this corrective, clarifying, and equitable legislation.

I thank you very much, Mr. Chairman. That concludes my statement.

The CHAIRMAN. Mr. MORROW, thank you very much for your statement on this subject.

Are there any questions of Mr. Morrow?

Mr. YOUNGER?

Mr. YOUNGER. Just one.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. On these changes, have you discussed them with the Commission?

Mr. MORROW. No, sir. I undertook, in connection with the first one I mentioned, to find out just what the amendment meant, and they were very helpful in telling me what it meant. I did not ask them why or how they felt about it. So I do not know.

But with regard to the second one, since they said it was being suggested only because they consider it unnecessary, I take it they could not oppose leaving it in if we are afraid that it wouldn't be unnecessary.

Mr. YOUNGER. That is all.

The CHAIRMAN. Are there any other questions of Mr. Morrow?

Mr. MORROW, thank you very much for your testimony.

Mr. MORROW. Thank you, sir.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. The committee will take a brief recess.

(Whereupon, the committee took a short recess.)

The CHAIRMAN. Mr. MORROW, will you take the witness chair again, please, sir?

Mr. YOUNGER has a question he wants to put to you.

Mr. YOUNGER. Mr. MORROW, I think there may be a few members on the committee who understand what the functions of the freight forwarder are, but I think most of us do not know.

Could you briefly describe the functions of a freight forwarder and how they are classified as a carrier?

Mr. MORROW. Mr. Chairman and members of the committee, that is a question I have been dealing with for about 23 years now, and I don't know whether I have had much success in effectively describing a freight forwarder or not.

Legally, a forwarder is described as a common carrier who functions by assembling and consolidating and breaking bulk and distributing freight, utilizing the services of common carriers subject to the act, and assuming full responsibility to the shipper from actual receipt to ultimate destination.

This means that a freight forwarder assembles freight largely through the use of motor carriers, some within the terminal areas of cities and some of it from distances up to 200 or 300 miles from a city, brings it to a consolidating point, and there he makes larger shipments out of it to be moved in line haul service between consolidation and distribution points by either motor carriers or railroads, mostly by railroads, in the longer distances.

At the distribution point the forwarder deconsolidates the shipments, and distributes them to the ultimate consignees, very largely by motor carriers.

A forwarder is permitted to own motor carriers and operate them within terminal areas of cities. Outside of terminal areas he is required to use common carriers. We have the right under section 409 of the act, to make contracts with motor carriers for the assembling and distribution of freight outside of terminal areas, on a basis which is comparable in all respects to the divisions which these motor carriers would make with other line-haul carriers.

We do largely operate on the basis of a contract with the motor carrier into the consolidating point, then the consolidated lot is moved either in piggyback service or rail boxcars or for the shorter distances in trucks to the distribution point where we distribute the freight again by motor carrier, either our own motor carrier or a contract carrier within the city limits or a common carrier under contract outside the city limits.

Has that clarified it at all for you, sir?

Mr. YOUNGER. Yes. And you collect the total charge and then distribute it to the various carriers that you use; is that true?

Mr. MORROW. Yes. We publish rates for our through service which are comparable to the less truckload or less carload rates of the other carriers. Service is our main product.

Out of that total charge which we collect we pay the underlying carriers, we pay the contract carriers a contract charge, and we pay the railroads their published tariff rates for the line-haul movement.

Mr. YOUNGER. Thank you.

The CHAIRMAN. When was part IV—I have forgotten—when was part IV adopted?

Mr. MORROW. In May 1942. There continued to be doubt for a long time whether part IV had really defined freight forwarders as true common carriers.

In proceedings before the Commission it indicated it was not clear to the Commission that the forwarder was regulated as a common carrier. The words "common carrier" were not in the definition but the responsibility of a common carrier was imposed by the definition. In fact, the definition is a classic definition out of the old common law cases of a common carrier. But to clear up any doubt about the matter Congress in 1950 amended the definition of a forwarder to specifically include the term "common carrier"—any person who as a common carrier does these things.

So there has been no doubt legally or otherwise about the common carrier status of a forwarder since 1950.

The CHAIRMAN. I was thinking about 1945 or 1946 we had some amendment, too.

Mr. MORROW. In those years we had a good deal of difficulty. We had several bills in those years dealing with the relationships between forwarders and their motor carriers.

At first, you permitted us to have divisions with the motor carriers on the same basis as anybody else. But that was temporary and it wasn't until 1950 that the act was finally amended to give us the right to make contracts but there were several temporary changes in the law along about that time.

The CHAIRMAN. If I remember, and for the information of the members of the committee who may not otherwise be informed of it, the motivating thing that brought about the recognition and the inclusion of freight forwarders was for the purpose of going out and gathering and consolidating freight as a service to the shippers and in order to compensate for that service, you obtained rates at carload lots and saved the higher rates at less than carload lots in order that that additional service be provided to the public.

Mr. MORROW. Yes, sir.

The CHAIRMAN. Is that not true?

Mr. MORROW. That is the economic function.

The CHAIRMAN. I remember that as the motivating basis for the establishing of the forwarder business.

Mr. MORROW. Yes, sir.

The CHAIRMAN. Any further questions?

Thank you very much.

Mr. MORROW. I appreciate the opportunity, Mr. Chairman.

The CHAIRMAN. Mr. Fort, James F. Fort.

#### STATEMENT OF JAMES F. FORT, COUNSEL, PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. FORT. Mr. Chairman and gentlemen of the committee, my name is James F. Fort. I am counsel, public affairs, of the American Trucking Associations, Inc., with offices at 1616 P Street NW., Washington 6, D.C.

The association, as most of you know, is a national federation representing all forms of motor carriers, both private and for-hire, and having affiliated associations in 49 States and the District of Columbia.

I think, Mr. Chairman, I would proceed most rapidly by simply delivering the statement as presented here rather than summarizing it.

The CHAIRMAN. Whichever you please, Mr. Fort.

Mr. FORT. ATA opposes H.R. 12201.

Our opposition to the pending bill goes solely to the point that under this legislation for the first time freight forwarders would have the right to gain control of motor carriers, railroads, or water carriers.

Your hearing today is not by any means a hearing on a simple procedural change to clear up inconsistencies which presently exist in part IV of the Interstate Commerce Act relating to freight forwarders. It is instead a hearing on the old, violently controversial subject of common ownership of the various modes of transportation.

The motor carrier industry has consistently, since it went under Federal regulation in 1935, opposed the ownership of one mode of transportation by another. It continues to oppose it most vigorously.

We do not oppose the attempt of the Interstate Commerce Commission to clear up inconsistent and conflicting provisions which presently exist in part IV.

In order to place our opposition in the proper perspective it seems necessary to delve briefly into the historical background of this subject.

This committee has held many hearings on the subject of common ownership over the years. Your most recent hearing was on H.R. 7960 and related bills in the spring of 1960, and it is not my intention today to belabor this record with a full, comprehensive historical treatise of congressional action prohibiting ownership of modes of transportation by other modes.

I invite the committee's attention to the 1960 hearings.

Suffice to say that since 1912, when this committee of the House instituted legislation to limit the operations of water carriers by railroads, the position of the Congress has been consistent over the years in prohibiting one mode of transportation from invading the field of another.

There is language prohibiting this in the Interstate Commerce Act as to rail operation of motor carriers and as to water carrier operation by railroads, and in the Civil Aeronautics Act of 1938 prohibiting air carrier operation by any surface mode.

In 1942 when freight forwarders were for the first time brought under Federal regulation, freight forwarders were not considered common carriers. This bill which became part IV of the act contained a prohibition against control of a carrier by a freight forwarder. Some of the pending bills (specifically the bill proposed by the ICC) in addition to the prohibition against a forwarder owning a carrier contained a provision which would have required carriers to divest themselves of control of forwarders.

The final legislation contained the provision which presently appears as section 411(a) which prohibited a forwarder—

or any person controlling, controlled by, or under common control with a freight forwarder, to acquire control of a carrier subject to part I, II, or III of this act.

The final version, however, did not adopt the ICC's proposal that carriers be prohibited from owning forwarders.

Instead they adopted 411(g) specifically authorizing this and at the same time, somewhat inconsistently, adopted 411(c) prohibiting any director, officer, and so forth, of a common carrier from any pecuniary interest in a freight forwarder.

Many attempts have been made to modify section 411(c), but the trucking industry has never favored these attempts. We feel that motor carriers should not control freight forwarders and that freight forwarders should not control motor carriers.

Thus at the present time it is illegal for a forwarder to own a carrier. However, conversely it is perfectly legal for a carrier to control a forwarder. It is important to the understanding of this that the committee know that no ICC approval is today required for a carrier to obtain control of a forwarder. In other words, no Commission approval is required under section 5 of the act (which controls all other merger and acquisition proceedings).

The motor carrier industry has no objection to the ICC's recommendation that motor carrier acquisition of freight forwarders be brought under the Commission's jurisdiction. We do not object to bringing these acquisitions under section 5 provided, of course, that existing control of freight forwarders by motor carriers is adequately protected. This is accomplished by H.R. 12201.

With this brief background, let me turn now to the reasons for our opposition to the pending bill.

Regardless of what the statute may say, a freight forwarder, in his relationship to a motor carrier, is a shipper. While he may by law be a common carrier in some other respects he nevertheless stands as a shipper when he comes to a motor carrier to move consolidated shipments over the line of the motor carrier from point A to point B.

The Interstate Commerce Act's philosophy is based upon a separation of shipper and carrier. The carrier must hold himself out to serve all shippers.

The shipper, on the other hand, has available all common carriers who may serve his needs. There is no connection between shipper and carrier, and proper regulation of interstate commerce requires, and indeed demands, this separation.

We see no ultimate good which is to come from allowing, even with ICC approval, a shipper, in this instance a freight forwarder, to control a motor carrier. This is true even despite the language (sec. 404(c)) which would prohibit a forwarder which controls a carrier from giving that carrier any undue or unreasonable preference or advantage.

Our historical opposition in this field has been primarily to railroads gaining control of motor carriers because of our fear that a railroad might then use this motor carrier as a "fighting ship" to destroy other motor carriers to the detriment of the transportation industry as a whole, among other reasons. This argument is pertinent here, because there is a definite possibility that a railroad, through a series of several subsidiaries, may obtain control of a freight forwarder and that freight forwarder might, under this bill, then obtain control of a motor carrier. It is the possibility of this back-door common ownership that is primarily responsible for our opposition today.

Again not wishing to unduly prolong this record we do not intend to go into detail as to what could happen if a railroad through the

device of several seemingly innocent subsidiaries or controlled corporations were to gain control of an independent motor carrier. We again invite the committee's attention to the arguments which persuaded the committee to take no action on the 1960 legislation.

The ICC in the 1956 hearings on this same subject opposed repeal of section 411(a) on the grounds that ownership of carriers by forwarders was contrary to the public interest. The Commission at that time suggested that if the committee, despite its opposition, decided to allow control of carriers by forwarders, that the whole procedure should be placed under the merger and acquisition requirements of section 5.

This has been done in the present bill. However, this does not overcome, in our view, the basic objections which we hope will lead this committee to reject H.R. 12201. It is still our fear that: (1) H.R. 12201 might allow railroads to control motor carriers with all of its attendant evils; and (2) a breaking down of the bars to common ownership as proposed in this bill may lead the Congress to a more serious removal of the present prohibitions in other fields.

It is the old idea that if it is decided to remove these controls which have been in effect since 1942, it may next year be decided to remove the controls which have been in effect since 1935 on railroad control of motor carriers, and perhaps the year after that, to remove the water carrier safeguards which have been in effect since 1912. We do not want to see such a trend started.

Much has been said before this committee in the past few weeks in other hearings of the need for equality in the regulation of the various modes of transportation. The president of a major railroad just last week before this committee, in response to a question as to why the railroads did not operate unregulated trucks, said in effect, "We are railroad men and we would rather operate railroads."

This is the view of the motor carrier industry. We are truckers and we do not want to operate railroads, airlines, water carriers, or even freight forwarders.

If it is uniformity and equality that the Congress seeks in the regulation of transportation, then let's have a prohibition against all modes owning or controlling any other mode.

We do today, and we have in years past, advocated legislation which will keep railroads as railroaders, motor carriers as truckers, and air carriers as airline operators.

We urge the committee to adopt legislation to this effect and we will be glad at any time to work with the committee in formulating specific legislative proposals to this effect.

Mr. Chairman, that completes my statement. I would like to request of the Chair permission to hold the record open with respect to H.R. 4272, the other pending bill for perhaps 1 week in order that we may comment upon it if we so desire during that week.

The CHAIRMAN. Very well.

Mr. WILLIAMS. Mr. Chairman, may I ask Mr. Fort how long he has been notified of the date schedule for these hearings?

Mr. FORT. I would have to consult the committee clerk as to when the notice was mailed, sir. I would guess it was approximately a week ago.

Mr. WILLIAMS. Notice went out on both bills at the same time.

Mr. FORT. It did, sir.

Mr. WILLIAMS. I am wondering why the association took a position on one bill and couldn't take a position on that other bill in the same length of time. The reason I asked that question, Mr. Friedel has brought up a very pertinent point here that the Congress is drawing fast to a close, and I am wondering why you weren't able to prepare a statement on the other bill as well as on this one?

Mr. FORT. The basic reason, sir, is that the bill upon which I did prepare a statement is one of historic American Trucking Association policy.

The bill to relieve express companies from the fourth section is a new proposal, and we have not adequately had time to prepare our views on it.

Mr. WILLIAMS. How long does it take you to prepare your views?

Now, if you can't prepare your views in the 2 weeks you have had, how can you prepare it in the next 1 week?

Mr. FORT. I would hope by the end of a few more days that we would have the expression of the views from the various rate bureaus and other people more concerned with the day-to-day operation of rate competition.

We will make it as quickly as possible, Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, I have no objection to keeping the record open, of course, but I would not want to defer executive consideration of any of this legislation pending the filing of additional statements.

The CHAIRMAN. I don't think that in view of the business before the committee and the schedule that there will be any delay.

I think the request is reasonable.

Mr. WILLIAMS. I think the request is reasonable.

Mr. FORT. We will be certain to make it as quick as possible, sir.

The CHAIRMAN. Any further questions, Mr. Younger?

Mr. YOUNGER. Mr. Fort, do any of your members own freight forwarders?

Mr. FORT. Quite a number do; yes, sir. They have acquired them in recent years, and in years past.

Mr. YOUNGER. And have you considered that to be all right?

Mr. FORT. Our historic policy is in opposition to it, sir.

Mr. YOUNGER. But you don't kick your members out because they do it?

Mr. FORT. No, sir; we do not.

Mr. YOUNGER. You leave them in good standing?

Mr. FORT. Yes, sir.

Mr. YOUNGER. You are a good deal like Mr. Dorr, you still want to live in sin. [Laughter.]

Mr. FORT. No, sir; the policy is today and has been that we would favor a change in the law which would prohibit a motor carrier from purchasing a freight forwarder; the law today allows it and a number of them have done it.

Mr. YOUNGER. Do you think you could get your organization to come in with a recommendation that the law be changed to that effect?

Mr. FORT. I believe I could, sir.

Mr. YOUNGER. You might create a separate trucking organization.

Mr. FORT. I might add that I would believe that any such recommendation would be couched in terms to protect existing relationships.

Mr. YOUNGER. With the grandfather clause?

Mr. FORT. With the grandfather clause; yes, sir.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. No questions.

The CHAIRMAN. Would you base your objections solely on the fear, Mr. Fort, that another carrier or mode may avail itself of this procedure and through a loophole acquire other modes such as railroads or motor carriers that you described, is that your real fear in this?

Mr. FORT. That is our most basic objection to it, most assuredly.

Mr. WILLIAMS. Mr. Chairman, I think all you are asking for is a fair advantage. I think that is a reasonable request. [Laughter.]

The CHAIRMAN. Well, you are familiar with section 5(2)(b) which provides certain restrictions on the purchase of motor carriers by railroads, are you not?

Mr. FORT. Yes, sir; it presently says that if a railroad or any person controlled by a railroad seeks to purchase a motor carrier certain specific criteria shall apply.

Our fear is that a railroad might control a corporation, that corporation in turn controls another corporation, and this one and this one and this one and down the line so that you might have a proceeding before the Commission in which it might be extremely difficult for the Commission to determine that the specific acquiring corporation was ultimately controlled by a railroad.

The CHAIRMAN. Well, as you have said section 5(2)(b) makes it very clear that it is applicable not only to railroads but to any person controlled by a railroad.

How can you interpret, Mr. Fort, the situation as you have described to be brought about?

Mr. FORT. As I just said, sir, our fear is that the control might be so remote that the Commission might not be aware of it.

Corporate structure in these United States can get to be very complex.

The CHAIRMAN. I have great confidence and a lot of respect for the ability and the astuteness of you people here in Washington representing the trucking industry and those of your associates throughout the country.

Do you think by any stretch of the imagination that such outstanding men, always with their eyes open, moving at an instant's notice on matters affecting the industry, are not going to immediately step in and point up that effect?

Mr. FORT. Obviously, sir, I think the answer to your question is, that would be a rare occurrence, if it could every happen at all. We just don't want to see the possibility that it could ever happen.

The CHAIRMAN. Then you do admit that if it did happen it would be a complete bypassing of law?

Mr. FORT. Yes.

The CHAIRMAN. It looks to me, consistently and logically speaking, you had better get yourself another reason.

Mr. FORT. I think our basic idea, sir, as I have expressed it, is that we would like to see a prohibition, a national prohibition against any mode operating any other mode. Should that be adopted, that would set aside section 5(2)(b), and it would say that there shall be no railroad operation of motor carriers at all.

The CHAIRMAN. I could imagine what would happen, though, if this committee were to report a bill right off that would follow that course. Within your own organization—

Mr. FORT. Our organization has no qualms, hesitancy, or split whatsoever, sir, on the question of a railroad's operation of motor carriers.

The CHAIRMAN. I know that. That has been very consistent all the way through. But your industry also has certain operations that you want to maintain even though you don't want others to have the same privilege.

Mr. FORT. Speaking with respect to control of freight forwarders, as I said, if a bill were to be reported out of this committee tomorrow prohibiting future acquisitions by motor carriers of freight forwarders, I believe our industry would support it, provided that it had a grandfather clause to take care of existing motor carriers, and there are quite a number of them.

The CHAIRMAN. Yes, there are.

Mr. FORT. That control freight forwarders.

The CHAIRMAN. Probably about all that will—that there will be are, except on change of ownership, and so forth.

Mr. WILLIAMS. Do I understand you would give preferential treatment to those who have already acquired freight forwarders and would not require that they divest themselves of that interest but would simply prohibit it in the future, is that right?

Mr. FORT. That is correct.

Mr. WILLIAMS. If it is a sin in the future why wouldn't it be a sin today?

Mr. FORT. Well, to go back to 1942, the ICC's proposal, would have prohibited motor carriers or any other mode from operating freight forwarders and vice versa.

Congress in its wisdom in passing the freight forwarder regulatory bill, said that carriers may control freight forwarders, but that freight forwarders may not control carriers.

One of the bills in 1942 contained a provision requiring carriers under parts 1, 2, and 3, to divest themselves of within, I believe, 18 months, to divest themselves of freight forwarders.

ATA at that time supported the bill which required divestiture.

The CHAIRMAN. You haven't recommended that to Congress, have you?

Mr. WILLIAMS. I understand you have changed your mind since then.

Mr. FORT. No, sir.

Mr. WILLIAMS. You still believe all of them should be required to divest themselves of their interest in freight forwarders?

Mr. FORT. I would not like to be pinned down on that specific issue. I do not think that we would go that far as to requiring divestiture of the existing freight forwarders.

The CHAIRMAN. Do you know of any railroads today that own freight forwarders?

Mr. FORT. That question, perhaps, should be directed to Mr. Morrow, sir, but I will give you my understanding and impression of the situation, which is that there is only one sizable freight forwarder which is controlled today by a railroad. There were formerly quite a number but there is today only one that is controlled by a railroad.

The CHAIRMAN. Is that in connection with the Southern Railroad?

Mr. FORT. Yes. That is the one to which I have reference.

The CHAIRMAN. I believe it is Republic.

Mr. FORT. I am not sure of the company name, sir.

The CHAIRMAN. That is the only one you know anything about?

Mr. FORT. Yes.

The CHAIRMAN. Well, thank you very much.

We are glad to have your statement here.

If there are no further questions—

Mr. YOUNGER. Mr. Chairman, I would just like to add this comment.

I remember our old football coach used to lecture the referee before a game. He would always point his long finger at him and he would say, "All we want is a square deal, but in case of a doubt give it to us."

I think that is the position that Mr. Fort takes. [Laughter.]

The CHAIRMAN. Thank you, Mr. Fort, very much.

We have several communications for the record.

Here is one on H.R. 4272 from Mr. Austin L. Roberts, general solicitor of the National Association of Railroads and Utilities Commissioners, advising and submitting a resolution supporting the legislation which will be included in the record at this point.

From the National Retail Merchants Association, Mr. John C. Hazen, vice president, a letter together with a statement in support of the bill H.R. 4272. It may be included in the record at this point.

From M. W. Wells of Maguire, Voorhis & Wells, Orlando, Fla., on H.R. 4272 urging the passage of the bill.

And from Mr. W. W. Hulsey, executive vice president and director of sales, Oklahoma City, in support of H.R. 4272. That will be included in the record.

(The letters referred to follow:)

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS,  
Washington, D.C., July 16, 1962.

Re H.R. 4272, 87th Congress.

HON. OREN HARRIS,

Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: It is indicated in the Congressional Record that the Committee on Interstate and Foreign Commerce will consider H.R. 4272 on July 20.

The National Association of Railroad and Utilities Commissioners embraces within its membership the members of the regulatory commissions and boards of the several States of the United States. The association in annual convention in 1960, upon consideration of the subject matter of H.R. 4272; namely, repeal of the so-called fourth section of part I of the Interstate Commerce Act as applied to express companies, adopted a resolution supporting such legislation. A certified copy of that resolution is enclosed herewith and it is requested that it be incorporated in the official record of the hearings on H.R. 4272.

Thanking you for your cooperation, I remain,

Sincerely yours,

AUSTIN L. ROBERTS, JR.,  
General Solicitor.

RESOLUTION SUPPORTING REPEAL OF THE FOURTH SECTION AS APPLIED TO  
EXPRESS COMPANIES

Whereas express companies are subject to regulation under part I of the Interstate Commerce Act, and the long and short haul and aggregate of intermediate clauses of section 4 of part I of the act, hereinafter called the fourth section are applicable to such companies; and

Whereas the application of the fourth section to express companies appears to be a serious hindrance to simplification of the express rate structure; and

Whereas the competitors of express—namely, parcel post, motor carriers, freight forwarders, and airfreight—are not subject to the fourth section or similar restrictions; and

Whereas it appears that express shippers and competitors do not need protection from the fourth section since express rates are and will remain subject to section 1, 2, and 3 of the Interstate Commerce Act: Now, therefore, be it

*Resolved*, That the National Association of Railroad & Utilities Commissioners supports and urges legislation to amend the fourth section so as to remove express companies from the application of its provisions; and

*Resolved further*, That a certified copy of this resolution be transmitted to the chairmen of the committees to which such legislation may be referred with the request that such resolution be incorporated in the official record of hearings on such legislation.

Certified a true and correct copy of resolution adopted by the National Association of Railroad & Utilities Commissioners in annual convention on December 1, 1960.

AUSTIN L. ROBERTS, Jr.,  
*General Solicitor, NARUC.*

NATIONAL RETAIL MERCHANTS ASSOCIATION,  
*Washington, D.C., July 17, 1962.*

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

DEAR MR. CHAIRMAN: In behalf of the National Retail Merchant Association, I am transmitting herewith a statement in support of the enactment of H.R. 4272, a bill to amend section 4(1) of the Interstate Commerce Act.

I would appreciate this statement being made a part of the official record of hearings scheduled for Friday, July 20, 1962.

Sincerely,

JOHN C. HAZEN,  
*Vice President, Government.*

STATEMENT OF ROBERT E. VANTINE, CHAIRMAN, TRANSPORTATION COMMITTEE OF  
NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association is the trade association for department and specialty stores with over 10,000 members in all of the 50 States and having an aggregate annual sales volume of over \$19 billion. Representatives of our membership are Woodward & Lothrop and The Hecht Co., in Washington.

The fourth section of the Interstate Commerce Act, 49 U.S.C. 4(1), forbids a higher rate for a shorter than for a longer haul over the same route (the "long-and short-haul clause"), and also forbids a through rate higher than the aggregate of intermediate rates (the "aggregate of intermediates clause"). The Interstate Commerce Commission is authorized to exempt rates from its provisions in special cases. The fourth section applies only to carriers regulated under part I of the act (principally railroads) and under part III (water carriers). It does not apply to those regulated under part II (motor carriers) nor to those under part IV (freight forwarders). Because express companies are subject to regulation under part I the fourth section applies to them.

In the conduct of their businesses, members buy merchandise from thousands of manufacturers located in over 1,000 cities. Shipments of this merchandise are made to the store by the vendor through the carrier specified by our member. We use all forms of transportation, including railroad, motor common carrier, freight forwarder, parcel post, REA express, and airfreight. Also, these same carriers are used to make deliveries from the store to its customers who reside beyond the area served by the member's delivery fleet.

NRMA members, collectively, are probably the largest customers of REA. We therefore have a deep interest in the outcome of this legislation. The traffic group of the NRMA in convention assembled on May 16, 1962, at the Sheraton-Jefferson Hotel, St. Louis, Mo., approved the recommendation of its transportation committee that H.R. 4272 be supported.

#### TYPE OF SHIPMENTS INVOLVED

REA is a carrier of small shipments. In 1961 on all their traffic the average shipment weighed 46.31 pounds, and the average charges were \$5.31. On NRMA shipments, which consist primarily of REA's first-class traffic, the average weight is 34.79 pounds and the average charges \$5.72. It is hard to conceive why fourth section regulation is necessary on these shipments. We do not think it was needed originally anymore than it's needed now. We repeat, the fourth section is not needed by our members who are scattered over the entire land, in large and small cities alike, and who are the principal customers of REA. It seems rather foolish to apply this provision to transactions averaging \$5.72. Who could possibly be hurt by the absence of the fourth section on transactions of this minute size?

On the contrary, we have been injured by the application of the fourth section. Because of the nature of the REA rate structure prescribed by the Interstate Commerce Commission, the fourth section has the effect of forcing Railway Express Agency to apply rate increases to traffic which the agency does not wish to subject to such increases. Here is an example of how it results in unnecessary rate increases and hurts our members:

In *Increased Express Charges Within Eastern Territory*,<sup>1</sup> docket No. 32035 (mimeographed), decided May 31, 1957, the Interstate Commerce Commission granted REA authority to increase all express rates approximately 11 percent. Because of the refusal of the Commission to grant fourth section relief, the increased rates and charges had to be observed as a minimum on all shipments moving between the East and points outside the East.

As a result our members located beyond eastern territory had to pay and are being required to pay increased REA charges despite the fact that no such increases were required nor contemplated by REA Express.

By way of illustration, and this is typical, a department store at Milwaukee, Wis., was paying an REA charge of \$5.87 on a 35-pound shipment of wearing apparel from New York City prior to the effective date of the increases within eastern territory. This charge became \$6.30, an increase of about 8 percent, merely because REA was required to comply with section 4 of the act whereas no such increase would have been necessary if REA rates were not subject to the fourth section, as is the case with the motor carriers and the freight forwarders.

#### THE FOURTH SECTION INCREASES RETAILERS AUDITING EXPENSE

The fourth section has another great disadvantage: it needlessly complicates tariffs and makes them cumbersome. It is very difficult for our members to correctly read the tariffs, and, consequently, it adds to the cost of auditing express bills to determine if the charges were correctly assessed. To be specific, as a result of fourth section application, ICC 8300 which was a simple, easily understood 23-page tariff, has been superseded by ICC 8500, a complicated, burdensome 313-page tariff. (Each tariff covers the same points and names the same rates and charges.) So, to take care of the fourth section this tariff had to be increased by 290 pages or 1,360 percent.

#### RETAILERS WILL BE ADEQUATELY PROTECTED THROUGH OTHER CONTROLS

It should be borne in mind that if REA rates are exempted from the fourth section they will remain subject to all of the various other controls over rate-making in the Interstate Commerce Act, to insure that the rates remain reasonable, compensatory, and not destructively competitive under section 1; that they do not create undue preferences and prejudices among shippers and receivers under section 2; and that they do not unduly discriminate among persons and location under section 3.

<sup>1</sup> North of the Ohio and Potomac and east of the Mississippi Rivers.

## COMPETITORS ARE NOT SUBJECT TO FOURTH SECTION

Simple justice demands that the handcuffs be removed from REA and that they be permitted the flexibility of pricing their service without regard to the fourth section, the same as their main competitors, i.e., the motor common carriers and freight forwarders. In enacting part II (motor carriers) and part IV (freight forwarders) of the act subsequent to part I, Congress must have seen fit, and rightfully so, not to make the fourth section applicable to these modes of transportation that are direct competitors of REA and are very large haulers of small shipments. To illustrate, for 1961 the average forwarder charge per shipment was \$5.50 and the average weight was 308 pounds<sup>2</sup> per shipment—almost identical with the \$5.72 average of REA. Also of interest is the fact that 47 percent of the total revenue of motor common carriers results from less-carload shipments. For the fiscal year ending June 30, 1961, 217,400,000 shipments were transported with an average weight of 524 pounds.<sup>3</sup> These forwarder and motor carrier statistics show that all three types of transportation are competitors in the transportation of small shipments.

Since the days of the pony express, REA, and its predecessors, have fulfilled an important and continuing need in our economic life, particularly with respect to the retail trade. In the last few decades motor carriers and freight forwarders have severely challenged REA with respect to small shipment transportation. NRMA finds all three services necessary and important to our business. We think that all three services should be on an equal competitive basis with respect to the fourth section. Therefore we favor passage of H.R. 4272.

Dated July 20, 1962.

MAGUIRE, VOORHIS & WELLS,  
Orlando, Fla., July 17, 1962.

Re H.R. 4272.

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

DEAR MR. CHAIRMAN: I am commerce counsel for Growers & Shippers League of Florida, Florida Citrus Commission, and Florida Express Fruit Shippers Association, and have been for about 25 years. I have appeared on a number of occasions before your committee with respect to proposed legislation affecting transportation.

The purpose of this letter is to support H.R. 4272 (and Senator Smathers' companion bill S. 319) which is intended to exclude REA Express from the long- and short-haul provisions of section 4 of the Interstate Commerce Act.

The Florida citrus industry annually ships up to 3 million packages of citrus fruit in interstate commerce via REA Express. It is therefore to our interest that every proper and reasonable aid be given to that important mode of transportation so as to assist in its continued operation as an efficient handler of small package shipments. Anything which will reduce its costs and improve its operation is, in our opinion, desirable.

Our experience has been that the fourth section has had very little, if any, effect on express rates—except only to require technical procedure to obtain ICC relief from its provisions in a limited number of instances. The elimination of the expense and delay incident to that technical requirement as to express traffic and rates is therefore desirable, and will not be a detriment to express fruit shippers.

It is our view that, from a practical standpoint, the fourth section does not now serve any useful purpose as to express traffic. Therefore, I do not know of any valid reason for any objection to H.R. 4272, and we respectfully urge its passage.

Respectfully submitted,

M. W. WELLS.

<sup>2</sup> Transport Economics, May 1962 (issued by the ICC).

<sup>3</sup> From 75th annual report of Interstate Commerce Commission.

MACKLANBURG-DUNCAN Co.,  
Oklahoma City, Okla., July 16, 1962.

HON. OREN HARRIS,  
Chairman, House Committee on Interstate and Foreign Commerce,  
House Office Building, Washington, D.C.

DEAR SIR: It is the desire of Macklanburg-Duncan Co., of Oklahoma City, Okla., to support H.R. 4272, which amends section 4 of the Interstate Commerce Act to exclude this section's application to the rates of express companies.

We believe this bill would promote the simplification and modernization of express rate structures which, in turn, would benefit the so-called small shipment traffic of the country.

The consideration of our views by your committee will be appreciated.

Respectfully,

W. W. HULSEY,  
Executive Vice President and Director of Sales.

The CHAIRMAN. This will conclude the hearings on these two bills. The record will be held open for 5 days for the submission of any appropriate statements that are germane and, of course, that will be acceptable under the usual rules for the record.

(The following communications were received for the record:)

[Telegram]

NEW YORK, N.Y., July 25, 1962.

OREN HARRIS,  
Chairman, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.:

The National Retail Merchants Association, a trade association representing over 10,000 department and specialty stores in all States, is opposed to enactment of H.R. 12201. In 1958 this association adopted following policy regarding freight forwarders acquiring control of railroads, motor carriers, and water carriers subject to Interstate Commerce Act regulation: "A merger, purchase, or control involving carriers of different modes of transportation should be permitted if it does not unduly restrain competition. This should be confined to operations where current authority exists without substantial extension of the controlling carriers' operating rights. This policy, however, does not include but does oppose ownership or control by freight forwarders of underlying modes of transportation." Since that time this policy has been reviewed yearly at association's traffic conference and reaffirmed. Last such reaffirmation took place at Sheraton-Jefferson Hotel, St. Louis, May 16, 1962. As members of National Industrial Traffic League we endorse and subscribe to their statement in opposition to this bill, presented by Lester Dorr at hearing on July 20. May we ask you incorporate this communication in transcript of hearing.

ROBERT E. VANTINE,  
Chairman, NRMA Transportation Committee.

AMERICAN RETAIL FEDERATION,  
Washington, D.C., July 24, 1962.

Re H.R. 12201.

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

DEAR MR. HARRIS: The Transportation Committee of the American Retail Federation wishes to present to you and to members of your committee a statement of its views on the above bill. It is hoped that this statement will be of assistance to the committee in its consideration of the bill and, in view of the fact that no further hearings will be held, it is requested that the statement be incorporated into the hearing record.

The American Retail Federation is a federation of 32 national retail associations and 42 statewide associations of retailers. Through these member organizations the federation represents more than 800,000 retail establishments of all kinds and sizes, employing about 5 million persons, and accounting for approximately 70 percent of the retail sales in the United States.

The transportation committee has adopted policies which include specific opposition to the ownership or control by freight forwarders of underlying modes of transportation and, for this reason, opposes the provisions of H.R. 12201. This objection was previously expressed to your committee on April 14, 1960, in the consideration by the 86th Congress of H.R. 7960, 7961, 7962, 9279, 9280, and 9281. In fact your committee considered and rejected a similar proposal in H.R. 9771 during the 84th Congress to which reference should be made.

The Interstate Commerce Commission recommended against the adoption of H.R. 9771 as contrary to the public interest on April 19, 1956 (see printed hearings on "Transport Policy," 84th Cong., 2d sess., pt. 1, pp. 292 and 293), stating: "To permit forwarders to acquire control of carriers subject to the act would, in our opinion, open the way to opportunities for discrimination not only with respect to rates and charges, but also in respect of practices which would be difficult to control." It is rather difficult to comprehend why the current Commission now takes the opposite view and recommends the enactment of H.R. 12201 as a "clarification" measure with no explanation as to the reasons for the changed view or the dissolution of opportunities for discriminatory practices. In 1956 it was the Commission view that section 409 of the Interstate Commerce Act should be amended in several ways because of defects which permitted violations of contracts between forwarders and motor carriers with impunity. (See for example, the ICC 69th annual report, Nov. 1, 1955, Legislative Recommendation No. 30, pp. 137, 138.) Adoption of H.R. 12201 would permit forwarder control of a motor carrier throughout which the forwarder could contract for services at compensation not controlled by the Commission. The rates charged the public by both the forwarder and the motor carrier are otherwise subject to regulation by the Commission but in this case the forwarder, in his relationship with the motor carrier as a shipper, would be permitted to enter into a contract with a controlled company on terms not subject to any regulatory control. No change should be made in section 411 without corresponding changes in section 409 recommended by the Commission for many years.

The Freight Forwarder Institute believes that the provisions of H.R. 12201 would make the ICC responsible to apply the rules equally to all carriers. This would not be possible because the resulting rules would be different under section 5. The Commission must approve the control of a motor carrier by a freight forwarder if it is consistent with the public interest. However, a railroad, in order to control a motor carrier, must establish that the proposed transaction is consistent with the public interest and will enable the carrier to use the motor service to public advantage and will not unduly restrain competition (sec. 5(2)(b)). Further, a freight forwarder, under H.R. 12201 could control a water carrier if consistent with the public interest but the efforts of a railroad for similar control under the present section 5(16) must show in addition the advantage to the convenience and commerce of the people and that it will not exclude, prevent, or reduce competition. Thus, in contradiction to according freight forwarders equal treatment, H.R. 12201 would be giving them greater latitude in control than other carriers.

Inequity for the freight forwarder under the law is certainly inadequate justification for the enactment of H.R. 12201. First, there is no inequality of treatment unless the forwarder is considered in the same light as the basic common carrier and equal in his relationship to rail, motor, or water carriers. This concept has consistently been rejected by the shippers, the Commission, and the courts. Secondly, as pointed out heretofore, there is no uniformity or equality in the provisions for control of and by the basic common carriers subject to regulation under part I, II, or III of the Interstate Commerce Act, or for that matter, as to air carriers. The various sections dealing with control vary in the required tests from simply in the public interest, through the different effects on competition, to absolute prohibitions. Thus, far from placing part IV forwarders on an equal basis with part I, II, or III carriers, the provisions of H.R. 12201 would add a further complication to the already complex statutory limitations pertaining to control of various modes of transportation.

For example, the Commission witness cited one example of a troublesome case involving the control of a motor carrier by a joint motor carrier-forwarder organization (citing MC-F-7096 *Calore Express, Inc.*). Upon the adoption of H.R. 12201 consider the confusion which might result if a forwarder controlled by a railroad sought to control a motor carrier. The forwarder need show only consistency with the public interest. However, the railroad must show that the motor carrier will be used to public advantage and will not unduly restrain competition. Which tests would be required by the Commission?

If equality of treatment is the desirable objective then, as pointed out by the American Trucking Association, perhaps consideration should be given to a prohibition of control of one mode of transportation by another whether it be land, sea, air, or, as the adjunct of all, the freight forwarder. Conversely, equality of treatment could be accorded by permitting any to control another upon an approval by the Commission that it is shown to be in the public interest. Equality will not result from H.R. 12201.

For the above reasons, the American Retail Federation urges your committee to reject H.R. 12201. In view of the controversial nature of the proposal, as evidenced in hearings on past bills as well as on the instant bill, it should not be considered alone but only in connection with all other control provisions of various enactments. To do otherwise would be confusion worse confounded and, as well, add an opportunity for uncontrollable discrimination.

Thank you for the opportunity of presenting these views to you.

Respectfully,

CHARLES A. WASHER,  
*Counsel, Transportation Division.*

The CHAIRMAN. With the thanks of the committee, the committee is adjourned.

(Whereupon, at 12:40 p.m., the hearing was adjourned.)

(Subsequently, the committee received the following:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
*Washington, D.C., July 25, 1962.*

HON. OREN HARRIS,

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

DEAR MR. CHAIRMAN: During the hearings last Friday, July 20, on H.R. 4272, permission was granted to American Trucking Associations, Inc., to file a statement on that legislation, and this letter is in response to that permission.

As you know, the fourth section of the Interstate Commerce Act which, among other things, prohibits charging of a greater rate for a shorter than for a longer distance, appears only in part I of the Interstate Commerce Act and thus applies only to railroads and express companies regulated under part I of the act. However, while the fourth section is not applicable to motor carriers under part II, the principle involved has long been applicable to motor carrier rates. In other words, no specific section of the law prohibits motor carriers from charging more for a shorter distance than for a longer distance but the Commission has for many years held that rates which violate this principle are prima facie unreasonable under the ratemaking provisions of the Interstate Commerce Act which prohibit unjust and unreasonable rates. *United States v. New York & New Brunswick Auto Exp. Co.*, 62 M.C.C. 767; *Commodities, Kansas to Illinois, Missouri, and Oklahoma*, 44 M.C.C. 90; *United States v. Davidson Transfer & Storage Co., Inc.*, 302 I.C.C. 87.

H.R. 4272, by specifically repealing the application of the fourth section to express companies, might conceivably be construed as repealing the principle involved insofar as its application to express companies is concerned. Thus a motor carrier rate filed (after passage of the bill) might be attacked as unreasonable but a similar express rate might not be subject to such attack because of passage of this bill relieving express companies from the fourth section. To do this would afford express companies a peculiar and advantageous immunity from basic ratemaking provisions of the act.

The trucking industry has no objection to H.R. 4272 provided it is amended by the addition of language to make certain that the other ratemaking provisions of the act will still apply. Both the Interstate Commerce Commission and the representative of the REA Express testified last week that this would, in effect, be the case. However, we think it would be better to specifically write this into the bill in order to remove any possible doubt.

To implement this amendment we suggest amending H.R. 4272 to read as follows (new amendment italicized) :

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(1) of the Interstate Commerce Act (49 U.S.C. 4(1)) is amended by inserting before the period at the end thereof a colon and the following: 'And provided further, That the provisions of this paragraph shall not apply to express companies subject to the provisions of this part: Provided, however, That the exemption herein accorded express companies shall not be construed to relieve such express companies from the operation of any other provision contained in this Act.'"*

We respectfully request that this letter be made a part of the hearings on H.R. 4272.

Respectfully submitted.

JAMES F. FORT,  
Counsel, Public Affairs.

REA EXPRESS,  
New York, N.Y., July 25, 1962.

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

DEAR MR. CHAIRMAN: I understand that the American Trucking Associations has filed for the record on H.R. 4272 a letter recommending an amendment to the effect that the bill does not relieve express companies from any provision of the Interstate Commerce Act other than section 4 of part I.

Without considering the reasons given for the suggestion, I wish to advise that we regard the amendment as unnecessary but not objectionable.

I testified both in the prepared statement and in response to Chairman Harris that the Interstate Commerce Commission would retain its full present authority under the remaining sections of the law. The Chairman of the Commission took the same position.

If the committee nevertheless feels that the suggested amendment will further insure this interpretation of the bill, I would certainly interpose no objection.

We respectfully request that this letter be made a part of the record on H.R. 4272.

Very truly yours,

WILLIAM B. JOHNSON.

