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TRANSPORTATION ACTS AMENDMENTS—1962

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 11583

A BILL TO EXEMPT CERTAIN CARRIERS FROM MINIMUM RATE REGULATION IN THE TRANSPORTATION OF BULK COMMODITIES, AGRICULTURAL AND FISHERY PRODUCTS, AND PASSENGERS, AND FOR OTHER PURPOSES

H.R. 11584

A BILL TO PROVIDE FOR STRENGTHENING AND IMPROVING THE NATIONAL TRANSPORTATION SYSTEM, AND FOR OTHER PURPOSES

JUNE 26, 28, 29, JULY 10, 11, 12, 13, 24, 25, 27, AUGUST 7, 8, 9, 10, 1962

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

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TRANSPORTATION ACTS AMENDMENTS—1962

TUESDAY, JUNE 26, 1962

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

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

The CHAIRMAN. The committee will come to order.

This morning the committee opens hearings on two bills, H.R. 11583 and H.R. 11584, which I introduced last month at the request of the Secretary of Commerce.

(The bills referred to, H.R. 11583 and H.R. 11584, follow:)

[H.R. 11583, 87th Cong., 2d sess.]

A BILL To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1 of the Interstate Commerce Act, as amended (49 U.S.C. 1), is amended by adding thereto a new paragraph (23) to read as follows:

"(23) Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'exempt' in the 'commodity list' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products) or (3) passengers, by carriers subject to part I, II, III, or IV of this Act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. If any carrier or carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against

unlawful restraints and monopolies and for other purposes', such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained herein shall be construed to prohibit a common carrier from establishing reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 5a of the Interstate Commerce Act is amended by changing the period at the end of paragraph (9) to a comma, and adding the following: "except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 1(23) of the Interstate Commerce Act, or of passengers."

SEC. 2. Section 303(b) of the Interstate Commerce Act is amended to read as follows:

"(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended."

SEC. 3. Section 418 of the Interstate Commerce Act is amended by striking out all following the final semicolon therein and inserting in lieu thereof "or common carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of this Act."

SEC. 4. (a) The Intercoastal Shipping Act, 1933 (46 U.S.C. 843), is amended by redesignating section 8 as section 9, and inserting immediately after section 7 the following new section:

"SEC. 8. Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'exempt' in the 'commodity list' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products), or (3) passengers, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. If any carrier or carriers exempted by the provisions of this section from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this section, or of passengers, in violation of the provisions of the 'antitrust laws', as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained herein shall be construed

to prohibit a common carrier from establishing reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 15 of the Shipping Act, 1916, as amended (46 U.S.C. 814), is amended by changing the period to a comma at the end of the next to last paragraph therein, and adding the following: "except that such relief shall not extend to any agreement with respect to any rate, charge, or fare referred to in section 8 of the Intercoastal Shipping Act, 1933, as amended."

SEC. 5. (a) Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482) is amended by inserting the designation "(1)" after the word "*Provided*," replacing the period at the end of said subsection with a comma, and adding the following:

"(2) That as to rates and charges for transportation of (i) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or of liquid commodities in bulk and (ii) property consisting of ordinary livestock, fish, including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof) the Board shall determine and prescribe only a just and reasonable maximum rate or charge. If any carrier or carriers exempted by the provisions of this subsection (d)(2) from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in such subsection in violation of the provisions of the antitrust law, as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained herein shall be construed to prohibit a common carrier from establishing reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 1002 of the Federal Aviation Act of 1958 is further amended by adding thereto a new subsection (j) to read:

"DEFINITIONS

"(j) For the purposes of subsection (d)(2) of this section, the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall include property shown as 'exempt' in the 'commodity list' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'not exempt': *Provided*, That these words shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products)."

(c) Section 414 of the Federal Aviation Act of 1958 is amended by changing the period at the end thereof to a comma, and adding the following: "except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 1002(d)(2) of this Act."

(d) It is the intent of Congress that regulatory control over minimum passenger fares of the air carriers be reduced to the greatest extent consistent with the public interest, so that business incentives and competition may play a more influential role in the pricing of air transportation.

SEC. 6. The provisions of this Act shall become effective on the date of enactment of this Act.

[H.R. 11584, 87th Cong., 2d sess.]

A BILL To provide for strengthening and improving the national transportation system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Act of 1962".

EXPERIMENTS BY COMMON CARRIERS IN RATE, CLASSIFICATION AND DOCUMENTATION SYSTEMS

SEC. 2. (a) In order to test new service combinations or arrangements, simplified documentation, and plans for different or simplified rate bases and freight classifications, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission are empowered to authorize experiments by individual common carriers, between common carriers of the same mode of transportation, between common carriers of different modes of transportation, or among common carriers of all modes of transportation subject to the regulatory authority of agencies of the United States.

(b) Experiments in subsection (a) shall, after notice to the public affording interested persons opportunity to submit written views, be authorized by the regulatory agency concerned, or, where common carriers subject to different regulatory agencies are concerned, by those agencies jointly. Such regulatory agency or agencies shall control and carefully supervise such experiments and shall provide, in any authorization granted for such experiments, terms and conditions covering the duration, location, number, scope, and type of such experiment.

(c) Experiments in subsection (a) may be proposed by carriers, shippers, or regulatory agencies. However, participation by shippers or common carrier subject to the Interstate Commerce Act, the Federal Aviation Act or the Intercoastal Shipping Act, 1933, shall be voluntary.

(d) Where joint action by two or more agencies is required under subsection (b) or (c) hereof, it shall be taken by the joint boards provided for in section 1003 of the Federal Aviation Act of 1958, and the actions of such joint boards shall be reviewable as therein provided.

(e) For the purposes of this section, each agency referred to in subsection (a) shall have the powers conferred on it in the statute creating such agency, and nothing in this section shall be deemed to diminish the existing regulatory powers of such agencies.

RIGHT TO SHIP VEHICLES OR CONTAINERS ON CARRIERS OF OTHER MODES WITHOUT PRICE DISCRIMINATION

SEC. 3. (a) Section 2 of the Interstate Commerce Act (49 U.S.C. 2) is amended by inserting "(a)" after "SEC 2." and by adding at the end thereof the following new subsection:

"(b) Common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

(b) Section 216(d) of such Act by changing the period at the end thereof to a colon and adding the following: "*Provided further, however* That the common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

(c) Section 305(c) of such Act is amended by changing the period after the proviso to a semicolon and adding the following: "*Provided further, however,* That common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

ESTABLISHMENT OF THROUGH SERVICE AND JOINT RATES; JOINT BOARDS

SEC. 4. (a) It is hereby declared to be in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be encouraged and promoted.

(b) Section 1003 of the Federal Aviation Act of 1958 (49 U.S.C. 1483) is hereby amended to read as follows:

"DESIGNATION OF BOARDS

"SEC. 1003. (a) The Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall direct their respective chairmen to designate, from time to time, a like number of members of each to act as a joint board to consider and pass upon matters referred to such board as provided in subsection (e) of this section.

"THROUGH SERVICE AND JOINT RATES, FARES, AND CHARGES

"(b) Air carriers subject to the Federal Aviation Act of 1958, common carriers subject to parts I, II, and III of the Interstate Commerce Act, as amended, and common carriers by water subject to the Intercoastal Shipping Act, 1933, as amended (including persons who hold themselves out to transport goods by water but who do not own or operate vessels), may establish reasonable through service and joint rates, fares, and charges with any other such common carriers in connection with the transportation of persons or property in interstate or foreign commerce; except that air carriers not directly engaged in the operation of aircraft in air transportation (other than companies engaged in the air express business) may not establish joint rates or charges, under the provisions of this subsection, with common carriers subject to the Interstate Commerce Act, as amended, and the Intercoastal Shipping Act, 1933, as amended.

"JOINT RATES, FARES, AND CHARGES TO BE JUST, REASONABLE

"(c) In case of through service, it shall be the duty of carriers party thereto to establish just and reasonable rates, fares, or charges and just and reasonable classifications, rules, regulations, and practices affecting such rates, fares, or charges, or the value of the service thereunder, and if joint rates, fares, or charges shall have been established with respect to such through service, tariffs naming such joint rates, fares, or charges shall be filed by each of the carriers party thereto with the agency having regulatory jurisdiction over the portion of the through services to be performed by such carrier in accordance with the tariff rules and regulations of such agency. Just, reasonable, and equitable divisions thereof between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers, shall be established.

"COMPLIANCE WITH TARIFFS

"(d) No carrier party to a tariff filed in accordance with subsection (c) shall charge or demand or collect or receive a greater or lesser or different compensation for transportation between points served by it and points served by any other such carrier or for any service in connection therewith, than the rates and charges so filed; and no such carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker or others, refund or remit any portion of the rates or charges so specified, or extend to any person any privileges or facilities other than those described in such tariffs. The willful failure of any such carrier to observe tariffs filed in accordance with this section shall be punishable by a fine of not less than $1,000 nor more than $20,000 for each offense.

"REFERENCE TO JOINT BOARDS

"(e) Matters relating to such through service and joint rates, fares, or charges may be referred by the Board, the Federal Maritime Commission or the Interstate Commerce Commission, upon complaint or upon its own initiative, to a joint board created as provided in subsection (a). Complaints may be filed with the Federal Maritime Commission, the Interstate Commerce Commission, or the Board by any shipper, consignee, or carrier affected thereby, charging that any joint rate, fare, or charge or any classification, regulation, or practice relat-

ing thereto, is, or will be, in violation of subsection (c). Any carrier participating in a joint rate may file a complaint charging that the divisions of such joint rate are in violation of subsection (c).

"POWERS OF BOARDS

"(f) With respect to matters referred to any joint board as provided in subsection (e), such joint board shall have the same powers which section 216 of the Interstate Commerce Act, title 49, United States Code, section 316, confers upon the Interstate Commerce Commission in respect to common carriers of property by motor vehicle. In prescribing just and reasonable joint rates, fares, and charges, and classifications, regulations, and practices relating thereto, any such joint board shall give due consideration, among other factors, to the inherent advantages of transportation by the carriers involved; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service. Joint boards are authorized to use, with its consent, the available services, equipment, personnel and facilities of any of the participating agencies and may adopt for the conduct of their proceedings the suitable procedural rules of any participating agency.

"REVIEW OF ORDERS OF BOARDS

"(g) An order of any such joint board shall take effect within a reasonable time, not less than thirty days, except as otherwise provided by the joint board, and shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by a joint board or be suspended or set aside by a court of competent jurisdiction. Any such order shall be reviewable as provided in title 5, United States Code, sections 1031–1041, inclusive."

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION

SEC. 5. Section 205(f) of the Interstate Commerce Act (49 U.S.C. 305) is amended by inserting after the second sentence therein a new sentence reading as follows:

"In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

EXTENSION OF CIVIL FORFEITURE PENALTIES OF INTERSTATE COMMERCE ACT TO VIOLATIONS OF SAFETY REGULATIONS AND INVOLVING LACK OF OPERATING AUTHORITY; INCREASE IN PENALTIES

SEC. 6. Subsection (h) of section 222 of the Interstate Commerce Act (49 U.S.C. 322) is amended by striking out the words "shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50 for each additional day during which such failure or refusal shall continue" in the first sentence therein and by inserting in lieu thereof the following words: "or shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States the sum of $500 for each such offense, and, in case of a continuing violation not to exceed $250 for each additional day during which such failure or refusal shall continue".

CIVIL LIABILITY FOR VIOLATIONS OF FEDERAL AVIATION ACT BY AIR CARRIERS

SEC. 7. Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof a new subsection "(c)" reading as follows:

"REPARATION AWARDS; LIMITATION OF ACTIONS

"(c)(a) In case any air carrier or foreign air carrier demands, charges, collects, or receives any individual or joint rate, fare, or charge, or establishes or maintains any classification, rule, regulation, or practice, in violation of any

provision of this Act, such air carrier or foreign air carrier shall be liable to the person or persons (not including an air carrier or foreign air carrier suing in other than the capacity of a shipper) injured thereby for the full amount of damages sustained in consequence thereof together with a reasonable counsel's or attorney's fee to be fixed by the court in every case of recovery, which fee shall be taxed and collected as part of the costs in the case.

"(b) Any person, organization, or body politic claiming to be damaged by any such carrier may either make complaint to the Board or may bring suit in his or their own behalf for the recovery of the damages for which such carrier may be liable under the provisions of paragraph (a), in any district court of the United States of competent jurisdiction; but such person, organization, or body politic shall not have the right to pursue both of said remedies.

"(c) When a complaint as authorized in paragraph (b) of this section is filed with the Board, a statement of such complaint shall be forwarded by the Board to the carrier or carriers named in such complaint, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Board. If such carrier or carriers within the time specified shall make reparation for the injury alleged to have been done, such carrier or carriers shall be relieved of liability to the complainant only for the particular violation of law set forth in the complaint. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating the said complaint, it shall be the duty of the Board to investigate the matter complained of in such manner and by such means as it shall deem proper.

"(d) If, after hearing on a complaint, the Board shall determine that any party complainant is entitled to an award of damages under the provision of this Act for a violation thereof by any carrier, the Board shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"(e) If such carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file with the district court of the United States for the district in which he or it resides, or in which is located the principal operating office of such carrier, or in which such carrier operates, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Board in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Board shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. If the Board shall determine that any party complainant is not entitled to an award of damages or less damages than are sought, an appeal from such determination may be taken to the district court specified herein within sixty days after entry of the Board's order: *Provided, however*, That a party receiving an award of damages shall combine any such appeal with any action brought under this subsection for enforcement of such award.

"(f) (1) (A) All actions at law by common carriers by aircraft subject to the provisions of this Act for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

"(B) All complaints against such carriers for the recovery of damages not based on overcharges shall be filed with the Board within two years from the time the cause of action accrues, and not after, subject to subparagraph (D).

"(C) For the recovery of overcharges, action at law shall be begun or complaint filed with the Board against such carriers within three years from the time the cause of action accrues, and not after, subject to subparagraph (D), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

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"(D) If on or before expiration of the two-year period of limitation in subparagraph (B) or the three-year period of limitation in subparagraph (C) a common carrier by aircraft subject to the provisions of this Act begins action under subparagraph (A) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or charges are collected by the carrier.

"(2) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after.

"(3) A complaint for the enforcement of an order of the Board for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

"(4) The term 'overcharges' as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Board.

"(5) The provisions of this section 901(c) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Board or any court by or against carriers subject to this part: *Provided, however,* That wth respect to such transportation of property or passengers for or on behalf of the United States, the period of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

"(g) In suits brought to enforce an order of the Board for the payment of money all parties in whose favor the Board may have made an award of damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant has his or its principal operating office. In case of such joint suit the recovery, if any, may be judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff."

SEC. 8. Subsection (a) of section 1006 of the Federal Aviation Act of 1956 (49 U.S.C. 1486) is amended by amending the first sentence therein to read as follows: "Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect to any foreign air carrier subject to the approval of the President as provided in section 801 of this Act or any order in respect of reparations issued pursuant to section 901(c) of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order."

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES AND PROCUREMENT; TRANSPORTATION OF MAIL BY MOTOR VEHICLE COMMON CARRIERS

SEC. 9. (a) Section 321 of title III, part II, of the Transportation Act of 1940, as amended (49 U.S.C. 65), is amended by—

(1) Striking out the second proviso in subsection (a) thereof and substituting therefor the following: "*Provided further,* That the head of an agency or such persons as he may designate may negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, including mail transportation services performed by common carriers by motor vehicles when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed, and services accessorial thereto for the United States, without regard to the provisions of any law requiring advertising for bids;" and

(2) Striking out subsection (b) thereof and substituting the following:

"(b) Notwithstanding any other provision of law, the Administrator, General Services, or such persons as he may designate on behalf of civil agencies, and the Secretary of Defense or such persons as he may designate on behalf of the military agencies may negotiate, agree to, contract for, engage, or otherwise

establish simplified rate structures for the whole or for portions of transportation of persons or property and accessorial services procured for the United States for periods not to exceed one year but renewable for successive one-year periods: *Provided*, That the Administrator, General Services, or the Secretary of Defense or their designees, have determined that the prospective simplified rate structure is in the public and Government interest and that the said structure may reasonably be expected to result in administrative and transportation costs to the United States lower or not substantially higher in the aggregate than costs normally applicable: *And provided further*, That such simplified rate structures shall initially entail research and experimentation in diminished differentiation among commodities, in methods for determination of distance through use of geographic grids and geometric formulas or other nontraditional techniques well suited to condensed tabulation or application of automatic data processing, and in the evaluation of charges over time periods as distinct from conventional rate construction, all for the purpose of devising practical systems to make rate publication and ascertainment less costly and more convenient. Federal transportation regulatory bodies shall, and other interested industrial, academic, or governmental agencies may, with the approval of the Administrator, General Services, or the Secretary of Defense, as appropriate, observe, recognize, and employ to the maximum beneficial extent the techniques and results of said research and experimentation."

(b) Nothing contained in this section is intended to repeal or revise section 2631, title 10, United States Code.

TRANSFER OF POWERS VESTED IN CIVIL AERONAUTICS BOARD AND INTERSTATE COMMERCE COMMISSION WITH RESPECT TO GUARANTY OF LOANS TO AIR CARRIERS AND COMMON CARRIERS BY RAILROAD

SEC. 10. (a) Subsection (a) of section 2 of the Act of September 7, 1957 (71 Stat. 629), as amended, is amended by striking out the words "Board" and "Civil Aeronautics Board," and substituting therefor the words "Secretary" and "Secretary of Commerce," respectively.

(b) Section 3 of such Act is amended by:

(1) Striking out the word "Board" where it appears the first and third times therein, and substituting therefor the word "Secretary"; and

(2) Inserting the words "Civil Aeronautics" immediately before the word "Board" where it appears the second time therein.

(c) Sections 4 and 5 of such Act are amended by striking out the word "Board" wherever it appears in such sections and substituting therefor the word "Secretary".

(d) Subsection (a) of section 6 of such Act is amended by:

(1) Striking out the word "it" where it appears the first time therein, and substituting therefor the word "him";

(2) Striking out the word "it" where it appears the second time therein, and substituting therefor the word "the"; and

(3) Striking out the word "Board", and substituting therefor the word "Secretary".

(e) Section 7 of such Act is amended by striking out the word "Board" wherever it appears therein and substituting therefor the words "Department of Commerce".

(f) Section 410 of the Federal Aviation Act of 1958 (49 U.S.C. 1380) is amended by replacing the period at the end of the last sentence with a colon, and adding the following: "*Provided, however*, That the provisions of this section shall not be applicable to the guaranty of loans by the Secretary of Commerce under the provisions of the Act of September 7, 1957 (71 Stat. 629), as amended, but the Secretary of Commerce shall consult with and consider the views and recommendations of the Board in making such guaranties."

SEC. 11. (a) Section 2 of the Transportation Act of 1958 (49 U.S.C. 1231–1240), as amended, which added part V to the Interstate Commerce Act, as amended, is hereby repealed.

(b) It is the purpose of this section to provide for assistance to common carriers by railroad subject to the Interstate Commerce Act to aid them in acquiring, constructing, or maintaining facilities and equipment for such purposes, and in such a manner, as to encourage the employment of labor and to foster the preservation and development of a national transportation system

adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

(c) For the purposes of this section—

(A) The term "Secretary" means the Secretary of Commerce.

(B) The term "Commission" means the Interstate Commerce Commission.

(C) The term "additions and betterments or other capital expenditures" means expenditures for the acquisition or construction of property used in transportation service, chargeable to the road, property, or equipment investment accounts, in the Uniform System of Accounts prescribed by the Commission.

(D) The term "expenditures for maintenance or property" means expenditures for labor, materials, and other costs incurred in maintaining, repairing, or renewing equipment, road, or property used in transportation service chargeable to operating expenses in accordance with the Uniform System of Accounts prescribed by the Commission.

(d) In order to carry out the purpose declared in subsection (b), the Secretary may, after consultation with and consideration of the views and recommendations of the Commission and upon terms and conditions prescribed by him and consistent with the provisions of this section, guarantee in whole or in part any public or private financing institution, or trustee under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder, by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made, or which have been made, for the purpose of aiding any common carrier by railroad subject to the Interstate Commerce Act in the financing or refinancing (1) of additions and betterments or other capital expenditures, made after January 1, 1957, or to reimburse the carrier for expenditures made from its owns funds for such additions and betterments or other capital expenditures, or (2) of expenditures for the maintenance of property: *Provided*, That in no event shall the aggregate principal amount of all loans guaranteed by the Secretary exceed the uncommitted balance of the limitation set forth in section 503 of the Interstate Commerce Act, as added by section 2 of the Transportation Act of 1958.

(e) (1) No guaranty shall be made under subsection (d)—

(A) unless the Secretary finds that without such guaranty, in the amount thereof, the carrier would be unable to obtain necessary funds, on reasonable terms, for the purposes for which the loan is sought;

(B) if, in the judgment of the Secretary, the loan involved is at a rate of interest which is unreasonably high;

(C) if the terms of such loan permit full repayment more than fifteen years after the date thereof; or

(D) unless the Secretary finds that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States. A statement of the findings of the Secretary required under the provisions of this subsection shall be made a matter of public record by the Secretary with respect to each loan guaranteed under the provisions of this section.

(2) It shall be unlawful for any common carrier by railroad subject to the Interstate Commerce Act to declare any dividend on its preferred or common stock while there is any principal or interest remaining unpaid on any loan to such carrier made for the purpose of financing or refinancing expenditures for maintenance of property of such carrier, and guaranteed under this section.

(f) The Secretary may consent to the modification of the provisions as to rate of interest, time of payment of interest or principal, security, if any, or other terms and conditions of any guaranty which he shall have entered into pursuant to this section, or the renewal or extension of any such guaranty, whenever the Secretary shall determine it to be equitable to do so.

(g) (1) Payments required to be made as a consequence of any guaranty by the Secretary made under this section shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions of this section.

(2) In the event of any default on any such guaranteed loan, and payment in accordance with the guaranty by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the defaulting carrier, carriers, or other persons liable therefor.

(h) The Secretary shall prescribe and collect a guaranty fee in connection with each loan guaranteed under this section. Such fees shall not exceed such amounts as the Secretary estimates to be necessary to cover the administrative costs of carrying out the provisions of this section. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

(i) (1) To permit him to make use of such expert advice and services as he may require in carrying out the provisions of this section, the Secretary may use available services and facilities of departments and other agencies and instrumentalities of the Government, with their consent and on a reimbursable basis where necessary.

(2) Departments, agencies, and instrumentalities of the Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this section.

(j) Except with respect to such applications as may then be pending, the authority granted by this section shall terminate at the close of June 30, 1963: *Provided*, That its provisions shall remain in effect thereafter for the purposes of guaranties made by the Secretary.

SEC. 12. (a) All orders, determinations, rules, regulations, permissions, approvals, agreements, rulings, directives, and privileges which have been issued, made, or granted, or allowed to become effective, by the Civil Aeronautics Board or the Interstate Commerce Commission, or any court of competent jurisdiction, under any provision of law amended or repealed by section 10 or 11 of this Act, or in the exercise of duties, powers, or functions which, under such sections, are vested in the Secretary of Commerce, and which are in effect at the time such sections take effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Commerce or by any court of competent jurisdiction, or by operation of law.

(b) The provisions of sections 10 and 11 of this Act shall not affect any proceedings pending at the time such sections take effect before the Civil Aeronautics Board or the Interstate Commerce Commission, as the case may be; but any such proceedings shall be continued before the Secretary of Commerce, orders issued therein, and payments made pursuant to such orders, as if section 10 or 11 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Commerce, or by operation of law.

(c) The provisions of sections 10 and 11 of this Act shall not affect suits c mmenced prior to the date on which such sections take effect; and all such suits shall be continued by the Secretary of Commerce, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if section 10 or 11 had not been enacted. No suit, action, or other proceeding lawfully commenced by or against the Civil Aeronautics Board or the Interstate Commerce Commission, as the case may be, or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from the Board or Commission or officer to the Secretary of Commerce under the provisions of section 10 or 11, but the court upon a motion or a supplemental petition filed at any time within twelve months, after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Secretary of Commerce.

SEC. 13. (a) The officers, employees, and property (including office equipment and official records) of the Civil Aeronautics Board and the Interstate Commerce Commission which the Bureau of the Budget, after consultation with the Civil Aeronautics Board, or the Interstate Commerce Commission, as the case may be, shall determine to have been employed by the Civil Aeronautics Board, or the Interstate Commerce Commission, in the exercise and performance of those powers and duties vested in and imposed upon the Board by the Act of September 7, 1957, as amended (71 Stat. 629), or the Commission by section 2 of the Transportation Act of 1958, as amended, and which are vested by section 10 or 11 of this Act in the Secretary of Commerce, shall be transferred to the Department of Commerce upon such date or dates as the Bureau of the Budget shall specify: *Provided*, That the transfer of such personnel shall be without reduction in classification or compensation, except that this requirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of classification or compensation to conform to the duties of which such transferred personnel may be assigned.

(b) Such of the unexpended balances of appropriations available for (1) use by the Civil Aeronautics Board in the exercise and performance of those powers and duties vested in and imposed upon it by the Act of September 7, 1957 (71 Stat. 629), as amended, and which are vested by section 10 of this Act in the Secretary of Commerce, and (2) use by the Interstate Commerce Commission in the exercise of those powers and duties vested in and imposed upon it by section 2 of the Transportation Act of 1958, as amended, and which are vested by section 11 of this Act in the Secretary of Commerce, shall be transferred to the Department of Commerce upon such date or dates as the Bureau of the Budget shall specify, and shall be available for use in connection with the exercise and performance of the powers and duties vested in and imposed upon the Secretary of Commerce by section 10 or 11 of this Act.

(c) All records transferred to the Secretary of Commerce under this section shall be available for use by him to the same extent as if such records were originally records of the Secretary.

SEC. 14. The provisions of this Act shall become effective on the date of enactment of this Act.

The CHAIRMAN. In transmitting the drafts of the bills in the usual way, the Secretary stated that the purpose was to implement certain recommendations contained in the President's message to the Congress of April 5, 1962, on the transportation system of the Nation.

H.R. 11583 proposes to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, of agricultural and fishery products, and of passengers.

H.R. 11584 covers a number of miscellaneous amendments, some procedural and some substantive, to existing transportation statutes, and provides for the transfer to the Department of Commerce of authority relating to governmental guarantee of loans to railroads and air carriers, and for the creation of a new joint board, in which the Federal Maritime Commission would participate, for the purpose of handling through routes and joint rate matters.

It is my understanding that the two bills do not encompass all of the recommendations contained in the President's message of April 5. That is obvious, because some of those recommendations go to other committees. Some are covered by other bills that are pending before this committee.

At this time, I think it would be appropriate to include in the record a copy of the message of the President of April 5 on the transportation system of the Nation.

(The document referred to follows:)

[H. Doc. No. 384, 87th Cong., 2d sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO THE TRANSPORTATION SYSTEM OF OUR NATION

To the Congress of the United States:

An efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress. Affecting the cost of every commodity we consume or export, it is equally vital to our ability to compete abroad. It influences both the cost and the flexibility of our defense preparedness, and both the business and recreational opportunities of our citizens. This Nation has long enjoyed one of the most highly developed and diversified transportation systems in the world, and this system has helped us to achieve a highly efficient utilization of our manpower and resources.

Transportation is thus an industry which serves, and is affected with, the national interest. Federal laws and policies have expressed the national interest in transportation particularly in the last 80 years: through the promotion and development of transportation facilities, such as highways, airways, and waterways; through the regulation of rates and services; and through general governmental policies relating to taxation, procurement, labor, and competi-

tion. A comprehensive program for transportation must consider all of these elements of public policy.

During the last session of Congress, action was taken to place our Federal-aid highway program on a sounder fiscal basis. Initial steps were taken to improve the operations of our regulatory agencies through reorganization. A beginning was also made toward meeting the needs of our cities for mass transportation. By Executive order, I recently assigned to the Department of Commerce authority for emergency transportation planning.

But pressing problems are burdening our national transportation system, jeopardizing the progress and security on which we depend. A chaotic patchwork of inconsistent and often obsolete legislation and regulation has evolved from a history of specific actions addressed to specific problems of specific industries at specific times. This patchwork does not fully reflect either the dramatic changes in technology of the past half century or the parallel changes in the structure of competition.

The regulatory commissions are required to make thousands of detailed decisions based on out-of-date standards. The management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative. Some parts of the transportation industry are restrained unnecessarily; others are promoted or taxed unevenly and inconsistently.

Some carriers are required to provide, at a loss, services for which there is little demand. Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates. Restraints on cost-reducing rivalry in rate-making often cause competition to take the form of cost-increasing rivalry—such as excessive promotion and traffic solicitation, or excessive frequency of service. Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt. Some carriers benefit from public facilities provided for their use, while others do not; and of those enjoying the use of public facilities, some bear a large part of the cost, while others bear little or none.

No simple Federal solution can end the problems of any particular company or mode of transportation. On the contrary, I am convinced that less Federal regulation and subsidization is in the long run a prime prerequisite of a healthy intercity transportation network. The constructive efforts of State and local governments as well as the transportation industry will also be needed to revitalize our transportation services.

This administration's study of long-range transportation needs and policies convinces me that current Federal policies must be reshaped in the most fundamental and far-reaching fashion. While recognizing that a revision of the magnitude required is a task to which the Congress will wish to devote considerable time and effort, I believe the recommendations below are of sufficient urgency and importance that the Congress should begin consideration of them at the earliest practicable date. If direct and decisive action is not taken in the near future, the undesirable developments, inefficiencies, inequities, and other undesirable conditions that confront us now will cause permanent loss of essential services or require even more difficult and costly solutions in the not-too-distant future.

A Basic National Transportation Policy

The basic objective of our Nation's transportation system must be to assure the availability of the fast, safe, and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security, and other broad public objectives. Investment or capacity should be neither substantially above nor substantially below these requirements—for chronic excess capacity involves misuse of resources, lack of adequate capacity jeopardizes progress. The resources devoted to provision of transportation service should be used in the most effective and efficient manner possible; and this, in turn, means that users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the service they desire at the lowest total cost, both public and private.

This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately owned facilities, operating under the incentives of private profit and the checks of competition to the maximum extent practicable. The role of public policy should be to provide a consistent and comprehensive framework of equal competitive opportunity that will achieve this objective at the lowest economic and social cost to the Nation.

This means a more coordinated Federal policy and a less segmented approach. It means equality of opportunity for all forms of transportation and their users and undue preference to none. It means greater reliance on the forces of competition and less reliance on the restraints of regulation. And it means that, to the extent possible, the users of transportation services should bear the full costs of the services they use, whether those services are provided privately or publicly.

For some 75 years, common carriage was developed by the intention of Congress and the requirements of the public as the core of our transport system. This pattern of commerce is changing—the common carrier is declining in status and stature with the consequent growth of the private and exempt carrier. To a large extent this change is attributable to the failure of Federal policies and regulation to adjust to the needs of the shipping and consuming public; to a large extent it is attributable to the fact that the burdens of regulation are handicapping the certificated common carrier in his efforts to meet his unregulated competition. Whatever the cause, the common carrier with his obligation to serve all shippers—large or small—on certain routes at known tariffs and without any discrimination performs an essential function that should not be extinguished.

Considerable research and analysis, going far beyond our present findings, will be required before we know enough about the costs and other characteristics of various forms of transportation to guarantee the achievement of these objectives in full. In the meantime, it is clear that the following fundamental reforms in our transportation policy are needed now.

PART I. INTERCITY TRANSPORTATION

Our system of intercity public transportation—including railroads, trucks, buses, ships and barges, airplanes and pipelines—is seriously weakened today by artificial distortions and inefficiencies inherent in existing Federal policies. Built up over the years, they can be removed only gradually if we are to mitigate the hardships that are bound to arise in any program of far-reaching adjustment.

As an initial step, I am requesting the Chairmen of the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission to meet at frequent intervals to discuss regulatory problems affecting the various modes of transportation and to seek coordinated solutions in the form of legislation or administrative action that will improve the regulatory process.

(*A*) *Equal competitive opportunity under diminished regulation*

(1) Bulk commodities: At present, the transportation of bulk commodities by water carriers is exempt from all rate regulation under the Interstate Commerce Act, including the approval of minimum rates; but this exemption is denied to all other modes of transportation. This is clearly inequitable both to the latter and to shippers—and it is an inequity which should be removed. Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for these commodities, while protecting the public interest by leaving intact the ICC's control over maximum railroad rates and other safeguards (such as the prohibition against discrimination, and requirements on car service and common carrier responsibility). While this would be the preferable way to eliminate the existing inequality, Congress could elect to place all carriers on an equal footing by repealing the existing exemption—although this would result in more, instead of less, regulation and very likely in higher though more stable rates. Whichever alternative is adopted, these commodities are too important a part of carrier traffic to continue to be governed so unequally by Federal rate regulation.

(2) Agricultural and fishery products: An exemption similar to that described above, and now available only to motor cariers and freight forwarders, relates to agricultural and fishery products. This exemption from minimum rates should also be extended to all carriers. Here, too, the ICC should retain control of maximum railroad rates and certain other controls, to protect the public inter-

est in those areas where there is no effective truck or water carrier competition to keep rates down.

The combined effect of extending these bulk and agricultural exemptions will be to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service and lower rates.

(3) Intercity passenger rates: The traveling public, like the commercial shipper, is also uninterested in paying higher rates to subsidize weak segments of the transportation industry. Chronic overcapacity and deficits can be ended in the long run only in an industry made fit, lean and progressive by vigorous competition and innovation. But this is not possible as long as Federal agencies fix uniform minimum rates for passenger travel. I recommend, therefore, that the Congress enact legislation which would eventually limit the control of intercity passenger rates to the establishment of maximum rates only. In the case of the airlines, it may be preferable to initiate this program on a gradual or temporary basis under existing authority.

To prevent the absence of minimum rate regulation under the above three proposals from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers freed from minimum rate regulations would be covered by existing laws against monopoly and predatory trade practices.

While the above three recommendations relate to the most critical—and controversial—problems of unnecessary or unequal regulatory curbs on transportation, other changes in the Interstate Commerce Act and the Federal Aviation Act are needed consistent with these same principles. I recommend that legislation be enacted to:

(4) Assure all carriers the right to ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers. This change will put the various carriers in a position of equality with freight forwarders and other shippers in the use of the promising and fast-growing piggyback and related techniques.

(5) Repeal the provision of the Interstate Commerce Act which now prevents a railroad from hauling cargo it owns. The need for this provision, which goes back to the days of oppressive railroad monopoly, has largely passed; and its current effect is to handicap the railroads in competing with other modes of transportation. The antitrust laws can insure protection against the possible abuse by a railroad of its dual status as shipper and carrier.

(6) Direct the regulatory agencies to sanction experimental freight rates, modifications and variations in existing systems of classification and documentation, and new kinds or combinations of service.

(B) Consistent policies of taxation and user charges

The same accidents of circumstance that have molded our transportation regulatory policies and programs have largely determined specific transportation taxes. As a result, inequities have developed and in some instances have persisted for many years.

(1) *Transportation excise tax.*—I have already recommended repeal of the 10-percent passenger transportation tax. This tax, a vestige of World War II and the Korean war, has undoubtedly discriminated against public transportation in favor of the automobile. I again recommend repeal of this tax to improve the competitive position of intercity railroad and bus passenger transportation systems, which generally are not publicly supported, and to clear the way for an equitable system of user charges for aviation.

(2) *Aviation.*—For commercial airlines, I have suggested (*a*) continuation of the 2-cents-per-gallon net tax on gasoline and extension of that tax rate to all jet fuels; and (*b*) a 5-percent tax on airline tickets and on airfreight waybills. By delaying until January 1, 1963, the effective date of all proposed changes as they affect aviation—including the repeal of the passenger tax for the airlines—ample time will be allowed for review by the Civil Aeronautics Board of any tariff adjustments that may be required by the carriers to recover the cost of user charges on fuel. The ticket and waybill taxes will be passed on directly to ultimate users.

For general aviation, such as recreational flying and company planes to which ticket and waybill taxes would not be applicable, a fuel tax of 3 cents per gallon is recommended as a minimal step toward recouping the heavy Federal investment in the airways.

All of the above taxes—in effect user charges—will recover only about half of the annual cost of the Federal airways system which is properly allocable to civil aviation. Total airways costs, which are approximately $500 million annually, have risen steadily in the past decade and will continue to grow as airways facilities and services are improved to accommodate future air traffic. Repeal of the 10-percent passenger tax as it now applies to aviation should not become effective, therefore, until the recommended user charges are in force for all segments of civil aviation.

(3) *Inland waterways.*—Also in the interest of equality of treatment and opportunity, the principle of user charges should be extended to the inland waterways. A tax of 2 cents per gallon should be applied to all fuels used in transportation on the waterways. The recommended effective date, January 1, 1963, will allow time for review by the Interstate Commerce Commission of any adjustments that may be necessary in common carrier rates. This deferral is recommended even though the bulk of inland waterways traffic is carried by unregulated rather than regulated carriers.

The new tax should include an exemption similar to the current exemption from taxation accorded to gasoline and ships supplies for vessels employed in the fisheries, foreign trade, or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Vessels in domestic trade using facilities and routes similar to those engaged in foreign trade, and vessels in coastal trade which are too large to use the intercoastal waterways, should also be exempted.

This administration recognizes the responsibility of the Government to maintain and improve our system of inland waterways. Over $2 billion of Federal funds has already been invested in capital improvements. Expenditures for operating and maintaining the waterways are about $70 million annually, even though only a small fraction of the traffic consists of common carriers which serve all shippers and the general public. The users of the waterways include some of the largest and financially strongest corporations in the United States today, and it is surely feasible and appropriate for them to pay a small share of the Federal Government's costs in providing and maintaining waterway improvements.

(4) *Income taxes.*—Another effort to improve equity in taxation is being taken by the Treasury Department, which is reviewing the administrative guidelines now governing depreciation rates in the transportation industry. The objective of this administration will be to give full recognition to current economic forces, including obsolescence, which in their impact upon the lives of depreciable assets may affect quite differently the different modes of transportation and, therefore, their competitive relationships. In addition, I recommend that the Internal Revenue Code be amended to increase from 5 to 7 years the period during which regulated public utilities, including those in transportation, can apply prior year losses to reduce current income for tax purposes.

(C) Evenhanded Government promotion of intercity transportation

To achieve a better balance of Federal promotional programs:

(1) I urge favorable consideration of legislation proposed by the Civil Aeronautics Board last year to make the domestic trunk air carriers ineligible for operating subsidies in the future. These carriers provide more passenger miles of transportation service than any of the other common carriers; and, while they are experiencing temporary overcapacity and have recently sustained financial losses, they have bright prospects for longrun growth and prosperity which should make them permanently independent of Government support.

(2) With respect to other aviation subsidies, the Congress has limited to $6 million the funds available in fiscal 1962 for the payment of operating subsidies to the three certificated helicopter services; and the Appropriations Committees have requested the Civil Aeronautics Board to prepare a schedule for the termination of these subsidies. I endorse this position and seek the extension of this principle. I am asking the Board to develop by June 30, 1963, a step-by-step program, with specific annual targets, to assure sharp reduction of operating subsidies to all other domestic airlines as well, within periods to be established by the Board for each type of service or carrier. Rigorous enforcement of the Board's use-it-or-lose-it policy and further development of the class rate subsidy plan which the Board initiated in January 1961 with the cooperation of the local service carriers would clearly facilitate this objective. The development of single airports to serve adjacent cities, or regional airports, is also clearly necessary if these subsidies are to be eliminated and if the Federal

Government and local communities are to meet the Nation's needs for adequate airports and air navigation facilities without excessive and unjustifiable costs.

(3) The Federal Government is a major user of transportation services. To assure the greatest practical use of the transportation industry by Government, I am directing all agencies of the Government, in meeting their own transport needs, to use authorized commercial facilities in all modes of transportation within the limits of economical and efficient operations and the requirements of military readiness.

(4) I also recommend that the Post Office Department be given greater flexibility in arranging for the transportation of mail by motor vehicle common carrier.

(5) Last year the Congress extended until June 30, 1963, the authority by which the Interstate Commerce Commission has been guaranteeing interest and principal payments on emergency loans to the railroads for operations, maintenance, and capital improvements for which the carriers cannot otherwise obtain funds on reasonable terms. A similar law by which the Government guarantees loans for aircraft and parts being purchased by certain certificated air carriers will expire this year. Since the Department of Commerce is already a focal point for Government transportation activities and since, in the interest of program coordination and consistency of policy these activities should be further consolidated, I recommend that the railroad loan guarantee authority, and the aviation loan guarantee authority if it is extended, be transferred to the Department of Commerce. These problems are not regulatory in nature and are clearly separable from the chief functions of the Interstate Commerce Commission and the Civil Aeronautics Board, and can be acted upon more expeditiously by an executive agency.

(D) Protection of the public interest

(1) Mergers: A great resurgence of merger talk has occurred in the railroad and airline industries in the last several years, and major mergers have been proposed in recent months in both industries. The soundness of such mergers should be determined, not in the abstract, but by applying appropriate criteria to the circumstances and conditions of each particular case. This administration has a responsibility to recommend more specific guidelines than are now available and more specific procedures for applying them.

Accordingly, I have directed the formation of an interagency group to undertake two tasks: First, after proper consultation with interested parties, to formulate general administration policies on mergers in each segment of the transportation industry; and second, to assist the Department of Justice in developing a Government position on each merger application for presentation before the regulatory agencies. This group will consist of agency representatives designated by the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council of Economic Advisers, and the heads of other agencies involved in a particular case. Under the chairmanship of Commerce, this group will examine each pending merger in transportation on the basis of the following criteria and others which they may develop:

(1) Effective competition should be maintained among alternative forms of transportation, and, where traffic volume permits, between competing firms in the same mode of transportation.

(2) The goals of economical, efficient, and adequate service to the public—and reduction in any public subsidies—should be secured by the realization of genuine economies.

(3) Affected workers should be given the assistance to make any necessary adjustments caused by the merger.

(2) Through routes and joint rates: For many years some regulatory agencies have been authorized to appoint joint boards to act on proposals for intercarrier services; but they have taken virtually no initiative to foster these arrangements which could greatly increase service and convenience to the general public and open up new opportunities for all carriers. I recommend, therefore, that Congress declare as a matter of public policy that through routes and joint rates should be vigorously encouraged, and authorized all transportation agencies to participate in joint boards.

(3) I have requested the Secretary of Defense and the Administrator of General Services to make the fullest possible use of their statutory powers, and I urge 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. These experiments will be pilot studies for a more general simplification of rates and for the application of new kinds of service to transportation in general.

(4) I am requesting the National Conference of Commissioners on Uniform State Laws, in cooperation with the Interstate Commerce Commission, to develop and urge adoption of uniform State registration laws for motor carriers operating within States but handling interstate commerce. The Congress should, consistent with this effort, give the Interstate Commerce Commission authority to enter into cooperative enforcement agreements with the various States, covering both the economic and the safety aspects of highway transportation.

(5) I recommend that all common carriers, including freight forwarders and motor carriers, be required to pay reparations to shippers charged unlawfully high rates.

(6) Finally, I recommend that the civil penalty now imposed on motor carriers for failure to file required reports be substantially increased; that the same civil penalty be imposed for violations of safety regulations and for operating without authority; and that the safety regulations of the Interstate Commerce Commission should be made fully applicable to private, as well as to common and contract carriers, so as to clarify the ambiguous situation prevailing at present.

PART II. URBAN TRANSPORTATION

I have previously emphasized to the Congress the need for action on the transportation problems resulting from burgeoning urban growth and the changing urban scene.

Higher incomes coupled with the increasing availability of the automobile have enabled more and more American families, particularly younger ones with children, to seek their own homes in suburban areas. Simultaneously, changes and improvements in freight transportation, made possible by the development of modern highways and the trucking industry, have reduced the dependence of manufacturers on central locations near port facilities or railroad terminals. The development of improved production techniques that require spacious, one-story plant layouts have impelled many industries to move to the periphery of urban areas. At the same time the importance of the central city is increasing for trade, financial, governmental, and cultural activities.

One result of these changes in location patterns has been a change in the patterns of urban travel. Formerly people traveled mainly along high density corridors radiating to and from downtown. Today traffic patterns are increasingly diverse. Added to traditional suburb-to-city movements are large cross-town flows which existing mass transportation systems are often not geared to handle. Also, the increasing use of automobiles to meet urban transportation needs has resulted in increasing highway congestion, and this has greatly impeded mass transportation service using those highways.

This drastic revision of travel patterns in many urban areas has seriously impaired the effectiveness and economic viability of public mass transportation, which is geared to the older patterns. A steady decline in patronage and a concomitant rise of unprofitability and financial problems have occurred. This has been particularly true of rail commuter and streetcar services limited to particular routes by fixed roadbeds.

To conserve and enhance values in existing urban areas is essential. But at least as important are steps to promote economic efficiency and livability in areas of future development. In less than 20 years we can expect well over half of our expanded population to be living in 40 great urban complexes. Many smaller places will also experience phenomenal growth. The ways that people and goods can be moved in these areas will have a major influence on their structure, on the efficiency of their economy, and on the availability for social and cultural opportunities they can offer their citizens. Our national welfare therefore requires the provision of good urban transportation, with the properly balanced use of private vehicles and modern mass transport to help shape as well as serve urban growth.

At my request, the problems of urban transportation have been studied in detail by the Housing and Home Finance Administrator and the Secretary of Commerce. Their field investigations have included some 40 metropolitan and other communities, large and small. Their findings support the need for substantial expansion and important changes in the urban mass transportation

program authorized in the Housing Act of 1961 as well as revisions in Federal highway legislation. They give dramatic emphasis, moreover, to the need for greater local initiative and to thee responsibility of the States and municipalities to provide financial support and effective governmental auspices for strengthening and improving urban transportation.

On the basis of this report, I recommend that long-range Federal financial aid and technical assistance be provided to help plan and develop the comprehensive and balanced urban transportation that is so vitally needed, not only to benefit local communities, but to assure more effective use of Federal funds available for other urban development and renewal programs. I recommend that such Federal assistance for mass transportation be limited to those applications (1) where an organization, or officially coordinated organizations, are carrying on a continuing program of comprehensive planning on an areawide basis, and (2) where the assisted project will be administered through a public agency as part of a unified or officially coordinated areawide transportation system.

(*A*) *Long-range program*

Specifically, I recommend that the Congress authorize the first installment of a long-range program of Federal aid to our urban regions for the revitalization and needed expansion of public mass transportation, to be administered by the Housing and Home Finance Agency. I recommend a capital grant authorization of $500 million to be made available over a 3-year period, with $100 million to be made available in fiscal 1963. Only a program that offers substantial support and continuity of Federal participation can induce our urban regions to organize appropriate administrative arrangements and to meet their share of the costs of fully balanced transportation systems.

This Federal assistance should be made available to qualified public agencies in the form of direct grants to be matched by local, non-Federal contributions. For rights-of-way, fixed facilities, including maintenance and terminal facilities, and rolling stock required for urban mass transportation systems, grants should be provided for up to two-thirds of the project cost which cannot reasonably be financed from expected revenue. The remaining one-third of the net project cost would be paid by the locality or State from other sources, without Federal aid. The extension and rehabilitation of existing systems as well as the creation of new systems should be eligible. In no event should Federal funds be used to pay operating expenses. Nor should parking facilities, except those directly supporting public mass transportation, be eligible for Federal grants.

While it is expected that the new grant program will be the major Federal support for urban mass transportation, it is important to have Federal loans available where private financing cannot be obtained on reasonable terms. I therefore recommend removal of the time limit on the $50 million loan authorization provided in the Housing Act of 1961. Federal loans would not be available to finance the State or local one-third contribution to net project cost.

Although grants and loans would be available only to public agencies, those agencies could lease facilities and equipment or make other arrangements for private operation of assisted mass transportation systems. The program is not intended to foster public as distinguished from private mass transit operations. Each community should develop the method or methods of operation best suited to its particular requirements.

A community should be eligible for a mass transportation grant or loan only after the Housing Administrator determines that the facilities and equipment for which the assistance is sought are necessary for carrying out a program for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area.

The program I have proposed is aimed at the widely varying transit problems of our Nation's cities, ranging from the clogged arteries of our most populous metropolitan areas to those smaller cities which have only recently known the frustrations of congested streets. There may, however, be some highly specialized situations in which alternative programs, for example, loan guarantees under stringent conditions, would be better suited to particular needs and the Congress may, therefore, wish to consider such alternatives.

(*B*) *Emergency aid*

Time will be required by most metropolitan areas to organize effectively for the major planning efforts required. Even more time may be needed to create public agencies with adequate powers to develop, finance, and administer new or improved public transportation systems. Meanwhile, the crisis conditions

that have already emerged in some areas threaten to become widespread. Mass transportation continues to deteriorate and even to disappear. Important segments of our population are thus deprived of transportation; highway congestion and attendant air pollution become worse; and the destructive effects upon central business districts and older residential areas are accelerated.

In recognition of this serious situation, I also recommend that the Congress, for a period of 3 years only, authorize the Housing Administrator to make emergency grants, (*a*) where there is an urgent need for immediate aid to an existing mass transportation facility or service that might otherwise cease to be available for transportation purposes, (*b*) where an official long-range program for a coordinated system is being actively prepared, and (*c*) where the facilities or equipment acquired under the emergency grant can reasonably be expected to be required for the new long-range system. This emergency aid should not exceed one-half of the net project cost. Upon completion of an acceptable areawide transportation program within 3 years, these emergency projects, if a part of the ultimate system, should qualify for the balance of the regular Federal assistance available under the long-range program.

(*C*) *Role of highways*

Highways are an instrumental part of any coordinated urban transportation program, and must be an integral part of any comprehensive community development plan. Accordingly, I have requested the Secretary of Commerce to make his approval of the use of highway planning funds in metropolitan planning studies contingent upon the establishment of a continuing and comprehensive planning process. This process should, to the maximum extent feasible, include all of the interdependent parts of the metropolitan or other urban area, all agencies and jurisdictions involved, and all forms of transportation, and should be closely coordinated with policymaking and program administration.

Progress has already been made in coordinated transportation planning for metropolitan areas through the use of funds made available under both Federal highway and housing legislation. To increase the effectiveness of this effort, I recommend that the Federal-aid highway law be amended to increase the percentage of Federal funds available to the States for research and planning. Legislation will be submitted to effectuate this change and to provide that (*a*) these funds should be available for planning and research purposes only; (*b*) the funds be matched by the States in accordance with statutory matching requirements; and (*c*) any funds not used for planning and research lapse.

In addition, I recommend that the Federal-aid highway law be amended to provide that, effective not later than July 1, 1965, the Secretary of Commerce shall, before approving a program for highway projects in any metropolitan area, make a finding that such projects are consistent with comprehensive development plans for the metropolitan area and that the Federal-aid system so developed will be an integral part of a soundly based, balanced transportation system for the area involved.

Highway planning should be broadened to include adequate traffic control systems, parking facilities, and circulation systems on city streets commensurate with the traffic forecasts used to justify freeways and major arterial roadways. Provision for transit and highway facilities in the same roadway, permissible under present law and already tested in several cases, should be encouraged whenever more effective transportation will result. Moreover, I have requested the Secretary of Commerce to consider favorably the reservation of special highway lanes for buses during peak traffic hours whenever comprehensive transportation plans indicate that this is desirable.

To permit the State highway departments greater flexibility in the use of Federal-aid highway funds to meet urban transportation needs, I further recommend that the Federal-aid highway law be amended to permit more extensive use of Federal-aid secondary funds for extensions of the secondary system in urban areas.

I have asked the Secretary of Commerce and the Housing and Home Finance Administrator to consult regularly regarding administration of the highway and urban mass transportation programs, and to report to me annually on the progress of their respective programs, on the needs for further coordination, and on possibilities for improvement.

(*D*) *Relocation assistance*

Last year in a message to the Congress on the Federal-aid highway program, I called attention to the problems of families displaced by new highway construction and proposed that the Federal highway law be amended to require assistance

to such families in finding decent housing at reasonable cost. The need for such assistance to alleviate unnecessary hardship is still urgent. The Secretary of Commerce has estimated that, under the interstate highway program alone, 15,000 families and 1,500 businesses are being displaced each year, and the proposed urban mass transportation program will further increase the number of persons affected.

To move toward equity among the various federally assisted programs causing displacement, I recommend that assistance and requirements similar to those now applicable to the urban renewal program be authorized for the Federal-aid highway program and the urban mass transportation program. Legislation is being submitted to authorize payments of not to exceed $200 in the case of individuals and families and $3,000 (or if greater, the total certified actual moving expenses) in the case of business concerns or nonprofit organizations displaced as a result of land acquisitions under these programs.

(E) Mass transit research and demonstrations

Further, I believe that progress will be most rapid and long lasting if the Federal Government contributes to economic and technological research in the field of urban mass transportation. These research activities should be an integral part of the research program described later in this message. Important parts of this program should be carried out by the Housing Administrator directly, through contract with other Federal agencies, private research organizations, universities and other competent bodies, or through the allocation of funds to local public agencies for approved programs.

To facilitate this approach, I recommend that the $25 million authorized last year for demonstration grants be made available for broad research and development undertakings, as well as demonstration projects, which have general applicability throughout the Nation. That amount, plus an additional $10 million from the proposed capital grant funds for each of the years 1963, 1964, and 1965 should suffice for these purposes. These funds, together with research funds available under the Federal-aid highway program, can contribute to substantial advances in urban transportation.

(F) Interstate compacts

Finally, since transportation in many urban areas is an interstate problem, I recommend that legislation be enacted to give congressional approval in advance for interstate compacts for the establishment of agencies to carry out transportation and other regional functions in urban areas extending across State lines.

PART III. INTERNATIONAL TRANSPORTATION

We should endeavor, to the maximum extent feasible, to (*a*) gear international transportation investments to the requirements of our peacetime international trade and travel, and (*b*) provide incentives to users that will channel traffic to those forms of transportation that provide desirable service at the lowest total cost. The most critical problems associated with these policies are in the national defense area. Determination must be made as to whether the number and types of ships and aircraft adequate to meet long-range peacetime needs are also adequate to meet probable military emergencies, and if they are not, how best to meet these additional requirements.

(A) Merchant marine

In the Merchant Marine Act of 1936, the U.S. Government made a new start on the vexing problems of the American merchant marine in the face of repeated failure to improve its condition both before and after World War I. Subsequently, other aids in the form of cargo preference legislation, various "trade-out," "trade-in," and tax incentives devised to stimulate new construction, and a mortgage insurance program with up to 87½-percent Federal guarantees were added to the arsenal of protection against the industry's exposure to low-cost foreign competition.

In spite of these aids, subsidies required for both construction and operations under the 1936 act have steadily increased. Operating subsidies will rise from $49 million in 1950 to over $225 million in 1963. Ship construction costs in U.S. yards are now approximately double those in Japanese and German yards. For this reason and because of an acceleration of the program beginning in 1956 to replace war-built cargo ships, Federal expenditures for new ship construction will rise to a postwar high of $112 million in 1963.

At my request, the Secretary of Commerce has undertaken a study of the current problems of the American merchant marine. This review will involve such specific issues as the state of coastal and intercoastal shipping and the costs of service to our noncontiguous territories. It will also consider more fundamental questions of long-term adjustment: Are the criteria adopted in 1936 as guides to the establishment of essential trade routes and services relevant for the future? Are there alternatives to the existing techniques for providing financial assistance which would benefit (*a*) the public in terms of better service and lower rates and (*b*) the operators in terms of higher profits, more freedom for management initiative and more incentive for privately financed research and technological advance? What research and development efforts are most likely to increase the competitiveness of our merchant marine? Can defense readiness requirements be met adequately by greater reliance on the reserve fleet and the ships of our allies under NATO agreements? Would a smaller reserve fleet be adequate? Are the international arrangements pursuant to which world shipping operations are carried on conducive to the stability of the industry, fair but effective competition and adequate service?

I have also asked the Secretary of Defense to provide the Secretary of Commerce with estimates, under a range of assumptions as to military emergencies, of what active and reserve tonnages of merchant shipping should be maintained in the interest of national security. In addition, I have established a Cabinet-level committee, chaired by the Secretary of Labor, whose study will include the flags of convenience and cargo preference issues. When the findings and conclusions of these studies become available, I shall send to the Congress appropriate specific recommendations concerning our maritime program.

In the meantime, I have directed the Secretary of Commerce to implement fully section 212(d) of the Merchant Marine Act of 1936, for securing preference to vessels of U.S. registry in the movement of commodities in our waterborne foreign commerce; and I have directed all executive branch agencies to comply fully with the purpose of our cargo preference laws.

I have also recommended a stepped-up research program for developing ways and means of increasing the competitive efficiency of our merchant marine and related industries. Of particular significance in this effort will be the application of the principles of mass production, and the standardization of ship types and ship components, for reduction in the cost of new vessel construction. Also, I am urging that sound development in technology and automation be applied to merchant shipping as rapidly as possible, fully recognizing and providing for the job equities involved, as a major program for enhancing the competitive capability of our merchant marine.

(*B*) *International aviation*

An interdepartmental committee, headed by the Administrator of the Federal Aviation Agency, and including representatives from the Department of State, the Department of Defense, the Department of Commerce, the Civil Aeronautics Board, and the Bureau of the Budget, was established at my direction last July to undertake a study of U.S. international air transportation policies and problems. This study is presently underway, and will be completed by late summer. Concurrent with this policy study, the Bureau of the Budget is conducting a study of the organizational structure within which Government agencies carry out activities concerned with international aviation. Once these studies have been completed and evaluated, an administration policy on international civil aviation will be enunciated, with responsibilities assigned to the agencies involved according to statutory requirements.

PART IV. LABOR RELATIONS AND RESEARCH

(*A*) *Labor relations*

Technological advance in transportation must be explored and developed if we are to meet growing requirements for the movement of people and goods. New equipment often requires new skills, sometimes displaces labor, and often requires retraining or relocation of manpower. An overall reduction in manpower requirements in transportation is not inevitable, however; and the new Manpower Development and Training Act will help those transportation workers in need of new jobs or new skills.

For the long-range benefit of labor, management, and the public, collective bargaining in the transportation industry must promote efficiency as well as solve problems of labor-management relations. Problems of job assignments, work

rules, and other employment policies must be dealt with in a manner that will both encourage increased productivity and recognize the job equities which are affected by technological change. The Government also has an obligation to develop policies and provide assistance to labor and management consistent with the above objectives.

(B) Research

To understand the increasingly complex transportation problems of the future, to identify the relationships of social, economic, administrative, and technical factors involved, to translate scientific knowledge into transportaton engineering practice, to weigh the merits of alternative systems, and to formulate new, improved, and consistent policies—we need information that can evolve only from a vigorous, continuous, and cordinated program of research. Yet, in the field of transportation where we have many unfulfilled opportunities, research has been fragmented, unsteady, inadequate in scope and balance.

Scientific and engineering research will bring to all forms of transportation the benefits of new high strength, low-cost and durable materials, compact and economical powerplants, new devices to increase safety and convenience—improvements which have characterized the development of jet-propelled aircraft. Experiments in the maritime field have resulted in the development of a nuclear-powered merchant ship, the NS *Savannah*, which has already begun test cruises, and a hydrofoil ship, the *Dennison*, which is nearing trial runs. Transportation on land, as well as in the air and on the seas, can benefit from accelerated scientific research.

Economic and policy research will improve knowledge about the functioning of our transportation system as a whole and about the interrelation of the major branches of the industry. It should consider the new demands for transportation, the changing markets and products being handled, and the need for speed and safety. For instance, such research can consider the handling of freight as a system beginning in the shipper's plant and ending with the delivery of goods to the very doors of his customers—using new packaging, containerization and cargo handling methods that will take full advantage of new economies and convenience.

Taking advantage of new techniques that would provide convenience and efficiency, we must consider the impact of different forms of transportation investment on economic development; we must combine and integrate systems to take advantage of the maximum benefits of each mode of travel; we must now consider the Nation's transportation network as an articulated and closely linked system rather than an uncoordinated set of independent entities.

Just as a transport system must be built and operated as a whole, the different areas of transportation research must be coordinated within an overall concept. With the advice and assistance of the heads of the principal Federal agencies concerned with transportation and members of my own staff, the Secretary of Commerce is undertaking a broad evaluation of research needs in transportation and of the appropriate methods to meet these needs. I look to the Secretary of Commerce to develop a comprehensive transportation research program for the Government for later consideration by the Congress. Once such a coordinated and policy-oriented research program is underway, it will produce a flow of information of the kind that we must have to implement a comprehensive public policy on transportation.

Improved statistics for private and Government use are also urgently needed. The 1963 budget repeats a request made by the previous administration for funds to prepare for a Census of Transportation. This census will make an important beginning to supplying these much-needed data. I urge early favorable action on this request.

Conclusion

The troubles in our transportation system are deep; and no just and comprehensive set of goals—which meets all the needs of each mode of transportation as well as shippers, consumers, taxpayers and the general public—can be quickly or easily reached. But few areas of public concern are more basic to our progress as a nation. The Congress and all citizens, as well as all Federal agencies, have an increasing interest in and an increasing responsibility to be aware of the shortcomings of existing transportation policies; and the proposals contained in this message are intended to be a constructive basis for the exercise of that responsibility.

The difficulty and the complexity of these basic troubles will not correct themselves with the mere passage of time. On the contrary, we cannot afford to delay

further. Facing up to the realities of the situation, we must begin to make the painful decisions necessary to providing the transportation system required by the United States of today and tomorrow.

JOHN F. KENNEDY.

THE WHITE HOUSE, *April 5, 1962.*

The CHAIRMAN. We also have reports from various agencies on these proposals which will be included in the record at this point.

(The reports referred to follow:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 25, 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 letter of May 9, 1962, requesting our comments on H.R. 11583, a bill to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes.

We favor passage of this bill because we believe it is consistent with the goals set forth in the President's transportation message and would be beneficial to agriculture generally as well as to the Nation's common carriers.

If passed, this bill would exempt from minimum rate regulation the interstate transportation of (1) bulk commodities, (2) agricultural and fishery products, and (3) passengers. It would tend to equalize competitive opportunities between carriers of different modes of transportation and would permit the forces of competition to determine the charges paid by shippers for moving freight and the fares paid by passengers. At present, commodities moving in bulk in interstate commerce by inland waterway are exempt from economic regulation. These comodities, when moved by railway, are not exempt and when moved by highway are not correspondingly exempt. In addition, the present law is inconsistent because interstate transportation charges for moving unmanufactured agricultural commodities are not regulated by any Federal agency if moved by for-hire motor trucks but are regulated if moved by railroads or inland waterways (except in bulk by water).

We are convinced that if this bill were passed, it would eliminate many of the above inconsistencies and would be beneficial to the movement of agricultural products and farm supplies. This is the reason for our strong support of it.

Inasmuch as this bill bears directly on the transportation of virtually all farm products and supplies, we will continue to study it. If we have any additional comments to make, we will forward them to you as they occur to us.

The Bureau of the Budget advises that there is no objection to the presentation of this report and that enactment of the proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 15, 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 requests of May 9, 1962, for reports on H.R. 11583, to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes, and H.R. 11584, to provide for strengthening and improving the national transportation system, and for other purposes.

These bills were transmitted to the Congress by the Secretary of Commerce to carry out the recommendations made by the President in his transportation message of April 4, 1962. The Bureau of the Budget therefore urges enactment of the bills as a part of the program of the President.

Sincerely yours,

(Signed) Phillip S. Hughes,
PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

THE SECRETARY OF COMMERCE,
Washington, D.C., May 17, 1962.

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

DEAR MR. CHAIRMAN: In your letter of May 9, 1962, you asked for comment from this Department on H.R. 11583 and H.R. 11584.

As you know, these are the bills submitted by this Department in draft form to the Speaker of the House on May 1, 1962, to implement the President's recommendations to Congress on transportation. In our submission to the Speaker we included a section-by-section analysis of the proposals to explain the meaning and purpose of the bills. We, of course, support the bills and expect to so testify before your committee during hearings which we understand will be held in the next few weeks.

Please let us know the dates of these hearings.

The Bureau of the Budget has advised that enactment of these bills would be in accord with the program of the President.

Sincerely yours,

EDWARD GUDEMAN,
Acting Secretary of Commerce.

THE SECRETARY OF COMMERCE,
Washington, D.C., May 1, 1962.

Hon. LYNDON B. JOHNSON,
President of the Senate,
Washington, D.C.
Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. PRESIDENT AND MR. SPEAKER: There are submitted herewith drafts of proposed bills to provide for strengthening and improving the national transportation system, and for other purposes, and to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes.

The proposed bills implement certain recommendations contained in the President's message on transportation which was submitted to the Congress on April 5, 1962.

The first bill empowers the regulatory transportation agencies to sanction experimental freight rates and modifications in existing systems of service, classifications, and documentation; prohibits common carriers subject to the Interstate Commerce Act from discriminating as to service or rates in the transportation of vehicles or containers tendered by shippers or carriers; declares it to be in the national interest that through service and joint rates, fares and charges between carriers of all modes of transport be encouraged and promoted and authorizes the Federal Maritime Commission to participate with the Civil Aeronautics Board and the Interstate Commerce Commission in joint boards for the review of such rates; authorizes the Interstate Commerce Commission to enter into cooperative agreements with the States for enforcement of the economic and safety laws and regulations of the States and the Federal Government concerning highway transportation; provides for extension of civil forfeiture penalties of the Interstate Commerce Act to violations of safety regulations and involving lack of operating authority, and for increases in such penalties; requires that air carriers pay reparations to shippers charged unlawfully high rates; provides for simplification of Government transportation rates and procurement, and for greater flexibility in the use of motor vehicle common carriers for the transportation of mail; and provides for transfer to the Secretary of Commerce the powers and duties vested in the Civil Aeronautics Board and the Interstate Commerce Commission with respect to the guarantee of loans to air carriers and common carriers by railroad, respectively.

The second bill exempts carriers from minimum rate regulation by the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission in the transportation of bulk commodities and certain agricultural and fishery products. Carriers transporting passengers are also exempted from such regulation by the Federal Maritime Commission and the Interstate Commerce Commission. Carriers exempted from minimum rate regula-

tion who engage in any act or practice in violation of the "antitrust" laws will be subject to the proceedings and penalties specified in such laws.

This Department believes that enactment of these bills, together with enactment of legislation relating to tax policies and user charges to be submitted by the Secretary of the Treasury and legislation pending before the Congress implementing recommendations in the President's mesage relating to making motor carrier safety regulations of the Interstate Commerce Commission applicable to private carriers (H.R. 5598 and S. 1287); repeal of the prohibition against rail carriers transporting certain commodities in which they have an interest (S. 734); making domestic trunk air carriers ineligible for operating subsidies in the future (H.R. 10813 and S. 2297); and the requirement that motor carriers and freight forwarders pay reparations to shippers charged unlawfully high rates (H.R. 5596 and S. 1283), will materially assist in the development of an efficient and dynamic transportation system, which is vital to our economic growth and progress.

The Department of Commerce recommends, therefore, the enactment of the proposed bills.

There are enclosed section-by-section analyses of the proposed bills.

The Bureau of the Budget advises that enactment of the proposed bills will be in accord with the program of the President.

Sincerely yours,

LUTHER H. HODGES, *Secretary of Commerce.*

Enclosures.

ANALYSIS OF A PROPOSED BILL TO EXEMPT CERTAIN CARRIERS FROM MINIMUM RATE REGULATION IN THE TRANSPORTATION OF BULK COMMODITIES, AGRICULTURAL AND FISHERY PRODUCTS, AND PASSENGERS

Section 1. Exemption for ICC Carriers: The exemption from minimum rate regulation provided in this section would apply to all carriers subject to regulation by the Interstate Commerce Commission. Such exemption applies to (1) bulk commodities, (2) agricultural and fishery products, and (3) passengers.

(a) Bulk commodities: Rates charged by any carrier subject to the Interstate Commerce Act for the transportation of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, would be exempt from the minimum rate regulation of the Interstate Commerce Commission. However, such carriers would be subject to applicable antitrust laws as discussed below.

The purpose of this examination is to equalize competitive opportunities between carriers of different modes of transportation and to permit the forces of competition to replace cumbersome regulation for these commodities. At present, the transportation of bulk commodities by water carriers is exempt from all rate regulation under the Interstate Commerce Act, including and approval of minimum rates; but this exemption is denied to all other modes of transportation. Extending to such other carriers the exemption from the approval or prescription of minimum rates would correct this inequity.

(b) Agricultural and fishery products: Similarly, the exemption from minimum rate regulation for the transportation of certain agricultural and fishery products (specified in sec. 203(b) of the Interstate Commerce Act) now available only to motor carriers and freight forwarders would be extended under this section to all carriers subject to the Interstate Commerce Act. The purpose of this amendment, like the exemption from minimum rate regulation for bulk commodities, is to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service, and lower rates.

(c) Passengers: Consistent with the freedom from minimum rate regulation for certain kinds of freight is the freedom to set minimum fares for passengers. Accordingly, this section would withdraw the power of the Commission to determine that a fare prescribed by a carrier is lower than a reasonable minimum fare. Again, as with the freedom to set minimum rates for bulk commodities and agricultural and fishery products, the carrier would be subject to the proceedings and penalties in the applicable "antitrust" laws with respect to the fares charged.

This amendment is designed to unshackle carriers from the uniform minimum fares fixed by the Commission for passenger travel. This will permit vigorous competition and innovation which in the long run should end chronic overcapacity and deficits in providing this service.

To prevent the absence of minimum rate regulation under the above three proposals from resulting in predatory, discriminatory trade practices, or rate wars reflecting monopolistic ambitions rather than true efficiency, there is included in this section a provision making carriers who engage in such practices subject to applicable "antitrust" laws. However, in recognition that it is acceptable practice for a common carrier to establish through routes with other such carriers, or to consider, initiate, or establish jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes, a proviso has been included making it clear that such joint action shall not be construed as a violation of the antitrust laws.

Section 1(b) would amend section 5a of the Interstate Commerce Act (which exempts agreements among carriers subject to the act, respecting rates or procedures for making rates, from the antitrust laws if the agreements are approved by the Commission) to withdraw the power of the Commission to approve agreements and thereby grant immunity from the application of the antitrust laws, for any party who makes an agreement with respect to any rate, charge, or fare for the transportation of passengers, bulk commodities, or agricultural or fishery products referred to in section 1(23) of the act.

In short, a carrier exempt from minimum rate regulation in the transportation of passengers, bulk or agricultural or fishery products is subject to the antitust laws, except where an agreement as to rates is reached with other carriers on the carriage of those items on through routes.

2. Section 2 amends section 303(b) of the Interstate Commerce Act, which is the present bulk commodities exemption, by removing the requirement that no more than three such commodities can be carried in one vessel or tow and by revising the definition of bulk commodities to eliminate the requirement that the commodities must have been treated as bulk commodities in 1939. This has the effect of exempting bulk commodities transported by water carrier from all regulation.

3. Section 3 amends section 418 of the Interstate Commerce Act to include all carriers authorized to transport bulk commodities as carriers, the services of which freight forwarders may utilize. The amendment merely takes account of the fact that the bulk commodities exemption has been extended to carriers other than by water.

4. Section 4 extends to intercoastal water carriers the same exemption from minimum rate control for the transportation of persons or bulk commodities or agricultural or fishery products as is proposed for carriers subject to the Interstate Commerce Act under section 1.

5. Section 5 would amend the Federal Aviation Act to limit the authority of the Civil Aeronautics Board to the determination and prescription of just and reasonable maximum rates or charges for the transportation of bulk commodities or agricultural or fishery products. As to these items of freight, air carriers would be as free from minimum rate control as carriers subject to the Interstate Commerce Commission or Federal Maritime Commission. Antitrust laws would be applicable in the same way.

Such freedom from minimum rate control has not been extended to the carriage of passengers, as with the other carriers, in recognition of the need to proceed more gradually in the deregulation of passenger fares in air transportation. The intent of Congress to attain this freedom from minimum rate control is expressed in the last subsection so that business incentives and competition may play a more influential role in the pricing of air transportation.

SECTION-BY-SECTION ANALYSIS OF PROPOSED TRANSPORTATION ACT OF 1962

1. The first section identifies the act as the "Transportation Act of 1962." (A separate bill is proposed to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers.

2. Experiments: Section 2 would empower the three regulatory agencies, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, to authorize controlled experiments in rate, classification, and documentation systems. Participation by common carriers in the experiments would be voluntary and the experiments may be authorized intramode

or jointly with carriers by different modes. The purpose of these experiments is to determine the best service/price transportation patterns by testing new services, service combinations or arrangements, simplified documentation, and different or simplified rate bases and freight classifications. Legislation to authorize these experiments is recommended in order to provide a clear statement of congressional intent that such experiments should be authorized by the regulatory agencies.

3. Nondiscriminatory rates to all shippers: Section 3 would require railroads or common carriers by motor vehicle or water, subject to the Interstate Commerce Act, to accept shipment by any carrier, whether regulated or not, of loaded or empty vehicles or shipping containers without discrimination as to service or rates. The purpose of this legislation is to provide the carrier shipper—as in piggyback—with the same competitive opportunities as noncarrier shippers. Basic laws underpinning the Civil Aeronautics Board and the Federal Maritime Commission do not permit carriers regulated by these agencies to discriminate against other carriers who desire to ship vehicles or containers, hence no change in those laws is required.

4. Through service, joint rates, and joint boards: In section 4, Congress would declare it to be a matter of public policy that through routes and joint rates should be encouraged and promoted by use of joint boards to act on proposals for intercarrier services. New joint boards, comprised of the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, would supersede the joint boards of the ICC and CAB, which is presently authorized in the Federal Aviation Act.

In the case of through service, the duty is placed on the carriers to establish just and reasonable rates and equitable divisions thereof between the participating carriers. Complaint as to these matters may be referred to the joint board, which is empowered to fix the rates, after notice and hearing, if it finds that the rates fixed by the carriers are or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

5. Enforcement, highway transportation: Section 5 would authorize the Interstate Commerce Commission to make agreements with States to cooperate in the enforcement of the economic or safety laws and regulations of the various States or of the Federal Government with respect to highway transportation. This law would be consistent with collateral efforts to develop and adopt uniform State registration laws for motor carriers operating within States but handling interstate commerce. The purpose of both of these efforts is to help eliminate unlawful (gray area) trucking operations which abound because of diverse, ambiguous laws and practical limitations in enforcement.

6. Civil penalties for operating without authority; increase in penalties: Section 6 extends the civil forfeiture provisions of the Interstate Commerce Act, as increased hereunder, to any person who operates a motor vehicle in interstate or foreign commerce without the operating authority required under the act. The civil penalty applies upon "failure or refusal" to comply with applicable provisions requiring operating authority. Previously, such persons were subject only to the criminal penalty provisions of section 222 of the act if they "knowingly and willfully" violated the applicable provisions. The purpose of the amendment is to make the increased civil penalties a significant deterrent to unlawful motor carrier operations and to assist in policing unscrupulous operators who have persisted in such unlawful operations in the knowledge that the more demanding requirements for proof under the criminal sanctions, as compared to civil penalties, make enforcement considerably more difficult.

7. Civil liability for violations of Federal Aviation Act by air carriers: Section 7, which would make air carriers subject to payment of reparations to shippers charged unlawfully high rates, is consistent with H.R. 5596 and S. 1283 presently before the Congress which propose that motor carriers and freight forwarders be subject to the same liability. Similar authority already exists with respect to railroads and water carriers. The existing and proposed legislation would make all common carriers liable to any person for the full amount of damages (together with reasonable counsel's fees) sustained as a consequence of such carriers charging an unlawfully high rate. Such injured person may sue, alternatively, in an appropriate district court of the United States, or he may bring an action before the regulatory agency having cognizance of the carrier in violation. Under the latter procedure, after hearing, the agency is empowered to order the carrier to pay the damages to which he is entitled. If the carrier does not pay as ordered, the injured person may sue for payment in an appro-

priate Federal district court or any State court of general jurisdiction having jurisdiction of the parties and the order must be accepted as prima facie evidence of the facts involved.

This amendment is another of those whose purpose it is to strengthen enforcement of applicable laws in interstate and foreign transportation. Primarily, however, it provides a way to recover damages.

8. Reparations orders to be reviewed by district court: Section 8 amends section 1006 of the Federal Aviation Act. It is necessary to make orders of the Civil Aeronautics Board, concerned with reparations by air carriers to a shipper charged unlawfully high rates, reviewable by a Federal district court, as provided in the reparations statute, rather than by a court of appeals, which is the court to which orders of the Board are usually referred.

9. Simplification of Government transportation rates and procurement; transportation of mail by motor vehicle common carriers: The purpose of section 9 is to simplify rate structures for the procurement of Government transportation and by experiments to develop systems that will make rate ascertainment and publication less costly and more convenient. In addition, it will give the Post Office Department greater flexibility in the use of motor vehicle common carriers for the transportation of mail.

The simplification and automation of the common carrier's transportation rates offer a means to remedy the complex pricing system presently employed. Such simplification does not appear to be feasible under the present commercial tariff system, consisting largely of special commodity rates which are subject to too frequent changes to be practical for automatic data processing. Therefore, any changes in this regard require that such a simplified system for Government transportation be established separate from commercial transportation.

In order to provide a broad base for such a system, the first subsection of the amendment would authorize the procurement of Government transportation, including mail transportation services by common carrier motor carriers, and accessorial services, from all modes of transportation, without regard to any law requiring formal advertised bidding procedures. Under existing law, the negotiating authority extends only to transportation services by common carriers.

The second subsection would provide for the initiation and establishment, through progressive research and development, of a system of simplified rate structures for Government traffic. The first proviso would require a determination that the proposed simplified rate structure is in the public interest and may be expected to result in lower overall costs to the Government, or at least no increase in costs. The second proviso prescribes the initial direction to be taken in research and experimentation; viz, diminished differentiation among commodities, simplified methods for determination of distances adaptable to automatc data processing, and improved procedures for evaluation of charges.

These experiments are to be pilot studies for a more general simplification of rates and for the application of new kinds of service to transportation in general.

10. Transfer of loan guarantee authority: Sections 10 through 14 would transfer the railroad loan guarantee authority of the ICC and the aviation loan guarantee authority of the CAB, to the Department of Commerce. Provisions are included for the continuance of actions taken by the Civil Aeronautics Board and the Interstate Commerce Commission unless or until changed by the Secretary of Commerce, and for the transfer of persons, property, records, and unexpended appropriations from those agencies to the Department of Commerce.

The purpose of these amendments is to achieve a better balance of Federal promotional programs by transferring this authority to the Department of Commerce, which is already a focal point for Government transportation activities, and which, because it is an executive agency, can act upon guarantee loan applications more expeditiously than the regulatory agencies.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., August 9, 1962.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 11583, 87th Congress, a bill "to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes."

H.R. 11583 is one of two omnibus bills designed to strengthen and rationalize U.S. transportation by carrying out those recommendations in the President's recent transportation message which called for legislative action.

The purposes of H.R. 11583 are to be accomplished by appropriate amendments to the Interstate Commerce Act, as amended; the Intercoastal Shipping Act, 1933, as amended; the Shipping Act, 1916, as amended; and the Federal Aviation Act of 1958. Certain groups of carriers would be exempted from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers. The practical effect of the extension would be to place the several modes on a substantially equal basis in competing for the business concerned. In the case of passenger transportation by air, minimum fare regulation would not be removed, but the bill includes an expression of the intent of Congress that regulatory control over minimum passenger fares of air carriers be reduced to the greatest extent consistent with the public interest. It is believed that, in the long run, competition among modes on an equitable basis will better promote efficiency and health in the transportation industry than competition under unequal conditions.

The Department of Defense favors early enactment of H.R. 11583 as a measure which should better accomplish in pertinent part the recommendations in the President's recent transportation message.

The fiscal effects of the enactment of H.R. 11583 cannot be ascertained at this time.

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

Sincerely,

JOHN T. MCNAUGHTON.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 25, 1962.

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

DEAR MR. HARRIS: This is in reply to your request of May 9, 1962, for our comments on H.R. 11584, a bill "to provide for strengthening and improving the national transportation system, and for other purposes."

We believe this bill ought to be passed. It is consistent with the goals set forth in the President's transportation message which emphasized the need for fast, safe, and economical transportation at the lowest cost consistent with the health, convenience, national security, and other broad public objectives.

Passage of this bill would (1) encourage experimentation by the carriers in matters of rates, charges, and services, (2) discourage discrimination by the carriers, (3) encourage the creation of through service and joint rates for freight, (4) discourage illegal motor carrier operations, (5) increase civil liabilities for violation of the transportation laws, and (6) would transfer the financial assistance programs now under the jurisdiction of the Civil Aeronautics Board and Interstate Commerce Commission to the U. S. Department of Commerce.

Our only reservation concerning the provisions of this bill has to do with the proposed change in section 222(h). We agree that the penalty provisions in the section are too low, but we believe the penalties being proposed in section 6 of the bill are too high for some circumstances. It is our opinion that the initial penalty of $500 plus as much as $250 per day is much too severe for minor safety violations and for failure to file various and sundry reports required by the Interstate Commerce Commission. We think the $500 penalty should be modified to allow the size of the penalty to reflect the severity of the violation. We agree that the penalty of $500 for the original violation is a reasonable maximum.

Inasmuch as this bill bears directly on the transportation of virtually all farm products and supplies, we will continue to discuss it with farm representatives. If, after we have reviewed this bill more thoroughly, we find that we have additional comments, we will forward them to you promptly.

The Bureau of the Budget advises that there is no objection to the presentation of this report and that enactment of the proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C. June 20, 1962.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R. 11584, 87th Congress, a bill "to provide for strengthening and improving the national transportation system, and for other purposes."

H.R. 11584 is one of two omnibus bills designed to strengthen U.S. transportation by carrying out those recommendations in the President's recent transportation message which called for legislative action.

The Department of Defense favors the early enactment of H.R. 11584.

Section 9 of H.R. 11584, providing for simplification of Government transportation rates and procurement, is of direct interest to the Department of Defense. Enactment of this section can lead to significant acceleration and savings in the administrative processes involved in moving defense materiel and personnel. The enactment of section 9 and section 2, which calls for somewhat similar experimentation extending beyond Government traffic, should lead to a major reduction in transportation paper work by shippers, carriers, and Government agencies.

The fiscal effects of the enactment of H.R. 11584 cannot be ascertained at this time.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee and that the enactment of H.R. 11584 would be in accord wih the program of the President.

Sincerely,

CYRUS R. VANCE.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 3, 1962.

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

DEAR MR. CHAIRMAN: We refer again to your letter of May 9, 1962, with enclosures, requesting our comments on H.R. 11584, a bill to provide for strengthening and improving the national transportation system, and for other purposes. An identical bill, S. 3242, has been introduced in the U.S. Senate.

H.R. 11584 is one of various bills introduced in the 87th Congress with the objective of developing a more efficient and dynamic transportation system, vital to domestic economic growth, productivity and progress. Most of the provisions of H.R. 11584 are based on recommendations contained in the President's message on the "Transportation System of Our Nation," House Document No. 384, 87th Congress, 2d session, April 5, 1962, hereinafter referred to as the President's message.

Our comments on the various sections of the bill are as follows:

SECTION 2

This section of the bill, authorizing experiments by common carriers in rate, classification and documentation systems, implements the presidential recommendation, contained in part I(A)(6) of the President's message, for legislation directing the regulatory agencies to sanction experimental freight rates, modifications and variations in existing systems of classification and new kinds or combinations of service.

The section sets forth a proposal which in our opinion has considerable merit; it should serve as a spur for all concerned in transportation to capitalize on the rapid advances in technological knowledge in recent years.

We would have a particular interest in any experiments concerning simplified documentation, different or simplified rate bases or freight classifications since they could affect our audit of payments for transportation services under section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66. Our Office is constantly concerned with the simplification of all types of Government accounting documents and has cooperated with the Department of Defense and the General Services Administration in a number of projects for the better utilization

of existing means of transportation and documentary simplification. We would understand that the authorized experiments and such conditions as might be imposed, to the extent that they might affect shipper-carrier relationships, would be subject to applicable laws; for example, a shipper would not be deprived of his right reserved to him under existing law, to challenge the reasonableness or the applicability of particular experimental rate bases and classifications to certain transportation for which the shipper makes payment.

Section 2(b) of the bill outlines the method by which the regulatory agencies would authorize experiments after notice to the public affording interested persons opportunity to submit written views. We think that the present language leaves some doubt as to whether notice to the public is all that is required prior to authorization of an experiment, whether views of interested persons will be collected prior to the authorization, and whether effect should be given to such views in the determination of the desirability or possible value of an experiment. Control and careful supervision are provided only after the experiment is authorized; procedures and considerations prior to authorization should also be carefully planned and programed.

We note that on page 2, line 20, "of 1958" probably was intended to be added after the word "Act." Also, on page 3, line 1, after "1958" it may be desirable to add in parentheses "49 U.S.C. 1483."

SECTION 3

This section would amend sections 2, 216(d) and 305(c) of the Interstate Commerce Act, 49 U.S.C. 2, 316(d), and 905(c), to prohibit unjust discrimination by rail, motor, and water common carriers against other carriers as to services or rates in the transportation of loaded or empty vehicles or shipping containers. The section embodies part I(A)(4) of the President's message proposing that legislation be enacted to assure all carriers the right to ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers.

Possibly it was intended that there be included in this section these additional citations to the United States Code: page 3, line 19—49 U.S.C. 316(d), page 4, line 3—49 U.S.C. 905(c).

We do not believe that the changes proposed in this section of the bill would adversely affect the United States as a shipper, or the functions and operation of our Office and we recommend that your committee give it favorable consideration.

SECTION 4

Section 4 of the bill provides for the establishment of through service, joint rates and joint boards and is based on a recommendation contained in part I(D)(2) of the President's message. We are in accord with the idea of intermodal joint rates and through service. However, in the interests of uniformity, we feel that the proposed amendments to section 1003(d) of the Federal Aviation Act of 1958, beginning on page 6, line 13, of the bill, might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, at least to the extent it relates to persons or property of the United States. Section 22 permits rail common carriers to carry, store, or handle property "free or at reduced rates" for the United States, among other shippers, and has been incorporated by reference into parts II, III, and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers and freight forwarders. See 49 U.S.C. 317(b), 906(c) and 1005(c). In the broader view we favor the amendment of section 404(b), 49 U.S.C. 1373(b), to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates. In this connection, see the attached copy of our letter of March 2, 1962, B–127532, to you recommending inclusion of a provision for reduced rate authority in H.R. 7318 or comparable bill.

The proposed amendment of section 1003(f) provides that any joint board shall have the same powers which section 216 of the Interstate Commerce Act confers upon the Interstate Commerce Commission in respect to common carriers of property by motor vehicle. Since section 216 of the Interstate Commerce Act does not provide for reparation awards for unlawful rates and charges on past shipments, this would leave shippers without any right to challenge the lawfulness of payments on those shipments. A cross-reference to section 308, 49 U.S.C. 908, for the purpose of establishing reparation procedures might suffice to reserve the requisite powers to joint boards.

We note that H.R. 5596 and S. 1283, both introduced in the 87th Congress, would require motor common carriers and freight forwarders to pay reparations to shippers who have been charged unlawfully high rates and that section 7 of this bill proposes a similar reparations procedure with respect to air carriers subject to the Federal Aviation Act of 1958.

SECTION 5

Section 5 would amend section 205(f) of the Interstate Commerce Act, 49 U.S.C. 305(f), to authorize the Interstate Commerce Commission to make cooperative agreements with the various States to enforce State economic and safety laws relating to highway transportation. We understand that the purpose of the section is to help eliminate unlawful (gray area) trucking operations. The enactment of this section of the bill would not affect the functions and operations of our Office. It seems to be in the public interest and we would have no objection to its enactment. However, on page 9, line 4, "(49 U.S.C. 305)" probably should be "(49 U.S.C. 305(f))."

SECTION 6

This section implements legislative recommendation No. 4 of the Interstate Commerce Commission's 75th Annual Report. It proposes to emend section 222(h) of the Interstate Commerce Act, 49 U.S.C. 322(h), by extending the civil forfeiture provisions of the act to unlawful operations and safety violations by motor carriers and by increasing the dollar amount of the forfeitures. A similar bill, S. 2764, has been introduced in the 87th Congress at the request of the Interstate Commerce Commission.

The proposed section, if enacted into law, would not affect the functions or operations of our Office. It seems to be in the public interest and we see no objection to its receiving favorable consideration by your committee.

SECTION 7

Section 7 of the bill proposes to amend section 901 of the Federal Aviation Act of 1958, 49 U.S.C. 1471, to subject air carriers to civil liability for violations of the act and to establish various time limitations on actions by and against common carriers by aircraft subject to the act.

The subjection of regulated carriers to civil liability for violation of regulatory acts is a question that in recent years has received considerable attention from all concerned in the transportation industry. In 1959, in *T.I.M.E., Inc.* v. *United States*, 359 U.S. 454, the Supreme Court decided that shippers, including the United States, paying unlawful charges for motor common carrier transportation, are without redress because part II of the Interstate Commerce Act does not contain reparations provisions similar to those in part I of the act. Since that time several bills have been introduced which would subject motor common carriers and freight forwarders (pt. IV of the Interstate Commerce Act, pertaining to freight forwarders, likewise contains no reparations provisions) to civil liability for violations of the provisions of the act. For example, see H.R. 5596, which was introduced in the first session of this Congress. That part of section 7 of this bill (H.R. 11584) which amends sections 901 of the Federal Aviation Act of 1958 by adding sections 901(c) through 901(e) would provide a similar remedy for shippers who are forced to pay unlawful charges for air carrier transportation.

We believe that neither the United States nor private shippers should be required to pay transportation charges to any regulated carrier without the corresponding right, in proper circumstances, to challenge the lawfulness of those payments on past shipments. The enactment of the reparations part of section 7 of this bill, along with the enactment of H.R. 5596, would broaden the uniformity in the treatment of regulated carriers for civil liability for violations of the Interstate Commerce Act and of the Federal Aviation Act of 1958. We, therefore, strongly recommend favorable action on the reparations provisions of section 7 of this bill.

Under the present laws, similar time limitation periods are applicable to actions by and against all carriers subject to the Interstate Commerce Act. See sections 16(3), 204a, 308, and 406a of the act, 49 U.S.C. 16(3), 304a, 908, and 1006a. The part of section 7 which amends section 901 of the Federal Aviation Act of 1958 by adding section 901(f) through 901(g) would provide the same limitation periods to common carriers by aircraft subject to the Federal Aviation

Act of 1958. We favor the enactment of this limitation provision since it would complete a uniform pattern of limitation of actions for all carriers regulated by the Interstate Commerce Act and for common carriers by aircraft regulated by the Federal Aviation Act of 1958.

SECTION 8

Section 8 of the bill would amend section 1006 of the Federal Aviation Act of 1958, 49 U.S.C. 1486, to provide for the exclusion from the general procedure relative to review of Civil Aeronautics Board orders by Federal courts of appeals the review of any order concerning reparations issued pursuant to the reparations provisions contained in section 7 of the bill. Such exclusion is compatible with the proposed addition of section 901(e) and 901(f)(3), which would require proceedings for review to be undertaken in a Federal district court or a State court. On page 16, line 13, the year "1956" apparently should be "1958."

SECTION 9

This section of the bill would provide for the simplification of Government transportation rates and procurement and for the transportation of mail by motor common carriers. It is designed to encourage the development of simplified rate structures and systems for Government transportation, adaptable to automatic data processing and separate and distinct from the complex system prevailing in the case of commercial transportation. The simplified rate system would be accomplished by (1) authorizing the procurement of Government transportation from all modes of carriers, without regard to any law requiring formal advertised bidding procedures and (2) providing for the initiation and establishment through progressive research and development of a simplified rate structure for Government traffic. It implements a recommendation contained in part I(D)(3) of the President's message. Section 9 also would give the Post Office Department greater flexibility in the use of motor common carriers for the transportation of mail, a provision based on a recommendation contained in part I(C)(4) of the President's message.

The idea of simplifying the common carrier rate and classification system for the purpose of adapting it more readily to the requirements of automatic data processing is deserving of serious study and development. Perhaps as important, however, is the need to make this system more understandable and more capable of convenient application for the user of common carrier transportation service. Its present-day complexities impair its usefulness in business and Government for budget, research, and other purposes.

On page 17, line 23, page 18, line 8, and page 19, line 3, the designation "Administrator, General Services," may have been intended to be "Administrator General Services Administration."

SECTIONS 10 THROUGH 13

These sections of the bill, which are based on a recommendation contained in part I(C)(5) of the President's message, proposed to transfer to the Department of Commerce the railroad loan guaranty authority of the Interstate Commerce Commission and the aviation loan guaranty authority of the Civil Aeronautics Board. Provisions also are included for the continuance of actions taken by the Board and by the Commission unless or until changed by the Secretary of Commerce, and for the transfer of persons, property, records, and unexpended appropriations from those agencies to the Department of Commerce.

The transfer of loan guaranty authorities to the Department of Commerce would not affect the functions or operations of our Office. Enactment of the section seems to be in the public interest because it will remove from the regulatory agencies promotional transportation activities possibly better suited for administrative purposes in an executive agency and we see no objection to its receiving favorable consideration by your committee. However, in connection with section 10(a) of the bill, we note that section 8 of the act of September 7, 1957, 71 Stat. 629, Public Law No. 85-307, provides that the guaranty authority in section 3 of the act shall expire 5 years after September 7, 1957. We also note that the proviso in section 11(d) of the bill refers to "section 503 of the

Interstate Commerce Act, as added by section 2 of the Transportation Act of 1958." However, section 503 is repealed by section 11(a) of the bill.

In summary, subject to the suggestions indicated above, we recommend favorable consideration of the bill by your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., June 18, 1962.

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

DEAR MR. CHAIRMAN: Your letter of May 9, 1962, requested the views of the General Services Administration on H.R. 11584, a bill "to provide for strengthening and improving the national transportation system, and for other purposes."

As you know this legislative proposal would implement certain recommendations contained in the message on an efficient transportation system which the President sent to the Congress on April 5, 1962, House Document No. 384.

Section 9 of the bill which deals with the simplification of Government transportation rates and the procurement of transportation services by the Government would implement a proposal contained in the legislative program of the General Service Administration for the 87th Congress, 2d session.

Under the Federal Property and Administrative Services Act of 1949 (63 Stat. 383; 40 U.S.C. 481), the General Services Administration is interested in transportation and traffic management on behalf of executive agencies from the viewpoint of a user of transportation services.

Since H.R. 11584 would benefit users of transportation services by providing for a stronger national transportation system, the General Services Administration strongly recommends the enactment of this legislative proposal.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee and that the enactment of H.R. 11584 would be in accord with the program of the President.

Sincerely yours,

LAWSON B. KNOTT, JR.,
Acting Administrator.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., June 22, 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 a report on H.R. 11584, which is designed to improve the national transportation system.

We urge the enactment of this legislation.

We are particularly interested in section 9(a)(1) of the bill which would permit this Department to enter into contracts with reliable motor common carriers to transport mail, without the requirement to advertise for bids. This would allow the Government to obtain mail transportation service from motor common carriers in the same manner and to the same extent as it obtains transportation for persons or property.

We have been advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the submission of this report to the committee.

Sincerely yours,

J. EDWARD DAY,
Postmaster General.

The CHAIRMAN. It is quite obvious that in the proposals involved here, as is usual with transportation matters, that differences of opinion will inevitably arise.

Everyone recognizes the importance of these proposals, as indeed we recognize the importance of our common carrier system. So these hearings are highly important. It will be the purpose of the committee to make the best possible record for its consideration in an effort to resolve these questions in the public interest.

Today we are honored by the presence of the Secretary of Commerce. We certainly, Mr. Secretary, appreciate the vast responsibilities you have for the welfare of our Nation, the importance of the position that you hold in matters of transportation, as well as in the entire field of economics.

The committee is pleased to have you present today the views of the Department on these two, and any other bills, before this committee, involving matters contained in the transportation message.

I believe you have with you your Under Secretary and other personnel of your Department which you may want to identify for the record.

Mr. Secretary, you may proceed.

STATEMENT OF HON. LUTHER H. HODGES, SECRETARY OF COMMERCE; ACCOMPANIED BY CLARENCE D. MARTIN, JR., UNDER SECRETARY FOR TRANSPORTATION; ROBERT E. GILES, GENERAL COUNSEL; ROBERT ABLES, ASSISTANT TO THE GENERAL COUNSEL; BYRON NUPP, STAFF ASSISTANT IN THE OFFICE OF THE UNDER SECRETARY FOR TRANSPORTATION; FRANK BARTON, DEPUTY UNDER SECRETARY FOR TRANSPORTATION; AND HENRY S. SCHARER, DIRECTOR OF PUBLIC INFORMATION, DEPARTMENT OF COMMERCE

Secretary HODGES. Thank you, Mr. Chairman, and gentlemen. First of all, I would like to present my associates here with me, some of whom will be taking part.

To my left, Mr. Martin, the Under Secretary of Transportation. To my right, Mr. Robert Giles, General Counsel. Sitting here, Mr. Henry Scharer, Director of Public Information. Mr. Frank Barton, Deputy Under Secretary, assistant to the General Counsel, and Mr. Nupp, staff assistant in the Transportation Office.

Mr. Chairman, if it suits you and the committee, both the Under Secretary and I will make our statements, and then be available for questioning.

The CHAIRMAN. Yes; that would be very well, Mr. Secretary. You may proceed, if you desire.

Secretary HODGES. I appreciate the opportunity to come before your committee to urge your approval of H.R. 11583 and H.R. 11584.

These two bills were submitted to the Congress by the Department of Commerce with my letter of May 1, 1962. They are now before you as a followup to the recommendations made by the President on April 5, 1962, in his message to the Congress on the transportation system of our Nation.

This was a comprehensive message dealing with intercity, urban, and international transportation problems. Recommendations for legislative changes necessarily were subdivided according to subject matter. Consequently, bills concerning the transportation excise tax (H.R. 11879) and urban transportation (H.R. 11158 and H.R. 12135) have been introduced separately and have been considered by other committees of Congress.

That part of H.R. 11879 dealing with the transportation excise tax is consistent with the administration's proposal to remove this tax which has undoubtedly discriminated against public transportation in favor of private transportation. Repeal of this tax is recommended to improve the competitive position of intercity railroad and bus transportation systems.

The bills concerning urban transportation are proposals sponsored by the administration. They would encourage the planning of area-wide mass transportation systems and would assist in their development and financing. A key feature of these bills is the emphasis on cooperation between the Department of Commerce and the Housing and Home Finance Administration to assure a coordinated Federal policy on highway planning and urban transportation needs.

In addition to these bills being considered by other committees, your committee has before it bills, introduced earlier, which would implement the administration's recommendations by—

(*a*) Applying motor carrier safety regulations to private motor carriers (H.R. 5598). This will clarify existing doubt about the authority of the Interstate Commerce Commission to require private motor carriers to meet the Commission's regulations on safety of operations and equipment;

(*b*) Making domestic trunk air carriers ineligible for subsidy (H.R. 10813). This proposal is consistent with the administration's objective to rely on unsubsidized, privately owned facilities in our transportation system. It is timely because all such carriers are presently off subsidy and they have bright prospects for longrun growth and prosperity, which should make them independent of Government support;

(*c*) Repealing the so-called commodities clause (H.R. 2798). This is the provision which prevents a railroad from hauling cargo it owns. The need for this provision, which goes back to the days of oppressive railroad monopoly has largely passed. Its current effect is to handicap the railroads in competing with other modes of transportation. The antitrust laws can insure protection against the possible abuse by a railroad of its dual status as shipper and carrier;

(*d*) Requiring that motor carriers and freight forwarders pay reparations on the same basis as other common carriers (H.R. 5596). This proposal would place the same obligation on these carriers as exists on railroads and water carriers to pay reparations to shippers who have been charged unlawful rates. A proposal in H.R. 11584 would include air carriers so that the obligation to pay such reparations would fall equally on all common carriers.

We, of course, urge passage of each of these bills as they contain important parts of the President's total program on transportation.

The remainder—and the heart—of the administration's legislative proposals concerning national transportation policy is contained in the two bills presently before your committee, H.R. 11583 and H.R. 11584.

The Under Secretary for Transportation will comment later on the detailed provisions of these bills. Also, it is my understanding that other interested agencies of Government have been invited to testify.

The purpose of H.R. 11583 and H.R. 11584 is to come closer to realizing the basic objective of our Nation's transportation system, which the President has said is—

> to assure the availability of the fast, safe, and economic transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security and other broad public objectives.

We believe that this basic objective can and must be achieved primarily by continued reliance on unsubsidized, privately owned facilities, operating under the incentives of private profit. To achieve this objective, public policy must provide an orderly, comprehensive way for all modes of transportation to compete on equal terms.

Working out the best public policy is not an easy job. Many varied Federal laws and policies have been adopted through the years dealing with the promotion and development of transportation facilities, such as highways, airways, and waterways; the regulation of rates and services; taxation, procurement, labor, and competition. As the President noted, the firefighting character of this governmental action has resulted in a chaotic patchwork of inconsistent and often obsolete legislation and regulation which does not take into account either the dramatic changes in technology of the past half-century or the changes in the structure of competition brought about by the development of alternative modes of transportation.

It would serve no useful purpose to detail the effect this outdated public policy has had on our national transportation system. Countless studies and reports by industry, private research organizations and Government agencies have plainly warned that our transportation system, as we know it, is in danger of collapse unless a comprehensive program for transportation is developed which considers and coordinates all elements of public policy.

An efficient and dynamic transportation system is vital to our domestic growth, productivity, and progress. The degree of impact our transportation system has on our economy is indicated by the fact that nearly $1 of every $5 spent by U.S. citizens each year goes for some kind of transportation service or cost. In other terms, transportation's share of the gross national product is almost 20 percent.

Our transportation system is equally vital to our ability to compete abroad since it affects the cost of every commodity we consume or export. In this respect I call to your attention the fact that there is being established in Europe a cohesive and unified transport policy that can have the effect of integrating all modes of transportation into one vast efficient complex, serving the Common Market countries.

It is quite apparent then that anything we can do to improve the efficiency of our transportation system to reduce transportation costs will improve our domestic economy and our balance of payments relationship with foreign countries.

It is because an efficient transportation system is vital in our economy and because that system is in trouble that this administration has concluded that Federal policies must be reshaped in a fundamental and far-reaching fashion. If direct and decisive action is not taken in the near future, the inefficiencies, inequities, and other undesirable conditions that confront us now will either cause permanent loss of essential services or even more difficult and costly solutions in the not-too-distant future.

As we see it, the key elements in the public policy needed to provide an orderly framework within which the several modes of transportation may compete on equal terms are:

(1) A more coordinated Federal policy and a less segmented approach;

(2) A system of user charges so that, to the extent possible, the users of transportation services will bear the full cost of the services they use, whether those services are provided privately or publicly;

(3) Equal opportunity for all forms of transportation and their users and undue preference to none;

(4) Greater reliance on the forces of competition and less reliance on the restraints of regulation.

Aside from the proposals for legislative reform, a number of executive actions have been initiated, since the President's message, to coordinate Federal policy in transportation. For instance, an office of emergency transportation has been established since the President transferred to the Department of Commerce by Executive order authority for emergency transportation planning. Personnel to do this job have been recruited and they are working very closely with the Department of Defense on such emergency transportation problems.

Another important action being taken to coordinate Federal policy is the formation of an interagency group, under the chairmanship of the Department of Commerce, to develop administration policies on mergers. This group is already at work. It will formulate policies with respect to each segment of the transportation industry. In addition, the group will assist the Department of Justice in developing a Government position on each merger application for presentation before the regulatory agencies.

In another area, the subsidy policy for air and ocean water carriers is under review to achieve a better balance of Federal promotional programs.

Another such executive action is the work of the Treasury Department to review the administrative guidelines now governing depreciation rates in the transportation industry. The objective here is to give full recognition to current economic forces, including obsolescence, which in their impact upon the lives of depreciable assets may

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affect quite differently the different modes of transportation and, therefore, their competitive relationships.

There are other such programs which will reduce the segmented approach to developing public policy. The one that strikes me as having the greatest potential in this respect, however, is the President's directive to centralize in the Department of Commerce the responsibility to coordinate all the areas of transportation research in order to understand and prepare for the increasingly complex transportation problems of the future. Existing transportation research projects have already been surveyed for status and potential contribution to solution of transportation problems. Other surveys are being made to determine what additional research is needed. Once a coordinated and policy oriented research program is fully underway, it will produce a flow of information of the kind that we must have to implement a comprehensive public policy on transportation.

These are some of the actions the administration is taking to meet our transportation difficulties. Congress, similarly, should act in those areas requiring legislative change. H.R. 11583 and H.R. 11584 propose to place greater reliance on competition than on regulation and to equalize opportunities for all forms of transportation. They are important additions to the public policy we think is needed to resolve these transportation problems.

The first bill is H.R. 11583. This is a proposal to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers.

We recognize these proposals represent a major change in regulatory philosophy and therefore will be controversial. However, two important things should be understood about this bill. First, its central theme is equality of competitive opportunity under diminished regulation. And second, action should be taken on them because it is now apparent that only bold steps can move our national transportation policy off dead center and into the high gear necessary to revitalize our total transportation system. In a word, a shakedown is required to see where we are and what is more necessary to give us the kind of transportation system we must have.

Although there have been ups and downs, the trend most decidedly has been to increase the amount of regulation of the transportation industries through the years. Thus, no common carrier, whether by land, sea, or air, may engage in business, fix a rate, change its service, consolidate with another carrier, or even go out of business without getting specific prior approval from the Government, or be subject to an effective veto by the Government. In most cases, where the regulatory agency concerned sees fit, it can, and often does, fix the rate or change the service of the carrier before it. Detailed safety and economic regulations apply.

One of the important effects of this regulatory philosophy has been that the Congress, responding to the normal pressures of our transportation industry, has tended to legislate more and more definitively in an attempt to maintain some measure of competitive status quo between the different modes of transportation. The long range consequences of such action are predictable—a smothering of carrier initiative and a highly regimented, unimaginative, uncoordinated national transportation policy.

The promotional programs of the Federal Government have not alleviated this stifling effect. On the contrary, they have increased it because Federal aid, through the provisions of facilities subsidies, and loans, is an artificial prop which further reduces the kind of competitive drive necessary to give us the best transportation service at the lowest cost.

Clearly something must be done. The choices seem to be either that we continue to regulate more and more strictly winding up with a Government dominated transportation system—with all this implies—or we make some major break with our practices of the past and put more responsibility in the industry to produce the transportation services we should have.

This administration favors the second course.

To begin to get the "consistent and comprehensive framework of competitive opportunity" called for by the President in his transportation message, three areas of regulation have been selected for initial reform. Two of these—concerning existing exemptions for bulk commodities for water carriers and agricultural and fishery products for motor carriers—are the result of earlier special legislation to aid those carriers. But they now provide undue competitive advantage. The third involves a category of regulation—that is, pricing for the transportation of passengers.

(1) Bulk commodities: Rates charged by any carrier subject to the Interstate Commerce Act for the transportation of commodities in bulk would be exempt from the minimum rate regulation of the Interstate Commerce Commission. However, such carriers would be subject to applicable antitrust laws.

The purpose of this exemption is to equalize competitive opportunities between carriers of different modes of transportation and to permit the forces of competition to replace cumbersome regulation for these commodities. At present, the transportation of bulk commodities by water carriers is exempt from all rate regulation under the Interstate Commerce Act, including the approval of minimum rates; but this exemption is denied to all other modes of transportation. Extending to such other carriers the exemption from the approval or prescription of minimum rates would serve to correct this inequity.

(2) Agricultural and fishery products: Similarly, the exemption from minimum rate regulation for the transportation of certain agricultural and fishery products (specified in sec. 203(b)(6) of the Interstate Commerce Act) now available only to motor carriers and freight forwarders would be extended under this section to all carriers subject to the Interstate Commerce Act. The purposes of this amendment, like the exemption from minimum rate regulation for bulk commodities, is to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to improve their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service and lower rates.

(3) Passengers: Consistent with the freedom from minimum rate regulation for certain kinds of freight is the freedom to set minimum fares for passengers. Accordingly, this section would withdraw the power of the Interstate Commerce Commission to determine that a fare prescribed by a carrier is lower than a reasonable minimum fare.

Again, as with the freedom to set minimum rates for bulk commodities and agricultural fishery products, the carrier would be subject to the proceedings and penalties in the applicable antitrust laws with respect to the fares charged.

This amendment is designed to relieve carriers from the minimum fare policy of the Interstate Commerce Commission for passenger travel. This will permit more competition and innovation which in the long run should end chronic overcapacity and deficits in providing this service.

Such freedom from minimum rate control has not been extended to the carriage of passengers by air as with the other carriers, in recognition of the need to proceed more gradually in the deregulation of passenger fares in air transportation. The intent of Congress to attain this freedom from minimum rate control eventually is expressed in the last subsection of H.R. 11583 so that business incentives and competition may play a more influential role in the pricing of air transportation.

To prevent the absence of minimum rate regulation under the above three proposals from resulting in predatory, discriminatory trade practices, or rate wars reflecting monopolistic ambitions rather than true efficiency, there is included in H.R. 11583, a provision making carriers who engage in such practices subject to acceptable antitrust laws. However, in recognition that it is applicable practice for a common carrier to establish through routes with other such carriers, or to consider, initiate or establish jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes, a proviso has been included making it clear that such joint action shall not be construed as a violation of the antitrust laws.

The second bill, H.R. 11584, is aimed largely at strengthening our common carriers. Let me quote from the President's message:

> For some 75 years, common carriage was developed by the intention of Congress and the requirements of the public as the core of our transportation system. This pattern of commerce is changing—the common carrier is declining in status and stature with the consequent growth of the private and exempt carrier. To a large extent this change is attributable to the failure of Federal policies and regulation to adjust to the needs of the shipping and consuming public; to a large extent it is attributable to the fact that the burdens of regulation are handicapping the certificated common carrier in his effort to meet his unregulated competition. Whatever the cause, the common carrier with his obligation to serve all shippers—large and small—on certain routes at known tariffs and without discrimination performs an essential function that should not be extinguished.

Included in H.R. 11584 is a provision to empower the regulatory agencies to authorize experiments by common carriers, acting independently or jointly with others, to test new service and rate combinations. Examples of such experiments might be promotional fares or progressive reductions in rates depending on the size of the freight load or the speed of delivery required.

Another provision would secure the right of all carriers to ship vehicles or containers on carriers to other modes without price discrimination. That is the piggy-back. Then there are provisions which would promote establishment of through service and joint rates

in all forms of common carriage. This will have the effect of increasing intercarrier services.

Probably the most important of the provisions to strengthen common carriers are those which authorize agreements between the Federal Government and the States to enforce jointly existing laws on highway transportation and those which increase and extend the civil forfeiture penalties of the Interstate Commerce Act to violations of safety regulations and lack of operating authority. I think that with these sharply improved enforcement tools illegal private and exempt carriers will get the word that Congress expects full compliance with existing laws and regulations.

Other provisions in H.R. 11584 designed to improve our national transportation system concern equalizing responsibility of the common carriers for the payment of reparations where a carrier charges a rate in violation of the law; simplification of Government transportation rates; and transfer to the Department of Commerce of powers vested in the Civil Aeronautics Board and Interstate Commerce Commission with respect to guaranty of loans to air carriers and railroads.

No simple Federal solution can end the problems of any particular company or mode of transportation; however, the proposals in these bills and other action being taken provide good reason to believe that a sound program can be developed to improve our national transportation system.

One last thought with respect to these legislative proposals bears emphasis. It might as well be recognized frankly that there will be strong views urged on the Congress for and against some of these proposals. But if Congress waits for the noncontroversial transportation policy the chances are it will never act. If corrective action is not taken soon, however, we run the grave risk of having our transportation system deteriorate to the point where it can no longer be supported by private enterprise. This administration firmly believes that the legislative changes it has recommended, if adopted, will check this possibility and will instead give us a good start in developing a really first-class transportation system. Therefore, I urge the Congress to adopt the proposals in H.R. 11583 and H.R. 11584.

Under Secretary Martin can go ahead with this, if you wish to handle it that way, sir.

The CHAIRMAN. As I understand, Mr. Secretary, you prefer that Mr. Martin go ahead now, in order to give greater details and explanation of the section-by-section provisions of the bill.

Secretary HODGES. I think it would give you, and the other gentlemen, Mr. Chairman, a little bit more detail of how all of this would be done. I talked to the basic policy, which I have tried to say here. But I think these are further explanations of what the bills will do, and might give you a little more information.

The CHAIRMAN. Very well, then, we would be glad to have you continue, Mr. Martin.

Mr. MARTIN. Mr. Chairman, my name is Clarence D. Martin, Jr., and I am Under Secretary for Transportation in the Department of Commerce.

It is a privilege to appear before your committee to discuss further views of the administration and the Department of Commerce on H.R. 11583 and H.R. 11584 and related bills.

The Secretary has already indicated the philosophy of the administration concerning the transportation policy of the United States and how the many specific items in the two bills before you will carry out a basic revision in that policy. He has also stated that certain other policy changes can be made in accordance with the administration's program by the enactment of certain specific bills which are also before your committee.

It is my purpose today to discuss in more detail the features of the two bills presented by the administration—H.R. 11583 and H.R. 11584—and where appropriate the provisions of other bills which also will accomplish the aims of the administration in modernizing our national transportation policy.

The two bills presented by the administration concentrate on the principal needs for transport legislation. These needs could be summarized under two headings:

(1) Improvements in competitive equality among transport modes, and

(2) Improvements in the well-being of common carriers.

These two needs overlap to a large degree; improvements in one will serve the other need as well.

Because H.R. 11584 deals mainly with the common carrier problem, I shall now discuss its provisions in detail. Why should the common carrier be considered important?

A common carrier is important because of his obligation. He is required to serve all on reasonable terms without discrimination. His obligation is enforceable under common law and in specific Federal statutes. The general public must depend upon the common carrier for many essential services. The vital services of government and national defense can depend upon the common carrier, both for sustaining and emergency transportation.

Our entire economic philosophy of free competitive opportunity for business has a stake in the future of the common carrier. The control over transportation can be used as a means of increasing economic control and concentration. If the common carrier is in good shape it means that every form of business regardless of its size will have access to national markets through transportation. The common carriers' obligation to serve means access to distant markets by all business and all producers.

Why does the common carrier need special public protections? It may prove relatively costly to maintain a service prescribed by public authority. This cost may be a competitive handicap against persons who do not assume the obligations of a common carrier and who can skim off the cream of the traffic at cut rates. Those who serve the public at all times deserve protection against private interests operating against the law or taking advantages of loopholes in the laws.

Our bill offers some specific steps needed to advance and protect the common carrier.

Section 2 of H.R. 11584 would authorize the three regulatory bodies to allow experimental rates and services. These experiments could be in one mode of transportation or could involve two or more modes. Experiments would be voluntary on the part of either carriers and shippers, and would not affect any of the present powers of the regulatory agencies. These agencies would have the power to control,

supervise, and name the conditions under which the experiments would be conducted.

It may be possible under present law to have such experimental rates and services. In order to remove all doubts as to the authority to allow experiments, this section declares it to be public policy that such experiments should be approved where desirable.

If common carrier service is to improve, if transportation is to progress with improving technology and national growth, we must have innovation. The essence of modern science is the experimental method. Transportation must experiment continuously if new service potentials are to be developed.

Examples of experimental concepts might include new services using containers, simplified rates for individual types of movements, new classification patterns, application of modernized data procedures to rates and services, and many others which scientific ingenuity can devise.

The thing we are trying to avoid is the fate suffered by the earliest container movements on some of the eastern railroads during the early 1930's. When this new and progressive service idea got underway, the Commission found it violated its policies on ratings and classifications, suspended the rates on the service, and prescribed new rates which killed the business. Conditions have improved somewhat since that early day, but there is still need for a more explicit recognition that new ideas are welcome in the transportation business.

Section 3 would require railroads, motor common carriers, and water common carriers subject to the act to accept shipments by any other carrier, whether regulated or not, of loaded or empty containers without discrimination as to service or rates to ship containers by rail at the same rates as private shippers or freight forwarders.

Under the present practices of the Interstate Commerce Commission, as set forth in the key decision *Movement of Highway Trailers by Rail* (293 ICC 93 (1954)) and other decisions, substituted service by piggyback of regular motor carriers is handled under different rates and arrangements. It is our aim to encourage common carrier service. Common carriers should be able to use piggyback in their existing territories the most favorable terms available to other shippers.

It is also worth noting that both the Federal Aviation Act and the maritime statutes do not permit such discrimination. The Interstate Commerce Act should be brought into line with these other regulatory statutes.

In section 4 we propose that Congress declare it to be a matter of public policy that through routes and joint rates should be encouraged and promoted by the use of joint boards to act on proposals for intercarrier services. At present only the Federal Aviation Act authorizes the use of joint boards with the ICC to deal with air-surface carrier problems.

This provision has never been implemented in the more than 20-year history of the provision. In the present situation many joint rates and through routing arrangements are not even authorized by law.

For instance, a through route arrangement by rail and water between the United States and Alaska or Hawaii cannot be made. Any shipper must make separate arrangements for each segment of the trip; one rate filed under the provisions of the ICC and the other

under the Federal Maritime Commission. Where there is an internal haul in Alaska, even a third arrangement must be made.

The inconvenience of this can be imagined. If there are five carriers involved in moving goods from origin to destination, five separate contracts are necessary, and five separate rates must be ascertained, often from a large number of tariffs on file with the various agencies and at different locations. In addition, each of the carriers with which such contracts are made is liable for loss and damage that may occur while the freight is being handled by that carrier. Fixing of such liability on a carrier when a number of transportation companies have handled the freight places a great burden on the shipper.

Under our proposal, such through routes and joint rates would not only be authorized but encouraged. Joint boards of the ICC, the CAB, and FMC would be set up to regulate the terms and conditions of them.

In the case of through service, the duty is placed on the carriers to establish just and reasonable rates and equitable divisions of rates between participating carriers. Complaint as to these matters may be referred to the joint board, which will be created to consider each complaint. Joint boards will consist of members of the ICC, the CAB, and the FMC. This arrangement will supersede the authority for joint boards authorized in the Federal Aviation Act.

In section 5 of our bill we would assist the enforcement of the provisions of part II of the Interstate Commerce Act by authorizing the Commission to enter into cooperative agreements with States. This is part of a comprehensive enforcement and compliance effort that should be authorized. Many of the States have resources to contribute to this effort. During the studies of the Doyle group in the Senate, representatives of the State utility commissions participated, and that study recommended a closer coordination of enforcement with the States.

The measure would be consistent with collateral efforts to develop and adopt uniform State registration laws for motor vehicles. The purpose of these efforts is to eliminate "gray areas" in motor transportation.

A second part of a comprehensive program to improve the common carriers would eliminate so-called gray areas and illegal transportation in section 6 of our bill. This section extends the civil forfeiture provisions of the Interstate Commerce Act to any persons who operates a motor vehicle in interstate or foreign commerce without operating authority.

At the same time penalties are substantially increased to dissuade violations of the act. Previously, such violations were subject only to the criminal penalty provisions of section 222 of the act. The cumbersome procedure of proving that such persons had knowingly and willfully violated the act made enforcement more difficult. Violations by common carriers may result in civil as well as criminal penalties. The use of civil procedures will make enforcement considerably easier.

Some action has been taken in the Senate on a large part of the administration's program for improved safety and enforcement. S. 2560, as amended, was reported out of the Senate Committee on Commerce on June 7, 1962. The Deputy Under Secretary for Transportation, Mr.

Barton, appeared before that committee to present the Department's position. The amendments adopted by the committee include the administration's position with respect to joint enforcement agreements with States and go far toward implementing the recommendations for increased civil penalties for violations of economic and safety regulations.

In the President's transportation message there are other elements which would assist in strengthening the common carrier through better and more consistent application of the regulatory statutes. The safety provisions applicable to private carriers under the act should for example be made consistent with those applicable to common and contract carriers.

H.R. 5598 would amend section 204(a)3 of the Interstate Commerce Act respecting safety regulations of private carriers.

The Interstate Commerce Act regulates the safety of common, contract, and private carriers but the standards applicable to common and contract carriers are slightly different from those applicable to private carriers. This has resulted in ambiguity concerning specific applications as a result of a case decided on August 26, 1960, by the Federal District Court for Oregon. This court case is the *United States* v. *the Pacific Powder Company*.

The case involved the explosion of a dynamite laden truck which was left unattended in the downtown area of Roseburg, Oreg. Thirteen people were killed. About 125 others were injured. Some eight or nine blocks were almost completely destroyed. Property damage was estimated at between $10 million and $12 million.

The court ruled that the Interstate Commerce Commission had no jurisdiction over the liability of this carrier because the operator was a private carrier and the wording of the statute applying to private carriage had a different implication than the wording applying to contract and common carriers.

Under section 204a (1) and (2), safety regulations applying to common and contract carriers include—

> reasonable requirements with respect to * * * qualifications and maximum hours of service of employees and the safety of operations and equipment.

Under paragraph 3, applicable to private transportation, however, the wording is as follows:

> Reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment.

The court ruled that the Commission lacked jurisdiction because the matter involved safety of operations, and not standards of equipment. The Justice Department declined to appeal this case to a higher court. In its annual report for the fiscal year 1960, the Interstate Commerce Commission points out that this case will have a very serious impact on the enforcement of safety regulations involving private carriers.

For example, regulations concerning safe loading, parking, and fueling of vehicles, of stopping when involved in an accident, and rules against the transporting of unauthorized persons do not apply to private transportation. This situation calls for immediate correction by legislation and we, therefore, urge the enactment of H.R. 5598.

In this connection I remind the committee of the speedy action of the Congress in amending title 18, United States Code, dealing with

the transportation of explosives. Originally this title extended only to common and not to contract and private carriers. On August 26, 1960, the very day after the *Roseburg* decision, the Senate approved a bill already passed by the House to extend regulations to contract and private carriers.

This action partially corrected the situation created by the *Pacific Powder* case, but has not gone far enough. There is still a gap in the law with respect to safety operating regulations of private carriers and matters not within the purview of the regulations governing the transportation of explosives and flammable materials.

Section 9 of H.R. 11584 implements the recommendation that legislation be enacted encouraging experimental rates and services by the Federal Government, and the development of systems that will make rate ascertainment and publication less costly and more convenient. The section also implements the recommendation that the Post Office Department be given greater flexibility in arranging for the transportation of mail by motor vehicle common carrier.

Under existing law the authority to procure, without advertising, transportation and necessary accessorial service for the Government is limited to the procurement of transportation services furnished by common carriers. Simplification and automation of the carriers' transportation rates does not appear to be flexible under the present commercial tariff system, which consists largely of special commodity rates and which commercial interests no doubt oppose changing.

Furthermore, the commercial tariff system is too complex and subject to too frequent changes to be practical for automatic data processing. Therefore, any changes in this regard in the immediate future would require that such a simplified system for Government traffic be established separate from commercial traffic.

In order to provide a broad base for such a system, the procurement of transportation for the Government is authorized without regard to any law requiring advertising for bids. The Administrator, General Services Administration, and the Secretary of Defense would be authorized to initiate and establish, through progressive research and development, a system of simplified rate structures for Government traffic. The Administrator or the Secretary would be required to determine that the proposed simplified rate structure was in the public interest and would be expected to result in lower overall costs to the Government, or at least in no increase.

The initial direction to be taken in research and experimentation, including diminished differentiation among commodities, simplified methods for determination of distances adaptable to automatic data processing, and improved procedures for evaluation of charges is prescribed.

Although the Post Office Department may use the services of rail, air and water carriers for the transportation of mail on a tariff rather than a contract bid basis, it has no such authority with respect to the transportation of mail by motor common carriers (decision of Comptroller General, Dec. 30, 1959).

Section 9 would, therefore, authorize the procurement of mail transportation services performed by common carriers by motor vehicles when such services can be procured from any common carrier lawfully operating in the territory where the services are to be per-

formed without regard to the provisions of any law requiring advertising for bids.

Section 10 through 13 of the administration bill implement the recommendation that the powers and functions vested in the Civil Aeronautics Board and the Interstate Commerce Commission with respect to the guaranty of loans to air carriers and common carriers by railroad, respectively, be transferred to the Department of Commerce.

At the present time part V of the Interstate Commerce Act authorizes a program of loan guarantees to railroads. Loans so guaranteed are to be used for constructive purposes as set forth in the act. A similar program provides loan guarantees to airlines for capital improvements. Recently the Department of Commerce appeared before this committee and the committee of the other House to advocate the enactment of H.R. 10129 and S. 2815 to extend the aviation loan guarantees.

The President in his transportation message pointed out that the loan guarantee programs are not regulatory in nature and that they are clearly separable from the chief functions of the Interstate Commerce Commission and the Civil Aeronautics Board. He pointed out the need for more program coordination and consistency of policy among promotional activities in the Federal Government.

In this connection he expressed the desire that the Department of Commerce become a focal point for such policy coordination, and that the loan guarantee activities be transferred to the Department so that their administration could be accomplished in a manner consistent with other transport promotional activities.

Another important objective in the administration's program is to extend civil liability for reparation payments to all regulated carriers. Today only railroads and water carriers are liable for reparations where an unlawful rate has been charged. Motor carriers, freight forwarders, and air carriers are not liable for reparations. H.R. 5596 now before this committee would bring motor carriers and freight forwarders under such liability. The administration's bill, H.R. 11854, would extend it to air carriers.

In the case of motor carriers, the Supreme Court has ruled in the case of *T.I.M.E., Inc.*, v. *U.S.* (359 U.S. 464, May 18, 1959) that a shipper by motor carrier subject to part II of the Interstate Commerce Act cannot challenge in postshipment litigation the reasonableness of past charges made in accordance with tariffs filed with the Commission. A shipper, by this ruling, is without remedy for injury arising from the application of an unlawful rate.

H.R. 5596 would make both motor carriers and freight forwarders liable for damages sustained as a result of unlawful charges. Because this bill adequately covers the subject with respect to motor carriers, the administration did not include motor carrier and freight forwarder reparations in its draft bill, but would urge instead the enactment of H.R. 5596 (S. 1283) as in accord with the President's program.

Section 7 of the administration's bill, H.R. 11854, would make air carriers subject to reparations for unlawfully high rates. There is no valid reason why air carriers also should not have such liability. The aviation industry, like the motor carrier industry, has attained stature and stability as one of the chief agencies of public transporta-

tion. Shippers, therefore, should have the same rights of recovery as they have against rail and water carriers.

In section 7 air carriers would be made liable for the payment of damages to persons, including the United States as a shipper, injured by them as a result of charging rates in violation of the Federal Aviation Act of 1958. Injured parties would have the choice of pursuing their remedy either before the Civil Aeronautics Board or in any district court of the United States of competent jurisdiction. Periods of limitation are provided with respect to the commencement of such actions or proceedings.

Section 8 of the bill is a technical amendment required to insure that reparation orders of the Board will be subject to review by U.S. district courts rather than by the courts of appeal of the United States, which ordinarily review orders of the Board.

S. 734 would repeal paragraph 8 of section 1 of the Interstate Commerce Act, the so-called commodities clause. The commodities clause applied peculiarly to railroads. It was enacted in 1908 as a corrective to certain abuses that developed in connection with railroad ownership of extensive coal mine properties, particularly in the hard coal region. The conditions which brought about the necessity for the commodities clause no longer exist.

Furthermore, court rulings have weakened the effect of the provision considerably by exempting many operations controlled by subsidiary companies. At the present time, common carriers in water transportation, motor carriers and airlines conduct numerous nontransportation businesses either directly or through subsidiaries. It would seem appropriate in the interests of greater competitive equality to remove this prohibition aimed solely at railroad companies.

H.R. 10813 would amend section 406(b) of the Federal Aviation Act of 1958 to remove domestic trunkline air carriers from eligibility for Federal subsidy insofar as their operations in interstate and intrastate air transportation are concerned (other than transportation to, from, or within Alaska and Hawaii).

U.S. trunkline air carriers engaged in foreign air transportation would remain eligible for subsidy arising from such operations, but any profit that any such carrier might receive from mainland U.S. operations, over and above a reasonable return, would be applied as "other revenues" to reduce the subsidy necessary to maintain the foreign and oversea transportation service.

The President in his message on transportation, which was sent to the Congress after H.R. 10813 was introduced, recommended enactment of this legislation as one step toward achieving evenhanded Government promotion of intercity transportation.

The Department feels that the domestic trunklines have reached the stage of their development where they should no longer be eligible for direct Government subsidy in the operation of their domestic mainland routes. Experience has demonstrated that it is no longer necessary or in accord with sound transportation policy to consider that this group of carriers cannot compete effectively with the other modes of transportation. In this connection, I would point out that intercity passenger-miles of these airlines in 1961 were approximately equal to those of the railroads and buses combined.

The administration and the Department, therefore, urge prompt enactment of H.R. 10813 as in the best interest of sound national transportation policy.

The Secretary has discussed in some detail the objectives and features of the administration's second bill, H.R. 11583, which provides for more equal competitive conditions among modes of transport and for diminished regulation. As the Secretary indicated, minimum rate powers would be removed from the regulatory statutes for bulk commodity movements, for agricultural and fisheries products, and for passengers. Bulk commodities are not now subject to any regulation at all on water movements. Similarly, agricultural and fisheries products are exempt in motor transportation. In the field of passenger service we believe that more carrier initiative is desired, and that this can be achieved in part through the elimination of minimum rate regulation on rail, water, and bus transportation.

I hope to augment and amplify the previous discussion of H.R. 11583. I shall go through the bill, section by section, and point out significant detailed features.

Section 1 of the bill extends an exemption from minimum rate regulation to carriers subject to the jurisdiction of the Interstate Commerce Commission in the transportation of bulk commodities, agricultural and fisheries products, and passengers.

Water carriage of bulk commodities is exempted under section 303 of the Interstate Commerce Act. The exemption extends to all liquid bulk commodities carried in tank vessels, and to such dry bulk commodities which were carried in bulk in accordance with the customs of the trade as of June 1, 1939. Dry bulk commodity transportation is defined as the "transportation of commodities loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count."

The dry bulk commodities exemption is limited to the carriage of not more than three commodities in one vessel or tow, and there is a prohibition against mixing such exempt commodities with regulated commodities in a vessel or tow.

Under the existing provisions of the Interstate Commerce Act, the transportation of bulk commodities as defined is completely free from regulation. Section 1 of our bill would retain and extend this exemption for water carriers, and would, in the interests of equalized competition, remove all minimum rate regulation from other carriers when such commodities were carried.

A similar situation exists in the case of agricultural and fisheries products which are carried in motor vehicles. They are now totally exempt from economic regulation. We would, in the interest of equalized competition, allow other forms of transportation to carry these commodities without being subject to minimum rate regulation.

Section 1 of our bill would also withdraw the power of the Interstate Commerce Commission to regulate minimum passenger fares.

Section 1 goes on to provide that carriers exempted from the provision of minimum rate regulation shall be subject to the provision of section 1 of the Clayton Act of 1914 which applies to the antitrust laws rate agreements. A proviso in H.R. 11583 makes it clear, however, that common actions by carriers in the establishment of through routes and joint rates shall be permissible.

Section 1(b) would amend section 5a of the Interstate Commerce Act so as to make the relief provided therein from antitrust laws inapplicable "to any party to an agreement with respect to any rate, charge, or fare" exempted from minimum rate control by H.R. 11583.

Under the provisions of section 5a, the Interstate Commerce Commission is authorized to approve and regulate agreements relating, among other things, to procedures for the joint consideration, initiation, or establishment of rates, fares, and charges. Parties to any agreement approved by the Commission are relieved from the antitrust laws "with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission."

It is recognized that the underlying proposal on minimum rates is not dependent on modification of section 5a procedures. With section 5a left intact the conference method of making rates under agreements approved by the ICC would be continued on agricultural and bulk commodities and in setting passenger fares. Without the conference method of ratemaking under section 5a the normal procedures and channels available to shippers for rate adjustments would be disturbed.

There is a choice of whether to lessen antitrust immunity specifically as provided in section 1(b) of the bill, or leave undisturbed the present arrangements satisfactory to carriers and shippers. I think this is largely a question for Congress to determine.

Section 2 would amend section 303(b) of the Interstate Commerce Act, which is the present dry bulk commodities exemption, by removing the requirement that no more than three such commodities can be carried in one vessel or tow and by revising the definition of bulk commodities to eliminate the requirement that the commodities must have been treated as bulk commodities in 1939. This has the effect of exempting bulk commodities transported by water carrier from all regulation.

Section 3 would amend section 418 of the Interstate Commerce Act to include all carriers authorized to transport bulk commodities as carriers, the services of which freight forwarders may utilize. The amendment merely takes account of the fact that the bulk commodities exemption has been extended to carriers other than by water.

Section 4 would extend to intercoastal water carriers the same exemption from minimum rate control for the transportation of person or bulk commodities or agricultural or fishery products as is proposed for carrier subject to the Interstate Commerce Act under section 1.

Section 5 would amend the Federal Aviation Act to limit the authority of the Civil Aeronautics Board to the determination and prescription of just and reasonable maximum rates or charges for the transportation of bulk commodities or agricultural or fishery products.

As to these items of freight, air carriers would be as free from minimum rate control as carriers subject to the Interstate Commerce Commission or Federal Maritime Commission. Antitrust laws would be applicable in the same way.

Such freedom from minimum rate control has not been extended to the carriage of passengers by air as with the other carriers, in recognition of the present precarious financial condition of many airlines more gradual deregulation of passenger fares in air transportation is called for under present circumstances. The intent of Con-

gress to attain this freedom from minimum rate control is expressed in the last subsection so that business incentives and competition may play a more influential role in the pricing of air transportation.

Taken together the two administration bills, H.R. 11583 and H.R. 11584, along with several other bills already discussed, provide a fundamentally new direction to national transportation policy. The new direction will bring the economic laws of enterprise and competition into prominence in transportation, as a more effective supplement to regulatory laws and provisions. We retain a good measure of regulation in the public interest, but we also believe that public interest is also served by the basic economic forces which have applied to industry generally. Law must be used more to achieve equalized competitive opportunity, to protect the public interest in a sound common carrier system, and to bring about improved coordination in the administration of Federal transportation programs.

This aim must be achieved in several fields at the same time; in taxation and user charges, in promotional and investment programs, and in regulation. These fundamentally important actions require legislation. The President's legislative program for transportation is now before you, and we urge its favorable consideration.

The CHAIRMAN. That completes your statement, does it?

Mr. MARTIN. Yes, sir, Mr. Chairman.

The CHAIRMAN. Mr. Secretary, I must say that you and Mr. Martin have presented a most comprehensive statement, and a rather bold approach to transportation problems. Certainly I have been impressed by the statement, your views and recommendations, and I am sure other members of the committee, if not all, have likewise been impressed with it. You have covered so much area, however, that I am sure there are innumerable questions arising in the minds of the members, and no doubt would require some time to obtain further clarification.

In view of that fact, I want to suggest to our colleagues on the committee that the first round of the questioning be limited to approximately 5 minutes for each member, so every one can have an opportunity, without too great a delay, of making an inquiry of any question or two or three they may have.

Mr. Williams?

Mr. WILLIAMS. Mr. Chairman—Governor, Mr. Martin, I want to join with my chairman in commending you on making a very comprehensive and clear presentation of your program. But I may say that if this committee gets around to considering all of the proposals that you have put to us today, I am afraid we will be here until Christmas, and perhaps even Christmas day, if the Supreme Court outlaws that.

I would like to say that I think it is refreshing to find a Government agency coming in before this committee asking that Government controls and regulations be relaxed rather than tightened up. I have any number of questions that I would like to pose dealing with specific provisions of these bills, the general purpose of which I am sure no one can disagree with. But as to specifics, I think, Mr. Chairman, I would prefer to let some of the others develop their questions before I reach mine. I have a series of questions. I think perhaps I will wait until the second round to get into that.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Secretary, this is approximately 34 pages of testimony, which has taken roughly 40 minutes. I want to see if, in 5 minutes, I can reduce this to what the fundamentals are.

First as I understand it, you want to remove the prohibition, insofar as railroads are concerned, in the hauling of bulk commodities in competition with water. Is that one?

Secretary HODGES. Yes sir.

Mr. SPRINGER. Second, you want to remove the prohibition as far as regulations concerned as to railroads with reference to agricultural produce and fish. That is two, is that correct?

Secretary HODGES. That is right—railroads and other carriers other than motor carriers which now have it.

Mr. SPRINGER. Now, what about air transportation?

Secretary HODGES. Same thing.

Mr. SPRINGER. Same thing. What about passengers?

Secretary HODGES. The same thing on passengers, except we would go more slowly in deregulating the minimum rates for air passengers.

Mr. SPRINGER. Air passage is the only one you have. So, in essence, then, I take it in all of these fields, with reference to these particular products I have mentioned, there would, in essence, be no regulation.

Secretary HODGES. Minimum regulation.

Mr. SPRINGER. There would be no minimum regulation.

Secretary HODGES. Minimum rate regulation.

Mr. SPRINGER. No minimum rate regulation. With reference to passengers, the same would be true.

Secretary HODGES. Except for air.

Mr. SPRINGER. Except as to air.

Now, will you give me any other thing, other than safety, that is before us; is that correct?

Secretary HODGES. That is it basically. There are other details. But you have put your finger on the important ones.

Mr. SPRINGER. Those are the four.

Now, may I ask you, and may I ask the Under Secretary for Transportation if there are any other important changes in the law that you are requesting by legislation.

Secretary HODGES. I think we have covered it. I don't recall any others from this. The record speaks for itself, of course, Mr. Springer.

Mr. SPRINGER. So much for that. I have just one other thing.

Mr. WILLIAMS. Will the gentleman yield at that point?

Mr. SPRINGER. If it will come out of your time.

Mr. WILLIAMS. I just wanted to ask one question: Is the overall purpose of these bills to provide, insofar as possible, the ability to exploit the inherent advantage of the respective modes of transportation insofar as possible?

Secretary HODGES. That is right, sir.

Mr. SPRINGER. Mr. Secretary, on page 1 of your report, beginning in the third paragraph—

> recommendations for legislative changes necessarily were subdivided according to subject matter.
>
> Consequently, bills concerning the transportation excise tax and urban transportation, 11158 and 12135, have been introduced separately, and have been considered by other committees of the Congress.

Will you turn to the top of page 2?

The bills concerning urban transportation are proposals sponsored by the administration. They would encourage the planning of areawide transportation systems and would assist in their development and financing.

My question is this: Is it your philosophy, as a result of this introduction of these bills—is it your philosophy that the Federal Government should finance mass transportation for the city of Cleveland, the city of Chicago, the city of New York, the city of Los Angeles, or the city of Philadelphia?

Secretary HODGES. Basically, Mr. Springer, considering the very great need of urban areas, the Federal Government would, under our proposal, aid cities and urban areas in the planning of ways and means to work out their mass transportation problems.

Mr. SPRINGER. What about the cost of it?

Secretary HODGES. Well, of course when you are dealing with a thing like this, it will be pretty heavy.

Mr. SPRINGER. You are planning, in this legislation, to pay for the cost of the proposed system, such as, we will say, underground?

Secretary HODGES. No, no. Basically, at the moment, we are talking about helping in the planning costs of all these.

Mr. SPRINGER. Do you mean the drawing up of plans?

Secretary HODGES. That is right. The drawing up of the plans, and the very great amount of research, Mr. Springer, that will be required. This is a very large problem.

Mr. SPRINGER. Is that all that is contemplated?

Secretary HODGES. You have certain grants in there—I don't recall the details of the bill.

Mr. SPRINGER. What about the grants?

Secretary HODGES. Can you answer that, Mr. Barton?

Mr. BARTON. Yes.

The CHAIRMAN. I think you had better identify yourself for this record.

Secretary HODGES. This is Mr. Frank Barton, the Deputy Under Secretary for Transportation. He knows the details on this.

Mr. BARTON. The bill would provide $500 million over 3 years, to be used in making grants. The grants will be made to the extent of one-half for emergency projects, and two-thirds for long-range projects in urban transportation.

Mr. SPRINGER. Those would be grants for construction.

Mr. BARTON. Yes, sir, that is right.

Mr. SPRINGER. Are you familiar with the fact that the Municipal Mayors Association appeared before this committee March 1959, before the subcommittee, of which Mr. Williams is the chairman, and we had hearings on this thing, and rejected this plan?

Mr. BARTON. Yes, sir; I understand that.

Mr. SPRINGER. You understand they did.

Mr. BARTON. Appearances were made before the Senate Commerce Committee when I was with the committee to ask for help.

Mr. SPRINGER. And then because they couldn't get that legislation from this committee, they went over to the Banking and Currency Committee for the purpose of circumventing this committee, and got a Federal charter, which came under the jurisdiction of that committee.

Mr. BARTON. The same was done in the Senate—came to the Senate Commerce Committee first, and then the legislation——

Mr. SPRINGER. And the Senate Commerce Committee wouldn't okay that legislation?

Mr. BARTON. They took no action.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. I think, in order that the record may be clear on that subject, it might be well to recall, also, that it was either during 1958—along in there—that a group from the transportation industry came down and had a conference with several of us. I am not sure, Mr. Springer, if you were present or not. In this conference, such a proposal was offered. And at that time I advised them that if the bill was introduced, as they proposed, it would go to the Banking and Currency Committee, because of the fact that it would establish a Federal charter.

Mr. SPRINGER. This conference, Mr. Chairman, was in the fall of 1958. The hearings which we had, in which the railroads testified, were in the fall of 1958. The conference that we had in this room, at which the mayors testified, was in March of 1959.

The CHAIRMAN. Very well.

Mr. Roberts?

Mr. ROBERTS. Mr. Chairman, I would like to pass at this time.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Thank you, Mr. Chairman. I greatly appreciated the testimony of Secretary Hodges and Under Secretary Martin. I am deeply interested in this entire question. It appears that you have developed the millennium here in many ways. I think my colleague, Mr. Springer, put his finger on an extremely important point, and that is that in the development of urban transportation, mass transportation, that you or the administration or somebody decided that it best can be done under some sort of public facilities legislation, which comes generally under housing. Was that the reason for that?

Secretary HODGES. That is right. Commerce comes into it, Mr. Schenck, through public roads. So that the matter of planning for public roads in an urban area shall be tied in with overall transportation systems. That is the reason that Commerce gets in there with HHFA, in this discussion.

Mr. SCHENCK. The basic reason for this mass transportation is to save the downtown areas in urban areas; is that right?

Secretary HODGES. Yes, and to really preserve the cities which are getting so clogged up at the present time because of transportation problems. They are not oriented to present conditions.

Mr. SCHENCK. Well, now, Mr. Secretary, there is only one source of money for any Federal program, and that is the people themselves. Do you agree with that?

Secretary HODGES. Yes, sir. I think all the money comes from you and me.

Mr. SCHENCK. And consequently, the more money we take to operate the Federal Government, the less opportunity there is for local and State units of government to finance their own operations, isn't that true?

Secretary HODGES. I think that is basically correct. The more you take from one place, the less you have in total, whichever it may be, sir.

Mr. SCHENCK. Is there anything in this type of legislation which encourages private enterprise to do it?

Secretary HODGES. I think so. I think through all of these things we are suggesting, sir, in these bills, it is mostly for private initiative. In the urban transportation bill there is recognition of a problem that is very difficult to work out, and the Federal Government is saying that in this particular case we ought to try to help the cities get out of it particularly through helping them in their planning. But I think there are plenty of other things in here which point out that reliance on private enterprise will help a great deal.

Mr. SCHENCK. I would wholly agree with you, Mr. Secretary, that you are making some suggestions here that would greatly assist private enterprise transportation systems, and therefore the development of this mass transportation through a $500 million project seems to be a little inconsistent with the rest of the idea.

Mr. SPRINGER. Would the gentleman yield at that point.

Mr. SCHENCK. Yes.

Mr. SPRINGER. Mr. Secretary, I realize you are not familiar with this, but in March 1959, when Mayor Celebrese sat in the chair you are sitting in and testified before our subcommittee, I asked him why he was here. Well, he was frank enough to be honest about it, because I knew the facts. That is, that in February of the same year, less than 30 days before, the city of Cleveland had turned down a $41 million bond issue to build a subway in the city of Cleveland. So he was very frank—that he had come to the Federal Government to get that $41 million, if he could get it.

Now, I think the fundamental thing is, it is your philosophy that when Cleveland is not willing to vote a bond issue, the Federal Government at that point ought to come in and give a grant.

Secretary HODGES. Not unless it is a matching grant.

Mr. SPRINGER. All right. That is a pretty good answer.

The CHAIRMAN. If the gentleman would permit, I would like to ask a question at this point, prompted, I may say, by a note from a member of the staff.

It has to do with exemption from minimum rate regulation. And I agree that it is a very interesting proposal, as has been expressed by Mr. Springer, Mr. Williams, and Mr. Schenck and others—that is, to rely on competition rather than regulation, and to rely on the antitrust laws to protect the carriers and public against ruinous and unfair competition.

I have got several other questions on that that I am going to ask later on. But for the present—I wonder why, if this philosophy is sound under today's conditions, the exemption from minimum rate regulation should not apply to all commodities? What is the reason for confining the proposal to bulk transportation or to agricultural and fishery products only?

Secretary HODGES. It seems to me, Mr. Chairman, they are the ones which enjoy the special privileges. All we are saying, in probably oversimplified terms, is to cut out such privileges altogether, and let everybody enjoy the same. That is all we are saying. Whether it is a bulk commodity or an agricultural commodity. In one case, the bulk commodity, the one mode that has it is water, and in the other, motor carriers have the exemption—to the detriment of the other carriers.

The CHAIRMAN. Well, that appears to me to be basing a principle, which evidently is considered to be sound, on the basis of what somebody else might be able to do. I do think you understood what I asked, Mr. Secretary. That is, if the philosophy is sound that so far as extending exemptions—that is, the minimum rate provision, that they should——

Secretary HODGES. Why you shouldn't carry it the whole way, you mean?

The CHAIRMAN. Yes. If it is going to be applicable to certain movements, that is bulk commodities in this case, and agricultural products, why shouldn't it just go all the way and include everything?

Secretary HODGES. I see, Mr. Chairman. I understand what your question is. I think as someone said a while ago, this program may be a millennium. I think that would be carrying it a little too fast. I think you have got to start with this. You may move from that point later on. Just like we don't want to apply minimum rate regulation for passengers to air travel. We think it would be disastrous to do that overnight. We think it would help the other forms of transportation now. We don't think that is inconsistent. We think it is more practicable.

The CHAIRMAN. Well, maybe it would be something like it was, the argument when I was a boy—two gentlemen of the community engaged in an argument. One contended that the bigger the wagon wheels, the easier it would be to pull. The old doctor there asked the other man "but if that is true, how high would those wagon wheels have to be before it would roll by itself."

Mr. SCHENCK. Mr. Chairman, if the gentleman would yield—if you put small wheels on the front, then you are always going downhill. [Laughter.]

The CHAIRMAN. Well, when I was a very small boy, somebody switched around and put the small wheels on the rear of the buggy. I rode 8 miles in it, and I never did feel as though I were going uphill. [Laughter.]

But I think it does raise an interesting question.

And then it does provoke this question.

The minimum rate provision contained in this bill, H.R. 11583, speaks, then, only of rates, fares, and charges, and makes no reference to classification, regulations, and practices, relating to such rates, fares, or charges.

Is it intended by this bill to cover in these minimum rates provisions reductions in freight charges that might be accomplished through changes in classification of rates?

Secretary HODGES. I would have no objection to having those put in, Mr. Harris.

The CHAIRMAN. Well, I just wondered what is the intention—had that point been thought of in connection with your consideration of this matter. And what is the intention?

Secretary HODGES. Those items are a little more technical. We probably should have included them in the draft. But we are trying to cover the major phases. But if your committee——

The CHAIRMAN. Well, would they be reached by the language that you have in the bill?

Secretary HODGES. Probably not. They probably ought to be included.

The CHAIRMAN. I recognize that it is a technical problem. And I imagine it is a legal problem as well. I wonder if counsel would comment on that.

Mr. GILES. Mr. Chairman, I think what we ought to do is just take a careful look at that. It may be—my quick reaction is that that was just the way we drafted it—and probably we could have drafted it to clearly include that. But let us look at that carefully, and file with the committee a statement on it.

The CHAIRMAN. I think if you are not sure about the intent as well as whether it is included or not, you had better take a careful look at it, because I think it is a pretty important problem.

Mr. GILES. I would rather do that than to give a quick reaction on it.

(The following letter was subsequently submitted for the record:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 6, 1962.

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

DEAR MR. CHAIRMAN: During the course of the hearings, you questioned whether the minimum rate provisions in H.R. 11583 are intended to apply to freight charges that might be set through changes in classification of rates.

The language of the bill proposed by the Department of Commerce does not make express reference to any changes accomplished by classification, but there is a definite intent for the minimum rate provisions of this bill to apply to any reduction in freight charges, whether accomplished through changes in classification or otherwise.

Since a reduction in a classification rating would, of course, have the same effect as a reduction in the rate itself, I believe that the present language of H.R. 11583 is legally sufficient to apply to any method of rate reduction. My present thought is that no change in the language of the bill is necessary to make this clear. However, I think it would be desirable to have some appropriate language in the committee report on H.R. 11583 which would clarify the question you have raised.

If you believe that it would be desirable to have some change in the language of the bill itself, we shall certainly be glad to cooperate fully with your committee staff on this point.

With cordial regards, I am,

Sincerely yours,

ROBERT E. GILES.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Mr. Chairman, I would like to join in welcoming Secretary Hodges and his colleagues to the committee. I have no questions at this time. I would like to compliment the Secretary and his Department for what I think has been an all-out effort to reach out to interested groups and to other branches of the Government, including the Congress, for suggestions and ideas on what is needed in the general field of transportation.

I well remember last year when we sat informally, some of us here on the House side, and on the Senate side also, with the Secretary and his associates. And the one thing the Secretary was asking of us, as he was asking of other departments of Government and interested modes of transportation all over the country, was for recommendations as to what is needed in our Nation. It has been a tremendous effort at a unified overall program and I certainly want to compliment the Secretary.

Secretary HODGES. Thank you, Mr. Jarman.

The CHAIRMAN. Will my colleagues permit me to ask this question at this point. I see our friend and former colleague, a member of this committee, Mr. O'Hara is present. Of course he can't speak here.

But, Mr. Secretary, does this provision that you offer here not repeal the Reed-Bullwinkle provision of the law?

Secretary HODGES. I don't know.

Mr. BARTON. Mr. Chairman, it repeals it as far as making minimum rates is concerned. It preserves it for making joint rates and through routes. The feeling is that if they are given freedom from ICC regulation of minimum rates, that they should be subject to the antitrust laws in order to insure that the public is adequately protected.

The CHAIRMAN. Well, I noticed the Under Secretary's statement on the question, which led right up to it. And I thought that that is what it did. But then he gave that last punch, which looks to me like he backs completely away from what he says in the rest of the paragraph, and said it was a policy matter for Congress. But I believe the bill, as I interpret it, has a provision or incorporates a provision that actually and so far as the purpose of the bill, repeals what the Congress has done in that respect heretofore.

Mr. BARTON. Mr. Chairman, I think you will find there are differences of opinion as to how much antitrust immunity should be given. There will be other points of view expressed. As far as the practical workings of the rate bureaus are concerned, I think the committee will probably want to consider the measure of antitrust immunity that should be extended.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. I too want to congratulate the Secretary and the Under Secretary for some very fine proposals. However, there are a couple of questions I have.

I do not find anything in your statements about the permission of one mode of transportation to own or operate other modes of transportation.

Secretary HODGES. Well, we took on about all we could handle. We didn't take that one on.

Mr. YOUNGER. Did you sidestep it because it was a controversial subject, or don't you believe in it?

Secretary HODGES. Well, we would rather have you present that to the committee, sir.

Mr. YOUNGER. You want us to handle that.

Secretary HODGES. Yes, sir. We think we have said almost enough.

Mr. YOUNGER. Also I think you have skirted a little bit on the question of mergers.

Secretary HODGES. Well, no. We say here that we have an interagency committee working on mergers. We already met two or three times. We stated publicly our feeling on mergers. We favor the principle of mergers, of course subject to each one being looked at on its merits. We think that is an essential modern way of handling things, depending on the conditions and what is applied for.

Mr. YOUNGER. Do you think an approval of a merger by this interagency group, would prevent a court action afterward?

Secretary HODGES. No. This interagency group, sir, does not have the power or authority to approve mergers. We simply discuss the basic principles and policies in connection with it, and do try to aid the Justice Department, from a practical point of view, with the industry and commerce, in its arguments before a regulatory body that is considering and does have authority over mergers.

Mr. YOUNGER. In regard to eliminating the subsidy for the trunk-line air carriers, I have been interested in that for some time. I have had a bill in which would provide that once the carrier was off of subsidy, they could never return. As I understand, your idea now is to repeal the portion of the act which gives subsidies, so that they would never be eligible because it wasn't provided in the law. Is that true?

Secretary HODGES. That is right, sir—unless you pass another law. Certainly that would be the idea of getting away from it—except in the international phase of it.

Mr. WILLIAMS. That is with respect to the trunk carriers, and not with respect to the local service carriers, is that right?

Secretary HODGES. That is right.

Mr. YOUNGER. On page 6, elements of public policy No. 2, the question of user charges—what is anticipated there, toll charges, or what type of user charges did you have in mind?

Secretary HODGES. No; we are speaking of a basic principle there, Mr. Younger, that a person who uses a road ought to pay a tax of some kind that would take care basically of his use of that road. The same way on a railroad or on a bus, or airplane, or so forth, water line. They all ought to be, so far as possible, free from Government subsidy, and they ought to stand on their own feet. The user himself ought to pay the full costs of whatever he uses.

Mr. YOUNGER. Specifically how would you apply that to an air carrier to use an airfield, which was provided by the Government?

Mr. MARTIN. Mr. Younger, the Government spends many, many millions of dollars a year. The Federal aviation program is up in the neighborhood of half a billion dollars in airport construction, and the maintenance and improvement of the Federal airways system.

The executive branch believes that the airlines should pay a share toward the maintenance of the airways, and assistance in the airport program. I think that the principle is sound—that they should be paying something for the use of the airways.

Mr. YOUNGER. And you consider that the trucks now through the special taxes for the highway, are not contributing their share?

Mr. MARTIN. No, sir; we feel that they are. We came up here last year and proposed user charges for the trucks. We by no means got all we asked for, but we got a substantial amount. And we think that the trucks are paying a goodly share toward the use that they make of the Federal highway system.

Mr. YOUNGER. Just one other question.

Mr. Martin, in reading your statement, on page 4, you omitted one word—"Movement of highway trailers by rail 293ICC93 (1954) and other decisions, substituted service by piggyback." You left out the word "piggyback." Was that done purposely?

Mr. MARTIN. No, sir.

Secretary HODGES. He had it mixed up with piggybank. That is the reason he left it out.

Mr. MARTIN. No, sir.

Mr. YOUNGER. You want that still in the statement, in the printed form.

Mr. MARTIN. Yes, sir.

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

The CHAIRMAN. Mr. O'Brien.

Mr. WILLIAMS. Mr. Chairman—would the gentleman yield?

With respect to user charges, do you have any recommendation for a formula by which a user charge could be imposed against an air carrier in the light of the fact that our navigation system and air control system, and so forth, is necessary to the defense of this country, whether we have a single air carrier in operation or not?

Have you suggested a formula as to breaking down the part which should be borne by the civil aviation and the part that should be borne by the military?

Mr. MARTIN. I understand, Mr. Williams, that was worked up by the FAA. They did considerable research on that. I only know as to the details of the tax.

Mr. WILLIAMS. I simply say working out the formula——

Mr. MARTIN. Unfortunately, because of the urgency of business in the Ways and Means Committee, we were not able to have hearings on those user charges, and it was anticipated that hearings would be held early in the next session. So that was not able to be developed. I suspect that the administration would be very clear on that.

The CHAIRMAN. Mr. O'Brien.

Mr. O'BRIEN. Mr. Chairman, may I congratulate the Secretary and the Under Secretary on their statements, and also their frank recognition of the fact that this is a most controversial program. But the thing I am concerned about at the moment is the urgency of the problem before us.

There have been several reference to private enterprise.

Isn't it a fact, Mr. Secretary, that private enterprise, as represented by the railroads today, is going rapidly down hill, regardless of the size or the position of the wheels.

Secretary HODGES. That is right, sir.

Mr. O'BRIEN. Now, you said if corrective action is not taken soon, we run the grave risk of having our transportation system deteriorate to the point where it can no longer be supported by private enterprise.

Are you suggesting, Mr. Secretary, that unless we do something rather rapidly, there is a possibility that it would be necessary for the Government to take over and operate the railroads of this country?

Secretary HODGES. I think in the ultimate, if you took it to that extent, Mr. O'Brien, that would have to be the answer. I would not express the opinion that that is what is happening. But you take the case of the New Haven, and other situations, where the Government has had to step in. Unless it is restored to private enterprise, and unless private enterprise does its full duty, both in management and labor, the ultimate answer is that somebody has got to take it over, if you want to have a transportation system.

Mr. O'BRIEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Collier.

Mr. COLLIER. Mr. Chairman, I have a number of questions that deal with the various facets of the effect of this proposal on the common carriers, which I certainly wouldn't have time to ask now. But I might say, Mr. Secretary, that I, for one, am encouraged that we are today dealing with this legislation, and with your proposals, because if ever there has been an area of our economy that has long demanded change in basic policies it certainly is in the field of transportation.

Let me, if I may, direct one question to you.

Subsection (d) of section 5 of the bill expresses the intent of Congress that regulatory control over minimum passenger fares of areas be reduced to the greatest extent consistent with the public interest.

Now, what specific problems, if any, have been experienced with the Civil Aeronautics Board, the orders that they issue, in prescribing minimum passenger fares?

Mr. BARTON. Yes, Mr. Collier—if I may answer that.

You will find that the Civil Aeronautics Board has more outstanding rate orders on minimum passenger fares than any other regulatory agency. You know that they have recently turned down a proposal by Continental Airlines to have certain experimental rates. We feel that this statement of general policy, if we may call it that—as I consider it—would set the tone for allowing the carriers to assert more managerial discretion, publish lower rates where necessary to maximize their revenues, and bring themselves out of the slump that they have been in, passengerwise. They have large, powerful planes, but sometimes they are not full. Their pricing policies might be changed to enable more full utilization of the plant.

Mr. COLLIER. Then just one other question.

As work progresses on a means of financing, shall we say, a mass transportation program, particularly as it would affect the various metropolitan areas of the country, is it your thought, Mr. Secretary, to then propose a more specific proposal with regard to the conduct of mass transportation operations? Or would you be confined to assisting in the planning of mass transportation programs with loans or grants, as the case might ultimately be, to the purchase of equipment?

Secretary HODGES. This I would hope would be reviewed every year by the executive branch of Government and the Congress. The idea would be that as far as I am concerned we would have to be assured that the urban area, the city involved, was doing long range, continuous planning, or we would not even join them in helping out in the planning. And the same should be true with grants. These are primarily on basic pilot projects. It would certainly not be my idea that we would take over the operating responsibility or financial responsibility of cities to do their job. But I think it is a big enough problem now to require help, particularly in the early stages of planning.

Mr. COLLIER. I am hopping around the board a little bit, because of the vast scope of this legislation. But in dealing with the so-called competitive rate inclusions in this legislation, will a review or evaluation be made of those areas of the country where there are rate exemptions provided under the law, and wherein I understand the competition among motor carriers is almost cut-throat to a point where I think it actually endangers the type of service that is available to shippers in those areas.

Secretary HODGES. I gather that what you are saying—that you are finding in certain areas, that truck competition, unregulated truck competition, is creating difficulties.

Mr. COLLIER. That is right. And the competition imposes in my opinion a threat to the shipping public.

Secretary HODGES. It could indeed. That is one reason we are saying that they ought to all be subject to the same kind of considerations, whether they are rules, regulations, or whatnot.

Mr. COLLIER. Is it possible that this legislation would reach in to affect those areas, and conceivably ultimately remove the exemptions that exist in some of those areas?

Secretary HODGES. I would think it could.

Mr. COLLIER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Secretary, I want to join with my colleagues in expressing the view that your statement and the statement of Mr. Martin is a most excellent one. Mr. Schenck, I think, somewhat facetiously observed that you were proposing the millennium. It would be my observation it would be almost as difficult to achieve as any other millennium, because we are dealing with a fabric of preference and prejudice that has been built up over more than a half century in some instances, going back some 80 or 85 years.

I think that certainly the basic premise, that we can overcome many of the difficulties of transportation, by a massive injection of competition, is a valid one. And I undoubtedly would have far more specific questions after having the benefit of the testimony of those who will come, of course, before the committee and plead their special problems. But I do thank you and compliment you for the excellence of the statement and the presentation.

Secretary HODGES. Mr. Moss—I would like, Mr. Chairman, to say in connection with Mr. Moss' very practical statement, that we have made no suggestions in this rather revolutionary approach that haven't been made to us by somebody in industry. We, as was pointed out by Mr. Jarman, went very carefully into this situation, over a long period of time. The President asked us to try to prepare a transportation policy for this country, which had not been done.

As you know, Mr. Chairman, we got together for long discussions, and made the participants sit right there until they had their say—including every agency of Government dealing with transportation. We had them put their views in writing after they said what was on their mind. We did the same thing with about 115 members of labor and of the industry. And after meeting with them, we got them to put it in writing.

And we have said—

we are going to present this to the President and we hope ultimately to the Congress without any regard for the political phase of it, or for what people may think about it.

We think the time is past due when we can stand back in any kind of fear or concern, because we have got a transportation industry which is getting more and more of the dollar cost of shipment to a consumer. And we must put it back on its feet, and have it make money if it is going to exist. And that is the approach we made, Mr. Moss. And I appreciate your calling attention to it.

Mr. Moss. Would you agree with me, Mr. Secretary, that perhaps one of the most difficult problems the committee will encounter is the fact that while we have in all modes of transportation a very vigorous, underlying defense of competition and a free enterprise, that there is also frequently a vigorous and underlying defense of preference, privilege, or advantage.

Secretary HODGES. I would agree thoroughly.

Mr. Moss. Thank you, sir.

The CHAIRMAN. That is all, Mr. Moss?

Mr. Moss. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Mr. Chairman—Mr. Secretary, as I recall, in August or September of last year, you met with a number of us here, together with all these other persons you have mentioned, suggesting that the President wanted your recommendations to him, I believe, by November 1 of last year. I don't know whether you were able to meet the deadline or not. But this message from the President and these bills—are they a result of all those composite opinions?

Secretary HODGES. Yes, sir.

Mr. DEVINE. Of course, this has vast ramifications. And I see the House went into session 3 or 4 minutes ago. I was interested in one aspect. I believe the Under Secretary mentioned that this program would call for grants of about $500 million.

Is that correct?

Mr. MARTIN. That is in the urban mass transit program, Mr. Devine, which we didn't address ourselves to. That portion of the President's transportation message——

Secretary HODGES. That was separate from our transportation recommendations to the President.

Mr. DEVINE. Is there any particular recommendation or source from which this half a billion dollars is to come? You are going to recommend a new transportation or use or some type of tax to finance this $500 million?

Mr. MARTIN. It is out of general funds, Mr. Devine.

Mr. DEVINE. The General Treasury. If I am not mistaken I read in the public press this last week where the Secretary was recommending an across-the-board tax cut.

Secretary HODGES. I did, sir.

Mr. DEVINE. It is going to be hard to find this in the General Treasury if we are going to cut taxes, isn't it?

Secretary HODGES. We are going to have to leave a little bit of it to you, sir.

Mr. DEVINE. That is the thing that is disturbing to me, and I know other Members of Congress—Cabinet officers come up and you ask them how this will be financed, will they recommend a new tax on the taxpayers, and they say either the economy of the Nation will take care of it, or it comes from the general fund. Well, that certainly is not bottomless, and I thought we should explore that as we go on.

Secretary HODGES. We worked it out finally on roads, didn't we—the trust fund.

Mr. DEVINE. Finally we did.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Mr. Secretary, you pointed out in response to a question by one of my colleagues that you felt that the way to handle the problem we face with regard to the exemptions is either to repeal all exemptions or to extend them; am I correct?

Secretary HODGES. That is right, sir.

Mr. DINGELL. Now, you indicated that either way was actually acceptable to you—either all exemptions, or to increase the exemp-

tions and make them across the board to all parts of the transportation industry; is that correct?

Secretary HODGES. Mr. Dingell—the overriding principle that we are trying to enunciate here is that it ought to be equal. We ought to treat everybody alike. And we say in our statement we ought to extend the exemptions to other people. If you in your wisdom feel you can execute the policy by eliminating all exemptions, that is a different way of approaching it. But we have the overriding principle they ought to all be on the same basis.

The CHAIRMAN. Will the gentleman yield on that point?

Mr. DINGELL. I will be happy to yield.

The CHAIRMAN. I think we are going to all have to be going to another place in a moment. I was hoping that at some time some member would ask a question that would provoke the Secretary into commenting on the possibility of rate war.

Mr. DINGELL. I proposed to get to that point, Mr. Chairman. Getting back to this business of exemptions, Mr. Secretary, you have indicated that you feel the basic requirement is equality, and not necessarily expansion of the exemptions; am I correct?

Secretary HODGES. That is the overriding principle.

Mr. DINGELL. The overriding principle to be considered here is equality of opportunity and so forth as opposed to expansion of exemptions.

Secretary HODGES. That is right, sir.

Mr. DINGELL. So exemption, then, is not really the critical part of the administration's program. The administration would in effect consider its elimination of exemptions, to place all modes of transportation on substantially equal footing, as being an acceptable approach, would it not?

Secretary HODGES. Well, sir, Mr. Dingell, we are standing behind what we have just said. We give you the overriding thing. And we think that the way to do it is to give it to all. You in your wisdom—if you decided you want to take it away from all, you still have not violated our principle.

Mr. DINGELL. I see. So you feel that much of the evaluation in the transportation industry that exists today, because of the preferential exemptions, and lack of preferential exemptions in different areas, could be adequately met by repeal of the exemptions. Is that a fair estimate?

Secretary HODGES. Well, I think it could be done by giving them all the same. But I think it also could be done the other way, sir.

Mr. DINGELL. I see. Thank you very much, Mr. Chairman.

I have some more questions.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you for your fine testimony. I noticed in your statement that these studies were made, and that various departments and various phases of the transportation industry were involved in these conferences.

Now, I also noticed that in testimony of the ICC of June 9, 1961, the Commission does not appear to endorse some of the proposals that you have. And I also notice the speech that was made by Mr. Martin in October of 1961, wherein he stated:

> We should reexamine rate policies and develop new standards that will put an end to damaging rate cutting.

Now, my question is, is the final recommendation to the President the recommendation actually made, or have there been some amendments added to it since?

Now, is there a copy of your recommendation to the President on which this statement was based, or is there no such document?

Secretary HODGES. No, there isn't any document there, because the recommendations came from many sources. After we had presented what we thought was the best thing to be done, of course as usual the President and the Budget Bureau get recommendations from other sources, as to what they think. So we don't necessarily get all of our language into a document.

Mr. NELSEN. Well, I was a little concerned about the point that the chairman raised about the jungle war in rates, where we wind up if the lid was taken off all the way around.

Secretary HODGES. I think—so as not to leave it hanging, Mr. Chairman—certainly you have that possibility always. That is part of competition, not only in transportation, but in other things. But I think you have the remedy of injunctive relief under the antitrust laws, if you see something like that developing.

Mr. NELSEN. No further questions.

The CHAIRMAN. Well, right on that point, then—the thing that worries me about it, Mr. Secretary, I might say—and I hope some time during the course of these hearings you will elaborate on it further. I am inclined to agree that there is a lot of merit in what you are proposing in the interests of the public. If certain deregulation can work and is practical, and through competitive enterprises can work for the best interests of the public, I think it is a good thing to consider. But what has bothered me somewhat is the possibility of leaving the common carrier in a position where it will provide selective rates. In other words, in order to meet certain competition in one community, it will provide a certain rate, whereby in another community it would not be necessary to provide that particular rate, and thereby give advantage of one area or community over another.

Now, I hope when we have more time that you or somebody in your organization will expand on that question some. I would certainly like to have some discussion of it.

Secretary HODGES. All right, sir.

The CHAIRMAN. Mr. Rogers of Florida.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. Mr. Secretary, I have enjoyed your testimony this morning. I think you, along with the Under Secretary, have made some very fine points that have been brought out. I am concerned, however, about the proposal here where we take off minimum regulations—that we are in effect substituting perhaps the regulation now of an agency set up to go into this on minimum rates, and simply turning it over to the Department of Justice under this antitrust provision. And I would have great concern about this. I do want us to go into this further with questions, Mr. Chairman, to make sure that we are not going to subject the entire industry to harassment, and simply turning regulation of minimum wages over to the Department of Justice, rather than as it is now regulated by agencies set up to study this and do this same work. And I hope you would have that same concern.

Secretary HODGES. I would indeed, Mr. Rogers. I would like to add this. I think after you do this, assuming you did, that if the industry doesn't know any better than to bring on itself this kind of thing, then it is just too bad. I would hope very much that we would not get into the antitrust laws with Justice taking over, because nobody wants that to happen.

Mr. ROGERS of Florida. And I presume you have had liaison with Justice, and that they are in accordance with your approach to this problem.

Secretary HODGES. Yes, sir.

Mr. STAGGERS. Would the gentleman yield?

Mr. ROGERS of Florida. I would be glad to yield.

Mr. STAGGERS. I would like to commend the Secretary and the Under Secretary, too, for their new approach to these problems.

I would like to ask this question. Would the Robinson-Patman Act prohibition against discriminatory pricing apply in this case?

Secretary HODGES. No, sir, that does not affect services. That applies only to commodities for sale.

Mr. STAGGERS. Well, does the Clayton Act prohibit against tie-in sales apply?

Mr. BARTON. No, sir, it does not.

The CHAIRMAN. What is that?

Mr. BARTON. No, sir, it does not apply.

Mr. STAGGERS. It goes back to the first question which has been around a couple of times. What protection can be afforded against discriminatory ratemaking in 11583, if there is any?

Mr. BARTON. As far as the railroads are concerned, ICC still has authority over discriminatory rates, preferences and prejudices, and the safeguards of other sections of the act. Certainly the antitrust laws would apply, as provided in the bill.

Mr. STAGGERS. Those are all the questions. I would like to ask some more later. Thank you, Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Mr. Chairman, Mr. Secretary and Mr. Martin, I, too, would like to commend you for what is obviously a great deal of effort and work in making what I consider to be a very real contribution to the meeting of this problem.

Mr. Secretary, in response to Mr. O'Brien's questions, you have used the New Haven Railroad as an example of the particular problems which have come about today. I have a particular interest in that.

Is it your opinion that had we had the legislation you suggest on the books some years ago, that the New Haven would have been able to meet its problems in a better way so that it would not be in the shape it finds itself in today?

Secretary HODGES. Assuming it had a strong management during that whole period, yes.

Mr. SIBAL. Do you feel that the problems of the New Haven, which I know you have given some thought to—we have corresponded about it—came about in part, in any event, because of the regulations under which it had to operate?

Secretary HODGES. Yes, sir.

Mr. SIBAL. And do you feel that the passage of your suggestions would enable management, which we hope and assume will be strong, if it hasn't been in the past—can resolve some of these problems favorably under these proposals?

Secretary HODGES. Yes sir, I do. I think that a strong management that has a consideration for the total public interest, in both an ideal and practical point of view, under these things, can get along and can make money.

Mr. SIBAL. You would agree with me now, Mr. Secretary, that the public interest, which we hear a lot about today, requires the operation of a railroad in southern New England.

Secretary HODGES. Definitely. I think it is necessary to keep it going.

Mr. SIBAL. And the Government has a particular interest in this in the overall, would you not say?

Secretary HODGES. It has to, because it represents the total public, sir.

Mr. SIBAL. Thank you.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Mr. Chairman, Mr. Secretary, Mr. Martin, I would like to take this opportunity to welcome my fellow North Carolinian here today. We are very happy to have you, Mr. Secretary. I certainly appreciate what I consider to be a very fine statement which lays down a real challenge to this committee and the Congress, to assist in making improvements of our public transportation system. As a frequent user of several means and modes of transportation, I certainly agree with you, sir, that a great deal more imagination can be used by them, and if we can assist in extricating them from many of the regulations which they contend encumber their activities, I think it would be a good day's work.

Secretary HODGES. Thank you, sir.

The CHAIRMAN. That is all, Mr. Kornegay?

Mr. KORNEGAY. Yes, sir.

The CHAIRMAN. Governor Thomson.

Mr. THOMSON. Governor Hodges, you are impressive, as usual. I agree with your friend from North Carolina that you presented us with a challenge. You are also very persuasive. I am hopeful that with that persuasion you will have a few moments to spend with Orville Freeman.

Secretary HODGES. Go ahead, Governor.

The CHAIRMAN. Will the gentleman yield?

Mr. THOMSON. In the hopes that some of this philosophy of lessening of regulation and greater freedom might rub off on him.

That is all, Mr. Chairman.

The CHAIRMAN. I might say, in order that the record may be complete, to our distinguished colleague from Wisconsin, perhaps the Governor has already spoken to the Secretary of Agriculture, because we have two reports on these two bills which have just been put in the record, and which he approves and recommends both bills.

Mr. THOMSON. Well, Mr. Chairman, might I observe that that might be an encouraging sign, but it hasn't extended to the field of agriculture.

Mr. WILLIAMS. Mr. Chairman, may I comment to the Governor. Governor, I believe one of the bills that you support in particular that

is the reparations bill for motor carriers, has already been reported by the Subcommittee on Transportation and Aeronautics to the full committee, but it has not yet received executive consideration of the full committee. It is my hope that the parent committee, that is the Committee on Interstate and Foreign Commerce, may be able to consider this legislation at its next meeting, or as soon as possible. I quite agree with the position taken by the Department on that legislation.

Secretary HODGES. Thank you.

The CHAIRMAN. The subcommittee has done its usual fine job with the bill, but we find it before the full committee in a highly controversial state.

Mr. WILLIAMS. I quite agree with the chairman.

The CHAIRMAN. I observe that the subcommittee, I believe, adopted an amendment that has thrown the thing topsy-turvy, in an effort to get something done about it, and the chairman did attempt last year to resolve these competitive forces. I might say that was without success.

Mr. WILLIAMS. May I say, Mr. Chairman, that the amendment was adopted over my very vigorous protest and opposition, and it was my intent, when the committee met in executive session, to seek an amendment to the bill, seeking the approval of the full committee, to an amendment, that would take that objectionable language out. I was presuming I would have the support of the chairman and the other members of the committee, of course—and that we have the support of the Secretary of Commerce.

The CHAIRMAN. The chairman will certainly try to accommodate the chairman of the subcommittee in the very near future.

I wanted to ask—and I see the time has already passed—I did want to ask this question or two, Mr. Secretary, before we concluded today.

I am impressed by your recommendation of experimental rate authority. As far as I know, in the 20-odd years I have been on this committee, this is the first time any such recommendation has ever been made to us. I may be wrong, but I don't remember any. And I am intrigued by your suggestion.

Secretary HODGES. Just another form of research, Mr. Chairman.

The CHAIRMAN. Well, it speaks of the fine service and the usual good job you are doing as the head of this great organization down there.

In the testimony presented by Mr. Martin, on page 3, in connection with the experimental rates and services, he stated, in comment about section 2 of the bill—

> experiments would be volunteer on the part of either carriers and shippers and would not effect any of the present powers of the regulatory agencies.

That is in the first paragraph on page 3 of your statement, Mr. Martin.

Mr. MARTIN. Yes, sir.

The CHAIRMAN. Now, what I wanted to inquire about, and see if I am correct in understanding that section 2 of the bill would not in any way restrict the existing rights of the carriers to change their rights and services.

Mr. MARTIN. No, sir, this will not interfere with their rights. They could call them off at any time.

The CHAIRMAN. Now, on the following page, on page 4, I believe, you discussed through service, joint rates and joint boards.

As I interpret what you have said, generally the purpose is to encourage through routes and joint rates. I would like to inquire if it is the intent of the bill that carriers which have voluntarily entered into such arrangements could also agree voluntarily to terminate such arrangements.

Mr. MARTIN. Yes, sir.

The CHAIRMAN. Now, then, finally I would like to inquire with reference to H.R. 11583, where your reference is made to rates, fares, and charges for transportation of agricultural and bulk commodities—if it is not intended by the bill that the ICC be deprived of its authority to remove unjust discrimination against interstate commerce by prescription of a minimum level of intrastate rates. Now, that question was raised by another member a little while ago.

Mr. MARTIN. No, sir, I don't think so.

The CHAIRMAN. You do not think that that is intended by this provision?

Mr. MARTIN. No, sir.

The CHAIRMAN. And you think the provision with reference to discrimination, which I mentioned earlier, remains intact?

Mr. MARTIN. Yes, sir.

The CHAIRMAN. Well, I just wasn't sure. I don't doubt your word at all. I am still not sure.

I think we should give some more consideration to this point. I hope you will.

Secretary HODGES. All right, sir.

The CHAIRMAN. Mr. Secretary, we have been around the committee for the preferential questions from members. I am sure there are more detailed questions that will be in the minds of members. We will want you back at some convenient time.

Secretary HODGES. All right, sir.

The CHAIRMAN. I think, however, we probably should proceed with other witnesses as the schedule has already called for. As time goes on, at some convenient time, we will arrange for your return.

The committee has a rather important bill for consideration on the floor of the House this afternoon, and we will be unable to sit during the general debate.

Tomorrow I will say for my colleagues we will have an executive session of the committee at 10 o'clock, and I wish to encourage and ask the members to get here at 10 o'clock. If we can get a quorum here at 10 o'clock, we are going to take up the clear channel bill as reported by one of the subcommittees. I think most every member of the committee is interested in that proposal. I would urge we be here.

On Thursday, we will have representatives from the General Services Administration, Department of Agriculture, and Post Office.

On Friday, it is our hope to have the Department of Justice, and the Civil Aeronautics Board.

On Tuesday the 10th—next week is Fourth of July week and I don't think we would get many witnesses or members here—on July 10, Tuesday, we will have the Interstate Commerce Commission, and I will remind them and the members there is an all-star baseball game that afternoon, and we won't go beyond 12 o'clock.

Mr. Secretary, on behalf of the committee, I do want to thank you, Mr. Martin, and the other members of your staff for your appearance

here this morning, and to join the other members in complimenting you on the fine presentation you have made on this highly important question.

Secretary HODGES. Thank you, Mr. Chairman.

The CHAIRMAN. The committee is adjourned.

(Whereupon, at 12:30 p.m., the committee adjourned, to reconvene at 10 a.m., Wednesday, June 27, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

THURSDAY, JUNE 28, 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. The committee will come to order.

The first witness this morning will be the Honorable Robert B. Conrad, Commissioner of Transportation and Communications Services of the General Services Administration.

Mr. Conrad, we will be glad to have your presentation. I believe you have with you Mr. Malcolm D. Miller, assistant to the Commissioner.

Mr. CONRAD. Yes, sir.

The CHAIRMAN. We are pleased to have him appear with you.

STATEMENT OF HON. ROBERT B. CONRAD, COMMISSIONER OF TRANSPORTATION AND COMMUNICATIONS SERVICES, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY MALCOLM D. MILLER, ASSISTANT TO THE COMMISSIONER

Mr. CONRAD. Mr. Chairman and members of the committee:

My name is Robert B. Conrad, Commissioner of Transportation and Communications Services of the General Services Administration. I am accompanied by the Deputy Commissioner of the Transportation and Communications Services, Mr. Malcolm D. Miller.

Under the Federal Property and Administrative Services Act of 1949 (63 Stat. 383; 40 U.S.C. 481), the General Services Administration is interested in transportation and traffic management on behalf of executive agencies from the viewpoint of a user of transportation services.

Therefore, the Administrator of General Services, Mr. Bernard L. Boutin, had planned to appear before your committee in support of H.R. 11583 and H.R. 11584, bills which would implement certain recommendations contained in the President's message to the Congress of April 5, 1962, concerning the transportation system of our Nation. However, unforeseen circumstances have prevented him from doing so and he has asked me to represent him at today's hearing and express for him the views and comments of the General Services Administration on these two bills.

Before I do so, however, Mr. Chairman, I wish to convey to you the Administrator's regrets for not being able to appear before your

committee today and to express to you our mutual appreciation for allowing me to testify in his behalf.

In discussing the administration's proposed transportation legislation now under consideration by your committee, I shall deal with the two bills in the order of their numbers, first H.R. 11583, and then H.R. 11584.

As you know, H.R. 11583 would exempt carriers from minimum rate regulation for transportation services which are competitive with those furnished by nonregulated carriers, particularly in movement of agricultural and bulk commodities. The General Services Administration is in complete accord with the objectives of this proposal and recommends its enactment for the following reasons:

First: Consumers, including the Government as a user of transportation services, would benefit both directly and indirectly from reduced rates which should result from competition and freedom of enterprise under the proposed exemptions. We estimate that about 76 percent of the Government's rail carload shipments, or about 642,700 cars of freight per year, with freight charges of about $134 million per year, would come within the proposed exemptions. Additionally, the Government and other consumers would benefit from price reductions in products manufactured from the exempt commodities to the extent that transportation rate reductions would enable sellers to reduce costs and prices. The Government is particularly able to obtain such reductions in prices through its use of advertised bid procedures and procurement in large quantities.

Second: Existing rate regulation is burdensome, unfair, and tends to be impractical for regulated carriers which face competition from exempt transportation. The most harmful effect upon regulated carriers is diversion of freight to exempt carriers. In turn, this diversion of traffic affects consumers which use regulated carriers, thereby leading them to seek general revenue rate increases which consumers such as the Government must pay.

With respect to H.R. 11584, which would provide specific actions for strengthening of the common carrier system and improving competitive conditions, the General Services Administration has a special interest in section 9 of the bill.

This section would authorize negotiation and contracting for a system of simplified rates. Such a system would be highly advantageous to the Government in terms of economy, efficiency, and service for the following reasons:

(1) *Need to change slow and costly procedures.*—The complications of commercial tariffs make rate determinations slow and expensive, with the result that traffic management is not used as fully as is desirable in Government procurement and use of common carrier services. Simplified rates would enable Federal agencies to unite broad traffic management procedures with procurement practices, thereby resulting in savings to the Government.

(2) *Need for use in automated procedures.*—The present tariff structure is unsuited for automatic data processing (ADP) because there is lacking a "system" which would enable use of the computer ability of machine data processing. Present complications limit use of rates in computers to memory storage of the rates, and to recall of the data when needed. The numerous and frequent changes in tariff rates by

the carriers make impractical the use of ADP procedures to supply rate information.

(3) *Need for emergency tariffs.*—Simplified rates are needed to provide a system of rates readily usable in the event of national defense emergency operation of the Government from relocation sites and temporary offices which would not have access to tariff libraries and rate experts.

WHAT IS MEANT BY THE TERM "SIMPLIFIED RATES"

By the term "simplified rates," we refer to a body of common carrier prices established according to a system which is consistent and logical, which minimizes rate differences, and which is stable because frequent changes are unnecessary. Examples of simplified rates, already in existence, are the class rate systems of common carriers. While these class rates are in use, their effectiveness as simplified rates has been destroyed by the publication of numerous exceptions ratings and commodity rates, and class rates have become excessive for general application. Parcel post has a system of simplified rates. "Freight-all kinds" (FAK) rates, in a variety of forms, have been published by carriers with resulting simplification for shippers. Simplified rates were established by military services in Europe and other occupied zones as part of the World War II operations by use of simplified classifications and mileage rates for determining transportation payments.

For GSA, many motor carriers have published numerous simplified "freight—all kinds" (FAK) rates in section 22 quotaotions applicable from Federal Supply Service depots to other Federal agencies. These rates are about 30 percent lower than the class rates and carry about 70 percent of the depot outbound traffic. A primary advantage of the GSA FAK rates is the lack of complication arising from differences in transportation charges between commodities in the mixtures described on each bill of lading. Under FAK rates, transportation charges vary only by weight and distance. These rates are well adapted to the automated procedures developed for use in GSA depots, which provide for maximum consolidation of numerous commodities in the same shipment, and for machine preparation of bills of lading and other shipping papers.

NEED FOR LEGISLATION

While rate simplification for Government traffic is progressing under section 22 of the Interstate Commerce Act, that statute limits special Government rates to reductions under commercial tariff rates. There is need to extend rate simplification into greater use of "averaging" methods which would produce new rate systems making both reductions and increases of commercial tariff rates, and the proposed legislation is necessary for this purpose. Such simplified systems should not, on the average or overall, result in increases of total charges to the Government. Use of such simplified rates should produce large savings to the Government in two ways:

(1) Savings in transportation costs from broad application of traffic management principles to Government procurement and shipping, made possible by ready access to rate data and information without laborious and expensive rate research in tariffs; and

(2) Savings from reductions in overhead costs to the Government involved in handling of commercial tariff rate complications.

Common carrier rate data has numerous uses for Government agencies. Rates are needed in evaluation of cost feasibility studies, such as reclamation projects. Rates enter into determination of site locations for Government warehouses and other installations, and into planning for purchase, warehousing, and distribution of supplies. Rates are used to determine values of Government property in terms of market prices at distant cities. Rates are necessary in evaluation of bids for Government contracts and determinations whether to buy f.o.b. origin or destination. Rates are utilized in determinations of economical transportation routes, lowest-cost type of carrier to be selected, and the most economical ports of entry or export. Rates form the basis for committing appropriated funds for costs of transportation involved in Government transactions. Rates must be reviewed to determine whether negotiations are justified to obtain reasonable reductions. All of these needs are in addition to determinations of the actual charges for shipments and for audit of freight bills.

The possibilities for savings in these areas are enormous. The fiscal year 1963 budget of the Federal Government shows estimated expenditures of more than $2.6 billion for "Transportation of things." This amount is only part of the Government's freight costs, because the figures do not include freight charges on commodities shipped to or from the Government by contractors which include their freight costs in delivered prices or in contract performance expenses. In addition, there are large overhead costs in Government operations involved in paperwork handling of the complicated transactions involved in transportation of Government freight. Savings in costs to the Government are possible in all these areas by means of traffic management techniques which could be applied broadly to Government operations through use of simplified rates. Savings of only 1 percent in total budget estimates for freight transportation would be more than $25 million per year. Savings to this extent are possible through full use of traffic management applied to Government use of transportation.

The bill provides that the Government may negotiate and contract for simplified rates. From this authorization simplified rates would be produced through joint efforts and negotiations of both the carriers and the Government. By the contracts, the parties would agree to charges under the simplified rate schedules, regardless of the commercial rates, thereby providing certainty in the simplified rate structure and incentive for establishment of rates advantageous to the Government.

NATIONAL DEFENSE EMERGENCY NEEDS

A national defense emergency situation could develop to a point where the complicated commercial tariff system would become an impediment to emergency transportation. Under extreme emergency conditions, the complicated commercial tariff system undoubtedly would be abandoned as unworkable. On the other hand, a simplified

system of rates for Government traffic, adaptable to emergency conditions, could go far to expedite transportation actions to meet such situations.

PRIMARY PURPOSE OF RATE SIMPLIFICATION

The primary purpose of rate simplification is that of enabling application of traffic management to Government transportation on broad overall bases in lieu of the present limited and shipment-by-shipment methods now required by the complexities of the tariff system which necessitate handling of problems on commodity-by-commodity and point-to-point bases.

Should the proposed legislation be enacted, GSA would proceed to develop with the common carriers, on an experimental basis, methods of applying simplified rates which would be advantageous to the Government in terms of economy, efficiency, and service.

The General Services Administration is not only in complete accord with section 9 of H.R. 11584, but also with the other sections of the bill.

In closing, I wish to make the following brief comments concerning the remaining sections of H.R. 11584:

SECTION 2 OF THE BILL

Section 2 of the bill would authorize simplified rates upon voluntary agreement of shippers and carriers. This proposal would extend to commercial shippers substantially the same relief as provided for the Federal Government in section 9.

SECTION 3 OF THE BILL

Section 3 of the bill would forbid railroads to discriminate against any shipper or carrier tendering loaded or empty vehicles for transportation. This proposal would clarify and extend the availability of piggyback services for Government transportation.

SECTION 4 OF THE BILL

Section 4 of the bill would provide regulation of joint rates of carriers now subject to separate regulation of the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission. The purpose of this section is to encourage joint rates, fares, and charges between carriers of all modes of transport. This objective would be to the advantage of the Government as a shipper.

SECTION 5 OF THE BILL

Section 5 of the bill would authorize the ICC to make cooperative agreements with the States to enforce provisions of the Interstate Commerce Act relating to highway transportation. Such legislation would be desirable, particularly in safety of operation of motor vehicles.

SECTION 6 OF THE BILL

Section 6 of the bill would increase penalties applicable for violation of part II of the Interstate Commerce Act. The purpose is to improve enforcement of the act.

SECTIONS 7 AND 8 OF THE BILL

Sections 7 and 8 of the bill apply to air carriers the reparation provisions applicable to rail and water carriers under the Interstate Commerce Act, and which would be applied to motor carriers and freight forwarders should S. 676 be enacted. (See also S. 1283, H.R. 2765, H.R. 5596.) The provisions of this latter bill were proposed to Congress by GSA. The reparations provisions give relief to persons damaged because of violations of the regulatory statute on a retroactive basis. Such provisions are justified to protect users of transportation services from unreasonableness of carrier-made rates which are not adjusted by the carriers to meet consumer needs when transportation services are used.

SECTIONS 10 TO 13 OF THE BILL

Sections 10 through 13 of the bill transfer to the Secretary of Commerce the responsibilities of guarantee of loans to air carriers and railroads. As this responsibility involves promotion of carrier financing, rather than of regulation, it is a function properly assignable to the Department of Commerce.

This concludes my prepared statement on these bills, Mr. Chairman. However, I have with me today Deputy Commissioner, Mr. Malcolm D. Miller, and we shall be happy to answer questions which you or members of your committee may wish to ask.

The CHAIRMAN. Thank you, Mr. Conrad.

Mr. Mack, any questions?

Mr. MACK. Not at this time, Mr. Chairman.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Thank you, Mr. Chairman.

Briefly, Mr. Conrad, do you feel that this would expedite the work of the Interstate Commerce Commission in establishing rates, and would take some of the time lag out of it?

Mr. CONRAD. We are of that opinion, sir.

Mr. SCHENCK. Do you see any inference or effort in this legislation to do away with the Interstate Commerce Commission in the job of setting rates?

Mr. CONRAD. No, sir.

Mr. SCHENCK. That is all I have, Mr. Chairman.

The CHAIRMAN. To abolish the Interstate Commerce Commission?

Mr. SCHENCK. I wondered if that was a part of the purpose behind this proposed legislation.

The CHAIRMAN. I would be very much interested if it were, but I haven't had any indication that there was any such thought here.

Mr. SCHENCK. Mr. Chairman, I have heard such a suggestion mentioned. That is the only reason I asked the question.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Yes; one.

Mr. Conrad, your entire statement seems to illustrate the advantages to the Government by eliminating the minimum rate as included in the bill.

I am wondering, because Mr. Hodges, the Secretary of Commerce, yesterday said that this bill was for the benefit of the railroads and the common carriers. I am wondering where that point is, if you drive your rates down to a point where they are below cost, where is the relief to the common carriers?

I would like to go into that subject a little bit with you.

Mr. CONRAD. If I may address myself to the first part of your question, we are presenting our testimony here only in the capacity of the Government's interest as a user of the transportation service itself. This is the only purpose of our appearance.

Secondly, with reference to the second portion of your question, and while I am not sure that I can answer it, I can assure you that we have no desire to participate in any movement which would drive transportation costs or drive transportation rates below the cost which the industry is experiencing in providing the particular transportation facility involved.

Mr. YOUNGER. I just wanted to clear that up in the record, because one might very well gather from your statement that you are primarily interested in driving these rates down, and the great saving to the Government might be detrimental to all of the common carriers.

What we are trying to do is strike some balance and make sure that whatever the Government does, that they don't go into the field and pit one mode of transportation against another, to a point where they are carrying Government goods at a loss.

Mr. CONRAD. Congressman, we would be extremely pleased to provide or participate in the development of a rate structure which is geared to the cost of the transportation industry, including a reasonable amount for the profit which they are entitled to earn.

But I want to reemphasize, if I may, respectfully, that we do not intend, nor would we ever wilfully participate in, any movement to drive transportation rates below the costs which the industry itself is experiencing in providing the transportation facility.

Mr. YOUNGER. That is very fine, because I would like to see come out of this transportation legislation a bill which will permit every mode of transportation to take advantage of all of its inherent advantages for the benefit of the public and the Government.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Conrad, should any transportation company propose rates which had for its purposes driving its competition out of business, the antitrust laws would probably be applicable, at least they could be if that situation came about, is that not right?

Mr. CONRAD. That is correct.

The CHAIRMAN. In the second place, any responsible transportation company, in carrying on its own business, would not propose and offer a rate that would obviously put it out of business because of the economic situation a rate that could not meet and have good business. If they did that they ought to have their heads examined, is that right?

Mr. CONRAD. We find very little indication of different members of the transportation industry attempting to operate at or receive revenues that are less than their out-of-pocket costs.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. I am sorry I missed part of your statement, Mr. Conrad, but I have read it and it is a very interesting statement. I am glad you are interested in saving the Government money.

One of the questions I have about the legislation is whether or not you are going to save people money who are trying to buy these farm commodities, such as people who have cattle and people in the turkey and chicken businesses, and people of similar trades who, last year, were trying to get some feed grains out of the Midwest, when the freight rates were so prohibitive that they couldn't get the feed grains, and they were in the warehouses out there at a commodity support price.

So we had plenty of grain and plenty of need, and we couldn't get them together because of transportation costs.

In your opinion, will this help those people?

Mr. CONRAD. You are referring to H.R. 11583?

Mr. HEMPHILL. Yes.

Mr. CONRAD. And as I indicated on page 2 of my statement, we definitely feel that through the introduction of increased competition in this particular area of movement of agricultural and bulk commodities, that there would be a reduction in transportation costs which would be beneficial to the shipper and the consumer of the product involved.

Mr. HEMPHILL. I had given to me an illustration of certain commodities which presently had a rate of $10.65. If this H.R. 11583 went through, the railroads could ship the commodities and benefit the farmers involved for something like $3.90, and still make a profit.

Is that the intent of this bill, to make sure that the railroads can do this and still make a profit and still serve the public, in your opinion?

Mr. CONRAD. The intent of the bill is, as we interpret it, to extend to the rail industry the same economic environment which exists with reference to other modes of transportation industries in the movement of these commodities.

Mr. HEMPHILL. Such as barges and some of these trucks?

Mr. CONRAD. That is correct; yes, sir.

Mr. HEMPHILL. We call it down home "bird-dogging," I believe. Once a trucker goes down—well, he follows the produce market production. Then he gets a load and he brings it into a particular area, then of course the railroad can't compete because they can't change their rates, but he can change his rates.

So do you think it is fair to the regular trucking lines, freight forwarders and all others, that this competition be allowed?

Mr. CONRAD. Yes, sir.

Mr. HEMPHILL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Conrad, in your statement I observe that you state that 76 percent of the Government's rail carload shipments, I believe you said—is that true or is it the total?

Mr. CONRAD. This is just the railroad shipments, Mr. Chairman.

The CHAIRMAN. Freight charges I believe you mentioned a figure of $130 million plus. I had it awhile ago. Do you mean by that that all of the 76 percent is now moving under published tariff?

Mr. CONRAD. Mr. Chairman, most of this is moving under published tariffs, but not all of it.

The CHAIRMAN. That would leave 24 percent of the Government movement that would be applicable under section 22 rates, then?

Mr. CONRAD. They would be both section 22 and published tariff rates, Mr. Chairman. These statistics do not represent a division between section 22 rates and other rates. This is a composite of the total rail carload shipments.

The CHAIRMAN. I don't know that I get the distinction. You used the term "76 percent." Now you say that most of the—I just wish to clarify it a little bit, so I can get some idea of what the facts are.

Mr. CONRAD. Mr. Miller would like to address himself to that, with your permission, Mr. Chairman.

The CHAIRMAN. All right, sir.

Mr. MILLER. This 76 percent consists of the bulk commodities and the agricultural commodities shipped by the Government, most of which would be under tariff rates. There are section 22 shipments in that 76 percent.

The other 24 percent would be what you might call manufactured and miscellaneous commodities which would not come within this proposed exemption. There would be traffic under that 24 percent of both section 22 traffic and commercial tariff traffic.

Mr. MACK. Then, Mr. Chairman, could I ask a clarifying question here?

The CHAIRMAN. Yes.

Mr. MACK. Then the Government is shipping 76 percent of the agricultural products.

Mr. MILLER. And bulk commodities. A large part of it is grain, a large part of it is coal, things of that sort.

Mr. MACK. Could you give us a further breakdown on that?

Mr. MILLER. It could be prepared; yes. We do not have it here.

Mr. MACK. Mr. Chairman, I would like to have that broken down, if they have it available.

Mr. CONRAD. We would be pleased to supply that for the record.

The CHAIRMAN. You may submit it for the record.

Are there any further questions?

Mr. MACK. I would like also, if possible, to have the percentage of the shipments under section 22.

Mr. MILLER. That can be obtained.

Mr. MACK. That was not included in your statement this morning.

Mr. CONRAD. We will be glad to supply that.

The CHAIRMAN. You may supply that information.

Mr. CONRAD. Yes, sir.

Mr. NELSEN. Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I would like also to have some information relative to section 22, the difference in costs of transportation as provided under section 22 as compared to regular rates, what the difference would be. You can supply it for the record if you wish. You don't have to answer the question now if you don't have the information. I would like to have it included in the answer to the question asked by Mr. Mack.

Mr. MILLER. We have a study already prepared which shows comparisons of section 22 rates with the prevailing commercial rate on the same commodity in the same territory for approximately the same distance.

Because comparisons sometimes are not entirely possible, simply because the traffic is different, these comparisons are limited to situations in which the comparisons are appropriate. In other words, the study compares like with like. We can submit that study if you so desire.

Mr. NELSEN. The thing that I had in mind, there was a good deal of discussion in the Agriculture Committee about surplus commodity credit grain shipped to feed deficit areas under this section.

I was just wondering how much the advantage was because of the difference in rate. This could, of course, create some very unfair competitive situations.

If that could be supplied for the record, what the difference in rates was in shipments under those terms, that is what I was interested in.

Mr. MILLER. The general conclusion of this study is that section 22 rates are about the same, on about the same level as the commercial commodity rate structure.

Mr. NELSEN. Could we have those figures?

Mr. CONRAD. Yes, sir.

Mr. NELSEN. Thank you.

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

Mr. MACK. Mr. Chairman, I have one further question.

With regard particularly to the grain, you move a lot of the Commodity Credit Corporation grain.

Mr. MILLER. GSA does not.

Mr. MACK. Does not?

Mr. MILLER. No, sir.

Mr. MACK. I am glad to know that. And this is handled by the Department of Agriculture?

Mr. MILLER. Yes, sir.

Mr. MACK. And of course you are not familiar with the arrangements that are made for the movement of that grain?

Mr. MILLER. Not in any detail. I know some facts but not well enough to be able to testify.

Mr. MACK. Would you be in a position to say whether or not this legislation would affect the cost of that grain? Would you be in a position to say whether or not the enactment of this legislation would affect the cost of moving that grain?

Mr. CONRAD. We believe, sir, that with the introduction of increased competition in this area it would have a tendency to lower the transportation costs that would be involved in the movement of the grain.

Mr. MACK. This would apply to the Department of Agriculture as well?

Mr. MILLER. Yes, sir.

Mr. MACK. Thank you very much.

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

Mr. CONRAD. Thank you, sir.

(The following information was submitted in response to questions of the committee:)

Government's rail carload shipments within the exemptions of H.R. 11583—traffic moving on commercial rates during 1960

Commodity class	Carloads	Revenue
Wheat	117,400	$42,854,100
Corn	55,100	16,599,600
Sorghum grain	38,800	10,625,600
Oats	4,100	1,155,800
Barley and rye	12,300	5,472,000
Rice	3,300	1,096,600
Cotton in bales	7,600	3,143,200
Soybeans	3,500	849,500
Lemons, limes, and citrus fruits, not otherwise specified	100	75,900
Oranges and grapefruit	200	156,900
Fruits, dried, dehydrated, and evaporated, not otherwise specified	200	204,400
Fruits and berries—fresh, frozen	150	199,600
Celery	100	70,100
Lettuce	300	207,700
Potatoes, other than sweet	1,300	340,100
Beans and peas, dried	400	116,200
Peanuts	400	85,000
Flaxseed	100	14,700
Seeds, not otherwise specified	100	36,300
Products of agriculture, not otherwise specified	1,200	565,300
Poultry, dressed and frozen	300	187,900
Anthracite coal, not otherwise specified	1,500	356,400
Bituminous coal	131,000	17,635,200
Iron ore	100	64,200
Zinc ore and concentrates	200	90,200
Ores and concentrates, not otherwise specified	2,000	710,600
Clay and bentonite	4,900	705,500
Sand, industrial	300	111,100
Gravel and sand, not otherwise specified	2,800	199,700
Stone and rock—broken, ground, and crushed	4,900	526,000
Fluxing stone and raw dolomite	100	12,100
Asphalt	150	43,600
Salt	450	149,400
Phosphate rock	300	97,200
Products of mines, not otherwise specified	500	143,900
Pulpwood	200	21,800
Rosin and turpentine	100	40,600
Gasoline	32,200	3,924,300
Fuel, road, and petroleum residual oils, not otherwise specified	2,300	324,800
Petroleum products, refined, not otherwise specified	650	226,200
Gases, other than petroleum, not otherwise specified	2,400	2,182,000
Linseed oil	100	51,200
Vegetable and nut oils, not otherwise specified	300	55,200
Oils, not otherwise specified	200	57,800
Chemicals, not otherwise specified	1,100	1,092,600
Sulfuric acid	600	225,400
Acids, not otherwise specified	800	531,900
Sodium (soda) products	350	228,400
Alcohol, not otherwise specified	1,800	1,253,700
Fertilizers, not otherwise specified	1,000	307,600
Tar, pitch, and creosote	100	30,700
Alloys for steel manufacture	1,500	394,500
Cement: Natural and portland	1,200	266,900
Lime, not otherwise specified	50	16,500
Scrap paper and rags	100	71,600
Scrap iron and scrap steel	1,100	295,500
Furnace slag	1,900	248,000
Waste materials for remelting, not otherwise specified	200	96,100
Waste materials, not otherwise specified	200	64,800
Total	446,600	116,909,700

Government's rail carload shipments within the exemptions of H.R. 11583—Traffic moving on sec. 22 rates during 1960

Commodity class	Carloads	Revenue
Peanuts	400	$91,800
Products of agriculture, not otherwise specified	1,000	323,200
Bituminous coal	180,900	13,764,700
Ores and concentrates, not otherwise specified	300	164,800
Stone and rock: Broken, ground, and crushed	200	54,800
Phosphate rock	1,900	874,200
Gasoline	10,400	1,123,600
Sulphuric acid	100	53,800
Acids, not otherwise specified	600	292,600
Sodium (soda) products	50	55,200
Alcohol, not otherwise specified	100	43,900
Alloys for steel manufacture	100	28,900
Lime, not otherwise specified	50	14,300
Total	196,100	16,885,800

Summary of Government's rail carload shipments, 1960

Type of shipment	Carloads	Revenue
Total Government shipments:		
Traffic moving on commercial rates	619,500	$206,719,800
Traffic moving on sec. 22 rates	221,700	41,795,100
Total	841,200	248,514,900
Shipments within the exemptions of H.R. 11583:		
Traffic moving on commercial rates	446,600	116,909,700
Traffic moving on sec. 22 rates	196,100	16,885,800
Total	642,700	133,795,500

Source: Railroad waybills covering Government traffic from the ICC's 1-percent sample, summarized by GSA. Data from the sample have been expanded to 100 percent. The number of carloads of commodities which do not always move in bulk was estimated on the basis of examination of copies of waybills on file with GSA.

The CHAIRMAN. Mr. George A. Dice, Director of Special Services Division, Department of Agriculture.

Mr. Dice, I observed you have a statement to present.

STATEMENT OF GEORGE A. DICE, DIRECTOR, SPECIAL SERVICES DIVISION, AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JAMES L. PEASE AND IVON W. ULREY, FREIGHT RATE SERVICE BRANCH, SPECIAL SERVICES DIVISION, AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE

Mr. DICE. Yes, sir.

The CHAIRMAN. Off the record.

(Discussion off the record.)

(The prepared statement of Mr. Dice follows:)

STATEMENT OF GEORGE A. DICE, DIRECTOR, SPECIAL SERVICES DIVISION, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee, my name is George A. Dice. I am Director of the Special Services Division of the Agricultural Marketing Service, U.S. Department of Agriculture. This Division has responsibility, among others, for administration of the provisions of section 201 of the Agricultural Adjustment Act of 1938 and section 203(j) of the Agricultural Marketing Act of 1946, which authorizes the Secretary of Agriculture to engage, on behalf

of the agricultural community, in matters affecting freight rates and services for agricultural commodities and farm production supplies.

I am here to express the Department's full support of H.R. 11583 and H.R. 11584, and to comment in some detail on the reasons for that support.

The interest of the Department, of course, is primarily in connection with transportation of agricultural commodities and farm production supplies. In the light of this interest, H.R. 11583 is the bill of primary concern to us. While we do endorse and support H.R. 11584, its provisions affect agriculture less directly. Therefore, my comments will be directed to the provisions of H.R. 11583 which are aimed at lessening of regulatory control over rates.

The Department's endorsement reflects our conviction that passage of H.R. 11583 would result in greater emphasis in transportation on the free operation of the forces of competition to set fair and reasonable rates and provide good service.

We believe the time has come when greater reliance on the forces of competition will not only markedly benefit the Nation's common carriers but will also benefit agriculture by extending to the railroads and the regulated highway and waterway carriers many of the same freedoms that some highway carriers, and most water carriers, now enjoy.

As is well known, the Department and producers and shippers of farm products and supplies stand pretty much united in their support of the various arrangements made in the transportation laws many years ago to allow these commodities to move in interstate commerce by highway and waterway at rates and charges and on delivery schedules agreed to exclusively by the shippers and carriers involved. These freedoms, we believe strongly, have benefited agriculture, the processors of these goods, and consumers of them.

While our primary interest is in maximizing net returns to producers, after payment of transportation costs, we are also interested in holding down processors' costs and the prices paid by consumers for these commodities. All of these factors influence the welfare of the Nation's farmers, in terms of prices they receive for what they sell, prices they pay for what they buy, and the size and location of the markets to which they can sell. We believe the arrangements made in the transportation laws in the past for the maximum geographical flexibility and freight charge flexibility in the movement of farm products and supplies have been absolutely essential. These arrangements have encouraged orderly and efficient transportation of these commodities, many of which are highly perishable. Without these arrangements, we are confident that the farmers' incomes, by and large and on the average, would be lower than they are.

H.R. 11583 would permit the railroads and the regulated highway and inland waterway carriers to adopt any minimum rates suitable to them as individual carriers of agricultural and bulk commodities. To our way of thinking, this all adds up to greater equality of opportunity for carriers and even better transportation for agriculture.

Representatives of agricultural interests would have been very much disturbed if, instead of moving in the direction of freedom from regulation, proposals had been made to remove from the transportation laws the arrangements for flexibility and efficient transportation I have referred to.

Such a removal would, of course, have been one possible way of reducing the existing competitive inequalities. As indicated in the President's transportation message, a change in the direction of more public regulation would not be the preferable way to eliminate inequalities among carriers.

I would like at this point to provide some statistical evidence as to the importance of transportation to agriculture and also the substantial importance of agriculture to the transportation industry. Both of these factors influence our support of this legislation.

We, in Agriculture, have for many years attempted to determine how much is spent for transporting agricultural products each year. Our latest calculations indicate that expenditures by shippers for transportation of farm food products for civilian consumption by rail and truck, including private trucks, are well over $4 billion annually. This, we calculate, is about four times the amount spent for this transportation service in 1944. To be more precise, our preliminary figure for 1960 is $4.06 billion. For 1944 it was $1.11 billion. The bill has increased every year from 1944 to 1960 except for 1955 and 1960 when the figure fell moderately below the preceding years.

This huge sum of $4 billion reflects the importance of transportation of farm food products to the Nation's carriers. Our estimates show—and we believe they are conservative ones—that the railroads get about 20 percent of all their

tonnage and operating revenue from movements of commodities directly related to agriculture, commodities of the type that would be freed from minimum rate regulation by passage of H.R. 11583. This figure of 20 percent includes movement by railroads of bulk items and items motor carriers are permitted to move now free of rate regulation. It does not include rail traffic that would be affected by these bills that is of indirect interest to agriculture, such as petroleum and building supplies.

Figures for all highway transportation comparable to those I have just cited for railroads are not available but based upon ICC statistics supplied by highway carriers filing commodity statistics to that agency, a comparable percentage for these certificated interstate for-hire highway carriers would run in the neighborhood of 5 percent. We have been unable to develop a comparable figure for water carriers.

When related to tons and dollars involved for these carriers types, these percentages are even more impressive. For example, for railroads the tonnage is approximately 250 million annually. The dollar revenue derived by these carriers from this traffic exceeds $1.6 billion annually.

For the motor carriers I referred to, the tonnage figure is in excess of 7 million and the revenue is at least $80 million.

While these estimates are not precise, it is reasonable to conclude that passage of H.R. 11583 would free from minimum rate regulation by the ICC from one-third to one-half of all the traffic represented by the $4 billion transportation bill I mentioned earlier. This is why we are so vitally interested in this proposed legislation.

Carriers of farm products—and to some extent farm production supplies—have a particular need for freedom from geographical restrictions to function effectively. They need to be able to reach all sources of traffic, to move over all possible routes, to carry all commodities, and to serve destinations everywhere.

Carriers must also be free to adjust service charges to reflect the supply of transportation facilities on the one hand and the shippers' needs for such service on the other.

These transportation needs arise from the influence of the weather, the location of production areas and the location of markets, as well as the degree of perishability of the product itself. All of these factors add up to a set of genuinely peculiar transportation requirements for agriculture.

In addition to geographic flexibility, agriculture needs rate flexibility beyond mere variations in aggregate weight of shipment in a car, truck, or barge. It needs low rates reflecting slow unscheduled service as well as premium rates reflecting fast round-the-clock service with minimum transit time. Variations in service required in agriculture are such that application of the present regulatory process for tariff approval does not adequately meet the needs of agriculture.

Transportation needs of agriculture also vary in terms of types of equipment required. Some foods, like peaches, require in-transit refrigeration; others, like grain, do not. Both peaches and grain require specialized equipment to some extent but peaches require much more expensive equipment and such equipment is not eligible for as many uses by reason of the higher costs of the equipment itself.

Livestock and poultry are also carried in specialized equipment. So are milk and other edible liquids.

In meeting the need for geographic flexibility in transporting agricultural commodities, motor carriers have had a significant advantage. Similarly, in meeting the need for rate flexibility, both motor and water carriers have had advantages over the railroads.

Passage of H.R. 11583 will in no way lessen the ability of motor carriers to provide flexibility as to origins and destinations served, as to rates, and as to the use of specialized equipment designed to serve agriculture's needs. In fact, for the carriers subject to public regulation, their flexibility would be extended and their opportunity to haul bulk items would be expanded both in terms of the number of items and in the way they could be handled. For example, a bulk commodity and an agricultural commodity could be hauled in separate trailers by the same tractor. Nor will this bill, if enacted, in any way limit the ability of water carriers to provide the type of service for which they are so well adapted. As a matter of fact, the provisions of this bill tend to expand opportunities of these carriers to seek traffic at rates not subject to minimum rate regulation.

Insofar as the railroads are concerned, however, their opportunities to com-

pete with other carriers for traffic movements for which their equipment, service, and cost characteristics are well adapted, will be significantly improved. For example, they will be in position to adjust rates to compete with either trucks or water carriers in the movement of agricultural commodities and those bulk commodities adaptable both to rail and water transportation.

Also, the ability of the railroads to expand their geographical flexibility will be enhanced by virtue of the ability this bill would provide them to establish truck-rail or truck-rail-truck service, using either their own trucks or, by joint arrangements, independently owned trucks.

While our comments here today are general in nature and deal almost exclusively with the very desirable objectives of this legislation and not with its technical details, I should like to assure the committee of the desire of the Department to be helpful in resolving differences in points of view and in solving any problems which may arise. Transportation specialists in the Department, including commerce attorneys in our General Counsel's Office, are available to consult with or assist members of the committee staff in any manner desired. We hope you will feel free to call on them for help.

Mr. DICE. Mr. Chairman, the Department wholeheartedly supports both H.R. 11583 and H.R. 11584. We are of course primarily interested in the transportation of agricultural commodities and farm supplies, and because of that interest H.R. 11583 is of primary interest to us.

We do endorse H.R. 11584, but I would like to direct my comments primarily to the other bill because it is of greater importance to agriculture and affects it more directly.

We very strongly endorse the principle of lessening of regulatory control over rates, and we do believe that the enactment of H.R. 11583 would put greater emphasis on the operation of the forces of competition, and less on the regulatory process.

We have for a number of years in the Department attempted to determine the cost of transportation to agriculture. This, of course, reflects the importance of agriculture to the transportation industry. The cost of transporting farm food products for civilian consumption in 1961 was about $4.06 billion. This was about four times the level in 1944 when our statistics series was begun on the costs of transportation.

This transportation bill for agricultural commodities has increased each year with two exceptions, 1955 and 1960, when it fell below the preceding year. We think this $4 billion transportation bill very clearly reflects the importance of the transportation of food products to the transportation industry.

As nearly as we can estimate, about 20 percent of all of the tonnage hauled by the railroads is made up of agricultural products and supplies which would be freed from minimum-rate regulation by H.R. 11583. A similar estimate for highway carriers would indicate that, for those highway carriers that report to the Interstate Commerce Commission, a comparable figure would be 5 percent.

In the case of the rail industry, the estimates show that about $1.6 billion annually is derived by the railroads from the transportation of commodities of the type which would be freed from minimum-rate regulation by this bill, and about $80 million represents the value of the transportation of commodities by motor carrier, which would be freed from minimum-rate regulation by this bill.

We feel very strongly that the movement in the direction of less regulation is far preferable to the other alternative which would exist for equalizing competitive opportunity among carriers.

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The representatives of the farm community would have been quite upset, I am sure, if the proposal had been in the other direction, to achieve this equality by repeal of the provisions which are in the transportation laws for the exemption from economic regulation of various agricultural and bulk commodities.

We think that by enactment of this legislation, that the ability of the motor carriers to provide the service, the flexibility with respect to service of geographic areas and the flexibility with respect to rates would still be preserved.

Similarly, we believe that the provisions that enable water carriers to utilize their particular characteristics in the transportation of agricultural commodities would continue to be available and that in addition the railroads would have considerably greater ability to compete for the traffic which these other carriers are now transporting free of rate regulation.

Mr. Chairman, I believe that covers the highlights of our position. We do have available in the Department, Mr. Chairman, some people who have spent a great many years in transportation work, including some people in the office of our General Counsel, and if these folks can be of any help to the committee or the committee's staff at any stage in dealing with this legislation, we hope you will feel free to call on them.

The CHAIRMAN. Mr. Dice, I want to compliment you. Your entire statement has been included in the record, and I have gone through the statement with you as you have given a résumé of it. No. 1, it really shows that you knew your statement when you came here.

Mr. DICE. Thank you, sir.

The CHAIRMAN. Because you have given a very fine résumé of it. I think it about included everything in the résumé, in the brief analysis as I observed that you have in the statement, and I want to thank you for it.

Mr. Mack, do you have any questions?

Mr. MACK. Yes, Mr. Chairman.

This rather staggering figure—I presume that is much greater than the expenditures of the General Services Administration.

Mr. DICE. Yes. However, that figure of $4 billion, sir, is not intended to represent a Government cost in the movement of commodities.

Mr. MACK. Oh, I see.

Mr. DICE. This is a cost of movement of these farm food commodities for civilian consumption by all carriers for all shippers.

Mr. MACK. How much does the Department of Agriculture spend in the movement of farm commodities?

Mr. DICE. I don't have that figure, sir.

Mr. MACK. I wonder if you can supply that for the record.

Mr. DICE. I believe we probably can develop such a figure, and we certainly will try, and be glad to submit it.

Mr. MACK. And you handle the surplus grain, I presume?

Mr. DICE. That is handled in another service of the Department of Agriculture from the one that I represent.

Mr. MACK. Is that department going to present testimony before this committee?

Mr. DICE. The views which I have expressed represent the views of the Department as a whole, sir.

I have just been given an estimate of the amount spent on transportation of Government-owned commodities, $160 to $170 million, roughly, in that area, annually.

Mr. MACK. Is that on all carriers?

Mr. DICE. Yes, sir. No, I am sorry; it does not include the cost of offshore shipments by ocean carrier.

Mr. MACK. This bill which you are supporting, I want to join the chairman in commending you on a very fine statement concerning it; this bill would substantially reduce the cost of moving all agricultural products; isn't that correct?

Mr. DICE. Sir, I don't know whether it is possible to predict the extent to which costs of movement would be reduced.

To the extent that rail rates are reduced to meet competition, and this would be made possible through the elimination of minimum rate regulation in this bill, to that extent then there would be a saving, not only to the Government, but to all shippers of agricultural commodities.

Mr. MACK. I have no further questions.

The CHAIRMAN. Are there any further questions by members of the committee? Mr. Younger.

Mr. YOUNGER. A brief one. I would like to have the record show that you subscribe and your Department subscribes to the theory of compensatory rate, if the bill passes.

Mr. DICE. Yes, sir; we believe rates should be compensatory.

Mr. YOUNGER. Can you furnish us the cost of the movement of the grain out of the Estes warehouses to wherever it is going now?

Mr. DICE. That figure won't be available, of course, sir, for quite a considerable period of time, because the loadout is being accomplished gradually.

Mr. YOUNGER. Just one other question. Is any of that grain moving to other warehouses, or is it moving into the trade?

Mr. DICE. I think the objective is that to the extent possible that grain is moving out of there either for export or to meet sales under the feed grain program.

Mr. YOUNGER. You are not sure that some of it isn't moving to other warehouses?

Mr. DICE. I don't believe any is moving to other warehouses, but I am not certain, sir, and I will be glad to get that information and supply it for the record.

Mr. YOUNGER. I would appreciate it.

Mr. NELSEN. Would the gentleman yield? I would rather have the figures to show what the cost was to move it into Billie Sol's elevators.

(The following material was subsequently furnished for the record:)

DEPARTMENT OF AGRICULTURE,
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: At the time Mr. George A. Dice, Director, Special Services Division, Agricultural Marketing Service, testified before your committee in support of the transportation bills H.R. 11583 and H.R. 11584, some questions were asked by committee members to which the answers were not readily available and Mr. Dice offered to furnish them for the record.

He was asked what the transportation bill for the Department is annually and gave an estimate of $160 to $170 million. Following are the amounts spent for domestic transportation of commodities under the price support and surplus removal programs:

1956	$187,646,486	1959	$164,434,359
1957	186,382,306	1960	79,984,105
1958	173,279,896	1961	156,351,593

The smaller amount for 1960 was due to the poor grain harvest which required only about half as much reconcentration of grain stocks from country warehouses as normally.

Another question related to whether the grain stocks being moved from the Billie Sol Estes warehouses are being shipped to other warehouses. So far, loading orders have been issued for about 9 million bushels. None of this grain is being shipped to other warehouses for storage. It is being loaded out to port elevators for use on export programs or is being sold for domestic consumption, f.o.b. cars or trucks, at the loading-out warehouses. The exact cost of moving this grain will not be known for some time or until it has all been moved. However, due to the plan of disposal, it is reasonable to assume that the only additional cost will be the ¾-cent-per-bushel loading-out charge.

Mr. Nelson was interested in the cost of getting the grain into the Estes houses. At my request, the General Accounting Office examined loading orders and supporting documents of CCC-owned grain reconcentrated into four Estes warehouses. The result of that examination, copy of which is attached, indicates that on 531.5 million pounds reconcentrated into the warehouses, only about $650 in transportation costs might be classified as higher than the possible minimum. Actually the grain was moved into these warehouses via routes which will permit it to be shipped to ports for use on export programs and no added costs were incurred which would not have been incurred had it moved to other eligible warehouses.

We believe the foregoing fully answers the questions posed. We will be happy to reply to any other unresolved questions.

We appreciate the opportunity you gave us to express our views on these transportation bills.

Sincerely yours,

JOHN P. DUNCAN, Jr., *Assistant Secretary.*

Enclosure.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 29, 1962.

The Honorable SECRETARY OF AGRICULTURE.

DEAR MR. SECRETARY: By letter dated May 25, 1962, Mr. John P. Duncan, Jr., Assistant Secretary, Department of Agriculture, requested that we examine the loading orders and supporting documents relating to shipments of CCC-owned grain reconcentrated by the Kansas City and Dallas Agricultural Stabilization and Conservation Service (ASCS) Commodity Offices into the four warehouses listed below, to determine whether the shipments as indicated in the loading orders would result in higher net transportation costs than would have been incurred if reconcentration had been made at other warehouses over alternative routes.

Elevator code:	*Elevator and location*
9-7663	United Elevators, Plainview, Tex.
9-8068	Palo Duro Grain Co., Tulia, Tex.
9-8126	Allied Elevators, Hereford, Tex.
9-8105	McSpadden Grain Co., Lubbock, Tex.

The permanent Subcommittee on Investigations of the Committee on Government Operations, U.S. Senate, furnished for our examination 105 loading orders issued by the Kansas City ASCS Commodity Office, involving approximately 502 million pounds of transit tonnage, and 14 loading orders issued by the Dallas ASCS Commodity Office, involving approximately 29.5 million pounds of transit tonnage. These loading orders cover the reconcentration of this quantity of CCC-owned grain into the warehouses located at Plainview, Tulia, and Lubbock, Tex., reported to be operated by Billie Sol Estes and/or associates, from May 1959 to September 1961. None of the loading orders covered reconcentration of grain into the Allied Elevators at Hereford, Tex.

Our review consisted of a comparison of freight costs for the transit tonnage applied by the two ASCS commodity offices to the reconcentration movements, with subsequent shipment to Galveston, Tex., as shown in the loading orders and supporting documents, with freight costs available for the same tonnage via alternative routes.

Our examination disclosed minor differences in rates applicable via alternative routes, resulting in higher net transportation costs of approximately $650 for 6,679,000 pounds of grain out of the approximate total of 531.5 million pounds of grain reconcentrated into the warehouses named above.

A copy of this report is being furnished today to the permanent Subcommittee on Investigations of the Committee on Government Operations, U.S. Senate.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

The CHAIRMAN. Mr. Dice, thank you very much. I am sorry that the time is running short on it, but we are glad to have your statement, and the views of the Department of Agriculture on this important subject.

If there is anything else that the committee might wish, we will give you ample notice.

Mr. DICE. If you wish to ask further questions I will be available.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning, at which time we will hear the Department of Justice and the Civil Aeronautics Board.

I would like to ask our guests if they will give us the room as expeditiously as you possibly can.

(Whereupon, at 10:55 a.m., the committee adjourned, to reconvene at 10 a.m., Friday, June 29, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

FRIDAY, JUNE 29, 1962

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

The committee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Hon. Walter Rogers of Texas presiding.

Mr. ROGERS of Texas. The Committee on Interstate and Foreign Commerce will come to order for further consideration of the bill, H.R. 11583, by Mr. Harris of Arkansas, to exempt certain carriers from minimum rates, bulk commodities, agricultural commodities, and passengers; and H.R. 11584, by Mr. Harris of Arkansas, through service, joint rates, penalties, mail transportation, rate experimentation, and transfer air and rail loan guaranty to Department of Commerce.

Our witnesses this morning are Mr. Loevinger of the Department of Justice, and Mr. Boyd of the Civil Aeronautics Board.

Mr. Loevinger, Assistant Attorney General, Antitrust Division, the Department of Justice, is scheduled to appear first.

Mr. Loevinger, if you will come forward, we will be glad to hear you.

STATEMENT OF LEE LOEVINGER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. ROGERS of Texas. Mr. Loevinger, it is nice to have you before the committee and you may proceed.

Mr. LOEVINGER. Thank you very much, sir. I appear today at the chairman's request to present the views of the Department of Justice on H.R. 11583—a bill to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers. The Department recommends enactment of this legislation.

H.R. 11583 implements, in part, the legislative proposals contained in President Kennedy's message on transportation delivered to Congress on April 5, 1962. The bill proposes to exempt from minimum rate regulation the transportation of bulk commodities and certain agricultural and fishery products by those carriers which are subject to the jurisdiction of the Interstate Commerce Commission, the Federal Maritime Commission, the Civil Aeronautics Board. The transportation passengers by carriers subject to the jurisdiction of the Interstate Commerce Commission and the Federal Maritime Commission also would be exempt from miniumum rate regulation.

The bill does not withdraw from the Civil Aeronautics Board authority to impose a minimum level of rates for the transportation of passengers by air carriers. Existing law applicable to air passenger fares remains in effect, as qualified by the congressional declaration of minimum rate policy which provides, as follows:

> It is the intent of Congress that regulatory control over minimum passenger fares of the air carriers be reduced to the greatest extent consistent with the public interest, so that business incentives and competition may play a more influential role in the pricing of air transportation.

The obvious thrust of this legislation is to replace regulation with competition. This would encourage increased independence of emphasis upon individual initiative in meeting changing conditions in transportation. In place of the provisions of the various regulatory statutes which authorize the regulatory agencies to determine the reasonableness of minimum rates, fares and charts, the bill would substitute the standards of the antitrust laws. The definition of "antitrust laws" contained in section 1 of the Clayton Act is incorporated by reference in the bill.

The basic objective of H.R. 11583 is to equalize competitive opportunities among carriers by extending freedom from minimum rate control to certain carriers presently subject to such control. Under existing law common carriers by motor vehicle are not subject to such rate control in the transportation of agricultural and fishery products and water carriers under certain circumstances are exempt from such rate control for the transportation of bulk commodities. H.R. 11583 would be a move toward placing all modes of transportation on the same footing in competing for the transportation of these types of traffic.

H.R. 11583 provides that—

> if any carrier or carriers * * * (exempted from minimum rate regulation) shall enage in any act, practice, or conduct, or be a party to any * * * combination, or conspiracy with respect to any rate, charge, or fare for transportation of (bulk commodities, agricultural and fishery products, and passengers) * * * in violation of the provisions of the "antitrust laws" * * * such carrier or carriers shall be subject to the proceedings and penalties specified in such laws * * *

However, it specifically excepts from the application of the antitrust laws the concerted making of joint rates applicable to through routes.

The bill also appropriately amends relevant regulatory acts to make inapplicable to the transportation of passengers, agricultural and fishery products, and bulk commodities the provisions under which regulatory agencies are permitted to grant an exemption from the operation of the antitrust laws. For example, under section 5a of the Interstate Commerce Act (49 U.S.C. 5b) carriers are granted antitrust immunity for concerted ratemaking if such ratemaking conforms to Commission approved rates procedure agreements. The proposed substitution of the antitrust laws to test ratemaking conduct would have the effect of prohibiting carriers from jointly establishing rates and of compelling each carrier in making local rates—those rates which apply on the lines of a single carrier—to exercise its own managerial discretion, independent of collaboration with competitors. However, with respect to the making of joint rates which apply to traffic moving over more than one railroad between origin and destination, H.R. 11583 provides that the bill should not be construed to

prohibit a carrier from establishing reasonable through routes or establishing jointly with other carriers the rates which will be applicable on such through routes. This provision for joint ratemaking by end-to-end carriers is consistent with traditional concepts of ratemaking for through routes—a practice which the Interstate Commerce Act authorizes the Commission to require of rail carriers.

In addition to the substantive safeguards contained in sections 1, 2, and 3 of the Sherman Act (15 U.S.C. 1, 2, 3) against the elimination and destruction of competition by concerted ratemaking and by unilateral action of a carrier monopolizing or attempting to monopolize transportation services, the instant bill will operate to provide a significant procedural advantage to a carrier injured or threatened with injury by such practices. The bill provides that carriers freed of minimum rate regulation shall be subject to the proceedings and penalties specified in the "antitrust laws." The definition of antitrust laws is that contained in section 1 of the Clayton Act which, of course, includes the Clayton Act itself. Section 16 of the Clayton Act (15 U.S.C. 26) permits any person to sue for injunctive relief in any court of the United States against threatened loss or damage for a violation of the antitrust laws. The withdrawal from the Interstate Commerce Commission of jurisdiction over the regulation of certain minimum rates will permit a carrier who might be injured by a ratemaking practice violative of the antitrust laws to seek a district court injunction against the practice. This will permit prompt recourse to the courts to bar anticompetitive agreements or monopolistic practices.

The Department of Justice endorses the objective of placing greater reliance upon the interplay of competitive forces among carriers, rather than upon the restraints of regulation, in order to achieve the objectives of a rational national transportation policy. The Department is in favor of the enactment of this bill.

In connection with H.R. 11584 on which the committee is also hearing testimony, the Department defers to the Commerce Department for presentation of the administration's proposals contained in that bill since the provisions of that bill do not directly relate to our enforcement responsibilities under the antitrust laws.

Mr. ROGERS of Texas. Thank you, Mr. Loevinger.

Mr. Hemphill, do you have any questions?

Mr. HEMPHILL. Yes. Thank you, Mr. Chairman.

I want to thank you for this statement. It is concise and raises a lot of questions and answers some. I believe you said that you are going to substitute the present regulatory powers of the Interstate Commerce Commission, the Federal Maritime Commission, and the Civil Aeronautics Board by using instead, for the purpose of enforcement, or guidance, or administration or correct the antitrust laws. Is that what I understand that statement to be?

Mr. LOEVINGER. No, sir; I don't believe that this is quite a fair statement. What we are substituting for the regulatory powers of agencies is the free play of the market. The role of the antittrust laws is to maintain the free play of the market, to maintain competition in the market, and the free play of market forces against destructive, predatory, or monopolistic practices.

Mr. HEMPHILL. The reason I ask this is I understand as a lawyer what you are saying, but if this bill comes out we have to explain it to a lot of people who aren't lawyers. Suppose a single carrier, rail or barge or truck, or I believe even the airlines are included, was running a bulk commodity service from, say, Homestead, Fla., where they have great trucking interests, into New York. As I understand the provisions of this bill, if it is single carrier it has the right to make the rates it wants.

Mr. LOEVINGER. Right to make the minimum rates, yes, sir.

Mr. HEMPHILL. The minimum rates. And if it wants to get the business it can trade with a number of people and agree to how long one commodity, say, at below cost and to haul other commodities at a profit. Can it make that trade and not violate any law?

Mr. LOEVINGER. The question is too abstract to be answered in those terms, sir. Actually the present practice in the transportation industry, as I understand it, really not only permits, but in effect requires that some commodities be hauled below cost and others be hauled at very much above cost.

Incidentally, I would suspect that this has relatively little effect upon air carriage.

Mr. Boyd is here and of course can go into this further, but air carriers by and large don't carry a great many of these agricultural commodities, at least in terms of bulk, or many of the bulk commodities. However, if a carrier undertook to haul below cost for the purpose of driving a competitor out of business, it seems to me this would be monopolistic. This would be subject to private suit or to Government suit under the antitrust laws. The mere fact that the fare or charge is not directly related to demonstratable cost, as I understand rate regulation in the transportation industry, has never been thought to be of controlling significance. Today the whole structure of freight charges is based upon the so-called value of service theory, and if you haul something that is valuable you charge a great deal more than if you haul something that isn't valuable, and many of the bulk commodities that are not very valuable are probably hauled below cost today under the present regulatory scheme.

Mr. HEMPHILL. Perhaps I misunderstood your statement. On page 2 in the third paragraph, I believe the third sentence of that paragraph you say:

> The proposed substitution of the antitrust laws to test ratemaking conduct would have the effect of prohibiting carriers from jointly establishing rates and of compelling each carrier in making local rates—those rates which apply on the lines of a single carrier—to exercise its own managerial discretion, independent of collaboration with competitors.

Do I understand that the antitrust laws then would permit a single carrier to make the rates in its managerial discretion it thought were proper?

Mr. LOEVINGER. Yes, sir; generally.

Mr. HEMPHILL. And could it make one rate to one shipper and one rate to another?

Mr. LOEVINGER. No, sir. The prevailing rules applicable to common carriers would prohibit this. Common carriers are bound to treat all shippers alike, all shippers of the same commodities, for example.

Mr. HEMPHILL. Where would a competing shipper go that felt that the rates given to some other shipper were unreasonable or discriminatory to him? Would he come to the Antitrust Division?

Mr. LOEVINGER. In other words, if shipper A were being charged a higher rate for the shipment of his goods to New York where they are sold than shipper B, and this difference in rate was handicapping shipper A, shipper A could go to the Antitrust Division or could go simply to his own lawyer and immediately institute a suit in Federal court.

Mr. ROGERS of Texas. Would the gentleman yield there?

Mr. HEMPHILL. Yes, certainly.

Mr. ROGERS of Texas. Would that be in effect an amendment of the Clayton Act by this act?

Mr. HEMPHILL. No, sir. I think that these are established principles. I believe that the existing laws are ample to prevent such discrimination. Section 5 of the Interstate Commerce Act, title 49, United States Code, section 3, prohibits discrimination or preference, and there is nothing in the proposed bill, H.R. 11583, that I see that would in any way suspend the effect of section 3. As a matter of fact, it occurs to me that the shipper could also go to the Interstate Commerce Commission under section 3 of the act, because all that this bill does is say that the Commerce Commission shall not set a floor below which minimum rates cannot go.

However, as I read it, the Commission still retains the power to prevent discrimination or preference, but in addition the shipper that is injured by such acts may have a private right of action under the antitrust laws, so that it would probably increase the remedies available to shippers who might be discriminated against.

Mr. ROGERS of Texas. If the gentleman would yield further. Then, Judge, you are saying that he loses no right that he presently has under the Interstate Commerce Act by the passage of this act and would retain his rights under the Clayton Act and perhaps under—would it be the Robinson-Patman Act under the antitrust laws?

Mr. LOEVINGER. The applicability of the Robinson-Patman Act, in all candor, is questionable at the present time. That arises from the fact that the Robinson-Patman Act refers to discrimination in the sale of a commodity. The Seventh Circuit Court of Appeals has held that the word "commodity" does not include advertising. I think that the rationale of that decision would suggest that "commodity" likewise does not include transportation. However, I am not suggesting that the Department of Justice necessarily acquiesces in that decision, nor, for that matter, am I saying we reject it. We haven't taken a position, and I think that whether or not "commodity" includes services is an open question with the decisions that have been rendered against it.

Mr. ROGERS of Texas. Would you yield for just one more question?

Mr. HEMPHILL. Be happy to, sir.

Mr. ROGERS of Texas. I don't like to belabor the point.

Then you are saying that actually under the Clayton Act you are going to need to extend "commodities" to include services? You are going to cover this with the Clayton Act as the bill specifies, because, as I understand it, the Clayton Act has to do with conspiracies in restraint of trade?

Mr. LOEVINGER. The Sherman Act, sir.

Mr. ROGERS of Texas. I mean the Sherman Act.

Mr. LOEVINGER. Yes, sir; has to do with conspiracy in restraint of trade and monopolizing. If discrimination is of a monopolistic sort it would be actionable. However, it appears to me also that, once you have eliminated the regulatory authority to set minimum rates so that the minimum rates are being set by the carrier, you are also reinstating the common law, and if I understand the common law of common carriers correctly this prohibits discrimination, so that I think that you have a common law action in the courts, you have an action under the antitrust laws, and you retain your action under the Interstate Commerce Act in order to prevent discrimination or preference.

Mr. ROGERS of Texas. Thank you. Mr. Hemphill?

Mr. HEMPHILL. Let me ask you this: If competing carrier A complains that the rate was unreasonable, then he would be to the Interstate Commerce Commission, is that not correct? For unreasonableness?

Mr. LOEVINGER. The complaint was what, sir?

Mr. HEMPHILL. If the complaint is unreasonableness, the avenue is through the Interstate Commerce Commission, is that not right?

Mr. LOEVINGER. No.

Mr. HEMPHILL. But if the complaint is discrimination it is through the Antitrust Division?

Mr. LOEVINGER. No, sir; no, sir. If the complaint is that of discrimination, in my judgment, the complaint can be made, if this law is passed, to the Interstate Commerce Commission under section 3 of the Interstate Commerce Act. If I remember my sections correctly, I believe it is 49 United States Code, section 3, that prohibits undue preference or discrimination. I believe there is a common law action in the Federal courts. If the discriminatory rate is of a monopolistic character there is also an action under the antitrust laws and if there is action under the antitrust laws this may be brought either by the Department of Justice or by the injured party pursuant to his right of private action. If the complaint is merely that the rate is unreasonably low, I don't believe there is any recourse under this act to the Interstate Commerce Commission.

I believe that this is the power that is wiped out, that you can't go and say "Well, it is just too low." It has to be monopolistic or discriminatory or have a harmful effect in some way. You can't simply set a floor on minimum rates.

Mr. HEMPHILL. And by monopolistic or discriminatory you include a situation in which one shipper is charged one price and one another?

Mr. LOEVINGER. Yes, sir.

Mr. HEMPHILL. I believe, though, if they make joint rates applicable to through routes, then the antitrust laws do not apply?

Mr. LOEVINGER. That is correct, sir; but let me point out that essentially what you are talking about here is differentiated from the situation where they do apply in two respects.

First, there is a physical difference, but, second, what you have are essentially end-to-end carriers. In other words you ship this from point A to point B over carriers 1 and then from point B to point C over carrier 2. Carrier 1 and 2 are not essentially in competition for this carriage. They must cooperate in order to carry the commodity

over the entire route, so that this is a different situation than when you have carrier 1 and carrier 2 both having lines between points A and B, and competing for the traffic.

Mr. HEMPHILL. I want to thank you, sir. I think you have helped us and I appreciate it.

Mr. LOEVINGER. Thank you.

Mr. ROGERS of Texas. Mr. Younger.

Mr. YOUNGER. Just one question, Mr. Loevinger.

Do you know why in this legislation the air cirriers are not exempt from the minimum rates and all the other modes of transportation are?

Mr. LOEVINGER. It would be pretty presumptuous of me to answer that question with Mr. Boyd sitting here in the room. My guess is that this probably has to do with the fact that when you are carrying passengers, which is the overwhelming majority in air traffic, that you are in a slightly different situation than when you are carrying bulk grain, or oil, or something else, and that the necessity for maintaining very high safety standards in air transportation is thought to be related to the maintenance of certain minimum rates.

Mr. YOUNGER. Aren't the passenger minimum rates on the rails exempt under this legislation?

Mr. LOEVINGER. Yes, sir; but there is a difference between having a crack train from Chicago to Minneapolis break down on the tracks and delay the passengers and having an airplane carrying passengers break down half way between Chicago and Minneapolis. It does a little more than delay the passengers ordinarily.

Mr. YOUNGER. Trains run off the track once in a while, too. The Northern Pacific had some experience with that the other day.

Mr. LOEVINGER. I guess it is a matter of weighing the risks, sir.

Mr. YOUNGER. To your knowledge, then, you would say that it is on account of the safety factors?

Mr. LOEVINGER. I would believe so, sir. Let me say this: What this bill is is part of the plan to implement the President's message on transportation. The President has said, and has said quite properly in my judgment, that we should move toward greater competition in this field. On the other hand, it has been a highly regulated field. The President does not propose, nor does anyone propose that I know of, that we simply wipe out regulation altogether. It is a question of moving rather cautiously and carefully by well-considered steps in the direction of greater competition. It was thought that in abolishing minimum-rate regulation it was prudent to go only as far as this bill proposes to go and to maintain CAB authority over minimum rates for passengers in air traffic. It is altogether possible that a few years' experience may convince us that we can abolish that regulation. There is nothing final, as I understand it, about this proposed legislation. Presumably Congress will continue to observe its effects if it is enacted and in a few years the judgment may be it went too far or not far enough, but it seems like a well-thought-out, careful, prudent step in the direction that the President quite properly said we should attempt to move.

Mr. YOUNGER. Do you think that eliminating the rail transportation from minimum passenger rates might permit them to recapture some of the passenger business?

Mr. LOEVINGER. I assume that this is hoped for.

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

Mr. ROGERS of Texas. Mr. Loevinger, to get me cleared up on one or two matters here, of course antitrust laws are a sort of specialized business and no matter what kind of law you practice usually you don't get into it very much, so it is more or less hearsay to most of us as to what actually transpires. The thing that has disturbed me is this situation in title 15 of the United States Code, as I read it. The proviso there is that nothing contained in sections 12, 13, 14–21, and 22–27 of this title shall be construed to entitle any person, firm, corporation, or association except the United States, to bring suit in equity nor injunctive relief against any common carrier subject to the provisions of chapters 8, 12, 13, and 19 of title 49 in respect to any matter subject to the relation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Mr. Loevinger, the thought in my mind is, does not an aggrieved party go through the United States to obtain relief if he thinks he needs relief?

Mr. LOEVINGER. No, sir. I believe that what this says is that an aggrieved party may not sue for anything that is subject to the regulation of the ICC. As to minimum rates, these are deregulated and therefore subjected to the antitrust acts, under which an aggrieved party has the right to bring his own suit.

Mr. ROGERS of Texas. Primarily because of the deregulation of the rates?

Mr. LOEVINGER. Yes, sir.

Mr. ROGERS of Texas. That clears that up.

Would you be in position, Mr. Loevinger, to give us a sort of documented breakdown on the application of the Clayton Act, the Sherman Act, and the Robinson-Patman Act as related to the situations which are at issue in this bill? Is that too broad?

Mr. LOEVINGER. I am not quite sure what it is that you are asking, sir.

Mr. ROGERS of Texas. The thing that I am thinking about is this: The manner in which the present antitrust laws would apply and the relief that would be available to the aggrieved party, both as to substance and as to procedure.

Mr. LOEVINGER. Well, an aggrieved party would have the right to complain to the Department of Justice which might institute a Government suit, and would also have the right, on the basis of precisely the same complaint, to institute a private action. These are always parallel remedies under the antitrust laws. The remedies could be based upon either conspiracy or collusion between carriers with the effect of injuring a shipper or a competitive carrier either in the same mode or another mode of transportation.

Mr. ROGERS of Texas. Suppose that just one carrier was involved on either side.

Mr. LOEVINGER. If there is one carrier involved on either side, it would be necessary to establish either that there was cooperative action between the carrier and a shipper or group of shippers, or somebody else, or that there was a practice that constituted monopolization or attempt to monopolize, which, in the interpretation given it by the Supreme Court in a number of fairly old decisions, would involve practices which had the effect either of controlling prices or eliminating competitors from the field.

Mr. HEMPHILL. Would the gentleman yield?

Mr. ROGERS of Texas. Yes, I would be happy to.

Mr. HEMPHILL. I do not know whether it is possible or not, Judge Loevinger, but the thought occurs to me if we are going to sell this legislation to the House of Representatives they are going to ask the question—first, "What antitrust laws are you substituting"; second, "What are your avenues of procedure"; and "What statutes will you rely upon to substantiate that course of procedure?"

I realize that you people are overworked up there, but we have to answer the questions in general debate to people who are going to want to know why we did not print the statutes in the report, which I assume will follow the consideration in executive session.

Mr. Chairman, I don't know whether that question is in order or not, but if it would be possible for you people to give us some outline without burdening your Department too much then it would certainly help.

Mr. LOEVINGER. Surely.

Mr. HEMPHILL. I would ask, Mr. Chairman, that whatever procedures and information is furnished be placed in the hearing record at this point.

Mr. ROGERS of Texas. Without objection, it is so ordered.

(The following information was submitted for the record:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 23, 1962.

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

DEAR CHAIRMAN HARRIS: During the hearings on H.R. 11583 before the Interstate and Foreign Commerce Committee of the House of Representatives on June 29, 1962, the Department of Justice was requested to supply, for the record, a statement indicating specifically which laws are referred to in the term "antitrust laws" contained in section 1 of the bill. We were also requested to indicate what procedures would be available to deal with collusive or monopolistic rate practices.

H.R. 11583 provides that the "antitrust laws," as defined in section 1 of the Clayton Act (15 U.S.C. 12), would govern the ratemaking activities of carriers with respect to the traffic freed from minimum rate regulation under the bill. The one exception to this antitrust coverage would be joint action between carriers limited solely to the establishment of rates, fares, classifications, divisions or allowances applicable to reasonable through routes. The specific statutes referred to in section 1 of the Clayton Act are those popularly known as the Sherman Act (15 U.S.C. 1–7), Wilson Tariff Act (15 U.S.C. 8–11) and Clayton Act (15 U.S.C. 12–27).

The procedures which would be available to deal with acts and practices violative of the substantive provisions of the foregoing statutes are several. First, the Attorney General would be able to prosecute such practices as criminal violations, the penalties for which are fines up to a maximum of $50,000 and imprisonment not exceeding 1 year, or both. Second, the Attorney General could institute a suit in equity to prevent and enjoin monopolistic rate practices or collusive rate agreements. Third, private persons, such as an aggrieved competitor of a carrier allegedly engaging in unlawful practices, or a shipper, could institute a suit for an injunction against the unlawful practices. Such an action may be commenced by a private party without leave of the Government, so that, as Assistant Attorney General Judge Loevinger remarked during his testimony, this is a remedy promptly available to any aggrieved person. The fourth remedy is the right to institute an action for damages accruing to a person injured by a violation of the antitrust laws. A private party may obtain treble damages if successful in proving the alleged violation.

We trust this supplies the information requested by the committee. If we can be of further assistance, please call upon us.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Mr. HEMPHILL. Thank you very much.

Mr. ROGERS of Texas. Mr. Loevinger, with relation to the title 26 that we were discussing a minute ago, I believe you said that it was the deregulation that actually in effect vested in the aggrieved party himself the right to sue, whereas prior to that it would have been under a regulation. Therefore, any remedies sought would have to be pursued through the United States. That would be as to the reasonableness of the rate, would it not? Would he get that same rate insofar as the situation concerned if he was claiming discrimination?

Mr. LOEVINGER. I suppose that there is an area here of not absolute certainty. It seems to me that if it is claimed that the minimum rates are discriminatory as established there would be such remedies available. On the other hand, the argument against this would be that even though the Commission cannot set the minimum rate on the basis of reasonableness, it still retains the right to control discrimination and, therefore, when the claim as to discrimination is made it has lost none of its powers and, therefore, there should not be a specific antitrust remedy. I suppose that this is something that ultimately would have to be determined by the courts. However, my opinion, which I trust will not bind either me or anyone else in the Department of Justice in the event of litigation, at this time would be that this act takes the minimum rate establishment out of the area of regulation sufficiently to subject it to all of the remedies of the antitrust laws, having in mind the provisions of 15 U.S. Code, section 26.

Mr. ROGERS of Texas. Thank you, sir.

Now, I believe Mr. Hemphill's request was for a written statement on this.

Mr. LOEVINGER. Yes, sir.

Mr. ROGERS of Texas. Let me say this: I cannot speak for the other members of the committee, but certainly I am not trying to bind you or the Justice Department. We are merely on a fishing expedition.

Mr. LOEVINGER. Surely. These are perfectly reasonable questions, sir. I put in the caveat only because my opinions are sort of curbstone opinions and there is always a possibility, in further consideration or discussion with the Attorney General or the Deputy Attorney General, the Department may conclude to take a different position.

Mr. ROGERS of Texas. If you decide differently, we will not object to your reconsideration.

Mr. LOEVINGER. Yes, sir.

Mr. ROGERS of Texas. Do you have any further questions?

Mr. YOUNGER. No.

Mr. ROGERS of Texas. Thank you very much.

Do you have any more questions?

Mr. HEMPHILL. No, sir.

Mr. LOEVINGER. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. The next witness scheduled this morning is Hon. Alan S. Boyd, Chairman of the Civil Aeronautics Board.

Mr. Chairman, we are glad to have you before the committee again, and you may proceed.

STATEMENT OF ALAN S. BOYD, CHAIRMAN, CIVIL AERONAUTICS BOARD, ACCOMPANIED BY ROSS I. NEWMANN, ASSOCIATE GENERAL COUNSEL, AND IRVING ROTH, DIRECTOR, BUREAU OF ECONOMICS REGULATION

Mr. BOYD. Thank you, Mr. Chairman and members of the committee.

I am accompanied this morning by Mr. Ross I. Newmann, Associate General Counsel, and Mr. Irving Roth, Director of our Bureau of Economic Regulation.

The Board appreciates this opportunity to submit its views in support of H.R. 11583 and H.R. 11584, bills to implement certain recommendations contained in the President's message on transportation which was submitted to the Congress on April 5, 1962.

H.R. 11584, if enacted, would be identified as the Transportation Act of 1962. Section 2 of this bill would empower the three regulatory agencies, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission to authorize controlled experiments in rate, classification and documentation systems.

Participation by common carriers in the experiments would be voluntary and the experiments could be authorized intramode or jointly with carriers of different modes. The purpose of these experiments is to determine the best service/price transportation patterns by testing new services, service combinations or arrangements, simplified documentation, and different or simplified rate bases and freight classifications.

Some areas of experimentation insofar as air transportation has been concerned include excursion fares, family fares, night coach fares, youth fares, golden age fares, commuter fares, and their class or thrift fares. Since the Board presently has authority to permit such experimentation, we construe the proposed legislation as a statement and encouraged by the regulatory agencies.

The Board endorses this policy objective and recommends enactment of section 2 of H.R. 11584. We suggest, however, that a revision be made in section 2(b) which provides that experiments—

> shall, after notice to the public affording interested persons opportunity to submit written views, be authorized by the regulatory agencies concerned * * *.

This language could be read as an unequivocal direction under which the Board would be required to authorize the experiments. We do not believe this to be the intent of section 2(b), which we assume is merely determinative of the circumstances in which action will be taken by a single agency or agencies jointly. This conclusion is borne out by the permissive language of subsection (a), and by the language of subsection (e).

In order to clarify this point, the Board recommends that section 2(b) on page 2, line 9, be amended to delete the word "authorized" and in lieu thereof the words "acted upon" be inserted.

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Section 4 of H.R. 11584 would carry out the President's recommendation that Congress declare as a matter of public policy that through routes and joint rates should be vigorously encouraged and that all transportation agencies be authorized to participate in joint boards. New joint boards, comprised of the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission would supersede establishment of the joint boards of the Interstate Commerce Commission and the Civil Aeronautics Board which is presently authorized in the Federal Aviation Act.

The Board favors enactment of section 4. We suggest, however, that a technical amendment be made in section (c) to make it clear that the availability of through service, even where joint rates have not been established, must be reflected in the tariffs. We will be glad to submit appropriate language to the committee to accomplish this objective.

Section 7 of the bill would amend section 901 of the Federal Aviation Act to make air carriers and foreign air carriers liable for the payment of damages from charges collected or practices maintained in violation of any provision of the Federal Aviation Act. It would also give an injured party the choice of pursuing his remedy either before the Board or in any district court of the United States of competent jurisdiction.

Appropriate periods of limitation are provided with respect to the commencement of such actions or proceedings. Section 8 would amend section 1006 of the Federal Aviation Act so that orders of the Civil Aeronautics Board concerned with reparations would be reviewable by a Federal district court rather than by a court of appeals.

The Board favors enactment of sections 7 and 8 which would empower the Board to pass upon the past lawfulness of tariffs with respect to both rates and practices. The interest of the public in air tariff rules is generally not of sufficient importance to individuals or groups as to result in a significant number of complaints being filed against tariff rules prospectively.

On the contrary, a pecuniary interest sufficient to warrant litigation before the Board by a passenger or a shipper will usually occur only after the rule is relied upon in a specific case. The reparations provisions of H.R. 11584 would insure that individuals have such an opportunity to challenge the lawfulness of a tariff rule in an adjudicatory proceeding before the Board or to initiate a proceeding in a Federal district court. The Board recommends enactment of sections 7 and 8. We wish to point out, however, that some increase in personnel will be required in order to perform these functions.

Section 9, among other things, is intended to simplify rate structures for the procurement of Government transportation and by experiments to develop systems that will make rate ascertainment and publication less costly and more convenient. The Board supports this provision and recommends its enactment.

Sections 10 through 14, would implement the President's recommendation that the railroad loan guaranty authority and the aviation loan guaranty authority, if it is to be extended, be transferred to the Department of Commerce. Provisions are included for the continuance of actions taken by the Civil Aeronautics Board and the Interstate Commerce Commission unless and until changed by the Secretary of Commerce, and for the transfer of persons, property, records, and

unexpended appropriations from these agencies to the Department of Commerce.

Under existing law, section 410 of the Federal Aviation Act, the Board is empowered to approve or disapprove applications for any loan or other financial aid from the United States or any agency thereof, to or for the benefit of any air carrier. Under this section, no such loan or financial aid can be made or given without Board approval. The Board also has the responsibility of prescribing the terms and conditions upon which such loan shall be made. Section 10(f) of H.R. 11584 would amend section 410 to make that section inapplicable to the guaranty of loans by the Secretary of Commerce under the Loan Guaranty Act, but would require the Secretary to consult with and consider the views and recommendations of the Board in making such guaranties.

The Board agrees in principle with the administration's proposal to transfer the loan guaranty authority to the Department of Commerce and wishes to point out that there is a need for a close relationship between the Board and the Department in granting subsidies on the one hand and approving loan guaranties on the other.

This concludes our testimony on H.R. 11584. I would now like to present our views on H.R. 11583. This bill is primarily concerned with exempting certain carriers from minimum rate regulation in the transportation of bulk commodities, agricutural and fishery products, and passengers. Since many of the provisions of this bill involve matters outside the jurisdiction of the Civil Aeronautics Board, I will confine my testimony to section 5 which affects the Board and the air transport industry.

Section 5(a) would amend section 1002(d) of the Federal Aviation Act to limit the Board's authority to the determination of maximum rates and charges for the transportation of bulk commodities and certain agricultural and fishery products. Section 5(c) would amend section 414 of the Federal Aviation Act so that the Board could no longer grant immunity from the antitrust laws by approving rate agreements under section 412 of the act with respect to the commodities set forth above.

Section 5(d) is a statement of congressional intent that regulatory control over minimum passenger fares of air carriers be reduced to the greatest extent consistent with the public interest, so that business incentives and competition may play a more influential role in the pricing of air transportation.

The Board concurs in the objective of section 5 of the bill and recommends its enactment. In endorsing this proposal we want to point out that we construe section 5(a) as leaving undisturbed the Board's powers under section 411 of the Federal Aviation Act under which the Board may prosecute antitrust violations which constitute unfair practices or unfair methods of competition.

Since section 5(a) is an express declaration of congressional intent to make the antitrust laws applicable to the fixing of rates which are no longer under minimum rate control by the Board, it must also be the intent of Congress that section 411 remains in full force and effect with respect to the fixing of such rates.

This concludes our testimony, Mr. Chairman. If the Board can be of any further assistance, I hope you will call upon us.

Mr. ROGERS of Texas. Thank you, Mr. Boyd.
Mr. Hemphill, do you have any questions?
Mr. HEMPHILL. No questions. Thank you, Mr. Chairman.
Mr. ROGERS of Texas. Mr. Younger.
Mr. YOUNGER. Thank you, Mr. Chairman.
Mr. Boyd, can you give us any information as to why the air carriers were not exempt from the minimum passenger fare rates?
Mr. BOYD. I can give you several reasons I think. I don't know how valid they are, but I will tell you what they are. The first is that this is the essence of the President's statement in his transportation and the bill I presume is an extension of the philosophy expressed by the President for the administration. The second is that, unlike the surface carriers, the bulk of the movement by air is passengers. The third, which is related to that, is that the common carriage aviation industry is having a pretty rough struggle these days financially. I think it may be said that there are a number of mavericks in that industry and the feeling was that this is not a good time, or my feeling is, at any rate, to rock the boat and give somebody a license to get very far out of line in view of the poor economic condition of the industry. I would like to say in reference to the colloquy when you and Mr. Loevinger earlier, that, while safety is certainly a very important part of aviation, I want to make it as plain and as clear as I possibly can that the common carrier air transport industry has evidenced over the years that any financial considerations have nothing to do with safety, that they are going to operate in the safest manner known to human beings regardless of what their fare structure or their profit or loss position may be, so I don't think that there is any relations that can be attributed to safety here, really.
Mr. YOUNGER. I recognize what you say about the financial condition of the industry, which I doubt is any worse than the railroads. At least some of them seem to be about in the same financial condition. Yet all the passengers fares are exempt, on the surface carriers and not exempt under the air carriers. I haven't been able to get a good reason as to why that was done.
Mr. BOYD. I did the best I could for you, Mr. Younger. If it is not a good one, I am sorry.
Mr. YOUNGER. There is one other question that bothers our people. As you know, we ship a lot of freight, flowers, and it is all carried by air. Under the surface carriers, regardless of the fact that you have more than one carrier, if there is any damage to the product they are compensated for it. Under the air carriers when they ship flowers which have to be transferred at Chicago to another line to go to Pittsburgh or somewhere else, frequently the flowers are left out and they are frozen, or it is very hot weather and they are destroyed. The shipper can get no recovery from any of the lines. I have had legislation introduced on this subject but we just don't seem to get anywhere. What recommendation would you make to cure this deficiency which occurs only in air travel?
Mr. BOYD. We started a proceeding 2 or 3 years ago, Mr. Younger, on this very item, and while the proceeding was pending the shippers and the carriers worked out a compromise which suited both of them and as a result of that the proceedings were dismissed, and so far as we know today the situation is being handled satisfactorily to the shippers.

Mr. YOUNGER. I haven't received any complaint this past year. I admit that.

Mr. BOYD. I think you will find, if the assumptions of both the shippers and carriers were right, this problem is moot.

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

Mr. ROGERS of Texas. Mr. Dingell, do you have any questions?

Mr. DINGELL. No questions, Mr. Chairman. Thank you.

Mr. ROGERS of Texas. Mr. Keith.

Mr. KEITH. No questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Kornegay?

Mr. KORNEGAY. Mr. Boyd, your Board, of course, sets the minimum and the maximum rates, is that correct?

Mr. BOYD. In interstate transportation?

Mr. KORNEGAY. In interstate air travel.

Mr. BOYD. Yes, sir. I make this distinction as between interstate, overseas, and foreign. We do not do this in overseas and foreign, but in domestic or within the United States we do.

Mr. KORNEGAY. In setting the rates for excursion fares, family fares, and the other numerated experimental fares that you listed on page 2 of your statement, is that solely within the discretion of the carrier so long as it is within the range of the minimum and maximum, or do those experimental rates have to be approved by the Board?

Mr. BOYD. The exact rate has to be approved by the Board. We do not have a minimum and maximum range for domestic air transportation. We set specific rates.

Mr. KORNEGAY. You set specific rates?

Mr. BOYD. Yes, sir.

Mr. KORNEGAY. And then of course you set the specific excursion fare, family fare, and so forth?

Mr. BOYD. Yes, sir. Let me rephrase this so I am absolutely correct. We do not set a rate. We approve a specific rate. The rates are set and submitted by the carriers and we approve or disapprove a specific rate. If we disapprove, we try to give an indication of what we would approve as specific rate.

Mr. KORNEGAY. And of course once you approve a rate, say for a family fare or a coach fare, than that would apply throughout the industry to all carriers?

Mr. BOYD. No, sir; not necessarily. We have many excursion fares that are limited to specific markets and don't have any relevance in other areas, but coach fares I would say generally, yes. If the carrier puts in a fare there is no price competition in air transportation today, so if one carrier puts in a fare either the others go along or, if this happens to be a higher fare and the other carriers don't go along, he drops it.

Mr. KORNEGAY. Does the carrier or the Board control the number of these flights?

Mr. BOYD. We have no control over scheduling.

Mr. KORNEGAY. In other words, if, say, Eastern submitted and your Board approved a coach fare from Washington to Atlanta, they could run as many coach flights at that rate as they desire?

Mr. BOYD. Yes, sir.

Mr. HEMPHILL. Would the gentleman yield to me at this point?

Mr. KORNEGAY. I would be delighted to.

Mr. HEMPHILL. You mean to tell me the Civil Aeronautics Board cannot tell the airlines "You have the right of franchise in this particular area and you don't have to run so many flights."

Mr. BOYD. We have the power to require adequate service, Mr. Hemphill, but that is all. If Eastern, for example, wants to run 50 flights a day, that is their business. We can say to Eastern at the other end of the scale, "As we see this, in order to provide adequate service you have to provide a minimum of three flights a day," but from there on out it is whatever they want to do.

Mr. HEMPHILL. Will the gentleman yield to me further for just one more question?

Mr. KORNEGAY. I will be delighted to.

Mr. HEMPHILL. Hope you will tell Eastern to improve their service since I am affected because I have to ride that carrier so much, but the thought occurred to me that you have the independent airlines now begging for another ham and cake in this eastern district. Have they said to you "We take up the slack and provide the public transportation"?

Mr. BOYD. I have no knowledge of any such request being made.

Mr. HEMPHILL. I thank you and I am sorry I had to ask you that, but I wanted to know the answer.

Thank you, sir. I appreciate it.

(Discussion off the record.)

Mr. BOYD. The supplemental bill which the conference committee has just reported out would give the Board authority to do just exactly what Mr. Hemphill was urging. I want to say that, while I don't know what goes on in the minds of the supplemental carriers today, there is no doubt that the Board's authority to do anything with reference to the supplementals is pretty hazy, and this is one reason we have been so earnestly seeking some sort of legislation, but this bill that the conference committee has just agreed on will give us this short-term authority in the new section 417 of the Federal Aviation Act if the bill becomes law.

(Discussion off the record.)

Mr. ROGERS of Texas. Mr. Kornegay, do you have any further questions?

Mr. KORNEGAY. Yes, I just wanted to say one other thing.

Mr. Hemphill and I talked about the great public interest. At least we believe it would be all right. Speaking for myself and, I believe him, Mr. Boyd, I want to tell you that our remarks and comments are certainly not any criticism of you or your Board, but merely we are taking this opportunity in this forum to let off a little steam, you might say, about a situation that is very aggravating to our areas of the country at this particular time. I want to commend you, sir, on a very fine statement. Thank you.

Mr. ROGERS of Texas. Mr. Boyd, I note that on page 3 of your statement you endorse section 4 of H.R. 11584, which establishes a new joint Board and arrangements covering joint rates.

Do you endorse that, Mr. Boyd, without any qualifications: just blanket authority?

Mr. BOYD. Extension of joint routes and rates?

Mr. ROGERS of Texas. Yes.

Mr. BOYD. Yes, sir.

Mr. ROGERS of Texas. The thought that was in my mind is under the present section 1033 of the Aviation Act, the CAB and the ICC Joint Board would take action on the joint rates under the CAB standards.

Mr. BOYD. Yes, sir.

Mr. ROGERS of Texas. As I understand it, under the proposed 1003 the action would be taken under 216 of the Interstate Commerce Act, which has to do with, as I understand it, tests applicable to the railroads. Am I correct in that?

Mr. BOYD. I believe that is motor carriers, and we have looked at this thing, Mr. Chairman, and it is the judgment of our legal and tariff people that the differences in standards are minute. The differences are not significant in terms of overall transportation.

Mr. ROGERS of Texas. You think then, in either event there would be nothing to be concerned about?

Mr. BOYD. That is our judgment, yes, sir.

Mr. ROGERS of Texas. With relation to Mr. Younger's questioning on the exemption of the airlines from the minimum rate relaxation, I didn't quite understand your explanation of that, Mr. Boyd. Would you mind going over it briefly again?

Mr. BOYD. Yes, sir; I will. I said the first point in this bill is to implement the President's transportation message and that is specifically stated in his message. At least, that is my understanding of what this legislation is.

Mr. ROGERS of Texas. Yes.

Mr. BOYD. On page 4 of that message, if I may quote, the President said:

> I recommend, therefore, that the Congress enact legislation which would eventually limit the control of intercity passenger rates to the establishment of maximum rates only. In the case of airlines, it may be preferable to initiate this program on a gradual or temporary basis under existing authority.

The reasons that I see, and I am not privy to the President's thinking on this, are that air transportation is predominantly passenger transportation. The airlines are losing their shirts today as an industry. There are two or three carriers who have hopes of showing earnings this year, but the balance of them apparently are not going to show earnings this year, and my assumption is that because of the poor financial condition of the industry it was felt that this is no time to give anybody who might be a maverick an opportunity to break the traces.

Mr. ROGERS of Texas. You don't feel that this maybe is intended as an opportunity to permit the railroads to recover some of the passenger traffic that they have lost to the airlines?

Mr. BOYD. I don't know. It may be designed to do that. I would say, though, that this would be the least of the air transport industry's concerns.

Mr. ROGERS of Texas. Do you feel, Mr. Boyd, that the thinking of the President in leaving that matter of rates with the CAB might be prompted by the possible safety issues that may be associated with air service?

Mr. BOYD. No, sir, I don't think so because while the people seem to be much more concerned about safety in air transport than they do in other forms of transportation, because you don't travel with one foot on the ground, so to speak, the fact is that the airlines, certainly since the enactment of the Civil Aeronautics Act of 1938, have maintained the very highest safety standards throughout their ups and downs, and they have had a good many of them financially. Their economic condition has not affected their safety standards in any way.

Mr. ROGERS of Texas. Has there been any evidence, Mr. Boyd, of the airlines at any time relaxing safety standards and pursuing competitive practices in an effort to get business?

Mr. BOYD. No, sir.

Mr. ROGERS of Texas. There have been, though, situations involving some of the supplemental carriers in that regard, have there not?

Mr. BOYD. That charge has been made and the FAA has suspended or revoked the certificates of a small number of these carriers for failure to comply with the safety standards required by the FAA; that is true. I think it is also fair to say, Mr. Chairman, that some of the trunk carriers have been guilty of violations of the safety standards and this will always be true because these people are human beings and they sometimes make mistakes, but I don't believe there have been any conscious efforts. None have come to my attention.

Mr. ROGERS of Texas. You don't feel that those violations that you have in mind are associated with competitive practices or practices that were initiated by one carrier for the purpose of trying to get more business away from another by perhaps using pilots who had not the proper training?

Mr. BOYD. No, sir. I think throughout the aviation industry you will find unanimity on the one point that the highest possible standard of safety is the lowest standard that anybody can accept for the future of the industry.

Mr. YOUNGER. Would the gentleman yield?

Mr. ROGERS of Texas. Yes, sir; I would be happy to.

Mr. YOUNGER. Would the Board object to eliminating the minimum fare rates, on the air carriers the same as the other carriage?

Mr. BOYD. I can't give you an answer on that, Mr. Younger, because we haven't discussed it. I think the chances are good that the Board would be quite reluctant, but I have no basis for this, other than a general impression. We have not discussed it at all.

Mr. YOUNGER. Do you mind discussing that with the Board and furnishing that as a part of the hearings?

Mr. BOYD. Yes, sir; I would be delighted to.

Mr. YOUNGER. I think if we are going to make deviations we ought to have some reason from the Board in doing it.

Mr. BOYD. I would be very happy to do so, sir, and provide our thoughts to the committee and our reasoning therefor.

(The information requested follows:)

CIVIL AERONAUTICS BOARD,
Washington, D.C., July 16, 1962.

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

DEAR MR. CHAIRMAN: During the course of the Board's testimony in support of H.R. 11583 and H.R. 11584, bills to implement certain recommendations contained in the President's message on transportation, the question was raised as to why air carriers were not exempt from minimum passenger rate control as in the case of surface carriers. Specifically, the Board was asked whether it would object to the elimination of its authority to prescribe minimum rates.

The Board would be opposed to the elimination of its minimum rate power at this time. The difference in treatment accorded surface and air transportation was clearly recognized by the President in his transportation message and by the Under Secretary of Commerce for Transportation in his testimony before your committee.

At the outset, it is to be stressed that the largest part of the traffic carried by the air transportation industry consists of passengers. Therefore, the elimination of minimum passenger rate regulation would have the practical effect of eliminating the great bulk of minimum rate controls in air transportation. It is the Board's view that at the present stage of development of air transportation industry, such elimination would be most undesirable. Historically, the industry has been subject to wide fluctuations in earnings which have largely coincided with imbalances in the relationship of air carrier capacity and traffic demands. As technological developments lead to reequipment of carrier fleets, excess capacity frequently is apt to exist for an extended period until traffic demands catch up with the expanded capability. This factor is one of the chief causes of the depression in airline earnings which has existed for the past few years.

The pressures of unused capacity will frequently cause a carrier to offer promotional fares to the public which, while possibly beneficial to the carrier itself because of circumstances peculiar to it, could aggravate the financial condition of the industry as a whole. Inability of the Board to step in and control uneconomic fare reductions would almost inevitably lead to rate wars in the industry and possibly to financial chaos and the collapse of many of the smaller and weaker carriers unable to withstand such rate wars.

Moreover, the abolition of the Board's minimum rate power would be most inopportune under current conditions. As indicated above, the air transportation industry has been suffering from depressed earnings in recent periods. For the information of the committee, I am attaching as an appendix a table which shows the rate of return on investment for the domestic trunklines for periods beginning in 1951, as shown on their financial reports on file with the Board. This table reflects a fairly steady decline of earnings in the industry since 1955 culminating in a return of only 1.3 percent in the year ended March 31, 1962. You will note further from the table that three carriers realized a negative return on their investment for the latest 12-month period. In addition, the returns of two other carriers were insufficient to cover their interest expense. With the industry in such a precarious position, the Board believes that Congress ought not to subject it to the additional hazard of uncontrolled rate cutting.

While it is true that elimination of minimum rate control would not affect the Board's powers to implement sections 404(b) and 411 of the Federal Aviation Act, these provisions are in no sense adequate substitutes for minimum rate control. Thus, section 404(b), which authorizes the Board to eliminate unjust discrimination and undue preference, deals with problems of rate structure and rate relationships and is not available to regulate rate level. Section 411, which prohibits unfair methods of competition, is not a suitable mechanism to deal with the economic problems previously discussed, since the findings

required by that section (e.g., predatory intent to drive competitors out of business) could not normally be made.

In sum, it is the Board's view that elimination of passenger rate control would be inconsistent with the congressional declaration of policy as set forth in section 102 of the Federal Aviation Act and would not be in the public interest at this time. With the enactment of a policy statement as expressed in section 5(d) of H.R. 11583 it will be possible to take cognizance of the present precarious financial condition of the airlines, and at the same time provide for a gradual reduction in minimum rate control over the air transportation industry.

Sincerely yours,

ALAN S. BOYD, *Chairman.*

Enclosure.

Rate of return on investment, domestic trunks

A. Industry average by years:	*Industry rate of return (percent)*
1951	13.1
1952	15.3
1953	11.4
1954	11.0
1955	11.6
1956	9.4
1957	4.1
1958	6.2
1959	7.0
1960	2.8
1961	[1] 1.4
Year, Mar. 31, 1962	[1] 1.3

B. Rate of return by carriers, year ended Mar. 31, 1962:	*Rate of return (percent)*
American	5.1
Braniff	6.3
Continental	5.3
Delta	9.1
Eastern	—1.6
National	6.3
Northeast	—55.1
Northwest	3.3
TWA	[2] —6.4
United	1.1
Western	5.8
Industry average	[1] 1.3

[1] Industry return was 2 percent before special income adjustments.
[2] TWA's loss was —1.9 percent, excluding a net depreciation adjustment of $11,734,000 on piston aircraft.

Mr. ROGERS of Texas. What percentage of the passenger traffic is carried by the airlines at this time?

Mr. BOYD. I don't have a breakdown as between various modes of public transportation. Over 50 percent certainly, of the passengers moving on common carriers are carried by air. My impression is the figure is around 55 percent.

Mr. ROGERS of Texas. How much more of that traffic are they going to need before they get into the area of economic stability?

Mr. BOYD. I don't know how to answer that, Mr. Chairman, because one of the big difficulties they are having now is that this year traffic is growing. Last year and the year before it was fairly stagnant, but air traffic is growing this year. However, the carriers added a lot of capacity last year and they are still adding more capacity this year. For example, for the first quarter of the year I believe domestic traffic was up about 11 percent, but capacity was up about 23 percent. They are gradually phasing out, though, of their new acquisitions.

If they ever get all of their deliveries so they can hold still for a while, traffic will probably build up, but I don't know when that will be.

Mr. ROGERS of Texas. Then their increasing passenger traffic tends to increase their losses rather than to decrease them at the present time. They are like the man who was buying dirt for $1.50 a yard and selling it for a dollar. He wasn't making money, but he was doing a lot of business.

Mr. BOYD. It is not quite that way, Mr. Chairman. They have to order their equipment a long time ahead and there is not much they can do about it. They make their best projections and figure what capacity they will need, and then they order and they get deliveries 5 years later. It takes some awfully good guessers to come out right on this thing.

Another factor that is involved is that the market for piston aircraft has just about dried up so a number of the carriers have piston equipment remaining which is in good condition, has not been depreciated on their books, and they don't know what to do with it, so they are flying some of that.

Mr. ROGERS of Texas. Then it looks like at the present time rather than talking about minimum rates, you may be talking about having to increase the rates if you are going to put them on a sound economic basis?

Mr. BOYD. Yes, sir; there is a lot of talking being done about that right now.

Mr. ROGERS of Texas. Mr. Harris, do you have any questions?

The CHAIRMAN. No. I am sorry I have not been here, Mr. Chairman. I have been involved with another matter. I will read the statements of both the Department of Justice and the Civil Aeronautics Board with interest. I don't want to detain the committee at this time.

Mr. DINGELL. Mr. Chairman, very briefly——

Mr. ROGERS of Texas. Yes, Mr. Dingell.

Mr. DINGELL. Mr. Boyd, I was wondering, I would like to discuss with you, this proposal of the administration eliminating the minimum on rates for freight and passenger carriage. The chairman raised the other day a point which I was working around to and in which I am very much interested. When you set up a rate schedule with exempt commodities and with commodities which are not exempt, do the profits and the funds received from the carriage of both exempt and nonexempt carriage go into the same rate base for purposes of making rates and determining a fair return to the carrier?

Mr. BOYD. Yes, I am sure they will, Mr. Dingell. We haven't had that situation in the past as far as exempt commodities were concerned, but in the future, assuming this becomes law, yes, all of the revenues would go into figuring the rate of return.

Mr. DINGELL. What I am trying to find out is, will this practice of eliminating the minimum rates and permitting a carrier to carry passengers exempt from minimum rates authorize rate wars by permitting the carrier, in areas where he has an economic advantage in so doing, to carry at the minimum and then to carry in other areas at the maximum so as to make up the cost of uneconomic overregulated operations.

Mr. BOYD. I am not sure that I am tuned in, Mr. Dingell, but if I understand correctly, the statement about carrying in one area where

it has an economic advantage at a minimum rate and in another area at a maximum rate, if you are talking about the same commodity or the same type of traffic——

Mr. DINGELL. Let us talk about the same commodity or different commodities.

Mr. BOYD. There is no possibility of that with the same commodity because this would be an undue preference and that violates the law, and would continue to violate the law, the antitrust law, as I understand it, and certainly section 411 of the Federal Aviation Act. I think it is true that because of the route structure of carriers there may be segments of their route over which they can haul something cheaper than other competing carriers will be able to haul it, just because of the makeup of the route structure, but I certainly have no specific examples on that and it may be that I am wrong.

Mr. DINGELL. Let's go a little further on this. As you recall under this, the exemption from the minimum and also the exempt features are of a great deal of concern to me. Let's say that you have an airline and I have an airline. Along a certain portion of our respective routes we are in competition and along other sections of our authorized routes we are not in competition.

What I am trying to find out is under this bill on freight carriage or on passenger carriage, or either of them, would you and I be able to disregard the minimum for purposes of conducting a rate war and would we be able to utilize the provisions of exemption from regulations in large numbers of commodities to carry cheaply on the competitive areas and to then finance our cheap carriage in the areas where we are competitive by charging higher prices and higher rates where we have no competition?

Mr. BOYD. No, sir.

Mr. DINGELL. Not necessarily on the same commodity, but on a different commodity which might be carried on those other segments of the route.

Mr. BOYD. That is a very difficult question because when you talk about different commodities you get into the rating concept of value of service, and I don't know that you can make relations between different commodities due to the difference in value, which is the historical way that rates are established in this country.

Mr. DINGELL. Obviously, I am not an expert on rates, but I am fearful of this situation coming about.

Mr. BOYD. Neither am I.

Mr. DINGELL. Let me then ask you this question. Can you categorically tell the committee that carriers under this bill will not be authorized to conduct rate wars along certain portions of their routes where they have competition and to charge off the cost of the competition in which they are engaged, and in effect, the rate war in which they engaged, against other carriage that they will haul on other sections of their route?

Mr. BOYD. No, sir, I can't make any categorical statement to that effect.

Mr. DINGELL. Does this bill possess that inherent danger then?

Mr. BOYD. I don't see that it changes the situation a great deal from what it is now, as a matter of fact, because your agricultural commodities are exempt already.

Mr. DINGELL. I am aware of this. Do we have an assurance that this is not done today on agricultural commodities or cannot be done today on agricultural commodities where they are exempt?

Mr. BOYD. No, but I think you have to rely on the question of discrimination, undue preferences, and various provisions of the antitrust laws. I don't know that this legislation by itself will be self-remedying if the dangers that you see do become realities.

Mr. DINGELL. There is reason to fear that this may come about as a result of this legislation, since there is nothing in this legislation to prevent that from happening. Am I correct?

Mr. BOYD. I don't see the danger, Mr. Dingell.

Mr. DINGELL. You wouldn't deny that the danger is present in the bill, though? That is what I am trying to get. What I am trying to do is determine whether or not the danger is here or not.

Mr. BOYD. Of course, the whole thing that I see is, you are not going to have any rate competition unless you have carrier competition to begin with, so in a situation where you and I are not competitive, there is no reason for me to put my rates down, or either of us, to the lowest that we can get by on. It has always been considered in rate-making that there is a spectrum between reasonable and unreasonable from the low to high. There is a reasonable area, and I would anticipate that any businessman is going to charge what the traffic will bear, all other factors aside.

Mr. DINGELL. That would take care, let's say, of the maximum. What assurance are we going to have that he is not going to charge an unduly low rate here on certain commodities to achieve advantages on certain commodities over certain sections of his routes and to make up this unduly low charge, in fact, what might very well be a non-compensatory rate, over other portions of his routes or on the other commodities which he will carry?

Mr. BOYD. I think we have to limit ourselves to noncompensatory rates because, as I see it, if a business is charging a compensatory rate, then I don't see where Government, either through regulation or the courts, has any business fooling with it.

Mr. DINGELL. I used "unreasonably low," and we will equate that, too.

Mr. BOYD. If it is unreasonably low, then it seems to me that the remedy is in the antitrust laws where this is prohibited as an unfair method of competition. This is also covered in our law in section 411 which deals specifically with methods of competition and gives the Board the power to take action where it has the feeling, either as a result of its own information, or based on complaints, that a carrier is engaged in unfair or deceptive practices or unfair methods of competition.

Mr. DINGELL. I see. I wanted to be here this morning to discuss this with Mr. Loevinger but, unfortunately, I was detained. You are aware that the prohibition against discriminatory pricing in the Robinson-Patman Act, 15 United States Code 13(A), does not apply to transportation services, aren't you, sir?

Mr. BOYD. I am not aware of the various provisions of the act.

Mr. DINGELL. And also that the prohibition against selling goods cheaper in one part of the United States than in another for purposes of eliminating the competitor is not included in the language of the bills before the committee?

Mr. BOYD. I am aware that that is not included in the bills before the committee, yes, sir.

Mr. DINGELL. And also that the prohibition against selling goods at unreasonably low prices to eliminate a competitor is not included in the bill, which is also a violation of the antitrust laws?

Mr. BOYD. Yes, sir.

Mr. DINGELL. And the prohibition against tie-in sales and exclusive dealing contracts in the Clayton Act does not apply to transportation services? Again I am sure you are aware of that.

Mr. BOYD. Yes, sir.

Mr. DINGELL. And also that the right of a person, available in the Clayton Act, to get a temporary injunction against threatened injury, is not available against a common carrier?

Mr. BOYD. I am not aware of that. I have no immediate knowledge of the antitrust laws. I haven't looked at them since I practiced law, as a matter of fact.

Mr. DINGELL. Then it is unfair for me to question you on this.

Mr. BOYD. I think, Mr. Loevinger would be a much better witness on this, Mr. Dingell, because I have no knowledge of them, really.

Mr. DINGELL. Thank you very much. Sir, you have been most helpful.

Mr. BOYD. Thank you, sir.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Just one other question. Is there legislation involving the matter of subsidy, abolishing subsidy for trunk carriers, in this session?

Mr. BOYD. We have a bill in our legislative program to do that, Mr. Younger.

Mr. YOUNGER. That is satisfactory to the Board?

Mr. BOYD. Yes, sir. We presented that as a part of our legislative program.

Mr. YOUNGER. Thank you. That is all.

The CHAIRMAN. Mr. Boyd, thank you very much for your presence here this morning and your testimony on this important subject.

Mr. BOYD. Thank you, Mr. Chairman. It is a pleasure, sir.

The CHAIRMAN. The committee will adjourn these hearings until July 10, at which time the representatives of the Interstate Commerce Commission will be witnesses.

(Whereupon, at 11:35 a.m. the hearing was recessed to be reconvened on Tuesday, July 10, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

TUESDAY, JULY 10, 1962

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

The committee met, pursuant to recess, at 10:15 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Today has been set aside for presentation of the Interstate Commerce Commission on H.R. 11583 and H.R. 11584. Mr. Chairman, I did state also at the outset that even though the hearings were announced on these two bills, they also included a number of other bills pending before the committee, some of which your Commission has sent up.

Others, I believe, have been introduced from one source or another, and I believe we did at that time indicate several of the bills that would be included during the course of the hearings, so, in addition to these two bills this morning, you have your opportunity to get in whatever plug you want on whatever bills that the Commission might have.

STATEMENT OF RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. MURPHY. Thank you, Mr. Chairman.

I believe that we do make reference to a number of bills through the statement here that will possibly respond to that particular invitation.

The CHAIRMAN. Yes.

Very well.

I have another bill that I am not sure you will refer to here at this time, which, it has been called to my attention, you sent up, and was reported to me as being noncontroversial. I get a little bit of a feeling when somebody tells me that a transportation bill is noncontroversial before this committee. But it was called to my attention, and if you do not include it in this, I probably will have the committee hear you on the 19th of this month, or the 20th, whichever it was that we had set aside for it. I understand that it is the 20th. Now, it may be that you will include it in these hearings, which would alleviate the necessity of hearing you at that time.

Mr. MURPHY. That particular bill is set for the 20th, I believe, Mr. Chairman.

We have been notified that you would hear us on the 20th.

The CHAIRMAN. Then you do not include it in your remarks here today?

Mr. MURPHY. No, sir.

The CHAIRMAN. That will be all right.

We are glad to have you to present the Commission views on these various problems.

You may proceed.

Mr. MURPHY. Thank you, Mr. Chairman.

May I call your attention, Mr. Chairman, to the following Commissioners who are in attendance this morning, and, with your permission, I will furnish the reporter with a list of our staff who are here.

The CHAIRMAN. Yes; I think it would be advisable to identify them, and I want to ask these Commissioners to come around to the front seats, too.

Mr. MURPHY. Commissioner Kenneth Tuggle, Commissioner Charles Webb, and Commissioner Clyde Herring.

The CHAIRMAN. We are glad to have your fellow Commissioners with you today and members of the staff.

Now, if you want your counsel or a member of the Commission or anyone else to sit with you at the table, that will be agreeable, too.

Mr. MURPHY. With your permission, if necessary, I may call on one or more of them.

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 H.R. 11583 and H.R. 11584, which were introduced to give effect to some of the proposals contained in the President's message on transportation.

These measures are extremely broad and far reaching in their practical application. The President's message, and these bills, deal with some of the most troublesome problems facing the transportation industy. Some of the proposals extend to matters upon which we, ourselves, have submitted legislative recommendations in the past. We are glad to have this opportunity to support some of the proposals contained in the President's message and to offer such comments as may be helpful. The President's message, as we see it, calls for a constructive effort on the part of all to recognize their obligations to our transport system, to our Nation, and to our communities. Our careful consideration of these proposals is essential.

It is necessary in undertaking any approach to strengthening our transportation system to recognize that exempt and illegal carriage have chipped away at the legislative safeguards designed to protect the public interest in transportation, especially in the area of competitive ratemaking. Clearly, considerable damage has been done. The answers to this erosion lie, not in removing the safeguards, in whole or in part, but in the ways and means of repairing and strengthening those safeguards. Only in this way can we expect to have a national transportation system adequate to meet the needs of the Nation's commerce, as contemplated by the national transportation policy declared in the act.

H.R. 11583

The stated purpose of H.R. 11583 is to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes. As to such traffic, section 1 of this bill proposes to add a new paragraph (23) to section 1 of the act providing, in effect, that the Commission has no authority or power to determine that a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. Instead, except for the establishment of through routes and joint rates applying to such transportation, such carriers, with respect to the exempted transportation, would be subject to the provisions of the antitrust laws. However, nothing in the bill would exempt such carriers, for example, from the tariff-filing requirements of section 6, the long-and-short-haul and aggregate-of-intermediates provisions of section 4, nor from the provisions of sections 2 and 3 of the act prohibiting unjust discrimination and undue prejudice and preference.

The Commission's jurisdiction would continue with respect to port equalization, market competition, intermediate-point discrimination, and so forth, but its authority to eliminate discrimination of intrastate rates against interstate commerce would, apparently, be removed. In short, insofar as the so-called exempt commodities are concerned, the railroads would be subject to the same economic regulation as they are at present, except for the minimum rate regulation. The result appears to us to be that the railroads would still be discriminated against under the provisions of the bill, since transportation by other modes now exempt from the provisions of the act is not subject to any regulation by the Commission whatsoever—except, of course, for safety requirements insofar as motor carriers are concerned.

The railroads must, even if H.R. 11583 were enacted, comply with section 4 (the long-and-short-haul clause) of the act, or obtain fourth-section relief from the Commission. If, in transporting bulk commodities, they seek fourth-section relief, they must file an application showing that the proposed rates are "reasonably compensatory."

A question arises, however, as to whether the Commission can, if this bill is enacted, continue to find that a rate is or is not "reasonably compensatory" in accordance with the provisions of section 4, if it has no authority to determine that such a rate is lower than a reasonable minimum rate. Heretofore, a finding to the effect that a rate is "not reasonably compensatory" or "is below out-of-pocket costs" has, in general, been equivalent to a finding that the rate "is lower than a reasonable minimum rate."

It might even be urged that by enactment of this proposal Congress, in effect, is directing the Commission to find that all such rates are "not lower than a reasonable minimum rate" and, therefore, are "reasonably compensatory," so that the Commission could no longer deny a fourth-section application in this type case. Clarification of this point seems to us to be essential.

In port-equalization cases, protestants frequently urge that a rate to a competitive port is below a reasonable minimum rate and request the Commission to prescribe a minimum reasonable rate. Under this bill, ports not having the advantage afforded by strong competitive lines could be at a disadvantage and might suffer seriously.

The grain-rate adjustment in this country, largely prescribed by the Commission, is a highly complex structure of through rates generally made over the more important grain markets of the Nation, chiefly on the Missouri, Mississippi, and Ohio Rivers. Millions of people, including farmers, elevator operators, grain markets, millers, and other grain processors and numerous receivers of the products, as well as many rail, motor, and water carriers, are vitally affected by these rates. The Commission has resolved numerous controversies arising from such rates. The major problem affecting both shippers and carriers in such rates usually is not their maximum reasonableness, which would be retained under the bill, but (1) their minimum reasonableness, chiefly to make certain that the rates are compensatory for the service to be performed, and (2) the relationship between those rates as they affect numerous farmers, markets, elevator operators, processors, gateways, and receivers along the routes traveled by the grain and its products. We believe that in this type of case it would be difficult to guard against unlawful discrimination without the power to eliminate such discrimination, wherever found, by the prescription of minimum as well as maximum rates.

The exemption of all bulk traffic from regulation as to minimum rates could foster rate wars on such traffic, and the freight charges thereon could be driven down to rockbottom, perhaps below out-of-pocket costs. This could occur within a short period of time on a large part of the bulk tonnage now moving by rail. Under such circumstances, not only would the proposed exemption from regulation as to minimum rates be harmful to barge traffic, but it would bring about a substantial loss of revenues to rail and motor carriers.

As a consequence, the rail carriers would probably petition for a general increase in freight rates to make up the revenue lost from the exempt traffic, and with the showing of revenue need which probably could be made, the Commission might well feel impelled to grant a general increase. Such an increase would be applied, in all probability, not on the exempt bulk traffic (which could more readily bear increased rates if that traffic on all modes were under regulation), but rather on the remainder, or regulated traffic, which even now is bearing most of the overhead burden of the common-carrier system of this country.

As a practical matter, if this bill is enacted, most of the tonnage now moving by rail would no longer be subject to the Commission's minimum rate power, since more than half the rail tonnage moves in bulk. The more important commodities involved are grain, petroleum, and coal, although such commodities as iron ore, sand and gravel, and oyster shells also move in large volume. H.R. 11583 would exempt this traffic from minimum rate control except insofar as the antitrust laws might apply.

The bill apparently would apply the antitrust laws instead of section 1 of the Interstate Commerce Act. Prior to regulation, port fights were settled by arbitration—a procedure not permitted under the antitrust laws. Even where the Commission could find jurisdiction under section 3, its ability to deal effectively with such a situation would largely be defeated since, without the minimum rate power, it could prescribe only rate relationships between the ports, in total disregard of the minimum level of the rates. The Commission could

not prevent a carrier serving any particular port from reducing its rates on such commodity to and from that port to any level it saw fit, even substantially below out-of-pocket cost; and, of course, in order to remain competitive, the carriers serving the other ports would be forced to reduce their rates correspondingly. The carriers concerned would not be free to get together and work out a rate adjustment by agreement. The antitrust statutes would foreclose any such attempt. The result under this bill could be numerous rate wars throughout the country, with unnecessary losses of revenues by the competing modes.

Without the minimum rate power the unlawful discriminations in the southern class-rate structure, *Class Rate Investigation*, 1939, 281 I.C.C. 213, could not have been eliminated. In that proceeding, the Commission found, among other things, that the class rates in the North were below a just and reasonable level; that the corresponding class rates in the South were above a just and reasonable level; and that the interritorial class rates generally throughout the United States east of the Rocky Mountains were unduly prejudicial and preferential. In order to remove the unlawfulness thus found, the Commission prescribed a basis of uniform class rates which it fould would be reasonable and nonprejudicial for general application throughout that entire area, and by order required that basis to be published and maintained. The Commission's findings and order were sustained by the Supreme Court in 331 U.S. 284. Without the minimum rate powers, those findings—that the class rates in the North were below a just and reasonable level—could not have been made, and the unlawful discrimination could not have been removed. The shipping public would not have, under this bill, the protection against discriminatory practices of the carriers that it has now. The rail coal-rate structure, next to the grain-rate structure, is the most complicated interrelated freight rate adjustment of any of the transportation modes in the country. This is so because most of the coal moves under group rates which apply from origin districts, each embracing numerous mines, all of which take the same rate from each district to a given destination. The origin districts in each coal-producing region are differentially related one to the other. The Commission has found in a number of proceedings that this promotes healthier competition and is advantageous both to shippers and receivers, as well as carriers.

Some of the most controversial proceedings before the Commission have been those involving rates and origin differentials on coal. See *Coal to Beloit, Wis., and Northern Illinois*, 263 I.C.C. 179 (sustained in *Ayershire Corp.* v. *United States*, 331 U.S. 132; 335 U.S. 573). This proceeding grew out of a rate war by the various railroads serving the bituminous coal mines in Illinois, Indiana, and western Kentucky to destinations in northern Illinois and southern Wisconsin and embraced also intrastate rates in Illinois. The controversy was settled by the prescription of the reasonable, nondiscriminatory and nonprejudicial rates found necessary by the Commission to constitute a lawful adjustment. This could not have been done without the minimum rate power. Such controversies arise quite frequently, and it would seem important that the parties concerned, especially shippers who pay the freight charges, have available some tribunal to which they can resort, before suffering irreparable injury, for protection against unduly prejudicial, unstable, and destructively competitive rates.

The Commission has consistently recommended that, rather than lifting the minimum rate power on bulk commodities, the bulk commodity exemption as contained in section 303(d) of the Interstate Commerce Act be repealed. The President's message wisely recognizes the difficulties long existent with respect to the exemption of bulk commodities. In fact, the alternative suggested by the President is substantially what the Commission has recommended for a number of years. We support the alternative proposed in the President's message, and strongly urge that the bulk commodity exemption in section 303(b) be repealed. H.R. 5595, which was introduced March 14, 1961, and on which hearings have been held before your committee, would accomplish the purpose described in the President's alternative proposal.

H.R. 11583 also contemplates exempting certain carriers from minimum rate regulation in the transportation of agricultural and fishery products. As in the case of the bulk commodity exemption, the Commission has heretofore recommended that a limitation be placed on the transportation of exempt commodities under section 203(b)(6) of the act. The Transportation Act of 1958 brought a halt to the continuing judicial expansion of the commodities which could be transported under this provision of the act. This was accomplished by incorporating by reference into section 203(b)(6) Administrative Ruling No. 107, of the Commission's Bureau of Motor Carriers, which listed the various commodities and proclaimed them to be either exempt or nonexempt. While this was helpful, the problem of the transportation of exempt commodities to the detriment of our regulated common carriers continues.

As recently as our 75th Annual Report to the Congress, we submitted a legislative recommendation that section 203(b)(6) be amended so as to limit the application of the agricultural and other commodity exemptions to provide direct assistance to farmers, ranchers, and fishermen in the transportation of their products to local markets. The Commission has carefully considered various approaches to this matter involving the agricultural commodities exemption. The progressive broadening of this exemption resulted in a large volume of traffic being diverted from regulated to private and exempt carriers. Authorized carriers find it difficult, if not impossible, to compete with the revenue backhauling operations of private carriers. Without these backhauls, available largely through the provisions of section 203(b)(6), and often at charges barely sufficient to cover the cost of the return trip, private carriage would not, in many instances, be financially feasible. The loss of regulated carriers of important high grade traffic, such as manufactured goods, is often the result of these marginal operations now possible under section 203(b)(6).

In addition to fostering the growth of exempt and private carriage, the exemptions continue to be a breeding ground for schemes and devices to engage in unlawful for-hire transportation. Faced with cutthroat competition and the prospect of empty backhauls, the exempt commodity hauler and the private carrier will frequently attempt to circumvent regulation by resorting to such subterfuges as "buy-and-sell" or "equipment lease-driver service" arrangements in order to cover return trip expenses. Under the "buy-and-sell" arrangement, bills of sale, invoices, and so forth, are issued to make it appear that the commodities being transported are those of the vehicle owner and,

therefore, exempt as private carriage. Where "equipment lease-driver service" in involved, the vehicle owner supplies a shipper with both vehicles and driver under an agreement which purports to be a lease, but which in fact is no more than an arrangement for a for-hire movement under the guise of private carriage.

The effect of this evergrowing diversion of traffic can be measured by the adverse impact that so large a segment of unregulated traffic has in thwarting the expressed purpose of Congress to maintain a sound system of public transportation in the national interest.

We suggest, therefore, that section 203(b) (6) be amended by inserting after the words "motor vehicles," in the first line, the following:

(but not including motor vehicles or combinations thereof having more than three axles).

This approach is based upon the idea that in all movements of substantial distances, or substantial weight, the economies of the situation will dictate the use of vehicles having more than three axles, and thus the exemption would be lost. This approach, we believe, has many advantages. It is easy to determine whether or not the exemption is applicable. The ease with which this standard could be applied should be desirable both to the carrier and to enforcement officers. A precise physical fact is established as the test. Opinions and conclusions do not become a part of the determination.

Moreover, our proposal would augment that portion of the President's message on transportation, as well as the provision contained in section 5 of H.R. 11584, in which it is provided that the Commission may enter into cooperative agreements with the various States in order to further increase our effectiveness in the area of enforcement. The value of such agreements was recognized in another bill, S. 2560, which was passed by the Senate on June 29. State enforcement is accomplished primarily by highway patrol officers and by State inspectors at weight and inspection stations, followed by immediate charges before a justice of the peace. When our recommendation is brought together with the President's proposal, as provided in section 5 of H.R. 11584, and in S. 2560, the proposed limitation in the section 203(b) (6) exemption, based on the number of axles, would be ideal for effective enforcement.

We are convinced that this type of amendment, coupled with the cooperative agreement proposal contained in section 5 of H.R. 11584, would represent a major step forward in the strengthening of our Nation's transportation system.

Proposed new paragraph (23) omits certain commodities excepted under the provisions of section 203(b) (6), such as cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country. This means that proposed new paragraph (23), if enacted, would be in conflict with present section 203(b) (6). Under section 203(b) (6) these commodities are not exempt, while a literal reading of proposed new paragraph (23) would exempt them. The second proviso of proposed paragraph (23) (2) states that the words "agricultural commodities" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, etc.," but cocoa beans, coffee beans, tea, etc., are omitted—thus indicating that the latter are included in the term "agricultural commodities" and are therefore exempt. In other words, if proposed paragraph (23) is enacted into law,

"cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country" will not be exempted under section 203(b)(6) of the act, but they will be exempted under new paragraph (23). We think this needs clarification.

Finally, section 1 of H.R. 11583 would remove the Commission's power to determine that a passenger rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission has had no occasion to set minimum passenger fares, except intrastate fares under section 13 of the act. Our records indicate that passenger carriers' fares are in fact now restricted only by maximum rate orders, which are not affected by the proposal, except in certain States, where the railroads under section 13 have sought and obtained minimum rate orders on intrastate passenger train travel. If this measure is enacted, the State commissions would be freed of the restriction of section 13 of the act and could then order the railroads to reduce the fares on intrastate travel.

Paragraph (b) of section 1 of the bill would amend section 5a of the act, which provides exemption from the antitrust laws, to exclude from the protection of that section cooperative rate agreements involving minimum rates on bulk commodities and agricultural commodities covered by the minimum rate provisions of proposed section 1(23). The effect of this proposal would be to discourage, under the antitrust statutes, any agreement between the carriers for the establishment of through routes and joint rates on bulk or agricultural commodities. This does not seem to us to comport with the purpose intended by the provisions of section 4 of H.R. 11584, which is the encouragement and promotion of through service and joint rates. We are in full accord with the President's view toward the encouragement of through routes and joint rates, and we have supported H.R. 11643, passed by the House on June 22, providing for through routes and joint rates between Alaska and Hawaii and the 48 contiguous States. We support the President's efforts to encourage through routes and joint rates. Paragraph (b) of section 1 would, we believe, discourage the establishment of through service and joint rates. This is so irrespective of the last proviso of paragraph (a) of the bill which was apparently included to make it clear that joint rate action is not to be construed as a violation of the antitrust laws. We do not believe the last proviso in paragraph (a) is complete enough to accomplish that end. Section 5a has served a useful public purpose since its enactment as the Reed-Bulwinkle Act in June 1948. We believe it should be retained.

Section 2 of H.R. 11583 would remove the "no more than three" commodities restriction from the bulk commodities exemption contained in section 303(b) of the act. Since the position of the Commission is one of full support of the alternative proposal contained in the President's message that the exemption be repealed we do not favor expanding the exemption by removing the "no more than three" commodities restriction.

Section 3 of the bill would amond section 418 of the act to allow freight forwarders to use common carriers engaged in transportation exempted under the provisions of proposed section 1(23). The exemption, contained in proposed new section 1(23), relates only to minimum rates, and thus would not affect motor carrier transportation of agricultural commodities described in section 203(b)(6).

Since proposed new section 1(23) exempts, as to minimum rates, the transportation of these commodities by all carriers, it is not clear whether this amendment of section 418 would allow freight forwarders to use exempt motor carriers for these commodities. We believe clarification is needed. The drafters of the bill apparently inadvertently overlooked the prior amendment to section 418 of the act in which reference was made to the Alaska Railroad and common carriers serving Alaska and Hawaii. The amendment should, therefore, merely change the third from last clause to read: "common carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of this Act;".

Section 4 of the bill merely renumbers certain sections of the Shipping Act, and adds the minimum rate exemption of both bulk and agricultural commodities to the Shipping Act.

Section 5 of the bill adds to the Federal Aviation Act provisions similar to the minimum rate exemption proposed for bulk commodities and agricultural commodities.

H.R. 11583 clearly identifies areas in which some very difficult problems exist. We agree with the President's message that these are areas wherein strengthening moves are essential. The bill contemplates dealing with these problems essentially, through the application of the antitrust laws. The Clayton Antitrust Act of 1914 was enacted to provide more completely for regulating railroad financing and securities, so it is in the Sherman Antitrust Act, under the jurisdiction of the Department of Justice, that the regulatory powers proposed by this bill reside.

Without the minimum rate powers now possessed by the Commission, we do not believe that reliance upon the antitrust laws to prevent or stop destructive rate wars and to protect shippers and localities against unjust discrimination and undue prejudice and preference is adequate. With the hundreds of thousands of rate adjustments made each year, irreparable damage might be suffered by shippers, carriers, and localities before corrective steps could be taken under the antitrust laws. It is true that injunctive relief might be available. However, we are not aware of any present proposal to establish a means of screening these adjustments preliminary to bringing suits for an injunction whenever and wherever needed. The action under those laws might be too late. Before such injunctive relief could be obtained, there would have to be a determination that such relief was justified, and that determination would have to be made upon information gathered from carrier or shipper sources. How such information would be obtained is not entirely clear. We urge the committee to take into consideration the serious consquences which could flow from this portion of the bill which places reliance upon the antitrust laws. We believe that the potential for irreparable injury, together with the overriding necessity for protecting the public interest, strongly indicate the need for the availability of a special procedure that assures relief before, rather than after, injury has occurred.

In summary: It is our firm judgment that the repeal of Federal minimum rate controls on the exempted traffic, as presently provided in the Interstate Commerce Act, would result in substantially intensified, "unfair or destructive" carrier competition within the meaning of the national policy declared in the act.

Based on our practical experience in administrative work, it is reasonable to believe that such intensified competition on the exempted traffic, coupled with its inevitable adverse effect on fully regulated rate structures, would seriously impede the development and maintenance of the kind of national transportation system contemplated by the policy clause, and result in great economic damage to small towns, communities, and districts that are not located on the Nation's main channels of commerce.

In evaluating the practical merits and probable results of this proposal, it is important to know that the bill would free more than half—probably as much as 60 or 70 percent—of all railroad freight tonnage from ICC minimum rate controls; and that it would leave free from all rate regulation under the act about 90 percent of the water tonnage and about 65 percent of the present highway tonnage. This, it should be emphasized, would allow all carriers and all modes to compete for such traffic free from ICC minimum rate controls regardless of whether or not, in given situations, the traffic in question was actually moving by presently exempted carriers.

For illustration, it is probably correct to say that, today, the great bulk of the grain and coal traffic moves from and to points between which there is no substantial direct competition between regulated carriers and, on the other hand, unregulated carriers. The repeal of the ICC minimum-rate controls on all modes, therefore, unquestionably would result in damaging rate wars by all present regulated carriers, intramodal as well as intermodal, without any effective rate controls under the act.

Other traffic, of course, would have to foot the deficiency operating bill on coal and grain. And by "deficiency" operations we mean transportation performed under depressed competitive rates which do not yield out-of-pocket costs under the Commission's formulas, or which do not make a fair contribution to overhead considering the material transportation conditions surrounding the traffic in question.

With the great bulk of the traffic unregulated or—as to the railroads—only partially regulated under the Interstate Commerce Act, we seriously question whether it would be practical to continue effective ICC rate reguation of any substantial amount of interstate commerce by any mode of carriage. We have in mind especially those regulatory provisions which, since the inception of economic regulation, have required fair, just, and reasonable freight rates—for both carriers and shippers—and equality of treatment for people, commodities, ports, districts, and places, under substantially similar circumstances and conditions.

It has been said by advocates of greater freedom in transport pricing that shippers, ports, commodities, and so forth, have adequate protection against undue rate prejudice under section 3(1) and comparable provisions in the other parts of the act. In this connection it is important to know that the protection against undue prejudice applies only when the respective transportation services are performed under substantially similar circumstances and conditions. Carrier competition at one point and the absence of such competition at another point usually has been found to constitute a dissimilarity of circumstances and conditions which nullifies the prohibition against undue prejudice.

There is also another important rule of construction to the effect that shippers, communities, and so forth, have no protection whatever

under the prohibition against undue rate prejudice under the act unless the same carrier or carriers effectively participate in the rates on both the prejudiced and preferred traffic. If there is to be further and deeper competitive rate slashing, it is well to remember that shipper interests have no protection under the law of undue prejudice except in the limited situations just outlined.

If transportation history teaches any one thing, it is that while competitive forces generally are effective in reducing prices and improving standards of service, these very same competitive forces in the transportation field, unless subject to reasonable restraints, will result in eliminating competition and in disrupting reasonable and fair rate relations as between competing shippers, geographical areas, and territories.

It is our view that any substantial relaxation of minimum rate controls, as now provided in the several ratemaking provisions of the act, as those provisions are presently interpreted by the Commission and the courts, would be a step backward in reaching for a sound solution of the problems confronting the transportation industry, including the railroads and the shipping public. Our opinion on this, it should be emphasized, is based upon our day-to-day practical and objective experience in analyzing and evaluating the evidence and arguments of carriers and shippers in given situations, with due consideration for the general public interest in ratemaking.

The limited and flexible statutory restraints in the Interstate Commerce Act, on the managers of public carriers in the matter of ratemaking, generally have constituted a formidable shield against, and a remedy for, the correction of any unlawful situations resulting from the application of other more objectionable kinds of restraints. We here refer to the kind of economic restraints or trade barriers, as they have been called by the Supreme Court, that, in the absence of reasonable controls, could be imposed upon shippers, particular carriers, geographical regions, districts, etc., in the form of unfair and inequitable freight rates.

It is high time, we suggest, to give some consideration to the economic freedom that results from reasonable Federal rate regulation, rather than always emphasizing the restraints that safeguard such freedom from degenerating into license. The possible effect of rates and rate relationships on the public welfare cannot be overemphasized, for they are often the key to either economic advancement and growth or to economic retardment and withering of communities, areas, and industries. The stake of the Nation in the free flow of commerce and, therefore, in matters affecting transportation is very real and far reaching. It is this paramount public interest which distinguishes the transportation industry from other commercial enterprises.

We believe that the present statutory restraints in the act on ratemaking, including specifically the limited restraints or checks in competitive rate situations, have served a good purpose in the past and that they should not now be impaired.

We therefore favor the President's alternative suggestion that section 303(b) of the act be repealed, and recommend the enactment of legislation to achieve that purpose.

In addition we recommend the enactment of language which would tighten the agricultural and fishery products exemptions in the manner I have indicated.

H.R. 11584

In general, section 2 of H.R. 11584 would empower the Interstate Commerce Commission, as well as the Civil Aeronautics Board and the Federal Maritime Commission, to authorize common carriers subject to their jurisdiction to experiment, under the agencies' supervision and control, with new service combinations or arrangements, simplified documentation, and simplified rate bases and freight classifications. These experiments could be proposed by the carriers, shippers, or the regulatory agencies and could involve individual carriers, carriers of the same mode, or of different modes. The participation of carriers and shippers would, however, be strictly on a voluntary basis. Where joint action by two or more regulatory agencies would be required, such action would be taken by the joint boards provided for in the Federal Aviation Act of 1958.

The Commission has always encouraged carrier experimentation designed to improve service or lower costs whenever this could lawfully be done within the framework of the Interstate Commerce Act. In the recent past, it has approved innovations such as "piggybacking" services and rates, multiple-car and trainload rates, competitive rates based on certain minimum volumes moved within a specified period, and various types of experimental passenger fares. For example, in *Lumber from the Pacific Coast to Eastern Points*, 210 I.C.C. 317, 346 (Aug. 13, 1935) the Commission stated:

> The respondents * * * are entitled, as a matter of right, to make the experiment (of reduced rates) unless upon this record we can say that their action or its probable results will violate some provision of the act.

Again, in *Contract Rates, Rugs and Carpeting from Amsterdam, New York*, 313 I.C.C. 247, 254 (Feb. 13, 1961), (sustained in *New York Central R. Co.* v. *U.S. et al.*, 194 F. Supp. 947 and 368 U.S. 349) the Commission stated:

> Constructive ratemaking innovations by carriers are desirable so long as they are consistent with the standards of lawfulness in the act and the national transportation policy. As in all other situations, the lawfulness of innovations of this kind must be determined based on the controlling circumstances in particular situations.

As recently as June 14, 1962, the Commission declared with respect to constant charges on shipments weighing less than 300 pounds, proposed in I. & S.M.—14704, *General Increases—Eastern Central Territory:*

> The respondents' effort to solve the small shipment problem should not be condemned merely because it represents a departure from hallowed transportation practices. Every respected tradition in transportation began as a controversial innovation.

Further, in this connection, it should be noted that carriers do not now need specific authority to initiate experiments. To illustrate, rule 49 of supplement 12 to uniform freight classification 6, effective June 29, 1962—and I might state that this similar rule has been in effect for many years—states in part:

> For the purpose of determining the merits of shipping containers or loading or bracing methods not specifically provided for in the classification * * *, such shipments, for the purpose of experimentation and test, * * * will be accepted for transportation * * *.

The uncertainty of the language employed in section 2 gives rise to several very fundamental questions. First is the question of whether all proposals made by carriers or shippers pursuant thereto would have to be processed by the agency as a matter of right, or whether they could, in the agency's discretion, be rejected. Thus, on the one hand, subsection (b) requires the regulatory agencies to control and carefully supervise the experiments, but, at the same time, it also provides that such experiments "*shall* * * * be authorized by the regulatory agency concerned." [Emphasis supplied.] If this language is to be construed as meaning that the agencies must approve all proposed experiments, even though prescribing certain conditions, the result could be the approval of hundreds of proposals regardless of their effect on the general public, shippers, and other carriers.

Moreover, and even more importantly, if the language of subsection (b) is intended to be so construed, the regulatory agencies would be required to sanction experiments which would otherwise be prohibited by law, that is, which could not be conducted under existing regulatory statutes or under rules and regulations promulgated thereunder. For example, in *Contract Rates, Rugs and Carpeting from Amsterdam, New York, supra*, the Commission found that the so-called "guaranteed" rates were unjust and unreasonable in that they would constitute a destructive competitive practice within the meaning of the national transportation policy and ordered them canceled. Under a literal construction of subsection (b), however, the characterization of the same rates as an "experiment" would give them a legitimate status. We seriously question the wisdom of lending legitimacy to a basically unlawful proposal merely because it is characterized as an "experiment."

It is our view that section 2 should be amended to make it clear that the agencies would not be required to approve all proposed experiments, but would be authorized to reject those which would have a seriously harmful effect upon shippers, the general public, or other carriers. The carriers are now free to experiment with new and improved methods of performing service and ratemaking within the framework of existing law. Additional experimental proposals, under certain conditions, could contribute in some measure to the solution of some of the transportation industry's complex rate and service problems without causing any unreasonable injury to affected parties. In this connection it is presumed that the authorization of a proposed experiment would not be deemed to constitute future agency approval in any respect. It is also presumed that when effective and worthwhile results are obtained from an experiment, the rates, service, classification, et cetera, involved therein could be approved or prescribed for use by carriers generally if such action was possible within the framework of existing law or, if this could not be done, would be the basis for legislative recommendations to the Congress.

Under section 3 of the bill, common carriers subject to parts I, II, and III of the act would be prohibited from unjustly discriminating against any shipper or carrier, regulated or not, with respect to service or rates in transporting loaded or empty vehicles or shipping containers. According to the explanation of the Secretary of Commerce in his letter transmitting the underlying draft bill, the purpose of

this section is to provide the so-called carrier shipper, as in piggyback operations, with the same competitive opportunities as noncarrier shippers.

The Commission favors, and has itself sought to encourage, greater coordination of the transportation facilities of the various modes to the end that the inherent advantages of each may be utilized in the most efficient manner. In this connection, I should point out that in our 75th annual report, we recommend amendments to the act which would permit us, in proper cases, after a hearing, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers by rail, express, and water. (See Legislative Recommendation No. 3.) We therefore agree with the purpose of section 3 of the bill to the extent that it would be consistent with sound transportation principles within the basic regulatory framework established by the Congress.

Because of the relatively recent acceleration in the growth of coordinated motor-rail activities under the various piggyback plans and the relatively few proceedings that have come before the Commission involving such services, there has been little opportunity to develop comprehensive data concerning the overall ramifications of piggyback services. The Commission, therefore, lacks the necessary and detailed information which it should have in order to resolve a number of important questions relating to piggyback operations and to take a position of section 3 of the bill, the enactment of which could have far-reaching effects. An important question, for example, is the extent to which regulated motor carriers would be detrimentally affected by the indiscriminate use of piggyback service by unregulated motor carriers. There are also certain fundamental considerations involved in the formulation of a position regarding the merits of section 3 which we feel warrant reexamination and reevaluation. One such consideration is whether motor common carriers can lawfully make use of plan III piggyback services. The Commission stated in *Substituted Freight Service*, 232 I.C.C. 683 (1939), that one could not act as a common carrier by motor vehicle and as a shipper by rail as to the same shipment. Another is whether motor contract carriers can lawfully make use of any piggyback services. In *Movement of Highway Trailers by Rail*, 293 I.C.C. 93 (1954), the Commission found that they could not. Also to be considered, among other things, is whether motor carriers seeking to use plans I or III service should be required to have underlying operating rights, whether such rights should be reasonably direct, or whether a varying degree or circuity should be permitted. Other questions to be explored would be the propriety of a motor carrier hiring transportation from another mode for a portion of a haul and assessing the shipper or consignee all motor rates under its own tariff, and to what extent a motor carrier may be permitted to substitute rail for motor service without, in effect, constituting abandonment of service.

In order to develop additional information necessary to make a thorough review of piggyback operations and to establish adequate guidelines respecting their future utilization, the Commission has instituted a formal investigation covering piggyback service. Ex parte 230 *Substituted Service—Charges and Practices of For-Hire Carriers and Freight Forwarders (Piggyback Service)*.

We respectfully suggest, however, that the Congress, in the meantime, may wish to consider other appropriate action to encourage greater coordination of services by enacting legislation which would implement our Legislative Recommendation No. 3.

Section 4(a) of H.R. 11584 would declare, as a statement of policy, that it is in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes be encouraged and promoted. The Commission strongly favors this policy and has, in its annual reports, recommended to the Congress enactment of legislation with this end in view, that is, of promoting a more coordinated national transportation system. We have, at the same time, however, urged that, in the public interest, this be accomplished by the most simple and expeditious means.

As I have mentioned earlier, in our 75th annual report, covering fiscal year ending June 30, 1961, we recommended (Legislative Recommendation No. 3) that the Commission be authorized, after investigation and hearing, and when found to be necessary and desirable in the public interest, to require the establishment of through routes and joint rates between motor common carriers of property subject to part II of the act, and between such carriers and common carriers by rail, express, and water subject to parts I and III thereof, respectively.

Mr. Chairman, if I may, at this point, say that recently introduced were two bills to implement this recommendation, one of which is H.R. 11362, and the companion bill in the Senate is S. 3510.

We also recommended (Legislative Recommendation No. 17) enactment of legislation which would authorize the voluntary establishment of through routes and joint rates between motor and water common carriers subject to our jurisdiction and common carriers by water subject to regulation by the Federal Maritime Commission on traffic moving between Alaska or Hawaii and the other States. H.R. 11643, which would give effect to this proposal, was passed by the House on June 22, and extensive hearings have been held on a companion bill (S. 1839) in the Senate by the Senate Commerce Committee. We are hopeful that this proposal will soon be enacted by both Houses and approved by the President—thereby extending to the users of motor-water services (or of a combination of water services) and to the people of Alaska and Hawaii the benefits of joint rates similar to those now enjoyed by reason of joint rail-water rates voluntarily established pursuant to section 1(1)(a) of the act.

We favor enactment of section 4(a) of the bill.

Section 1003 of the Federal Aviation Act of 1958 which section 4(b) of the bill would amend, authorizes air carriers to establish through service and joint rates with other common carriers. Section 1003 further provides that matters relating to through service and joint rates between air carriers and common carriers subject to the Interstate Commerce Act may be referred by the Interstate Commerce Commission or the Civil Aeronautics Board, either upon complaint or upon its own initiative, to a joint board composed of a like number of members of the Commission and Board, as appointed from time to time by their respective Chairmen.

Subsection (b) of the proposed revision would, among other things, authorize air carriers subject to the Federal Aviation Act, common carriers subject to parts I, II, and III of the Interstate Commerce

Act, and common carriers by water, subject to the Intercoastal Shipping Act, 1933, to establish through service and joint rates with any other such common carriers for the transportation of persons or property in interstate or foreign commerce. Air carriers not directly engaged in the operation of aircraft (other than companies engaged in the business of air express) would be excluded.

The joint board as now provided for in section 1003 would, under the bill, be expanded to include members of the Federal Maritime Board. As thus composed, the joint board would, under proposed subsection (e), be authorized to pass upon such matters relating to through service and joint rates as may be referred to it by any of the participating agencies, upon its own initiative, or upon complaint filed with the agency by any affected shipper, consignee, or carrier. Participating carriers would also be authorized to file complaints respecting the lawfulness of the divisions of such joint rates.

As I have stated, the Commission has for a number of years favored the encouragement and promotion of through routes and joint rates, both intermodal and intramodal, and has recommended enactment of legislation which would accomplish this in the most direct, simple, and feasible manner. In considering section 4(b) of the bill it should be kept in mind that, with only two exceptions, statutory authority already exists for the establishment of through routes and joint rates with respect to combinations of rail, motor, and water services subject to the jurisdiction of the Interstate Commerce Commission; air service subject to the jurisdiction of the Civil Aeronautics Board; and water service subject to regulation by the Federal Maritime Commission. The only important through route and joint-rate combinations not now authorized are between motor and water common carriers subject to our jurisdiction and water carriers subject to the jurisdiction of the Federal Maritime Commission on traffic moving between Alaska or Hawaii and the other States. Even these voids would not have occurred except for certain provisions in the Alaska and Hawaii Statehood Acts retaining in the Maritime Commission jurisdiction over water transportation between Alaska, Hawaii, and the other States—jurisdiction which would have otherwise automatically devolved upon the Interstate Commerce Commission upon the advent of statehood. Ultimate enactment of H.R. 11643, as passed by the House, or of S. 1839, on which, as I have said, hearings have been held in the Senate, would fill this void through the simple expediency of amending parts II and III of the Interstate Commerce Act to authorize motor and water common carriers subject respectively to those parts to enter into joint-rate arrangements with water common carriers subject to the jurisdiction of the Maritime Commission. This amounts to no more than an extension of the present provisions of section 1(1)(a) of the act which now authorizes railroads subject to part I thereof to enter into voluntary joint-rate arrangements with water common carriers subject to the Shipping Acts, which, when entered into, are subject to regulation under the Interstate Commerce Act. Enactment of eother H.R. 11643 or S. 1839 would, in our opinion, make further consideration of section 4(b) of this proposed measure unnecessary.

We have previously had occasion to comment on the joint board approach to this problem, and after careful consideration of the matter concluded that it is unnecessarily complex and cumbersome

and fails to provide a satisfactory solution. Under the joint board approach, in the event of disagreement on important questions involving two or more modes of transportation, but not all of them, the deciding vote(s) could be cast by the representative(s) of the agency having no present responsibility in connection with the subject matter.

For example, in a joint motor-water-rail situation, with no air movement involved, the CAB representative(s) could cast the deciding vote. Likewise, in proposed joint operations between air and motor or rail, but with no water movement involved, the deciding vote might be that of the Maritime Commission representative(s).

The proposal fails to state how many members of the board are necessary to constitute a quorum. If, in the case of a three-member board, the affirmative votes of any two members would be sufficient to dispose of a matter, there is a possibility that a question involving a carrier subject to an agency's jurisdiction could be decided without the agency's participation. If the only representation on the board is that of the two agencies having jurisdiction over the two participating forms of transportation, a tie vote along agency lines may result. It would seem desirable, therefore, if section 4(b) is favorably considered, to provide that where only two agencies have a present direct responsibility in connection with a through arrangement, only those two agencies participate, and, in the event of disagreement, the agency having jurisdiction over the originating carrier in the joint movement prevail.

With further respect to our position that the joint board approach is generally unnecessary, it should be noted that although joint boards have been authorized by the present provisions of section 1003 of the Federal Aviation Act since 1938, no matters have arisen that have required joint board action, but the members of the two agencies and their staffs have worked together in a fine spirit of cooperation on matters of mutual interest. In fact, for some years after 1938, no joint rates were filed under these provisions. Since 1955, however, a limited number of joint air-motor rates have been filed with the Board and the Commission.

Similarly, we foresee no great demand for joint water-air service. This observation is based partially on the fact that joint rail-air rates have been permissible since 1938, and to date no such joint arrangements have been established. A fundamental reason for this appears to be the difference in shipping characteristics of the commodities transported by these two modes. Since the characteristics of the commodities which move by water are, in most respect, similar to those transported by railroad, it seems logical to conclude that there will be little demand for water-air through routes. The heavy, low-value commodities which constitute the principal traffic handled by the water carriers do not appear to be susceptible to movement by air, where perishability or high value in relation to density are generally requisites in order for air transportation to be economic. Containerization may increase the demand for water-air service, but if the demand for the commodity is great enough and its value sufficiently high, the strong possibility is that the entire service will be performed by air.

In addition to the foregoing objections to section 4(b) of the bill, it is also technically deficient in a number of important respects.

In view of the fact that H.R. 11643 has been passed by the House and that companion bill, S. 1839, has been the subject of hearing before the Senate committee, we urge ultimate enactment by both Houses of either of these measures instead of section 4(b).

Section 5 would amend section 205(f) of the act which, among other things, authorizes the Commission to avail itself of the cooperation, services, records, and facilities of State authorities in the enforcement or administration of the provisions of part II. Section 5 of the bill would authorize the Commission to make cooperative agreements with the States to enforce State and Federal economic and safety laws and regulations concerning highway transportation.

It appears to us that this proposal envisions the exchange of information which can be used in enforcing operating authority, registration, and safety requirements.

The CHAIRMAN. Commissioner, will you refrain for just one moment, please, sir. I interrupt you for the purpose of extending a welcome to this committee and to recognize the presence of the Honorable J. Hamilton Russell, a Member of Parliament from South Africa, Capetown.

Mr. Russell is here observing procedures of this committee, having the responsibility in Parliament as chairman of a similar committee on transportation in South Africa. His visit here is quite interesting, and I did want at this time to recognize his presence, and let it be known that he has been a guest of the committee this morning, and we are very glad to have Mr. Russell with us.

Mr. RUSSELL. Thank you, Mr. Chairman.

(Discussion off the record.)

The CHAIRMAN. You may proceed.

Mr. MURPHY. The specific terms to be employed in entering into such agreements are not spelled out in the bill, and, consequently, we are not certain of the extent which the proposed legislation contemplates more, if indeed it does, than an exchange of information. In any event, whether such agreements are in fact entered into is, under the terms of the proposed legislation, permissive rather than mandatory, thus enabling the Commission to make certain that becoming a party to such an agreement would be in the public interest. We assume, also, that any such agreement could be entered into with the understanding that the Commission, or the particular State involved, could withdraw from the agreement at any time that the public interest is no longer being served.

We strongly favor cooperation with State authorities in the exchange of information which may be helpful to State and Federal efforts to improve compliance and enforcement activities. As a matter of fact, many States now notify our field personnel of probable violations of the Commission's requirements which come to their attention. We feel that proposals designed to strengthen the abilities of both authorities to increase the effectiveness of their enforcement programs merit our attention and support. As you know, the Commission is now authorized, as I have said, to avail itself of cooperation by State authorities under the provisions of section 205(f) of the act. There is, at present, some question as to the extent of our authority to reciprocate.

Section 222(d) of the act prohibits the disclosure by any special agent, examiner, or accountant of any information coming to his

knowledge during the course of any examination or inspection of a motor carrier's property, equipment, or records, except as he may be directed by the Commission or by a court or judge. We are not certain that this section empowers the Commission to grant blanket authority in advance for a disclosure by its personnel to State officials of information concerning State violations which has come to their attention during any such examination or inspection.

In view of our doubts in this respect, we recommend that section 5 of H.R. 11584 or section 5 of S. 2560 be amended to give the Commission clear authority to allow such disclosures under appropriate safeguards in cooperative agreements.

The Commission believes, as I have indicated, that this proposal, when taken together with our suggested amendment of section 203 (b) (6), will be of substantial assistance in enforcement matters, and in helping to clean up gray area operations. Moreover, we believe that the enactment into law of a proposal authorizing the Commission to enter into such cooperative agreements would have the effect of lending the dignity and approval of the Congress of the United States to the heretofore informal cooperation between Federal and State authorities looking toward more efficient enforcement inuring to the benefit of all concerned.

We therefore support this proposal and recommend its enactment.

Section 6 of H.R. 11584 would amend section 222(h) of the act so as to extend the civil forfeiture provisions therein to unlawful operations by motor carriers and to violations of the Commission's motor carrier safety regulations. It would also increase substantially the amount of forfeitures prescribed. This proposed amendment, as far as it goes, is consistent with legislative recommendation No. 4 in the Commission's 75th annual report, which has been implemented by the introduction of H.R. 10054 and S. 2764 in the House and Senate, respectively, and with section 3 of S. 2560, as passed by the Senate on June 29. It is our view, however, that the proposed amendment should also permit the Commission to institute forfeiture actions directly in the courts.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occurred. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, has attempted to give the operation an appearance of private carriage.

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More specifically, an owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer under which the manufacturer allegedly uses the vehicle in private carrier operations. Such arrangements range all the way from a bona fide lease of a vehicle, at one extreme, to the most obvious sham at the other. No enforcement action is, of course, involved in the case of a bona fide case. The obvious shams, however, are the subject of criminal prosecution.

While there are a number of vehicle arrangements which the Commission believes to be illegal for-hire carriage by the vehicle owner, it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and wilfulness and proving guilty beyond a reasonable doubt. Violations would, of course, still have to be established by a preponderance of the evidence. In addition, in a criminal proceeding there can be no appeal from an acquittal. Such cases are now handled in the civil courts, but an injunction against such operations in the future is all that can be secure. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Operations sometimes referred to as "buy-and-sell" operations are very similar in effect. By allegedly purchasing merchandise the transporter represents the operation to be private carriage. As in the case of leasing arrangements these operations have many variations, some of which present close questions as to whether the operation constitutes for-hire carriage. Some are obviously illegal for-hire operations and are handled as criminal cases. Others, however, are not so clearly unlawful as to warrant criminal action for the reasons I have stated in connection with questionable leasing arrangements, but which, in our view, are nevertheless unlawful. Such operations may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease and desist order is issued by the court. If this proposed amendment is enacted a number of these cases could be made the subject of a civil forfeiture action which, if successful, would cause the operator to suffer a money judgment or forfeiture.

Enactment of the proposed legislation would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed of by pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of cases under the recommended forfeiture procedure.

The Commission's efforts at more effective and expeditious enforcement would also be greatly enhanced if it were authorized to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Delays

would be avoided not only by eliminating the mechanics involved in taking the extra step, but also by the elimination of such delays as may be caused by the time consumed in convincing the U.S. attorney that an action should be filed. Moreover, since a civil rather than a criminal proceedings is involved, participation by the Justice Department would not seem to be particularly important. This proposed change in the statute could be accomplished by substituting the words "by the Commission or its duly authorized agent," for the words "in the name of the United States," in the second sentence of section 222 (h), and by striking the fourth and fifth sentences of the subsection.

Enactment of section 6 of the bill, with the suggested change, would strengthen the Commission's hand considerably in dealing with some of the principal factors contributing to the decline of regulated common carriage. We therefore recommend that it be given favorable consideration.

Section 9(a)(1) of the bill would amend the second proviso in section 321(a) of the Transportation Act of 1940, which excepts from the competitive bidding requirements of section 5 of title 41, United States Code, transportation services procured for the Government from any common carrier lawfully operating in the territory where the services are to be performed. It is our understanding that the Comptroller General has construed this exception as being inapplicable to the transportation of mail.

Under the proposed revision, the head of any agency, or his designee, would be authorized, without advertising for bids, to negotiate contracts for the procurement of—

transportation, including mail transportation services performed by common carriers by motor vehicles when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed, and services accessorial thereto for the United States * * *.

The proposed revision would thus appear to make it clear that mail transportation services may be procured from motor common carriers without the necessity of advertising for bids.

Transportation of mail for the United States by motor vehicle is not subject to regulation by the Commission, either with respect to authority to perform such service or as to the compensation to be paid. We are not, therefore, familiar with the problems which may confront the Post Office Department in this area and we take no position with respect to this limited aspect of the proposal. However, it also appears from the language employed that contracts for transportation services, other than for the transportation of mail, could be negotiated, without competitive bidding, with any carrier, whether a common carrier or not. It is our understanding that the present exception from competitive bidding applies only to procuring the services of common carriers, and in this connection it should be noted the sections 1(7) and 22 of part I of the Interstate Commerce Act, and the comparable provisions in parts II, III, and IV, which authorize transportation free or at reduced rates for the Government, apply only to common carriers. Since it is not clear whether the extension of this exception to other than common carriers was intended, we deem it advisable to call this to the committee's attention.

Paragraph (2) of section 9(a) of the bill would, in effect, repeal present subsection (b) of section 321 of the 1940 act by enacting entirely new provisions in its place. The present subsection relates to

rates to be charged by so-called land-grant railroads when performing transportation services for the Government. Since land-grant rates, if presently applicable at all, are no longer an important factor in the performance of transportation services for the Government, we see no objection to the elimination of the present language.

The proposed new language would authorize the Administrator of General Services and the Secretary of Defense, or their designees, on behalf of the civil and military agencies, respectively, to negotiate, contract for, or "otherwise establish," for periods not exceeding 1 year but renewable for successive 1-year periods, simplified rate structures for transportation services and accessorial services procured for the United States. As a condition precedent to the establishment of any such rate structure, the Administrator and the Secretary would have to determine that the prospective structure was in the "public and Government interest" and might reasonably be expected to produce "lower or not substantially higher" administrative and transportation costs than are normally applicable to the United States. A further prerequisite would be the conduct of research and experimentation for the purpose of devising practical systems to make rate publication and ascertainment less costly and more convenient. One of the stated purposes is to develop a system that would be well suited to condensed tabulation or the application of automatic data processing. Finally, the new subsection would require the regulatory bodies to "observe, recognize, and employ to the maximum beneficial extent the techniques and results of said research and experimentation." Industrial, academic, and other governmental agencies would merely be authorized to do so.

One of the purposes of the bill appears to be the development of a new method of determining transportation charges which would replace the present rate structures of the carriers on government traffic, including section 22 charges. Another purpose seems to be the creation of a rate structure—separate and apart from the existing commercial traffic system—which would be susceptible to automatic data processing procedures. While the use of automatic data processing is usually desirable, we do not feel that the maintenance of just and reasonable rates for the carriers should be subordinated to machine data processing considerations.

We agree with the overall objectives of the proposal insofar as it seeks a simplification of rate structures, for it would merely incorporate into law the existing right of the Government, or any shipper for that matter, to urge such action upon the regulated carriers. The main thrust of this proposal, however, appears to be a reduction in administrative and transportation costs to the Government at the expense of a flexible rate structure and, possibly, even at the expense of the carriers since there is no requirement that they realize a corresponding reduction in their costs. We would, therefore, be opposed to the creation of a special rate structure for Government traffic which would be lower than that for commercial traffic unless it can be shown that there would be a corresponding reduction in the cost of performing the service.

The Commission has for many years been of the view that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common-carrier

services. A large percentage of the traffic transported for the Government now moves at reduced rates under section 22 which are not available to the commercial shipper. This preferential treatment has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversion of traffic to private carriage is obviously detrimental to the maintenance of a sound common carrier system. Moreover, the preferential treatment accorded the various levels of government is, in our view, inconsistent with the national transportation policy which has among its objectives "to foster sound economic conditions in transportation" and "to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

Accordingly, rather than broaden the authority of the Government to secure transportation services at less than the existing commercial rates, as proposed in section 9(a)(2), we favor complete elimination of such authority except during time of war or national emergency. Enactment of legislation to this effect was recommended to the Congress in the Commission's annual reports for 1955 and 1956, and more recently in a report dated December 12, 1961, to the Senate Commerce Committee commenting on S. 1145, to amend section 22 of the Interstate Commerce Act.

In addition to the contemplated creation of a special rate structure for Government traffic, there are a number of other features of section 9(a)(2) which, in our opinion, are open to serious question. It would appear, for example, that the Administrator or the Secretary could "negotiate, agree to, contract for, engage, or otherwise establish" simplified rate structures regardless of what the effect may be upon other carriers not parties to the agreement. We are also concerned with the possibility that the words "or otherwise establish" could be interpreted to mean "prescribe." If so construed, the result with respect to Government traffic would be to remove from common and contract carriers the responsibility, which historically has been imposed upon them, of taking the initiative in the establishment and maintenance of rates and charges for their services. It would also appear that, as in the case of section 22 quotations, the responsibilities of the regulatory agencies over such rates and charges would be removed.

The bill provides that the Administrator and the Secretary, or their designees, shall make a determination that the prospective rate structure will be in the "public and Government interest" before such structure could be established. It is difficult to see how the Administrator, for example, would be in a position to determine whether his proposal for a simplified rate structure would, standing alone, be in the overall "pubic and Government interest." It is also difficult to envision how he could determine whether his proposal would, as to the Government as a whole, "* * * result in administrative and transportation costs * * * lower or not substantially higher in the aggregate than costs normally applicable." Divided responsibility often results in loss of responsibility.

Since both the Administrator and the Secretary would be authorized to establish simplified rate structure, it appears possible, or even probable, that more than one rate structure would be established. If

several special systems were to be superimposed upon the existing system, which would then become applicable only to commercial traffic, enactment of the proposal would, it seems to us, complicate rather than simplify the existing tariff system. This would also undoubtedly have the effect of increasing rather than reducing the carriers' overhead costs. Such increased cost would hardly provide a basis for a reduction in rates on Government traffic.

While the second proviso to proposed subsection (b) would require research and experimentation as a condition to the establishment of simplified rate structures, no mention is made of who is to conduct such projects. It is not clear, therefore, whether such work is to be done entirely by the General Services Administration or the Department of Defense, or whether the carrier and the Federal regulatory agencies are expected to assume some of the responsibility and cost.

Also of serious concern to us is the proposed requirement that the Federal transportation regulatory bodies "observe, recognize, and employ to the maximum beneficial extent" the results of the research and experimentation. If this means, as it would appear to mean, that these regulatory agencies shall apply the simplified rate structures established for Government traffic to commercial traffic, the effect again would be to deny the carriers the right of initiating rates. We do not believe that this freedom should be taken away from the carriers. It would, moreover, appear that the Commission could not peremptorily "employ" the results of such experimentation and research without violating the provisions of the Interstate Commerce Act respecting the prescription of rates. The act would require the Commission, after hearing, to find that the simplified rate structures were reasonable and otherwise lawful in accordance with its provision.

Since the bill provides that the prospective simplified rate structure shall initially entail research and experimentation "in diminished differentiation among commodities," we have serious misgivings that what is contemplated is an inflexible rate structure suitable for automatic data processing, but which would not be susceptible to frequent changes to meet the changing needs of commerce with respect to particular commodities or movements between particular points. This language also raises the question as to whether the long-established ratemaking element of the value of the commodity is to be disregarded by establishing the same rates on high-grade as on low-grade commodities. If it is to be disregarded, it would appear that since freight charges are generally reflected in the price of a commodity, such a rate structure would have a tendency to increase the cost of many commodities to the Government. It would also appear that such a simplified rate structure would disregard entirely competitive influences as between the different modes of transport and the inherent advantages of each mode, contrary to the national transportation policy.

For the reasons I have stated, we recommend against enactment of section 9(a)(2) of the bill.

Subsection (b) of section 9 would retain the status quo insofar as the provisions of section 2631 of title 10 of the United States Code are concerned. That section relates to charges made by vessels of the United States for transporting supplies purchased for the armed

services. Since these provisions are not administered by the Commission, we do not feel that we are in a position to offer any helpful comments as to the merits of this subsection.

Section 11 of the proposed measure would repeal part V of the act under which the Commission guarantees loans made to railroads subject to its jurisdiction for the purpose of financing or refinancing certain expenditures for additions, betterments, or other capital improvements or for the maintenance of property. At the same time it would vest authority in the Secretary of Commerce substantially similar to the authority now vested in the Commission under this part.

In considering any transfer of the Commission's loan guarantee functions under part V, it should be borne in mind that this part was "tailored" for its administration by the Commission. The Commission regulates the accounting of the railroads and regularly receives from them reports, in form prescribed by the Commission, showing the results of their operations and their current financial position. Furthermore, ever since 1920 authorization by the Commission under section 20a of the act has been a prerequisite to the issuance by rairoads of all bonds and other evidences of indebtedness having a maturity in excess of 2 years.

The legislative history surrounding the enactment of part V indicates that it was the consensus of the congressional committees which considered the proposal that these long-existing and important powers of the Commission afforded it more information about the railroads, their financial condition, and their current needs and prospects for the future than any other agency, and that any new agency (or bureau or division of an existing agency) created to administer such a long-guarantee program would have undoubtedly found it necessary to seek information and advice from the Commission on pending applications.

When the Congress in the spring of 1961 extended the expiration date of part V, it, in effect, reaffirmed its earlier position that there were compelling reasons for vesting the loan-guarantee authority in the Commission. Also considered was the fact that the Commission already had the necessary machinery and personnel, including its field staff, to continue the program.

Although part V has been in effect for more than 3¾ years, applications for guarantees of loans have been received from only a small number of carriers. As of April 30, 1962, a total of 30 applications had been received by the Commission from 15 carriers for loan guarantees aggregating $193.2 million. Amendments filed by certain of the applicants reduced this total to $179.7 million. Twenty-nine of the 30 applications received have been processed, and one application for $5.8 million is now pending. Out of the 29 applications processed, 26 were approved, 2 were denied, as were portions of 2 others, and 1 was withdrawn. As of April 30, 1962, out of the $500 million aggregate principal amount of loan guarantees which the Commission is authorized to make, $167,372,360 (or 33.5 percent) have been made.

In view of the fact that the Commission is already equipped to administer the loan-guarantee program and the further fact that the Secretary's authority under the proposed legislation would expire on June 30, 1963, the same date as the Commission's authority under part V is due to terminate, the transfer of functions hardly seems

worthwhile. However, if the Congress nevertheless favorably consider the proposal, we would suggest certain modifications in order to eliminate ambiguities and voids appearing in subsections (f), (g)(1), and (j) of section 11 as presently worded.

Section 505 of the Interstate Commerce Act provides, in effect, that the Commission may consent to the modification of the provisions of any guarantee into which it had entered if it determines that it would be equitable to do so. Subsection (f) of section 11 of the bill would grant similar authority to the Secretary of Commerce with respect to any guarantee into which he had entered. No such authority would be granted to the Secretary, however, with respect to guarantees entered into by the Commission. Only by implication could it be said that section 12(a) would remedy this defect.

Section 506(a) of part V provides that payments required to be made as a consequence of any guarantee by the Commission shall be made by the Secretary of the Treasury. Under subsection (g)(1), the Secretary of the Treasury would be authorized to make whatever payments that may become necessary as a consequence of any guarantee made by the Secretary of Commerce, but no provision is made for payments occasioned by guarantees which had been made by the Commission under part V, which the bill would repeal. Finally, under subsection (j) the authority granted to the Secretary under section 11 would expire on June 30, 1963, except as to pending applications and as to guarantees already made by the Secretary. Although some of the obligations guaranteed by the Commission will not mature until 1975 or 1976, subsection (j), even though part V would be repealed, contains no comparable provision respecting guarantees which have been made by the Commission.

In order to avoid any doubt as to the status of obligations heretofore guaranteed by the Commission under part V, we recommend that the provisions of subsections (f), (g)(1), and (j) be amended to embrace such obligations. In this connection section 11 should also be amended to specifically provide that the Secretary shall be responsible for the continued administration of loans guaranteed by the Commission.

Two other problems would be raised by enactment of section 11 as presently worded. Subsection (d) would empower the Secretary to make guarantees "after consultation with and consideration of the views and recommendations of the Commission." This provision is indefinite in that it does not set up any standards or guiding principles to be followed by the Commission in expressing its "views and recommendations" to the Secretary. Good administration would seem to require that the Commission's duties and responsibilities in this connection be set forth in some detail. Comparable duties and responsibilities of the Commission were described in detail in the Transportation Act of 1920 and the Reconstruction Finance Corporation Act.

A very serious question is raised by the fact that section 11 does not indicate whether the issuance of railroad securities guaranteed by the Secretary would have to be authorized by the Commission under section 20a of the Interstate Commerce Act. Any such securities now issued without such authorization are void. It is of utmost im-

portance, therefore, that it be made clear whether the issuance of securities of a railroad guaranteed by the Secretary would have to be authorized by the Commission under section 20a.

Section 12 of H.R. 11584 deals with various matters incidental to the proposed transfer of loan guarantee authority. Subsection (a) provides that all orders, approvals, permissions, agreements, and regulations, among other things, issued, made, granted, or allowed by the Commission under part V and in effect at the time the Commission's functions thereunder are vested in the Secretary shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, by a court, or by operation of law. At present there is no provision in part V authorizing the Commission unilaterally to terminate or set aside the loan guarantee agreements into which it has entered. Section 12(a) would, however, by its terms, appear to authorize the Secretary to terminate or set aside any guarantee agreement which has been approved and entered into by the Commission under part V. It would seem obvious that this is not the intent of the bill and we therefore recommend, if the provisions of section 12(a) are favorably considered, that they be clarified in this respect.

Section 12(b) provides that the provisions of section 11 of the bill shall not affect any "proceedings pending" before the Commission at the time such section takes effect; but any proceedings shall be continued before the Secretary of Commerce, orders issued therein and payments made pursuant to such orders, as if section 11 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Commerce or by operation of law. The meaning of this section is not entirely clear. Perhaps, it is intended that "proceedings pending" embrace all cases in which guarantees have been made, but this would, in our opinion, require an unnatural construction. We consider that a proceeding is closed (although, of course, subject to reopening) when a guarantee has been approved and a guarantee agreement has been executed and delivered. The language of this section should be revised so as to eliminate the ambiguity.

Under section 13 of the bill, officers, employees, records, and property presently employed or kept by the Commission in the administration of the loan guarantee provisions of part V would be transferred to the Department of Commerce. Unexpended appropriations available to the Commission in connection with such administration would also be transferred to the Department. We have no objection to these provisions if it is ultimately determined that the loan guarantee functions of the Commission should be transferred to the Department.

Under section 14 all of the provisions of the bill would become effective on the date of enactment. This, we feel, would create a number of problems. For example, if section 3 is enacted, it is possible that some of the tariffs of the affected carriers which are in effect on the date of enactment would not be in full compliance with the provisions of the section. These carriers would need at least 45 to 60 days within which to bring their tariffs in line with the new requirements. Furthermore, with respect to section 4, if enacted, suffi-

cient time, not less than 180 days, should be allowed to establish any necessary regulations such as the form and manner of publishing and filing tariffs pursuant thereto. Finally, in connection with section 13(a) concerning the transfer to the Department of certain Commission personnel and property, the Bureau of the Budget would need some time within which to determine which employees and what property should be transferred. We recommend, therefore, if these provisions are favorably considered, that section 14 be amended so as to provide that the aforementioned sections shall not become effective until the expiration of 180 days after enactment.

Subject to the amendments, changes, additions, and deletions which we have suggested in these bills, we would not oppose the enactment of H.R. 11583 and H.R. 11584.

We have not undertaken to comment on those sections of H.R. 11583 and H.R. 11584 which do not relate to the jurisdiction or functions of the Commission.

Mr. Chairman and members of the committee, I appreciate the opportunity of appearing here today to testify on the Commission's behalf on these proposed measures.

The CHAIRMAN. Chairman Murphy, we are glad to have your presentation on behalf of the Commission.

This is a pretty big bundle you have pitched to us.

Mr. MURPHY. Yes, sir.

The CHAIRMAN. I suppose there would be numerous questions by members of the committee, although it might appear to be a wise thing if we had an opportunity to mull over this some beforehand.

I believe you are going over to the other side tomorrow, are you not?

Mr. MURPHY. No, sir.

Mr. Chairman, I had understood that, most likely, you would ask that I come back for questioning tomorrow, and I have endeavored to arrange my schedule for that purpose.

The CHAIRMAN. All right, then.

Since it is 12 o'clock, and the morning has been taken up, I think the thing to do now would be to adjourn until 10 o'clock in the morning, at which time you may come back and make yourself available for such questions as members of the committee may want to ask.

Mr. MURPHY. Thank you.

The CHAIRMAN. Very well.

The committee will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12 noon, the hearing was adjourned, to reconvene at 10 a.m., Wednesday, July 11, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

WEDNESDAY, JULY 11, 1962

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

The committee met, pursuant to recess, at 10:15 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Mr. Murphy, you may resume the witness chair.

In view of the great triumph of last night and the successful achievement of increasing efficiency in our communications program, which pleases all of us and makes us proud we are Americans, which was accomplished by splendid cooperation between Government and industry, it would seem to me that if we are able to make these advances in the field of communication, that it is equally important that we take whatever action is appropriate to achieve comparable results in the field of transportation. To me, this outstanding event which should bring and does bring great pride to the people of this country, should give us the added incentive to do something that would bring about equal and comparable service in the field of transportation.

To me transportation and communications, as far as the people of our country are concerned, are about the same as power and water. Both are absolute necessities, and without either we could not accomplish what we have accomplished in this great country and during these tremendous days. It makes us even more proud that we are living.

Mr. SCHENCK. Would the Chairman yield?

The CHAIRMAN. I would be glad to.

Mr. SCHENCK. Mr. Chairman, I think we of the committee ought to be very proud of the work we did on the communication satellite. And I think that we on our side would like to especially commend the chairman for his great interest, work, and wisdom in helping to guide the communications satellite bill through the committee and through the House. And we are indebted to our chairman, who has always performed distinguished service.

I didn't get to that Telstar meeting last night, but I got to another important meeting of scientists and they were greatly overjoyed with the fact that only in a country like the United States could occur what did occur yesterday in the field of communications. I also want to commend our distinguished chairman for his outstanding service and understanding in the field of transportation.

The CHAIRMAN. I thank you for the very fine compliment. As a committee, we work together and whatever we accomplish we do it as a group.

I would like to take occasion to say that the great triumph of and success of last night, it seems to me justifies the action of the committee and the House. The bill is passed, and I hope it will be some incentive to our friends across the Capitol in approving the philosophy that is incorporated in the bill. And if they do, whatever changes are made, I would say without fear of contradiction, we would have no difficulty in working it out.

You have given us a very interesting and challenging statement, Mr. Chairman. I want to thank the Commission for the long, tedious and hard work in preparing this highly complicated technical outline, the description of these problems and the suggestions you have made in connection therewith. I think it is a magnificent presentation from the viewpoint of the Commission. Certainly it demonstrates that you have made a close study and analysis of the problems, and the proposals that are set out in the President's message and included in the two bills and many other bills under consideration here.

Certainly from the standpoint of technical approach and from the continuity of the Interstate Commerce regulations under the ICC, you have approached it with a sense of understanding and urgency that a continuity be obtained. From that standpoint it is a very splendid presentation.

But the thing that bothers me which I do not find out through this entire presentation, is the real subject matter involved. Maybe I have overlooked some of the points that you intend to emphasize and deal with in connection with these proposals. And that is the principle of regulation of our common carrier system to cope with the requirements of our day. The Interstate Commerce Act was passed because of a particular reason in 1887. Certain things had happened over the years that led up to it. Primarily, it involved one mode of transportation. That mode had a monopoly at that time. And due to the experiences of the public where discriminations were the rule, and where there were practices that were abominable and should not be permitted, and because of an aroused public at that time, the Interstate Commerce Act was approved by the Congress of the United States.

We have had some major changes in the Interstate Commerce Act since that time, but the same principle and philosophy that underlies that original act is still in my judgment being pursued today.

Certainly refinements are necessary throughout the years. The recommendations that we have had by the regulatory agencies appear to be along the same general policy of each regulatory agency which has for its purpose the services of the people and the protection of the people throughout all these years following the same principle that is the underlying philosophy.

Now, in 1955, I think it was in your great State of Georgia, Mr. Chairman, I made some comments in which I recommended that sooner or later we were going to have to get away from the same underlying policy that was maybe vested in the original act and the same thing down the line and get into something new, because today we are in a new world, we are in a new day.

Now, we have modes of transportation to serve our people that are so different from those in 1887 that they don't even look alike. But we all endeavor to achieve the same purpose, which is a common carrier system in this country that can serve the people. And to me, you haven't dealt with that genuine, deep principle in your presentation here today. I can understand that, because you had a particular thing to treat of and that is two bills primarily, and several others.

We have four principal modes of common carrier transportation, railroads, highways, air, and water. Now, I do not think that anyone can question the fact that we are wasting time in their development—all four of these means of transportation are pretty well grown. I think now we have got to tackle the problem sooner or later of whether with that kind of common carrier system we are going to continue with rules applicable to one kind different from rules applicable to another kind. If it is best, why of course we will have to do it.

But I think it is time that we wake up to see what is taking place in each of these modes as they try to serve the public, because if we don't watch ourselves we are going to find the basic common carrier transportation owned and controlled by the Government. If private enterprise can't do it, the public is going to insist on it, and we are going to have it, and if we can't have it any other way we know what the alternative is.

There are certain people in this country that would prefer that type of procedure and operation. I am one of those who do not. I just do not believe that we have tackled this problem of the real competitive spirit between modes of transportation.

As an example, industry in the country depends upon transportation, it has got to. And it is obvious that certain sections of the country are permitted to develop because they have advantages in transportation over other sections of the country.

Yet we say in our broad general principle in all these years, 1920 and even 1940, that the situation should not be permitted. But we know that it is permitted, it is happening every day. I admit that I am very anxious for the expertise that your Commission can provide as to how it should be done.

You insist that insofar as the real controversial subject here, that is, the minimum rate requirement, we meet that on the basis that we let everybody come under your jurisdiction. Your purpose there is to regulate and provide more regulation, and not deregulate and depend on competitive forces.

That is the way I see it, Mr. Chairman. That subject has not been dealt with in your very fine manuscript that you presented here, and I say understandably so. And I hope somebody will treat of that subject before we get through.

I am not sure with the experience that we have had in discriminations and advantages and disadvantages that the farmers, the bulk commodity operations, and those who were given such exemption in the past, are going to sit idly by and see themselves brought under regulation. I am sure that they are going to be very active against it, or have something else that will supply it.

I can give you an example, the poultry industry. We tried to do something about rolling back the situation 4 or 5 years ago. There was available transportation unregulated in certain of the areas, including your State, the transportation of poultry to the market. Yet had we

approved the recommendation that the Commission and certain of the modes of transportation insisted upon at that time the rates in the poultry industry would have obviously been increased. We would have changed the poultry industry from their present sources today because of that.

The kind of transportation needed to haul chickens to the market could be made available without being regulated. We permitted it, and it has operated pretty well since. What was asked of us at that time was to bring them within regulation, which we did not do. Just that slight difference in the cost would have been required under regulation that the industry itself would have been completely rearranged. It would not have remained as it is and as it has developed in the last several years.

It is things like that that worry me. I am taking too long in expressing my views, but I am doing it so that everybody will take notice and if anyone has any knowledge of it, give it to us during the course of the hearings.

On the other side of the coin, if the regulation of any particular mode of transportation is not required or provided, I want somebody to also tell me why a major transportation mode in this country will give preferential treatment to one section of the country. I can give you some examples, such as one which came to my office this morning, affecting the State of Ohio, my own State of Arkansas, and the State of Mississippi. I have talked to the railroads, who have a great deal to do with situations of this kind, and I have obtained information from your own Commission during the past month concerning rates between Chicago and Houston, Tex., and places between. I have been studying the matter. I just don't think that it is right in a great Nation such as ours to continue with a system, or to help its regulation or deregulation like this. I have come to the point where under the process of regulation I think we have seen so much discrimination in some places over others, that I have about reached the point where I think it might be better to try some deregulation and see.

I may have thrown out a slab here that is so big that it can't be chewed, I don't know. But those are the two fundamental things in my mind which, if we could do something about them, then we should do something about them.

I want to compliment the President of the United States, his administration, and the Secretary of Commerce, for throwing this big slug at us. They have actually put it up to the Congress and to the Commission. They have challenged the transportation industry of this country as it has never been challenged in a long time. And I for one am ready to try to meet this thing and see if we can't devise some kind of method that would improve the situation in this country, not only the service to the people who are entitled to have it, and who are going to have—don't ever overlook it, they are going to have it, they are going to insist on it, if they can't get it one way they will get it another—and the same time we should improve and strengthen the soundness of our common carrier situation.

I hope that you will think about these things from the standpoint of your Commission, and if I have made it too general or too broad, I will be glad to discuss it with you or any of your group sometime, and maybe later during the course of these hearings we can get into a little more specific and detailed discussion.

I have gone far beyond the time that I have allotted myself.

Mr. Jarman, do you have any questions?

Mr. JARMAN. Mr. Chairman, on page 19 of your statement you say:

> We urge the committee to take into consideration the serious consequences which could flow from this portion of a bill which places reliance upon the antitrust laws. We believe that the potential for irreparable injury together with the overriding necessity for protecting the public interest, strongly indicates the need for the availability of a special procedure that assures relief before rather than after injury has occurred.

Is there in your statement, Mr. Chairman, any recommendation to the committee, to the Congress, of what you think effective special procedure of that sort would be?

STATEMENT OF RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION—Resumed

Mr. MURPHY. Mr. Jarman, we point out in the statement some of the deficiencies which we feel—or certainly raise questions which—certainly should be clarified if the Congress decides to follow the recommendations or the bill—matters that will have to be considered.

As to the injury that might occur in following a procedure of divided authority, that is, between the antitrust procedure and that of the Commission when it relates to two different questions on the same adjustment, we do not believe that it is clear as to just what the procedure would be, or as to how you will, you might say, determine which of the hundreds of thousands of rates that are published annually will be sifted out to determine which ones will cause injury and which ones will not.

Another thing, that I am sure we have to bear in mind is that if, following the antitrust procedure for the protection of—and while I claim to be no authority on antitrust laws, I believe insofar as the Government is concerned the Department of Justice would not have to give a bond, but I believe that a shipper or a carrier using that procedure would be required to post a bond in order to obtain a restraining order or injunction against such rate.

I am thoroughly convinced that the suspension procedure is the best approach we have today for protecting the interest of the shipper and of the public. I think it is also the most open, and least complicated, and I personally feel that the procedure that would have to be followed under this particular portion of the bill would be detrimental.

Mr. JARMAN. Let me ask you about something else that I believe is not covered in your prepared statement, no reference is made to it, but that is a part of this overall problem. In the President's transportation message this recommendation is made at page 5, and I will just quote from it:

> To repeal the provision of the Interstate Commerce Act which now prevents a railroad from hauling cargo it owns. The need for this provision, which goes back to the days of oppressive railroad monopoly, has largely passed; and its current effect is to handicap the railroads in competing with other modes of transportation. The antitrust laws can insure protection against the possible abuse by a railroad of its dual status as shipper and carrier.

The implementing legislation is contained in a separate bill that has been introduced by Congressman Van Zandt, H.R. 12798. The companion bill is S. 734, introduced by Senator Magnuson. So far as

I know, the Interstate Commerce Commission has not taken a position on these bills. And the thing I would like to ask you, Mr. Chairman, is whether you are in a position today to indicate whether the ICC does support these bills, or if you are not in a position to make that statement, whether you are taking any position of opposition to the passing of the bill. As I say, I do not find any reference as to that in your statement, and I would like some comments on it.

Mr. MURPHY. Mr. Jarman, I have checked on that, and find that we have been requested to comment on the two bills. The report is in the process of being completed, but the Commission has not yet formally acted on the request for its views. I will see that that is expedited, and we will do so as both the House and the Senate. But at this moment I cannot say what the Commission's position would be.

Mr. JARMAN. Would the Commission's position be indicated to us during the consideration of the bills that we now have before us? Do you anticipate that we will get the Commission's position on the Van Zandt bill within the near future?

Mr. MURPHY. Yes, sir.

Mr. JARMAN. I, for one, will appreciate it.

Mr. MURPHY. I will endeavor to see that it is expedited. We have been requested to comment.

Mr. JARMAN. Mr. Chairman, I don't want to take more than my share of the time. And that will conclude my questions at the present time.

If I may be permitted, Congressman Dingell could not be here this morning and asked that I ask questions in his behalf of the chairman, if that is acceptable.

The CHAIRMAN. We will try to get to that later.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Mr. Chairman, I want to join with the chairman in complementing you on your technical advice and your experience in regulating our modes of transportation, as shown in a very fine résumé of the legislation. In looking over it, two things strike me; one, that you are in favor of the President's message, but you are not too much in favor of the legislation, because it doesn't meet the requirements of the message. Is that a fair judgment?

Mr. MURPHY. No, sir, I don't believe that I can agree as to that. For example, in H.R. 11583, as to the first part dealing with the bulk commodities, the President's message, as we stated, recognized this as being a very troublesome spot in the transportation industry. And I say again, we feel that the public has been injured to some extent certainly by the present situation that exists with respect to exempt bulk commodities.

The President suggested deregulation. The Commission more or less renewed its position that it has had for several years. We have had it in our annual reports, we have had bills before Congress urging that the bulk commodity provision be repealed, and that the transportation of bulk commodities be put under regulation. So in this connection the Commission favors reaching the same goal that apparently the President, as we construed it, was seeking. But we recommend a different approach to that which is contained in the bill, which is to accept the alternate and regulate rather than deregulate.

Mr. YOUNGER. Is this opinion a unanimous opinion of your Commission, as well as the recommendations made here?

Mr. MURPHY. No, sir, I could not say that it was unanimous.

Mr. YOUNGER. Does it represent a majority of views?

Mr. MURPHY. Yes, sir, we had some that were absent.

Mr. YOUNGER. Was the Commission consulted by whoever wrote the bill?

Mr. MURPHY. No, not individually. But we did cooperate with the Department of Commerce and the Bureau of the Budget, in advising with respect to the preparation of the bill, but without taking any official position. They did not ask us to take any position. But I believe Mr. Barton is here in the room and can confirm the fact that we provided some personnel to advise them in the technical preparation of the bill that you have before you.

Mr. YOUNGER. And did you provide the group with the recommendations that you make here?

Mr. MURPHY. No, sir, not as to these actual recommendations or the statement that I have submitted here. But I think they were familiar with the recommendations we have made each year in our annual report to Congress, and our comments on pending legislation over the past several years. I believe that they were also aware of the fact that we did make a certain recommendation last year in the testimony we submitted last August to the Senate Surface Transportation Committee dealing with the decline of the common carrier system. I believe that these matters were referred to.

And I believe Senator Smathers was chairman of that subcommittee.

Mr. YOUNGER. Then would you say that it is a fair conclusion that those who were responsible and prepared this legislation had before them your recommendations; the various recommendations that you make here in your statement?

Mr. MURPHY. Yes, quite a few of them—the views that the Commission has expressed and recommendations made over a period of several years. I also refer you to the efforts we have made to have the transportation tax repealed. That is something we have recommended, I believe, consistently since 1945 or 1946, or for at least quite a few years.

Mr. YOUNGER. In the consultation could you give any reason, or was it discussed, as to why the minimum rates to be rescinded from the legislation so far as surface carriers are concerned were not rescinded insofar as the air carriers are concerned?

Mr. MURPHY. Do I understand, Mr. Younger, you are asking as to why we were silent as to the minimum rate provision as to air carriers?

Mr. YOUNGER. In the preparation of the bill—and I have been unable to find out from any of the witnesses so far, and I was wondering if you could make a contribution—the fact that the minimum rate requirements for surface carriers are recommended to be rescinded, but that same recommendation doesn't apply to the air. And I was wondering in your consultation, was there any reason expressed why not as to the air carriers?

Mr. MURPHY. I do not know of any. May I be sure that we understand each other. We were not in consultation with the drafters of this bill as to what factual information they used in reaching the proposed changes contained in the bill. Our advice and cooperation primarily dealt with the technical preparation of the bill to be placed before the Congress—what they intended to accomplish by the legislation.

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In other words, our cooperation was limited to the technical drafting of the bill after all the information had been gathered by the Department of Commerce and other agencies.

Mr. YOUNGER. But they did have before them your recommendations or they had knowledge of your feelings in regard to the various ideas that you express in here?

Mr. MURPHY. I think I can say to that question they did, knowing Mr. Barton and his activities over on the Senate side. I think the entire public knew, not only the other agencies. The public at large has known of the recommendations we have made over the years.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I too would like to join the others in congratulating you on your statement. I don't agree with some of it, but it is certainly magnificent treatment. I think the Commission should be commended for it.

Mr. MURPHY. Thank you.

Mr. HEMPHILL. The practical aspects of this thing bother me somewhat. I have been told by people that I find reliable that if we pass the legislation proposed that a farmer in the southern part of the United States can buy grains from the Midwest where we have too much grain and have it shipped to the South, the southeastern part of the United States, for $3.85 a unit, as compared with the cost of $10.85 now. And if that is true, and if that opportunity lurks behind this legislation, can we accomplish it under the amendments that you propose?

Mr. MURPHY. I do not know how low a rate can be accomplished under the proposed bill, and neither could I answer you as to what rate could be effected if the alternative we have suggested were enacted. But I can say this, as far as my personal experience is concerned, I feel very confident, as did the majority of the Commission, in recommending what we have, that you will have a more stable rate structure, you will have a stronger transportation system, and the public at large will benefit over the long run by having such stable rate structure than might be, as we see it, accomplished for a very short time of cutthroat competition that can be very injurious to the public, to the transportation system. Frankly, it would take quite a while, I think, to get back on a leveled-out basis of the type of transportation system we need.

Mr. HEMPHILL. When you say cutthroat competition, do you mean competition between the railroads themselves and the trucking companies themselves and bargelines; do you mean competition between the railroads as a transportation entity, the trucklines and of the bargelines?

Mr. MURPHY. Unless I qualify it, I would say I am speaking of cutthroat competition among the railroads, the bargelines, and the motor carriers, inter- and intramodal, that is without any check other than as proposed here in regard to minimum rates.

Mr. HEMPHILL. You think it would be sort of like what on the local level we see in a gas war; is that right?

Mr. MURPHY. I think that is a very good comparison, yes, sir.

Mr. HEMPHILL. What worries me—because I have such respect for the Commission and you personally, Mr. Chairman——

Mr. MURPHY. Thank you.

Mr. HEMPHILL. Is the position of the public. I had had some particular problems come through my office in which we were trying to get this so-called feed grain, which is a dressed-up name for corn, down to cattle farmers. And we found out that the Commodity Credit Corporation had the grain and the taxpayers were paying storage on it, the Commodity Credit Corporation expressed a desire to get rid of it, but the freight rates were so high that they couldn't afford it.

Now, if this legislation would result in lowering the freight rates to accomplish that, isn't the consuming public going to gain by it? I am talking about the consuming public that is left out of here so often.

Mr. MURPHY. I believe, to begin with, that the Commodity Credit Corporation is moving a great deal of this grain under section 22 quotations today, is the first answer to it. Next, I am not familiar with the level of the rates, but I don't think you or the public would want to see the rates down to where they would cost the carriers to handle it, rather than make money on it. But I am not familiar with the exact situation you are speaking of. We have a very important grain case now before the Commission, the issues in which I do not want to discuss, but I assure you, it is not a one-sided thing. It has been going on for almost a year, and there are some very strong positions. We have a very strong record for both sides in that case.

So I would like to leave that proceeding without even identifying it. And I think that is where some of your inquiries came from.

Mr. HEMPHILL. No, sir; my inquiries had nothing to do with that particular case, I have no familiarity with it. My inquiries came from the fact that I have got farmers that wanted grain. I represent them. And when I come up here to represent them I am going to ask questions, because I want to find out how to get the grain to feed the cattle when we couldn't get the grain to feed the cattle because of the freight rates.

Now, if the transportation people that gave this cost level say they can put the grain down there and still make a profit, that concerns me, because you say that they can't do it without it costing them.

Mr. MURPHY. May I correct you on that. I did not make that statement.

Mr. HEMPHILL. Maybe I misunderstood you.

Mr. MURPHY. The carriers have the right under their managerial discretion to file a rate, and I don't know whether they have filed a rate or not. But they certainly have the right to file one if it is within the confines of the statute that we administer. Unless it violates the statute in some way the carrier has the managerial discretion to file his rate any time he likes.

Mr. HEMPHILL. And by the time you get through with the redtape the cattle have gotten so lean or starved that they had to be sold. That is the reality of the situation that concerns me.

I am much concerned—I am not in the cattle business, I don't own a cow, I am just worried over the fact that we have been told as Members of Congress, not in relation to any case, by the farmers on one hand that they can't get the grain down there, and by the transportation people on the other, that if this legislation passes we can put the grain down there, and if it can be accomplished, I think the

public can be served. And I am not trying to argue with you, I am just trying to find out why these representations if they are not true. That is what is bothering me.

Mr. MURPHY. What is bothering me, Mr. Hemphill? I don't know that the carriers have even filed the rate that they tell you they can file here, because there is no prohibition against any railroad or group of them filing a rate today.

Mr. HEMPHILL. But under this legislation, if it were passed, instead of filing a rate and having to go through a proceeding, they could say, all right, we are going to give you such and such a rate on these particular commodities, right?

Mr. MURPHY. No, sir. They would still have to file a rate, but the Commission would have no authority to suspend it as to it being below a minimum reasonable rate. They would still have to file their rates, as I interpret the proposed legislation, and comply with all other provisions as to statutory notice, or obtaining short notice. And I caution again that my experience and the position of the Commission here is that you can start a series of those adjustments, and if they get down below, or to the point where it is costing the carriers to make money, whether it is brought about by the management itself or whether it is through pressure from shippers and receivers, you can do a great deal of damage. But I go right back to what I said a moment ago, and that is that the carrier has every right to file a rate. And I know of no rate that has been filed on that basis, unless it is involved, Mr. Hemphill, in the pending case that I mentioned which may not necessarily have been identified to you in the inquiries you might have. It might have been tied in with that particular adjustment, but not identified to you as such.

Mr. HEMPHILL. It doesn't have anything to do with any particular case; my inquiry came in connection with a group of farmers down in my area who got hit by a drought.

Mr. MURPHY. We have provisions under an agricultural act that the Secretary of Agriculture can call on us to permit the carriers to publish those low rates for distressed areas, even to the point of getting short notice for it. I believe Congressman Rogers will recall that during that bad winter we had in Florida that I am the one that personally signed an order which permitted the railroads to put reduced rates into effect in less than 24 hours to take care of the cattle situation in the State of Florida.

Mr. ROGERS of Florida. That is right—if the gentleman will yield——

Mr. HEMPHILL. I would be happy to yield.

Mr. ROGERS of Florida. And it was very helpful, because we were hit by a disaster.

Mr. MURPHY. But as far as I know the Department has never called on us, nor have the carriers called on us, to put in reduced rates to take care of any area in the Southeast as to grain. I know of no move of any kind in regard to that, Mr. Hemphill.

Mr. HEMPHILL. Let me pass on to something else.

On page 44 of your statement you were talking about criminal convictions, and you made the statement in the middle of the second paragraph, the second sentence:

In addition, in a criminal proceeding there can be no appeal from an acquittal.

That is elementary. But if there has been acquittal after there has been a just trial, why should there be an appeal from an acquittal?

Mr. MURPHY. There couldn't be.

Mr. HEMPHILL. Why should there be, if a man has been tried justly and acquitted, why should there be a retrial?

Mr. MURPHY. We are trying to approach it from the other side. Mr. Hemphill, I believe that in a criminal proceeding, and properly so, you are required to prepare a much stronger case than you are in civil actions, and that is as I think it should be. We have many of these matters coming up in which you have to follow very strict procedure—the amount of evidence and the proof of willfully and knowingly violating the law. It is a very difficult matter to prepare many of those cases. And I will say this to you, that if you don't have one that is practically airtight and you lose it, overnight you will have operators in the same category springing up throughout the United States. They will know about it, and it has actually happened. In my opinion, it has deterred us from accomplishing more, due to the difficulty that we are confronted with.

That is why we have to be very careful, because once we lose a case it is relied on by those types of operators we are trying to reach.

Mr. HEMPHILL. You believe there should be some appeal from a criminal trial?

Mr. MURPHY. No, sir.

Mr. HEMPHILL. Have you asked the Congress to strengthen your hand in any respect in this field?

Mr. MURPHY. Yes, sir, we have sought legislation on this in the past. And I think on one occasion, in connection with the revision of the Transportation of Explosives Act, we asked that the "willful and knowingly" be stricken. We have sought authority for the registration of exempt and private carriers, but this was opposed by the private carrier organization. With the many thousands of carriers that you have to deal with, unless you can prove that you have served them with copies of our safety rules.

We have tried quite a number of ways, Mr. Hemphill, to strengthen our hand in eliminating a lot of the illegal for-hire carriage. We have done everything that we possibly can with the resources available to us to hold it down. But it is still one of the primary causes of the present situation, I think, from a revenue standpoint, confronting your transportation system.

Mr. HEMPHILL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Yes, I have two or three questions, Mr. Chairman.

Mr. Chairman, I, too, would like to join my colleagues in thanking you for a very fine statement. And I have two or three questions that I would like to ask you.

I find myself somewhat in the same situation as my colleague from South Carolina so far as the transportation of grain into the Southeast is concerned. It is my information that a rate was filed by the railroad to haul grain in from the Midwest, at a much lower price than prevailed at the time, and that a protest was filed and suspension was issued by the Commission, and it became involved in a hearing. And

I suspect that that is the hearing about which you made reference. I am not asking you anything about the particulars of that hearing, but I am merely making the statement to indicate the concern on the part of a number of Members of Congress and the people in a large area of the country that at one time last year, I believe it was, last fall, or in the late summer, it appeared that this very thing would in effect defeat the purpose of the whole feed grain bill that was passed by Congress because the farmers in certain areas of the country that cooperated, participated in the voluntary program, reduced their production below their needs with the feeling that they would be able to purchase grain on the market at a reasonable price.

And then they found out they couldn't get the abundance out of the Midwest because of the high freight rates that were necessary under the prevailing conditions to haul it into some certain sections of the country. And quite a bit of resentment was built up as a result of that situation.

I don't know whether there is any comment that you can or care to make about it. But it is of concern to us.

Mr. MURPHY. Yes, I can comment about it.

I do not know what the situation was that existed at the time of the legislation that you speak of. But I know of no drastic changes in the rate pattern covering the coarse grains other than that a number of substantial reductions have been made in recent years in the coarse grains within and between different territories. The only thing I can say about this pending rate case—I hope you will have confidence in the Commission and give us a chance on it——

Mr. KORNEGAY. We certainly do.

Mr. MURPHY. Because it is of such size and scope that actual hearings have been held almost continuously since last fall. It involved one carrier to begin with on its own system, and there have been no delays in the process of expediting the proceedings in every way possible. The Commission has urged that it move on with dispatch, and I believe the greatest delay we have had was when counsel for the respondent, I believe it was, became ill. Then there was a delay of a few weeks.

But beyond that, it is of such scope that I think you will agree that if it takes that many months, almost a year, to hear the evidence, with both sides being given full opportunity to make a complete record, that undoubtedly it will be a very important decision once it is issued.

Mr. KORNEGAY. In other words, the matter is being worked on and seriously considered in the hopes that within the reasonably near future some decision will be reached?

Mr. MURPHY. The Commission is doing all in its power to expedite the proceedings. But the parties want to make the record, and we have got to permit them within reasonable ground to make it. And we are satisfied that there is no delay in tactics on either side in the proceeding.

Mr. KORNEGAY. I gather from your statement, Mr. Chairman, that you and the Commission take the position that rather than eliminating the minimum rate requirements on certain carriers, that it would be better to impose minimum rates on those carriers which are not now subject to the minimum rate provisions; is that correct, sir?

Mr. MURPHY. I would like to use a term that makes it subject to the Commission having authority to prescribe a reasonable minimum rate rather than imposing it on them, because it would not come into play unless there was some complaint or record made, and only then could we prescribe the minimum rate.

Mr. KORNEGAY. Am I correct in saying that the law now does not authorize the Commission to prescribe minimum rates for certain types of carriers such as barges in cases of bulk commodities and truckers in the case of agricultural and fishery products?

Mr. MURPHY. That is true on the exempt commodities. The carriers that are operating and handling the exempt commodities are not subject to regulation. The water carriers, of course, on practically all the bulk commodities—and the motor carrier that is transporting exempt commodities is subject to the safety and hours of service regulations, but not the economic regulations.

Mr. KORNEGAY. Not the economic regulations as to the rate that he can charge in transporting exempt commodities?

Mr. MURPHY. That is correct; yes, sir.

Mr. KORNEGAY. But yet the other forms of carriers such as railroads are subject to minimum rates with reference to the same commodities which are exempt when carried by water carriers and in certain instances by truck?

Mr. MURPHY. That is true; yes, sir.

Mr. KORNEGAY. Do you not feel, sir, that all types of carriers should be subject to the same type of regulation?

Mr. MURPHY. That is what we are trying to advocate in our statement.

Mr. KORNEGAY. In other words, to bring all carriers under the authority of the Commission with reference to the prescription of minimum rates?

Mr. MURPHY. Yes, sir.

Mr. KORNEGAY. Now, I gathered also, Mr. Chairman, from your statement that you have certain fears about what would happen if H.R. 11583 were enacted into law.

Mr. MURPHY. Yes, sir.

Mr. KORNEGAY. And one of those major fears is rate wars?

Mr. MURPHY. Yes, sir.

Mr. KORNEGAY. And you state on page 6 of your statement, after stating that fear that rate wars would take place, and that the charges would be driven down to rockbottom and perhaps below out-of-pocket cost, you go on to state:

> As a consequence, the rail carriers would probably petition for a general increase in freight rates to make up the revenue lost from the exempt traffic, and with the showing of revenue need which probably could be made, the Commission might well feel impelled to grant a general increase.

Now, as I understand that statement, you mean that if this legislation were enacted the railroads could come in at rates less than out-of-pocket cost, less than actual cost, and operate at a loss in hauling bulk commodities and agricultural and fishery products, and show a loss, and come before the Commission and ask for a general rate increase or an increase on regulated items; is that it?

Mr. MURPHY. Yes, that in substance is what we are saying—that you could have that situation develop.

Mr. KORNEGAY. Would not the Commission have certain control, an indirect control perhaps, over the ratemaking of the bulk commodities?

Mr. MURPHY. It would be so indirect that I think it would be ineffective. And bear in mind, we would have no control or authority over the reasonable minimum rates, so we would have no authority to investigate that rate.

Mr. KORNEGAY. Well, if a particular railroad came before you asking for a general freight rate increase, it would be proper to inquire into the rates they were charging on the transportation of bulk commodities, wouldn't it?

Mr. MURPHY. We might inquire into it, but we could not, as I interpret it, have any authority to raise the rate above what we would consider to be below a reasonable minimum rate. And if we tried to, I think that the very first thing we would be accused of is being bureaucratic and meddling in something that had been taken away from us.

Mr. KORNEGAY. I understand that. But if they came in and said, "We operated at a loss last year and we need an increase in rates," and you inquired and found that the reason they operated at a loss was because of their less-than-cost rate structure on bulk commodities, couldn't you fairly and in good conscience say, "Look here, Mr. Railroadman, the reason you lost money was because you participated in rate wars in bulk commodities, and this Commission cannot allow you to increase rates to take care of such losses which were incurred as a result of a rate war which you started and participated in?"

Mr. MURPHY. We would have nothing to do or say about the minimum rate, and the carrier would be at perfect liberty to go ahead and increase that rate. If it is below a reasonable minimum, you could juggle it, as I interpret the law, any way you want to just so that he doesn't get it into a position where the Commission would consider it unlawful under some other provision of the act.

Mr. KORNEGAY. But you stated in your statement that you thought the Commission might well feel impelled to grant a general increase.

Mr. MURPHY. I think we would have to do what we could toward maintaining a sound transportation system in this country if the record was such, and if we felt that it had to be accomplished on that part of the traffic over which we had some control, we could approve such increase and issue a permissive order on it. I think we would be compelled to grant the increase in order to preserve the carriers, regardless of what they did under the minimum rate situation. I don't know now we could get around it.

Mr. KORNEGAY. Well, of course, carriers are like any other business concerns, they want to try to make a profit, don't they?

Mr. MURPHY. I like to think so, yes, sir.

Mr. KORNEGAY. And if they knew in advance that they weren't going to make up losses on the transportation of bulk commodities by increasing their rates on other types of freight, then wouldn't that tend to make them more responsible in setting reasonable rates in the transportation of bulk commodities?

Mr. MURPHY. I think you would have to give them the benefit of the doubt—that they would be expected to do that. But we still go back to what we have in the statement here, the fear of this intense

competition between the different modes—and it can become intramode as well. We are seriously concerned about as to just what would be the ultimate results.

Mr. KORNEGAY. I just wanted to bring out that point.

I thank you for a very fine statement, Mr. Chairman.

Mr. MURPHY. Thank you. I hope I have been responsive to your questions.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. Mr. Chairman, on page 20 of your statement you say that if this legislation, H.R. 11583, were enacted into law that it would deregulate, as to rates, 60 to 70 percent of all railroad freight tonnage, 90 percent of the water tonnage and about 65 percent of the present highway tonnage. Do bulk commodities comprise that percentage of the traffic carried by these three different types of carriers?

Mr. MURPHY. Yes, sir, from the figures we have that is the nearest estimate we can make—and I believe there have been other independent estimates made—that it would exempt from the minimum rate regulation that percentage of the total traffic.

Mr. CURTIN. And the chief bulk commodities are grain and coal?

Mr. MURPHY. I would think so. And it might be of interest if I read to you some of the bulk commodities that we think will be included under the bill if it is enacted, or I can read you the ones that we have today——

Mr. CURTIN. I can hardly hear you.

Mr. MURPHY. I think you are correct that the coal and grain would be the largest total tonnage that would move in bulk or would be exempt under the proposal.

Mr. CURTIN. And is it in these two, that is, coal and grain, where you feel these rate wars will develop?

Mr. MURPHY. We are fearful of it, and many others—there is quite a list of the commodities that would be brought under the proposed legislation in addition to the bulk commodities that are today exempt.

Mr. CURTIN. Do you have that list available there?

Mr. MURPHY. Yes, sir. It is the best I could prepare.

Mr. CURTIN. It is very voluminous?

Mr. MURPHY. No, I can read it into the record very easily. The principal commodities today that are considered bulk and were such as of June 1, 1939, were coal, coke, grain, sand, crushed stone, cement, gravel, sulfur, salt, seashells, limestone, phosphate rock, iron ore, and molasses.

Now, if this legislation is approved, then the ones that we believe will be brought in—and possibly there are others—are aluminum, ammonium nitrate, ammonium sulfate, zinc concentrates, feldspar, fluorspar, ferro alloys, ferro manganese, flue dust, fly ash, fertilizer materials, drilling mud, sludge, soy beans, sugar, caustic soda, glycol, linseed oil, methanol, molten sulfur, soybean oil and liquid chlorine.

Mr. CURTIN. Are all of those commodities which are transported in bulk or would be transported in bulk?

Mr. MURPHY. They could, yes, sir.

Mr. CURTIN. And you feel that in all of those items that there is the possibility of rate wars?

Mr. MURPHY. Yes, sir.

Mr. CURTIN. Some of such commodities are going to require very particular types of containers for such transportation, which might be peculiar, perhaps, to railroads, is that not true?

Mr. MURPHY. I don't think today we have many of them that are peculiar to any one or the other, I think each one in their own respective fields is pretty well fixed so that they can handle any one commodity that they desire.

Mr. CURTIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Staggers.

Mr. STAGGERS. Mr. Chairman, I have no questions of my own, but I was handed a sheet containing a few questions that Mr. Dingell would like to have asked.

Mr. Chairman, perhaps you have answered one of these questions. Beginning on page 7 of your prepared statement you speak at length about the class rate investigation in 1939. Why is this case so important in view of the fact that comparatively little traffic moved at class rates?

Mr. MURPHY. Mr. Staggers, I use that as one of the examples because it is a case in which you had the question of maximum reasonable rates, you had the question of minimum reasonable rates, and under the present provisions of the act the Commission was able to prescribe just and reasonable rates that were not discriminatory or that gave preference and prejudice within the respective territories and between the respective territories.

Now that established a principle, and I think it was one of the most clearly established principles that we have in our reports, as to the authority of correcting a situation that had developed over a period of years within territories and between the territories.

Now with respect to such a small amount of traffic moving, I think we must bear in mind that relative to the total amount of traffic, yes, it is small. But the latest figures that we have in 1956, using that year—and this was obtained from our 1 percent waybill study—the railroad carload traffic, that is, moving by class 1 railroads on class rates, from a revenue standpoint represented 3.8 percent of the total revenue. It represented 2.7 percent of the total tonnage.

Now the class 1 railroads in that year handled 2,705,300,000 tons, and applying 2.7 percent would give you 73.043 billion tons moving on class rates. Now that is a small shipment. I think small shippers and small industries predominantly move their traffic by class rates. And I think it is a very important segment of the overall economy.

Mr. STAGGERS. I think that answers the question.

On page 20 of your statement you refer to the large volumes of tonnages that would become exempt from regulation if the proposal to remove minimum rate regulation were adopted. Could you tell us now or supply for the record, the percentage of figures of total freight revenue which these tonnages now yield to the carriers?

The CHAIRMAN. What carriers are you talking about, Mr. Staggers?

Mr. STAGGERS. I guess all carriers. If you can supply it for the record, Mr. Chairman, that will be satisfactory.

Mr. MURPHY. If I may, we will furnish it for the record.

(The following letter was received in response to the aforementioned request:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 19, 1962.

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

DEAR CHAIRMAN HARRIS: During the course of my testimony before your committee on July 11, 1962, on H.R. 11583 and H.R. 11584, Congressman Staggers made the following request:

"On page 20 of your statement you refer to the large volume of tonnages which would be exempt from regulation if the proposal to remove minimum rate regulation were adopted. Could you tell us now, or supply for the record, the percentages of figures of total freight revenue which these tonnages now yield to the carriers?" (T.R. 292.)

I did not have this information with me at the time. However, I am now advised by our Bureau of Transport Economics and Statistics that based on 1960 reports, the percentage for railroad revenue would be about 47 percent, assuming approximately 70 percent of rail tonnage would be free from minimum rate regulation. As to the proportion of waterway and highway revenue produced by each of the respective tonnages, there are no data available on which to base revenue estimates for totally exempt and private-carrier segments of traffic moved by these modes of transport. However, with respect to such carriers subject to economic regulation by the Commission, it is estimated that about 55 percent of the reported highway tonnage which yields 22 percent of the revenue, and 84 percent of the reported waterborne tonnage which accounts for 48 percent of the revenue would be exempt if the proposal to remove minimum rate regulation were adopted.

If I can be of further assistance in this connection, please let me know.

Sincerely,

RUPERT L. MURPHY, *Chairman.*

Mr. STAGGERS. The next question: To what extent are the carriers now free to experiment with rate change?

Mr. MURPHY. We try to reflect in the statement that so long as any experiment they desire to make is within the provisions of the act, or does not violate some part of the act, their management is free to experiment in any way they wish as far as I am concerned.

I will give you one example of the container trials and test periods that gave specific reference to that as it is provided in their tariffs. Experimenting with containers is nothingg new. It has been going on since it was first regulated. I remember 10 years ago when I first had some connection or experience with some containers that had been tried then, that are today becoming very popular. They were handled on an experimental basis.

I think you have noticed in the papers here recently where the railroads are experimenting with trainloads of coal. We have had decisions—I believe a limestone case on the Missouri-Pacific Railroad, from the State of Arkansas, in that area, Mr. Chairman, if I may refer to your good State——

The CHAIRMAN. Yes, but it was a sad experience, I might also comment.

Mr. MURPHY. The limestone case?

The CHAIRMAN. The limestone case, from New Mexico to Arkansas, as compared to the rates to other areas.

Mr. MURPHY. I am not speaking of that one, I am speaking of the one moving out of that area south, out of Missouri down to the gulf port section.

The CHAIRMAN. I don't recall that. I was talking about a matter that I think I had up to the Commission, I believe I did, I am not sure—it might have been when you were Chairman, although I am not sure—having to do with the rates out of New Mexico, that area there, into certain areas of the United States.

Mr. MURPHY. I was speaking of these experimental or changes in methods of operation and handling freight rather than a particular rate adjustment. But I refer again to these movements of trainloads of coal. I noticed no later than last evening where the Pennsylvania, B. & O., and the New Haven Railroads are actually moving some into the New England area. They didn't have to get permission from the Commission to make these test runs or experiment with it. In fact, the way the Commission learned of it has been through the medium of transportation magazines and the newspapers.

Mr. STAGGERS. They are free within the framework of the law to go ahead. I just wondered if they are making use of it to any great extent, with the exception of these cases you just pointed out.

Mr. MURPHY. I am not in a position to say to what extent they are making use of it, but I do not think the Commission can block or prevent it as long as it stays within the provisions of the act.

Mr. STAGGERS. Thank you, Mr. Chiarman. That is all.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Mr. Chairman, I am concerned about the legislative history that we are making in relation to this whole question of rate wars. I personally am convinced that the people who support this legislation have no intention of contributing to a situation which will open the door to rate wars. I would think that as a matter of policy that this committee and the Congress and the Interstate Commerce Commission would make it clear that any loss of revenue resulting from rate wars will not be compensated for by a general increase in rates from other areas.

And I would hope that you can agree to this. It seems to me that this is certainly within the province of this committee, the Congress, and your Commission to make it clear to the carriers, and enforce that policy. Wouldn't you agree with that?

Mr. MURPHY. The policy sounds good. But I have serious question as to how in the world you can enforce or administer a matter of that kind.

Mr. SIBAL. You mean if a loss of revenue weakened the financial structure of an existing carrier resulted from a rate war that your Commission frowned upon, that you would be required to grant increases in rates?

Mr. MURPHY. To begin with, you would have to determine—it would be a question of fact as to whether a rate war did actually develop, and then you would have to have some record on which to determine whether it was necessary, and to the extent it was below a reasonable rate. That would be an awfully difficult situation to meet, as I see it.

Mr. SIBAL. In other words, you just don't feel that any deregulation should be considered in that area?

Mr. MURPHY. You wouldn't have—under what is being proposed here we wouldn't have anything to do with that. But you are talking about, as I understand your question, that there should be some provision for that, to prevent you from permitting—

Mr. SIBAL. Policy.

Mr. MURPHY. There you are getting into a thing—I don't believe anyone is any stronger for management running its own business than I am. But you would have a multitude of things there that I just don't believe that a Solomon could apply unless you are in to prevent it to begin with.

Mr. SIBAL. I believe when you were answering questions put to you by Mr. Hemphill you used the example of the gasoline rate wars which all of us are familiar with. It is difficult for me to see the relationship between an industry such as the oil industry with its limited regulation and an industry such as the common carrier industry which is so fully regulated or relatively fully regulated. I know in the oil industry, within a relatively small area such as, say, the State of Connecticut, that if rates are cut in one area you can drive 75 miles and find quite different rates charged by the companies for gas in areas that are not engaged in the rate war.

It certainly seems to me to be quite a different situation from that of a carrier which must submit its maximum considerations to your Commission and to the interstate ratemaking authorities within the States.

Mr. MURPHY. To begin with, under the legislation we would have no authority to deal with the lower reasonable minimum rate. Under the law today the carrier is at liberty to set his rates as between a minimum reasonable and a maximum reasonable. He is permitted to vary them back and forth any way that his managerial discretion dictates so long as he doesn't do so in some way that will result in something contrary to the provisions of the act. He certainly has the right today to make those changes.

Now you can have in different areas different situations with which the carrier is confronted. If he has to meet a particular situation they may have more intensified private carriage or exempt carriage competition in one area that would cause the carriers to modify or change their rate pattern from that which applies generally over a larger territory or to one that may not exist in some other territories.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. SIBAL. Yes.

Mr. ROGERS of Florida. It seems to me that your position, Mr. Chairman, is that if you took off all regulation, then it would be difficult to stop price wars simply by indirect regulation, and the argument that you can stop price wars, or rate wars, rather, by refusing to grant increases under another authority that you have is in effect asking you to have regulation to stop the rate war.

Mr. MURPHY. That is correct.

Mr. ROGERS of Florida. And I see your position there. Now what I am concerned with is not so much that authority but rather the possibility that we will simply be transferring the authority to regulate in this whole field from the ICC over to the Justice Department. And I think this is the great danger in this whole procedure, that we are simply going to turn over the whole management of this movement of bulk commodities to the antitrust division, so that when one company comes in and lowers its rate, they immediately have filed against them an antitrust suit, and you go through the same redtape and harassment, perhaps more than ever before. And I think this

committee must go into this problem very carefully before we get into that situation.

I thank the gentlemen.

Mr. SIBAL. Thank you.

Had you completed your point?

Mr. MURPHY. I don't want to dominate the talking——

Mr. SIBAL. You are the witness.

Mr. MURPHY. I do want to say this, following up what Mr. Rogers has said. You are dividing the authority or the regulation of these rates which, today, under the present provisions, can be dealt with under a single authority with respect to the question of preference, prejudice, discrimination, and the maximum or minimum reasonable rates. You could very easily get into rate situations under this proposed legislation as we see it—you can have before the Interstate Commerce Commission the same situation that would be dealing with preference and prejudice and discrimination, and, at the same time, have a question in the court on antitrust violation concerning the very same rate adjustments.

So to me I think it is going to be rather difficult to handle.

Mr. SIBAL. You don't feel that the reasonable maximum test which is still available to you under this legislation, as I understand it, is enough authority for you to cope with the problems which would be created by the passage of this legislation?

Mr. MURPHY. Well, there are two different matters entirely, Mr. Sibal, if I may say so. As to the maximum reasonable rate, there are very few of those classifications to date. Most of the matters we have now involve the lowering of rates. And that has been true for a number of years now.

Mr. SIBAL. The point you made in connection with the possibility of rate wars, you would receive applications for increases in other areas, isn't that true?

Mr. MURPHY. Yes, sir. But we would have to stay within the sphere where we were permitted to operate. The national transportation policy puts the burden on us of doing all we can to help maintain a strong national transportation system that will meet certain requirements. So I think there again where we would have no control or no authority over minimum reasonable rates. We would, under the present statute, if the carriers showed that they needed it in order to stay strong, be required to grant the increases on those commodities where we did have the control and authority to regulate them.

I don't think we could give very much consideration to the minimum rate question, since that would have been removed from the statute that we would administer.

Mr. SIBAL. Even if the participation in these rate wars was done with the obvious result of hurting the financial structure of the road involved?

Mr. MURPHY. Well, we would be starting from scratch, and we would have to find out first if there had actually been a rate war, and what levels of rates had developed. And there we would be dealing with a thing that we would have no authority, as I interpret the proposed legislation, to go into.

Mr. SIBAL. Thank you very much.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, I am sorry that I couldn't be here yesterday to hear your testimony. I understand from my colleagues that it was an excellent statement of the position of the Commission on this legislation. As I understand it, the underlying purpose of this legislation is to permit each mode of transportation to exploit to the fullest the respective inherent advantages that accrue to that particular type of transportation. Going on that assumption, wouldn't that contribute to a sound and healthy transportation system in the United States?

Mr. MURPHY. Yes, sir; with certain safeguards. And I am in full accord with the theory of the respective carriers as to the inherent advantages being recognized.

Mr. WILLIAMS. Is it possible to exploit their respective advantages and still be subject to minimum rates?

Mr. MURPHY. You mean without having the minimum rate provision?

Mr. WILLIAMS. I mean, is it possible for them to exploit their inherent advantages by requiring that their rates be above a certain level?

Mr. MURPHY. Yes, sir; I think it is possible.

Mr. WILLIAMS. You think it is possible?

Mr. MURPHY. Yes, sir.

Mr. WILLIAMS. Let me ask you this. Let's take two cities in my district, for instance, Jackson, which does not have barge transportation, which is not on a river, and Vicksburg, which is on the Mississippi River. There is a railroad between Vicksburg and Memphis, and one between Jackson and Memphis, both operated, I believe, by the same company, the Illinois Central Railroad. However, Vicksburg has the advantage of having barge transportation between Vicksburg and Memphis. The distance between Vicksburg and Memphis is approximately the same as it is between Memphis and Jackson.

Would this legislation open the door to a rank discrimination against the city of Jackson in favor of the city of Vicksburg because Vicksburg would have the competition of another mode of transportation while Jackson would be more or less a one-carrier center, and would this legislation open the door to permitting the Illinois Central to charge an exorbitant rate between Jackson and Memphis and a below-cost rate between Vicksburg and Memphis, simply because the rate between Vicksburg and Memphis was competitive with the bargeline?

Mr. MURPHY. You said Illinois Central Railroad?

Mr. WILLIAMS. Illinois Central Railroad, yes.

Mr. MURPHY. Yes, sir; it could bring about that situation, Mr. Williams. And as I interpret the proposed legislation, you would be confronted with this situation. As to those commodities, the carrier would establish his rates. As to the rate being below a reasonable minimum rate, we would have no control over it. Now, assume that you have a complaint filed by Jackson, Miss., against the railroad attacking the rate that is charged to Jackson versus the one to Vicksburg.

Mr. WILLIAMS. Understand, this is purely a hypothetical case.

Mr. MURPHY. I understand that. And here is what you will be confronted with. The Commission could entertain the complaint so long as it didn't deal with minimum reasonable rates. As to that

part it would be out. But as to discrimination, we could consider that. As to preference and prejudice, we could consider that. If there is a fourth section question involved, that could be considered. But if you found that the discrimination and preference and prejudice existed, whereas today we could prescribe a reasonable minimum rate and a maximum reasonable rate within which those rates could be adjusted, we could issue an order which would be permissive, the carrier could within that zone bring his rates up or lower the other, as I see it. Under the proposed legislation here the only thing the Commission could do would be to issue an order finding discrimination, preference, and prejudice, and order it removed.

The carrier could either increase his rate from Vicksburg—we couldn't order him to do it, even though it might be below cost——

Mr. WILLIAMS. Or he could decrease the one at Jackson.

Mr. MURPHY. He could decrease the one at Jackson. And if he were decreasing that to a level or a rate that was losing money to another point, it would just be a further depletion of the carrier's revenue.

The CHAIRMAN. Will the gentleman yield?

Mr. WILLIAMS. Certainly.

The CHAIRMAN. I was hoping that this situation would develop at this point, in order to point up the glaring ambiguities and the gross inequities that exist under the present situation. Mr. Chairman, you have just responded to a hypothetical question. Now, let me give you one that is not hypothetical, one that you have dealt with, and it is a matter of practice. The principle involved is the thing that disturbs me.

In southeast Arkansas, some 20 miles away from the Mississippi River to the west, a particular rate from there to New Orleans is put into effect and tariffs filed with the Commission. As compared with the rate filed by the competing railroad from Greenville, Miss., to New Orleans right down the Mississippi River, the Commission-approved rate to the railroad on the Mississippi River south from Greenville, Miss., is far below that which you would approve for another railroad within 20 miles of the same place where it is initiated to the same destination in New Orleans. Now, can you explain to me why that situation is permitted under the present proceedings?

Mr. MURPHY. We will endeavor to——

The CHAIRMAN. First, I will tell you why it was explained to me it was permitted; because you permitted the railroad paralleling the Mississippi River to compete with barge rates.

Mr. MURPHY. Yes, sir.

The CHAIRMAN. And then you have another road within 20 or 30 miles over here, the origin, in the same area, with the same agricultural products going the same place, about the same distance—if that isn't discrimination, I don't know what it is, and it is an actual fact; this is not a hypothetical question.

Why is it permitted under the present procedure?

Mr. MURPHY. Of course, I can't give you why the example you have set out here exists. I would like to look at the case to which you have reference, and I will do it.

The CHAIRMAN. You have a letter in your files on it, and you have a reply to me. I have correspondence on it. I have had it up with the railroads and also the Commission. And you told me that it was

within the law. And that is the reason that I had in mind. If it is such a good system that you have in mind, I want to know why these things exist.

Mr. MURPHY. I don't recall the particular case, but today under the fourth section provisions we do grant lower rates for longer hauls that are involved than in an immediate haul.

The CHAIRMAN. This is not a longer haul, this is approximately the same distance, and it is going to the same destination, originating in the same area, within 40 miles.

Mr. MURPHY. I am not familiar with what transpired on that. I will look into it. But you do have actual water competition, the statement you made, from Greenville to New Orleans is a water-to-water movement.

The CHAIRMAN. And that is what I had in mind, Mr. Chairman, when I said earlier today that I do not believe the Commission is attacking the problems that exist today, I think you are trying to extend the philosophy of the problems that existed 75 years ago.

Mr. MURPHY. Some of the problems you would have today existed then, and I think would exist again today.

The CHAIRMAN. We are trying to meet them with the same vehicle.

Mr. MURPHY. I don't understand, Mr. Chairman—if this legislation right here was enacted I don't think it would correct that situation, unless the carriers themselves wanted to correct it.

The CHAIRMAN. I think that is probably true. But you have a certain degree of competition which the carriers themselves indicate that they have got to consider in the whole area under the threat that certain people would take the business away from them. I think if you are going to have regulation that would permit certain ones to require certain things of a carrier, then you ought to give them freedom to operate.

I will show you the file on it, Mr. Chairman, sometime, so you can be in a better position to comment.

Mr. MURPHY. If the carrier from the inland point wants to meet what the competitor is doing as to actual water competition, he is perfectly at liberty to file his rate. I don't know whether the case you are talking about is a normal complaint by a shipper or receiver or whether it is the result of an I and S proceeding where they have attempted to publish such rates. But I will certainly look at it.

The CHAIRMAN. I am not trying to develop—I am sorry to take your time, Mr. Williams—I am not trying to develop any criticism at all, I am just telling you of a situation that exists. And if it exists in this case it exists in many, many places throughout the country. And that is the reason, I think, we have got to develop some kind of approach to meet them. How, I don't know. And that is what I am raising.

Mr. HEMPHILL. Would you yield, Mr. Williams?

Mr. WILLIAMS. Surely.

Mr. HEMPHILL. Getting back to Mississippi, suppose you had this legislation, and under the hypothetical case Mr. Williams gave you, the railroad did charge an exorbitant rate from Memphis to Jackson. Where is the truckline going to be? Can't the truckline come in there and compete under the free enterprise system if you have no minimum rate?

Mr. MURPHY. Yes, sir, he is at liberty to compete and is competing today.

Mr. HEMPHILL. If you had the situation outlined by Mr. Williams, the trucking line would have the right to make a rate too, wouldn't he?

Mr. MURPHY. Yes, sir.

Mr. HEMPHILL. So therefore there is a potential of an adjustment there between the competing modes of transportation as well as the intrarates between the Illinois Central Railroad from Memphis to Jackson and Memphis to Vicksburg?

Mr. MURPHY. Then, as I see it, you would be pitting one mode of transportation against the other to do just what I have mentioned, and that is to inaugurate some cutthroat competition to drive them down below a reasonable level.

Mr. HEMPHILL. Aren't you doing that today——

Mr. MURPHY. No, I do not think so.

Mr. HEMPHILL. When you say that on the Mississippi River, because there are bargelines which have an exemption today—isn't that right, to a certain extent?

Mr. MURPHY. Yes, sir.

Mr. HEMPHILL. There are bargelines on the Mississippi River that have an exemption, and therefore any time a fellow happened to be able to ship down the river he gets cheaper rates than another shipper shipping the same distance by identical modes of transportation for identical purpose, so there is discrimination now, isn't there?

Mr. MURPHY. No, sir—there is some, but not there—I think the way to remedy the situation you describe is to bring it under, as we suggested—that the alternate recommendation of the President be adopted.

Mr. HEMPHILL. And then the public suffers, doesn't it?

Mr. MURPHY. No, sir.

Mr. HEMPHILL. Because the rate structure has then been made to keep in business the modes of transportation rather than to serve the public, that is what I am fearful of. That worries me a great deal.

Thank you, Mr. Williams.

Mr. WILLIAMS. Mr. Chairman, I hope the ICC won't take too close a look at that case of Mr. Harris, because as I understand the State of Mississippi came out on top in that.

But seriously speaking, most of the points that I had planned to develop, I think, have been determined by the questioning of Mr. Harris and Mr. Hemphill.

Permit me to ask this further question. You indicated in your answer to my initial question that regardless of whether this legislation could pass or not, the Commission would still have the authority to concern itself with discriminatory rates as between the cities of Jackson and Memphis and the cities of Vicksburg and Memphis, which is the hypothetical case I brought up. Is that correct?

Mr. MURPHY. Yes, sir; that is true.

Mr. WILLIAMS. Not on exempted commodities?

Mr. MURPHY. No. I misunderstood your question.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Mr. Dominick.

Mr. DOMINICK. Thank you, Mr. Chairman.

I am sorry that I didn't get through all of your testimony. But I have scanned a good deal of it. And on page 21, in the third paragraph, I rather gather that what the Commission is saying is that if you exempt the bulk commodities from regulation, that you might as well wind up the ICC, that you really don't have very much else to do.

Is this correct?

Mr. MURPHY. In the statement we point out that 60 to 70 percent of the rail traffic will be exempt under the provision and 90 percent of the water carriers, and I believe 65 percent of the highway transportation.

We say in the paragraph to which you make reference that, in our opinion, we question whether it would be possible to continue effectively ICC rate regulation of any substantial amount of interstate commerce by any mode of carriage. We do not make the statement that we suggest that it be abolished, or a change of that type.

Mr. DOMINICK. Let me ask just a couple of questions. I don't think any of us here on the committee are interested in wiping out the trucking industry. And I have gotten a lot of letters, as I presume everybody else has, saying that if this bill is passed this would happen. In getting at, however, the alternative proposal which you suggest, it might be helpful if you could tell us how long it takes following an application to determine whether a minimum rate is or is not a reasonable rate, reasonably compensatory.

Mr. MURPHY. That will depend on the type proceedings and the scope of the proceedings as to how long it will take. Now, we have under your present provisions in I. & S. proceedings, that is, where a rate is published, if for any reason there appears a possibility that it is violating the law, we have 7 months to determine the lawfulness of the suspended rate. If we have not determined it within that time, unless the proponent agrees to postpone for an additional period of time, or indefinitely, that is, until the matter is determined, his rate can automatically go in effect at the expiration of 7 months.

The greater proportion of our I. & S. proceedings—and I think it exceeds the bulk in numbers—is determined within the 7-month period.

Mr. DOMINICK. How many additional applications do you feel that you would have if you eliminated the existing exemptions on bulk commodities?

Mr. MURPHY. You mean in proposed rate changes?

Mr. DOMINICK. No. At the present time, as I understand it, the truckers and the bargelines in many cases have exemptions for bulk transportation of certain commodities. And the railroads do not have this. And therefore, in many cases they cannot be competitive. Now, suppose we have the truckers and the bargelines within this same minimum rate regulation, how many additional proceedings would you have to determine whether or not these rates that they are filing with you are compensatory?

Mr. MURPHY. I am trying to understand your question, Mr. Dominick.

Mr. DOMINICK. I am trying to see how much more work it would put on you, that is all.

Mr. MURPHY. I think perhaps to begin with there would be quite an increase in the number of rates that would be published. But I

think it would level itself out. And I doubt seriously in the long run if it would add substantially to the volume of work.

Mr. DOMINICK. Isn't it probable that wherever a trucking line or a bargeline proposes a minimum bulk rate which is lower than a rail rate between the same points, that the railroad naturally is going to say that the other rate is not compensatory, and force a hearing?

Mr. MURPHY. When these type rates are filed, and there is a protest made, we do have cost information available to us, and the suspension board has it available to them in passing on the rate.

Mr. DOMINICK. How many proceedings do you estimate that this would involve?

Mr. MURPHY. I couldn't give you an estimate on it. It would be strictly a guess.

Mr. DOMINICK. It would be a large number, would it not?

Mr. MURPHY. Yes, there would be a substantial increase in it.

Mr. DOMINICK. And about how long do you think it might take to process these new proceedings?

Mr. MURPHY. Well, you would not have to process all of them, that is, through a formal hearing. Many of them would be, I am sure, not suspended. In other words, merely because you have a protest lodged against a rate does not mean that it will be suspended—you would, I am sure, have some that would be suspended and have to hold formal hearings on them. Some that are suspended would be withdrawn.

Mr. DOMINICK. How long does it take to determine that they should not be suspended?

Mr. MURPHY. Well, we have from the date of the filing of the publication and the receipt of the protest less than 30 days. There are very few of them, taken by numbers, that are published much more than a 30-day notice which is a statutory requirement.

The CHAIRMAN. Pardon me, Mr. Chairman. I don't understand what rates you are discussing, what type of rates.

Mr. DOMINICK. I was discussing the additional work and time which might be put on the Commission in the event the alternative proposals were accepted, namely, the elimination of existing bulk exemptions.

The CHAIRMAN. Thank you.

Mr. DOMINICK. How much additional staff would you need to handle this?

Mr. MURPHY. I don't think it would require but very little additional staff. And that is my offhand opinion here. I just don't see it as developing into anything very great.

Mr. DOMINICK. I am somewhat concerned over bringing the trucks and the barge carriers under more regulation. In many instances the time, and the delay that might be created under this type of regulation, would be stifling.

Mr. MURPHY. I say again, I don't think it is going to require any substantial increase——

Mr. DOMINICK. The Commission did not make an analysis of this in preparing your recommendations, then?

Mr. MURPHY. Make an analysis of which?

Mr. DOMINICK. The amount of proceedings that might be encompassed if your recommendations were accepted.

Mr. MURPHY. No, sir; we did not.

I might mention to you that as I understand the water carriers are very strongly in favor of the repeal of the exemption on the bulk commodity clause which we have previously testified on. That is beside the question. I just couldn't give you a figure other than saying that my own opinion is that it would not be a substantial increase in volume of work or in personnel requirements.

Mr. DOMINICK. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Jarman, do you have some more questions?

Mr. JARMAN. No; those questions were asked by Mr. Sraggers.

The CHAIRMAN. Mr. Chairman, I think you have made it very clear that the bulk commodities, agricultural and fishery products, passengers—bulk commodities primarily, agricultural and fishery products—insofar as railroad transportation is concerned, are regulated.

Mr. MURPHY. Yes, sir.

The CHAIRMAN. And as far as water carriers are concerned, they are not regulated, is that true?

Mr. MURPHY. Except under certain conditions where they haul more than three bulk commodities in the same tow. But generally speaking, that is true, they are not regulated rates.

The CHAIRMAN. But insofar as the motor carriers are concerned, some are regulated and some are not?

Mr. MURPHY. On the exempt commodities, Mr. Chairman, the motor carrier is exempt as to the economic regulation, but is subject to the safety rules and regulations and hours of service of employees.

The CHAIRMAN. Are the motor carriers exempted from hauling such products as bulk fuel oil?

Mr. MURPHY. No, sir.

The CHAIRMAN. Isn't that considered a bulk commodity?

Mr. MURPHY. Yes. But they are not a water carrier, and the water carriers are the ones that are exempt—the bulk commodities—I am not trying to be facetious, Mr. Chairman, but the Motor Carrier Act does not exempt the bulk commodity as such; you do have exemptions on agricultural and fishery products.

The CHAIRMAN. In other words, the motor carriers are, generally speaking, exempted from agricultural products, and so forth, but they are not exempted from bulk products as such?

Mr. MURPHY. That is true. For example, your petroleum haulers or your liquid haulers are 100 percent regulated today.

The CHAIRMAN. Now, the big difficulty of the exempt carriers is that those carriers getting into business has its effect on the regulated carriers?

Mr. MURPHY. Yes, sir. That is something that the Commission has been concerned about for a number of years.

The CHAIRMAN. Now, if all carriers—that is, the exempt carriers now—if your recommendation that Mr. Dominick asked about would be adopted, and there would be a repeal of the exempt provisions, could you say that there would be very likely a general increase in rates to the consumer?

Mr. MURPHY. No, sir; I could not say that I would expect that.

The CHAIRMAN. Do you think the common carrier would provide the rate under regulation in certain hauls that is now, for example, being given by exempted carriers?

Mr. MURPHY. Under legitimate exempted carriers, Mr. Chairman, I would say that they could. But what I am speaking of are the illegitimate exempt carriers that are giving the difficulty, where they themselves have a cutthroat rate war amongst themselves as exempt carriers, and when they get into hauling things like manufactured products, either by means of leasing their equipment to be operated as a private carrier or otherwise, that is where the real damage is being done.

The CHAIRMAN. Mr. Chairman, in the delivery of poultry from my State to market in California, Texas, Colorado, Chicago, and various other markets, I happen to know that the common carriers told the producers they could not provide them with the rate that they were receiving and are now receiving in view of the fact that they were exempted. How can you explain that situation?

Mr. MURPHY. I thought we had explained it in our statement, that if the exempted carrier is hauling dressed poultry from Arkansas to California, I don't believe that he can operate any lower than can the common carrier with refrigerated service, no matter how it might move, unless——

The CHAIRMAN. I am telling you what actually happened. And they told them what would be the charge if they had to use common carrier.

Mr. MURPHY. I don't know what their backhaul is. And that is the thing I am trying to get to, that we find these situations, Mr. Chairman, in which your rate structure has been beaten down by just such practices as that. Now, I don't know what they are doing in the poultry industry as to hauling the dressed poultry. But I am speaking—an example, I believe, originated in Chicago in the State of Illinois of a carrier that was hauling perishable goods, coming in from the west coast, and I believe it was the State of Illinois that caught him hauling pianos on his return trip, which is not an exempted commodity. So without that return haul——

The CHAIRMAN. You are appropriately concerned with that kind, but I am appropriately concerned with the legitimate haul which is a rather large and substantial business, and it is an operation which is aboveboard, that everybody knows about—contract carriers, ICC, and everybody else. And I asked you the question: If this were to happen, would the rates be increased? And you said "No." I am telling you this example where they assured them they would be increased.

Mr. MURPHY. I think you can find exceptions to any rule. I said I did not think——

The CHAIRMAN. This occurred in large exceptions that I am talking about that ought to be given consideration as a matter of policy in dealing with these things, because this kind of operation is tremendous. And I want to know why. That is the point.

Mr. MURPHY. You get back to what the statement has here, Mr. Chairman, you have got to consider what they are doing in connection with it. And I have had some experience myself in the operation of private carriage, and have represented people who operated private carriage.

The CHAIRMAN. I think this is contract carriage that I am talking about now, it is not private carriage.

Anyway, I just wanted to raise those questions.

Mr. MURPHY. Mr. Chairman, I don't want to prolong it, but I certainly don't want to leave—I don't think anyone is more concerned about a strong transportation system than is the Commission, and certainly our attitude here is one of trying to be constructive.

The CHAIRMAN. I agree with that.

Mr. MURPHY. And I do not care whether it is the President's message that causes us to bring about what we think is needed or whether it is something we suggested 5 years ago or now, if we can get it done—but beginning at the bottom of page 11 of my statement and continuing over on 12, we try to point out about the exempt haulers today, and the things that we are confronted with—when you get into the one that you mentioned, of course, I am ignorant about what the situation is there. But you do have to find out the type backhaul he is performing—is he taking his equipment and leasing it to some private carrier, or using it in——

The CHAIRMAN. No, sir, he is not leasing it to a private carrier, they are bringing back certain kinds of exempt commodities such as perishables of some kind, where refrigerated trucks would be applicable.

Let's go into the coal situation and get away from the poultry business.

Mr. MURPHY. All right, sir.

The CHAIRMAN. You mentioned it in your statement. There is a proposition before this committee right now which we are urged to consider that would grant eminent domain by the Government, that is, through Federal jurisdiction to coal slurry pipelines. Now, I have gone into that to some extent. I am told by the railroads that they could not compete with it. And the coal pipeline boys say that they can give a dollar and a half approximately as their rate. After reading the pamphlet that was put out by the Consolidated Coal Co. and Texas Eastern, they contend that. The railroads involved say that if they were to be given the authority to operate under the same type of situations to customers, they could meet it. But the ICC under its rules and its law will not permit them.

Mr. MURPHY. I dispute the statement. I don't know which one furnished it to you, but I dispute it. And I can review some cases just in recent years where the railroads have been able to put in rates on coal moving to the utility people on the North Atlantic Seaboard. The reduced rates are dependent upon a particular volume being met within a given period of time. As I mentioned previously, the carriers have had under experimentation here for some time, I do not know how long, the movement of trainload lots of coal. I have seen news items in which they say that they can compete under those conditions.

The CHAIRMAN. I am asking for information. Can a railroad get a special rate on a trainload movement of coal to particular customers in certain areas?

Mr. MURPHY. Yes, sir, if it comes within the provisions of the law and it doesn't discriminate, yes, sir, there is no law prohibiting trainload movement.

The CHAIRMAN. No, I know there is not any law prohibiting trainload movement. But can they deliver trainload movements to a particular customer or customers without having to give the same rates on a less-than-trainload movement to other places even though within an area?

Mr. MURPHY. Yes, sir, I think rates can be based on—if you go into cost and do not discriminate—and I don't want to prejudge any case that might come before us, but I say that there are conditions and circumstances under which rates could be established in that manner.

The CHAIRMAN. Your contention is that insofar as the coal industry is concerned, which was pointed out here to be one of the basic products involved—as far as the coal industry is concerned, they could compete now under the law and procedure of the Commission at reduced rates?

Mr. MURPHY. Yes, sir. And you know, some of this adjustment we have made in the last year or year before in order to permit the railroads to compete with this residual oil that was being imported into this country. And as I tried to say in the statement, we think it is time that we give some recognition to some of the benefits that flow from regulation rather than just using the one-sided approach that some have used of claiming that they have bene shackled by it. I do not agree with it.

The CHAIRMAN. You don't approve of a continuation of the policy of some being exempted and others being regulated in these exempt hauls?

Mr. MURPHY. Mr. Chairman, may I say this. The Commission in this statement—and we are serious and earnest about it—we think the alternative approach mentioned by the President in his transportation message in our opinion and our judgment is the better approach.

The CHAIRMAN. Let me thank you again for your statement here. And I do not want you or any member of the Commission to get the idea that I or anyone else have had any feeling that you are not completely sincere in what you are doing. I think I probably would have taken the same course had I been on the Commission. I do think that some of these challenging problems which you have got to recognize today are different from anything you have ever had. Probably they should be considered in a different light than we have all of these years.

New techniques, I think, are something that should be recognized, and consideration should be given to them in order to get the greatest advantage out of them. And the questions that have been mentioned here are in an effort to develop this record on such a wide, complicated problem as we have here today. And I do want to say that what I have said is in no way intended as a criticism of the Commission not trying to do its job under the law and established procedures.

We are talking about changes in established procedures and policies here. I think it behooves you and me and anybody else to consider any kind of suggestion that has any meat in it whatsoever, and not feel that we have just got one line that we believe and we adhere to and we are going to stay with, and no consideration is to be given to an entirely different course.

If we develop the new courses presented, and they do not seem feasible, then that is ample proof beyond anything that can be developed that what has been taking place over the years and what is being done now is the best. That is my intention in trying to develop this record.

Let me on behalf of the committee thank you and all members of the Commission and your staff for the contribution you have made. I am sure at the right time we will get to it. We will want more consultation with you.

Mr. MURPHY. We are ready at any time, Mr. Chairman, to follow through. And may I say again on behalf of the Commission we are concerned and we have been concerned with the situation for several years.

The CHAIRMAN. None of you would have any business being on the Commission if you were not concerned. And I know every one of you are.

Mr. MURPHY. We are. And in what we have brought here today and what we have had to say, we are not taking sides with any particular mode of transportation. We are looking for an overall sound and strong transportation system. I think that is what we are all striving for. But we gave you the report that we thought was best for the overall public interest.

The CHAIRMAN. And we appreciate it too.

The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 12:35 p.m., the hearing was adjourned, to reconvene at 10 a.m., Thursday, July 12, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

THURSDAY, JULY 12, 1962

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

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

The CHAIRMAN. The committee will come to order.

In the continuation of hearings on transportation, the first witness today will be Mr. Daniel P. Loomis, president, Association of American Railroads.

Mr. Loomis.

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

Mr. LOOMIS. Mr. Chairman, my name is Daniel P. Loomis. I am president of the Association of American Railroads, with headquarters at Washington, D.C. The Association of American Railroads is a voluntary nonprofit organization. Its membership comprises railroads that operate 94 percent of the total mileage of all railroads in the United States and have operating revenues approximating 96 percent of the total operating revenues of all railroads in the United States.

My appearance here today is for the purpose of expressing the support of the association and of its members for H.R. 11583 and H.R. 11584, the two bills introduced by the chairman of this committee on May 3, 1962, to afford implementation to certain of the recommendations contained in the President's transportation message of April 5, 1962.

In his message relative to the transportation system of our Nation, President Kennedy dealt both comprehensively and forthrightly with many aspects of what has come to be known as the transportation problem. In view of what has been said by those who have preceded me, especially by the Secretary of Commerce and the Under Secretary of Commerce for Transportation, a summary of the President's message or the recommendations contained therein would be unnecessary duplication. There are certain features of the message, however, that it would be helpful to bear in mind in connection with my statement.

The message recognizes at the very outset that transportation is "an industry which serves, and is affected with, the national interest," and that "an efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress" as well as to our ability to compete abroad and to our defense preparedness. It

calls attention to the incontrovertible fact that the common carrier, "developed by the intention of Congress and the requirements of the public as the core of our transport system," is declining in status and stature as private and exempt carriage grow.

The message recounts a number of the more important reasons for the decline of the common carrier industry, but concludes that—

> Whatever the cause, the common carrier * * * performs an essential function that should not be extinguished.

The President referred to common carriage as "the core of our transport system." It is almost universally conceded that the railroad common carrier is the mainstay, or backbone, of our transportation system. It is appropriate, therefore, especially in my case, that I should focus primarily upon the railroads' interest in the proposed legislation. I shall approach the pending bills, then, from the standpoint of what they mean to the railroads and why the railroad industry gives them its wholehearted and keen support.

Mr. Chairman, in the interest of brevity I will do some skipping and briefing in certain parts of my statement, but I would like to ask that the entire statement be included in the record.

The CHAIRMAN. Very well, it will be included.

Mr. LOOMIS. If you will turn to page 3, you will find a statement of the net railway operating income, rate of return and net income, railroads of class 1 in the United States, for the years 1929–61.

From a rate of return of 4.22 percent in 1955, which was already one-fifth less than in 1929, there has been a constant downward trend to only 1.97 percent in 1961. This shows that the condition is chronic and not merely the occasional result of recessionary periods.

The net income, after payment of interest and other fixed charges, has dwindled from $927 million in 1955 to $382 million in 1961. And, this decline in net earnings has occurred notwithstanding necessary retrenchments of maintenance and other expenses.

Also, the weakened financial position of the railroads is reflected by recent diminutions of working capital. Net working capital is the margin of current assets, excluding materials and supplies, over current liabilities and it has fallen from $934 million on December 31, 1955, to $513 million on December 31, 1961. Furthermore, net working capital in excess of debt maturing within 1 year dropped from $545 million at the end of 1955 to $119 million at the end of 1961.

Because of financial stringencies and limited access to investment funds, railroad expenditures for improvement in plant and equipment have declined. You will find on page 4 a table showing the gross capital expenditures for the 7 years 1955–61. Note that in 1961 they fell to $646,452,000.

There are many and varied reasons for the precarious position in which the railroads find themselves, but foremost among those reasons are the severe handicaps to which they are subjected in their competition with other forms of transportation. And one of the principal intermode competitive handicaps with which the railroads are confronted is the grossly discriminatory and inequitable scheme of Federal regulation found under present law.

I shall later show the volume of traffic moving by each of the several types of transportation over a period of years. From the showing it will appear that a large and increasing part of the total traf-

fic of the country is moving by highway and inland waterway while the railroads' share is steadily declining, and it will appear also that far the greater part of highway and inland waterway traffic is entirely free of rate regulation by the Interstate Commerce Commission while all interstate railroad traffic—except for certain Government traffic—is subject to comprehensive, rigid, and cumbersome ICC regulation.

The President's message recognizes that "some parts of the transportation industry are restrained unnecessarily," and that the management of regulated transport "is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative." It attributes the decline of the common carrier, in large degree, "to the fact that the burdens of regulation are handicapping the certificated common carrier in his efforts to meet his unregulated competition." It points out that—

> Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates. * * * Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt.

The exempt traffic referred to in the transportation message, and sought to be dealt with in one of the bills (H.R. 11583) being considered by this committee, is that falling within the coverage of the so-called agricultural commodities exemption provided by law for motor carriers and the bulk commodity exemptions similarly provided for water carriers. These exemptions together with the rapid growth of private carriage, account in very large part for the alarming diversion of traffic from the rails to the highways and waterways.

It will be of interest, I think, if I present to you at this stage of my testimony concrete figures showing the amount of freight traffic handled by each of the several modes of transportation during recent years and show the trend of the distribution of traffic among the different modes. These figures are set forth in two tables identified as "table I" and "table II."

If you will turn to page 7 of the statement, you will find a table showing the intercity freight traffic in the United States in millions of ton-miles distributed between the various modes of transportation for the years 1931 to 1961. The sources are shown at the bottom of the page.

Table II, which appears at page 8, shows the percentage distribution of intercity freight traffic in the United States for the same years.

During the postwar period, the railroad share of the total traffic showed a decrease in every year, falling from 66.6 percent in 1946 to 43.2 percent in 1961. During the same period the motor truck share of the total traffic showed an increase in virtually every year, rising from 9.1 percent in 1946 to 22.6 percent in 1961. Likewise, the share of water carriers on rivers and canals showed an increase in every year of the period, moving from 3.1 percent in 1946 to 9.5 percent in 1961, as practically tripling.

In summary, it may be said that during the postwar period the railroad percentage of total traffic has been reduced by about one-

third while the truck percentage has more than doubled and the percentage of water carriers on rivers and canals has tripled.

A glance at table I will show that not only has the railroads' relative share of the total intercity freight traffic decreased in recent years, but that the actual ton-miles have fallen off. In the case of highway and inland waterway carriers not only have their relative shares of the total traffic increased as noted, but in terms of absolutes there have been even more striking increases. Between 1946 and 1961 the railroads' ton-miles declined from 602 to 570 billion. In the same period the motor carriers' ton-miles grew from 82 to 298 billion, and the inland water carriers' surged from 28 to 125 billion.

As I have already indicated, the distribution of traffic among the several modes of transportation does not, standing alone, tell the whole story. One must look further. Substantially all interstate transportation by railroad is subject to rate regulation by the Interstate Commerce Commission and, therefore, to competitive restraint. But this is not true of transportation by highway or inland waterway, a very large part of which is unregulated either because it is private carriage or because it is for-hire transportation of the kind expressly exempted from regulation by the Interstate Commerce Act. Under the agricultural exemption, then, numerous agricultural, horticultural, and seafood commodities, aggregating vast tonnages, are exempt from rate regulation when they move by truck, but are not so exempt when they move by rail. Railroads are similarly prejudiced in competing with water carriers for the movement of coal and coke, ore, grain, sand, gravel, sulfur, fertilizer, cement, petroleum, chemicals, and other commodities that move in bulk free of regulation when waterborne, but subject to full regulation on the rails.

These exemptions from regulation that apply when the traffic described is transported by other modes of transportation, but do not apply when such traffic is moved by railroad, create gross discrimination against the railroads and pose severe competitive difficulties for them.

Railroads cannot change their published rates except upon 30 days' notice to the public unless upon application to the Interstate Commerce Commission, and for good cause shown, they should be authorized to publish a change on shorter notice. Their rates must meet standards of reasonableness—they must not be unreasonably high or unreasonably low—and they must not discriminate unjustly against any person, locality, port, or region. Their rates are subject to suspension.

The railroads' exempt competitors by highway or waterway, as the case may be, operate under no such requirements and have no such standards to observe. Where railroad rates are open, theirs are secret. With the railroads' rates before them and not readily subject to change, the exempt carriers are privileged to make whatever secret rates they choose at any time, without any notice to anyone, on whatever basis is necessary to get the business.

If you will look at tables III, IV, and V on pages 13, 14, and 15 of the statement, you will see there the distribution of intercity freight between regulated and unregulated carriers. Table III shows in terms of ton-miles the distribution of highway intercity freight traffic in the post-World War II years, between that regulated by the Inter-

state Commerce Commission and that not regulated by the Commission. It will be seen that unregulated motor carriage has steadily advanced from 64.4 billion ton-miles in 1947 to 187.1 billion ton-miles in 1959—the latest year for which figures of this kind are available—an increase of 190 percent.

Table IV shows the distribution of freight tonnage (ton-mile figures are not available) on the Mississippi River and tributaries, from 1947 to 1960, between that regulated by the Commission and that not so regulated. Here, again, it will be seen that the unregulated traffic has progressively increased, from 86.5 million tons in 1947 to 167.6 million tons in 1960 for an increase of 94 percent.

Please observe that over these same spans of years, rail freight traffic fell more than 12 percent from 664.5 billion ton-miles in 1947 to 582.5 in 1959 and 579.1 billion in 1960. (See table I.)

Table V illustrates, in terms of percentages, the extent of regulation of intercity freight traffic on the highways and certain domestic waterways. From this table it appears that in 1959 (the most recent year for which both highway and waterway figures are available) the highway traffic regulated by the Interstate Commerce Commission was only 35.1 percent of the total highway traffic, and only 10.6 percent of the waterway traffic on the Mississippi River and related waterways was subject to the Commission's regulation.

In all fairness it should be pointed out (in the event it has not already been made clear) that in the tables and statistics I have just supplied, the figures for unregulated transportation include private carriage by highway and waterway along with exempt for-hire transportation by these modes. We have not been able to obtain current figures showing a division between private carriage and exempt for-hire carriage.

Surely it is obvious that an indefensible situation results when the railroads are subject to the restraints in competitive ratemaking that are placed upon them by existing regulation, while much of their competition from other forms of transport is entirely free of such restraints. To whatever extent the railroads may have lost traffic to other transport modes because of the superior economic capability of those modes as to particular kinds of transportation services, they have no just cause for complaint; but they do have just grounds for complaint as to traffic that has been and is being diverted from them because of undue restraints under existing regulation that prevent them from reflecting their full cost advantage and inherent capabilities in competitive rates, especially as to traffic that may be transported by their competitors entirely free of regulatory restraints. And we are speaking of an immense volume of freight.

Because of the diversion to motor carriers of a large part of the high-rated merchandise traffic once carried by rail, the railroads have become increasingly dependent upon bulk (and, to a lesser extent, agricultural) traffic. In the handling of bulk freight, in particular, there is strenuous competition between water carriers and railroads.

I have attached to my prepared statement as appendix A a table showing, for the year 1960, the extent to which the freight transported by class I railroads consisted of bulk commodities and agricultural commodities that may be transported by waterway and highway respectively, free of rate regulation under the bulk and agricultural

commodity exemptions. This table provides a measure of the handicap with which the railroads are confronted in their competition with water and motor carriers for the transportation of these commodities. The summary appears on the first page of appendix A, which is a 4-page statement broken down into detail in subsequent pages.

Reference to that page will show that during 1960 bulk commodities of the kind susceptible of unregulated transportation by water carriers under the provisions of the bulk exemptions accounted for 67.4 percent of the total tons of freight originated by class I railroads. Agricultural commodities of the kind that move unregulated by motor vehicle accounted for 9.9 percent of class I railroad tonnage. Allowing for duplications (grain, for example, is both a bulk and an agricultural commodity), these bulk and agricultural commodities aggregated 69.9 percent of the total railroad tonnage.

Turning next to revenues, the same table shows that bulk freight accounted for 38.9 percent of the gross freight revenue of class I railroads in that year; and the gross revenue from agricultural commodities comprised 12.3 percent of the total. Again allowing for duplications, the gross freight revenue derived by the railroads from bulk and agricultural traffic was 44.7 percent of the total.

As I have already pointed out, the transportation message finds that under present law, as it is administered—

> management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative.

Let us examine certain features of this regulatory supervision, and observe just how it is that present law, as administered, restrains railroads in their competitive ratemaking efforts.

When a carrier seeks to better its competitive position through rate adjustment the course usually followed is a proposed reduction in its own rates, although on occasion the course followed is to attack as unreasonably low the rates of its competitors. In either event such control as the Interstate Commerce Commission exercises over competitive rate adjustments nearly always, if not always, involves its power to determine and prescribe just and reasonable minimum rates.

This power is given to the Commission with respect to the minimum rates of each of the several types of carriers over which it has authority to exercise economic regulation, including railroads and regulated carriers by motor vehicle and by water. It is not given to the Commission, of course, as to the rates of those carriers by motor vehicle and water which the Interstate Commerce Act exempts from regulation, as in the case of motor carriage of agricultural commodities and the water carriage of bulk commodities. Nor has the Commission any economic control over private carriage. Exempt and private carriers enjoy complete freedom in the competitive field.

The occasion for exercise of the minimum rate power ordinarily arises in so-called investigation and suspension proceedings. Reductions in the rates of railroads and regulated motor and water carriers may not be made except upon 30 days' notice to the Commission and the public, unless the Commission permits less notice; and during this period of statutory notice the Commission has authority to suspend the proposed rate for as long as 7 months beyond

the time when it would otherwise go into effect, pending an investigation and determination as to the "lawfulness" of the rate. It may take this action either upon complaint, including the complaint of a competing carrier, or upon its own initiative without complaint.

Such delays in making reduced rates effective are likely to defeat entirely the purpose of the publishing carrier. This is particularly true where the shipper, not caring to await the outcome of the proceeding, is able to turn to private carriage or to carriers exempt from regulation and thus free to change their rates overnight. If a proposed reduced rate is finally found to be and to have been all the while lawful in every respect, the traffic and revenue that would have resulted from it are nevertheless irretrievably lost for the period of delay. Traffic so lost may well continue indefinitely to be lost, especially if the shipper has meanwhile turned to private carriage.

It is obvious that the suspension procedure, under existing law, affords a powerful instrument for the carriers of one mode of transportation to use in delaying or preventing the effectiveness of competitive rates proposed by carriers of another mode.

Because of the imbalance in the rights of competing modes of transportation to seek the suspension of each other's rates, the railroads are more severely handicapped than their competitors. While railroad rates for interstate transportation are subject to regulation by the Interstate Commerce Commission and hence subject to suspension by the Commission if reduced, the minimum rate and suspension provisions of the Interstate Commerce Act have no application to exempt transportation by highway or water or, of course, to private transportation by those means. As I have alread shown, only about one-third of intercity truck transportation and only about one-tenth of the transportation on the Mississippi River and related waterways is subject to Interstate Commerce Commission regulation.

Not all protested rates are suspended, of course. The Commission may allow them to become effective despite protest. By the same token, however, suspension is not a prerequisite for exercise of the minimum rate power. The Commission has the power, in an appropriate proceeding, to declare a rate already in effect to be lower than a just and reasonable minimum rate and order its cancellation in favor of a higher rate.

If the Commission, as a result of its investigation concerning the lawfulness of a competitive rate, does not find it to be unjust or unreasonable or otherwise in contravention of the provisions of the act it will, of course, permit the rate to become effective. If, however, it finds such a rate to be unlawful it will condemn it; and the basis for condemnation may be, and frequently is, a determination that the rate is lower than a just and reasonable minimum rate. The Commission may then simply order its cancellation, or the Commission may determine and prescribe what will be the just and reasonable minimum rate.

The foregoing description of the competitive ratemaking process is, of necessity, an oversimplification; but I believe it covers the procedural essentials. A very important substantive point does remain to be covered. That is the question of just what standards or criteria are employed by the Commission in determining whether a rate is just and reasonable, or is lower than a just and reasonable rate.

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In order to see what these standards or criteria are, in the case of competitive rates, one must examine individual cases decided by the Commission. This committee will recall that the Congress, in the Transportation Act of 1958, took steps designed to make for greater freedom in intermode competitive ratemaking. Written into the Interstate Commerce Act was a new provision (section 15a(3) of the act) as follows:

> In a proceeding involving competition between carriers of different modes of transportation subject to this act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this act.

We have now had a period of experience with this particular attempt to bring about more flexibility in competitive ratemaking, permit the freer exercise of managerial judgment, and give carriers greater opportunity to assert their inherent competitive capabilities. That experience has demonstrated, in cases decided by the Commission, that the attempt disappointingly fell somewhat short of what is needed. To avoid unnecessary and undesirable repetition, I shall not elaborate on this aspect of the matter. It will be dealt with by rail witnesses scheduled to follow me.

The President's transportation message, under the heading "A Basic National Transportation Policy," points up the need to achieve a number of important objectives that are not at present being achieved. I shall not undertake as a part of this statement to list or enumerate the sound basic objectives called for, but will merely point out, in partial summary, that according to the message their achievement—

> * * * means a more coordinated Federal policy and a less segmented approach. It means equality of opportunity for all forms of transportation and their users and undue preference to none. It means greater reliance on the forces of competition and less reliance on the restraints of regulation.

With this philosophy we agree.

The President has recommended, and H.R. 11583 provides, that there be extended to all carriers (including the railroads) an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities.

Under the Interstate Commerce Act, as we have seen, the transportation of bulk commodities by water carriers is exempt from all economic regulation (including minimum rate regulation), but no such exemption is available to other modes of transportation. "This," the transportation message concludes, "is clearly inequitable both to the latter and to shippers—and it is an inequity which should be removed."

As we have also seen, there is a similar exemption available to motor carriers (and freight forwarders) in the transportation of agricultural commodities—again denied to other forms of transportation. It has been recommended that "this exemption from minimum rates should also be extended to all carriers."

H.R. 11583 would implement these recommendations, and would also begin implementation of a further recommendation of the Presi-

dent that would "eventually limit the control of intercity passenger rates to the establishment of maximum rates only." In section 1 of the bill, it is provided by way of amendment to the Interstate Commerce Act, that—

> Notwithstanding any other provisions of this act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk * * *, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof) * * * or (3) passengers, by carriers subject to * * * this act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge.

It will be observed that the bill would not equalize rate regulation between the railroads and their highway and waterway competitors as to agricultural and bulk traffic, for it is not proposed to extend to the railroads outright exemptions such as those the motor carriers and the water carriers now enjoy and would retain. In what is the most important respect, however, the existing inequality would be eased. The Interstate Commerce Commission would no longer be authorized to condemn a reduced rate on agricultural or bulk traffic on the ground that it is, in the Commission's judgment, lower than it should be (i.e., lower than a reasonable minimum rate). Nor could the Commission any longer suspend the effective date of a proposed reduced rate on traffic of that kind pending determination of the question of minimum reasonableness, for it would have no authority to make such a determination.

With the removal of these regulatory restraints that have operated so often in the past to block or at least delay the railroads' reduced rate proposals there will be increased opportunity for effective competitive effort. As the President said in his transportation message—

> Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for these commodities * * *.
>
> The combined effect of extending these bulk and agricultural exemptions will be to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service and lower rates.

Let me point out that it is only with regard to minimum levels that the jurisdiction of the Interstate Commerce Commission over railroad rates would be altered by H.R. 11583, and that only in the case of bulk and agricultural commodities (and passenger fares). The Commission would retain its full present regulatory jurisdiction over rail rates for all other traffic; and even in the case of rates for the transportation of the specified commodities railroads would continue to be subject to those provisions of the Interstate Commerce Act relating, for example, to discrimination, maximum rate levels, long and short haul, notice, filing and publication of rates, and suspension (except suspension on the question of minimum reasonableness).

This is in line with the President's observation that the public interest would be protected—

> by leaving intact the ICC's control over maximum railroad rates and other safeguards (such as the prohibition against discrimination, and requirements on car service and common carrier responsibility).

A very important feature of the minimum rate proposal contained in H.R. 11583 that I have not yet mentioned is its affirmative applica-

tion, in specified circumstances, of certain provisions of the antitrust laws. The President stated, in connection with his recommendation—

> To prevent the absence of minimum rate regulation * * * from resulting in predatory, discriminatory trade practics or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers freed from minimum rate regulations would be covered by existing laws against monopoly and predatory trade practices.

The draftsmen of the bill have heeded this admonition. Indeed, we think that the authors of the bill have in some respects been overzealous in this regard. The provisions of H.R. 11583 give rise to certain questions and problems in connection with the application of the antitrust laws, including the manner in which the bill is introduced would affect the conference method of making rates under section 5(a) of the Interstate Commerce Act—the Reed-Bulwinkle Act.

These, however, are matters that both require and deserve careful and detailed explanation. They will be treated comprehensively by another railroad witness who will suggest, for your consideration, how the bill should be amended in these regards. In order to avoid unnecessary repetition, then, I shall not undertake to elaborate upon or discuss further the antitrust features of the bill.

There are, in addition, certain technical or perfecting amendments that we believe should be made in the minimum rate provisions—section 1 of H.R. 11583. They are intended merely to clarify in three or four respects what we understand to be the purpose and intent of the bill and its sponsors. To avoid excessive length in my oral presentation I have dealt with these proposed amendments in a separate memorandum which is attached to my prepared statement as appendix B. I do ask that the memorandum be made a part of the record and considered by the committee and its staff at the appropriate time.

So far my testimony has been confined to the minimum rate provisions of H.R. 11583. I should like now to address myself to another part of the bill which, although separate, is nonetheless closely related to the matters I have been discussing. I refer to section 2—on page 4—of H.R. 11583.

This section of the bill would amend the existing dry bulk commodity exemption for water carriers in such a way as greatly to liberalize it in the future. Under the present exemption, section 303(b) of the Interstate Commerce Act, the complete exemption from regulation enjoyed by water carriers is conditional, as follows:

> Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.

The underscored language has resulted in, or given rise to, two rules that control applicability of the exemption: (*a*) the three-commodity rule, under which the exemption is unavailable if more than three bulk commodities are transported in the same vessel or tow of barges, and

(*b*) the so-called mixing rule, under which the exemption is unavailable if nonbulk commodities are transported in the same vessel or tow of barges with bulk commodities.

The pending bill would so amend section 303(b) of the Interstate Commerce Act as to eliminate the conditions found in the present water carrier exemption and thus do away with the three-commodity rule and the mixing rule. It would amend section 303(b) of the Interstate Commerce Act to read as follows, page 4, line 5:

> Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count * * *.

This mendment would increase the discrimination and aggravate the competitive inequality found in present law. It would make absolute, instead of conditional, the complete exemption from regulation available to the water carriers, by repealing the three-commodity rule and the mixing rule. While railroads, under the pending bill, would be free of the three-commodity and mixing rules in the transportation of bulk commodities, it must be borne in mind that the railroads are not by any means being granted the complete regulatory exemption that water carriers have and will retain, but only exemption from minimum rate regulation. Railroads would continue, for example, as I have already indicated, to be subject to those provisions of the act relating to discrimination, maximum rates, long-and-short haul, notice, filing and publication of rates, et cetera.

As already noted, a principal basis for the President's recommendation that exemption from minimum rate control be extended to all modes of carriage in the case of bulk traffic is that water carriers are competitively favored under present law. Therefore, it would be wholly inconsistent with the objective of the President's message to achieve greater equality of competitive opportunity in transportation, as well as inconsistent with the general approach of H.R. 11583, to broaden the scope of the water carrier exemption. Observance of the three-commodity rule and the mixing rule should be retained as conditions of complete regulatory exemption for water carriers.

The freedom from minmum rate regulation without observance of the three-commodity rule or the mixing rule, provided in section 1 of the bill, would be applicable across-the-board to all carriers subject to the Interstate Commerce Act, including water carriers. Water carriers desiring to operate without observing the three-commodity rule and the mixing rule should be relieved from regulation only to the limited extent that it is proposed to relieve railroads under the same circumstances; that is, relief only from minimum rate controls.

There is no valid reason or justification for making the present bulk commodity exemption for water carriers less restriction. Section 2 of H.R. 11583 should, in all equity, be stricken.

With the several amendments I have mentioned, the railroads wholeheartedly endorse and support H.R. 11583.

The railroads also endorse and support H.R. 11584, the other bill being considered by this committee. I shall now discuss, in very brief compass, some of its principal features. Let me begin with two sections of the bill in connection with which I should like to urge clarifying amendments.

Section 2 of H.R. 11584 has to do with "experiments by common carriers in rate, classification and documentation systems." The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission would be empowered to authorize controlled experiments by common carriers to test new service combinations or arrangements, simplified documentation, and plans for different or simplified rate bases and freight classifications.

These experiments could involve individual carriers, or two or more carriers. They could be intramode or intermode. They could be proposed by the carriers themselves, or by shippers or the regulatory agencies; and participation would be voluntary on the part of both carriers and shippers. The regulatory agencies would "control and carefully supervise such experiments," and would be directed to provide in each instance "terms and conditions covering the duration, location, number, scope, and type" of the experiments.

The railroads heartily favor this concept. If we are to have improvement and progress in transportation, there must be opportunity for innovation, the trial of new ideas and techniques, experimentation. There must be flexibility for change, and for adjustment to meet varying and constantly changing conditions. Exploratory attempts and efforts looking toward new or changed rates, services, and methods of a promising nature should be encouraged, not stifled. In a word there should be elbowroom, on the basis of controlled experiments, for test departures from established policies and principles.

There is a clarifying amendment that I would like to suggest. Some apprehension has been expressed that this section of the bill might be applied by regulatory agencies in such a way as to limit or restrict existing rights of carriers. While this would be inconsistent with what is proposed, any possible doubt should be resolved by inserting the following language after the word "agencies" on line 7 of page 3 of H.R. 11584:

or to restrict existing rights of carriers subject to the regulatory authority of such agencies.

The latter part of subsection (e) of section 2 of the bill would then read:

* * * nothing in this section shall be deemed to diminish the existing regulatory powers of such agencies or to restrict existing rights of carriers subject to the regulatory authority of such agencies.

This is understood to be the intention of the draftsmen. On June 26, 1962, during the appearance before this committee of the Under Secretary of Commerce for Transportation, the chairman asked the following question:

Now, what I wanted to inquire about, and see if I am correct in understanding that section 2 of the bill would in any way restrict the existing rights of the carriers to change their rights (rates) and services.

Mr. Martin replied, "No, sir * * *" (transcript p. 95). In his appearance before the Senate Committee on Commerce on June 29, 1962, in connection with S. 3242—an identical bill—the Under Secretary of Commerce for Transportation was asked:

On the subject of experimental rates, it has been explained that experiments would be voluntary on the part of either carriers or shippers and would not affect any of the present powers of the regulatory agencies. Would it be correct

that section 2 of the bill would not in any way operate to restrict the existing rights of carriers to change their rates and services?

Again the witness replied, "That is correct" (transcript pp. 191, 192).

Section 4 of H.R. 11584 would have Congress declare it to be in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be encouraged and promoted. Provision would be made for the creation of new joint boards, made up of designated members of the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission. Such joint boards would exercise appropriate regulatory control over matters relating to such through service and joint rates, fares, and charges as might be established between carriers of different modes.

To the extent that these provisions would encourage and promote voluntary and permissive through service and joint rate arrangements between carriers of different modes, the objectives are desirable and the railroads endorse them.

We feel, however, that the language of the bill needs amendment to make it entirely clear that the arrangements contemplated are in all respects voluntary and permissive. The recommendation contained in the transportation message obviously contemplates voluntary arrangements, for it states they should be "encouraged," not prescribed. Section 4 of H.R. 11584 is likewise properly cast in permissive terms, for it provides that common carriers "may establish reasonable through service and joint rates, fares, and charges with any other such common carriers" section 4(b), line 9, page 5, of the bill.

A question arises, however, as to whether such arrangements may be freely terminated by the parties thereto. The provisions of the bill might perhaps be construed as imposing an obligation to continue them indefinitely or at least until regulatory sanction for termination has been secured. Such legal compulsion to continue joint rates in connection with through service, notwithstanding the possibility of regulatory action changing the level of the rates or the divisions thereof, would be arbitrary and would transform what was voluntary in inception to a mandatory relationship.

This would not only appear to be inconsistent with the recommendation in the message but also would actually defeat its objective of encouraging voluntary action. It would discourage the establishment of through service and joint rates. Establishment of through routes and joint rates under this section of the bill would involve a contractual relationship between business concerns engaged in different modes of transportation and, naturally, they would be most hesitant to enter into a contract if its provisions should be subject to change, and its term subject to indefinite extension, by regulatory action.

This is a subject of such importance that any doubt as to the intent of the bill should be removed. The following amendments would clarify the matter:

(a) Line 9, page 5, insert "voluntarily" after the word "may" and insert "and maintain" after the word "establish."

(b) Insert at the end of line 18, page 5: "Any joint rate, fares and charges thus established may be canceled by any party thereto by giving thirty days' notice to the other party or parties and by tariff cancellation notice to the agency or agencies referred to in subsection (C) of this section, notwithstanding any

order that may have been made with respect thereto under subsection (f) hereof."

This would carry out the intention of the bill's authors. When he appeared before this committee on June 26, 1962, the Under Secretary of Commerce for Transportation was asked by the Chairman:

> Now, on the following page, on page 4, I believe, you discussed through service, joint rates, and joint boards. As I interpret what you have said, generally the purpose is to encourage through routes and joint rates. I would like to inquire if it is the intent of the bill that carriers which have voluntarily entered into such arrangements should also agree voluntarily to terminate such arrangements.

The reply was "Yes, sir" (transcript p. 96).

Furthermore, while undoubtedly not so intended, subsection (c) of section 4 is subject to the possible construction that a legal obligation to establish joint rates would be created by the voluntary action of carriers in agreeing on a through service arrangement. Such an arrangement, however, might very well provide for single billing from point of origin to destination and physical interchange of equipment, even though the transportation service involved were to be covered by a combination of the rates of the participating carriers. The apparent inadvertency in draftsmanship should be corrected, and it is suggested that the following be substituted for lines 21 through 24 and all of line 25 on page 5 of the bill from the word "charges" through the word "thereunder":

> Such joint rates, fares or charges and classifications, rules, regulations, and practices relating thereto as may be established pursuant to subsection (b) of this section shall be just and reasonable.

Section 5 of H.R. 11584 would authorize the Interstate Commerce Commission to make cooperative agreements with several States to enforce the economic and safety laws and regulations of the various States and the Federal Government concerning highway transportation.

Section 6 of the bill would extend the civil forfeiture provision of part II of the Interstate Commerce Act to reach any failure or refusal to comply with requirements for certificates or permits to operate in the for-hire motor transportation business, and any failure or refusal to comply with the motor vehicle safety regulations promulgated by the Commission. At present these civil forfeiture provisions relate only to the failure or refusal to make reports, keep records, and the like. There would also be increases in the amounts of the forfeitures prescribed.

The purpose of these two sections of H.R. 11584 is to aid in the elimination of unlawful highway operations (the so-called "gray area" of trucking) through strengthening the enforcement machinery and reinforcing the regulatory statutes.

The railroads solidly endorse and support these two proposals.

Sections 7 and 8 of H.R. 11584 would extend to air carriers liability for the payment of reparations to shippers charged unlawfully high rates. Railroads and water carriers already have statutory liability for reparations where unlawful rates have been charged. A separate bill (H.R. 5596) now pending before this committee would subject motor carriers and freight forwarders to similar liability.

Consistent with our adherence to the principle of equality of regulation for all modes of transportation, we support this proposal.

Section 9 of the bill is designed to implement a recommendation of the President that such legislation as is necessary be enacted encouraging experimental rates and services for Government transportation and encouraging, also, in connection with Government transportation, the development of systems that will make rate ascertainment and publication less costly and more convenient.

The transportation message stated that—

> These experiments will be pilot studies for a more general simplification of rates and for the application of new kinds of service to transportation in general.

The railroads endorse these objectives of H.R. 11584.

The final sections of the bill would transfer to the Department of Commerce the railroad loan guarantee authority of the Interstate Commerce Commission and the aviation loan guarantee authority of the Civil Aeronautics Board. There is merit to this proposal and since, as the transportation message points out, "these problems are not regulatory in nature and are clearly separable from the chief functions of the Interstate Commerce Commission and the Civil Aeronautics Board," we endorse it.

Shippers, as well as the railroads, have been heartened by the President's transportation message and by the recommendations it contains, and their support for the message and its recommendations is wholehearted and enthusiastic.

This reaction is echoed by the response of the general public and the near-unanimous endorsement of the Nation's press, which have hailed the recommendations as a long overdue action in the public welfare. H.R. 11583 and H.R. 11584 embody some very important features of the program of recommended legislative actions and are so drafted, in general, as to implement in appropriate fashion the proposals to which they are directed. The railroads therefore support these two bills and urge this committee's favorable consideration of them at the earliest practicable time.

The central theme of the transportation message is that a sound transportation policy can best be achieved by placing greater reliance on competition than on regulation, and by equalizing opportunities for all forms of transportation. To the extent that these objectives are reflected in the two bills this committee is now considering, the focal point is the minimum rate proposal contained in H.R. 11583.

It is of vital importance to the railroads that the Congress accept and adopt this proposal that there be extended to all carriers the exemption from minimum rate regulation now, and for many years past, enjoyed by motor carriers in the transportation of agricultural commodities and by water carriers in the transportation of bulk commodities. This Nation cannot enjoy a healthy economic body if the right arm is withered and bound up. The railroads are the right arm of a prosperous economy, and they must be freed of the long outmoded restrictions that bind them if America is to realize its fullest economic potential.

Railroads are hard pressed and steadily losing ground in the competitive struggle for traffic. In this competition the scales are weighted against them, for they are subject to comprehensive and rigid rate regulation on substantially all of their traffic while two-thirds of intercity highway ton-miles and nine-tenths of inland waterway tonnage move wholly free of any Interstate Commerce Commission rate

regulation—largely in consequence of the agricultural and bulk commodity exemptions.

A measure of the railroads' handicap in this regard finds expression, as I have pointed out, in the fact that some 70 percent of railroad tonnage consists of these self-same agricultural and bulk commodities, and some 45 percent of the railroads' gross freight revenues is derived from them.

Volume traffic is essential to low-cost transportation. As cost is a key factor in obtaining volume, the railroads seek to translate improved efficiency through technological progress into lower costs and rates. Unless the regulatory drags under which the railroads are required to operate are removed, new-found efficiencies cannot produce their potential benefits for the national economy.

It is proposed, in H.R. 11583, to take a step in the direction of equality of competitive opportunity to participate in the transportation of this traffic, and to do so by way of diminished regulation. Regulatory control of the levels of minimum rates for the rail transportation of agricultural and bulk commodities would be eliminated. This step would constitute only partial equality, for it is not proposed to grant to the railroads the complete regulatory exemptions available to highway and waterway operators. Except for the elimination of minimum rate controls the Interstate Commerce Commission's authority and power over rates for the rail movement of agricultural and bulk traffic would be preserved and remain undiminished.

The Commission's control over maximum rail rate levels, for example, would be left intact, as would its control over discriminatory rail rate practices.

But decontrol of minimum rates would remove the most formidable obstacle faced by the railroads in their competition for agricultural and bulk traffic. Further, it would do so without rendering the railroads' competitors helpless, as is sometimes contended. Reduced rail rates on this traffic would still have to be published and observed, without change except upon statutory notice; and applicable provisions of the antitrust laws would be interposed as protection against the threat of predatory practices.

In summary, enactment of the minimum rate legislation would afford greater equality of opportunity among carriers through the removal of artificial and inequitable regulatory restraints, encourage vigorous—but fair—competition for traffic, and thus benefit users and the public through lower rates for transportation services more nearly reflecting the true economic capabilities of the carriers.

The transportation system which a strong America must have can be provided if Congress will act favorably on the recommendations contained in the President's transportation message. We urge such action at this session of Congress in order to help bring about the sound and healthy transportation system so essential to the economy and defense.

The CHAIRMAN. That concludes your statement, does it?

Mr. LOOMIS. That concludes my statement.

The CHAIRMAN. You referred to the appendixes attached to your statement. They shall be included in the record with your statement for the information of the committee and the Congress.

Mr. LOOMIS. Thank you, sir.

(The complete prepared statement of Mr. Loomis and attachments follow:)

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

My name is Daniel P. Loomis. I am president of the Association of American Railroads, with headquarters at Washington, D.C. The Association of American Railroads is a voluntary nonprofit organization. Its membership comprises railroads that operate 94 percent of the total mileage of all railroads in the United States and have operating revenues approximating 96 percent of the total operating revenues of all railroads in the United States.

My appearance here today is for the purpose of expressing the support of the association and of its members for H.R. 11583 and H.R. 11584, the two bills introduced by the chairman of this committee on May 3, 1962, to afford implementation to certain of the recommendations contained in the President's transportation message of April 5, 1962.

In his message relative to the transportation system of our Nation, President Kennedy dealt both comprehensively and forthrightly with many aspects of what has come to be known as the transportation problem. In view of what has been said by those who have preceded me, especially by the Secretary of Commerce and the Under Secretary of Commerce for Transportation, a summary of the President's message or the recommendations contained therein would be unnecessary duplication. There are certain features of the message, however, that it would be helpful to bear in mind in connection with my statement.

The message recognizes at the very outset that transportation is "an industry which serves, and is affected with, the national interest," and that "an efficient and dynamic transportation system is vital to our domestic economic growth, productivity and progress" as well as to our ability to compete abroad and to our defense preparedness. It calls attention to the incontrovertible fact that the common carrier, "developed by the intention of Congress and the requirements of the public as the core of our transport system," is declining in status and stature as private and exempt carriage grow.

The message recounts a number of the more important reasons for the decline of the common carrier industry, but concludes that—

"Whatever the cause, the common carrier * * * performs an essential function that should not be extinguished."

The President referred to common carriage as "the core of our transport system." It is almost universally conceded that the railroad common carrier is the mainstay, or backbone, of our transportation system. It is appropriate, therefore, especially in my case, that I should focus primarily upon the railroads' interest in the proposed legislation. I shall approach the pending bills, then, from the standpoint of what they mean to the railroads and why the railroad industry gives them its wholehearted and keen support.

It is largely a matter of economics. Let us see, without laboring the point, what today's economic conditions are in the railroad industry.

ECONOMIC CONDITIONS IN THE RAILROAD INDUSTRY

The railroads are in financial difficulty.

The low state of railroad earnings may be summarized by referring to the trend in net earnings and the rate of return on investment in transportation facilities.

Net railway operating income, rate of return and net income, railroads of class I in the United States

Year	Net railway operating income	Rate of return on net investment	Net income
	Millions	*Percent*	*Millions*
1929	$1,252	5.30	$897
1947	781	3.44	479
1955	1,128	4.22	927
1956	1,068	3.95	876
1957	922	3.36	737
1958	762	2.76	602
1959	748	2.72	578
1960	584	2.13	445
1961	538	1.97	382

From a rate of return of 4.22 percent in 1955, which was already one-fifth less than in 1929, there has been a constant downward trend to only 1.97 percent in 1961. This shows that the condition is chronic and not merely the occasional result of recessionary periods.

The net income, after payment of interest and other fixed charges, has dwindled from $927 million in 1955 to $382 million in 1961. And, this decline in net earnings has occurred notwithstanding necessary retrenchments of maintenance and other expenses.

Also, the weakened financial position of the railroads is reflected by recent diminutions of working capital. Net working capital is the margin of current assets, excluding materials and supplies, over current liabilities, and it has fallen from $934 million on December 31, 1955, to $513 million on December 31, 1961. Furthermore, net working capital in excess of debt maturing within 1 year dropped from $545 million at the end of 1955 to $119 million at the end of 1961.

Because of financial stringencies and limited access to investment funds, railroad expenditures for improvement in plant and equipment have declined. For the class I railroads, capital expenditures in 1961 amounted to only $646 million, less by nearly one-third of those of 1960, and were at the lowest level in 15 years. It has been estimated that the railroads should spend $2 billion a year for modernization of facilities and overcoming obsolescence.

Gross capital expenditures for the past 7 years have been as follows:

Year:	*Gross capital expenditures*
1955	$909, 521, 000
1956	1, 227, 857, 000
1957	1, 394, 705, 000
1958	738, 036, 000
1959	818, 002, 000
1960	919, 154, 000
1961	646, 452, 000

This committee knows of the financial straits of the railroad industry, and I do not believe I need spend additional time discussing it.

There are many and varied reasons for the precarious position in which the railroads find themselves, but foremost among those reasons are the severe handicaps to which they are subjected in their competition with other forms of transportation. And one of the principal intermode competitive handicaps with which the railroads are confronted is the grossly discriminatory and inequitable scheme of Federal regulation found under present law.

I shall later show the volume of traffic moving by each of the several types of transportation over a period of years. From the showing it will appear that a large and increasing part of the total traffic of the country is moving by highway and inland waterway while the railroads' share is steadily declining; and it will appear also that far the greater part of highway and inland waterway traffic is entirely free of rate regulation by the Interstate Commerce Commission while all interstate railroad traffic (except for certain Government traffic) is subject to comprehensive, rigid, and cumbersome ICC regulation.

The President's message recognizes that "some parts of the transportation industry are restrained unnecessarily," and that the management of regulated transport "is subject to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative." It attributes the decline of the common carrier, in large degree, "to the fact that the burdens of regulation are handicapping the certificated common carrier in his efforts to meet his unregulated competition." It points out that—

"Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from

making full use of their capacity by restrictions on freedom to solicit business or adjust rates. * * * Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt."

The exempt traffic referred to in the transportation message, and sought to be dealt with in one of the bills (H.R. 11583) being considered by this committee, is that falling within the coverage of the so-called agricultural commodities exemption provided by law for motor carriers and the bulk commodity exemptions similarly provided for water carriers. These exemptions, together with the rapid growth of private carriage, account in very large part for the alarming diversion of traffic from the rails to the highways and waterways.

TRAFFIC HANDLED BY THE SEVERAL MODES OF TRANSPORT

It will be of interest, I think, if I present to you at this stage of my testimony concrete figures showing the amount of freight traffic handled by each of the several modes of transportation during recent years and showing the trend of the distribution of traffic among the different modes. These figures are set forth in two tables identified as "table I" and "table II." I ask that these tables be incorporated in the record of my testimony at this point.

TABLE I.—*Intercity freight traffic in the United States,*[1] *1939–61*

[Millions of ton-miles]

Year	Railroads[2] (1)	Motor trucks[3] (2)	Great Lakes[4] (3)	Rivers and canals (4)	Oil pipelines (5)	Air carriers (6)	Total (7)
1939	338,850	52,821	76,312	19,937	55,602	12	543,534
1940	379,201	62,043	95,645	22,412	59,277	14	618,592
1941	481,756	81,363	113,639	26,815	68,428	19	772,020
1942	645,422	59,896	122,167	26,398	75,087	34	929,004
1943	734,829	56,784	115,346	26,306	97,867	53	1,031,185
1944	746,912	58,264	118,769	31,386	132,864	71	1,088,266
1945	690,809	66,948	113,028	29,709	126,530	91	1,027,115
1946	602,069	81,992	96,022	27,951	95,727	93	903,854
1947	664,523	102,095	112,165	34,549	105,161	158	1,018,651
1948	647,267	116,045	118,707	[5] 43,139	119,597	223	1,044,978
1949	534,694	126,636	97,503	41,893	114,916	235	915,877
1950	596,940	172,860	111,687	51,657	129,175	318	1,062,637
1951	655,353	188,012	119,984	[5] 62,232	152,115	379	1,178,075
1952	623,373	194,607	104,530	63,837	157,502	415	1,144,264
1953	614,199	217,163	127,383	[5] 75,056	169,884	413	1,204,098
1954	556,557	213,225	91,175	[5] 82,504	179,203	397	1,123,061
1955	631,385	223,254	118,845	97,663	203,244	481	1,274,872
1956	655,891	248,846	110,665	109,313	229,959	563	1,355,237
1957	626,222	254,174	117,231	114,561	222,728	572	1,335,488
1958	558,738	255,544	79,885	109,131	211,289	579	1,215,166
1959	582,497	288,519	79,880	116,679	226,991	739	1,295,305
1960	579,130	297,662	99,468	120,785	228,626	778	1,326,449
1961[6]	570,000	298,000	90,000	125,000	235,000	870	1,318,870

[1] Includes intercity freight traffic of private as well as contract and common carriers. Excludes coastwise and intercoastal traffic.

[2] Includes mail and express, and includes electric railways.

[3] Includes movements between cities and between rural areas and urban areas. Rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.

[4] Includes Canadian and oversea traffic on the Great Lakes.

[5] New coverage accounted for increases over the preceding year of 2,600,000,000 ton-miles in 1948; 4,300,000,000 in 1951; 6,400,000,000 in 1953; and 6,700,000,000 in 1954. Thus, the table indicates a greater increase than has actually occurred.

[6] Estimated.

Source: Interstate Commerce Commission, Corps of Engineers, and AAR.

TABLE II.—*Distribution of intercity freight traffic in the United States,*[1] *1939–61*
(by percent)

Year	Railroads [2] (1)	Motor trucks [3] (2)	Great Lakes [4] (3)	Rivers and canals (4)	Oil pipe lines (5)	Air carriers (6)	Total (7)
1939	62.4	9.7	14.0	3.7	10.2	--------	100.0
1940	61.3	10.0	15.5	3.6	9.6	--------	100.0
1941	62.4	10.5	14.7	3.5	8.9	--------	100.0
1942	69.5	6.5	13.1	2.8	8.1	--------	100.0
1943	71.3	5.5	11.2	2.5	9.5	--------	100.0
1944	68.6	5.4	10.9	2.9	12.2	--------	100.0
1945	67.3	6.5	11.0	2.9	12.3	--------	100.0
1946	66.6	9.1	10.6	3.1	10.6	--------	100.0
1947	65.3	10.0	11.0	3.4	10.3	--------	100.0
1948	61.9	11.1	11.4	4.1	11.5	--------	100.0
1949	58.4	13.8	10.6	4.6	12.6	--------	100.0
1950	56.2	16.3	10.5	4.9	12.1	--------	100.0
1951	55.6	16.0	10.2	5.3	12.9	--------	100.0
1952	54.5	17.0	9.1	5.6	13.8	--------	100.0
1953	51.0	18.1	10.6	6.2	14.1	--------	100.0
1954	49.6	19.0	8.1	7.4	15.9	--------	100.0
1955	49.5	17.5	9.3	7.7	16.0	--------	100.0
1956	48.4	18.4	8.2	8.0	17.0	--------	100.0
1957	46.9	19.0	8.8	8.7	16.7	-------	100.0
1958	46.0	21.0	6.6	9.0	17.4	--------	100.0
1959	45.0	22.3	6.2	9.0	17.5	--------	100.0
1960	43.7	22.4	7.5	9.1	17.2	0.1	100.0
1961 [5]	43.2	22.6	6.8	9.5	17.8	.1	100.0

[1] Includes intercity freight traffic of private as well as contract and common carriers. Excludes coastwise and intercoastal traffic.
[2] Includes mail and express, and includes electric railways.
[3] Includes movements between cities and between rural areas and urban areas. Rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.
[4] Includes Canadian and oversea traffic on the Great Lakes.
[5] Estimated.

Source: Interstate Commerce Commission, Corps of Engineers, and AAR.

Table I shows in terms of ton-miles the estimated distribution of total intercity traffic in this country for each of the years 1939–61. The sources of the figures are, for the most part, publications of the Interstate Commerce Commission and the Corps of Engineers, Department of the Army.

Table II is derived from table I. It shows the percentage of total traffic carried by each form of transport for each year. From this table it clearly appears that the railroad share of the total traffic is steadily declining whereas the shares of highway carriers and of water carriers on rivers and canals are increasing. The only break in this trend was during World War II and immediately thereafter when the railroad share showed a temporary upturn due to disabilities of the motor carriers and inland water carriers under war conditions.

During the postwar period, the railroad share of the total traffic showed a decrease in every year, falling from 66.6 percent in 1946 to 43.2 percent in 1961. During the same period the motortruck share of the total traffic showed an increase in virtually every year, rising from 9.1 percent in 1946 to 22.6 percent in 1961. Likewise, the share of water carriers on rivers and canals showed an increase in every year of the period, moving from 3.1 percent in 1946 to 9.5 percent in 1961.

In summary, it may be said that during the postwar period the railroad percentage of total traffic has been reduced by about one-third while the truck percentage has more than doubled and the percentage of water carriers on rivers and canals has tripled.

A glance at table I will show that not only has the railroads' relative share of the total intercity freight traffic decreased in recent years, but that the actual ton-miles have fallen off. In the case of highway and inland waterway carriers

not only have their relative shares of the total traffic increased as noted, but in terms of absolutes there have been even more striking increases. Between 1946 and 1961 the railroads' ton-miles declined from 602 to 570 billion. In the same period the motor carriers' ton-miles grew from 82 to 298 billion, and the inland water carriers' surged from 28 to 125 billion.

UNREGULATED TRANSPORTATION BY HIGHWAY AND INLAND WATERWAY

As I have already indicated, the distribution of traffic among the several modes of transportation does not, standing alone, tell the whole story. One must look further. Substantially all interstate transportation by railroad is subject to rate regulation by the Interstate Commerce Commission and, therefore, to competitive restraint. But this is not true of transportation by highway or inland waterway, a very large part of which is unregulated either because it is private carriage or because it is for-hire transportation of the kind expressly exempted from regulation by the Interstate Commerce Act.

Section 203(b)(6) of the act exempts from the regulation of rates "motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation; * * *." As to water carriers, section 303 of the act provides for certain exemptions the most important of which is the so-called dry bulk exemption relating to the transportation of commodities in bulk when the cargo space of the vessel is being used for the carrying of not more than three such commodities. This section also includes provisions exempting the water transportation of liquid cargoes in bulk.

Under the agricultural exemption, then, numerous agricultural, horticultural, and seafood commodities, aggregating vast tonnages, are exempt from rate regulation when they move by truck, but are not so exempt when they move by rail. Railroads are similarly prejudiced in competing with water carriers for the movement of coal and coke, ore, grain, sand, gravel, sulfur, fertilizer, cement, petroleum, chemicals, and other commodities that move in bulk free of regulation when waterborne, but subject to full regulation on the rails.

These exemptions from regulation that apply when the traffic described is transported by other modes of transportation, but do not apply when such traffic is moved by railroad, create gross discrimination against the railroads and pose severe competitive difficulties for them. Specifically, the railroads are required on this traffic, as on all traffic, to publish their rates so that everyone, including competing exempt carriers, may know precisely what they charge; and they are prohibited, under heavy penalties, from charging any rate for a given service differing from that published. They cannot change their published rates except on 30 days' notice to the public unless upon application to the Interstate Commerce Commission, and for good cause shown, they should be authorized to publish a change on shorter notice. Their rates must meet standards of reasonableness—they must not be unreasonably high or unreasonably low—and they must not discriminate unjustly against any person, locality, port or region. Their rates are subject to suspension.

The railroads' exempt competitors by highway or waterway, as the case may be, operate under no such requirements and have no such standards to observe. Where railroad rates are open, theirs are secret. With the railroads' rates before them and not readily subject to change, the exempt carriers are privileged to make whatever secret rates they choose at any time, without any notice to anyone, on whatever basis is necessary to get the business.

For railroads to meet all of the regulatory requirements to which they are subject and at the same time meet competition that is wholly free of those requirements places them in an almost intolerable competitive situation.

To illustrate the growth and extent of unregulated transportation I invite your attention to tables III, IV, and V, and ask that they be incorporated into the record at this point.

TABLE III.—*Distribution of intercity freight ton-miles, by types of highway carriers, 1947–59* [1]

[Highway ton-miles (millions)]

Year	Regulated by ICC [2] (1)	Not regulated by ICC [3] (2)	Total (3)
1947	37,693	64,402	102,095
1948	46,706	69,339	116,045
1949	47,891	78,745	126,636
1950	65,648	107,212	172,860
1951	72,292	115,720	188,012
1952	70,843	123,764	194,607
1953	76,510	140,653	217,163
1954	72,301	140,924	213,225
1955	82,906	140,348	223,254
1956	83,015	165,831	248,846
1957	84,408	169,766	254,174
1958	84,339	171,205	255,544
1959 [4]	101,377	187,142	288,519

[1] "Intercity" includes movements between cities and between rural areas and urban areas. The urban portions of such movements are included. Rural-to-rural movements, city deliveries and city movements to contiguous suburbs are omitted.

[2] Common and contract intercity motor carriers, classes I, II, and III.

[3] Includes private carriers, for-hire carriers of commodities exempt under the Interstate Commerce Act, carriers for hire in wholly intrastate operations, and the relatively minor intercity and other rural-road operations of "local" carriers. Derived by deducting col. 1 from col. 3.

[4] Preliminary.

Source: Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Statement No. 6103, April 1961, p. 17.

TABLE IV.—*Distribution of domestic freight tonnage by types of water carriers, 1947–60*

[Waterway tonnage (thousands)]

Year	Regulated by ICC (1)	Not regulated by ICC (Mississippi River and tributaries) (2)	Total (3)
1947	11,314	86,557	97,871
1948	12,419	92,113	104,532
1949	11,106	89,051	100,157
1950	14,258	100,439	114,697
1951	15,712	112,863	128,575
1952	15,672	116,761	132,433
1953	17,464	125,105	142,569
1954	17,558	118,834	136,392
1955	17,403	146,357	163,760
1956	19,075	160,182	179,257
1957	19,700	168,514	188,214
1958	18,581	154,001	172,582
1959	19,552	164,357	183,909
1960	20,428	167,670	188,098

Source: Col. 1 derived from tonnage of class A and B water carriers as published in "Transport Statistics in the United States," based on percentage of reported traffic found by ICC studies to be subject to its jurisdiction. (70th ICC Annual Report, p. 32.)

Col. 2 derived by subtracting col. 1 from col. 3.

Col. 3 from "Waterborne Commerce of the United States," Corps of Engineers, pt. 5, table 8.

TABLE V.—*Extent of regulation of intercity freight traffic on highways and waterways in the United States, year 1959*

Facility	Total traffic	Traffic regulated by ICC	
		Amount	Percent
	(1)	(2)	(3)
1. Highways (million ton-miles)	288,519	101,377	35.1
2. Mississippi River and tributaries (thousand tons)	183,909	19,552	10.6

Source: Highways—Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Statement No. 6103, April 1961, p. 17.
Waterways—Col. 1 from "Waterborne Commerce of the United States," Department of the Army, Corps of Engineers, pt. 5. Col. 2 derived from tonnage of class A and B water carriers as reported in "Transport Statistics in the United States." Interstate Commerce Commission. (Represents 49.3 percent of reported tonnage on Mississippi River system, this being the percentage of tonnage of reporting carriers found by latest ICC study (1955) to be subject to its jurisdiction. 70th Annual Report of Interstate Commerce Commission, p. 32.)

Table III shows in terms of ton-miles the distribution of highway intercity freight traffic, in the post-World War II years, between that regulated by the Interstate Commerce Commission and that not regulated by the Commission. It will be seen that unregulated motor carriage has steadily advanced from 64.4 billion ton-miles in 1947 to 187.1 billion ton-miles in 1959 (the latest year for which figures of this kind are available), an increase of 190 percent.

Table IV shows the distribution of freight tonnage (ton-mile figures are not available) on the Mississippi River and tributaries, from 1947 to 1960, between that regulated by the Commission and that not so regulated. Here, again, it will be seen that the unregulated traffic has progressively increased, from 86.5 million tons in 1947 to 167.6 million tons in 1960 for an increase of 94 percent.

Please observe that over these same spans of years, rail freight traffic fell more than 12 percent from 664.5 billion ton-miles in 1947 to 582.5 in 1959 and 579.1 billion in 1960 (see table I).

Table V illustrates, in terms of percentages, the extent of regulation of intercity freight traffic on the highways and certain domestic waterways. From this table it appears that in 1959 (the most recent year for which both highway and waterway figures are available) the highway traffic regulated by the Interstate Commerce Commission was only 35.1 percent of the total highway traffic, and only 10.6 percent of the waterway traffic on the Mississippi River and related waterways was subject to the Commission's regulation.

In all fairness it should be pointed out (in the event it has not already been made clear) that in the tables and statistics I have just supplied, the figures for unregulated transportation include private carriage by highway and waterway along with exempt for-hire transportation by these modes. We have not been able to obtain current figures showing a division between private carriage and exempt for-hire carriage.

It nevertheless is clear that a large part of the unregulated two-thirds of highway transport and the unregulated nine-tenths of waterway transport is free of regulation by virtue of the specific commodity exemptions to which I have referred.

Surely it is obvious that an indefensible situation results when the railroads are subject to the restraints in competitive ratemaking that are placed upon them by existing regulation, while much of their competition from other forms of transport is entirely free of such restraints. To whatever extent the railroads may have lost traffic to other transport modes because of the superior economic capability of those modes as to particular kinds of transportation services, they have no just cause for complaint; but they do have just grounds

for complaint as to traffic that has been and is being diverted from them because of undue restraints under existing regulation that prevent them from reflecting their full cost advantage and inherent capabilities in competitive rates, especially as to traffic that may be transported by their competitors entirely free of regulatory restraints.

Please bear in mind that when we speak of traffic that is exempt from regulation under the bulk and agricultural commodity exemptions, we are not speaking of small tonnages. We are speaking of an immense volume of freight.

Please bear in mind, too, that when we speak of bulk and agricultural commodities, we are not speaking of a type of traffic that is unimportant, or relatively unimportant, to the railroads. We are speaking of classes of traffic that are very important to the railroads. Because of the diversion to motor carriers of a large part of the high-rated merchandise traffic once carried by rail, the railroads have become increasingly dependent upon bulk (and, to a lesser extent, agricultural) traffic. In the handling of bulk freight, in particular, there is strenuous competition between water carriers and railroads.

I have attached to my prepared statement as appendix A a table showing, for the year 1960, the extent to which the freight transported by class I railroads consisted of bulk commodities and agricultural commodities that may be transported by waterway and highway, respectively, free of rate regulation under the bulk and agricultural commodity exemptions. This table provides a measure of the handicap with which the railroads are confronted in their competition with water and motor carriers for the transportation of these commodities.

Reference to appendix A will show that during 1960 bulk commodities of the kind susceptible of unregulated transportation by water carriers under the provisions of the bulk exemptions accounted for 67.4 percent of the total tons of freight originated by class I railroads. Agricultural commodities of the kind that move unregulated by motor vehicle accounted for 9.9 percent of class I railroad tonnage. Allowing for duplications (grain, for example, is both a bulk and an agricultural commodity), these bulk and agricultural commodities aggregated 69.9 percent of the total railroad tonnage.

Turning next to revenues, the same table shows that bulk freight accounted for 38.9 percent of the gross freight revenue of class I railroads in that year; and the gross revenue from agricultural commodities comprised 12.3 percent of the total. Again allowing for duplications, the gross freight revenue derived by the railroads from bulk and agricultural traffic was 44.7 percent of the total.

Thus, for some 70 percent of their tonnage and almost 45 percent of their gross freight revenue the railroads, operating under strict regulatory supervision and restraint, must rely upon the transportation of commodities that may move by water carriers and trucks without any rate regulation or restraint.

RESTRAINT UNDER EXISTING MINIMUM RATE REGULATION

As I have already pointed out, the transportation message finds that under present law, as it is administered, "management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative."

Let us examine certain features of this regulatory supervision, and observe just how it is that present law, as administered, restrains railroads in their competitive ratemaking efforts.

When a carrier seeks to better its competitive position through rate adjustment the course usually followed is a proposed reduction in its own rates, although on occasion the course followed is to attack as unreasonably low the rates of its competitors. In either event such control as the Interstate Commerce Commission exercises over competitive rate adjustments nearly always, if not always, involves its power to determine and prescribe just and reasonable minimum rates.

This power is given to the Commission with respect to the minimum rates of each of the several types of carriers over which it has authority to exercise economic regulation, including railroads and regulated carriers by motor vehicle and by water. It is not given to the Commission, of course, as to the rates of those carriers by motor vehicle and water which the Interstate Commerce Act exempts from regulation, as in the case of motor carriage of agricultural commodities and the water carriage of bulk commodities. Nor has the Commission any economic control over private carriage. Exempt and private carriers enjoy complete freedom in the competitive field.

The occasion for exercise of the minimum rate power ordinarily arises in so-called investigation and suspension proceedings. Reductions in the rates of railroads and regulated motor and water carriers may not be made except upon 30 days' notice to the Commission and the public, unless the Commission permits less notice; and during this period of statutory notice the Commission has authority to suspend the proposed rate for as long as 7 months beyond the time when it would otherwise go into effect, pending an investigation and determination as to the "lawfulness" of the rate. It may take this action either upon complaint, including the complaint of a competing carrier, or upon its own initiative without complaint.

Such delays in making reduced rates effective are likely to defeat entirely the purpose of the publishing carrier. This is particularly true where the shipper, not caring to await the outcome of the proceeding, is able to turn to private carriage or to carriers exempt from regulation and thus free to change their rates overnight. If a proposed reduced rate is finally to be and to have been all the while lawful in every respect, the traffic and revenue that would have resulted from it are nevertheless irretrievably lost for the period of delay. Traffic so lost may well continue indefinitely to be lost, especially if the shipper has meanwhile turned to private carriage.

It is obvious that the suspension procedure, under existing law, affords a powerful instrument for the carriers of one mode of transportation to use in delaying or preventing the effectiveness of competitive rates proposed by carriers of another mode.

Because of the imbalance in the rights of competing modes of transportation to seek the suspension of each others' rates, the railroads are more severely handicapped than their competitors. While railroad rates for interstate transportation are subject to regulation by the Interstate Commerce Commission and hence subject to suspension by the Commission if reduced, the minimum rate and suspension provisions of the Interstate Commerce Act have no application to exempt transportation by highway or water or, of course, to private transportation by those means. As I have already shown, only about one-third of intercity truck transportation and only about one-tenth of the transportation on the Mississippi River and related waterways is subject to Interstate Commerce Commission regulation.

Not all protested rates are suspended, of course. The Commission may allow them to become effective despite protest. By the same token, however, suspension is not a prerequisite for exercise of the minimum rate power. The Commission has the power, in an appropriate proceeding, to declare a rate already in effect to be lower than a just and reasonable minimum rate and order its cancellation in favor of a higher rate.

If the Commission, as a result of its investigation concerning the lawfulness of a competitive rate, does not find it to be unjust or unreasonable or otherwise in contravention of the provisions of the act it will, of course, permit the rate to become effective. If, however, it finds such a rate to be unlawful it will condemn it; and the basis for condemnation may be, and frequently is, a determination that the rate is lower than a just and reasonable minimum rate. The Commission may then simply order its cancellation, or the Commission may determine and prescribe what will be the just and reasonable minimum rate.

The foregoing description of the competitive ratemaking process is, of necessity, an oversimplification; but I believe it covers the procedural essentials. A very important substantive point does remain to be covered. That is the question of just what standards or criteria are employed by the Commission in determining whether a rate is just and reasonable, or is lower than a just and reasonable rate.

In order to see what these standards or criteria are, in the case of competitive rates, one must examine individual cases decided by the Commission. This committee will recall that the Congress, in the Transportation Act of 1958, took steps designed to make for greater freedom in intermode competitive ratemaking. Written into the Interstate Commerce Act was a new provision (sec. 15a(3) of the act) as follows:

"In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving

due consideration to the objectives of the national transportation policy declared in this Act."

We have now had a period of experience with this particular attempt to bring about more flexibility in competitive ratemaking, permit the freer exercise of managerial judgment, and give carriers greater opportunity to assert their inherent competitive capabilities. That experience has demonstrated, in cases decided by the Commission, that the attempt disappointingly fell somewhat short of what is needed. To avoid unnecessary and undesirable repetition, I shall not elaborate on this aspect of the matter. It will be dealt with by rail witnesses scheduled to follow me.

THE REMEDY PROPOSED

The President's transportation message, under the heading "A Basic National Transportation Policy," points up the need to achieve a number of important objectives that are not at present being achieved. I shall not undertake as a part of this statement to list or enumerate the sound basic objectives called for, but will merely point out, in partial summary, that according to the message their achievement—" * * * means a more coordinated Federal policy and a less segmented approach. It means equality of opportunity for all forms of transportation and their users and undue preference to none. It means greater reliance on the forces of competition and less reliance on the restraints of regulation." With this philosophy we agree.

The President has recommended, and H.R. 11583 provides, that there be extended to all carriers (including the railroads) an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities.

Under the Interstate Commerce Act, as we have seen, the transportation of bulk commodities by water carriers is exempt from all economic regulation (including minimum rate regulation), but no such exemption is available to other modes of transportation. "This," the transportation message concludes, "is clearly inequitable both to the latter and to shippers—and it is an inequity which should be removed." As we have also seen, there is a similar exemption available to motor carriers (and freight forwarders) in the transportation of agricultural commodities—again denied to other forms of transportation. It has been recommended that "this exemption from minimum rates should also be extended to all carriers."

H.R. 11583 would implement these recommendations, and would also begin implementation of a further recommendation of the President that would "eventually limit the control of intercity passenger rates to the establishment of maximum rates only." In section 1 of the bill, it is provided by way of amendment to the Interstate Commerce Act, that—

"Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk * * *, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof) * * * or (3) passengers, by carriers subject to * * * this Act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge."

It will be observed that the bill would not equalize rate regulation between the railroads and their highway and waterway competitors as to agricultural and bulk traffic, for it is not proposed to extend to the railroads outright exemptions such as those the motor carriers and the water carriers now enjoy and would retain. In what is the most important respect, however, the existing inequality would be eased. The Interstate Commerce Commission would no longer be authorized to condemn a reduced rate on agricultural or bulk traffic on the ground that it is, in the Commission's judgment, lower than it should be (i.e., "lower than a reasonable minimum rate"). Nor could the Commission any longer suspend the effective date of a proposed reduced rate on traffic of that kind pending determination of the question of minimum reasonableness, for it would have no authority to make such a determination.

With the removal of these regulatory restraints that have operated so often in the past to block or at least delay the railroads' reduced rate proposals there will be increased opportunity for effective competitive effort. As the President said in his transportation message:

"Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for these commodities * * *.

"The combined effect of extending these bulk and agricultural exemptions will be to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service and lower rates."

Let me point out that it is only with regard to minimum levels that the jurisdiction of the Interstate Commerce Commission over railroad rates would be altered by H.R. 11583, and that only in the case of bulk and agricultural commodities (and passenger fares). The Commission would retain its full present regulatory jurisdiction over rail rates for all other traffic; and even in the case of rates for the transportation of the specified commodities railroads would continue to be subject to those provisions of the Interstate Commerce Act relating, for example, to discrimination, maximum rate levels, long-and-short haul, notice, filing and publication of rates, and suspension (except suspension on the question of minimum reasonableness).

This is in line with the President's observation that the public interest would be protected "by leaving intact the ICC's control over maximum railroad rates and other safeguards (such as the prohibition against discrimination, and requirements on car service and common carrier responsibility)."

A very important feature of the minimum rate proposal contained in H.R. 11583 that I have not yet mentioned is its affirmative application, in specified circumstances, of certain provisions of the antitrust laws. The President stated, in connection with his recommendation—

"To prevent the absence of minimum rate regulation * * * from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers freed from minimum rate regulations would be covered by existing laws against monopoly and predatory trade practices."

The draftsmen of the bill have heeded this admonition. Indeed, we think that the authors of the bill have in some respects been overzealous in this regard. The provisions of H.R. 11583 give rise to certain questions and problems in connection with the application of the antitrust laws, including the manner in which the bill as introduced would affect the conference method of making rates under section 5a of the Interstate Commerce Act (the Reed-Bulwinkle Act).

These, however, are matters that both require and deserve careful and detailed explanation. They will be treated comprehensively by another railroad witness who will suggest, for your consideration, how the bill should be amended in these regards. In order to avoid unnecessary repetition, then, I shall not undertake to elaborate upon or discuss further the antitrust features of the bill.

There are, in addition, certain technical or perfecting amendments that we believe should be made in the minimum rate provisions (sec. 1) of H.R. 11583. They are intended merely to clarify in three or four respects what we understand to be the purpose and intent of the bill and its sponsors. To avoid excessive length in my oral presentation I have dealt with these proposed amendments in a separate memorandum which is attached to my prepared statement as "Appendix B." I do ask that the memorandum be made a part of the record and considered by the committee and its staff at the appropriate time.

AMENDMENT OF BULK COMMODITY EXEMPTION

So far my testimony has been confined to the minimum rate provisions of H.R. 11583. I should like now to address myself to another part of the bill which, although separate, is nonetheless closely related to the matters I have been discussing. I refer to section 2 (on p. 4) of H.R. 11583.

This section of the bill would amend the existing dry bulk commodity exemption for water carriers in such a way as greatly to liberalize it in the future. Under the present exemption (sec. 303(b) of the Interstate Commerce Act) the complete exemption from regulation enjoyed by water carriers is conditional, as follows—

"Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk *when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities.* This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. *For the purposes of this subsection*

two or more vessels while navigated as a unit shall be considered to be a single vessel." [Emphasis supplied.]

The italicized language has resulted in, or given rise to, two rules that control applicability of the exemption: (*a*) the three-commodity rule, under which the exemption is unavailable if more than three bulk commodities are transported in the same vessel or tow of barges, and (*b*) the so-called mixing rule, under which the exemption is unavailable if nonbulk commodities are transported in the same vessel or tow of barges with bulk commodities.

The pending bill would so amend section 303(b) of the Interstate Commerce Act as to eliminate the conditions found in the present water carrier exemption and thus do away with the three-commodity rule and the mixing rule. It would amend section 303(b) of the Interstate Commerce Act to read as follows (p. 4, line 5)—

"Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. * * *"

This amendment would increase the discrimination and aggravate the competitive inequality found in present law. It would make absolute (instead of conditional) the complete exemption from regulation available to the water carriers, by repealing the three-commodity rule and the mixing rule. While railroads, under the pending bill, would be free of the three-commodity and mixing rules in the transportation of bulk commodities, it must be borne in mind that the railroads are not by any means being granted the complete regulatory exemption that water carriers have and will retain, but only exemption from minimum rate regulation. Railroads would continue, for example, as I have already indicated, to be subject to those provisions of the act relating to discrimination, maximum rates, long-and-short haul, notice, filing and publication of rates, etc.

As already noted, a principal basis for the President's recommendation that exemption from minimum rate control be extended to all modes of carriage in the case of bulk traffic is that water carriers are competitively favored under present law. Therefore, it would be wholly inconsistent with the objective of the President's message to achieve greater equality of competitive opportunity in transportation, as well as inconsistent with the general approach of H.R. 11583, to broaden the scope of the water carrier exemption. Observance of the three-commodity rule and the mixing rule should be retained as conditions of complete regulatory exemption for water carriers.

The freedom from minimum rate regulation without observance of the three-commodity rule or the mixing rule, provided in section 1 of the bill, would be applicable across the board to all carriers subject to the Interstate Commerce Act, including water carriers. Water carriers desiring to operate without observing the three-commodity rule and the mixing rule should be relieved from regulation only to the limited extent that it is proposed to relieve railroads under the same circumstances (i.e., relief only from minimum rate controls).

There is no valid reason or justification for making the present bulk commodity exemption for water carriers less restrictive. Section 2 of H.R. 11583 should, in all equity, be stricken.

With the several amendments I have mentioned, the railroads wholeheartedly endorse and support H.R. 11583.

H.R. 11584, THE OMNIBUS BILL

The railroads also endorse and support H.R. 11584, the other bill being considered by this committee. I shall now discuss, in very brief compass, some of its principal features. Let me begin with two sections of the bill in connection with which I should like to urge clarifying amendments.

EXPERIMENTAL RATES

Section 2 of H.R. 11584 has to do with "experiments by common carriers in rate, classification, and documentation system." The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission would be empowered to authorize controlled experiments by common carriers

to test new service combinations or arrangements, simplified documentation, and plans for different or simplified rate bases and freight classifications.

These experiments could involve individual carriers, or two or more carriers. They could be intramode or intermode. They could be proposed by the carriers themselves, or by shippers or the regulatory agencies; and participation would be voluntary on the part of both carriers and shippers. The regulatory agencies would "contol and carefully supervise such experiments," and would be directed to provide in each instance "terms and conditions covering the duration, location, number, scope, and type" of the experiments.

The railroads heartily favor this concept. If we are to have improvement and progress in transportation, there must be opportunity for innovation, the trial of new ideas and techniques, experimentation. There must be flexibility for change, and for adjustment to meet varying and constantly changing conditions. Exploratory attempts and efforts looking toward new or changed rates, services and methods of a promising nature should be encouraged, not stifled. In a word there should be elbowroom, on the basis of controlled experiments, for test departures from established policies and principles.

There is a clarifying amendment that I would like to suggest. Some apprehension has been expressed that this section of the bill might be applied by regulatory agencies in such a way as to limit or restrict existing rights of carriers. While this would be inconsistent with what is proposed, any possible doubt should be resolved by inserting the following language after the word "agencies" on line 7 of page 3 of H.R. 11584: "or to restrict existing rights of carriers subject to the regulatory authority of such agencies."

The latter part of subsection (e) of section 2 of the bill would then read: "* * * nothing in this section shall be deemed to diminish the existing regulatory powers of such agencies or to restrict existing rights of carriers subject to the regulatory authority of such agencies."

This is understod to be the intention of the draftsmen. On June 26, 1962, during the appearance before this commitee of the Under Secretary of Commerce for Transportation, the chairman asked the following question:

"Now what I wanted to inquire about, and see if I am correct in understanding that section 2 of the bill would in any way restrict the existing rights of the carriers to change their rights [rates] and services."

Mr. Martin replied: "No, sir, * * *" (transcript, p. 95). In his appearance before the Senate Commitee on Commerce on June 29, 1962, in connection with S. 3242 (an identical bill), the Under Secretary of Commerce for Transportation was asked:

"On the subject of experimental rates, it has been explained that experiments would be voluntary on the part of either carriers or shippers and would not affect any of the present powers of the regulatory agencies. Would it be correct that section 2 of the bill would not in any way operate to restrict the existing rights of carriers to change their rates and services?"

Again the witness replied, "That is correct" (transcript, pp. 191–192).

THROUGH SERVICE AND JOINT RATES

Section 4 of H.R. 11584 would have Congress declare it to be in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be encouraged and promoted. Provision would be made for the creation of new joint boards, made up of designated members of the Civil Aeronautics Board, the Federal Maritime Commisison, and the Interstate Commerce Commission. Such joint boards would exercise appropriate regulatory control over matters relating to such through service and joint rates, fares, and charges as might be established between carriers of different modes.

To the extent that these provisions would encourage and promote voluntary and permissive through service and joint rate arrangements between carriers of different modes, the objectives are desirable and the railroads endorse them.

We feel, however, that the language of the bills needs amendment to make it entirely clear that the arrangements contemplated are in all respects voluntary and permissive. The recommendation contained in the transportation message obviously contemplates voluntary arrangements, for it states they should be "encouraged" (not prescribed). Section 4 of H.R. 11584 is likewise properly

cast in permissive terms, for it provides that common carriers "may establish reasonable through service and joint rates, fares, and charges with any other such common carriers" (sec. 4(b), line 9 on page 5 of the bill).

A question arises, however, as to whether such arrangements may be freely terminated by the parties thereto. The provisions of the bill might perhaps be construed as imposing an obligation to continue them indefinitely or at least until regulatory sanction for termination has been secured. Such legal compulsion to continue joint rates in connection with through service, notwithstanding the possibility of regulatory action changing the level of the rates or the divisions thereof, would be arbitrary and would transform what was voluntary in inception to a mandatory relationship.

This would not only appear to be inconsistent with the recommendation in the message but also would actually defeat its objective of encouraging voluntary action. It would discourage the establishment of through service and joint rates. Establishment of through routes and joint rates under this section of the bill would involve a contractual relationship between business concerns engaged in different modes of transportation and, naturally, they would be most hesitant to enter into a contract if its provisions should be subject to change, and its term subject to indefinite extension, by regulatory action.

This is a subject of such importance that any doubt as to the intent of the bill should be removed. The following amendments would clarify the matter:

"(a) Line 9, page 5, insert 'voluntarily' after the word 'may' and insert 'and maintain' after the word 'establish.'

"(b) Insert at the end of line 18, page 5: 'Any joint rates, fares, and charges thus established may be canceled by any party thereto by giving thirty days' notice to the other party or parties and by tariff cancellation notice to the agency or agencies referred to in subsection (c) of this section, notwithstanding any order that may have been made with respect thereto under subsection (f) hereof.'"

This would carry out the intention of the bill's authors. When he appeared before this committee on June 26, 1962, the Under Secretary of Commerce for Transportation was asked by the chairman:

"Now on the following page, on page 4, I believe, you discussed through service, joint rates, and joint boards. As I interpret what you have said, generally the purpose is to encourage through routes and joint rates. I would like to inquire if it is the intent of the bill that carriers which have voluntarily entered into such arrangements should also agree voluntarily to terminate such arrangements."

The reply was "Yes, sir" (transcript p. 96).

Furthermore, while undoubtedly not so intended, subsection (c) of section 4 is subject to the possible construction that a legal obligation to establish joint rates would be created by the voluntary action of carriers in agreeing on a through service arrangement. Such an arrangement, however, might very well provide for single billing from point of origin to destination and physical interchange of equipment, even though the transportation service involved were to be covered by a combination of the rates of the participating carriers. The apparent inadvertency in draftsmanship should be corrected, and it is suggested that the following be substituted for lines 21 through 24 and all of line 25 on page 5 of the bill from the word "charges" through the word "thereunder": "Such joint rates, fares, or charges and classifications, rules, regulations, and practices relating thereto as may be established pursuant to subsection (b) of this section shall be just and reasonable."

UNLAWFUL HIGHWAY OPERATIONS

Section 5 of H.R. 11584 would authorize the Interstate Commerce Commission to make cooperative agreements with the several States to enforce the economic and safety laws and regulations of the various States and the Federal Government concerning highway transportation.

Section 6 of the bill would extend the civil forfeiture provisions of part II of the Interstate Commerce Act to reach any failure or refusal to comply with requirements for certificates or permits to operate in the for-hire motor transportation business, and any failure or refusal to comply with the motor vehicle safety regulations promulgated by the Commission. At present these civil for-

feiture provisions relate only to the failure or refusal to make reports, keep records, and the like. There would also be increases in the amounts of the forfeitures prescribed.

The purpose of these two sections of H.R. 11584 is to aid in the elimination of unlawful highway operations (the so-called gray area of trucking) through strengthening the enforcement machinery and reinforcing the regulatory statutes.

The railroads solidly endorse and support these two proposals.

OTHER SECTIONS OF H.R. 11584

Sections 7 and 8 of H.R. 11584 would extend to air carriers liability for the payment of reparations to shippers charged unlawfully high rates. Railroads and water carriers already have statutory liability for reparations where unlawful rates have been charged. A separate bill (H.R. 5596) now pending before this committee would subject motor carriers and freight forwarders to similar liability.

Consistent with our adherence to the principle of equality of regulation for all modes of transportation, we support this proposal.

Section 9 of the bill is designed to implement a recommendation of the President that such legislation as is necessary be enacted encouraging experimental rates and services for Government transportation and encouraging, also, in connection with Government transportation, the development of systems that will make rate ascertainment and publication less costly and more convenient.

The transportation message stated that "these experiments will be pilot studies for a more general simplification of rates and for the application of new kinds of service to transportation in general."

The railroads endorse these objectives of H.R. 11584.

The final sections of the bill would transfer to the Department of Commerce the railroad loan guarantee authority of the Interstate Commerce Commission and the aviation loan guarantee authority of the Civil Aeronautics Board. There is merit to this proposal and since, as the transportation message points out, "these problems are not regulatory in nature and are clearly separable from the chief functions of the Interstate Commerce Commission and the Civil Aeronautics Board," we endorse it.

CONCLUSION

Shippers, as well as the railroads, have been heartened by the President's transportation message and by the recommendations it contains, and their support for the message and its recommendations is wholehearted and enthusiastic.

This reaction is echoed by the response of the general public and the near-unanimous endorsement of the Nation's press, which have hailed the recommendations as a long-overdue action in the public welfare. H.R. 11583 and H.R. 11584 embody some very important features of the program of recommended legislative actions and are so drafted, in general, as to implement in appropriate fashion the proposals to which they are directed. The railroads therefore support these two bills and urge this committee's favorable consideration of them at the earliest practicable time.

The central theme of the transportation message is that a sound transportation policy can best be achieved by placing greater reliance on competition than on regulation, and by equalizing opportunities for all forms of transportation. To the extent that these objectives are reflected in the two bills this committee is now considering, the focal point is the minimum rate proposal contained in H.R. 11583.

It is of vital importance to the railroads that the Congress accept and adopt this proposal that there be extended to all carriers the exemption from minimum rate regulation now, and for many years past, enjoyed by motor carriers in the transportation of agricultural commodities and by water carriers in the transportation of bulk commodities. This Nation cannot enjoy a healthy economic body if the right arm is withered and bound up. The railroads are the right arm of a prosperous economy, and they must be freed of the long outmoded restrictions that bind them if America is to realize its fullest economic potential.

Railroads are hard pressed and steadily losing ground in the competitive struggle for traffic. In this competition the scales are weighted against them, for they are subject to comprehensive and rigid rate regulation on substantially

all of their traffic while two-thirds of intercity highway ton-miles and nine-tenths of inland waterway tonnage move wholly free of any Interstate Commerce Commission rate regulation—largely in consequence of the agricultural and bulk commodity exemptions.

A measure of the railroads' handicap in this regard finds expression, as I have pointed out, in the fact that some 70 percent of railroad tonnage consists of these self-same agricultural and bulk commodities, and some 45 percent of the railroads' gross freight revenues is derived from them.

Volume traffic is essential to low-cost transportation. As cost is a key factor in obtaining volume, the railroads seek to translate improved efficiency through technological progress into lower costs and rates. Unless the regulatory drags under which the railroads are required to operate are removed, new-found efficiencies cannot produce their potential benefits for the national economy.

It is proposed, in H.R. 11583, to take a step in the direction of equality of competitive opportunity to participate in the transportation of this traffic, and to do so by way of diminished regulation. Regulatory control of the levels of minimum rates for the rail transportation of agricultural and bulk commodities would be eliminated. This step would constitute only partial equality, for it is not proposed to grant to the railroads the complete regulatory exemptions available to highway and waterway operators. Except for the elimination of minimum rate controls the Interstate Commerce Commission's authority and power over rates for the rail movement of agricultural and bulk traffic would be preserved and remain undiminished.

The Commission's control over maximum rail rate levels, for example, would be left intact, as would its control over discriminatory rail rate practices.

But decontrol of minimum rates would remove the most formidable obstacle faced by the railroads in their competition for agricultural and bulk traffic. Further, it would do so without rendering the railroads' competitors helpless, as is sometimes contended. Reduced rail rates on this traffic would still have to be published and observed, without change except upon statutory notice; and applicable provisions of the antitrust laws would be interposed as protection against the threat of predatory practices.

In summary, enactment of the minimum rate legislation would afford greater equality of opportunity among carriers through the removal of artificial and inequitable regulatory restraints, encourage vigorous, but fair, competition for traffic, and thus benefit users and the public through lower rates for transportation services more nearly reflecting the true economic capabilities of the carriers.

The transportation system which a strong America must have can be provided if Congress will act favorably on the recommendations contained in the President's transportation message. We urge such action at this session of Congress in order to help bring about the sound and healthy transportation system so essential to our economy and defense.

APPENDIX A

Tons originated and gross freight revenue, class I railroads, year 1960

	Tons originated		Gross freight revenue	
	Amount	Percent	Amount	Percent
Agricultural commodity exemption [1]	122,888,343	9.9	$1,034,036,965	12.3
Bulk commodity exemption [1]	835,737,545	67.4	3,264,829,031	38.9
Total	958,625,888	77.3	4,298,865,996	51.2
Less duplications	91,626,980	7.4	541,450,431	6.5
Total exempt	866,998,908	69.9	3,757,415,565	44.7
Total, all commodities	1,240,788,692	100.0	8,401,685,733	100.0

[1] See following tables for lists of agricultural and bulk commodities.

Source: Interstate Commerce Commission, Freight Commodity Statistics, Class I Railroads in the United States.

Tons originated and gross freight revenue—Class I railroads, year 1960

No.	Agricultural commodities	Tons originated	Gross freight revenue
1	Wheat	40,359,536	$264,231,809
3	Corn	21,590,287	105,630,529
5	Sorghum grains	9,638,046	57,818,874
7	Oats	2,784,723	17,666,836
9	Barley and rye	6,484,548	48,065,943
11	Rice	1,733,006	11,492,119
13	Grain, not otherwise specified	97,249	1,045,127
25	Hay	139,824	1,923,300
27	Straw	62,333	514,781
29	Tobacco, unmanufactured	578,554	5,937,934
31	Tobacco siftings, sweepings, and waste	33,474	310,112
33	Cotton in bales	4,235,544	56,773,166
35	Cotton linters, noils, and regins	535,599	8,220,388
37	Cottonseed	170,887	554,048
41	Cottonseed hulls and bran	40,731	279,259
43	Soybeans	8,939,585	35,499,194
49	Apples, fresh, not frozen	284,511	10,750,096
51	Bananas, fresh	838,137	18,977,370
53	Berries, fresh, not frozen	963	38,731
55	Cantaloups and melons, not otherwise specified	356,846	17,720,710
57	Grapes, fresh	335,123	16,044,659
59	Lemons, limes, and citrus fruit, not otherwise specified	213,996	7,715,036
61	Oranges and grapefruit	825,855	27,960,169
63	Peaches, fresh, not frozen	117,981	4,223,213
65	Pears, fresh, not frozen	156,895	6,843,378
67	Watermelons	99,614	3,898,417
69	Fruits, fresh, not otherwise specified, not frozen	105,111	4,783,127
71	Fruits, dried, dehydrated, and evaporated, not otherwise specified	131,875	4,494,177
75	Coffee	747,644	9,007,145
77	Cabbage	143,064	4,632,123
79	Celery	327,951	13,889,130
81	Lettuce	853,221	41,494,918
83	Onions, dry	258,809	7,449,221
85	Potatoes, other than sweet	3,399,939	71,640,409
87	Tomatoes	197,544	10,248,099
89	Vegetables, fresh, not otherwise specified, not frozen	702,019	26,403,503
91	Beans and peas, dried	911,591	10,577,504
93	Vegetables, dried, dehydrated, and evaporated, not otherwise specified	57,152	1,197,551
97	Peanuts [1]	134,811	1,624,821
101	Sugarbeets	9,888,103	13,302,454
105	Flaxseed	527,216	3,093,964
107	Seeds, not otherwise specified	227,331	5,191,176
199	Products of agriculture, not otherwise specified [2]	712,931	4,843,816
201	Horses, mules, ponies, and asses	6,305	217,057
203	Cattle and calves, single deck	1,729,312	37,103,792
205	Calves, double deck	31,136	781,534
207	Sheep and goats, single deck	58,397	1,471,868
209	Sheep and goats, double deck	300,676	6,818,366
211	Swine, single deck	37,133	793,550
213	Swine, double deck	496,486	13,001,271
223	Poultry, live	720	66,007
225	Poultry, dressed and frozen	134,078	3,775,708
227	Eggs	3,371	99,883
235	Wool and mohair in grease	145,606	4,171,187
237	Wool and mohair, not otherwise specified	31,712	720,354
243	Seafood, not otherwise specified	33,252	1,068,052
	Total, agricultural commodity exemptions	122,888,343	1,034,036,965
	Total, all commodities	1,240,788,692	8,401,685,733
	Percent agricultural commodities of total	9.9	12.3

[1] Includes 50 percent of this commodity class.
[2] Includes 25 percent of this commodity class.

No.	Bulk commodities	Tons originated	Gross freight revenue
1	Wheat	40,359,536	$264,231,809
3	Corn	21,590,287	105,630,529
5	Sorghum grains	9,638,046	57,818,874
7	Oats	2,784,723	17,666,836
9	Barley and rye	6,484,548	48,065,943
11	Rice	1,733,006	11,492,119
13	Grain, not otherwise specified	97,249	1,045,127
43	Soybeans	8,939,585	35,499,194
301	Anthracite coal, not otherwise specified	9,899,596	36,620,902
303	Anthracite coal to breakers and washeries	6,939,543	1,555,817
305	Bituminous coal	304,500,304	1,034,403,703
307	Coke	16,452,862	67,207,999
309	Iron ore	96,846,698	226,904,321
311	Aluminum ore and concentrates	3,208,085	26,418,840
313	Copper ore and concentrates	7,590,021	4,977,718
315	Lead ore and concentrates	941,398	3,256,264
317	Zinc ore and concentrates	1,617,746	12,112,105
319	Ores and concentrates, not otherwise specified	7,268,935	35,650,522
321	Barytes	1,084,123	7,323,705
323	Clay and bentonite	9,322,387	76,219,355
325	Sand, industrial	10,582,607	36,464,576
327	Gravel and sand, not otherwise specified	51,384,831	71,020,811
329	Stone and rock: broken, ground, and crushed	50,704,667	84,537,520
331	Fluxing stone and raw dolomite	16,161,010	32,484,241
333	Stone, rough, not otherwise specified	1,865,539	4,461,610
335	Stone, finished, not otherwise specified	75,656	1,295,918
337	Petroleum, crude	1,888,387	9,283,233
339	Asphalt	2,733,501	25,777,709
341	Salt	3,811,830	35,594,371
343	Phosphate rock	24,320,916	47,828,344
345	Sulfur	3,203,289	13,092,373
501	Gasoline	7,530,631	28,573,797
503	Fuel, road, and petroleum residual oils, not otherwise specified	7,279,497	35,384,271
505	Lubricating oils and greases	2,981,201	37,042,468
507	Petroleum products, refined, not otherwise specified	9,643,923	126,003,845
527	Chemicals, not otherwise specified	8,753,465	140,883,873
529	Sulfuric acid	2,833,756	13,436,138
531	Acids, not otherwise specified	1,434,144	24,272,922
533	Sodium (soda) products	9,512,331	87,389,855
535	Alcohol, not otherwise specified	980,088	15,106,001
539	Fertilizers, not otherwise specified	19,455,221	150,961,710
633	Cement: natural and portland	27,982,871	94,602,084
757	Molasses, residual	1,280,447	9,238,361
759	Sugar	6,262,804	55,450,188
793	Furnace slag	5,776,255	10,541,130
	Total, bulk commodity exemptions	835,737,545	3,264,829,031
	Total, all commodities	1,240,788,692	8,401,685,733
	Percent bulk of total	67.4	38.9

APPENDIX B

CLARIFYING AMENDMENTS—H.R. 11583

1. Page 1, line 7. Insert the word "interstate" before the word "transportation."

The purpose of this amendment is to make certain that the Interstate Commerce Commission will retain authority under section 13(4) to remove unjust discrimination against, or undue burden on, interstate commerce by prescription of the minimum level of intrastate rates.

This would be consistent, it appears, with the intended purpose of the bill. During the course of testimony presented before this committee on June 26, 1962, by the Under Secretary of Commerce for Transportation the following colloquy took place:

"The CHAIRMAN. Now, then, finally I would like to inquire that with reference to H.R. 11583, where your reference is made to carriers of rates, fares, and charges for transportation of agricultural and bulk commodities—if it is not intended by the bill that the ICC be deprived of its authority to remove unjust discrimination against interstate commerce by prescription of a minimum level of intrastate rates. Now, that question was raised by another member a little while ago.

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

"The CHAIRMAN. You do not think that that is intended by this provision.

"Mr. MARTIN. No, sir." (Tr., p. 96.)

2. Page 2, line 25, and page 3, lines 1 and 2, substitute for the words "The Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum" the following "Neither the Commission nor the courts shall have authority or power to determine that such a rate, fare, or charge is unlawful under this Act on the ground that it is lower than a just and reasonable minimum."

The purposes are these: (*a*) Section 1(5) of the Interstate Commerce Act provides that every unjust and unreasonable charge is prohibited and declared to be unlawful. Section 9 of the act provides that any person claiming to be damaged by violation of substantive provisions of the act shall have the right to make complaint to the Commission or to bring suit in designated courts. It might conceivably be argued that the bill deprives the Commission of jurisdiction to determine that a reduced rate violates section 1(5), but that damages could still be sought in court for a violation of section 1(5); (*b*) insertion of the words "just and" before the word "reasonable" constitutes a technical change to conform the wording in the bill with that in section 1 (4) and (5) of the act, where the reference is to "just and reasonable" rates, fares, and charges.

3. Page 3, line 3, insert the following sentence after the word "charge":

"When used in this paragraph, the terms 'rates, fares, or charges' shall include all classifications, regulations, and practices relating thereto."

The purpose of this proposed amendment is to make certain that reductions effected by changes in classifications, regulations, and practices will be covered by the limitation on ICC authority effected by the bill. For example, a reduction on freight charges on a particular commodity might be accomplished by a change in classification rating or by creating an exception therefrom. The proposed amendment is consistent with section 15a(1) of the Interstate Commerce Act, which provides:

"When used in this section the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto."

An alternative form of amendment would add the following language after the word "change" on line 3: "and this limitation shall include any reduced rate, fare, or charge effected by changes in classifications, regulations, and practices relating thereto."

When the Secretary of Commerce appeared before this committee on June 26, 1962, he was asked by the chairman:

"The minimum rate provision contained in this bill, H.R. 11583, speaks, then, only of rates, fares, and charges, and makes no reference to classification, regulations, and practices, relating to such rates, fares, or charges. Is it intended by this bill to cover in these minimum rate provisions reductions in freight charges that might be accomplished through changes in classification of rates?

"Secretary HODGES. I would have no objection to having those put in, Mr. Harris.

"The CHAIRMAN. Well, just wondered what is the intention—had that point been thought of in connection with your consideration of this matter. And what is the intention?

"Secretary HODGES. Those items are a little more technical. We probably should have included them in the draft. But we are trying to cover the major phases. But if your committee——

"The CHAIRMAN. Well, would they be reached by the language that you have in the bill?

"Secretary HODGES. Probably not. They probably ought to be included" (Tr. p. 68).

The CHAIRMAN. Any questions, Mr. Williams?

Mr. WILLIAMS. I think congratulations should be in order to Mr. Loomis for the comprehensive and clear presentation of the railroads' position with respect to this legislation now under consideration.

Mr. LOOMIS. Thank you, sir.

Mr. WILLIAMS. His statement answered most of the questions that I had in mind. However, I do have one. That is with respect to the suggestion that you made on page 28 to the effect that the mixing rule and the three-commodity rule be retained for water carriers.

Now, if these are retained, that would not make for exact equality in the shipment of bulk and agricultural commodities, would it?

Mr. LOOMIS. The carriers hauling the three bulk commodities, and subject to the mixing rule, would still have greater privilege than would a competing railroad, because they would be free of all regulation, whereas the railroads are only free of minimum rate regulation.

Mr. WILLIAMS. That is correct. However, there is no suggestion that the mixing rule or the three-commodity rule be extended to the railroads?

Mr. LOOMIS. No, sir.

Mr. WILLIAMS. Now, let me ask you this. I understand that you are at some disadvantage because of the fact that you still have to file minimum rates where the other forms do not have to file minimum rates, and you are subject to regulation as to discrimination of rates, long haul, and so forth. If language were written into this act that would place the water carriers under exactly the same type of regulation in this respect that the railroads now have, would the railroads be satisfied with it?

Mr. LOOMIS. That would achieve the objective of equality.

Mr. WILLIAMS. You would be satisfied, if that were done, to eliminate the mixing rule and the three-commodity rule?

Mr. LOOMIS. If they were relieved only from minimum rate regulation, you would have equality, and that would be in accordance with our objective.

Mr. WILLIAMS. In other words, you would have no objection to providing actual, real equality?

Mr. LOOMIS. That is right. If a water carrier now exceeded the three-commodity rule, or was subject to the mixing rule because he mixed with nonexempt commodities, he would be freed from minimum rate regulation under this bill, but not from the other provisions of the Interstate Commerce Act applicable to it. So as to that, you would have equality as far as minimum rate regulation is concerned between that type of water carrier and the railroads. The carrier who only carries three or less commodities, or is not subject to the mixing rule, or doesn't violate it, is free from all regulation. So he would still have an advantage under the bill as drafted.

Mr. WILLIAMS. Throughout your statement and the statements of other industry witnesses I have noticed that reference is continually made to the economic health of that particular industry, and the way that this legislation would affect the economic health of that industry. Very few, if any of the industry witnesses have appeared to testify in regard to the public interest. Would you like to comment on how you feel that the enactment of this legislation would serve the public interest?

Mr. LOOMIS. I think it would definitely serve the public interest in providing lower rates; in providing a greater choice of services, it could not help but benefit the public and the shippers.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Yes, Mr. Chairman.

I believe, Mr. Loomis, you were here when Mr. Murphy testified yesterday.

Mr. LOOMIS. Yes, sir.

Mr. YOUNGER. In your recommendations you follow the bill recommendation eliminating the minimum rate rule, while Mr. Murphy

recommended that all of the modes be put under regulation. What is you reaction to the recommendations of the ICC?

Mr. LOOMIS. Our reaction is strongly against it. We think there should be less regulation rather than more regulation. And our experience since the passage of section 15(a)(3) in our opinion justified that position entirely.

Mr. YOUNGER. Do you agree with the fears expressed by Mr. Murphy as to the regulatory difficulties that might arise with the enactment of this bill and the exemption of the minimum rate?

Mr. LOOMIS. No, sir, I do not. If I may comment briefly on that, as I understand the intent of the bill, the Commission's power under sections 2, 3, and 4 relating to preference and prejudice, discrimination, long and short haul, is retained in the bill. The filing and notice and publication are retained. Mr. Murphy made one statement that the railroads might be so improvident as to lower their rates to a position where their revenues would suffer, and then would come in with a general rate increase case which the Commission would feel impelled to grant because of the revenue needs.

To me that statement just does not make sense in any way, nor do I think that it would have any effect on the Commission's handling of any general rate increase or reduction case.

Mr. YOUNGER. Then you do not concur in his statement that the removal of the minimum rate will take from the Commission the right to consider that loss in connection with an application for higher rates on other commodities if the railroads were losing money?

Mr. LOOMIS. No, sir, I do not.

Mr. YOUNGER. Why?

Mr. LOOMIS. I think it would stand on its own feet.

Mr. YOUNGER. You think they would have to take into consideration the loss by the railroads as a result of the lowering of the minimum rate?

Mr. LOOMIS. Well, generally, Mr. Younger, in the case of an increase on a particular commodity, the conditions and the circumstances surrounding that commodity are the guiding factors rather than the entire revenue situation of the particular railroad or railroads or carrier or carriers filing the application. You don't get in very much to the question of overall revenue needs except in a general rate revision case. So I do not think that that would have very much effect if any.

Mr. YOUNGER. It seems to me that if the philosophy which Mr. Murphy expressed was carried to its logical conclusion you would find that manufactured articles might be paying a subsidy to the railroad carrying bulk commodities.

Mr. LOOMIS. In that case I think we would lose the carriage of the manufactured commodities very quickly either to other carriers or private carriage.

Mr. YOUNGER. Wouldn't that be the result of his philosophy?

Mr. LOOMIS. Of his philosophy. But I don't agree with his philosophy, and I don't think there is anything to it.

Mr. YOUNGER. And outside of the suggested amendment that you offer here, then the rails which you represent are perfectly satisfied with it?

Mr. LOOMIS. We do support it.

The CHAIRMAN. Mr. Collier.

Mr. COLLIER. I have a couple of questions, Mr. Chairman.

Mr. Loomis, the opponents of the provision of this bill to remove minimum rate levels for railroads as it applies to bulk and agricultural commodities take the position that this would not stop at bulk and agricultural commodities but would in fact eventually reach beyond that.

In your opinion, is there any merit to this charge?

Mr. LOOMIS. No, sir. I might say that we would hope that eventually all minimum rate regulation would be eliminated. But this is a start in that direction with respect to providing equality among carriers, and we support it. We would hope that the experience would be so satisfactory to the country that all minimum rate regulation would be eliminated.

Mr. COLLIER. Would you say there is any merit to the further argument that if this legislation were enacted that this section would eventually lead to a temporary lower level of rates which at some time in the future then would be raised again after competition had been eliminated?

Mr. LOOMIS. No, sir, I would not. If it comes to a question of later raising rates, the necessity for the increase would have to be justified to the Commission and the Commission, through its maximum rate control, would have full power to decide whether or not such a rate could be increased, and would consider all the surrounding circumstances and conditions.

Mr. COLLIER. Now, there has been further fear expressed by the opponents of this legislation that this could lead to a rate war. Do you think that there is merit to this argument against the bill?

Mr. LOOMIS. No, sir, not in the term used. It will lead to greater competition and more freedom of competition, but I don't think you can define that as a rate war. And I don't think we are going to be so foolish as to try to get a lot of traffic that won't even pay expenses, in the sense that our opponents put up that story.

Mr. COLLIER. Wouldn't you think that good business practice would so dictate?

Mr. LOOMIS. It does not in other businesses that are free to fix their own prices.

Mr. COLLIER. I pose these questions, of course, for the purpose of getting your opinion to these arguments to the record.

Mr. SCHENCK. Would you yield?

Mr. COLLIER. I will be happy to yield.

Mr. SCHENCK. Mr. Loomis, do you feel that one of the important functions of the ICC is the responsibility to establish rates to protect the financial stability of a given mode of transportation in order to protect the public interest?

Mr. LOOMIS. No, sir, I do not think that you can say that the establishing of rates to protect a given mode of transportation serves the public interest. The public interest would be better served by letting the different modes of transportation compete. And if one mode is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right, and the public will benefit by it.

Mr. SCHENCK. Thank you.

Mr. COLLIER. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Yes, Mr. Chairman. I would like to join in complimenting Mr. Loomis on an able and comprehensive statement on the bills before the committee.

Mr. LOOMIS. Thank you, sir.

Mr. JARMAN. Mr. Loomis, I would like to ask for any reaction that you might have or comments that you might have on one paragraph from Chairman Murphy's statement yesterday in which he said on page 18:

> Without the minimum rate powers now possessed by the Commission, we do not believe that reliance upon the antitrust laws to prevent or stop destructive rate wars and to protect shippers and localities against unjust discrimination and undue prejudice and preference is adequate.

And then the second sentence:

> With the hundreds of thousands of rate adjustments made each year, irreparable damage might be suffered by shippers, carriers, and localities before corrective steps could be taken under the antitrust laws.

Mr. LOOMIS. My comment, Mr. Jarman, is that I do not agree with the statement in any way, and neither does the head of the Antitrust Division, who also appeared before this committee. As a matter of fact, the statement is very farfetched, because the Commission itself makes the point that out of hundreds of thousands of rate adjustments it interferes in very few of them. But the ones in which it does interfere are the very important ones that involve substantial amounts of traffic and revenue. And I do not think that providing in lieu of the Commission's interference the right of either the Justice Department or a private party to move under the antitrust laws would fit in with Mr. Murphy's conception.

Mr. JARMAN. And it is your position and your thinking that the antitrust laws do give us adequate protection against abuses?

Mr. LOOMIS. Yes, sir.

Mr. JARMAN. The only other question I have, Mr. Loomis, would be to ask for any comment——

The CHAIRMAN. Would the gentleman yield to me before he goes to another question on that same subject?

Mr. JARMAN. Yes.

The CHAIRMAN. It has been of some interest to Mr. Loomis—and Mr. Rogers had something to say about it yesterday, expressing what I thought to be some concern—that the exempt carriers are privileged to make whatever secret rates they choose at any time without notice to anyone, on whatever basis is necessary to get the business.

Mr. LOOMIS. Right.

The CHAIRMAN. You have stated that in your statement.

Now, if these carriers are exempt from the rate regulation provisions of the Interstate Commerce Act, are they not now subject to the provision of the antitrust law?

Mr. LOOMIS. That is an area that I am not sure I know the answer to. I would assume in general that they probably would be, if combinations, and so forth, could be substantiated. I do not know of any antitrust cases, however, that have involved the exempt carriers.

The CHAIRMAN. Of course, that presents a greater puzzle than I had anticipated, because there is no suggestion here to amend the antitrust laws in any way, yet it is contended that with this type of

procedure the antitrust laws would be applicable. And you seem to raise some question as to whether or not they would be.

Mr. LOOMIS. I think they would be. But I know of no cases that have ever been brought involving exempt carriers.

The CHAIRMAN. That is precisely the next question I was going to raise. And I think you recognize it immediately. If these conditions can go on now under antitrust laws, would they not be the same for a greater amount of traffic, should this bill be enacted?

Mr. LOOMIS. No; I do not think so. I presume you would have to make the assumption that the exempt carriers have not been guilty of violating the antitrust laws, or at least no one has thought that they have been.

The CHAIRMAN. Then we would have to go on the assumption that no carriers would violate the antitrust laws, if that be true.

Mr. LOOMIS. Well, I hope that is the way it will work out as a practical matter. But at the same time, railroad rates would be published, open to the public, and open to their competitors, and anybody that didn't like them would be free to take any action they want.

The CHAIRMAN. I thank the gentleman for yielding.

Mr. JARMAN. On another aspect of this subject, Mr. Loomis, I would like to ask a question about bills that are now pending, bills other than the ones that we are now considering, but on the general subject; these bills that are now in the House and Senate and would permit a railroad to haul cargo that it owns. In the President's transportation message the recommendation is made that Congress repeal the provision of the Interstate Commerce Act which now prevents a railroad from hauling cargo it owns. The message goes on to point out that the need for this provision, which goes back to the days of railroad monopoly, has largely passed, and its effect is to handicap the railroads in competing with other modes of transportation. The message goes on to say that the antitrust laws can assure protection against the possible abuse by the railroad in its dual status as shipper and carrier.

What comment would you make as to the need the railroads have for this authorization to haul cargo they own?

Mr. LOOMIS. The need today probably—and I would not like to be held on this, because I have not studied the matter—but my impression is that it is certainly not one of the most important things facing the railroad industry. It is a thing that the railroads ought to have. But I would not put it in the range of one of the most important things that the industry needs to receive its ability to perform a satisfactory transportation job.

Mr. JARMAN. The reason I raise the question with you today is that the ICC has not indicated its position on the bills, whether it supports it, or has any particular objection to the bills. Since I raised the issue with Chairman Murphy yesterday, I have asked for a comment from you.

Mr. LOOMIS. It is my impression, although I have not recently studied the history, that both the antitrust features and the origin-of-the-commodities clause to a very large extent went back to the old days of anthracite coal, when the railroads owned a very large proportion of the anthracite coal mines in Pennsylvania, and were accused of making rates that gave preference to their coal and prejudice to the coal of other producers.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. JARMAN. Yes.

Mr. ROGERS of Florida. First of all, I want to say that I think your statement has been excellent in pointing up the railroad position very clearly. But I do have some concern—perhaps it is ill-founded—about the fact that there is a possibility, of simply transferring the authority to regulate from the ICC to the Justice Department under the antitrust laws, because all of the testimony has been that the antitrust laws would be the Government's way of regulating the industry when taking off the minimum rate regulations.

Now, if emphasis is placed on this means of regulation where it is not presently placed on it, does this cause you no concern as to the harassment that could be developed to the entire industry by almost anyone bringing in a case for antitrust?

Mr. LOOMIS. Let me say this, Mr. Rogers, that another witness tomorrow, I believe, will discuss these features in much greater detail. My answer, however, would be that we are willing to take our chances rather than to continue having rate proposals that we know would bring added traffic and added revenue and added income suspended and held up indefinitely and perhaps canceled under the present regulation.

Mr. ROGERS of Florida. You feel that it would be preferable to take your chances, as you say, rather than have the other modes of transportation brought in under similar minimum regulation?

Mr. LOOMIS. Yes, sir, even then you would still run the risk of the Commission trying to divide the traffic.

Mr. ROGERS of Florida. You don't think this would constitute a problem under the antitrust law?

Mr. LOOMIS. No, sir.

Mr. ROGERS of Florida. Thank you.

Mr. JARMAN. Thank you, Mr. Loomis. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Loomis, in response to Mr. Jarman's question dealing with the protection of the carriers under the antitrust laws, it is my understanding that you feel that adequate protection does exist through the antitrust approach and rate regulation would not be a necessary safeguard.

Mr. LOOMIS. Yes, sir.

Mr. NELSEN. Some time back we had a report from the Federal Trade Commission. And in their case they were recommending cease-and-desist legislation to correct circumstances that existed because of delay of the handling of monopolistic practices or cut price procedures on the premise that the antitrust laws were too slow and too cumbersome. So they were asking for cease-and-desist legislation for immediate action, and actually implying that the antitrust laws are not adequate.

There seems to be a conflict of opinions.

Mr. LOOMIS. I do not have adequate knowledge of the Federal Trade Commission's practices, policies, and problems, and the things they deal with, to discuss that. But I think as far as transport is concerned where you have all the different modes as well as private carriage available, the chances of any serious violation of antitrust laws is very remote indeed.

Mr. NELSEN. Thank you. No more questions.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I have enjoyed your statement very much. If this is to effect a transfer of rate supervision from the Interstate Commerce Commission to the Department of Justice, what antitrust laws does your association conceive of as being applicable to the ratemaking?

Mr. LOOMIS. Well, I would suppose the Sherman Act and the Clayton Act. I do not regard it as a transfer of regulation, however. It is the removal of regulation. But only if the railroads or other carriers do certain villainous things that run afoul of the law do the antitrust provisions come in. The Justice Department or nobody else would have the power to say, well, you just can't make that rate because we don't think it is reasonable.

Mr. HEMPHILL. I realize that. But what would happen would be that you would have to go through an experimental stage with many cases, perhaps, and much litigation and conferences, and whatnot, if this other vehicle of ratemaking or rate adjustment or antivillainous activity were engaged in, would you not?

Mr. LOOMIS. It is possible that in the early stages there might be some cases presented to the courts. I think the law would pretty soon become settled. We have had some experience with antitrust suits just recently, but we were able to win them.

Mr. HEMPHILL. It just occurs to me that we are engaging here in quite a change in the pattern that has existed for a good many years.

Mr. LOOMIS. It needs to be changed.

Mr. HEMPHILL. I am not arguing that point one way or another, I am here to be convinced. Now, the question that occurs to me is, we have two alternatives, as I understand your statement. One is to remove the minimum rate provisions so that you will be able to compete with people who are not subjected to the same regulation.

Mr. LOOMIS. Exactly.

Mr. HEMPHILL. The other is to take the people who are now exempt and put them on the same basis that your method of transportation either enjoys or doesn't enjoy under the present law. The question in my mind is whether or not the public, which hasn't been considered here as much as I would like in the testimony so far, whether the public at large, the shippers and the people to whom things are being shipped, and the consumers—I am thinking of farmers among others because of a problem I had—whether they would be most benefited by an abolition of the minimum rate as is proposed in this legislation, or by bringing the exempt carriers under the regulations. In either event, as I understand your testimony, you would reach what you call the objective of equality.

Mr. LOOMIS. To that extent, yes. I think there are two phases to your question. First of all, as to the benefit to the public, take the existing situation, where some very important railroad rate reductions have been either suspended or canceled by the Interstate Commerce Commission on the ground that they were unreasonable, even though the Commission found that they were compensatory to the railroad proposing them. How does it benefit the public to deprive the public of the lower rate proposed simply because the Interstate Commerce Commission for some reason or another thinks

it might hurt some competitor, and therefore the lower rate should not be put into effect? Surely that does not benefit the public.

The second phase, I think, is a practical phase. I think you would find that the shippers and the farmers would object very strongly to the repeal of the exemptions for the other forms of transportation. Therefore the only practical way—we have tried for years to advocate repeal of the exemptions and it never got off the ground—the only practical way to achieve equality is through the method of deregulation rather than increased regulation.

Mr. HEMPHILL. I want to thank you for your answer, because I think it is very clear.

Now, the next question I would have is, if we enacted the legislation which you have endorsed here, would you expect under the legislation to have "intercarrier" and "intracarrier," if those be the right terms, competition, that is, railroad against railroad and railroad against truck and bargeline?

Mr. LOOMIS. Yes, sir.

Mr. HEMPHILL. In other words, the competition would be within that particular facet of transportation regardless of what it was and against all other methods of transportation?

Mr. LOOMIS. That is right.

Mr. HEMPHILL. And would you expect that the public would get the benefit of the lower rates over a long period of time, or just until the weak boys were eliminated and the strong took over?

Mr. LOOMIS. I think the public would get the benefits of the rates for the longer period of time.

Mr. HEMPHILL. Do you feel that once you published——

Mr. LOOMIS. I don't think there is anything to the idea that somebody is going to put the weak boys out of business. If they cannot compete on a fair basis, there is nothing wrong with it if they do fail. Certainly rates shouldn't be held up just to keep some inefficient carrier in business.

Mr. HEMPHILL. I certainly agree with you. But I think it has been done.

Mr. LOOMIS. Yes. So do we.

Mr. HEMPHILL. But I think it is wrong, because the public suffers

I would like to direct your attention to another part of this legislation in which we transfer what we call section 5, which is the loan guaranty provisions over to the Department of Commerce. I believe that is the concept.

Sometime ago in this committee we extended—much over my protest—the loan guaranty provision because we found out that the Interstate Commerce Commission had apparently made a loan to the New Haven Railroad without following the law which Congress had provided. We passed the extension legislation with the understanding that there would be no more loans of that nature. My understanding is that even after that direction by the Congress that they loaned the New Haven some more money on what no banker in the United States would have thought was good collateral. And I am just wondering if your association feels that the loan guaranty provision could be more adequately handled under the Department of Commerce.

Mr. LOOMIS. I don't think we have any real opinion on that, Mr. Hemphill. We understook to support the President's message in its entirety.

Mr. HEMPHILL. I will thank you for that. The thought occurred to me that the loan guaranty provision possibly could always be held as a pressure position over anyone protesting against rate regulations or any other regulations.

Mr. LOOMIS. I hadn't thought that the Government would be guilty of that.

Mr. HEMPHILL. I am not accusing them, but I am a realist about it. And the situation as we found it here has deteriorated a good bit—as least that is my opinion, perhaps not shared by others.

I want to thank you for your answers, sir.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Mr. Loomis, I want to join in the general compliments which have been directed to you.

I am interested in your opinion as to whether or not the elimination of the minimum rate regulatory power of the ICC would lead to any passenger reductions, passenger rate reductions.

Mr. LOOMIS. That is hard to say. I don't believe the Commission has exercised very much if any minimum rate power with respect to passenger fairs, in recent years in any event. As I recall it, the Chairman of the Commission in effect said that that was a matter of indifference to the Commission.

Mr. SIBAL. As a matter of fact, the pressures have been quite the reverse, haven't they?

Mr. LOOMIS. It would have this effect, I think, probably, it would facilitate railroad—and certain railroads are still greatly interested in it, in the excursion business and special party business, where all they would have to do would be to file their rate and go ahead with it—I think to facilitate certain reductions of that kind where a railroad saw a chance by special excursions and special party business to bring in some revenue. And there are still a number of railroads that are very much interested in that sort of business.

Mr. SIBAL. The bulk commodity feature of this business, the elimination of minimum rates on bulk commodities which you referred to on all sort of things, can you tell me what effect this would have on the short-haul eastern railroads? Are they involved in this very much?

Mr. LOOMIS. Yes, they would be, because they are very much interested in water competition—to take one example, out of Pittsburgh on the Ohio River down to the Mississippi, where the water carriers are free and the railroads are not. And you have also your problem of market competition, which ports certain things go to and how they go. So I am sure that the eastern railroads are very much interested in it. And there will be the president of one of the large eastern railroads following me.

Mr. SIBAL. Thank you.

The CHAIRMAN. Mr. Dominick.

Mr. DOMINICK. Thank you, Mr. Chairman.

Unlike Mr. Sibal, Mr. Loomis, I am interested in the long-haul western railroads. And we have had for some time a problem in trying to get a rate which would permit us to ship our Great Plains wheat to California for export to Japan. We have been working on that for a number of years, as you know. And recently the railroads have reduced their rates to an extent where we might be competitive

with Canada at this point. In any event, there has been real progress made.

Mr. LOOMIS. Yes, I understand so.

Mr. DOMINICK. Now, speaking competitively, there isn't very much competition with the railroads on this kind of a haul. And my concern in this is, if we should grant the bulk exemption or the agricultural exemption to the railroads, we do not have a competitive feature here, and would there be any possibility of the railroads holding to a high rate without having the opportunity to go before the ICC to get a lower rate, proving that it is compensatory, and thereby remaining competitive with the Canadian shipments?

Mr. LOOMIS. I think the answer to that question would be that the Commission still retains full power over maximum rates, and that if it can be shown to the Commission that the existing rate is too high, the Commission has all of its present power to prescribe a lower rate.

Mr. DOMINICK. The problem in my own mind on this bill is that where you don't have any competition with the railroad setting their own rate, how do you know whether it is a maximum rate or minimum rate?

Mr. LOOMIS. It depends, I suppose, on evidence in the presentation to the Commission. In any event, I do not see how this bill would have any effect on that. I would also say, however, from a rather vague knowledge, but some knowledge, that the exempt and private carriage of grain in certain parts of the West has been increasing alarmingly in recent years, and that that only creates an additional burden on the grain that moves by rail if the railroads aren't now allowed to meet that growing competition.

Mr. DOMINICK. Thank you. That helps on that point.

I had one other point that I was interested in in connection with Mr. Jarman's questions on the antitrust laws. Is my understanding correct that the Robinson-Patman Act is not applicable to transportation?

Mr. LOOMIS. That is our understanding; yes, sir.

Mr. DOMINICK. The Robinson-Patman Act would be a method, would it not, to determine whether or not the charges that are being made are unreasonably low?

Mr. LOOMIS. Frankly, I am afraid I am not qualified to discuss the Robinson-Patman Act. I don't know that I have even read it.

Mr. DOMINICK. Is it applicable to barge carriers and trucking lines?

Mr. LOOMIS. I do not understand so.

Mr. DOMINICK. Would you have any objection to making the Robinson-Patman Act applicable to transportation?

Mr. LOOMIS. Again I say I don't think I have even read it. I am quite certain, however, that after discussion with our legal lights we would object to it. We don't think it is necessary.

Mr. DOMINICK. Thank you.

The CHAIRMAN. As I recall, the Robinson-Patman Act was designed for the protection of small businesses.

Mr. LOOMIS. I couldn't even answer that.

The CHAIRMAN. Would you consider with all the various modes, that the transportation industry is a small or large business?

Mr. LOOMIS. I think it is a pretty large business.

Mr. DOMINICK. If the chairman will yield on that point, the Robinson-Patman Act is also applicable to discriminations and unreasonably low pricing and a variety of things.

The CHAIRMAN. In view of that fact, let me ask you this. Have you not testified—and your statement makes reference to it in several places—that the Interstate Commerce Commission still retains jurisdiction with reference to discrimination?

Mr. LOOMIS. Yes, sir—or preference and prejudice.

The CHAIRMAN. That being true, I would assume that the Interstate Commerce Act would prevail.

Mr. LOOMIS. Yes, sir; I would too.

The CHAIRMAN. Mr. Loomis, the proposal contained in 11583 is thought provoking, to rely upon the competitive forces rather than regulation, and then getting back to the antitrust laws for the protection of the carriers and shippers, and so forth. I mentioned that a while ago.

Now, if this proposition is sound under today's traditions, should not the exemption from minimum-rate regulation apply to all commodities instead of bulk and agricultural commodities?

Mr. LOOMIS. I think it should, Mr. Chairman. And we hope that experience under this proposed bill will make it sufficiently plain that all minimum rate regulations should be eliminated.

The CHAIRMAN. But you don't recommend that now?

Mr. LOOMIS. Not at this time, no, sir. I don't say we wouldn't like to have it.

The CHAIRMAN. But you don't expect to get it, do you?

Mr. LOOMIS. Not right now. But we hope experience will justify an extension.

The CHAIRMAN. That is certainly laudable.

I don't think, however, that anything that we or the Congress can do by way of legislation or anything else is going to remove the human element from this business.

The thing that I wonder about—Mr. Williams brought it up a moment ago—and which you urge—and there is a lot of merit in it, as you first observed—and that is the question of total equality. But the thing that bothers me about bringing total equality between the modes of transportation is, would it not bring a lot of inequality between communities and shippers?

Mr. LOOMIS. No, sir, I don't think so, not as long as the discrimination powers and the preference and prejudice powers remain in the law.

The CHAIRMAN. I don't know how extensive, if any, are the prejudices that might prevail. But you would not contend that where water transportation, navigation, is available, shippers should have the advantages over rail transportation?

Mr. LOOMIS. I think they should have the advantages of either one.

The CHAIRMAN. You think they should?

Mr. LOOMIS. If the water carrier can carry it cheaper than the railroad, the shipper should have the right to ship by water.

The CHAIRMAN. I think you have missed the point. The shippers in those areas which have transportation available either by water or rail are given preferential treatment over those who have only rail transportation.

Mr. LOOMIS. I see what you mean. Mr. Chairman, I think on that there are two comments that I would like to make. One is that, first, it is a matter of geography, and the formation of the earth, which I am afraid no one can change. Secondly, I think there is no question but the vast sums of money spent on water development that come out of public funds have enhanced that advantage to the shipper located on an improved waterway. And I don't think there is anything the railroads can do about it except to meet the competition as best they can.

Take a case where A is on the river, and there is a bargeline operating. B is not on the river. If the railroad retains the high rate and loses the business from A to the river, that isn't going to help the shipper at B one bit, because the man at A is just located on the river where he can get that service. But it is no fault of the mode of transportation, it is simply a geographical fact.

The CHAIRMAN. That is an interesting comment to me, because you just said a while ago, I think, in answer to Mr. Younger or someone else, that you could not conceive of the industry going for a business that would not be profitable.

Mr. LOOMIS. That is correct.

The CHAIRMAN. Why, then, would you give a rate that would be profitable in the area where you have competition with the river and not then give the same rate to the community that does not have the transportation?

Mr. LOOMIS. I don't think the question is that simple.

The CHAIRMAN. It is that simple to the man who lives off the river.

Mr. LOOMIS. That may well be. It is probably unfortunate that he lives off the river. And if the conditions were all equal, of course you could have that. But the conditions aren't equal, and the fact is that one man lives on the river and the other doesn't. But that is no fault of the form of transportation.

The CHAIRMAN. I am not sure that I can agree with that altogether, because I think if a particular form of transportation can be made available at reasonable rates and at a profit, or with an opportunity to get along over one area, there is no reason as I can see it that it cannot be made over another area of equal distance.

Mr. LOOMIS. I think there is another consideration there, Mr. Chairman. Let's suppose that the railroad keeps a higher rate from both A and B, so it loses all the business from A. That is necessarily eventually going to result in the man at B having to pay a higher freight rate, because the railroad has lost business from A, and it needs more revenue out of its remaining business. On the other hand, if the railroad competes for the business at A, and increases its overall volume and revenue situation, then it would avoid any increase in the rate of the man at B, and that may very well result in a lowering of his rate, because of the volume of transportation that would be on the railroad.

Mr. YOUNGER. Would the gentleman yield for one question there?

The CHAIRMAN. After this one comment.

In other words, you are for total equality so long as it serves a special purpose?

Mr. LOOMIS. No, sir, for total equality, period.

The CHAIRMAN. You just said that you are not for total equality between community A and community B, because one happens to live on the river and the other one doesn't.

Mr. LOOMIS. No, sir, I don't think you can take a particular commodity and say that it ought to have the same rate all over the country, conditions just do not fall into that sort of a scheme, and I don't think you can do it as a practical matter.

The CHAIRMAN. I agree with that, but I don't see how you can justify giving a higher rate on a parallel proposition just because it happens to be 20 or 30 miles the other way.

Mr. LOOMIS. As I say, if you lose all the business out of A, B would be paying higher rates. Whatever you can get out of A is going to help B.

The CHAIRMAN. Somebody is going to have to show me something different on that proposition with respect to equality.

Mr. LOOMIS. To me it appears pretty plain.

The CHAIRMAN. It is not plain to me. I have actually seen communities within a stone's throw where there is this situation.

Mr. Younger.

Mr. YOUNGER. Following your example, if you try to furnish transportation to A and compete with the water route and you lose money, how is that going to assist B?

Mr. LOOMIS. I didn't assume that you lose money.

Mr. YOUNGER. Certainly there are places where water carriers do have an economic advantage over the railroads so far as the waterways are concerned, and you can't compete with them, isn't that true, in certain cases?

Mr. LOOMIS. That is probably true in certain instances.

Mr. YOUNGER. And if you tried to compete with them you would be losing money?

Mr. LOOMIS. We don't expect to lose money.

Mr. YOUNGER. That is the only point I made. I think it does not necessarily follow that B is going to get a lower rate because you compete with A on the waterways.

Mr. THOMSON. Will the gentleman yield?

The CHAIRMAN. Yes.

Mr. THOMSON. Mr. Loomis, when you talk about total equality are you talking about total equality between competing modes of transportation?

Mr. LOOMIS. Yes, sir.

Mr. THOMSON. And total equality that you referred to, then, doesn't mean total equality between each individual citizen in the country and their opportunity to use one mode of transportation or another?

Mr. LOOMIS. Insofar as that goes, geography and conditions of that sort, I think the answer is that that is right.

Mr. THOMSON. I got the impression that you were talking about a different type of equality from what the chairman was talking about.

Mr. LOOMIS. I think that is right. I am talking about equality as between modes of transport.

Mr. THOMSON. Under the law.

Mr. LOOMIS. Right.

Mr. THOMSON. Not between opportunities that might exist because of geographical location.

Mr. LOOMIS. That is correct.

The CHAIRMAN. I am greatly impressed by your statement, Mr. Loomis. I am still bothered about the public interest that Mr. Williams mentioned. And if we can give opportunity to the modes of transportation to provide service to the public, which is the only reasons for your existence, it seems to me we should provide some kind of an opportunity where one community would have a semblance of equality in its opportunities as another community.

Mr. LOOMIS. The only way I see you could do it would be through equality of geographical conditions. You have the same so-called thing in a common market with one producer at a very long distance from the market and another producer 75 or 100 miles away. The producer that happens to be near the big market can ship into it cheaper.

The CHAIRMAN. I have always said there are two things that I wouldn't undertake and I wouldn't be a part of. And that is being a rate man in the transportation industry, No. 1; and No. 2, a man who tries to provide schedules for airline communities.

The committee will adjourn until 10 o'clock in the morning. And you may be excused, Mr. Loomis.

(Whereupon, at 12:10 p.m., the hearing was adjourned, to reconvene at 10 a.m., Friday, July 13, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

FRIDAY, JULY 13, 1962

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

The committee met, pursuant to recess, at 10:15 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

In resuming the hearings this morning on transportation, our first witness will be Mr. D. W. Brosnan, president of the Southern Railway System.

Mr. Brosnan, we are very glad to have you with us and we will be pleased to have your statement.

STATEMENT OF D. W. BROSNAN, PRESIDENT, SOUTHERN RAILWAY SYSTEM

Mr. BROSNAN. Thank you, Mr. Chairman.

Mr. Chairman and gentlemen, my name is D. W. Brosnan. I am president of the Southern Railway System, which operates some 8,200 line-miles of common-carrier railroad serving the entire southeastern portion of the United States. I appear here in support of H.R. 11583—the so-called minimum rate bill.

No one would deny that the condition of the railroad industry is critical. For that matter, the entire common-carrier industry is in difficulty. Also, it is true that the public is paying higher than necessary prices for the transportation of freight.

These conditions exist despite the fact that railroads have been regulated since 1887, and other segments of the common-carrier industry for two decades or more.

If regulation is the cure-all that its proponents say it is, these conditions should not exist. In my judgment, excessive regulation is the chief cause of the ills not only of railroads but of all common carriers. If this regulation is continued in its present form and direction, Government ownership is inevitable for railroads and for the common carrier trucks and barges. Experience in other countries shows the disaster that this produces.

The railroads have been regulated almost to death, and other common carriers are now beginning to feel the blighting effect of excessive regulation.

It is high time that the main reliance be placed on competition, as is called for in this bill, rather than on regulation. No man, nor group of men, can possess the omnipotent ability that would be required to

pass judgment on every transaction that is made in the transportation business. Competition, subject to control of maximum rates and the usual antitrust controls, can provide the needed freedom for decision and policymaking to lower transportation costs to the public and to help the ills of the common-carrier industry.

While all regulated common carriers have difficulties stemming from regulation, the inequality of regulation between the various modes is especially vicious. For example, the water carriers, both regulated and nonregulated, haul a long list of bulk commodities which are exempt from any regulation. These commodities are regulated when handled by either the common-carrier railroads or trucks. On the other hand, the so-called agricultural exemptions, which cover a long list of farm and related products, free these products from regulation when hauled by unregulated or regulated trucks, but they are regulated when hauled by bargelines or railroads.

There is no justification for this discrimination. It is a disgrace that it is permitted to exist in our country where we talk so much about freedom and equality. These discriminations, which kill competition, are extremely costly to the public through the artificially high prices or rates which they produce.

Private, unregulated carriage, in both barges and trucks, is increasing by leaps and bounds to the detriment of all of the common carriers—truck, barge, and rail. Private carriage grows because it is highly profitable. A large part of this high profit results because common-carrier rates are held at unnecessarily high levels by Government regulation. Regulation that causes artificially and unnecessarily high rates provides the cover under which illegal or so-called gray area operations can take place. And artificially high rates provide the high earnings that fuel these illegal operations in much the same fashion as the Volstead Act fueled the outlawry of the 1920's. Competition as provided by the minimum rate bill can control the outlawry of illegal transportation in much the same way that bootlegging was controlled when prohibition was repealed; that is, by lowering the opportunity for high profit.

The territory served by Southern Railway System is highly industrialized and in addition has extensive mining operations and has a diversified agricultural pattern. Consequently, Southern is called upon to handle substantial amounts of so-called bulk commodities as well as agricultural products. In fact, in 1961 these bulk and agricultural commodities comprised 67 percent of our tonnage and more than 50 percent of our net revenue.

We have severe competition from regulated and nonregulated highway and waterway carriers in the transportation of all commodities. The toughest competition is from the unregulated or so-called private truck. With respect to exempt agricultural commodities the competition of private or unregulated trucks is particularly vicious.

My appearance before you today in behalf of H.R. 11583 results from my strong conviction that the public interest requires that all modes of common carriage must have the right to compete fairly and equally in the transportation market without regulatory discrimination. That right is nonexistent today because of excessive and contradictory regulation. This is especially true where bulk movements or agricultural products are involved.

The absurdities in today's regulatory requirements as to both bulk commodities and agricultural products can be pointedly illustrated by Southern's present attempt to reduce its freight rates by some 60 percent for the movement of grain into and within the Southeast.

These rates were published by Southern last summer to become effective on August 31, 1961. After protests were filed, they were suspended by the Interstate Commerce Commission. The Commission started hearings on these rates on January 8, 1962. These hearings are continuing to this day, and the end is not yet in sight.

These rate reductions were made possible by improvements in the art of railroading—including the development by Southern of a new aluminum-body, 100-ton-capacity, lightweight freight car and improved methods of operation. We know that we can make a good profit on these rates. Since these rates were published, we have hauled, as of July 10, 1,445 cars of grain on these rates in intrastate movements and in interstate movements of Government grain, and it is no longer an arguable question whether we make a profit. We do make a handsome profit. And we know, too, that these rates will result in spectacular savings to the public that foots the transportation bill.

It is significant to me, and I feel sure it will be significant to you, that we are finding it much harder to reduce a rate on a single commodity on a single railroad than experience has shown it to be to increase rates on all commodities on all railroads. Any time in this country of ours when it becomes more difficult to lower prices than it is to raise them, it is obvious that changes should be made.

In Southern's grain rate case, the reason is easy to spot—discriminatory regulation. The fact is that the transportation of grain is not subject to regulation except when it is moved in a railroad car.

Water carriers with their bulk commodity exemptions move grain free of regulation. Highway carriers haul grain without rate regulation because it is an agricultural commodity. The asininity of these regulations is shown by the fact that the law would permit a railroad to buy trucks and haul grain in those trucks without regulation. But the minute it is put in a railroad car, it is regulated and at higher than necessary rates.

The common-carrier truck can haul grain without regulation, but actually hauls very little of it. A large volume is hauled by some private business concerns, who haul their own product on one leg of the trip and fill up with grain on the other leg for whatever charge they can get on the spot, with the idea that such a charge makes some contribution to their costs of getting back home. This is a product of regulation, and this discriminatory and unequal treatment is an injustice to the railroads and the American public. Furthermore, the competitors of such business firms are badly disadvantaged especially where they must depend on common-carrier transportation.

The great bulk of the grain, however, is hauled by itinerant, unregulated trucks. They haul grain from one section of the country to another—for example, from the Midwest to any point in the Southeast, where the grain is unloaded; the truck continues to Florida and picks up a load of perishables for the return trip home. This is a particularly vicious two-way cut for the railroads that is condoned and, in fact, is a commonplace product of discriminatory and unjust regulation.

Rate reductions such as we have proposed in our grain rates can provide tremendous savings to the public. There is nonrailroad testimony in the grain rate hearing that these rates will save the public in the Southeast from 10 to 12 cents a bushel on grain. The volume of grain moving into the Southeast has been estimated by reliable sources to be some 370 million bushels per year. At 10 cents per bushel the saving would be some $37 million in the Southeast alone on this one commodity. It is plain that nationwide, on the long list of items which are considered to be agricultural and bulk commodities, the savings to the public would be enormous. Hundreds of millions of dollars a year is very likely an understatement of the potential savings that would result if railroads were free, as other carriers are, to set minimum rates on these products without regulation.

It is not my purpose to try our grain rate case before this committee. I have mentioned it because the mere description of what has taken place is one of the best proofs that the present regulatory system is wrong. If it were not for this system, we could have put the rates in effect a year ago with tremendous savings to the public and profit to ourselves. Instead, we have had to spend thousands of dollars and unending time and effort to justify giving the public a substantial savings in the cost of getting grain.

Chairman Murphy, of the Interstate Commerce Commission, has recently said that common carriers have lost 60 to 70 percent of intercity traffic to private, exempt, or illegal transportation. He called upon the common carriers to stop fighting among themselves and to devote their energies to regaining this traffic. This is not the big reason for the loss of this traffic. Regulation itself is in large measure responsible for the promotion and growth of private transportation, through stifling competition and forcing the maintenance of higher-than-necessary freight charges. These higher charges provide a fat and attractive profit cushion for the expansion of private carriage, but at the expense of the public and to the detriment of the regulated common carriers. A most potent weapon—competition—for use in regaining this traffic is provided for all common carriers in the minimum rate bill.

Some segments of the common carrier industry are opposing the minimum rate bill. Already, there are arising the old familiar cries of "monopoly" and "bloody rate wars" to put barges and trucks out of business, after which, so opponents say, railroads would hike their rates sky high.

I have no desire to put anybody out of business; my concern is to stay in business.

These cries are designed to blind the public to the fact that these other carriers are lusty giants in the transportation field, not infants; that railroads no longer have a monopoly; and that keeping railroads hamstrung with moss-grown regulations is costing the public untold millions in higher-than-necessary transportation costs.

Railroads certainly do not have a monopoly when they today account for only 43 percent of the total intercity freight ton-miles, down from 74 percent in 1930.

How can railroads have a monopoly when the total revenues of the intercity trucking industry—ICC regulated as well as non-ICC regulated—were $19 billion in 1961, as compared with railroad freight

revenues of $8 billion? This $8 billion, incidentally, compares with the Transportation Association of America's estimate of $100 billion a year as the total transportation cost for the Nation. It is crystal clear that railroads are a small part of the total transportation industry and have no monopoly. Any such charge is merely a smokescreen to hide the facts.

The Interstate Commerce Act was passed in 1887 when the railroads had a near monopoly of transportation. That monopoly began to fade away during the 1920's. But railroads are 100 percent regulated today as though they still were a monopoly, while only one-third of truck traffic is regulated, and only one-tenth of barge traffic is regulated. The plain truth is that the railroads have almost been regulated to death. Instead of this regulation promoting competition, it has had directly opposite results. It has stifled competition. It has kept railroad rates at unnecessarily high levels to provide an umbrella which other modes of transportation use to exact from the public higher-than-necessary freight charges. This same high level has forced the growth of private carriage to the detriment of all common carriers—truck, barge, and rail—by making it economically attractive to use private carriage.

Opponents of the minimum-rate legislation are doing a lot of talking nowadays about rail transportation becoming obsolete. That is stuff and nonsense. But if we are actually to become technologically and economically obsolete, we in the railroad industry want that to happen in the competition of a free market. We do not want to be regulated into obsolescence by the Federal regulatory powers. The inconsistency of statements such as "railroad obsolescence," "passing from the scene," and "the death of the iron horse" is clearly shown when those elements in the transportation field who are making such statements cry out for protection from the competition of this "dying horse." The truth is that behind these phrases degrading the railroads is a desire to protect higher-than-reasonable rates at the expense of the public, under the guise of protecting the public.

Opponents say, too, that if railroads are given minimum-rate freedom, they would lower their rates only long enough to put other modes out of business, and then up would go the rates. This is ridiculous. Under this bill the Interstate Commerce Commission would still retain control over rate increases. It would be economic suicide for any carrier to reduce its rates below cost in order to try to corner the business. The Commission could and would break such an offender by the simple device of refusing to approve the increased rates. This threat alone is in reality the best and most powerful control.

As to the substitution of the antitrust laws for regulation in certain areas of rail ratemaking, I want to make it perfectly clear, speaking for my company, that I prefer freedom of action to compete, to try to do a proper job of serving the American public economically and at low cost. We do our business face up on the table, and I do not mind having the Department of Justice looking over my shoulder.

This I do know—freedom to act, even subject to antitrust laws, is far more challenging and productive than being shackled by regulation which often blindly prohibits the exercise of managerial discretion in the use of technological improvements to produce the greatest

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economy for the people of America and the best earning position for the rail carriers. I will gladly exchange manacled regulation for supervised freedom.

Even with the legislation called for in this bill, railroads will still be hamstrung in the marketplace. As the bill is now written, all railroad rates must be published for 30 days before becoming effective, and are subject to suspension by the Interstate Commerce Commission at the whim of anyone on the grounds that the rate violates some other portion of the Interstate Commerce Act. The railroads would be the only carrier subject to this requirement. Accounting for only some 25 percent of the total intercity freight traffic bill and for only 8 percent of the Nation's total transportation bill, as railroads do, there is no reason why this unequal treatment, which results in discrimination, should be permitted to continue. This is the rankest kind of inequality and it should be removed in the interest of fair-play, if nothing else. No loopholes should be left through which the Commission can exercise discriminatory control of minimum rates.

Other carriers and other businesses are free to charge for their services or goods whatever the management chooses to charge. If such charges violate the antitrust laws, the proponent of the charge must suffer the consequences. On Southern we are prepared to take our chances on this. As a matter of policy we would not knowingly violate the law and, in my judgment, there would be no occasion for possible law violation to arise in connection with pubishing minimum rates. I say this since our policy is to publish only remunerative and nondiscriminatory rates. "Loss leaders" are not in our catalog of pricing. We do not seek special favor, nor do we ask for paternal protection from folly. We do ask for the right to compete on equal terms, a right to which we are entitled. We cannot have this opportunity in its fullest sense if we are required to give advance notice of our prices while our competitors, who handle the lion's share of the business, are not required to do so.

I repeat that passage of this legislation can save the shippers of the United States hundreds of millions of dollars annually—excessive charges that are now adding unnecessarily to prices which consumers must pay.

Southern Railway System today could be and would be furnishing its transportation services at much lower cost to the public if the laws of this country would now permit us to do so. In the public interest, and in simple justice, those laws should be realistically modernized to eliminate discrimination, to promote competition and equality of treatment of the various common carriers, and to free all common carriers so they can meet the fast-growing threat of private carriage.

The need for changes in the regulatory pattern which would permit railroads to accomplish such an objective is clear and acute. Today, there is no real competition in the field of transportation. There is nothing but an unimaginative, unrealistic, and unproductive fixation of prices by regulation. The regulation approach as a solution has failed miserably. The time has come to try the fresh, realistic approach of competition offered by H.R. 11583. Therefore, I respectfully urge as strongly as I can that this committee approve and speedily report this bill to the House so that it may take prompt action.

Mr. Chairman, I heard some of the testimony here yesterday, and I have prepared a supplemental statement that I would like to introduce in evidence.

Mr. Chairman, you inquired yesterday as to the treatment of non-river towns as compared to river ports. I would like to say a word on that.

With respect to so-called water competitive rates, my company is determined to give every inland town the rate advantages now enjoyed by waterway ports. We are doing this by extending to those inland towns rates that are comparable to and on the same mileage scale as the river port rates. For example, we maintain that Atlanta, Ga., Columbia, S.C., Anniston, Ala., or any other inland town, is entitled to the same low rates as any town on a river—the determinant of the charges to be the number of miles that the freight is hauled.

This basis is followed in our grain rate case, to which I have already referred. The same scale of rates applies from the Ohio and Mississippi River crossings to inland points as well as to the Tennessee River ports, and while our original publication did not have Chattanooga or any other Tennessee River port as origin points, we have offered and will apply this same scale of rates from any point on our railroad to any other point whether it is on a river or not.

W are extending this method of ratemaking to other commodities as rapidly as we can, although we do have difficulties here with regulation by the Commission under its minimum rate powers.

Because some town is located on a river is no reason why it should be accorded a lower rate than some nearby town which, by the accident of geography, is not located on a river. Only through this process can we extend the benefits of low-cost transportation throughout the area that we have the duty to serve, and give all of the public those benefits.

It gives me pleasure to say that our railroad more than a year ago publicly announced this principle. In a press release dated July 3, 1961, more than a year ago, I said, with respect to our grain rates:

> No distinction has been made in the rate level to points reached by water, as compared to points inland from water, because we feel that Southern has an obligation to haul to off-river points on the same basis as it hauls to on-river points. The accident of location should not cause an inland area to be penalized in the matter of freight rates. That is why we have extended the rates to the entire territory so that the whole area will get the benefits of modern railroad technology.

We consider this principle a sound one and we will continue to expand its application as rapidly as possible. Enactment of H.R. 11583 will be a great help to us in this effort.

There have been several questions asked by members of the committee indicating a concern about possible below-cost rates being published by the railroads. As I have said, we will not publish such rates. We are not interested in any business that we cannot handle at a profit. Furthermore, the word "cost" is one that is thrown about pretty loosely by the barge people and some truckers who have a monetary interest in keeping rail rates regulated at high levels so that they can keep their charges up.

The mumbo-jumbo that these people, especially the barge operators—common carrier and private—are peddling to the effect that railroad rates do not reflect fully distributed costs is self-serving and

camouflages their extraction of higher than necessary charges from the public. The fact that this occurs is another clear indication of the evils of overregulation.

There is no such thing as a fixed cost per ton or ton-mile for any railroad. Costs vary with volume—the lower the volume of business, the higher the cost. An increase in volume reduces the costs per unit of transportation.

For a regulatory agency to average out a lot of figures to produce railroads' costs is as meaningless as the average depth of a river. You can drown in the deep holes of a river that average just 2 feet in depth, and the railroads have all but been drowned for the want of business caused by the enforcement of high rates from this kind of regulation.

Due to the 5-day week in industry and the necessity for 7-day rail operations, the volume of business varies sharply from day to day of every week. It would be ridiculous to say that we could not haul business on slack Mondays or Tuesdays because the revenues from the fewer cars hauled on those days would not cover the so-called fully distributed cost. This makes as much sense as those cases where the Commission has required rates to be canceled or raised on the grounds that they did not cover fully distributed costs.

Higher than necessary rates make the railroads noncompetitive. This dries up business, and slack business automatically raises costs per car. So this vicious circle can lead only to the poorhouse for the railroads and to higher prices for the public. This unrealistic "formula" approach to costing is the very essence of minimum rate regulation, and so long as the Commission is empowered to fix minimum rates the public is going to pay higher prices, the rapid growth of private carriage will continue, and the position of the railroads—and for that matter all of the common carriers—will worsen.

Mr. Chairman, that concludes my statement.

Thank you for permitting me to appear.

The CHAIRMAN. Mr. Brosnan, I am very much interested in your statement, and I am greatly impressed by it. I am sure other members of the committee are, as well.

You have, in my judgment, given from your own viewpoint a very frank opinion of the position from your own experience and your own company and, at the same time, you have challenged, it seems to me, the transportation industry, as such.

I want to compliment you on the initiative that you have taken with reference to eliminating what seems to me to be a continuous discriminatory practice over the years between communities in the same area with reference to rates.

It is my firm hope that your great, able, and highly efficient president, who testified before this committee yesterday, might see it clear to revise his expressions of views on the principle in order that the railroads might follow the lead which you have enunciated here with reference to such practices.

I have never been able to see why the transportation industry, providing service to the public, feels that it is in the best interests, and that it was fair and equitable, to provide a rate under given circumstances, when precisely the same apparent cost, distance, facilities, and so forth used a different rate to another area.

I have just never been able to see that.

Now, may I ask you one question out of a situation that came to my attention here not too many years ago. First, I would say: Is this policy of yours, which you announced in 1961, applicable only to agricultural movements?

Mr. BROSNAN. No, sir.

We adopted and announced that policy at the time that we published these rates.

We have since then been extending that principle to other commodities other than bulk commodities and other than agricultural commodities.

We have a lot of work left to do to clean up old tariffs, upgrade them, bring them up to date.

We are going to have an awful howl, and do have an awful howl, every time we go to the ICC with some of these things, to bring them into this picture. We run into a lot of opposition usually from the bargelines.

The CHAIRMAN. I am impressed by your explanation of the experiences you have had, but what led me to make the inquiry is that you said that the announcement you made in 1961 was with respect to grain movement.

Mr. BROSNAN. I made that announcement, sir, when we announced or published our grain rates.

The CHAIRMAN. But, as you have stated here, it is your policy in order to try to extend this principle on an equitable basis insofar as possible as you proceed?

Mr. BROSNAN. We have since that time extended it; where we make a water competitive rate, if you call it that, we have extended it to the inland territories.

The CHAIRMAN. Now, what I wanted to inquire about, here a few years ago was there not a situation that arose that created a great deal of concern among the people whereby the movement of cotton over your railroad in the Southeast brought about a great deal of attention to certain people that if the cotton came from the west side of the Mississippi River, it would cost $1 or $1.25 a bale more for the movement than if the cotton moved on the east side of the river?

Mr. BROSNAN. Well, sir, let me say, in the first place, I am not an expert on the intricacies of rates.

I can deal with principles and did establish this principle: equality of treatment.

The CHAIRMAN. Yes; I appreciate that.

Mr. BROSNAN. I did that.

The CHAIRMAN. I compliment you for it.

Mr. BROSNAN. Now, the intricacies of these catalogs of rates can get me lost.

I, frankly, have no knowledge of those cotton rates, but I will be very happy to get the facts about that and bring them back here, sir, or send them to you by letter, or however you might want it.

The CHAIRMAN. I think the matter has been resolved, and amicably so, but it took a long time to do it. I have never had anyone explain to me why a transportation company such as yours would have made such a decision: that merely because there was a body of water that separated two States or two areas, that that which comes on one side of the river would have a higher transportation cost to the same places than that which was produced on the other side.

Mr. BROSNAN. Mr. Chairman, I very frankly do not have enough knowledge about that matter to discuss it in detail.

The CHAIRMAN. As I say, I think it has been resolved.

Mr. BROSNAN. Yes.

The CHAIRMAN. I do know that there was great concern expressed by the organizations involved in the movement of cotton back at that time.

You see, I hope you will pardon me and others who come, but I have had accumulation of these things over the years as to certain discrimination, and this gives me an opportunity to bring them out.

Mr. BROSNAN. Yes, sir.

The CHAIRMAN. I think it should help to try to understand some of the problems and try to get some answers. Others, I know, have had similar experiences from their own constituents that I have had, and we might be able to do something about this whole problem in this generation.

Mr. BROSNAN. Mr. Chairman, I would be the last man to attempt to say to anyone that the railroads have not had their sins, and a lot of big sins, and that we will not make some mistakes in the future.

The CHAIRMAN. I do not want to indicate here that I am one of those who is going to start throwing rocks, because I know it can go both ways.

But this is a highly important thing, and there are some things that I have been involved with that, as I told Mr. Loomis yesterday, that I want some answers to.

You have given very good answers to one of them here, and I hope that the entire industry will give serious consideration to your leadership in this field.

I applaud it.

As I say, I hope we get somebody representing the Southwestern part of this country. I want to ask him about a certain transportation organization down there with reference to certain other rates affecting certain other industries in Ohio, Mississippi, and Arkansas.

If there is anyone who is going to testify from that area, why, I am putting him on notice now that he is going to be asked about it.

I am for the principle of giving the right of transportation industries to serve the public, but all my life I have heard about these discriminatory practices. They have been tied up in zones and areas and the Supreme Court, the Interstate Commerce Commission, and so forth, and I think that we have progressed in this country enough now that we ought to work out, all together, something that would be advantageous to all of our people, and not on the basis of giving one area or one group or one company or one transportation mode advantages over another.

I am very strong for that principle.

I hope my colleagues will pardon me for taking this much time at this point, but I wanted to ask you about that car. I have heard a great deal about that car. I have never seen one of them.

Mr. BROSNAN. That is the aluminum——

The CHAIRMAN. This all-aluminum car you are talking about in the movement of such products as you claim. I have been pretty critical of the railroad industry over the last years as to its lack of progress and new techniques, and you make me feel very good that you are moving into an area to meet these problems.

I would like to know a little bit more about this car, if you would tell me about it.

Mr. BROSNAN. All right, sir.

Well, sir, of course, ours is an old industry, and it has picked up a lot of barnacles over the years, and it was a monopoly industry, and it takes a while for people who grew under that system to get completely away from it and away from that way of thinking.

But it became apparent to some of us that maybe the railroads were not moving along in stride with the times; that if we were to have a future, it was high time we tried to find out how to have it. We started some very definite inward looking and soul searching.

One of the things we came up with was the fact that we had to have a better rate structure, a more competitive rate structure.

We had to reduce our costs to lower prices.

I will not burden you with a lot of detail, but it took about 6 years to develop that car. It was based on a study of the traffic that moved and contacting the people who ship goods.

We finally had to go to the aluminum people to get a lightweight car that would do the job and give us a maximum payload.

I secured the services of the Lockheed Aircraft Co. to design it, because the railroad people were not used to designing in aluminum. It probably was the most thoroughly engineered car ever built by a railroad.

The Reynolds Metals Co. supplied tremendous help in design know-how. They also supplied the metal for it, and made the necessary breakthroughs in the way of guarantees against corrosion and electrolysis possible sources of damage that were absolutely unknown as to what might happen, to protect us against loss in case such damage developed.

The cars came into being, and there were several applications. The car that applies to grain is approximately a 5,000-cubic-foot car in volume. It is a very large car, and we are able to put 110 tons of corn, shelled corn, in that car.

We can put a little more than that in wheat.

We cannot put more than about 90 tons of oats into the car, but that is a pretty good sized pile of oats.

It would take two ordinary cars to haul that much grain. So, we can produce economies that have not been available heretofore. We give rate incentives to encourage the public to use them, to ship in volume.

A group of farmers can come in and order 450 tons of corn in the name of one of them and all of them would get the benefit of the incentive rate.

If they ship 900 tons, we give them a little more rate incentive because it costs us less in the way of switching; for example, we can switch 9 cars at one time instead of individually switching 18 of the old, half-sized cars, and, naturally, we do it for much less cost.

We have 1 piece of paper instead of 18 to work with, and paperwork is costly.

So the savings are really quite worth while, and we are trying to pass them on to the public.

The cars are free of infestation. They are airtight. They do not get the grain wet nearly as often as would be the case in an ordinary

boxcar. We have carried that principle of large cars with quick turnaround and incentive rates on to the haulage of coal. We have built 750 of these aluminum-body cars for the haulage of coal. They are open top. We are averaging about 111 tons of coal to the car.

Well, with a trip a week on each car of coal, we can get 10 or 12 extra tons in it at $2 to $3 a ton which would make $20 to $30 every week extra earnings. Each car earns an extra $1,000-plus in 50 weeks.

And that runs into money in a hurry.

It is the old Woolworth principle of quick turnover. We can afford the higher cost of the lighter aluminum car because it has a capacity to haul more payload, and it is much more dynamic.

The CHAIRMAN. That is all very interesting, and I think very helpful, but I do not want to take any more time. Mr. Springer?

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. Brosnan, may I say that you have brought some ingenuity to this committee which has been lacking for a long time in the testimony that I have heard from the railroads, and I am glad to see that there is somebody pushing ahead in some of these fields wherein many on the committee have felt there was room for improvement.

Would you turn to page 3 of your first statement. Line 6 from the bottom, beginning:

In fact, in 1961 these bulk and agricultural commodities comprised 67 percent of our tonnage and more than 50 percent of our net revenue.

Mr. BROSNAN. Yes, sir.

Mr. SPRINGER. How long have you been with the Southern?

Mr. BROSNAN. I have been with the Southern Railway since 1926, sir.

Mr. SPRINGER. Could you tell me in about 1926 how much the bulk and agricultural commodities comprised?

Mr. BROSNAN. No, sir.

I can get it for you.

Mr. SPRINGER. Could you give me a rough estimate?

Mr. BROSNAN. No, sir; I cannot.

Mr. SPRINGER. Could you tell me what percent of your net revenue in 1926 was comprised of this?

Mr. BROSNAN. I cannot tell you that offhand, sir, but I can certainly get it, and I will get it.

Mr. SPRINGER. May I ask this:

Was it substantially lower or substantially higher?

Mr. BROSNAN. I cannot answer that, sir.

At that time I was driving spikes in crossties, and I did not have anything to do with making policy of the company.

Mr. SPRINGER. That is a pretty good beginning, Mr. Brosnan.

A few years ago I went up on the Pennsylvania to inspect, and I remember President Franklin, as I recall it was at that time, he was very proud of the fact—he got me up at 7 o'clock in the morning and said he wanted to show me something.

He went to the back of the train and he said:

Right there in that little toolshed is where I started to work on this railroad.

It was a good many years longer ago because he was an old man, 70 years old, and I think he started at 17 or 18. So he started with that background.

Do you have a town Charlotte, N.C., on your railroad?

Mr. BROSNAN. Do I have what, sir?

Mr. SPRINGER. Charlotte, N.C.

Mr. BROSNAN. Yes, sir; Charlotte is on our railroad.

Mr. SPRINGER. Have you stopped in that station lately?

Mr. BROSNAN. I am familiar with the station there, sir. I certainly am, and there is a new station being built there.

Mr. SPRINGER. There is? That is fine.

The reason I asked that was I went down to North Carolina to make a speech 3 years ago, and I came back, and the next day we had the authority for airline construction, that is, for construction of airports up in the House, and I made a speech in which I compared the airport at Charlotte with the railroad station in Charlotte.

I did not expect anything to come of this, but actually the Charlotte paper blew this up and took pictures of both of them and compared them.

Now, may I ask if you are building that out of your own money?

Mr. BROSNAN. We are, sir.

Mr. SPRINGER. This is one of the big problems which has bothered me, Mr. Brosnan, to which I do not have any answer.

But somewhere we are going to have to make some decisions on this.

When I went into the Charlotte airport, it was a fine airport, and I pointed out that the marble around the walls was higher than my head, which is 6 feet 2 inches tall. And when I got into an examination, I found out that a very substantial part of that was paid for with public funds, and I realize, when I say that, that the airplanes do not fly in there for nothing; they pay fees; but a very substantial part of that airport is paid for by public funds.

Probably your railroad in that county paid for the cost of part of that airport.

The thing I am trying to get to here is I do not know what the future of the railroads is.

You are doing a marvelous job as president, but the point I would like to ask at this point is, if it should be necessary—and there are some people talking about that now—that when your earnings reach a certain low point, that you would be eligible, the same as airways and airlines, to receive a subsidy based upon your earnings, do you have an opinion on that?

Mr. BROSNAN. Well, sir, fortunately, I have not had to look at that as a pressing problem of Southern's. We have been serving a section of the country that has been growing and that has been dynamic, for which we are grateful.

We are trying to run our business as a profitmaking business, without leaning on any segment of the Government to make a contribution to us.

Now, what I would say, if I needed the money, might be something entirely different.

Mr. SPRINGER. Now, Mr. Brosnan, in effect, what you have in this country are three classes of railroads economically.

There are the ones like yours, that one that runs down the center of my particular district, the Illinois Central; they are among the more profitable railroads, is that not true?

Mr. BROSNAN. That is correct, sir.

Mr. SPRINGER. Then you have the great middle section which does well in some years and does rather badly in others.

They are on the margin right now, is that right, as to whether they can sustain themselves or not?

Mr. BROSNAN. That is right.

Mr. SPRINGER. Then you have a very small minority which is more or less geographically placed in this country where it looks like they are ultimately going to have to go down the drain or be subsidized; is that not the truth?

Mr. BROSNAN. Well, sir, I hesitate to speak about my neighbors. I am sure they have their problems.

Mr. SPRINGER. I am not naming any railroads, Mr. Brosnan.

I am trying to get this problem on top of the table so that we can see what the condition of the railroads is; not your railroad, because you have given a very good outline of what you intend to do.

But I am trying to get the picture of the railroads broadly in this country.

Mr. BROSNAN. The railroad industry is definitely in distress, sir.

No one would deny that.

It is evident the railroads in the eastern section as a group, I suppose, are harder hit than any others.

There are some few in the South that are not doing too well, and there are some few in the West and Midwest.

But, by and large, I think they are in worse shape in the eastern section.

Mr. SPRINGER. Now, I come to the second point.

Three or four years ago the representatives—I am not saying the American Railroad Association, the American Association of Railroads came, but a group of railroads did come, led by the Pennsylvania, in this very room to testify. Mr. Younger and I were there at the time, as I recall.

They were asking for the formation of more or less a corporation to lend them $500 million for the building of cars and equipment and so on.

We turned that down.

Then the mayors came just a few weeks later and they wanted some kind of a subsidy for the development of rapid transportation to and from the suburbs and nearby areas, and we turned that down.

We rejected that.

Then they left this committee and drew a bill in such a way that it went to the Banking and Currency, and they put it in the housing bill, for rapid transportation in and around large cities.

Now, this is bringing us to a second problem, which before had been entirely handled almost exclusively by railroads.

Now, this is a fourth class of railways which they are seeking to do something about at the present time through this means and method.

And the city of Chicago is considering a loan under this particular corporation as to their immediate situation. This is why I come back to the same problem.

If railroads do reach a point where they are no longer able to exist, what is your opinion with reference to subsidy?

Mr. BROSNAN. Well, sir, if the railroad industry cannot exist as private, free enterprise companies, I suppose there is no answer ex-

cept nationalization of the railroads, and that would be tremendously expensive.

The British lost, I noticed the other day, something over $300 million last year on their railroads.

Mr. SPRINGER. That is the second point I am coming to.

Now, have the railroads taken any position on this question of subsidy?

Mr. BROSNAN. So far as I know, they have not, sir.

Mr. SPRINGER. A few weeks ago the president of an eastern railroad came to my office to talk to me about this particular railroad problem that his railroad faced. He did not have any resolution.

He had asked the States to give him some relief in taxes, which I think they did. This is no long-time solution for that particular railroad, and, as I know, four or five other railroads in the immediate vicinity.

I think, rather than the problems of your railroad which you face—and this is an important problem for you, this whole question of rate structure and what you are able to do in the form of competition; for you and a vast number of railroads in this country, this possibly would be a solution—I was trying to get your opinion as to what should be done about this creeping paralysis which seems to be taking its toll among railroads presently that are rather strategically located geographically.

Mr. BROSNAN. Well, sir, I do not think there is any doubt but what an increase in traffic has a tremendous effect on the economic life of a railroad.

Frankly, I have never seen anything that is as refreshing as a build-up to traffic, I mean in putting vigor and strength into a railroad.

The railroads, with some return of business of that character, would have more funds available for modernization. Some of them would have difficulty today in obtaining money for modernization and credit.

My frank opinion is that the greatest single thing that is wrong with the railroad industry today is that they have been saddled with regulations so long that they have just about been regulated to death.

Their prices are forced up high so that they cannot come to grips with the real competition.

Mr. SPRINGER. Now, just one further question and I am through.

I note that you say in here that at the present time railroads have only 25 percent of the intercity business.

Mr. BROSNAN. In dollars.

Mr. SPRINGER. And only 8 percent of all the transportation countrywide.

Is that true?

Mr. BROSNAN. That is in dollars, yes, sir, and that includes passenger and freight.

Mr. SPRINGER. That is in dollars?

Mr. BROSNAN. Yes, sir.

Mr. SPRINGER. Now, how would that compare with 1930?

Mr. BROSNAN. Well, sir, I do not have 1930 figures, but my judgment would be that in 1930 the railroads' share would have been very much larger than that.

These figures were published by the Transportation Association of America, and if they have such figures for 1930, I can get them.

I would get them and supply them.

But my judgment is that the railroads' share would have been very much larger in 1930.

Mr. SPRINGER. Now, just one more question.

Is there anything that we should be doing as a Government with reference to relief from taxation?

Mr. BROSNAN. Well, sir, yes. I think so.

Mr. SPRINGER. Now, would you direct your testimony to what lines you think would be the most beneficial or the most helpful?

Mr. BROSNAN. Well, sir, it is a known fact that railroads are fair game in every political district that they run through, and by "political district," I mean city or county.

Mr. SPRINGER. I am talking about the Federal level, Mr. Brosnan, because I do not have anything to do with that.

I know what that is because I used to be county judge, but I do not have anything to do with that, now.

Mr. BROSNAN. The railroads have asked, of course, for a liberalization of depreciation, which would be helpful, and, frankly, this directive of Mr. Kennedy's a couple of days ago will be of some assistance there. That is certainly an area that——

Mr. SPRINGER. Do you think that this would be an impetus to better equipment and more efficiency?

Mr. BROSNAN. In the case of my company it encourages us to buy equipment, yes, sir.

Now, whether it would encourage some company that might be in dire financial stress, I could not say.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mr. Brosnan, I have listened with a great deal of interest to your presentation.

I think it is a succinct and very strong presentation of your position on the bills before the committee.

Mr. BROSNAN. Thank you, sir.

Mr. JARMAN. One question I would like to ask is with reference to something you have said on page 3 and that has been referred to by other witnesses before the committee.

You make reference to an illegal or a so-called gray area of operations that take place, as you say, because regulation causes artificial and unnecessarily high rates, thus providing a cover under which these illegal or gray-area operations take place.

Mr. BROSNAN. Yes.

Mr. JARMAN. I wonder if you could give the committee some examples of the kind of operations that you have in mind?

Mr. BROSNAN. Well, sir, I can.

When we were studying the basic information for our grain rates, it was necessary that we make some checks on the movement of grain by truck, barge, and so forth. Well, the barge figures are pretty well kept by the Corps of Engineers of the Army.

But when we got into the truck end of it—I am speaking now of the nonregulated trucks, not the common-carrier truck lines; their figures are obtainable, too—there were no published figures, and a study was necessary, and we did make quite a study, including following some of the trucks to see where this grain went to, where it

originated and where it went to, to get some patterns and ideas as to the volume.

There were some cases where buried down under the grain there would be quite a sizable package wrapped up in waterproof material, and the grain would be dumped off and the truck go on.

We did not report those occurrences to the ICC at the time because we were having enough trouble getting information on which to build our grain rate case, and that would have closed a lot more doors to us in trying to have access to needed information.

But we found that.

We also found those fellows would drive on off and go to some other industry and deliver a piece of goods.

We could not tell what it was, but it obviously was not theirs.

Some of it is done openly without burying it under grain.

It is a terrific job to police. There are millions of trucks.

I am not speaking now of common-carrier trucks. I am speaking of private trucks and itinerant truckers.

Mr. JARMAN. I understand.

Mr. BROSNAN. Fellows that haul this grain, they are prone to pick up something and haul it back.

It seems to me, from our study of it, that policing it is not ever going to cure it; that the only way to get rid of it is to remove the incentives, and that means taking the opportunity for making money out of it.

That was what led me to make the parallel to the Volstead Act.

As you know, when legal whiskey could be bought, the price was lower and a lot of bootlegging outlawry died out. We had not had much luck policing it. And I think that that is a good parallel.

I do not think that we are going to have any luck policing this gray area in trucking because there are many, many, many more dollars involved in it than were ever involved in the illegal liquor business.

As long as that incentive is there, the American is going to be pretty resourceful about trying to find some way around it.

But if the incentive is not there, it dies.

Mr. JARMAN. Thank you.

I have no further questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Yes.

Thank you, Mr. Chairman.

Mr. Brosnan, your testimony has very clearly demonstrated that the old adage about the South being conservative and hidebound is not true.

Mr. BROSNAN. Thank you, sir.

The CHAIRMAN. Just hidebound.

Mr. YOUNGER. Can you give me a definition of what you think is a "minimum rate"?

Mr. BROSNAN. Yes, sir; I can.

I think a minimum rate, first, must take into account what your—or in any case, my company's—costs are to move the business.

That is an absolute floor.

We can determine that. We cannot determine it by these averaging-up formulas.

We go out and survey the movement of the business and how much there is and where it is going to and get some idea of the prices, and then maybe we might approach a shipper and say:

"We would like to participate in the haulage of this. What kind of a price does it take to get it?"

You realize that in the case of this grain, while there are published rates by trucklines and bargelines, the grain does not move on those published rates. It moves on something they agree on, which is not made public, and you have no way of finding out except if someone would be good enough to tell you, some shipper, and some of them do because they are interested in price.

Then from weighing the factors we would make a rate, but it must yield us a profit.

Otherwise, we are wasting our time and our talent trying to haul something at a loss.

A minimum has got to be low enough to move the business and yet be above cost.

That is as succinctly as I could put it, sir.

Mr. YOUNGER. Now, under this bill, it lists the commodities that are specifically exempt and which the Commission shall have no authority or power to determine that such a rate or fare charge is lower than a reasonable rate-fare charge. In other words, if this bill is passed, in the movement of these commodities the rates are at your discretion, is that correct?

Mr. BROSNAN. Bulk and agricultural commodities would be at our discretion as the bill is presently drawn.

We must publish such rates.

Mr. YOUNGER. That is right, you publish, but I mean the determination of the rate?

Mr. BROSNAN. Is up to us.

Mr. YOUNGER. Is no longer subject to supervision?

Mr. BROSNAN. Unless it produces discrimination.

Mr. YOUNGER. Oh, well.

Mr. BROSNAN. Or something of that sort.

Mr. YOUNGER. That would come under the antitrust laws.

Mr. BROSNAN. Right, sir.

Mr. YOUNGER. That we understand.

Mr. BROSNAN. Yes, sir.

Mr. YOUNGER. That applies also to passenger fares?

Mr. BROSNAN. Correct, sir.

Mr. YOUNGER. And that could apply to passenger fares, all passenger fares, regardless of where it is, cross-country or on your railroad or a combination of your railroad and the Illinois and the Chicago Milwaukee or the Southern Pacific or any; is that true?

Mr. BROSNAN. That is my understanding; yes, sir.

Mr. YOUNGER. So that, to the extent that this bill governs all of those rates on the exempt commodities and all passenger fares, regardless of where or how long the haul, they would be exempt from any supervision by the Commission?

Mr. BROSNAN. Well, sir, of course, you understand a large part of this business is exempt now for our competitors.

The railroads are only hauling about 8 percent of it from a dollar standpoint and a large segment of the rest of it is exempt from regulation now.

So our part is a very minor portion of it.

Mr. YOUNGER. Well, that is true.

Now, if that is good business, if that is proper, then why not exempt minimum rates for all traffic?

Mr. BROSNAN. Well, personally, I think that is the proper approach, and I think some day that will happen in this country.

Mr. YOUNGER. If it is going to happen eventually, why not now?

Mr. BROSNAN. Sir, I do not know that I am qualified to answer that.

This is the first time that anyone has had the courage to put up a bill of this kind that I can remember, and I do think it was a courageous move on the part of the President to put it up.

Certainly, it is a good beginning point. If it works well, it would be a good point then for departure into complete exemption on minimum rates, in my judgment. I would welcome it now on all of them.

Mr. YOUNGER. It probably then originates from the fact that these particular commodities are exempt under certain laws already.

Mr. BROSNAN. That is correct, sir.

Mr. YOUNGER. That is probably where it originates.

Mr. BROSNAN. The great volume of the business is already moving free of regulation. About 66 percent of the grain moving into the Southeast, for example, sir, comes by itinerant, unregulated truck. It has no regulation whatsoever.

Mr. YOUNGER. And you would favor this approach as opposed to the approach by Mr. Murphy, the Chairman of the ICC, that, instead of exempting any of the commodities, putting all commodities under some form of regulation for all modes?

Mr. BROSNAN. I think Mr. Murphy's proposals are hopeless. They are just some more of the same stuff that has failed.

I don't think that the farm interests of this country would ever agree to bring these agricultural commodities under the ICC.

Mr. YOUNGER. This bill does not get rid of the private and contract truck carriers; does it?

Mr. BROSNAN. No, sir; it does not.

Mr. YOUNGER. And you say that is one of the greatest evils that you are confronted with; is that true?

Mr. BROSNAN. Yes, sir.

I do not think there is any evil in a man hauling his own freight, but when he hauls his own freight, if he manufactures something in the South and hauls it to the Midwest, then he picks up a load of grain and goes back South, under this exemption he is obviously reducing the cost of moving his product.

Now, some competitor of his, who may be making exactly the same thing and may be a lot smaller and who does not have his own trucks and does not want to spend the kind of money to do that, or maybe he does not have the kind of money, has got to use common-carrier truck or common-carrier rail, and he is disadvantaged by the ability of his competitor to maneuver under this exemption.

Now, the competition that the rails could bring into this situation by lowering this artificial rate structure would save the public money—you realize that the railroad rate is used as an umbrella?

Mr. YOUNGER. Yes.

Mr. BROSNAN. The unregulated carriers price just as near the rail rate as they can to get the business, and if the rail rate is low, that is going to take a lot of high profit out of this haulage of these exempt agricultural products and bulk commodities.

That will lower the profit margin of these private carriers on these return hauls. It will lower the profit margin of the illegal trucker, and, in my judgment, it will be a most wholesome and effective approach to the whole picture, rather than policing, which is envisioned by Mr. Murphy's approach.

Mr. YOUNGER. And this bill only solves part of your problems.

It does not solve that other portion of the private and contract hauling?

Mr. BROSNAN. It will solve the most pressing and immediate portion, sir, and give us a relief that is needed, and, in my judgment, it could mean at least $1 billion a year to the consumer and his household.

Mr. YOUNGER. Thank you very much.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

First of all, Mr. Brosnan, I want to say how much I, too, have gotten out of your statement, which I think is very concise, and you have pointed up to us the fact that many things can be done in the railroad industry that have not been done in the past simply by initiative being shown in the industry itself.

Do you feel that one of the reasons that the railroads have lost so much of this business is simply because the unregulated industries, such as the truck and the water carriers, have been able to come in and carry your bulk products without regulation while the railroads have to be regulated?

That has been the basic cause of the railroads losing this part of the market; is that true or not?

Mr. BROSNAN. In my judgment, that is absolutely the fact.

Mr. ROGERS of Florida. Now, how much do you suppose would be regained? Is there any way to make any estimate how much could be regained by the railroads if we pass this bill?

Mr. BROSNAN. Well, sir, I can tell you about grain, because we have made a thorough study of that. We were dealing with a lot of factors that we could not put our hands on in the way of these agreed prices, because they were not published, and the trucker would not talk about them. It was only when we could get some elevator operators, or some receivers, who would tell us what the truckers' charges were, that we could get some measure of the charges.

But we think that we could haul at least 3 million additional tons of grain and probably as much as 5 million additional tons of grain on the Southern Railway per year, as a result.

Mr. ROGERS of Florida. I see.

Mr. BROSNAN. And that is only one commodity, sir.

Mr. ROGERS of Florida. So you feel this part of the market would be a considerable recapture for the railroads?

Mr. BROSNAN. Yes, sir.

We feel that so strongly we now have nearly 600 of these so-called Big John cars in anticipation of hauling a lot of grain one of these days.

We cannot believe that where we can save that kind of money for the public that we can be permanently denied the competitive opportunity.

Mr. ROGERS of Florida. And you estimate the saving to the public from the passage of this bill would be somewhere in the neighborhood of $1 billion?

Mr. BROSNAN. That is my judgment; yes, sir.

Mr. ROGERS of Florida. Thank you.

Mr. BROSNAN. There again, on grain we have had public witnesses who estimate that it would mean $35 million to $40 million a year on grain into the Southeast alone.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Brosnan, I am sorry that I was not in here to hear your statement when you read it. However, since I have arrived, I have had an opportunity to read your statement and also the supplement which you submitted. In my opinion, this is one of the finest, clearest presentations that we have had before this committee.

Mr. BROSNAN. Thank you, sir.

Mr. WILLIAMS. You have not only given the position of the railroad, and I might add the very progressive railroad which you head, but you have also given recognition to the public interest in your statement. I just want to say that I am very much impressed with it.

I have no questions.

Mr. BROSNAN. I appreciate that, sir.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I, too, wish to join my colleagues in thanking the gentleman for a fine statement.

I noticed on page 5 you mentioned that in the instance of the railroads they were denied the right to haul a certain type of load, and if they were to buy trucks, they could haul them and they would be exempt from regulation. To your knowledge, have any of the railroads bought any trucks to do exactly that?

Mr. BROSNAN. I understand that some railroads in the West have, sir, but I am sure they could produce a witness who can describe that.

Mr. NELSEN. I was just curious to see what might have happened because of regulation.

Mr. BROSNAN. Yes, sir. But we are not truckers. We are railroad people, and we cannot understand why we should be forced to buy trucks to haul grain.

Mr. NELSEN. I understand.

Mr. BROSNAN. When we have cars standing around empty.

Mr. NELSEN. Yes, I understand. Thank you.

No more questions, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Brosnan, I have noticed instances where trucks are hauled on flatcars, which seems to be a new method of transporting certain merchandise.

Do you know of any cases where bulk commodities are put in trucks and then hauled by your railroad flatcars to various sections of the country?

Mr. BROSNAN. No, sir; we do not. I might say that from a railroad standpoint we can generate the best cost by hauling this bulk commodity in a very-large-unit car, which, of course, you could not begin to run over the highways—110 tons of corn, nearly 5,000 cubic feet of it, is an awfully big load.

It is surprising the number of people—farmers, feed merchants, and others—who can use corn in those volumes. So that we can develop

our very best cost, our lowest cost in that fashion, and also, naturally, give a lower price. There have been no demands, so far as I know, sir, for the movement of grain in trucks loaded on railroad flatcars, and, frankly, we have not approached the problem from that angle.

I do not see—two-thirds of this grain coming in from the Southeast is by itinerant truck, and we do not know who a lot of these truckers are. We have no way to approach them to solicit their business.

Some man who owns a truck and wants to make a day's pay or a week's pay out of driving south with his truck and driving back, would have no interest in our hauling the truck for him so competitively we have an awfully hard nut to crack there.

Mr. CURTIS. But there is developing a considerable traffic of hauling trucks on your cars, is there not?

Mr. BROSNAN. Yes, sir; it includes a long list of items, some of which might even be some bulk commodity.

Mr. CURTIN. I understand that most of such trucks are trucks of competitive trucking corporations; is that correct?

Mr. BROSNAN. Sometimes they are trucks of a shipper, a manufacturer. Sometimes they are trucks of a common-carrier truckline. Very often they are trucks that we own and rent.

Now we are not permitted to drive these trucks over the highways between one city and another, except we could do it with these exempt commodities, but there is a very small part of that that moves piggyback.

There is a long list of manufactured articles that railroads are not permitted to haul over the highways, but we can furnish the shipper a trailer and charge him rental on it, or he can bring his own trailer down, load it on the flat car, and we will haul it to the East or Midwest, where it is unloaded, and he can use his own tractor to haul it away.

Or we often will go out and pick his load up, if it is within the switching limit of a city. In that case, that is a different plan of piggyback. There are five of them, all told.

But none of those plans deal with, nor is there any movement of these exempt commodities by piggyback. They usually carry a low rate and don't fit piggybacking. The reason the itinerant trucker is so involved is that it gives him some income that he might not otherwise have.

Mr. CURTIN. That is all.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brosnan, thank you very much for your testimony here this morning before the committee and the information that you have given us on the subject.

Mr. BROSNAN. Thank you very much, Mr. Chairman, for permitting me to testify.

(The following supplemental statement was subsequently received for the record:)

SUPPLEMENT TO STATEMENT BY D. W. BROSNAN, PRESIDENT, SOUTHERN RAILWAY SYSTEM, JULY 13, 1962

Mr. Chairman, you inquired yesterday as to the treatment of non-river towns as compared to river ports. I would like to say a word on that.

With respect to so-called water-competitive rates, my company is determined to give every inland town the rate advantages now enjoyed by waterway ports. We are doing this by extending to those inland towns rates that are comparable

to and on the same mileage scale as the river port rates. For example, we maintain that Atlanta, Ga., Columbia, S.C., Anniston, Ala., or any other inland town, is entitled to the same low rates as any town on a river—the determinant of the charges to be the number of miles that the freight is hauled.

This basis is followed in our grain-rate case, to which I have already referred. The same scale of rates applies from the Ohio and Mississippi river crossings to inland points as well as to the Tennessee River ports, and while our original publication did not have Chattanooga or any other Tennessee River port as origin points, we have offered and will apply this same scale of rates from any point on our railroad to any other point whether it is on a river or not.

We are extending this method of ratemaking to other commodities as rapidly as we can, although we do have difficulties here with regulation by the Commission under its minimum rate powers.

Because some town is located on a river is no reason why it should be accorded a lower rate than some nearby town which, by the accident of geography, is not located on a river. Only through this process can we extend the benefits of low-cost transportation throughout the area that we have the duty to serve, and give all of the public those benefits.

It gives me pleasure to say that our railroad more than a year ago publicly announced this principle. In a press release dated July 3, 1961, I said, with respect to our grain rates:

"No distinction has been made in the rate level to points reached by water, as compared to points inland from water, because we feel that Southern has an obligation to haul to off-river points on the same basis as it hauls to on-river points. The accident of location shouldn't cause an inland area to be penalized in the matter of freight rates. That's why we have extended the rates to the entire territory so that the whole area will get the benefits of modern railroad technology."

We consider this principle a sound one and we will continue to expand its application as rapidly as possible. Enactment of H.R. 11583 will be a great help to us in this effort.

There have been several questions asked by members of the committee indicating a concern about possible below-cost rates being published by the railroads. As I have said, we will not publish such rates. We are not interested in any business that we can't handle at a profit. Furthermore, the word "cost" is one that is thrown about pretty loosely by the barge people and some truckers who have a monetary interest in keeping rail rates regulated at high levels so that they can keep their charges up.

The mumbo jumbo that these people, especially the barge operators—common carrier and private—are peddling to the effect that railroad rates do not reflect fully distributed costs is self-serving and camouflages their extraction of higher than necessary charges from the public. The fact that this can occur is another clear indication of the evils of overregulation.

There is no such thing as a fixed cost per ton or ton-mile for any railroad. Costs vary with volume—the lower the volume of business, the higher the cost. An increase in volume reduces the costs per unit of transportation.

For a regulatory agency to average out a lot of figures to produce railroads' costs is as meaningless as the average depth of a river. You can drown in the deep holes of a river that averages just 2 feet in depth, and the railroads have all but been drowned for the want of business caused by the enforcement of high rates from this kind of regulation.

Due to the 5-day week in industry and the necessity for 7-day rail operations, the volume of business varies sharply from day to day of every week. It would be ridiculous to say that we couldn't hold business on slack Mondays or Tuesdays because the revenues from the fewer cars hauled on those days wouldn't cover the so-called fully distributed cost. This makes as much sense as those cases where the Commission has required rates to be canceled or raised on the grounds that they did not cover fully distributed costs.

Higher than necessary rates make the railroads noncompetitive. This dries up business, and slack business automatically raises costs per car. So this vicious circle can lead only to the poorhouse for the railroads and to higher prices for the public. This unrealistic "formula" approach to costing is the very essence of minimum rate regulation, and so long as the Commission is empowered to fix minimum rates the public is going to pay higher prices, the rapid growth of private carriage will continue, and the position of the railroads—and for that matter all of the common carriers—will worsen.

The CHAIRMAN. Mr. B. W. Heineman, chairman of the board of the Chicago & North Western Railway.

Mr. Heineman, we are very glad to have you today. I hoped to get to you a little before this time.

STATEMENT OF B. W. HEINEMAN, CHAIRMAN OF THE BOARD, CHICAGO & NORTH WESTERN RAILWAY

Mr. HEINEMAN. My name is Ben W. Heineman. I am the chairman and chief executive officer of the Chicago & North Western railroad.

The Chicago & North Western railroad operates approximately 10,300 route-miles in nine Middlewestern States, the East, the West, Northwest, and north of Chicago.

In addition to being a large freight carrier, the North Western railroad is the largest suburban carrier in and around the Chicago area.

I am not going to take the time of this committee to repeat the substance of what Mr. Brosnan has testified to this morning. I have heard and read his statement, and wholeheartedly agree with it as it reflects precisely the conditions, not merely as they exist in the Southeast, but as they exist in the West.

I believe that I can say that the western railroads would also agree with Mr. Brosnan's statement.

I would like to deal, however, with certain questions that have been raised and with Chairman Murphy's testimony, before turning to discuss the antitrust aspects of the bill.

The chairman, in substance, testified that the cure for the inequality that exists is not to extend exemptions now existing to the railroads, but, rather, to repeal the existing exemptions that are available to water on bulk commodities and to truckers on agricultural commodities and fishery products. In his opinion, as he stated it to the committee, this would correct the difficulties which the railroads are facing, to which both Mr. Loomis and Mr. Brosnan have directed their attention.

I would like to say, sir, that, in my opinion—and this view is shared unanimously by the railroad industry—this is not only no solution, but would result in substantially higher transportation costs to the entire country.

In my opinion, the continuation of the railroads, and the placing of other forms of transportation, under ICC regulation in connection with minimum rates would result in the almost certain elimination of the common carrier from the transportation scene.

And since the railroads, unlike other modes of transportation, are 100 percent common carriers, this would mean, in my opinion, which, as I say, I believe is shared by the entire industry, that the railroads would disapppear from the transportation scene.

Now, to take issue with the Chairman of the Interstate Commerce Commission on such a matter, to which I know the Chairman and the members of the Commission have given great thought, is not a matter lightly to be undertaken, and it is not a matter certainly lightly to be undertaken before a committee of the Congress.

Hence, I would like to deal with the situation by referring to specific situations.

The North Western Railroad for years has been what we might term a low-rate railroad. We believe in the lowering of rates for competitive purposes. We believe that the railroads are basically the low-cost form of transportation, if permitted to exercise the type of ingenuity which Mr. Brosnan has illustrated so well here.

We believe that the technology of transportation has barely been developed, and that, with the incentives which come from competition, and with the additional revenues which, in our opinion, the railroads would receive from lower rates, this technology would be brought to fruition to the benefit of the consuming and shipping public.

This is not idle conversation so far as the North Western Railroad is concerned.

We have been engaged in lowering rates on every type of commodity for the past 5 years where we have been permitted to. However, the Commission has acted repeatedly to allocate business between the various modes of competition and to deny to the railroads the right to lower rates where such rates would transfer business from other modes of competition of transportation, even though the rates are compensatory.

In certain instances the Commission has said that even though our rates are compensatory, we must hold our rates at a differential above other modes of transportation, a 6-percent differential or a 10-percent differential. Now, this committee properly praised Mr. Brosnan for the ingenuity and resourcefulness shown in the development of the Big John car.

I would like to ask this committee to consider what incentives there are to a railroad management for the exercise of ingenuity and resourcefulness in the developing of new cars, new techniques, if, when they seek to pass these on to the public, the Commission denies them the right to pass it on, upon the ground that it will transfer business from another mode of competition?

I had thought that that was what competition was aimed to do: To transfer business. Lawful, proper, reasonable, and nondiscriminatory competition was designed to transfer business, from other modes of transportation or, indeed, from other railroads.

The North Western Railroad has had, unfortunately, a good deal of experience with the Commission in these matters.

In a recent case involving the lowering of rates on agricultural implements, to which the North Western Railroad was a party, the Commission found that we had no right to lower it, although they also found that the new rates were fully compensatory.

I might say that a court has subsequently reversed that decision, after long, protracted litigation.

In another relatively recent case involving eastern railroads, the Commission found that a 6-percent differential was required to be maintained over a competing mode, since, otherwise, that mode would lose the business, even though the rail rates were found to be compensatory, and I might add that a three-judge district court has recently reversed the Commission on that subject.

Recently, in connection with tobacco, the Commission held that rates clearly compensatory could not be put in, or could not be maintained by the railroads, because it would transfer the business from trucks.

And I might add that as recently as July 6, a three-judge court has reversed that decision.

In a recent case the North Western Railroad, in the exercise of its business judgment, lowered rates on a commodity from St. Louis to Chicago. In that case——

Mr. SPRINGER. What commodity was that?

Mr. HEINEMAN. It happened to be beer, sir. St. Louis is a very fine location for the manufacturing of beer. I might say—and I think the committee will be interested in what the examiner of the Interstate Commerce Commission had to say in recommending that that rate be canceled. Here is what he said:

> It appears—

and he is speaking about the North Western Railroad, I might add—

> that the reduction of 5 cents in the Chicago rate on November 10, 1959, was not necessary.

Mind you, this is a compensatory rate, and it is so found.

He said:

> Upon this record it appears that the reduction of 5 cents in the Chicago rate on November 10, 1959, was not necessary and was an unbusinesslike surrender to the threat of private carriage.

In short, an examiner of the Interstate Commerce Commission, sitting in Washington, substituted his judgment for that of the traffic department of the North Western Railroad, of our economists, and of our executives, as to what was or was not desirable as a competitive rate on beer.

I do not conceive either that an examiner or that the 11 members of the Interstate Commerce Commission are qualified to determine what is or is not an unbusinesslike surrender to the threat of private carriage on every rate in the United States.

I do not concede or conceive that their judgment is a substitute for the informed judgment of the management of all the railroads in the United States on individual rates, and I certainly do not conceive that extending the present regulation of the railroads to the trucks and water would do anything but materially increase the levels of rates in this country.

That is substantially what the President said in discussing the alternative possibility of extension, which Chairman Murphy spoke to.

The North Western Railroad, in order to meet water competition between Illinois coalfields and generating stations in Sheboygan, Milwaukee, and elsewhere, has lowered all rail coal rates from Illinois fields.

In a particular case involving coal to Sheboygan, we have been engaged in litigation before the Commission for upward of 2 years. The coal rate to Sheboygan, in our judgment, is fully compensatory, and will reduce the cost of electricity to the consumers in Wisconsin. We can handle the coal at a profit, and enlarge our Illinois markets.

And I say to this committee with all the sincerity that I can command that, in our opinion, the marketplace today, with competition in transportation being what it is, is the proper place to determine what the rail rates and what the truck rates and what the water rates should be.

Now, the chairman—and, again, dealing for a moment with initiative and incentive, and the railroads have been criticized for being a hidebound industry.

One might ask, after repeated frustration by the regulatory commission, with lengthy judicial proceedings or quasi-judicial proceedings over a competitive rate, one may ask just where the incentive and the initiative and the resourcefulness are to come from, with this type of frustration, and what advantage there is to a management to be imaginative, to be progressive, to invest capital, which they do not obtain from the U.S. Government, but which they must borrow and pay back, if they are not able to share the benefits of that initiative and that imagination and resourcefulness, and of that expenditure of capital, with the public in the form of lower rates in order to command a greater proportion of the transportation market.

And so I say that one of the greatest handicaps that the railroads have faced is the dead hand of regulation in the area of minimum rates.

I might add that this committee has been faced with the problems of passenger business.

The North Western is a passenger and commuter carrier, a large one. I will say to you that, in my opinion, a very significant part of the passenger problem would disappear were the freight side of the railroad industry healthy because of the employment of its competitive position due to the lowering of rates.

I may say that the western railroads have substantially larger passenger deficits than the eastern railroads. Yet, you do not hear of them. You do not hear of the Union Pacific or the Southern Pacific or the Santa Fe discussing their passenger deficits, which are very substantial and larger than any eastern railroad, and you do not hear of this in spite of the high quality of the service that they provide, because of the fact that, partly because of geographical location and other reasons, their freight service is in a healthier condition; healthier—not healthy—but healthier.

Now, the chairman asked the question yesterday that Mr. Brosnan responded to about differentials between water-located plants and inland plants.

I think the chairman may not realize that, in part, this differential is the direct product of existing regulation. We have great difficulty in lowering rates. The Commission tends to permit rate reductions with less difficulty, not without difficulty, but with less difficulty, where we may demonstrate that the lower rate is what we might call competition compelled or water compelled or truck compelled; in the case of coal, gas compelled.

They are not willing to trust the management's judgment.

We must make a clear demonstration that this lower rate is the result of this type of competitive compulsion.

The consequence of this is that, being human, having only so much time, only so many lawyers, only so many accountants on our staff, we do tend to move in the area of rate reductions where there is water-compelled differentials and the like.

And it is a fact, Mr. Chairman, that, in my opinion, the inequalities to which you referred in your questions yesterday will tend to disappear far more rapidly if the recommendations of the President were carried into law than under the system of existing regulation, and

certainly faster than if one system of regulation were extended to the other modes of transportation.

One more word on this and then I would like to turn, if I may, to some of the antitrust aspects.

There are those people who suggest that the cure is to extend regulation to the other modes. I can say to the committee that some of those people, as the Commission and the chairman, act in good faith on this. Others do it knowing full well that the farmers of this country, the manufacturers of this country, will rise up in wrath at the thought of extending regulation to these other forms of carriers, because it will increase the costs.

And, at least in my opinion—and I think that the President's message makes quite clear that this is also his—there is no possibility, no realistic possibility, of extending the regulation to the other modes of transportation, because the farmers and farm organizations will fight it tooth and nail, as will the manufacturers' groups, and I have been so told only as recently as yesterday by two of the largest farm organizations in the United States, who, I am sure, will make their own views known to this committee personally.

On the other hand, the manufacturers' groups will, in my opinion, support this bill, because what they are interested in, as buyers of transportation, is the lowest possible type cost of transportation, and they are interested in competition, genuine competition, between the modes of transportation and within the modes of transportation.

Now, if I may, sir, I would like to turn to the manner in which H.R. 11583 deals with that part of the President's message dealing with antitrust liability.

First of all, we ought to know just what it was that the President said.

These are his words:

> To prevent the absence of minimum rate regulation under the above three proposals from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers, freed from minimum rate regulations, would be covered by existing laws against monopoly and predatory trade practices.

You will note that his precise reference is to "carriers freed from minimum rate regulations." It is this freedom, and no other, which the President, in terms, recommends to the Congress that the Congress should make certain be accompanied by a corresponding measure of antitrust liability. And, of course, it is important also to remind ourselves that the President has proposed no new or other freedom for the railroads than exemption from minimum rate regulation.

Earlier in his message the President said specifically that he was recommending only the repeal of the minimum rate power, and I quote again:

> While protecting the public interest by leaving intact the ICC's control over maximum railroad rates and other safeguards—

such as the prohibition against discrimination, for example—

> and requirements on car service and common-carrier responsibility.

There has been widespread confusion on this point, that I am sure is not shared by this committee, on the part of those who have not read the President's message carefully.

He has not proposed that the railroads be placed on an equal footing with our truck and barge competitors with respect to existing agricultural and bulk commodity exemptions. They have for years been exempt, respectively, from all regulation in these areas. They continue to be so for the future.

They file no tariffs. Their rates are beyond ICC control either as to maximums or minimums.

There are no prohibitions on them with respect to discrimination, and I can assure you that they discriminate every day; that they come to a point on our railroad, inquire what the rail rate is, say, "We will haul it 10 cents under," and leave with a load.

An elevator operator, a shipper in the next town, may not have that opportunity that day or that week or that month.

However, the President says that the railroads should continue fully under ICC regulation except with respect to the single matter of minimum rates.

Now, I am not taking issue with this limited nature of the President's recommendation.

People as closely regulated as the railroads are grateful for all favors, and the President has made a landmark recommendation that, in our opinion, took great courage.

But we of the railroads are, it seems to me, entitled at least to insist that the President's proposal be recognized and identified and considered in terms of what it really is: a narrow, limited withdrawal of regulation, and not a full extension to us of the complete exemption which now obtains in respect of agricultural commodities for the trucks and bulk commodities for the water carriers.

The rates of railroads are now, and have for many years been, subject to the prohibitions against preferences and discriminations contained in the Interstate Commerce Act. The Interstate Commerce Commission has a duty to suspend such rates upon findings or to hold them unlawful after investigation, and it has done so on many occasions.

I have read Chairman Murphy's statement that if they were denied the minimuum rate authority, their power to prevent discrimination might be seriously impaired.

I can only say, most respectfully, that I, individually, and I believe our industry as a whole, thoroughly disagree with this.

I believe the shipper and the manufacturer and the farmer, for whose benefit this is, will, when they appear before this committee, disagree with his statement.

We know of no reason why, under section 3 of the Interstate Commerce Act, the Commission cannot prevent discrimination regardless of its control over minimum rates on bulk commodities and agricultural commodities.

And I might say that the chairman in his testimony left it as a broad generality with no specific illustration.

The President has proposed no change in the power of the Commission to control discrimination, and the railroads are not asking the Congress to go beyond his recommendation. I conceive, therefore, that when the President refers, as he does, to existing laws against monopoly and predatory trade practices as a substitute for minimum rate regulation, he is not talking about the existing laws against dis-

crimination such as the Robinson-Patman Act, because it would be improper, improvident, imprudent, to have the Commission enforcing laws against discrimination under section 3 of the Interstate Commerce Act and the Department of Justice, at the same time, seeking to enforce it under the Robinson-Patman Act. The only result could be confusion of the worst sort in terms of overlapping and conflicting jurisdiction.

If and when the President were to recommend, or this committee or the Congress were to consider, the withdrawal from the Interstate Commerce Commission of its section 3 power to prevent discrimination, then would be, it seems to me, adequate time to consider whether or not the Robinson-Patman Act should be substituted therefor.

I believe that the Congress should wish to avoid any confusion whatsoever in its response to the President's suggestion that it make certain that coverage of the appropriate antitrust laws apply.

The bill before you, in my opinion, suffers from vagueness in this respect and should be clarified. The appropriate antitrust laws within the meaning of the President's reference to existing laws against monopoly and predatory trade practices are sections 1, 2, and 3 of the Sherman Act insofar as the substantive provisions are concerned.

We believe that this bill should name them specifically, together with the various procedural and remedial sections through which they are customarily implemented, and these letters are to be found in title XV, United States Code, paragraphs 4, 5, 6, 7, 15, 15(a), 15(b), 16, 22, 23, 24, and 26.

The approach used in the present language of the bill, that is to say, a blanket and unspecific reference to the provisions of the antitrust laws, as designated in section 1 of the Clayton Act, is inexact.

It is imprecise and pregnant with ambiguities which the courts will be wrestling with for years.

We hope that this committee will recommend the specific references to which I have referred and which fully embody the applications of the appropriate antitrust laws.

There is one other feature of the present bill which is neither required nor contemplated by the President's recommendations, and which will, unless altered, imperil its chance of enactment.

I refer to the bill's treatment of the Reed-Bulwinkle Act. The scheme of the bill before you is to amend the Reed-Bulwinkle Act to exclude from its coverage any agreement relating to rates for the exempt agricultural and bulk commodities.

This exclusion contained in section 1(b) of the bill before you is not, however, as sweeping as it appears for the reason that in the proviso which comes at the close of section 1(a) it is expressly stated that nothing in the bill shall prohibit carriers from acting in concert to establish through rates and the rates applicable thereto.

This proviso appears to have the effect of reinstating Reed-Bulwinkle protection for all actions by carriers in concert to establish through rates and the rates therefor, leaving the exclusion from Reed-Bulwinkle to operate only upon the establishment of local rates or what we might call one-line-haul rates on one railroad.

The effect of section 1(b) is thus to prevent joint consideration or action by two separate carriers serving points A and B in respect to the rates which each will provide in respect of service between such points.

Section 1(b) would also have the effect of preventing a carrier which serves points A and B from discussing rates with another carrier which serves points A and C.

We believe that it is undesirable to make any change in the provisions of the Reed-Bulwinkle Act, and we do not think that such changes are necessary in order to carry out the extension of the exemptions to bulk commodities and to agricultural and fishery products.

The original enactment of Reed-Bulwinkle by the Congress over the veto of the President was in recognition that the making of railroad rates is, and in the nature of things must be, a cooperative enterprise in which many different carriers must participate and in which many different people, including shippers and localities, have an interest and wish to have a voice.

Now, I want to make very clear that in making this suggestion I am not suggesting to this committee that there be any lack of competition between railroads themselves. Reed-Bulwinkle provides full opportunity for independent action.

Our railroad, in particular, and most railroads, in general, have taken independent action repeatedly, and more important, perhaps, than any of these considerations, is the fact that in lowering a rate to be competitive with water or truck, one inevitably is lowering the rate with respect to other railroads.

The incentives that have brought this industry before this committee to urge it to implement the President's message will operate fully to assure interrailroad competition just as fully as intermodal competition.

It is impossible to lower a rate on grain or any other commodity to meet truck or water competition without having it apply to other railroads.

For many years the railroad rate bureaus, which were given legal sanction by Reed-Bulwinkle, have been the working forums for the consideration of proposed railroad rates. When a single carrier proposes a rate to apply to a certain commodity between points A and B under the rate bureau procedure, it files that proposal with the bureau and notice is given to the world at large.

The proposal is placed on a docket for discussion, and anyone may appear and state his views with respect to such rates.

Out of such discussion there may emerge reasons why the rate should not be dropped, should be modified, or any other change made.

Now, those members of this committee who go back to the Reed-Bulwinkle days will recall that Reed-Bulwinkle was the result of shipper, farm group, Defense Department, and other solicitation.

I can assure this committee, based on personal experience within the past few weeks with major shipper and farm groups, that they are just as interested in the protection, full protection, of Reed-Bulwinkle today as they were in 1948, and the Reed-Bulwinkle Act has been regarded basically as a charter for the protection of the shipper, the farmer and the public.

Now, the shippers have always found this procedure to be valuable to them as a means by which they can communicate their views in advance about proposed rates.

As I have just said, in my opinion, they will be unalterably opposed to any change in it.

Now, even when confined to single railroad rates, there is a reason for this. If the North Western, for example, were to drop a rate on grain from point A to point B, and if there were a grain elevator—and this would apply to any commodity—10 miles away from the North Western on the Milwaukee Railroad, and if that grain elevator had no notice or knowledge or an opportunity to discuss it, from his standpoint he would feel damaged.

From his standpoint he would feel that his customers could truck to the North Western, rather than to elevators on the North Western, rather than to elevators on the Milwaukee, and even though a single line haul is involved, that shipper would feel damaged.

I will not say to you that, in my opinion, this is unworkable. I believe that it would work as contained in this bill. But I will say to you that it would have the unalterable opposition of the shipper and the farmer, for reasons that have always produced his support of Reed-Bullwinkle.

The CHAIRMAN. May I inquire how much more time you will need?

Mr. HEINEMAN. I am practically finished, sir.

As a matter of fact, if it would be convenient to the committee, I can stop right here.

The CHAIRMAN. I thought perhaps if you were about concluded, that would be all right, but if you are going to require a good deal of time, we are going to have to close this session up, unfortunately.

Mr. HEINEMAN. No, sir.

I can easily terminate at this point, and would simply say that I hope that this committee, returning for just a moment to Chairman Murphy's suggestion, will recognize that in an industry as competitive as the transportation industry, that extending regulations rather than deregulating is no answer to our problems and will simply make them far worse.

I thank the committee for its patient consideration.

The CHAIRMAN. Mr. Heineman, thank you very much for your contribution to this record.

I personally am glad to have your discussion of the Reed-Bulwinkle Act, and the aspects of this proposal here as it would affect antitrust laws.

I am not going to take any time myself to ask any questions because, as I say, the House is in session, and we have got two bills over there today that we want to get to. But I would not want to leave the record with what seems to be a clear indication that the Interstate Commerce Commission would be deprived of any responsibility in connection with discriminatory rates and practice and various other things, as the Interstate Commerce Act provides.

In other words, Mr. Rogers of Florida had something to say about it the other day, and from your testimony this morning I get the impression that the record is left with the proposition that the Department of Justice would have to assume the full responsibility in that regard.

This is not the way I would conceive of the situation at all.

Mr. HEINEMAN. Clearly not, sir, and if I left such an impression, it was not my intent.

The impression that I hoped I was leaving was that the Interstate Commerce Commission——

The CHAIRMAN. I am sure that the gentleman did not intend to do that, but what you have said here and what Mr. Rogers said the other day, and the questions of Mr. Younger this morning to Mr. Brosnan and his reply thereto, seems to be building up the record that the Interstate Commerce Commission is relieved of any further responsibility at all in matters of this kind.

Mr. HEINEMAN. That is not the intent under the bill, sir.

The CHAIRMAN. I want the record to be clear on that.

Mr. HEINEMAN. I thank you, sir.

The CHAIRMAN. Does any member of the committee have any questions?

Another thing, if I might say so, I think I am the only man on the committee that was on it at the time that the Reed-Bullwinkle was passed.

I remember very clearly the tremendous problem that we had at that time in bringing about the approval, and I was a little bit, do not suppose I should say surprised, but it did cause me to take notice, when the message carried with it in the legislation the repeal of that provision.

I know there are certain people and groups in the country that did not like it when it was passed, and they have not liked it since, and they are never going to like it, I suppose.

I have the feeling that history has proven that the majority was correct, however, and even the Department of Justice, insofar as I know, has been unable to show any adverse results from that action taken by the Congress that was finally approved by the President.

But I am glad to have your statement on that, because it is something new to most members of the committee, and I commend the problem to all members of the committee to give close attention to during consideration of this entire matter.

Does anybody have any comment or questions?

Mr. SPRINGER. Mr. Chairman, I would like to say that this has been an excellent statement.

I think in many instances it is awfully hard to keep your mind on the work, but I think you have done an excellent job orally.

Mr. HEINEMAN. Thank you.

Mr. SPRINGER. There are one or two things I would like to ask about.

What is your passenger situation on the Chicago & North Western?

Mr. HEINEMAN. We, of course, divide our passenger business into two types. We have our suburban service, and what we call our long-haul or intercity passenger service.

Mr. SPRINGER. Now, I am talking about your suburban service.

Mr. HEINEMAN. In the past 5 years the North Western Railroad has spent $43 million modernizing our suburban service. It is the most modern suburban service in the world.

Mr. SPRINGER. Now, the second question:

Are you making any money?

Mr. HEINEMAN. For 2 years after we did it, we made money, a little money. We broke even, which we regard as a very handsome result.

With the opening of the Northwest Expressway, built, of course, with Federal and other funds, it took about 7 percent of our passengers away, and it put us in the red. We are not discouraged.

We are hopeful that by the exercise of some ingenuity and resourcefulness and perhaps a small rate increase, and if the North Shore is permitted to go out of business, that we will be in the black again.

Mr. SPRINGER. You are not asking for any Federal help at this time?

Mr. HEINEMAN. The North Western is not, sir.

I ought to say, however, that we believe that our position in Illinois in this respect is more fortunate, perhaps, than some of the other railroads in the country, including the East. We believe that we are fortunate to be in Illinois.

Mr. SPRINGER. I take it the substance, the heart, of your whole statement is that the important issue is the relief from the minimum rate regulations?

Mr. HEINEMAN. Yes, sir.

Mr. SPRINGER. And that is the point you emphasize?

Mr. HEINEMAN. Yes, sir.

Mr. SPRINGER. All the rest of this is ancillary?

Mr. HEINEMAN. In my opinion, that will correct many of the difficulties of the common-carrier industry and assist and relieve this committee of many burdens.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Heineman, let me, on behalf of the committee—Mr. Williams?

Mr. WILLIAMS. One question. I want to clarify one point, Mr. Chairman.

Mr. Heineman, I join with my colleagues in commending you on an excellent statement.

Yesterday Mr. Loomis appeared before the committee, as you know. Mr. Loomis was very emphatic in his request that complete equality be given to the railroads in regard to the handling of agricultural and bulk commodities. He expressed objection to the repeal of the mixing rule and the three-commodity rule with respect to water carriers, and said that he felt, if I recall his testimony correctly, that the bargelines or water carriers and the truck carriers should be placed on exactly the same level of equality with respect to regulation of these commodities as the railroads.

Now, you indicated in your statement, if I understood you correctly, that, as far as you personally were concerned, and as far as your railroad was concerned, you were not demanding, although I feel sure you would like to have it, you were not demanding complete equality in this respect; that the elimination of the regulation of minimum rates would be a tremendous stride forward, and, even though you might not be able to get complete equality, you would be very happy to have that.

Am I correct in that?

Mr. HEINEMAN. You have correctly understood me, sir. I think that we must be practical. I think there are some limitations on obtaining complete equality overnight, and I think that a significant step like this would be of great help to the railroad industry.

Mr. WILLIAMS. I presume that you do not take exception to Mr. Loomis' position, but you simply feel that you would rather have a little bit than nothing?

Mr. HEINEMAN. You are correctly stating my position, sir.

Mr. WILLIAMS. Thank you, sir.

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

Mr. HEINEMAN. Thank you, sir.

The CHAIRMAN. We are very pleased to have your testimony, sir.

The committee will adjourn on these bills until Tuesday, July 24, at 10 a.m. The hearings will resume at that time and continue during that week.

We may have to have a break on Thursday for an executive session. Otherwise, we are going to try to proceed with these hearings towards their conclusion.

We are going to give everybody an opportunity to be heard within reason, but we want to develop a full and complete record on it.

(Whereupon, at 12:30 p.m., the hearing was adjourned, to reconvene at 10 a.m., Tuesday, July 24, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

TUESDAY, JULY 24, 1962

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

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

The CHAIRMAN. The committee will come to order.

We will resume our hearings on the transportation bills, and with particular reference to H.R. 11583 and 11584, the subject of the message of the President of the United States, and related bills thereto. Our first witness will be our friend and colleague, Arnold Olsen, from Montana. We are pleased to have your statement, sir.

STATEMENT OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. OLSEN. Thank you, Mr. Chairman and members of the committee.

I appear today before your committee to present my views on H.R. 11583, a bill to exempt certain carriers from the minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers. The people of my district favor this legislation.

First, I would emphasize the size of the transportation industry in our country today. In the most recent report I have read, published by the Transportation Association of America, it is stated that one out of every five dollars spent by the U.S. citizen each year goes for some kind of transportation service cost. It was reported by the TAA that the 1961 freight bill was estimated at $44.1 billion. In 1961, Americans spent $53.4 billion for passenger travel. Each year, it is estimated that $2.5 billion is spent by the Federal and State Governments for transportation facilities, over and above the direct reimbursements from the users. The cost of transportation to our citizens is thus more than $100 billion a year. This figure would amount to about one-fifth of the gross national product. The total cost of our national defense budget is yet only half of the amount spent for transportation in our country. The cost of the freight bill alone has risen $3.5 billion from 1958 to 1961, amounting to a total of $44.1 billion. Trucking service amounted to two-thirds of the total amount; railroad services amounted to 21 percent with approximately $1 billion by handlers of freight cars; overland pipeline amounted to over $1 billion; water carriers about $2.8 billion; airlines collected $382 million

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in freight and mail revenues. While it is a fact that the citizens of our country do not pay for this item directly, they do pay for them when they build a home, buy clothing, food and other essentials necessary for daily living.

To recapitulate, the total amount of freight and passenger costs for trucks, busses and autos represents an amount of $80 billion. This represents 80 percent of $100 billion of the transportation bill and 15 percent of our country's amount spent on goods and services annually. Mr. Chairman, this cost factor charged annually to the citizens of our Nation is the reason for my testifying before your committee in support of H.R. 11583.

This bill will go far in clearing up the transportation mess that has weakened our national transportation and our national welfare. This bill will introduce competition into this phase of our national industry and will reduce the cost of living by saving the public hundreds of millions of dollars each year by lowering some high freight charges. The termination of some regulations would give the carriers independence in fixing minimum freight and passenger rates. It would instill individual initiative consistent with public interest. This measure would not interfere with Interstate Commerce Commission's regulations of maximum rates. It would end ICC's jurisdiction over minimum rates on bulk commodities and on agricultural and fishery products, and include passengers. These rates, henceforth, would be subject only to the antitrust laws.

This bill would enable the railroads to compete with other modes of transportation for the great tonnages of bulk commodities and agricultural products which now move largely in private and unregulated highway trucks and waterway barges. This proposed legislation gives railroads nothing that other forms of transportation do not already have, and nothing to which they have not long since been justly entitled.

Mr. Chairman, we are living in competitive times, not just within our own country, but throughout the world. Today in Europe, there is being established a cohesive and unified transport policy that can have the effect of integrating all modes of transportation into one vast, efficient complex, serving the Common Market countries. Gentlemen, an efficient and dynamic transportation system is vital to our domestic growth, productivity, and progress. In every way, this legislation is in the best interest of our national well-being.

The CHAIRMAN. Thank you for your fine statement, Mr. Olsen. If there are no questions of the committee we will continue with our next witness, Mr. Jervis Langdon, Jr., president of the Baltimore & Ohio Railroad.

Mr. Langdon, we are glad to have you back with us, and we will be pleased to have your testimony.

STATEMENT OF JERVIS LANGDON, JR., PRESIDENT, THE BALTIMORE & OHIO RAILROAD CO.

Mr. LANGDON. Thank you, sir.

My name is Jervis Langdon, Jr., and I am president of the Baltimore & Ohio Railroad Co., with headquarters at Baltimore, Md.

Primarily, my testimony will deal with H.R. 11583, which, along with H.R. 11584, was introduced to give effect to some of the proposals

contained in the President's message on transportation. So far as H.R. 11584 is concerned, I would endorse the testimony already submitted Mr. D. P. Loomis, president, Association of American Railroads.

A greater degree of equality in the treatment by Government of the several forms of transportation is undeniable. H.R. 11584 would move in this direction by exempting the railroads from ICC control of minimum rates when hauling—

(*a*) Bulk commodities that water carriers transport without economic regulation under part III of the Interstate Commerce Act; and

(*b*) Agricultural and fishery products that motor carriers transport without economic regulation under part II of the same act.

It is to be emphasized that H.R. 11583 would take no more than a step toward equality. When handling bulk commodities, water carriers would continue to be subject to no regulation at all; they could make secret rates, contract or otherwise; rebate at will; and discriminate without restraint. No publication of their rates is required and no notice to the public. Motor carriers, when moving agricultural and fisher products, would continue to have the same freedom.

Under H.R. 11583, on the other hand, railroads would be under full economic regulation in relation not merely to maximum rates but also to every conceivable form of discriminatory rate practice. Even as to minimum rates, the proposed legislation would not give the railroads equal standing. For railroad rates on bulk commodities and agricultural and fishery products would continue to be published on 30 days' notice and be subject to rejection or change if found unduly preferential or prejudicial or unjustly discriminatory.

In supporting the proposed legislation, which I do most enthusiastically, it is not necessary to argue in favor of equal treatment for the railroads. Everyone concedes this, even spokesmen for inland water carriers. In a speech before the New York Security Analysts on May 24, 1962, Mr. J. W. Hershey, chairman of the board, American Commercial Barge Line Co., pointed out:

> The regulated carriers, who handle some 40 percent of the total traffic on the Mississippi-Ohio River system, have also long favored the repeal of the exemptions and the application of ICC regulation equally to all modes.

Only last month, on June 12, 1962, this position was echoed by Capt. A. C. Ingersoll, Jr., president, Federal Barge Lines, Inc., in a speech before the ICC Practitioners in Washington, D.C., who said:

> For more than 10 years the water common carriers have joined the railroads and the Interstate Commerce Commission in pointing out the inequity of the bulk exemption and have urged repeal in the interest of the "fair and impartial regulation of all modes of transportation" urged in the national transportation policy.

The principal point I want to make in this statement is that this equal treatment of the several forms of transportation—an objective that everyone accepts—can only be approached (by legislation such as H.R. 11583) and ultimately achieved (by further legislation in the years ahead) by exempting the railroads and not be regulating the other forms. The reasons for this conclusion follow:

First: There is the very practical consideration that regulation of water carrier rates on bulk traffic and motor carrier rates on agricul-

tural and fishery products is "deadlocked" and thus impossible to achieve. On prior occasions, when the subject has been up, strong opposition on the part of industry, commercial interests, and particularly farm groups has presented itself, and there is no reason to believe that such opposition would be less articulate or effective if the possibility came up again. Moreover, the carriers engaged in this exempt transportation are themselves opposed to regulation. As frankly acknowledged by Captain Ingersoll of the Federal Barge Line during the course of the same speech previously referred to:

> This perennial recommendation (that water carrier rates on bulk traffic be put under regulation) has been opposed by the growing body of exempt bulk water carriers, apparently laboring under the unwarranted delusion that economic regulation would be injurious to them, and by shipper organizations, apparently believing that economic regulation would necessarily reduce competition.
>
> A deadlock has resulted.
>
> * * * * * * *
>
> With the stated justification for the proposal, "equal competitive opportunity," we completely agree. We are sorry if the deadlock on the extension of regulation prompts this proposal to correct the longstanding inequity by an experiment in a partial deregulation of the railroads * * *.

In the past, when railroads have been brought under regulation and certain other forms under partial regulation, it has been accomplished with the approval, at least tacit, of many of the carriers concerned and also of the shipping interests who have been the users. Here, the situation is radically different. Extension of regulation to bulk traffic moving by water and agricultural and fishery products moving by highway would be fiercely resisted. Accordingly, the Congress, in moving toward equality, has no alternative but to go in the direction pointed to by the proposed legislation.

Second: Even if, expressly contrary to the conclusion just stated, it were feasible to put the water transportation of bulk commodities and the highway movement of agricultural and fishery products under regulation, equality among the several forms would still not be achieved. Private transportation on the waterways and highways would, of course, remain untouched.

It is realized that when equality of regulation among transportation modes is referred to, only public carriers are meant. But equality, so limited, has little meaning as private transportation, unrestrained by any form of regulation, leaps forward and displaces public carriage. Railroads and other public carriers must be free to deal with private transportation and to offer the shipper a more attractive proposition. The ICC, in its regulation of competitive railroad rates, is willing to be more lenient when the competition being faced is private carriage, but it is often disabled from being so because the public water and motor carriers will invariably oppose the railroads as a matter of routine—even when their primary target is private transportation. In other words, regulated carriers are often prevented from dealing with the true competition, which is private transportation, because of opposition (of a nature that the ICC customarily recognizes) from public carriers of the same form as the private ones.

Third: Since World War II there has been a practical demonstration of the inability or incapacity of a public agency to preside over the competition of different forms of transportation in a manner which at once (1) promotes competition, (2) encourages the use of

competing forms where they are most efficient, and (3) protects the public against competitive practices which are truly unfair or destructive. This is not a case of special ICC inability or incapacity. It is simply too tough a job for any regulatory body to do. The obvious alternative, as provided in H.R. 11583, is to let competition take its course, subject to the restraints of the antitrust laws.

From the very beginning of competition among different transportation modes, the railroads have recognized, as they recognize at the present time, that they are properly subject to a prohibition against unfair or destructive competitive practices. Such a prohibition in words is, of course, an integral part of the national transportation policy that was originally enacted with the Transportation Act of 1940. The great difficulty that has arisen, persists today, and is apparently incurable, is found in the construction and application of this prohibition by the ICC. It is altogether likely that any other regulatory agency, charged with responsibility for the competitive pricing of rival industries, would have fallen into the same bottomless pit.

In 1940, the Congress, foreseeing problems in this area, fixed one basic principle: Subject to the prohibition against unfair or destructive competitive practices, the rates of one mode should be regulated in the interest of that mode and not in the interest of a competing mode. This principle was expressly recognized as "the policy of the law" when, 5 years later, the ICC decided *New Automobiles in Interstate Commerce*, (259 I.C.C. 475), 538, and said:

> As Congress enacted separately stated ratemaking rules for each transport agency, it obviously intended that the rates of each such agency should be determined by us in each case according to the facts and circumstances attending the movement of the traffic by that agency. In other words, there appears no warrant for believing that rail rates, for example, should be held up to a particular level to preserve a motor-rate structure, or vice versa.

But instead of announcing standards that would facilitate the carrying out of this basic congressional intent, permitting the regulated carriers to know where they stood and what was meant by an inability to make rates—

> according to the facts and circumstances attending the movement of the traffic by that agency—

the ICC, in the 10 years that followed the *New Automobiles* case, proceeded to forget all about this precedent. Instead, it embarked upon an entirely different course; that is, the role of a general traffic manager of the railroads and regulated motor carriers. In such role the ICC, purporting to exercise its control over minimum rates, condemned rates as "lower than necessary to meet the competition" and approved other rates because "not lower than necessary"; condemned rates as "not competitively necessary" and approved other rates because "competitively necessary"; and condemned rates as not in the interest of the carrier's net revenues and approved rates that passed this test.

The fact that the lower rates were demonstrably in the interest of the sponsoring carriers was only incidental. Usually, the ICC would be more impressed by a comparison of the proposed rate level and the shipper's cost of using the competing form and the spread, if any, that would exist between them. If the spread appealed to the ICC as reasonable in the light of the value of the competing services, the lower rates had a good chance, but if the ICC believed that the lower

rates were likely to be effective and divert more than "a fair share" of the traffic, it was apt to reject them, irrespective of the economic capabilities of the competing carriers.

In substance and effect, the ICC during the period following the *New Automobiles* case used its power over minimum rates to prevent any rocking of the boat; the status quo must not be disturbed. The fact that, during the same period, exempt carriers and private transportation were leaping forward in their share of the Nation's ton-miles appeared to be beside the point. In describing the decisions of the ICC in the exercise of its role as general traffic manager, Judge Friendly, U.S. circuit judge for the second circuit, has written:

> Each gave rise to a host of subsidiary questions, perhaps unanswerable in any understandable fashion and sure unanswered. How long is "necessary"? Is it the same rate as the rival carrier's, a lower rate which takes account of the latter's service advantages, or a higher rate which allows for service advantages of the proponent? Must it allow for such advantages in full or only in part? The Commission has been on all sides. How much more than a fully compensatory rate may the Commission require simply because it believes the traffic will bear this? Does not the cry of interference with management prerogatives, which the railroads have surely sounded too often, here ring true? Is not the Commission's policy questionable from a public interest standpoint—by what right does it deny a shipper a lower rate, voluntarily offered, that will yield the carrier all costs and even some return? Hardest of all, what share of the traffic is "fair"? Is it an existing but very likely depressed share, a former higher share, a 50–50 share? A king whose name has become synonymous with wisdom assumed to make such a decision only with good assurance he would not have to go through with it; the Commission might have been wiser to have followed his lead. (75 Harv. Law Rev. at pp. 1284–1285.)

In 1958, the Congress reaffirmed the basic principle of the Transportation Act of 1940, criticized the ICC for inconsistencies, and referred to the *New Automobiles* case as setting forth the correct approach.

But this congressional action, including the enactment of section 15a(3) as part of the Transportation Act of 1958, brought no lasting change. At first, the ICC, or at least individual Commissioners, appeared to believe that the Congress intended no change, although it seemed, following the passage of section 15a(3), that lower railroad rates were finding greater acceptance at the offices of the ICC, and there were fewer suspensions. Later, under the sort of fierce and unrelenting pressures that subjects of this kind inevitably generate, culminating in the well-known Hoffa bill (S. 1197) that received the enthusiastic endorsement of the trucking and water carrier interests, the ICC openly resumed its role of general traffic manager and the practice of fixing arbitrary differentials between railroad rates and the shippers' costs of using competing forms in order to "protect" these competitors. There was no embarrassment to the ICC in this renewed activity because, consistent with its practice of never disclosing standards or guideposts, it had said nothing officially about the impact, or lack of impact, of section 15a(3). In the Doyle report of last year, at p. 405, it is said:

> The Commission in its written decisions and its statements to congressional committees provides the best documentation of the thesis that the meaning of minimum rate policy is less certain and its application more confusing than before the addition of section 15a(3).

Even on the question of what constitutes a compensatory rate the ICC has not been clear. As pointed out in a recent study:

> One searches in vain for an unambiguous pronouncement of general policy with respect to the various measures of compensativeness. Indeed, the reading

of the decisions creates the impression that the Commission selects whichever theory appears best to fit the case at hand (Fulda, "Competition in the Regulated Industries Transportation" 370 (1961)).

With particular reference to the ICC's minimum rate power, Judge Friendly, U.S. circuit judge for the second circuit, has said further:

* * * the minimum-rate power has raised a series of substantive questions, with the opposing forces in the kind of direct conflict with which courts are familiar—questions that were, and still are, susceptible of yes or no answers. It should have been possible for the Commission to develop a series of propositions within the broad congressional directives, as these have changed from time to time, such as we have seen done by the Labor Board—propositions that would have pretty well determined most cases and therefore ought altogether to have eliminated a great many of them. To be sure, the task was an agonizingly hard one. All too often the Commission was not supplied with the cost tools needed for the job, and its decisions were bound to have a literally vital effect on transport companies with large investments and many employees, not to speak of the shipping and consuming public, whose interest often seems to have been rather neglected in the heat of intermodal rivalries. But, whatever the anguish of decision, the fruits of indecision have proved more bitter still; the Commission's drifting among the minimum-rate shoals have submerged it in waves of proceedings that definition would have avoided, and has provoked criticisms from all modes of transportation the Commission regulates and from many disinterested sources as well.

Based on this actual attempt on the part of the ICC to control the minimum ratemaking of different forms of transportation—each in competition with the other—the conclusion is easily drawn that the job is simply too much for one regulatory body. The ICC's only escape valve has been to act as an overall traffic manager and to try to keep peace in the family by dividing (on the basis of undisclosed standards) competitive traffic. I know that the ICC vigorously denies that its minimum rate power is used for this purpose, but I also know that many of its decisions have this effect.

Certainly an overall traffic manager, with a desire to keep everyone happy, stands in the way of a national transportation system where each form does the job for which it is best equipped. In moving toward such a system, traffic will in certain cases shift in accordance with the economic characteristics of the competing modes, but the shifts will be in the interest of the greatest economy for the Nation as a whole. A traffic manager, concerned primarily with "fair shares" and the safeguarding of competitors instead of competition itself, is superfluous and should retire from the scene. His place will be taken by a judicial system that will apply the prohibition against unfair or destructive competitive practices as a judicial system should. For if a public body is properly charged with telling the railroads (and other modes) that the lower rates they propose on the basis of economics are not competitively justified and will attract too much business—a public body that, of course, assumes no responsibility for the actual results—then the time to turn the entire railroad industry over to the Government has come. In that event, the Government would at least be directly accountable.

There is, however, an alternate, much to be preferred—the one provided by the legislation (H.R. 11583) here under consideration. Let the carriers make their own decisions. In carrying them out, of course, the carriers cannot be guilty of truly unfair or destructive competitive practices, but here the antitrust laws will apply. This is much to be preferred to the judgment of a regulatory agency whose

urge to act as an overall traffic manager (under the guise of prohibiting such practices) has proven irresistible.

Fourth: The final reason I have for urging the passage of H.R. 11583 is that it would bring new life to those trying to promote railroad service. The psychology here is of immense importance, particularly in an industry that, in its share of the Nation's total ton miles, has been going downhill. The president of the American Trucking Association is quoted in the public press as believing that the railroad industry is decadent. The early enactment of H.R. 11583 would be helpful in proving him wrong.

It is one thing to be subject to public control in the fixing of maximum rates and the avoidance of discriminatory rate practices. It is quite another thing to be subject to such control in the naming of rates that are designed to advance a competitive position. In the latter case, the public control operates to suppress initiative and discourage the assumption of responsibility. Personnel with imagination and competitive instincts are not attracted to an industry where a government body reserves the right to say what is competitively necessary and what is not competitively necessary. H.R. 11583 would open the door to the exploitation of rail capabilities and represent a real and welcome challenge.

Near the beginning of the President's message on transportation the following paragraphs appear:

> The regulatory commissions are required to make thousands of detailed decisions based on out-of-date standards. The management of the various modes of transportation is subjected to excessive, cumbersome and time consuming regulatory supervision that shackles and distorts managerial initiative. Some parts of the transportation industry are restrained unnecessarily; others are promoted or taxed unevenly and inconsistently.
>
> Some carriers are required to provide, at a loss, services for which there is little demand. Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates. Restraints on cost-reducing rivalry in ratemaking often cause competition to take the form of cost-increasing rivalry—such as excessive promotion and traffic solicitation, or excessive frequency of service. Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt. Some carriers benefit from public facilities provided for their use, while others do not; and of those enjoying the use of public facilities, some bear a large part of the cost, while others bear little or none.
>
> No simple Federal solution can end the problems of any particular company or mode of transportation. On the contrary, I am convinced that less Federal regulation and subsidization is in the long run a prime prerequisite of a healthy intercity transportation network. * * *

I conclude this statement by endorsing the President's views and expressing the hope that the Congress will move speedily to an enactment of the implementing legislation.

Mr. Chairman, there has also been distributed a brief supplementary statement with my answer to Chairman Murphy's testimony, which I, with your permission, should like to read.

The CHAIRMAN. Very well.

You may proceed with it, Mr. Langdon.

Mr. LANGDON. The purpose of this supplementary statement is briefly to consider two points made in the testimony of Chairman Murphy of the Interstate Commerce Commission in opposition to H.R. 11583.

(*a*) Section 4 (the long- and short-haul clause) of the Interstate Commerce Act: Chairman Murphy raises a question as to whether under section 4 of the Interstate Commerce Act the Commission would continue to have authority to require rates to further distant points to be reasonably compensatory if, as contemplated by H.R. 11583, "it has no authority to determine that such a rate is lower than a reasonable minimum rate."

I do not believe that there is any reason for Chairman Murphy's concern.

Section 4 prohibits violations of the so-called long- and short-haul clause but does permit the ICC "in special cases" to authorize the charging of a lower rate to a further distant point than to the intermediate point on the same route. One of the conditions that must be satisfied in every such "special case" is that the lower rate to the further distant point be "reasonably compensatory."

This statutory condition in section 4 will obviously continue if the proposed legislation dealing with minimum rates is enacted. In fact, there is no connection between the two. In administering section 4, the ICC has developed its own standards for measuring whether a rate is reasonably compensatory. *Transcontinental Cases of 1922* (74 I.C.C. 48). The proposed legislation would leave these unchanged so far as the administration of section 4 is concerned.

Chairman Murphy also suggests that, with no power to control minimum rates, the ICC might be powerless to deny applications for relief from section 4 where the issue was whether the lower rates to the further distant points were "reasonably compensatory."

Again there would seem to be no reason for apprehension.

Section 4, as stated above, prohibits special forms of discrimination but gives to the ICC the power to make exceptions in "special cases." What these special cases may be is for the ICC to say on the basis of the evidence in individual situations, and this discretion on the part of the ICC would not be affected by H.R. 11583. Nor (as indicated above) would its ability to enforce the statutory test that the further distant rate be "reasonably compensatory" be changed in any way.

(*b*) Section 3 of the Interstate Commerce Act: Passing on from section 4 to the other provisions of the act prohibiting unjust discrimination and undue prejudice and preference, Chairman Murphy says that the enactment of H.R. 11583 would disable the ICC from giving relief to complaining parties:

With reference to litigation over the grain rate structure, he says (p. 5):

> We believe that in this type of case it would be difficult to guard against unlawful discrimination without the power to eliminate such discrimination, wherever found, by the prescription of minimum as well as maximum rates.

In contests between ports over the relative levels of export and import rates by rail, Chairman Murphy says (p. 7):

> Even where the Commission could find jurisdiction under section 3, its ability to deal effectively with such a situation would largely be defeated since, without the minimum rate power, it could prescribe only rate relationships between the ports, in total disregard of the minimum level of the rates.

And again:

Without the minimum rate power the unlawful discriminations in the southern class-rate structure, *Class Rate Investigation* (1939, 281 I.C.C. 213), could not have been eliminated.

* * * * * * *

Without the minimum rate powers, those findings—that the class rates in the North were below a just and reasonable level—could not have been made, and the unlawful discrimination could not have been removed. The shipping public would not have, under this bill, the protection against discriminatory practices of the carriers that it has now.

Referring to a controversy over the relationship of rates on bituminous coal originating at mines in Illinois, Indiana, and western Kentucky and moving to Illinois and Wisconsin destinations—a controversy that reached the Supreme Court and was decided in litigation known as *Ayershire Corp.* v. *U.S.* (335 U.S. 573)—Chairman Murphy says further:

The controversy was settled by the prescription of the reasonable, nondiscriminatory and nonprejudicial rates found necessary by the Commission to constitute a lawful adjustment. This could not have been done without the minimum rate power.

In dealing with H.R. 11583 in the manner indicated, it occurs to me that Chairman Murphy has overlooked at least two salient points. these are:

First: The Commission's power to prescribe nicely balanced rate structures in order to avoid discrimination has much less meaning than it used to have in the old days when railroads handled most of the traffic. All of these relationships have been badly undermined and made academic, at least in large part, by the tremendous growth of exempt transportation that does no pay any attention to the ICC or is nicely balanced rate structures.

Second: In any event, it is not the minimum rate power that the ICC employs to eliminate unjust discrimination or undue prejudice or preference. Rather, it is the ICC's power to prescribe the precise or exact reasonable rate that is accorded by section 15 of the Interstate Commerce Act. The ICC, in other words, has today not only the power to prescribe maximum and minimum rates, but it also can name the precise rate within the zone of reasonableness for the purpose of eliminating unjust discrimination. H.R. 11583 would in no way interfere with this ICC authority. As set forth in the Supreme Court's decision in *Ayershire Corp.* v. *U.S.* (335 U.S. at p. 593) (a decision cited in Chairman Murphy's statement):

This is not a case like *Texas & Pacific Railroad Company* v. *United States, supra*, where the Commission issues a so-called alternative order directing the carriers to remove an unjust discrimination or undue preference which has been found. That kind of order leaves a choice to the carriers whether to eliminate the unlawful practice by raising one rate, lowering the other, or altering both. But, as we recently held in *New York* v. *United States, supra*, at 342, that rule is not applicable where the Commission itself undertakes to correct the unlawful practice by prescribing the just and reasonable rate. The Commission has taken that action here. As we noted above, the present proceeding was one under section 15(1) and section 15(7). Section 15(1) gives the Commission power to determine and prescribe the just and reasonable rate once it finds, inter alia, that any rate charged is unjustly discriminating or unduly preferential or prejudicial. The Commission in the present case has exercised that power. It has prescribed approved rates. They are rates which in the Commission's judgment will eliminate the unjust discrimination and undue preference found to exist in this rate structure. Hence, the question whether

Milwaukee effectively controlled the higher jointline rates is irrelevant here. *New York* v. *United States, supra.*

Finally, it is suggested that the order is invalid because the Commission did not find that the preferential rates were noncompensatory. But once a forbidden discrimination or preference in rates is found, the Commission may remove it even though the rates are within the zone of reasonableness. *New York* v. *United States, supra,* at 344.

In short summary, I do not share Chairman Murphy's concern as to the power of the ICC, in the event H.R. 11583 passes, to cure any form of unjust discrimination or undue preference or prejudice that may arise under the Interstate Commerce Act.

Finally, Mr. Chairman, I should like to add that in line with the policy stated by Mr. Brosnan for the Southern Railway in extending competitive rates to inland points, the B. & O. has exactly the same policy, and I have here a list of specific instances where we recently have extended to inland points not affected by the competition the same basis of rates that was established to meet competition.

I wanted, in other words, the record to show that the B. & O.—and, incidentally, there are other railroads, too—follows this same policy.

You see, otherwise, if we do not do this, these industries are going to move to the river. In fact, a great many of them, I think in the days past, probably moved to the river because of different treatment insofar as rates are concerned.

We are not going to let that happen, if we can possibly avoid it, nowadays.

We are making it a practice on the B. & O.—and I say this is not confined to our property; it is being accepted quite widely nowadays—to extend the same competitive level of rates to inland points as to water-competitive points.

That is all I have, sir.

Thank you.

The CHAIRMAN. Mr. Langdon, thank you very much for your statement on this question.

We are trying to develop as complete a record on all of these subject matters as we can.

There are related bills before the committee, some of which are being urged on the committee at the present time. I assume that your attention has been occupied with the particular bills that you referred to, and, consequently, you had not given any thought to other provisions. I have in mind specifically a bill which has passed the other body and which is pending before this committee, to which some attention has been given pro and con.

More recently, the committee has been getting more and more interest.

Some are urging that consideration be given shippers and organizations generally. Some have questions about it, and I refer to S. 2560.

I fully realize that some provisions of that bill are related to some of the provisions on which you have testified here today, but, in view of the fact that little attention has been given to it and yet great interest has been manifested in it, I wondered if you had had any opportunity to consider it; and, if so, if you have any comments to make on it?

Mr. LANGDON. Sir, it is my understanding that that is the so-called gray area bill, is that correct?

The CHAIRMAN. It is designed and alleged to reach that particular problem. Whether or not it does, we do not know, because no one has given any attention to it yet, and that is what I am calling to your attention, those of you who should be familiar with these problems and their relation to these activities.

I think the committee should have the benefit of your wisdom and experience and knowledge of the subject.

Mr. LANGDON. We are strongly for that legislation, Mr. Chairman, and I think this is one piece of legislation where all the regulated carriers are in favor of, and have a common interest in, this particular legislation.

Certainly the railroads are for it, and I understand that the other forms are, too, the regulated portions of the other forms are for it, too.

The CHAIRMAN. The National Association of Railroad Utilities objects to certain features of it. That has been called to my attention, particularly to section 1 of the bill.

I intend to include, and will at the appropriate place in the record, a resolution that I have on that particular problem. I think that we should have someone, sooner or later, give a full description of that problem, those who are interested in it, and not skim over it, in the hope that the committee will be familiar with it and in a position to take action.

I bring this to your attention at this time because others of the industry, and I believe the Commission itself, skimmed over it.

I think, if there is going to be any consideration of it at either this present session of Congress or at a later date, somebody had better start giving some attention to it.

Mr. LANGDON. Sir, I will be glad to have an analysis made of this proposed legislation from our point of view and submit it very promptly.

The CHAIRMAN. We would be glad to have you do that.

(The following letter was received in response to Chairman Harris' request:)

THE BALTIMORE & OHIO RAILROAD CO.,
EXECUTIVE DEPARTMENT,
Baltimore, Md., July 30, 1962.

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

DEAR CHAIRMAN HARRIS: During the course of my appearance before the Committee on Interstate and Foreign Commerce on July 24, 1962, in support of H.R. 11583 and H.R. 11584 (bills introduced in implementation of certain recommendations contained in President Kennedy's transportation message of April 5, 1962), you asked me to submit for the record my views as to another bill pending before your committee. That bill is S. 2560, "to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes," passed by the Senate on June 29, 1962, and referred to the Committee on Interstate and Foreign Commerce on June 30, 1962.

S. 2560 is designed to foster and encourage activity against illegal operations in the motor carrier field at both the Federal and State levels and by private parties. It has come to be known as the gray area. Gray area truck operations may be said generally to be those that are unauthorized and unlawful but in many instances difficult under present circumstances and present law to apprehend, punish, and halt.

The railroad industry endorses and supports S. 2560. It is well known that regulated common carriage in the United States has declined in stature and

status as unregulated carriage has developed and prospered. One important reason for this trend has been the accelerated growth of unlawful highway operations. Corrective measures are indicated if the problem is to be solved; and S. 2560 represents a worthwhile starting point.

The bill would provide means for stricter and more effective enforcement of certain of the substantive provisions of the Insterstate Commerce Act relating to motor carriage. From the standpoint of the railroads, the most important and desirable provisions of the bill are those that would:

(1) Authorize the Interstate Commerce Commission to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation (sec. 5).

(2) Make the civil forfeiture provisions of part II of the Interstate Commerce Act applicable to unlawful operations and safety violations, and increase the amount of such forfeitures (sec. 3).

(3) Enable any person injured by specified violations of the Interstate Commerce Act to obtain injunctive relief against the violator (sec. 2).

As to (3) above, however, we believe that an amendment of S. 2560 would be desirable. Section 2 of the bill would add to section 222(b) of the Interstate Commerce Act a new paragraph (2) under the terms of which any person injured by certain violations of the act would be enabled, under stated circumstances, to sue in the Federal courts for injunctive relief. The violations involved are those related to the requirements of the act in respect of motor carrier operating authority (certificates of public convenience and necessity, permits and brokerage licenses). Such suits for injunctive relief could not, under the terms of the proposed new paragraph (2), be brought against any motor carrier holding a certificate or permit or grant of temporary authority issued by the Interstate Commerce Commission, but only against persons not holding such a certificate or permit or temporary grant. Section 222(b) of the present act, proposed now to be designated paragraph (1) of section 222(b) (see line 14 on p. 3 of S. 2560), already allows the Interstate Commerce Commission to apply in the Federal courts for injunctive relief against any motor carrier or broker operating in violation of certain provisions of the act including those provisions the violation of which would furnish basis for relief under the proposed new paragraph (2).

The addition of the proposed new remedy would aid greatly in curbing illegal highway operations, and we favor its adoption. We urge, however, that the language be amended in one respect before enactment. In lines 22 and 23 on page 4 of S. 2560 it is provided that the operation to be enjoined must be "in clear and patent violation" of the provisions of one or more of the specified sections of the Interstate Commerce Act. This language could be construed as requiring a greater quantum of proof from the plaintiff in a suit under proposed section 222(b)(2) against one not holding operating authority than is required in the case of a suit under the preceding paragraph against an authorized motor carrier.

An injunction suit is civil in character, of course, and the proof required is not generally understood to be, as it is in a criminal case, "beyond a reasonable doubt." Yet the language "in clear and patent violation" might be thought to approach a requirement for proof beyond a reasonable doubt. Almost certainly its use would be construed as requiring a higher degree of proof than that required for obtaining an injunction under the preceding paragraph (applicable in the case of suits by the Interstate Commerce Commission against motor carriers holding certificates or permits); and there appears to be no need or justification for such a distinction.

We urge, therefore, that the words "clear and patent" in lines 22 and 23 on page 4 of S. 2560 be stricken.

Sincerely,

JERVIS LANGDON, Jr.

The CHAIRMAN. Mr. Mack, any questions of Mr. Langdon?

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Langdon, out of what you consider 100 percent of traffic in these three categories in your area, how much do you carry?

Mr. LANGDON. On the B. & O., sir?

Mr. SPRINGER. Percentagewise.

Mr. LANGDON. I think we are about the same as the industry, approaching 70 percent; the bulk traffic plus the agricultural traffic approximate 70 percent of our tonnage.

Mr. SPRINGER. Of the remaining 30 percent in these three categories under question in this bill, how much is carried by water?

Mr. LANGDON. I would say very little on the inland waterways. There may be sugar movements; there may be cotton movements. These are the two principal commodities that come to mind at the moment.

Of course, the water carriers, really the inland water carriers certainly do not carry—and I do not think they want to carry—so-called merchandise traffic.

Mr. SPRINGER. These three categories now?

Mr. LANGDON. I beg your pardon, sir?

Mr. SPRINGER. In these three categories in this particular bill?

Mr. LANGDON. I am afraid I do not understand your question, sir. I am sorry.

Mr. SPRINGER. I said the three categories of producing, specifically mentioned in this bill.

Mr. LANGDON. Whether sugar moves over the highway as an exempt agricultural commodity, I suppose it does, and I suppose cotton in certain forms does. But when it is processed, I imagine the exemption would not apply.

Mr. SPRINGER. Now, what about the water carriers?

What percentage of the remaining 30 percent do they carry of these three products mentioned in this bill?

The CHAIRMAN. I think you misunderstood, Mr. Langdon. What Mr. Springer has in mind is the fact that in the bill it refers to the exemption of No. 1 bulk commodities.

Mr. LANGDON. Yes.

The CHAIRMAN. No. 2 agricultural commodities—that is the products he had in mind.

Mr. LANGDON. Oh, I see.

Mr. SPRINGER. I am trying to find out—in your particular area you say you carry 70 percent of those three products; is that correct?

Mr. LANGDON. Of our total traffic, about 70 percent would be either bulk traffic or agricultural products, including fishery products.

Mr. SPRINGER. I am trying to find out, of the area which you would ordinarily support, of the 100 percent in these three products, do you carry 70 percent of all in your area?

That is what I am trying to find out.

Mr. LANGDON. Oh, no.

Mr. SPRINGER. As served by your railroad?

Mr. LANGDON. No. I wish we did.

Mr. SPRINGER. Now, how much do you carry? That is my point.

Mr. LANGDON. I am sorry, sir, I cannot offhand give you that figure except with relation to a few specific commodities such as coal.

I know how much coal we handle in the East as compared with the other lines, and in the movement of iron ore I have a fair idea of how we stand, but in relation to bulk traffic generally by all forms of transportation in our territory, I am afraid I could not at this moment give you a percentage figure.

Mr. SPRINGER. Can you give me an estimate? Is it 20, 30, 40, 50, or 60 percent of the three categories described in this bill?

Mr. LANGDON. I would say we were pretty close, in the East, now, east of the Mississippi and north of the Ohio River, I would say that the B. & O. probably carries between 8 and 10 percent of the rail traffic.

Mr. SPRINGER. All right.

Now we are getting down to——

Mr. LANGDON. Wait a minute, sir. Of the rail traffic. Now, how much of this traffic is moving through the barge canal and up through the St. Lawrence Seaway and over the highway, of course, no one knows.

Mr. SPRINGER. Now, you are saying, as I get it—and I want to pin this down—you say you are getting 8 to 10 percent. Am I about right on that?

Mr. LANGDON. Of the rail traffic.

Mr. SPRINGER. Of the rail traffic?

Mr. LANGDON. Yes, sir.

Mr. SPRINGER. But you are not saying what percentage you are getting of all of it?

Mr. LANGDON. No; I do not think that figure, sir, is available.

There has never been a census of transportation in this country, and I really do not think that figure is available.

Mr. SPRINGER. Let us see if we can get some opinions. You are an expert in this field, I take it. You are the president of the B. & O. You are a big enough man to have some idea.

If you are in here asking that these rates be changed, the minimum rates, you certainly ought to have an idea where this freight is going. That is what I am trying to find out, to see if we can come up with some idea of where you are in this competitive field.

Now, can you give me an idea as to how much is carried by water that is in competition with you in your area?

Mr. LANGDON. Of course, in our area, sir, the Ohio River, the St. Lawrence Seaway and the barge canal and the Great Lakes are the water-carrying carrier rights-of-way, and I suppose that when you take into account all of the traffic on those waterways, and compare it with bulk traffic by rail, the rail tonnage would be about 30 percent, and of that 30 percent the B. & O. will get 10 percent.

Mr. SPRINGER. Then how much—is the Great Lakes in competition with B. & O.?

Mr. LANGDON. Certainly.

Mr. SPRINGER. Barge lines are in competition with B. & O. in your area, is that right?

Mr. LANGDON. Certainly.

Mr. SPRINGER. The Ohio River is in competition with you, is that right?

Mr. LANGDON. Certainly.

Mr. SPRINGER. All right.

Now, what percentage do they get?

Mr. LANGDON. They would get 80 percent of the bulk traffic. I think I said that rails would get—it was 20 percent that I said the rails would get, but the water carriers would get the balance of it, the balance of the bulk traffic, enormous quantities of coal and other bulk commodities, including petroleum products.

Mr. SPRINGER. Are you talking, then, in terms of the railroads, 20 percent; and the barge lines, the Great Lakes and the river traffic getting 80 percent?

Mr. LANGDON. Yes, sir.

Mr. SPRINGER. Now, do the trucks get any?

Mr. LANGDON. The trucks do not handle much bulk traffic, although they are moving into this. We are having important movements of coal by truck from nearby mines in western Maryland and central Pennsylvania, moving into some of the utilities not far from here, as a matter of fact.

Mr. SPRINGER. Is that extensive?

Mr. LANGDON. It is growing.

Mr. SPRINGER. How big is it?

Mr. LANGDON. It is extensive enough. One plant I know took 500,000 tons of coal by truck in 1 year from nearby mines.

We have had extensive movements of coal by truck into such points as Buffalo, Dunkirk, along Lake Erie ports. Also there is trucking of anthracite coal.

Mr. SPRINGER. Would you say 5 percent?

Mr. LANGDON. Yes, I think probably no more than 5 percent.

Mr. SPRINGER. Then what the situation on the distribution in competition is, it is roughly 5 percent from trucks in these three categories in competition with you. You are getting 10 percent and 20 percent. Seventy-five percent, then, is carried by water, is that about right?

Mr. LANGDON. Yes, on bulk traffic.

Mr. SPRINGER. That is what I wanted to find out. Thank you very much, Mr. Chairman.

Mr. LANGDON. You understand, sir, of course, that these are judgment figures. I will be glad to cull through the available statistics on these and see where there is any further light I can throw.

There is unfortunately very little information available as to transportation by means other than railroad.

That is why I hope we are going to have a transportation census soon, and we will know more about how traffic is moving in this country.

Mr. SPRINGER. Mr. Langdon, may I say this is astounding to me because I had no idea that the diversity was this great. I was rather under the impression—and I think I know a little about this field—that the truck traffic was larger, and I would have thought yours was larger, and I was greatly surprised to know that much moved by bargeline or by water.

This is something the committee wants to know, because we can get an understanding of the relative significance of the forms of transportation in particular areas of the country in competition with the various modes of transportation.

Mr. LANGDON. Sir, you have to keep in mind, insofar as truck transportation is concerned, that they do not specialize in bulk traffic. For the most part, their traffic is so-called merchandise traffic.

Except for coal and one movement of iron ore that I know of, any bulk transportation I cannot think of by truck.

So far as the water transportation is concerned, I am including traffic that moves by private barges on the inland waterways and private carriers.

This is a very important part of the transportation on the Ohio River, and I am including that because it is traffic, some of which at least, I think, we ought to be able to get on the railroad.

Mr. SPRINGER. Mr. Langdon, may I ask this:

You have talked a great deal about bulk. I have been talking, and I want to be sure the committee understands this, there seems to be some inquiry here as to whether or not you are including agricultural produce and fisheries, which are the two other concepts brought out in this bill.

Mr. LANGDON. I am sorry, sir.

So far as agricultural commodities—so far as truck transportation is concerned, I overlooked very heavy movements of agricultural commodities by truck. I am sorry. I was concentrating in my mind on bulk transportation.

Mr. SPRINGER. Now, what about fisheries?

Mr. LANGDON. There is some, of course, but the principal highway transportation—well, yes, oysters and fish from the eastern seaports moving inland, lobsters and so forth, all of that except that portion which moves by air, I think moves by truck. There is some by express, railway express.

Mr. SPRINGER. Now, are you putting the same figures upon these two other products that you are upon bulk insofar as the division of the traffic is concerned?

Mr. LANGDON. I would increase, then, the truck transportation, if you are going to include agricultural commodities, and I did not realize that that was included. I would increase, then, the truck transportation portion of the available agricultural products in the eastern markets. I would say that the trucks were handling well over half. There are some figures on that that the Department of Agriculture has gotten by individual markets, the unloads at such markets as Washington, Baltimore, Philadelphia, and New York, and I think that those figures show that at least a half, and maybe more, of the agricultural products arriving in those markets arrive by truck.

Mr. SPRINGER. That is in competition with your own railroad in your own area?

Mr. LANGDON. Some of it, sir, would be in competition. Others would be local produce that really would not be proper for rail transportation, that is coming within, oh, a radius of 100 miles into market, for instance.

Mr. SPRINGER. I have finished, Mr. Chairman.

The CHAIRMAN. You have raised quite a question here. You have not seen Mr. Loomis' statement, or else you have overlooked it, or else it is in general terms something that you have tried to analyze.

Mr. Loomis gave to this committee a rather voluminous statement about the division of the traffic and the trend over the last several years, and pointed out—I have forgotton in what years, but it is in the statement. He used several years showing what part of the traffic the rails had in these given years and what part the waterways had, what part the motor vehicles had, and so forth.

Mr. LANGDON. That, sir, I think was for the entire country.

The CHAIRMAN. If you can get it for the entire country, why can you not break it down for a given section?

Mr. LANGDON. It might be possible to do this, and it may be that my figures, my guesses, are not as accurate as they should be.

I will be glad to make a special project of this and see if we cannot get to the bottom of it. I am talking about Eastern States, now, because this, I understood, was the question.

The CHAIRMAN. Are you familiar with Mr. Loomis' statement?

Mr. LANGDON. I am familiar, sir, with the division of traffic among modes in this country. Of course, some of them are guesses.

No one knows what is on the highway other than the results of a count that the Bureau of Roads submits as to the number of trucks passing over sample highways in certain periods, and from this they then compute rough aggregates and draw certain conclusions, and then these are added together.

But no one knows, really.

As a matter of fact, those overall national statistics for years left out all intercoastal traffic, and they left out a large part of the coastwise traffic on the ground it was too circuitous.

I do not think those figures, quite frankly, are as reliable as they should be and could be if we had a census of transportation in this country, and I also would like to make the point that they do not apply to the East. I think in the East we have had a heavier, more insistent competitive situation than perhaps in some other parts of the country, sir.

(The following letter was subsequently received for clarification of the record:)

THE BALTIMORE & OHIO RAILROAD CO.,
EXECUTIVE DEPARTMENT,
Baltimore, Md., July 31, 1962.

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

DEAR CHAIRMAN HARRIS: In reading the transcript of the hearing before your commitee on last Tuesday (July 24, 1962) at which you were good enough to receive my testimony, I came across an exchange between Congressman Springer and myself where I want to correct my answer by giving a better estimate. (See pp. 509–520. The truth is, I simply did not understand Mr. Springer's question at the time it was put to me, and my answer was not properly responsive. I am sorry for this. The question is clear enough when it appears in print.

As I now understand it, Mr. Springer was inquiring as to B. & O.'s share of the total traffic that would be exempted from minimum rate control under H.R. 11583 in the territory that B. & O. serves (the eastern district).

You will appreciate that judgment figures are unavoidable here.

For the Nation as a whole the railroads handle roundly 43 percent of the total ton-miles, as shown in Mr. Loomis' statement, and of this 43 percent, the B. & O.'s share is 4.1 percent (4.1 percent of 43 percent). The truck share is 23 percent; water carriers, 16 percent; and pipelines 18 percent.

However, confining the relationships to (1) the particular traffic that under H.R. 11583 would be exempt from minimum rate control (bulk commodities, agricultural and fishery products) moving in the (2) eastern district, it is my judgment that the rail participation would be less, or 30 percent, and of this, the B. & O.'s share would be about 15 percent (15 percent of 30 percent). Here, the water carriers (including the St. Lawrence) would move the same, or 30 percent; and the trucks (principally agricultural and fishery products) about 25 percent, with the pipelines, 15 percent.

I wish the information were at hand to give you more precise data. The foregoing relationships are based on my best judgment.

Sincerely,

JERVIS LANGDON, Jr.

The CHAIRMAN. Mr. Staggers?

Mr. STAGGERS. Mr. Chairman, just one question.

You mentioned this census of transportation, Mr. Langdon.

As I gather it, you consider this quite essential and quite important in making these decisions that we have to make or should make. We should have something like that before the committee probably.

Mr. LANGDON. I do not make that point at all. I think the action that you should take on this legislation is quite clear and does not certainly require any census of transportation to know that the railroads are being treated differently and unfairly in this competitive situation.

Mr. STAGGERS. I did not hear all of your statement, Mr. Langdon.

I would like to say this:

I think it is very thought provoking and challenging, and I shall read all of the statement.

From what I have heard, it is very good.

Thank you, Mr. Chairman.

That is all.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Mr. Chairman, I have no particular questions except an observation or two.

I would like to commend Mr. Langdon for the very excellent, complete, and full statement he made, and also to express the thought that it is rather refreshing to have part of the Federal Government, at least, asking for fewer and less controls instead of more.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Langdon, keep this in mind:

That the port of Baltimore is much closer to the West than the port of New York, is that not true?

Mr. LANGDON. Yes.

Mr. FRIEDEL. If H.R. 11583 were enacted into law, what would be the effect on port differentials? Would it be possible for the Pennsylvania to reduce rates to New York and Philadelphia so as to equal or even lower the rates to Baltimore?

Mr. LANGDON. Mr. Friedel, you know that for 5 years now, 6 years, we have been in the middle of litigation on this very point. And we have been before the Interstate Commerce Commission and we have been before the Boston court and we are now going to the U.S. Supreme Court next December on this very issue.

Since I am counsel for the railroads in this case, and since it is in litigation, I am wondering if I could be excused from answering that question. The issue is in litigation, and, frankly, the passage of this legislation, in my opinion, would have no effect at all on that litigation, nor on our right later to protect the position of Baltimore vis-a-vis New York to the extent it is justified under the Interstate Commerce Act.

Mr. FRIEDEL. I do not want to embarrass you, and I do not want you to answer any questions while it is in litigation, but I still have in mind the port of Baltimore, and I was worried whether this bill would have any effect on Baltimore. You said it would not have any effect on the port of Baltimore?

Mr. LANGDON. No, sir.

Mr. FRIEDEL. Thank you very much.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

I appreciate also the very frank statement you make about the ICC. But the ICC has no control over the two items mentioned here or have no authority to make any changes on bulk commodities, agricultural and fishery products, have they?

Those exemptions are in the law.

Mr. LANGDON. They are, on the waterways, of course. Bulk transportation is not regulated. And on the highways agricultural products are not regulated.

Mr. YOUNGER. That is an exemption that is in the law?

Mr. LANGDON. That is right.

Mr. YOUNGER. The ICC could not, by rules and regulations, change that, could it?

Mr. LANGDON. No, sir.

Mr. YOUNGER. Now, you make a statement about the ICC not carefully paying attention to the 1958 transportation law which we passed in connection with section 15a(3)?

Mr. LANGDON. Yes, sir.

Mr. YOUNGER. Is that true?

Mr. LANGDON. It is my opinion, yes, sir.

Mr. YOUNGER. Then what hope do you have that the ICC would pay any attention to this law if we passed it?

Mr. LANGDON. If they do not have any power to fix minimum rates, this would solve the problem.

In 1958, you, of course—the Congress continued the power to fix minimum rates, but reminded the Commission as to the standards to be employed. These standards, in my judgment, have been largely ignored.

Now, if you take away the power to fix minimum rates in these specified areas, why, then, the only control, of course, will be under the antitrust laws, and this is what we want.

Mr. YOUNGER. You figure, then, that under this law the ICC will have to observe it?

Mr. LANGDON. They will not have any power to act, you see, in the fixing of minimum rates. This will leave us free, then, to make such competitive rates as we think the situation requires, subject always to the restraints of the antitrust laws.

We have got to avoid discrimination, and we have got to avoid rates that promote a monopoly or constitute an unfair and destructive competitive practice, because, otherwise, we will be caught up in court.

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

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mr. Langdon, let me join in paying tribute to your very able presentation this morning.

The Chairman of the ICC testified before our committee in detail on legislation before us, and I would like to read one sentence on page 18 and then ask for any comments you might make:

> Without the minimum rate powers now possessed by the Commission, we do not believe that reliance upon the antitrust laws to prevent or stop destructive rate wars and to protect shippers and localities against unjust discrimination and undue prejudice and preference is adequate.

You have referred to the antitrust laws in your statement, but I wondered if you care to make any additional comment on the adequacy of protection under the antitrust laws.

Mr. LANGDON. Chairman Murphy, I think, was concerned as to the Commission's ability to deal with cases of discrimination in the event the minimum rate power were withdrawn from the Commission.

I believe that that concern is not justified because the Commission, it seems to me, would continue to have full authority to cure and deal with discriminatory rate practices by employing its power to fix the precise rate, the exact rate, a power that it has under section 15(1), as well as the power to fix maximum and minimum rates.

This is the power that, actually, it has used in the past on certain occasions when it was necessary to do so in order to eliminate discrimination.

So I just do not agree with Chairman Murphy at all on this point. I have tried to set forth my reasons in the supplemental statement I read earlier and submitted for the record.

I think the Commission would continue to have full power to cure every conceivable form of discriminatory rate practice.

Mr. JARMAN. The only other question that I would have would be as to Chairman Murphy's recommendation, in speaking for the Commission, that we not only not extend the exemptions, but that we repeal the exemptions and bring the other carriers under the minimum rate regulation of the ICC.

Now, as I understand your statement, the position you take is that even if that were desirable—I am simply trying to restate the position you have taken—even if that were desirable, to bring the other carriers now exempt under the ICC regulation, that from a practical standpoint you feel it could not be achieved; that it adds up to an academic recommendation of the ICC because of the very practical opposition from the farm groups, commercial interests, industry, and the carriers themselves to any effort to bring them back under the minimum rate regulation?

Mr. LANGDON. Yes, that is right.

In moving toward equality of treatment of two forms, or of the different forms of transportation, I do not think it is possible to regulate the presently exempt carriers, because I think they will oppose it, and I think the shippers will oppose it.

So there is a deadlock there, and I do not think it is practical to bring them under regulation.

But, even if they were brought under regulation, and it were possible to do it, this still would not achieve equality, because in so many important cases our competition is private transportation, and when we move to meet private transportation as a competitor, the public carriers of that same form will jump in and oppose us.

These public carriers may handle a small part of the traffic, and pretty soon the ICC has got an issue between public carriers of different forms, and the Commission then will exercise this authority that it thinks it possesses to decide whether the rails are lower than necessary to meet the competition. Later, our rates may very well be set aside as being lower than necessary or not competitively justified or not representing the proper differential over the full cost to the shipper of using this other form.

This has happened in many cases where the real competition was private transportation.

Mr. JARMAN. Thank you.

The CHAIRMAN. Mr. Collier?

Mr. COLLIER. Thank you, Mr. Chairman.

Mr. Langdon, in the case of the B. & O. only, is there a record of the economic maleffect of the ICC declaring that a rate in an application was too low and required that the rate be higher than that in the application?

Mr. LANGDON. We have been involved in a number of those situations, yes, sir.

One of the recent ones involves this coastwise traffic for which we are in competition with sea-land service. This is traffic moving by truck to and from coastal ports in the East and Southeast, where the Commission insists on a differential of 6 cents in the rail rates over the rates for the sea-land service, and the Federal district court at New Haven has upset the Commission in this respect.

We are in another case involving the movement of pig iron from certain origin points on the B. & O. to Chicago, where the Commission again has told us that our rates were too low, although we think they are necessary at the level proposed in order to participate in the traffic.

We have got a number of instances of that kind where we have been held up, along with other eastern railroads.

Mr. COLLIER. Can you think of any incidents where such action took place where it was, in fact, in the public interest?

Mr. LANGDON. Of course, sir, we feel that any lower rate that we can propose that is compensatory to us is in the public interest, provided it is not made with an intent to monopolize or destroy competition.

Mr. COLLIER. Then you would say, contrarily, that in most instances where such action took place, it was not in the public interest?

Mr. LANGDON. No, I think that in every case the rates proposed were in the public interest, sir. Lower rates are ordinarily in the public interest. It follows, I think, that this is so.

Of course, we propose them, quite frankly, for the purpose of increasing our net revenues. This is one way that we have to move in this competitive era.

Mr. COLLIER. Excuse me, sir, that is what I said. In other words, you would say that in more instances where the ICC required a rate higher than that in the application, it is not in the public interest?

Mr. LANGDON. That is our view, yes, sir.

Mr. COLLIER. Now, if this bill were enacted, and again this question is directed to strictly the B. & O. operation, would there be areas where the B. & O., in fact, would have to compete with other rail carriers for business in those areas?

Mr. LANGDON. Oh, yes.

Mr. COLLIER. In other words, this competition would not be only with the water and motor carriers, but would in many areas be competition within the railroad industry; is that correct?

Mr. LANGDON. Certainly; yes, sir.

Mr. COLLIER. Are there many cases, to your knowledge, where there would be exclusives, so to speak, as far as the railroad industry would be concerned, in this field? In other words, where there would be one long-haul rail service competing with the other modes of transportation, or in most instances would there also be competition between the rails in those areas?

Mr. LANGDON. I think in most instances there would be competition with other railroads, sir, certainly from the point of view of competition broadly defined. I was trying to think, the other day, of a situation on our railroad that might be regarded as noncompetitive, and I frankly could not find one, think of one, as I turned over the various types of commodities which were being transported.

A lot of people think of our eastbound movement of coal as being something that can only move by rail and, in effect, is noncompetitive.

But, as a practical matter, we have got the most damaging and desperate type of competition in the movement of eastbound coal. It does not take the form of other transportation, but it takes the form of the dumping of residual oil from foreign ports along the east coast, and these public utilities are taking this oil and displacing a lot of bituminous coal.

So that actually we have got a highly competitive situation in the movement of even eastbound coal. Not by another form of transportation at the moment, but even here, a pipeline is threatened.

Mr. COLLIER. This is the point that I am trying to make.

I think that we have looked at this proposal as one that involves only competition between the modes. In other words we will actually still have competition within the rail industry itself with the enactment of this legislation.

Mr. LANGDON. Oh, yes, sir; there will be no less competition among the railroads themselves. Actually, I think that in view of the competition from these other modes, and the manner in which it has gained momentum in the last 10 or 15 years, we have been concentrating on that because it has seemed about ready to engulf us.

But there is still, and will always be, competition among railroads.

Mr. COLLIER. One final question that is not directly but rather indirectly involved in this issue.

Would you say that over a period of time this legislation will bring some area of economic relief for the railroads that would ultimately result in improving passenger service in the railroads?

Mr. LANGDON. That is a good question, sir. This is one thing that is very close to our hearts on the B. & O. We are trying desperately to get better passenger service and, at the same time, to reduce the the deficit.

To be perfectly frank, I think we are approaching the point, perhaps attainable in another 6 months, when the passenger deficit, comparing direct expense with direct revenue, will have been eliminated on the B. & O. We are having to do some things, consolidating trains, certain curtailments—although we hope not too drastic—in our commutation service, and other things that we are doing, to try to bring revenues and expenses together, because we want to continue to provide passenger service, and good passenger service. We are moving in this direction.

Now, under this legislation, if this should pass, of course, this would make it easier to compete with these other forms of transportation in the movement of bulk traffic. To the extent it is easier to compete, I would hope that our net revenues would be improved.

But I would not want to charge against that additional net revenue any larger deficits on the passenger side. I think we have got to take the passenger business and try to make it self-sustaining or at least put it on a basis where it does not constitute a heavy drain.

We are hopeful of arriving at that point on the B. & O. in the next 6 months where it is not a drain and where we can continue to provide good service.

For instance, our three trains each way, each day, between here and Chicago are making a contribution over the direct expense of operating those trains, including the dining car deficit, of $100,000 a month. Now, that, of course, is a high density, well, relatively high density passenger route between here and Chicago.

A lot of people use that service, and we are getting a contribution out of it above our expenses.

Other parts of our service do not pay, and we are having trouble getting off trains that really operate only a standby service for the airlines. We have a train to Cleveland, as an example. All it does is operate as a standby for the airlines. When the airlines are down, that train is loaded. When the airlines are operating, there is no one on it, and we cannot get it off.

Mr. COLLIER. I am personally guilty of creating this situation at times. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Langdon, did I understand that you are operating at a $100,000-a-month loss on these three trains?

Mr. LANGDON. No, contribution, sir. This is revenue over and above the direct expense of operating our three pairs of trains between Chicago and Washington. They make a contribution over and above the direct expense of about $100,000 a month today.

Mr. DEVINE. On the black side of the ledger, then?

Mr. LANGDON. Yes, sir; contribution.

Mr. DEVINE. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Langdon, as I understand it, you feel this legislation still would not give the railroads equal standing?

Mr. LANGDON. Oh, no.

Mr. ROGERS of Florida. With water transportation?

Mr. LANGDON. It would fall far short.

Mr. ROGERS of Florida. What should be done to bring about equal treatment?

Mr. LANGDON. I think that after we have demonstrated, as I am clear that we can, that this legislation is in the direction of equality, and in the public interest, then I think we should have relaxation of the minimum rate power on other types of rates.

Then I think we have got to consider some user charges for the use of these public facilities on the part of the inland water carriers.

We have got a lot of tax proposals, too, that we think are in the direction of bringing about greater equality.

Mr. ROGERS of Florida. I was thinking more of your ratemaking now, with bulk commodities.

You state on page 2 of your statement:

> When handling bulk commodities, water carriers would continue to be subject to no regulation at all. They could make secret rates, contract or otherwise, rebate at will, and discriminate without restraint.

Mr. LANGDON. That is right.

Mr. ROGERS of Florida. I was thinking more of your ratemaking

Mr. LANGDON. No.

I think that the railroads are perfectly willing to continue to be subject to public restraint from the point of view of avoiding discriminatory rate practices.

I think when shippers and users of our services are being discriminated against or think they are being discriminated against unjustly, they ought to have a place to go.

Mr. ROGERS of Florida. Yes.

Mr. LANGDON. And this I am perfectly prepared, certainly speaking for myself and our company, to continue to accept—this kind of public regulation.

This makes sense.

Mr. ROGERS of Florida. Yes.

Well, now, what I wondered, if we are going to have railroads subject to this discriminatory rate practice control, should the water carriers and trucks also be subject to it?

Mr. LANGDON. Certainly. There ought to be equality in this respect.

Mr. ROGERS of Florida. Then you would agree that there should be some legislation that would bring them into the same control that the railroads would be under.

Mr. LANGDON. Yes, sir, although I am prepared to agree that the quality should include exemption on their part from minimum rate control in the same way that I hope we are going to have an exemption from minimum rate control.

Mr. ROGERS of Florida. Yes.

Chairman Murphy pointed out, of course, his approach would be to bring everyone in.

Mr. LANGDON. That is right.

Mr. ROGERS of Florida. You would not want to bring them in to that extent, but you would be willing to bring all modes of transportation in to the extent the railroads would be brought in, in this legislation?

Mr. LANGDON. That is right, but with no power in the Commission to fix minimum rates for anybody.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Langdon, you spoke about competition in the movement of petroleum products. Are the pipeline companies under the regulation of the ICC in the fixing of maximum and minimum rates for the movement of petroleum in its various forms?

Mr. LANGDON. Yes, sir.

Mr. CURTIN. They are?

Mr. LANGDON. Yes, sir.

Mr. CURTIN. And is that a very substantial part of your competition for this type of bulk commodity?

Mr. LANGDON. Yes, I am afraid that this traffic is going to continue to move by pipeline.

Certainly I do not contemplate any possibility of returning substantial volumes of petroleum products to rail transportation.

There may be some, but pipeline transportation has got great advantages. It is going to take a long time for the railroad industry to reach the point where they can provide a comparable type of transportation at low cost, if they ever arrive there.

They may.

The integrated train has possibilities in this respect, but this is some time off. I would not regard petroleum products now moving by pipeline as being subject to diversion to rail transportation at the present time in large quantities certainly. Maybe isolated situations here and there, but not on a large scale.

Mr. CURTIN. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman.

It is your opinion that if we pass this legislation, that the public will get the benefit of it?

Mr. LANGDON. Yes, sir.

Mr. HEMPHILL. I notice from your statement that you concentrate on two things, the benefit that the rail industry would receive and the happiness that you would receive in being out from under the ICC, but I have not heard mentioned enough here the interests of the public in this legislation, whether or not any benefits go back down to the American people using the railroads, buying the products, because I think that is our first responsibility, as was conceived to be the responsibility of the ICC in the ratemaking authority originally given to them.

I would like to have you comment on that, please, sir.

Mr. LANGDON. Sir, I think you will find that the shippers and users of rail transportation, all forms of transportation in this country, are almost unanimously, perhaps not unanimously but almost unanimously, strongly in favor of this legislation, and I think they want to come before this committee and say why this is in the public interest and why they are for it.

Farm groups and others are in favor of this legislation. I do not think there will be any problem at all in producing a number of public witnesses of this kind in favor of this legislation. In fact, I think a great many of them have already applied for the right to come here and tell you why they like this legislation.

Mr. HEMPHILL. It would be a little elementary. The fuel oil people buy in my district, would that be any cheaper; would the grain farmers be any cheaper; would the other commodities that the individuals buy for even a personal use reflect any benefits, costwise, from this legislation?

Mr. LANGDON. Oh, I think so.

I think Mr. Brosnan the other day, speaking of grain, indicated the extent to which the receivers of grain in the South would benefit if he could get his lower rates in that are presently under suspension before the ICC.

In our case in the movement of grain, we have not been held up on this, and we have been able to put lower rates in.

We have recently made still further reductions in our grain rates moving east to Baltimore in competition with the seaway.

So I have no doubt at all but that an ability to reduce transportation charges is going to accrue to the benefit of, and for the advantage of, the receivers.

Mr. HEMPHILL. I have also had some correspondence from some people who work in the petroleum industry selling fuel oil or delivering it.

I have a long petition in my office from people who say—

We are going to lose our jobs if this legislation is passed because the railroads will take over the business.

Of course, I am just wondering how you are going to deliver it door to door, but I would like you to comment on that.

Mr. LANGDON. I do not understand that.

We hope that this legislation is going to create a few more railroad jobs. Now, to the extent that we are able to bring back on the railroad traffic that we think belongs there under these rates, we are going to have more railroad jobs, and, of course, to the extent this traffic displaces traffic moving by truck, and maybe that would include your fuel oil friends, this might lead to less jobs in the distribution of fuel oil.

But those truck jobs would be taken up by railroad jobs, and it seems to me that, in a case like this, the objectives should be to try to let the traffic move by the means that is the most economical, and where the economics are in favor of a particular form.

I can think of a lot of fuel oil movements that do not properly belong on the railroad at all. I can think of other fuel movements, oil movements, that might more properly move on the railroad. But this would be, generally speaking, for the longer hauls.

Mr. HEMPHILL. May I switch over to one other subject? You mentioned passenger service. The section I come from suffers terribly from a lack of first class, courteous, decent passenger service on the railroads.

We just do not have it like we should.

I am just wondering, if this legislation were passed, would there be any inclination on the part of the industry to try to put back the first-class passenger service all over the Nation, even if it did not make any money that you would like to make out of it?

Mr. LANGDON. I want to make clear at the outset, sir, that so far as our company is concerned, we are going to try to do the very best job we can with passenger service, whether or not this legislation passes.

So far as the others are concerned, I would think that it might have a good effect in this respect: That we then, to a certain extent, would be on our own in dealing with this very important competitive problem involving the bulk part of our freight traffic. This would give an added sense of responsibility and feeling of achievement in case we could arrest the competitive trend against us. This, in turn, might lead to doing a better railroad job all around, including passenger service.

Mr. Moss. Would the gentleman yield?

Mr. HEMPHILL. Let me make one statement. I was not talking about your particular railroad. It is just that I get so many complaints and, as a representative of the public, I feel some responsibility to bring that to the attention of the people who are in high position in the industry.

I will be happy to yield to Mr. Moss.

Mr. Moss. Mr. Langdon, I accept the fact that the recommendations made by the President followed a very careful study where all of the modes of transportation were consulted, but I find myself increasingly puzzled as to how the enactment of this legislation is going to cure the ills which appear to be very real.

As I understand it, the railroads have a very difficult economic situation confronting them at the moment. My mail reflects the fact, or the contention, at least, that that problem is characteristic of truck transportation, waterways, and airlines.

I would conclude that the pipelines are enjoying a rather favorable economic climate.

Now, the whole transportation potential in this country is a great, big pie at the moment, cut up in pieces. You have your share, or you have a share, and each of the other modes has a share, and a very significant part of the total apparently is in the nonregulated carriers; is that correct?

Mr. LANGDON. Yes, if you include private transportation, of course.

Mr. Moss. That would be the private, nonregulated?

Mr. LANGDON. Yes, sir.

Mr. Moss. The exempt?

Mr. LANGDON. And the private.

Mr. Moss. And the private?

Mr. LANGDON. That is right.

Mr. Moss. If the enactment of this legislation is going to bring about significant public benefits through reduction in the cost of carriage of commodities, I fail to see where the business is coming from; redistribution is going to occur, but how is it going to, in total, cure the economic problems of the various modes of transportation?

Mr. LANGDON. I think, sir, only insofar as it will operate to give to the railroads that part of the traffic or enable the railroads to make themselves competitive for that part of the traffic which properly belongs on the railroad.

The trucks then will be free to handle that part of the traffic which properly belongs on the highway.

It may very well be that, in part at least, our troubles are owing to the fact that the several forms of transportation are engaged in businesses where economically they should not be involved, and that if, by virtue of having the power to make rates that will exploit their economic advantages, they will tend to confine ourselves to that part of the business which really belongs on the railroad or belongs on the highway or belongs on the waterway, this should not only reduce the overall costs of transportation in the country, but also enable the participants—the several forms—in the transportation industry itself to make out better because they will be doing the jobs for which they are economically suited.

Mr. Moss. Could this lead to a substantial dislocation and realignment within the various modes of transportation?

Mr. LANGDON. There will be some. There will certainly be some.

Mr. Moss. Do you feel that the railroads, removed from the present burdensome type regulation, would be able to recover a substantial part of the private carriage?

Mr. LANGDON. I think we can get back some of it, and, in addition, I think we can prevent any further substantial increase in the use of private transportation.

Traffic already on the highway now, with the trucks and fleets and everybody in operation and in motion, is going to be pretty hard to get back. The investment has been made. We have lost the traffic. Eventually they will come to the point where it is a question

of going back on the railroad or some public carrier or buying a new fleet. At that time we may have a chance to recover this traffic that is on the highway.

But certainly in the case of the companies that are presently uncommitted, and there are a great many of them that are backing away and taking a look at the problem, "Shall we go into private transportation or not," in those cases, the ability to quote a rate with confidence, I think, will prevent any further increase in private transportation except in certain cases where perhaps private transportation is better than anything they can get through a public carrier.

There are instances of that. We might as well recognize it.

But there are a lot of instances where private transportation is really not justified. We want to be free to make a quotation that will make it unjustified.

Mr. Moss. Do you have any idea as to the percentage of transportation now moving by modes other than railroads you would be able to recover if this legislation were to be enacted?

Mr. LANGDON. I have thought a lot about that, sir, and it is hard even to make an intelligent guess. I will say this:

I think with this legislation the railroads ought to be able to stop any further erosion.

Mind you, you said we had a part of the pie. That is true. But this has been a declining part. This has been a smaller and smaller part of the pie every year. So the first thing I think this legislation would do, or should do, is to enable us to stop the further erosion.

Then, from that point on, I think slowly, very slowly and gradually, we probably could recover to the point of perhaps participating in half of the ton-miles of the country.

Beyond that, I do not know. It depends on piggybacking and the development of piggybacking.

It may very well be that looking far in the future, there will be very little over-the-road truck transportation beyond 300 or 400 miles.

Mr. Moss. Do you not think that this committee should make every effort to gain some informed judgments as to the impact the enactment of this legislation might have upon the various modes now available where very heavy investments have been made, the problems of dislocation if it is going to be significant?

Mr. LANGDON. Obviously, sir, testimony on this point will come to you, I am confident.

The water carriers, of course, are going to be very strongly opposed to it, and I assume the motor carriers will be opposed to it.

They will point to the investments made.

Of course, I want you to realize that they are using equipment for which they have paid, but they are also using public rights-of-way.

It is not like a railroad that is put out of business where they have provided their own right-of-way, in addition to the equipment.

So far as the water carriers are concerned, of course, they are using these public rights-of-way without any charge of any kind.

Now, it occurs to me that where a carrier is using, particularly at no user charge, a public right-of-way and is invaded by a carrier that is completely self-sufficient and paying its own way and doing no more than exploiting its competitive advantage, this is a situation that ought to be recognized and allowed, despite the dislocation and the fact that the water carrier might be hurt.

Mr. Moss. You say that the committee undoubtedly will hear testimony on this, but where do we go to get the informed "guestimates" as to the extent of the diversions which might be encountered if the legislation is enacted? You have confessed to a difficulty in arriving at a judgment yourself, and your testimony reflects that you are extremely well informed on the problems of your own industry.

Where do we go to get those estimates or "guestimates" which would inform us sufficiently to make a judgment?

Mr. LANGDON. That is a very tough question, sir, and I am not sure that I can offhand tell you where I think you could go, because I am not sure that this is available in any tangible form or that judgments on this point—it is going to be awfully hard to get a judgment that is not colored by a particular self-interest.

The water carriers are going to be, in their own light, destroyed by this legislation and the motor carriers—I just saw a message that has been circulated throughout the trucking industry that this legislation represented a crisis; that if this legislation passed, the industry was on the ropes. And, of course, the railroads are looking at it from the point of view of their self-interest, too.

We might as well be frank about that.

We having been losing this competitive game, and we think we have been unfairly treated, and that we ought to have a measure of freedom in order to make competitive rates at least to try to move forward and exploit our situation where we have an advantage.

So that you have got to get somebody who is disinterested. Whether the Interstate Commerce Commission would care to speculate on this, I do not know. They might be asked to. Their Bureau of Transport Economics and Statistics is ably manned and they have got some good people there, and it might be that they could help here.

Mr. Moss. Would you not characterize this assignment as one which is peculiarly the responsibility of this committee to at least attempt to ascertain these probabilities before we finally act?

Mr. LANGDON. Yes, sir; I agree. But I would add that some dislocations that will come about as a result of this legislation may be justified, and I certainly would not want this legislation turned down on the ground that it was going to dislocate and have a disturbing effect in those areas and in those cases where transportation is more economic than by some other form.

The question is:

Is this other more economical form going to be given the right to pass on to the public the advantages of its economic capabilities?

Mr. Moss. The effect of dislocation should be balanced carefully against the overall public interest.

Mr. LANGDON. Interest, and keeping in mind the objective which is the lowest possible cost for the transportation industry as a whole, for the country as a whole.

This is the objective.

Mr. Moss. I thank the gentleman.

Mr. HEMPHILL. I thank you, Mr. Chairman, for yielding to me to let me yield to the member.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, I have no questions.

The CHAIRMAN. Mr. Staggers, you have another question?

Mr. STAGGERS. I would like to, if I may, ask this question.

You mentioned the fact that if this legislation is passed, there would probably be more railroad jobs.

You mean, then, that you would participate more in the hauling of different items and that would create more jobs, if this is passed?

Mr. LANGDON. That would be my hope; yes, sir.

Mr. STAGGERS. Of course, I would be interested because I live in a railroad town, and the terminal and shops are there, as you know.

I would like to ask you this: You mentioned residual oil being in competition: do you know whether residual oil has any regulation whatsoever about its rates or the cost of it?

Mr. LANGDON. Oh, no.

It is just a dumped waste product and it comes from foreign sources.

Mr. STAGGERS. Certainly.

I would just like to ask you this, then.

I want to congratulate you, as president of one of the great railroads of this Nation and I believe, if my memory serves me right, the oldest railroad in America, is that right?

Mr. LANGDON. Yes, sir.

Mr. STAGGERS. I used to work for the B. & O. Railroad. I used to be a brakeman, and also a caller of traincrews, for 2 years, while I was in high school, so I may say I have some interest in the Baltimore & Ohio, and again I want to congratulate you on your testimony here today.

Mr. LANGDON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. I have no questions, Mr. Chairman.

I would like to join others, though, in complimenting Mr. Langdon on a very splendid presentation.

The CHAIRMAN. Mr. Langdon, the uppermost thought, in my judgment, which we all should have in this country, is the availability of a sound, strong common carrier system, is that true?

Mr. LANGDON. Yes, sir; I think so.

The CHAIRMAN. In other words, to adequately serve the public, we have got to have a strong common carrier system where all common carriers can get along and make a go of it, be able to provide the services under the competitive system and without monopoly and restraint?

Mr. LANGDON. Yes, sir.

The CHAIRMAN. Do you think that this type of legislation, implementing the policy of the Congress over the years, the last major general policy statement being 1940—do you think that this legislation would add to that objective?

Mr. LANGDON. Yes, sir; promote that objective, you mean, move toward that objective?

The CHAIRMAN. That is right.

Mr. LANGDON. Yes, sir; that is right.

The CHAIRMAN. In other words, carry forward the idea that Mr. Hemphill raised.

Do you think that our common carrier system would be improved in order to give the public improved service?

Mr. LANGDON. Yes, sir.

The CHAIRMAN. I want to compliment you on the policy of your railroad in carrying forward the nondiscrimination objective insofar as various points are concerned which you announced a moment ago.

The president of the Southern Railway Co. announced the same policy.

You stated in your statement that your railroad also had now adopted this policy, and I want to applaud this action. I think it is long overdue.

I can see no reason for any common carrier to contend that they can provide a rate that is economically sound in a given area, and then in a given community charge a much higher rate for the same product to practically the same distance and to the same points.

It just does not seem reasonable to me that a common carrier could say, "I can provide a rate from point A to point B that is economically sound and that is within the framework of our system," and yet contend that in an adjoining community they have got to charge a higher rate in order to meet the expenses and costs and so forth.

You say that there are other roads that you think are pursuing the same policy?

Mr. LANGDON. Oh, yes, I know so.

The CHAIRMAN. I wish you would supply for the record those roads that you know of, since I understand you are testifying here not only in relationship to your own railroad, but on behalf of the railroad industry, are you not?

Mr. LANGDON. I was appearing for the B. & O., sir, but I will be glad to supply that.

(The following material was received in response to the aforementioned requests:)

THE BALTIMORE & OHIO RAILROAD CO.,
EXECUTIVE DEPARTMENT,
Baltimore, Md., August 23, 1962.

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

DEAR CHAIRMAN HARRIS: You may recall that during the course of the hearing on H.R. 11583 before the Committee on Interstate and Foreign Commerce, Tuesday, July 24, I undertook, at your suggestion, to supply for the record information as to the practice of railroads generally in publishing, from inland points, rates related to those published to meet specific water competition.

Attached hereto are copies of the following letters bearing on this subject and addressed to me—

1. From T. H. Maguire, chairman of the executive committee, Western Traffic Association, dated August 2, 1962.
2. From O. E. Schultz, chairman of the Traffic Executive Association, Eastern Railroads, dated August 7, 1962.
3. From R. E. Boyle, Jr., chairman, Southern Freight Association, dated August 6, 1962.

It appears that while there is no rigid rule it is the general practice of the railroads to publish related rates from inland points where market competition is involved.

As I tried to emphasize during the course of my appearance as a railroad witness, any failure to publish rates from inland points that results in unjust discrimination or undue prejudice or preference could be dealt with as effectively by the ICC after the enactment of H.R. 11583 as at present.

I am sorry for the delay in complying with your request, but I have been out of the city for the past 10 days.

Sincerely,

JERVIS LANGDON, Jr.

EXECUTIVE COMMITTEE—WESTERN TRAFFIC ASSOCIATION,
Chicago, Ill., August 2, 1962.

H.R. 11583.

Mr. JERVIS LANGDON, Jr.,
President, the Baltimore & Ohio Railroad Co.,
Baltimore, Md.

DEAR MR. LANGDON: Reference is made to our telephone conversation of August 1 when you advised me that Hon, Oren Harris, chairman of the House Committee on Interstate and Foreign Commerce, requested you during the course of your testimony on H.R. 11583 to make inquiries among the U.S. railroads as to their practice with respect to reductions in point-to-point rates to meet specific competitive situations. The inquiry was whether such point-to-point reductions are extended to other shippers of the same commodity whose traffic is not subject to the same competitive pressure.

The Executive Committee—Western Traffic Association was then in session, so your inquiry was referred to them.

I have been authorized to state in behalf of our executive committee the position and practices of the western railroads in connection with the above situation. There is no hard and fast rule or practice in this connection. For example, point-to-point reductions made to meet specific water competition, whether coastwise along the Pacific coast or via inland waterways are not necessarily extended to cover inland points. If, however, the relationship of railroad rates is a material factor in maintaining proper market relationships, the western railroads, of course, do not neglect the inland shipper or receiver, and it is their custom in such cases to preserve the existing rate relationships. This action protects both the shipper and the rail carrier. The shipper is protected against being shut out of common markets and it is, of course, to the interest of the rail carrier to continue to handle the inland shipper's business.

It is the position of the western railroads as a group that each situation of this kind should be handled upon its own merits.

The reason for this position is that some reductions are published to meet the competition of water carriers whose lower rates create a situation, over which the railroads have no control, whereby the waterside shipper, regardless of rail rates, already has a transportation cost advantage over the inland shipper. Unless the rail rates to or from both the waterside shipping points and the inland shipping points are a material factor in the marketing abilities of these two shippers the railroads, without affecting market competition one way or the other, would merely be depleting their revenues, in many cases to a much greater extent than they would gain by meeting the point-to-point water competition. However, where the change in the rail rate relationship tends to impair the ability of the inland shipper to compete we certainly do not shut our eyes to his plight. In such cases we do maintain the necessary relationship of rates.

I am sending you this letter in duplicate and you may feel entirely free to forward it to Chairman Harris.

Yours very truly,

T. H. MAGUIRE.

TRAFFIC EXECUTIVE ASSOCIATION—EASTERN RAILROADS,
New York, N.Y., August 7, 1962.

Mr. JERVIS LANGDON, Jr.,
President, Baltimore & Ohio Railroad,
Baltimore, Md.

DEAR MR. LANGDON: Concerning your inquiry to enable you to answer a question put to you by Chairman Oren Harris of the House Committee on Interstate Commerce as to the general policy of eastern railroads—when they make water-competitive rates to points served by water carriers—as to whether they make related rates in favor of shippers and consignees at locations not served by water carriers:

I have raised this question informally with a number of chief traffic officers at meeting here today. While these officers would not undertake to speak formally for all of the eastern railroads—it is their belief that the following language substantially reflects their own views, which they believe would reasonably be representative of those of railroad traffic officers in this territory.

There is no rigid policy followed regarding the question you raise. These railroads are highly sensitive to the competitive position of their customers who are not served by water carriers; and, where these railroads reduce rates to meet water competition, they are alert to the need of protecting the market position of their inland customers, if the rail rates charged at water-competitive points are a real factor in the market relationships of their inland customers.

In short, while it is not the position that, where the railroads make rate reductions at water-competitive points, they should automatically make equal reductions to all other points, nevertheless they apply reductions to the extent necessary to protect the market positions of their inland customers. They presently treat each of these situations on their individual merits.

Yours truly,

O. E. SCHULTZ, *Chairman.*

SOUTHERN FREIGHT ASSOCIATION,
Atlanta, Ga., August 6, 1962.

MR. JERVIS LANGDON, JR.,
President, Baltimore & Ohio Railroad,
Baltimore, Md.

DEAR MR. LANGDON: Referring to inquiry directed to you during hearings before the House Interstate and Foreign Commerce Committee on H.R. 11583 as to the policy or practice of railroads extending to so-called dryland shippers the benefit of rail rates made to meet water competition.

As to all important commodities moving in heavy volume it is the general practice of the railroads in southern territory to maintain established relationships from or to inland points in these instances where the force of water competition compels a reduction in rates from or to points having the benefit of water transportation. Thus the inland shipper receives full benefit of water competitive rates in these instances where rates of his competitor located on water are reduced. I might add this practice of railroads in southern territory is not confined to water-competitive rates but applies also as to reduced rates designed to meet other kinds of competition. For example, a reduction in rates from one or more points to a seaport designed to meet competition with foreign goods is usually extended in a relative way to all shipping points. In like manner rates frequently are reduced from inland points to permit shippers located at such points to compete with domestic producers having the benefit of water transportation.

The foregoing is not intended to imply an inflexible rule but it does accurately set forth what is the very general policy and practice of the railroads in southern territory.

Yours very truly,

R. E. BOYLE, *Chairman.*

Mr. LANGDON. I doubt if there are many exceptions nowadays. You see, the reason is this. We have got a selfish reason, too. We want to keep these people from moving to the river. In addition to that, these inland shippers are really our best customers, and we want to promote them in their competition with people who are on the rivers.

This is, you see, in our self-interest, too, to promote these people.

In the ordinary rate discussions, sir, when carrier A proposes a rate between two points, every other carrier will then consider what shippers it has on his line that are in competition with the shippers being taken care of by this rate between A and B, and they, every one of them, will then announce rates on the same relative level.

This is going on every day in our business. It is our self-interest, of course, to protect the people whose business we are trying to handle.

I will be glad to supply a list, but I think you will find it to be practically everyone.

The CHAIRMAN. Perhaps so; but there are also innumerable cases where areas have favorable rates over other areas which actually exist.

I know of some of them, and I think that that same situation can be pointed up in practically all sections of the country.

There are controversies, of course, and differences of opinion, but I mentioned a few the other day that had developed over the last few years down in my own part of the country. Who is the committee that makes the determination of the rates?

Mr. LANGDON. Sir, we have rate committees in the several rate territories.

We have one in the East, but I want to say quickly that the committee does not make the determination. The individual railroads make the determination, and on our property, and I am sure it is true of the others, we are making rates more and more independently, not through committees, except to advise the committees as to what is being done and what we propose to do in order that they then can take what action they think is necessary in the interests of the shippers who may be located on their line and to have public hearings, with the shippers coming in and stating their views as to various proposals that are made.

In the last year I checked up the other day and I think we have taken more on the B. & O., we have taken more independent actions in relation to rate proposals than in the past 10 years.

It has been decided by the B. &. O that we were going to do this.

Sure, we went through the committee procedure to let the others know what we were going to do, giving them an opportunity to come in, if they wanted to, to protect their own shippers, and then, as a result, and this is true of the other carriers, too, the general level on the particular commodity has gone down in the eastern territory where we operate.

The CHAIRMAN. Now, to carry that one step forward, if a particular railroad adopts a policy of nondiscrimination in various areas, is it reasonable for one road to have to pursue a rate to a certain point and a different railroad files tariffs that are two or three times less than that particular railroad?

Is that reasonable under our regulatory system?

Mr. LANGDON. Sir, I am sorry, I am not sure I caught your question.

The CHAIRMAN. I brought up a matter the other day with reference to bulk commodity movements, an agricultural movement, in which in one point, New Orleans, La., they charge 47 cents a hundred. Twenty miles away, another railroad, they charged 18 cents a hundred.

Now, is that reasonable and fair under the common carrier system in our regulatory procedures?

Mr. LANGDON. Rates ought to be on the same level. Of course, many times different transportation conditions will justify a higher rate in certain cases than in others.

The CHAIRMAN. Yes; in one case they had two mills in different locations competing against each other, fighting for it, and there was no alternative transportation available, and in the other place they did not have that same situation with the mills and they had water transportation available.

Mr. LANGDON. In those circumstances I think the same rate level should apply.

The CHAIRMAN. You think what?

Mr. LANGDON. The same rate level should apply, sir.

The CHAIRMAN. What could we do to bring that about?

Mr. LANGDON. I think in the East certainly this is being brought about now by the carriers' voluntary action. Now, if it is not, if there are instances where it is not, shippers have the right to complain of discriminatory practices, and will continue to have that right before the Interstate Commerce Commission.

The CHAIRMAN. Even if this bill that we refer to on minimum rates were to be passed?

Mr. LANGDON. Yes, sir.

They would continue to have the right to complain of discrimination.

The CHAIRMAN. Of course, what I am very greatly concerned with, and what I am going to pursue, is this question of bringing about an equality of transportation available to all segments of our public. At the same time, I want to see the spirit of competition prevail, and if this approach can help to bring about our total objective, why, it seems to me we have accomplished a great deal.

I am glad you mentioned this question of the fourth section. I am still a little bit puzzled, though, by your position that if all regulations were to be removed, how would the fourth section continue to operate?

Mr. LANGDON. Of course, this bill does not propose the removal of all regulations, sir; only the removal of the Commission's minimum rate power, and my position is that if this is done, the Commission would continue to have full authority to administer section 4 in the way that it has been administered in the past.

The CHAIRMAN. In other words, the minimum rate provided from one point to another point on a long haul; then the short haul would have to be followed accordingly?

Mr. LANGDON. Yes.

Well, you see, sir, section 4 prohibits a special type of discrimination under the long-and-short-haul clause.

The CHAIRMAN. That is right.

Mr. LANGDON. And the Commission has full authority to make exceptions, as the statute says, in special cases. So that when one applies for authority to depart from section 4, one has to prove a special case before the Interstate Commerce Commission.

The only condition that Congress has imposed is that, in any event, the rate to the further distant point be reasonably compensatory.

Now, all of this remains completely unchanged under this proposed legislation.

The Commission would continue to have full authority, as I see it, to administer section 4 in exactly the same way that it has been administered in the past. There would be no change.

The CHAIRMAN. You do not contend, then, that the Commission would have authority to set a specific rate, as you mentioned a moment ago, if the minimum rate provision were to prevail?

Mr. LANGDON. Yes, I think it does in the case of of a violation of section 4 or in the case of a violation of section 3 which bar discriminatory rate practices.

I think that once the discrimination is proven, the Commission then retains the power to fix the precise rate that will remove that discrimination.

The CHAIRMAN. Mr. Langdon, thank you very much for your most informative testimony today.

The time has swiftly gone from us, and we will have to adjourn.

The House is meeting.

The committee will adjourn until 10 o'clock in the morning, at which time we will have Mr. Don Manion as the first witness.

(Whereupon, at 12:10 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, July 25, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

WEDNESDAY, JULY 25, 1962

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

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

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Don Manion, president of the American Short Line Railroad Association. Mr. Manion, you may proceed.

STATEMENT OF D. L. MANION, PRESIDENT, THE AMERICAN SHORT LINE RAILROAD ASSOCIATION, WASHINGTON, D.C.

Mr. MANION. My name is D. L. Manion. I am president of the American Short Line Railroad Association with offices at 2000 Massachusetts Avenue NW., Washington, D.C. I have been an officer of this association since May 16, 1960, and president since August 16, 1961. Prior to coming with this association I served in various operating-maintenance supervisory capacities for 13 years with a common carrier railroad.

On behalf of the member lines of this association, the majority of which are representative of "small business" interests in the railroad industry, I appreciate the opportunity to appear before this committee in support of H.R. 11583 and H.R. 11584.

The American Short Line Railroad Association is a nonprofit, unincorporated association of 254 common carriers by rail representing an investment of about $1.8 billion and operating about 16,000 miles of first main track. During 1960 the member lines of this association earned gross operating revenues in the amount of $569 million, employed about 50,000 persons who were paid $303 million in wages and paid taxes of $70 million.

The importance of short line railroads to the public is in part shown by the fact that many of them provide the only rail service to a town, to an area or to a port. Their importance to the railroad industry as a whole lies in the substantial quantities of freight they originate, terminate, or both, and which is usually handled in line haul service by the larger lines. This proportionate share of traffic originated and terminated on short lines far exceeds their proportionate share of railroad plant.

When short lines are deprived of the opportunity to retain an adequate volume of tonnage or to increase their loadings by effective com-

petition, the entire industry loses serious amounts of revenue. If losses of tonnage are aggravated to the point of requiring abandonment, important communities are deprived of the opportunity to efficiently market their products, all rail service may be lost, and much traffic is permanently lost to the railroad industry. As short line road-haul carriers usually receive up to about 20 percent of the total revenue of an interline shipment, loss of revenue to a short line results in four or five times greater loss to the larger railroads participating in the haul.

During the 48th annual meeting of association members at San Francisco, Calif., on November 1, 1961, the representatives of member lines adopted a legislative program that has been developed, after careful consideration, through a long period of years. The principles that permeate this program are those of practical railroad officers whose lines provide service, employment, and seek sufficient revenues to efficiently perform transportation functions and discharge all corporate obligations. The realities of meeting these necessities in the long experience of these railroad people are reflected in their legislative program.

The association's legislative policies are based on three fundamental concepts. One is, private ownership and operation of the Nation's railroads. Two is, fair and reasonable rates, fares, and charges; fair and reasonable compensation for employees; and fair and reasonable return upon capital investment. Three is, equality of regulation and equality of opportunity for service for all competitive forms of transportation.

It is on the basis of these concepts, as discussed below, that we support H.R. 11583 and H.R. 11584 which have been introduced to implement in part the President's transportation message of April 5, 1962.

With regard to the basic objective of our Nation's transportation system, the President, in part, stated in his message:

> This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately owned facilities, operating under the incentives of private profit and the checks of competition to the maximum extent practicable. The role of public policy should be to provide a consistent and comprehensive framework of equal competitive opportunity that will achieve this objective at the lowest economical and social cost to the Nation.
>
> This means a more coordinated Federal policy and less segmented approach. It means equality of opportunity for all forms of transportation and their users and undue preference to none. It means greater reliance on the forces of competition and less reliance on the restraints of regulation. And it means that, to the extent possible, the users of transportation service should bear the full costs of the services they use, whether those services are provided privately or publicly.

The parallels between the underlying concepts of the legislative policies of the association and the keynotes of the President's message are particularly pronounced with regard to continued reliance on private ownership of common carriers and the objectives of securing equality of regulation and equality of opportunity for service for all competitive forms of transportation.

With such uniformity of objectives voiced by practical railroad officers and the President, it is clearly apparent why I am before you today urging favorable action upon these two legislative proposals which should aid in strengthening the Nation's transportation system.

Among the major areas of inequality of regulation and inequality of competitive opportunity under existing law that discriminate against the railroads, are the so-called agricultural commodities exemption for motor carriers, and the bulk commodities exemption for water carriers. To state it another way, the railroads, in this highly competitive transportation game, are not permitted to play under the same rules as their competitors. H.R. 11583 is intended to provide a partial remedy for these obvious inequalities of existing regulation.

Many of the short line railroads rely to a major degree, and some almost entirely, on traffic of an agricultural or bulk nature. When agricultural commodities move by truck they are exempt from economic regulation. But the same commodities being handled by a railroad, in a competitive situation or otherwise, are under full regulation.

When bulk commodities move by water they are free of regulation but they are under full regulation when moving via rail. When these commodities move by rail, as is the case with all traffic by rail, it must be at published rates which are rigidly adhered to and not changed without proper notice, and which must be just and reasonable and nondiscriminatory. Agricultural and bulk commodities when moved by motor or water carrier, respectively, can be handled at rates set at any time, unannounced to anyone, and not subjected to any test of reasonableness or other standard of regulation.

Under existing regulations railroads have in a variety of cases proposed reduced rates to meet competition but because the rates were disallowed they were excluded from effective competition. Restraint of this competition is not in the interest of the public or the railroads.

H.R. 11583 would remove existing inequalities to a degree by eliminating the requirement for the Interstate Commerce Commission's approval or prescription of minimum rates. It would not place competing forms of transportation on a fully equal regulatory footing as regards these commodities inasmuch as railroads would still be regulated under those provisions of the Interstate Commerce Act governing notice, filing, and publication of rates, maximum rate control, and discrimination.

The small railroads for whom I speak receive small revenues and must work within the limits of small monetary margins. Accordingly, they must have a maximum of flexibility and be permitted to exercise a maximum of managerial discretion to enable them to meet the ever-increasing costs of wages, materials, and taxes.

Enactment of this bill would do much to enable these small railroad properties to compete more effectively for transportation of these agricultural and bulk commodities. Their success in being able to do so would strengthen this necessary segment of our Nation's transportation system.

In order that they may continue to render an adequate service to the public, and in the hope of their earning an adequate return, we request that you give favorable consideration to H.R. 11583, amended along the lines suggested by other railroad witnesses.

H.R. 11584, also before you, contains provisions which are intended to achieve a further equality of regulation of competitive modes of transportation as recommended in the President's transportation message. For the reasons stated by Mr. Daniel P. Loomis, our members urge your favorable action on this bill.

I wish to thank the members of the committee for the opportunity to appear and state the views of our member lines.

The CHAIRMAN. Mr. Manion, thank you for your statement.

Mr. Hemphill, any questions?

Mr. HEMPHILL. Thank you, Mr. Chairman.

On page 4 of your statement you say:

> Many of the short line railroads rely to a major degree, and some almost entirely, on traffic of an agricultural or bulk nature.

That is in the third paragraph of the page, in the first sentence.

Do I understand by that that most of your revenue comes from freight and very little of it from passenger service?

Mr. MANION. That is correct. We have some members that have passenger service but most of these short line members of this association are freight haulers exclusively.

Mr. HEMPHILL. You also made another statement on page 2 that short line road-haul carriers usually receive up to about 20 percent of the total revenue of an interline shipment.

What is the variance? How little do you receive? Is that the maximum you receive, about 20 percent on a long haul?

Mr. MANION. That is an average figure. We have short lines that receive smaller, much smaller, proportions than that. I don't believe that there are many that would receive larger than that proportion. There are some, yes. This can also vary with the commodities. I am not a rate man. My experience has not been in rates and I have to speak in very general terms.

Mr. HEMPHILL. I am very sympathetic to your problem because I think it is absolutely true, as you said in your statement, that many communities depend on the short lines for their transportation of anything in bulk at all.

Mr. MANION. That is right.

Mr. HEMPHILL. I have some familiarity with short line railroads personally, or did some years ago before I severed my connections. We had such a problem of getting enough revenue to pay for operating expenses. You still have to pay the engineer and fireman for the day's work and keep the track up just as though it were a long road.

Thank you for your statement. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger, any questions?

Mr. YOUNGER. Thank you, Mr. Chairman.

On page 1, Mr. Manion, you give the amount of operating revenues and the amount paid out in wages and taxes, but you say nothing about profits. Were there any profits?

Mr. MANION. Yes, sir. This, of course, is an overall figure for the member lines of the association and might or might not be reflective of the situation with any particular road. During the year 1960 the net income of 255 member lines was in excess of $48 million, $48,637,961.

Mr. YOUNGER. Were there any short line members which did not make a profit?

Mr. MANION. Yes, sir; a number of them.

Mr. YOUNGER. One other question. I would judge from your testimony that as between the two bills H.R. 11583 and H.R. 11584, the preference of your organization, if only one were enacted, would be

H.R. 11583, because you lay more stress on that piece of legislation than on H.R. 11584. Is that correct?

Mr. MANION. Our feeling is that H.R. 11583 is of more importance to the member lines of this association; yes, sir.

Mr. YOUNGER. And also you would disagree with the Chairman of the ICC that it would be more to your advantage to do away with the minimum rates than to put all of the modes under regulation?

Mr. MANION. It is our feeling that less regulation is needed rather than more regulation.

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

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. Mr. Manion, how do you differentiate between short line railroads and large railroads in order to belong to your association?

Mr. MANION. That is a perennial question, sir. Possibly the shortest answer I can give you is one made by my predecessor; that is, that a railroad that will pay dues to this association and use the services of this association, we call a short line.

Actually, there are several different definitions in different places in the industry for a short line. The Interstate Commerce Commission classes carriers as class I and class II. Those having $3 million or more operating revenue per year are class I roads; less than that are class II roads.

Commonly, and in certain instances, a short line railroad is considered to be one of about 100 miles in length or less. We do not have in this association a formal definition of a short line railroad. In fact, we have a number of members that are class I carriers by rail.

Mr. GLENN. Thank you very much. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Manion, in further reference to the question asked by Mr. Hemphill, do I understand you to say with respect to a shipment originating on a short line road which had its destination over the so-called class I line, that about 20 percent of that revenue would come to the short line road?

Mr. MANION. Up to about 20 percent, Mr. Chairman. It might be quite a bit less than that.

The CHAIRMAN. Yes; I can understand that.

Mr. MANION. It frequently is.

The CHAIRMAN. In other words, you may have a short line that does the switching and takes the shipment out, say, a few miles to where it connects with a long line and would go several hundred miles maybe to its destination on the long line. Then what you are trying to say is that the share of the short line in that revenue would be up to 20 percent?

Mr. MANION. Up to 20 percent; yes, sir. That may be an interline shipment where the short line handles it just several miles from its point of origin or termination. Or it may be where the short line has quite a bit of road haul in connection with the origin or termination of the shipment, depending upon the handling.

The CHAIRMAN. To get back to the question that Mr. Glenn asked, if it has quite a bit of line haul, then it becomes a different class railroad, doesn't it?

Mr. MANION. Well, what is "quite a bit"? Twenty miles or eighty miles?

The CHAIRMAN. If you have distance of 500 or 1,000 miles, would that be short? I was thinking of the maximum length of a short line road.

Mr. MANION. The maximum length of any member line in our association is slightly over 2,100 miles.

The CHAIRMAN. 2,100 miles?

Mr. MANION. Yes, sir.

The CHAIRMAN. Do you call that a short line?

Mr. MANION. It is a member of this association. I am not specifically referring to that type of property in this presentation this morning.

The CHAIRMAN. Does that include all the main track of the road, or does that include switching and everything?

Mr. MANION. That is miles of road operated, not miles of track.

The CHAIRMAN. What do you mean by this statement?

This proportionate share of the traffic originated and terminated on short lines far exceeds their proportionate share of railroad plant.

Mr. MANION. The short line railroads are major originators and terminators of traffic and for the amount of plant that the average short line has it originates and terminates for more traffic than other railroads.

The CHAIRMAN. I see.

Gentlemen, any further questions?

Mr. Manion, thank you very much. We are glad to have your presentation.

Mr. MANION. Thank you.

The CHAIRMAN. Mr. J. W. Scallan, Railway Progress Institute.

Mr. Scallan, you may identify yourself for the record and proceed.

STATEMENT OF J. W. SCALLAN, CHAIRMAN, RAILWAY PROGRESS INSTITUTE, CHICAGO, ILL., ACCOMPANIED BY HOLCOMBE PARKES, PRESIDENT, RAILWAY PROGRESS INSTITUTE

Mr. SCALLAN. My name is John W. Scallan. I am president of Pullman-Standard with headquarters in Chicago. I am appearing here as chairman of the Railway Progress Institute, the national association of the railway equipment and supply industry. I am accompanied by Holcombe Parkes, president of the institute. Together we will endeavor to answer any questions you may care to ask us.

Because I will refer later to the membership of the Railway Progress Institute, I ask your permission now to file for the record its roster and the consist of its governing board, executive committee, and officers as of this date.

The CHAIRMAN. Very well. It may be included in the record.

(The roster referred to follows:)

OFFICERS, EXECUTIVE COMMITTEE, AND GOVERNING BOARD OF THE RAILWAY PROGRESS INSTITUTE

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John D. Cannon, vice chairman
Holcombe Parkes, president
T. A. Nooner, Jr., vice president-secretary

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W. Lyle Richeson
J. W. Scallan, chairman.
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Mark S. Downes, general sales manager, the Timken Roller Bearing Co.
R. L. Duchossois, president, Thrall Car Manufacturing Co.
L. M. Forncrook, executive vice president, Edgewater Steel Co.
C. E. Grigsby, president, American Steel Foundries Inc.
Edwin Hodge, Jr., chairman, Greenville Steel Car Co.
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J. G. Lyne, chairman of the board, Simmons-Boardman Publishing Corp.
L. A. Marquardt, vice president, sales, W. H. Miner, Inc.
J. B. McWilliams, chairman of the board, Railway Maintenance Corp.
R. Lee Mitchell, general manager, railroad sales, The New York Air Brake Co.
T. B. Monson, vice president and general manager, Pacific Car & Foundry Co.
Spencer D. Mosley, president, General American Transportation Corp.
R. C. O'Kane, president and general manager, the Buckeye Steel Castings Co.
W. L. Richeson, vice president, Westinghouse Air Brake Co.
J. W. Scallan, president, Pullman-Standard.
A. H. Smith, executive vice president, the Kerite Co.
P. W. Smith, president, General Railway Signal Co.
Frank Speno, Jr., president, Frank Speno Railroad Ballast Cleaning Co., Inc.
M. W. Stevenson, vice president, National Castings Co.
R. L. Terrell, general manager and vice president, Electro-Motive Division, General Motors Corp.
James F. Traa, manager of sales, Chicago district, United States Steel Corp.
E. M. Van Winkle, president, Magnus Metal Corp.
D. R. Watson, president, Modern Railroads.
C. P. Whitehead, president, General Steel Industries, Inc.
R. A. Williams, president, Stanray Corp.

MEMBERS OF THE RAILWAY PROGRESS INSTITUTE AS OF JULY 15, 1962

ACF Industries, Inc.
The Adams & Westlake Co.
Aeroquip Corp.
Air-Maze Division, Rockwell-Standard Corp.
Ajax-Consolidated Co., division of Pentron Electronics Corp.
Alexander & Alexander, Inc.
Aluminum Co. of America
American Creosoting Corp.
American SAB Co., Inc.
American Steel Foundries, Inc.
Anaconda Wire & Cable Co.
Apex Railway Products Co.
Archer-Daniels-Midland Co.
Birdsboro Corp.
Brandon Equipment Co., Inc.
Brenco, Inc.
The Buckeye Steel Castings Co.
Buffalo Brake Beam Co.
Calumet Steel Castings Corp.
Cardwell Westinghouse Co.
Central Equipment Co.
Chandeysson Electric Co.
Chicago Malleable Castings Co.
Chicago Pneumatic Tool Co.
Cleveland Graphite Bronze
Crucible Steel Co. of America
Dana Corp.
Davis Brake Beam Co.
Dearborn Chemical Co.
Double Seal Ring Co.
The Dow Chemical Co.
Edgewater Steel Co.

MEMBERS OF THE RAILWAY PROGRESS INSTITUTE AS OF JULY 15, 1962—CON.

Elastic Stop Nut Corp. of America
Ellcon-National, Inc.
Erman-Howell Division, Luria Steel & Trading Corp.
Fansteel Metallurgical Corp.
Farr Co.
General American Transportation Corp.
General Electric Co.
General Motors Corp.
General Railway Signal Co.
General Steel Industries, Inc.
Greenville Steel Car Co.
Griffin Wheel Co.
Gunthorp-Warren Printing Co.
Gustin-Bacon Manufacturing Co.
Heywood-Wakefield Co.
Holland Co.
Illinois Railway Equipment Co
Ingersoll-Rand Co.
International Equipment Co., Ltd.
International Steel Co.
Journal Box Servicing Corp.
Kaiser Aluminum & Chemical Sales, Inc.
The Kerite Co.
The LFM Manufacturing Co., Inc.
Luminator, Inc.
MacLean-Fogg Lock Nut Co.
Magnus Metal Corp.
Mannix International, Inc.
The Matisa Equipment Corp.
McConway & Torley Corp.
Mid-West Forging & Manufacturing Co.
Miller Lubricator Co.
Henry Miller Spring & Manufacturing Co.
W. H. Miner, Inc.
Modern Railroads
Morrison-International Corp.
Morton Manufacturing Co.
Nalco Chemical Co.
National Castings Co.
The New York Air Brake Co.
New York Railroad Club, Inc.
Oakite Products, Inc.
Pacific Car & Foundry Co.
Pittsburgh Forgings Co.
Progressive Railroading
Pullman, Inc.
The Pyle-National Co.
Railroad Accessories Corp.
The Rails Co.
The Rail-Trailer Co.
Railway Maintenance Corp.
Railway Service & Supply Corp.
Railway Track-Work Co.
Reynolds Metals Co.
Safety Electrical Equipment Corp.
St. Louis Car
Schaefer Equipment Co.
Screw & Bolt Corp. of America
Scullin Steel Co.
Servo Corp. of America
Simmons-Boardman Publishing Corp.
SKF Industries, Inc.
Sparton Railway Equipment
Frank Speno Railroad Ballast Cleaning Co., Inc.
Standard Car Truck Co.
Standard Forgings Corp.
Standard Railway Equipment, Division of Stanray Corp.
A. Stucki Co.
Superior Steel Castings Co.
Symington Wayne Corp.
Thrall Car Manufacturing Co.
The Timken Roller Bearing Co.
Trains magazine
Transport Products Corp.
Union Asbestos & Rubber Co.
Unit Truck Corp.
United States Railway Equipment Co.
United States Steel Corp.
Vapor Corp.
Weir Kilby Corp.
Western Railroad Supply Co.
Westinghouse Air Brake Co.
Westinghouse Electric Corp.
Industrial Systems, Public Works Province
Wheel Truing Brake Shoe Co.
Whitehead & Kales Co.
Woodings-Verona Tool Works

Mr. SCALLAN. We have made a few minor changes in this presentation after sitting through the testimony heard yesterday. These are minor and I think you will be able to follow my brief readily.

First, let me express our sincere appreciation for this opportunity to present our views on the two bills now under consideration, H.R. 11583 and H.R. 11584. Because we are suppliers, we frequently find ourselves buried and lost under the blanket term of "the railroads"—despite the fact that our industry is indispensable to the providing of adequate, efficient, and satisfactory rail services; despite the fact that our industry is a separate, multibillion-dollar segment of our national economy, particularly important in terms of employment in our plants and our purchases of significant quantities of such items as steel, aluminum, forest products, rubber, copper, brass, cast iron, electrical equipment, paints and chemicals, insulation and cotton products, ma-

chinery and petroleum products (to name just a few of the thousands of items we purchase when we have orders to work on). That is why we are grateful for this opportunity to present our industry's views on the legislation now before you.

You have already heard expert testimony in favor of these two bills from both governmental and railroad executives who have all presented detailed explanations of the two measures under consideration and cogent reasons for their approval.

Perhaps the most convincing of all the arguments for this legislation were voiced by President Kennedy in his message to the Congress on April 5. As an organization, we have already applauded the President's analysis and recommendations by means of a resolution adopted unanimously by our 33-member governing board on May 8. Copies of this resolution have been sent to all Members of the Congress by Mr. Parkes. We will be glad to supply additional copies for your record now if you care to include it.

The President eloquently summarized our views when he said in his message to the Congress:

> The troubles in our transportation system are deep; and no just and comprehensive set of goals—which meets all the needs of each mode of transportation as well as shippers, consumers, taxpayers, and the general public—can be quickly or easily reached. But few areas of public concern are more basic to our progress as a nation. The Congress and all citizens, as well as all Federal agencies, have an increasing interest in, and an increasing responsibility to be aware of, the shortcomings of existing transportation policies; and the proposals contained in this message are intended to be a constructive basis for the exercise of that responsibility.
>
> The difficulty and the complexity of these basic troubles will not correct themselves with the mere passage of time. On the contrary, we cannot afford to delay further. Facing up to the realities of the situation, we must begin to make the painful decisions necessary to providing the transportation system required by the United States of today and tomorrow.

The witnesses previously mentioned, and the President, have given many reasons for the prompt approval of H.R. 11583 and H.R. 11584—all the reasons except one. And that one heretofore unmentioned reason will be the thesis of my presentation here today, because we believe deeply that what we have to offer is definitely in the public interest.

The fortunes of our industry are wholly dependent upon the orders we receive from railroads for equipment, track, structures, yards, maintenance and repair facilities, signals, communications, and the thousands of other items needed for safe and efficient rail operation.

For the 10 years, 1947 to 1957 inclusive, these orders, excluding fuel, averaged $2,457,769,000 a year, with a high of almost $3 billion in 1951. For the past 4 years, 1958 to 1961 inclusive, railroad purchases, again excluding fuel, have averaged only $1,752,284,000 a year, or 29 percent less than the average for the preceding decade.

If we include the fuel purchases of the railroads, the average yearly amount spent by them in the 10 years from 1948 to 1957 was $3,025,944,900. In the past 4 years, 1958–61, the yearly average was only $2,126,953,000, or 30 percent less than it was in the preceding decade.

Breaking down these figures into the broad classifications of the things we make and sell to the railroads, take equipment, mainly cars and locomotives:

In the 1948–57 decade, the railroads invested an average of $841,803,400 per year for these necessary facilities. In the past 4 years,

this yearly average has been 37 percent less or only $526,961,000, dropping to a 15-year low of $427,134,000 last year. As a carbuilder dependent on that, I can testify with feeling on this point.

While things have picked up a little so far this year, the optimistic estimate of the Interstate Commerce Commission, made early in the year when everyone expected an upturn in business, was for equipment purchases totaling $309,623,688 in the first 6 months. Even if this rate continued for the whole of this year, which is quite doubtful, we would still be far below the yearly average of the 1948–57 decade.

Capital expenditures for roadway and structures averaged about $360 million a year in the 1948–57 period. Since then they have averaged only $253,426,000 a year, 30 percent less.

The Commission's estimate for the first half of this year is slightly more than $125 million, which, even if valid as an indication of the year's total, is anything but encouraging to the suppliers in this field.

Similarly, material and supply orders averaged $1,274,112,800 a year in the 1948–57 decade. Since then they have averaged only $971,887,000 a year, or 24 percent less. Most of the predictions we have seen for this year indicate little, if any, improvement over last year's low figure of $896,679,000.

Let me give you several other illustrations of what is happening to the vital rail segment of the Nation's transportation system:

In the past 4 years, from 1958 to 1961, the railroads permanently retired 298,513 freight cars. In the same period they installed only 156,292 freight cars. As a result, the Nation's freight car fleet has dropped from 1,745,721 units in 1957 to 1,603,500 units in 1961, a net loss of 142,221 cars.

Locomotives tell the same story. A total of 3,293 units were retired in the 1958–61 period and only 1,840 units were purchased. The locomotive fleet consequently dropped from 30,248 in 1957 to 28,795 last year.

The railroads' passenger car fleet has likewise dwindled from 36,130 cars in 1951 to 24,300 cars last year—33 percent fewer cars.

In 1961, the railroads cut their expenditures for the maintenance of equipment, roadway, and structures more than a half billion dollars ($542,468,645 to be exact) compared with 1957 and even more than that compared with the years of preceding decade. This, too, affects our business because we produce the machines, parts, and supplies used in maintenance work.

The railroads' shopping list is reported to consist of about 100,000 items. Much the same situation prevails, I am sure, in every one of the fields involved. By and large, the railroads, for more than 4 years now, have been buying only enough to stay in business. They have been unable to purchase many of the things that they need and want. We, as suppliers, have suffered as a result.

I am sure that this would not be a matter of great moment, certainly not one to challenge the concern of the Congress, if this significant drop in business involved only a handful of large manufacturing companies located in a few of our great industrial centers. But this is not the case.

Last year about this time, in preparation for an appearance before the Senate Committee on Commerce on July 10, we made a quick in-

ventory of the railway equipment and supply industry. The results amazed even those of us who have spent our lives in this field.

The inventory disclosed that our industry operated 914 plants in 468 cities in 45 States, with concentrations of from 5 to 125 plants each in the 29 largest industrial centers in the Nation. With your permission, I would like to present this part of my story graphically by means of the map which accompanies my text. You can see from this map, gentlemen, that ours is truly a national industry, with expected concentrations of plants in industrial centers throughout the country.

The important point I want to make here is the effect of these 4 years of depressed railway supply business on our national economy; on employment in every location you see on the map before you; on business conditions in thousands of other communities involved in the production or processing of the things we buy to carry on our manufacturing work—or the things we don't buy because we have no railroad orders to work on.

To get some clue as to what has happened in these plants as a result of the 4 famine years we have had, we recently took a poll of RPI members on the number of employees in their plants when business was fairly good, in the decade we have been talking about, and now. The answers to our questionnaire are still coming in, but the sample we already have shows these distressing facts: Where we once had 231,534 employees in 286 RPI plants in 36 States, we now have only 185,130, an overall reduction of 20 percent.

In 42 of our plants in Illinois, this survey shows a drop from 24,011 employees to 18,106, or 25 percent.

In 25 plants in Pennsylvania, the decline was from 53,241 employees to 33,664, or 37 percent.

In 22 plants in New York and New Jersey, there was a drop of 20 percent in employment.

In Ohio the story is the same: 15 of our plants report an employment decline of 21 percent; from 11,867 employees to 9,331.

Fifteen RPI plants in Indiana report a drop from 9,414 employees to 6,108, or 35 percent.

Two plants in West Virginia report a 65-percent drop in employment; 3 in Texas, 52 percent; 6 in California, 21 percent; 6 in Michigan, 19 percent; 4 in Connecticut, 28 percent; 6 in Minnesota, 73 percent; 11 in Missouri, 42 percent; 4 in Kentucky, 25 percent; 4 in Wisconsin, 57 percent; and so it goes across the country.

Some of the smaller companies in our industry have gone out of business in recent years. Other companies have turned to new fields in order to utilize their production facilities. And some have held on, in the hope that someday, somehow, better days will come for our railroad customers.

I do not want to labor this point, nor do I want to exaggerate the effect of 4 "famine" years, but I think that two case histories will serve to illustrate what lack of railroad business is doing to our industry and to our economy.

The American Car & Foundry Division of ACF Industries operated one of the oldest and largest carbuilding plants in the country at Berwick, Pa. Last November it was announced that this plant would be permanently closed upon the completion of orders then on the books. Within a few months this plant will be shut down.

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Shortly after World War II, in 1946, my company—Pullman-Standard—invested a sizable sum for the modernization and improvement of our passenger-carbuilding plant at Worcester, Mass. This was a 52-acre plant, with about 600,000 square feet of building space.

The last work done in the Worcester plant was in December 1958. We kept it on a costly standby basis after that in the hope that some of the eastern roads would come into the market for new passenger equipment. No business turned up and we finally sold the land and buildings 2½ years later.

But in case you are led to believe that we are taking a negative approach, let me add this: That most railway suppliers firmly believe that such legislation, now being proposed in Congress, is a step in the right direction, and, if enacted, would help the Nation's railroads regain their rightful position in the transportation field with resultant benefits to our large segment of the economy.

Another facet of this situation involves the things we buy to manufacture the products we sell, or try to sell, to the railroads. Our purchases fan out throughout the Nation, significantly affecting business in every one of the continental States.

One simple illustration of this chain reaction effect can be found in the standard all-purpose boxcar. As carbuilders, we find that the iron and steel products used to build boxcars are produced in 27 States; the wood and lumber products in 19 States; the aluminum and aluminum products in 16 States; the paint and chemicals in 21 States; the insulation and cotton products in 23 States; the alloy metals in 15 States; the lubrication products in 19 States; and the rubber products in 7 States. These are things we buy when we build boxcars—and boxcars are only a part of the railroad plant.

It is not an exaggeration to say, therefore, that when railroads cannot buy the equipment, facilities, and supplies they want and need, our nationwide supply business; our payrolls and our purchases are adversely affected—and when we are slowed down, business and industry everywhere is hurt.

According to the latest report of the Department of Labor, we now have 69,539,000 people at work in this country. But we also have 4,463,000 people unemployed—a disturbing number, of concern to everyone connected with government, management and labor.

Within recent months the President, the Secretary of Labor, the Secretary of Commerce, and many of the Members of the Congress have commented on this unemployment problem and it has been an important factor in action recently taken by the Congress on legislation and by the administration on depreciation rates for industry machines and other facilities.

We believe sincerely that this situation is relevant to the two measures you are considering here. I have endeavored to point out this relevancy in my testimony. The organization I represent here today recently substantiated this belief by sponsoring an advertisement in all editions of the Wall Street Journal, an advertisement which was headed:

> Here's a way to start wheels turning (and) put more people to work, now, in your city and State—support President Kennedy's recommendations on transportation.

Incidentally, copies of this advertisement have been sent to all Members of the Congress. Additional copies are available if you want them.

Who's gaining under the unfair regulatory rules now governing the railroads of this Nation? Surely not the public nor the shippers. If favorable action were taken on H.R. 11583 and H.R. 11584 now, the railroads could furnish their transportation services at much lower cost to the shipper with resultant benefits to the general public. And—in any fair battle with equal opportunity—I know that the railroads of this Nation could prove that shipping by rail is a good transportation buy, if not the best.

Any improvement of the railroads' stature as a common carrier, with the opportunity to compete profitably, would have an almost immediate effect on the multibillion-dollar supply business I am representing here today, for such favorable action, in our opinion, would stimulate the railroads to modernize and improve their properties; railroad orders for new equipment and other facilities would flow into our offices and plants; and our industry could start many idle wheels turning, call many idle employees back to work, and issue many a purchasing order for the materials and supplies that go into our products.

Of course, this alone will not solve the Nation's unemployment problem, but it will certainly help. And the public interest plusses will inevitably be better transportation service at lower rates, as many witnesses have predicted in these hearings.

Again, thank you, gentlemen, for the privilege of presenting our views on this important legislation.

The CHAIRMAN. Mr. Scallan, thank you very much for your statement on this question.

Mr. Williams, any questions of Mr. Scallan?

Mr. WILLIAMS. Mr. Chairman, I just want to make an observation. As I understand the basis of your testimony, what you say is that what is good for the railroads is good for Pullman-Standard, is that right?

Mr. SCALLAN. It is good for an entire industry which is badly in need of assistance.

Mr. WILLIAMS. It is good for the suppliers, anyway?

Mr. SCALLAN. Yes, sir.

Mr. WILLIAMS. I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I think Mr. Scallan made an excellent statement and added much to the value of our hearings. A number of the railroads have their own construction department. Do the figures that you gave include construction by the railroads?

Mr. SCALLAN. The railroads that do their own construction buy a great many of the parts, if not most of the parts, from the suppliers, but the overall figures as to cars and the capital expense I would say includes the railroad shops, yes, sir.

Mr. YOUNGER. For instance, I know that Southern Pacific builds some of their own freight cars.

Mr. SCALLAN. Yes. Those would be included in the capital expenditures.

Mr. YOUNGER. They would be included in here?

Mr. SCALLAN. Yes, sir.

Mr. YOUNGER. One other question. I can see the value of the statistics which you furnished in regard to the drop in the number of freight cars and so forth, but I am not sure that the same value can be attached to the number of locomotives that have been dropped because the new locomotives that have been built, the diesel locomotives, have more power and will haul more cars than the ones they are displacing, and you might have three-fourths as many diesel locomotives built and they would haul more cars than the ones that were dropped, so the same value could not be attached to your figures. Is not that true?

Mr. SCALLAN. I would say that is true, yes, sir, not wholly as much value.

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

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Scallan, I happen to represent a community that has a rather substantial stake in railroading, so I am not at all unsympathetic to its problems and I would not infer here that they are not as serious as you indicate, but in relating your statement to the overall picture we have to probe just a little more deeply than you have, do we not? I note, and pursuing Mr. Younger's line of questions just a little further, that we have had not only an increase in the power of locomotives, but a decrease in passenger service. You indicate a dropoff of a little less than 10 percent in the locomotive fleet. How much of that is attributed to the dropoff of passenger service which has been at an accelerated pace since 1958? Wouldn't it be rather substantial?

Mr. SCALLAN. Substantial, yes, but it certainly would not account for the whole amount of it.

Mr. Moss. You indicate, for example, on freight cars a dropoff of about 10 percent, a little less, from the period 1958 to 1961. Now if we take just that figure itself, how significant is more effective utilization of the freight car fleet in this dropoff of total units available?

Mr. SCALLAN. To put a percentage on that would be difficult. However, there is another factor that is working here. This is a growing country and there has been a tremendous growth in population. That should compensate a great deal and the fleet should really be increasing. The hard thing to know is how much of this existing fleet is in good order or is obsolete. One thing that I have not stressed here too much perhaps is that there has been a great deal of research done in our industry, in all branches of railroad supply we have built larger cars and the railroads are getting more utilization out of them, that is true. But at the same time, this progress is obsoleting a great lot of the railroad equipment that we number here as part of the active fleet. For instance, a 6-foot-door boxcar is of less value now because of differences in loading practices.

Mr. Moss. There is quite an improvement in the special-type cars that are available in the fleet too, and this leads to better utilization of them, is that not true?

Mr. SCALLAN. Yes, sir.

Mr. Moss. Then going back down to passenger cars, in contrast to the less than 10 percent dropoff in freight car total available units, it is better than 33 percent.

Mr. SCALLAN. Yes, sir; that is right. One reason for that is because there have been hardly any passenger cars built in recent years.

Mr. Moss. Is it your feeling that the enactment of this legislation would lead to the restoration of a substantial passenger service?

Mr. SCALLAN. I think it would help. I listened to Mr. Langdon's testimony here yesterday and I think the railroads feel that if they had better revenues and better income they would be much more liable to keep up their passenger service.

Mr. Moss. Although has not there been a tendency to try to force the passenger service to stand on its own feet and to determine whether or not abandonment should take place on the basis of whether it produces revenue sufficient to reimburse the lines?

Mr. SCALLAN. Yes, sir. What the railroads have been doing is to abandon unprofitable passenger runs. They have attempted, if this releases good cars, to put them on some other run that they were going to keep.

Mr. Moss. Do the total figures of capital expenditures represent expenditures for equipment purchased outside the United States?

Mr. SCALLAN. No, sir. This is all domestic.

Mr. Moss. This is all domestic?

Mr. SCALLAN. Yes, sir.

Mr. Moss. Has there been an increase in the amount of equipment purchased outside of the United States?

Mr. SCALLAN. From U.S.——

Mr. Moss. For U.S. lines.

Mr. SCALLAN. No.

Mr. Moss. I know there are some West German locomotives operating.

Mr. SCALLAN. You mean shipped into this country.

Mr. Moss. Yes.

Mr. SCALLAN. There has been very little shipped into this country.

Mr. Moss. But those figures are not reflected here.

Mr. SCALLAN. No, sir; but I would say it is almost nothing, sir. Of course, in the case of Canada and railroads like the Canadian National and the Canadian Pacific who operate American lines, it becomes a little fuzzy on that point, but these figures represent, by and large, the equipment bought for American lines in this country.

Mr. Moss. I knew that the Southern Pacific had some West German locomotives.

Mr. SCALLAN. Those are purely experimental.

Mr. Moss. Those are all the questions I have, Mr. Chairman.

Mr. CHAIRMAN. Mr. Collier?

Mr. COLLIER. Thank you, Mr. Chairman.

I would like to compliment Mr. Scallan on the very enlightening statement. I do not think there is any question but that the railroad equipment business offers an economic barometer to the railroad industry and I think the data which you have presented pretty well illustrates the general trends and conditions in the industry. I might make one observation further in connection with the statement made by my good friend and colleague from California with regard to the 10 percent figure that you offered in connection with the dropoff in the number of freight cars since 1958, and that is this: Just a couple of days ago I observed that the national figures on freight traffic

indicate an increase of 7.7 percent in the past 3 years. I think it is essential that we weigh the 10 percent drop in this case against the 7.7 percent increase in total freight traffic during the period of slightly more than 3 years since.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Yes, Mr. Chairman.

Mr. Scallan, I too, want to thank you for a very fine statement and ask you a question or two with particular reference to the passenger traffic of the railroads. Has your association given any thought to ways and means of putting the railroads back into the passenger traffic business, and meeting the competition for passengers of today?

Mr. SCALLAN. We have; yes, sir.

Mr. KORNEGAY. I was concerned with your statement, as I understood it, to the effect that there had been few, if any, passenger cars built since World War II for the railroads.

Mr. SCALLAN. Yes, sir.

Mr. KORNEGAY. To what do you attribute that fact?

Mr. SCALLAN. To lack of demand for passenger service. My company started that period with two plants, one in Worcester and one, the Pullman Car Works. We finally had to give up the Worcester plant and we have been struggling along with the Pullman plant. The last 2 years we have been building commuter cars there and we have made quite a contribution with new types of commuter cars, push-pull cars for instance. We are now building cars for New York City. There are two other passenger car plants in the country. I think it might be of interest to know that there are only three passenger car building plants now in the United States.

Mr. KORNEGAY. Only three in the United States in business today?

Mr. SCALLAN. That is right. One is the St. Louis Car, subsidiary of General Steel Industries, and the other is the Budd plant at Philadelphia. We are doing quite a lot of work in the development of new types of cars for commuter and rapid transit service. We have not been doing anything about intercity cars because there has been absolutely no demand for it.

Mr. KORNEGAY. Is this lack of demand, in your opinion, due to the attitude of the railroads, or the attitude of the public?

Mr. SCALLAN. The railroads have been losing money in passenger service. The public, as you know, is riding airplanes or driving for the most part. I think it is a combination of both.

Mr. KORNEGAY. Do you not feel, sir, if there were more interest on the part of the railroads in meeting the competition of the airplanes, and the buses, and private automobiles, that there would be a greater response by the public to using the rail facilities?

Mr. SCALLAN. I am not sure of that. The railroads have spent tremendous amounts of money on passenger service and on passenger equipment. After World War II they bought some 4,000 passenger cars at an average of $100,000 apiece, which would be $400 million. They spent tremendous sums on passenger equipment and built some very beautiful trains, as you know. The passengers left them for the highway and the private automobile and the airplane, and whether they could get these passengers back with equipment and with better

service is a moot question. We would like to think they could. There was a period about 5 years ago when the various builders built some Talgo-type trains; you remember, those low four-wheel cars. They were not successful as far as getting people back on the rails. I wish I could give a better answer. I think that certain runs are going to be profitable and I think that certain trains can be made profitable. Whether the railroads are going to get the ordinary intercity business back with equipment, I could not say. I do know there are certain cities that are quite concerned about the loss of rail service. One I know is Indianapolis. They have no rail service between Indianapolis and Chicago, about 250 miles. The Indianapolis people are quite concerned about this and would like to get the rail service back, but I think the railroads feel that they will be pulling empty cars again.

Mr. KORNEGAY. I can understand that, but I also understand that there is a feeling on the part of the general public that in so many instances in certain sections of the country the railroads are not interested in transporting people. It would appear their primary interest is in transporting goods rather than people, and for that reason the people are not getting the type of service from the railroads that they got at one time or that they can now get on other modes of transportation. That was my reason for bringing the point up with you.

Mr. SCALLAN. Yes, sir.

Mr. KORNEGAY. And certainly it is my hope that the railroads would as individual concerns, or collectively through organizations such as the one that you are representing today, attempt to render a better service to the public because to my way of thinking they are a vital segment of our national transportation system. We ought not to stand by and watch them just go away.

Mr. SCALLAN. I am sure that, as a supply industry, we feel the same way. Our passenger car plant represents maybe a $5 million investment on the part of our company and we have kept it going, but building very few cars. We hope much the way you do, that there is going to be a resurgence of passenger car building. It is coming through the commuter and the rapid transit fields now, and I believe it is going to come with intercity equipment.

Mr. KORNEGAY. There has been some talk about the increase of power of the locomotives and also there has been an increase in the size of boxcars. Is that not true?

Mr. SCALLAN. Yes, sir.

Mr. KORNEGAY. As well as innovation of new types of cars, boxcars and tank cars, that have increased volume?

Mr. SCALLAN. That is right. A boxcar from the outside looks like a boxcar always did, but actually it is a very elaborate, complicated, and expensive piece of equipment now. As to most of the boxcars that are being built, they are moving away from the 50-ton type, and that has happened within a year. Now there are 70-ton and 90-ton cars. They have cushioning built in them. For instance, they are getting 90 tons of newsprint in the new cars, so the capacity is higher. The cars are getting longer. Most cars were 40-foot cars 2 or 3 years ago. They went up to 50 feet and many now are 60 feet. Some of the new cars are three tier affairs. The hopper cars are 100-ton cars. There are devices that unload automatically. There are a great many innovations now taking place, so that freight cars are becoming quite

expensive and quite an elaborate piece of material-handling equipment.

The railroads are doing a great deal to make it easy for their shippers. They now have a wide-door boxcar with 50 feet of door that goes up like a garage door into the roof so that the lumber shipper or any other shipper, can move right into the car. Then it is cushioned, which eliminates most of the bracing in the car. We took a quick poll last week as to the amount of money being spent by our member companies on research and development work, and 33 companies replied that they have spent $23 million in the last 6 years.

Mr. KORNEGAY. In research?

Mr. SCALLAN. In research, and they are spending at the rate of $5 million a year. I think it is safe to say that our members are spending at least $10 million a year in direct research for the railroads.

Mr. KORNEGAY. Do you have this figure? How many new miles of railroad track were laid during that 4-year period, 1958 to 1961 that you are talking about?

Mr. SCALLAN. I am sorry, I have not, but I will be very glad to get it for you.

Mr. KORNEGAY. And also I would like to know, sir, if you have it available, the number of miles of track that were relaid. By that I mean straightened out or where improvement was made along the line.

Mr. SCALLAN. Yes, sir.

(The following material was subsequently furnished for the record:)

New tracks laid—Railroads of class I in the United States, 1951–60

Year	Miles of new road constructed	Miles of new tracks laid		Miles of road, end of year	Miles of track, end of year
		New running and passing tracks	New way and yard switching tracks		
	(1)	(2)	(3)	(4)	(5)
1951	58	328	1,073	213,401	354,546
1952	72	545	1,043	212,838	353,878
1953	27	474	1,046	212,284	353,075
1954	13	245	805	211,846	352,085
1955	73	292	916	211,459	350,217
1956	71	299	1,309	210,414	347,928
1957	38	270	1,027	209,182	345,832
1958	41	127	615	208,688	344,477
1959	1	146	708	207,800	342,566
1960	17	228	657	207,334	340,779

Source: Interstate Commerce Commission reports.

New rail and ties laid—Railroads of class I in the United States, 1951–61

Year	Laid in replacement			Laid in additional track, new lines, and extensions		
	New rail (tons)	Number of crossties	Switch and bridge ties (board feet)	New rail (tons)	Number of crossties	Switch and bridge ties (board feet)
	(1)	(2)	(3)	(4)	(5)	(6)
1951	1,266,288	29,061,560	92,798,640	15,562	3,395,129	26,338,751
1952	1,041,955	30,331,899	96,917,440	44,493	3,899,128	25,215,027
1953	1,268,777	29,808,949	99,791,974	33,697	3,652,980	25,409,026
1954	978,461	23,173,611	85,346,254	14,110	2,553,968	20,525,577
1955	942,683	24,149,169	79,098,327	20,667	3,023,871	20,788,166
1956	855,156	23,646,332	74,099,682	27,737	3,676,491	28,042,446
1957	770,972	22,082,225	71,582,096	11,118	3,040,362	23,173,818
1958	405,739	16,029,558	54,985,488	6,951	1,692,288	14,181,402
1959	471,088	16,423,307	54,378,386	9,825	1,844,091	14,520,080
1960	354,418	14,318,721	49,902,467	27,859	2,098,323	13,470,616
1961	287,844	12,010,034	50,253,403	4,882	1,405,711	12,021,196

Source: Interstate Commerce Commission reports.

Mr. KORNEGAY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. Mr. Scallan, does your company make trolley cars and subway cars, and if so, what is happening to the market in those two items?

Mr. SCALLAN. By trolley, do you mean the rapid transit-type of car?

Mr. GLENN. Yes.

Mr. SCALLAN. Yes, sir, we do. In the last year, there has been a tremendous revival in the cities where, not being able to move the people in and out by automobiles and the highways, they are going to the rapid transit type of transportation. The three companies I named before are very active in that and are bringing out new designs. We are right now building cars for Boston; rapid transit cars for the city of Boston, which are new and modern. The St. Louis Car Division of General Steel Industries is building subway cars for New York City. The Budd Co. is building some cars for Philadelphia and other places.

Apparently there is going to be quite a bit of that kind of work. We are very active, as all the other companies are, in developing new designs and bringing out new things that will be more comfortable and convenient for the passenger.

Mr. GLENN. This is in furtherance of the mass transportation problems which face most of our large cities?

Mr. SCALLAN. That is right. We have just completed 53 cars financed by the Port of New York Authority for New York Central operation. We are going to build 30 now for the Long Island along

the same line. As I say, the other companies are doing the same thing, and there are many improvements in the electric propulsion and the braking, and the new metals, a lot of new alloys, new alloy steels and aluminum. There are quite a few new, improved devices which you will find in these new rapid transit cars.

Mr. GLENN. Thank you very much.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Thank you, Mr. Chairman. I have received some mail recently from some constituents who have recently returned from Europe. They speak very favorably of the improvements there in commuter transportation and contrast them, rather unfavorably, with those we find in Boston and New York. Is there any significant development in Europe in this area that we can learn from?

Mr. SCALLAN. We have our engineers going to Europe periodically to find out. They have some new things, particularly in the trucks and the riding, but I am sure that anything worthwhile we will have here in these new cars. We are very close to that, as are all the other companies involved in it.

In Boston we hope that they will feel differently next year when they have these new cars.

Mr. KEITH. When are the new cars due in Boston?

Mr. SCALLAN. Toward the end of this year.

Mr. KEITH. And how many of them are there?

Mr. SCALLAN. There are 92. There are 46 two-unit cars, 92 cars altogether. Whether they call them units or cars, there are 92.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Scallan, you speak of the modernization and improvement of freight cars, but when are you going to start modernizing and improving the ordinary coaches and pullman passenger cars?

Mr. SCALLAN. As I say, there really just has not been a demand for that kind of car in the last 10 years. I do not believe there has been a sleeping car built in 5 years. There is just absolutely no demand for such equipment from the railroads.

Mr. CURTIN. On the trips between here and Trenton, N.J., which is just across the Delaware River from my home, I generally am a coach rider and very infrequently a pullman rider, but on the few occasions when I have been in one of those pullman parlor cars I find the chairs are extremely uncomfortable, those barrel-type chairs that do not even recline. They have been in style the last 30 years, it seems to me, and there have been no changes.

Mr. SCALLAN. In the commuter service, for instance in Chicago, we have the North Western on the north side. Their cars are air conditioned. They are very well lighted and they are all new, 200 of them all brand new. They have a very satisfied group of commuters. If you are talking of that type of passenger transportation, there is a lot of improvement already.

Mr. CURTIN. What depreciation rate do the railroads use on those cars?

Mr. SCALLAN. Previously they were using, I think, 30 years and now they can use 14 or 15 years if they want to.

Mr. CURTIN. Most of them have been completely depreciated by this time I presume.

Mr. SCALLAN. Yes, sir.

Mr. CURTIN. And the same way with the coaches for the ordinary passenger traffic. I ride in those most of the time and a great majority of these coaches are mighty old and uncomfortable. Are there any plans in that field?

Mr. SCALLAN. If you are talking about intercity——

Mr. CURTIN. Yes, I am.

Mr. SCALLAN. Again, there, the railroads have been using the cars they have, and they have a great many fairly new cars. The railroads bought many passenger cars in 1947, 1948, and the period from 1946 to 1953, then their passenger travel fell off so they were left with some very fine passenger cars. They have tended not to replace these or to put any new ones in service. As the supply industry, we would like to see a resurgence of the passenger business.

Mr. KEITH. Will the gentleman yield?

Mr. CURTIN. Yes.

Mr. KEITH. Has there been any noticeable change or improvement in orders as a result of the new regulations pertaining to depreciation that the administration has recommended?

Mr. SCALLAN. There has not been as yet because I do not think there has been time. However, we fully expect that there will be.

Mr. CURTIN. That is all, Mr. Chairman.

Thank you.

The CHAIRMAN. Mr. Sibal?

Mr. SIBAL. Thank you, Mr. Chairman.

Mr. Scallan, does your industry have a large research and development program?

Mr. SCALLAN. Among its membership, yes, sir, we have. We have made a sampling of this within the last week. We found that 33 of our 118 members who replied to our questionnaire spent $23 million in the last 6 years for research, and are now spending at the rate of about $5 million annually. Using that 33-company sample, I would say that we are spending at least $10 million directly on research for the railroads. That would not include metal research by the steel companies or aluminum research by the aluminum companies, but this is money being spent for direct betterment of railroad equipment, track machines, signals, and various other things; for instance, the pushbutton type of sorting yards and the electronics. So to answer your question directly, our individual members are carrying on what is a surprising amount, I think, of research.

Mr. SIBAL. Is this essentially aimed at the freight aspect of railroading?

Mr. SCALLAN. Not entirely. Quite a bit of it now is being aimed at the passenger, but more at the commuter rapid transit type of passenger.

Mr. SIBAL. Is work being done on such ideas as the monorail and such as that?

Mr. SCALLAN. Yes. Among the electrical companies are new propulsion motors; the brake companies have better, lighter brakes, and all of that, yes.

Mr. SIBAL. As I think you can gather from the questions which some of my colleagues have asked, Mr. Kornegay, and Mr. Curtin, and so forth, we are very much concerned with the plight the railroads are in and your industry is in, and there is a feeling, and perhaps it is not well founded, but nevertheless it exists, that the railroads have permitted, to some degree, time to go by them in terms of modernizing equipment. When you compare the railroad service for passengers today with what it was 10 years ago, and compare the same change in service in other forms of transportation, recognizing you have special problems, we wonder sometimes if part of the problem is not that time has passed you by.

Mr. SCALLAN. I agree with you, sir, because the passenger service is the railroad's "showcase" and most people, when they speak about the railroads, will immediately refer to the passenger part. I personally believe that the railroads make a great mistake not to keep their passenger business right up to snuff because I think it is their best advertisement. I happen to ride on the Broadway Limited between Chicago and New York. That is an excellent train and they seem to be pleased to have you on the train. I am not speaking against any other train and I am not making any invidious comparisons here, but the Broadway Limited and a number of other trains, really like to have you as a passenger and they give fine service. I think that does a great deal for the railroads generally, whereas I am sure that a bad experience and bad service draws a bad reaction. I agree completely with what you say.

Mr. SIBAL. Do you have any thoughts as to how these new ideas are developing and whether they are in practical application which can be made in the foreseeable future, such a thing as a monorail, for example, in a very heavily populated commuter area?

Mr. SCALLAN. The monorail is, of course, a very glamorous thing and everybody talks about it. But I think that there are other ways in the commuter and the city transportation part of this problem. There is a lot that is going to be done this year, very shortly. There is much that will be new. When you come to the intercity or the sleeping car part of the problem, I think that is further off I believe that it is going to wait until the railroads become healthier. If you make the railroads healthier and strong, then good passenger business is going to follow pretty quickly.

Mr. SIBAL. You do feel that commuter service is about to receive some significant, new ideas and new equipment?

Mr. SCALLAN. Yes, sir. As I say, these North Western cars are double deck. They have very comfortable seats. They are air conditioned and in the hottest weather they are cool. There is very good lighting and they run very much on time. I think some other commuter service is getting that way and I think it is going to get even better.

Mr. SIBAL. I do mean to put you on the spot. I know this is not the purpose of your testimony. Do you have any ideas as to whether this kind of equipment would be applicable to the New Haven Railroad?

Mr. SCALLAN. The New Haven Railroad has clearance problems with the double decker, but I believe that very shortly they intend to get new commuter cars of the type that is being built for New York Central. This, of course, is a matter of financing, but they are desperately in need of equipment. We have a lot of people in our company and there are a lot of people in the other companies that build passenger equipment who are very concerned about this. They have a million ideas and they want to promote them, so I would think that you can safely feel that passenger equipment in the commuter part of it is going to move ahead very quickly in design and improvement.

Mr. SIBAL. That is very encouraging. Now, all they have to do is find the money to buy these.

Mr. SCALLAN. Yes, sir. That is the problem.

Mr. SIBAL. Thank you. Thank you, very much.

The CHAIRMAN. Mr. Thomson?

Mr. THOMSON. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. I did have one question that came to mind, Mr. Scallan. What percentage of your business in your industry is now accounted for by exporting to other countries?

Mr. SCALLAN. I would not have the percentage figure. It is very small. Five to eight percent, Mr. Parkes says.

Mr. ROGERS of Florida. Are you doing anything to try to increase that?

Mr. SCALLAN. Yes, we are, and all of these RPI companies are. But the thing that all of our people run into right away is the question of financing. Countries like Canada and Germany provide financing and we are more or less on our own.

Mr. ROGERS of Florida. Yes. I wondered is the Department of Commerce helping at all in trying to encourage this?

Mr. SCALLAN. Very active and very much.

Mr. PARKES. May I answer you specifically? We have a committee on foreign trade dealing with the subject of the export of the American-produced railway equipment and supplies. We are working very closely with Mr. Gudeman of the Department of Commerce. We have had several meetings with him and we are now in the process of furnishing him with what he says are "case histories of the kind that I can use to help you increase your exports." So that is coming along.

Mr. ROGERS of Florida. I wondered if your committee, for instance, has an active group going around in other countries to try to encourage sales?

Mr. PARKES. Mr. Scallan has one man who travels so much I cannot get my hands on him as often as I would like. Several other companies have men who are constantly in foreign circulation. These are the men who constitute our committee. They are all men who are experts in foreign trade.

Mr. ROGERS of Florida. Are they getting the cooperation of our representatives in various embassies?

Mr. PARKES. That is one of the questions that is being discussed with Mr. Gudeman now; the improvement of reporting processes. One of the things our committee has asked the Department of Commerce for is one person with whom this industry can deal. Mr. Gudeman has been very friendly and he has offered full cooperation. He says, "If you demonstrate to me that is what you need, we will see that you get it." We have no quarrel as of now with the kind of assistance we have gotten from the Department of Commerce.

Mr. ROGERS of Florida. But now your export is only about 5 percent?

Mr. PARKES. Somewhere between 5 and 8 percent total.

Mr. ROGERS of Florida. How does this compare with 10 years ago, would you say?

Mr. PARKES. I have no basis here for making that kind of comparison.

Mr. ROGERS of Florida. Could you furnish that to the committee?

Mr. PARKES. We would be glad to.

Mr. ROGERS of Florida. I think that might be helpful, and maybe a comparison with a 15-year period and 10-year period and the present situation. Let us see what has happened to the export phase of your industry.

Mr. PARKES. Yes, sir.

(The information referred to was subsequently furnished and is as follows:)

CHART A–1

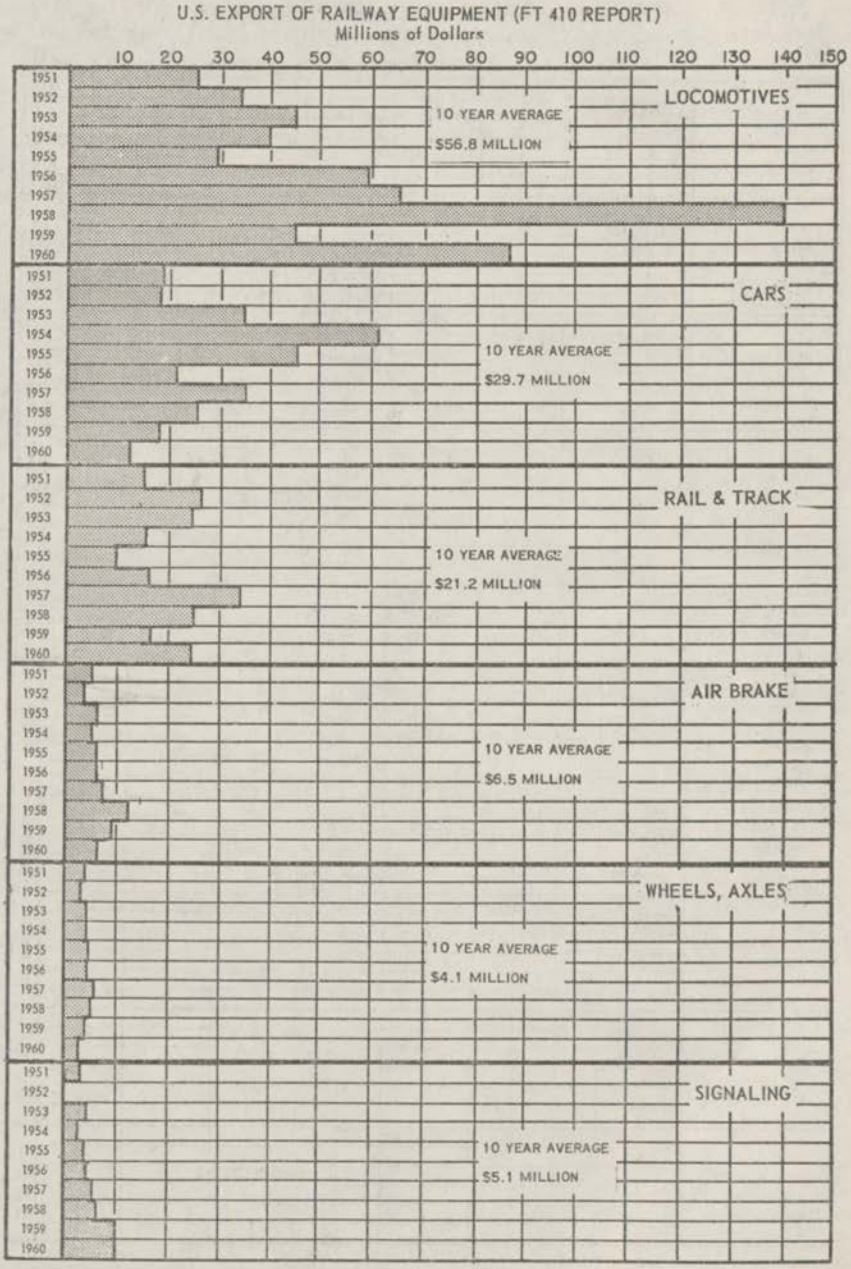
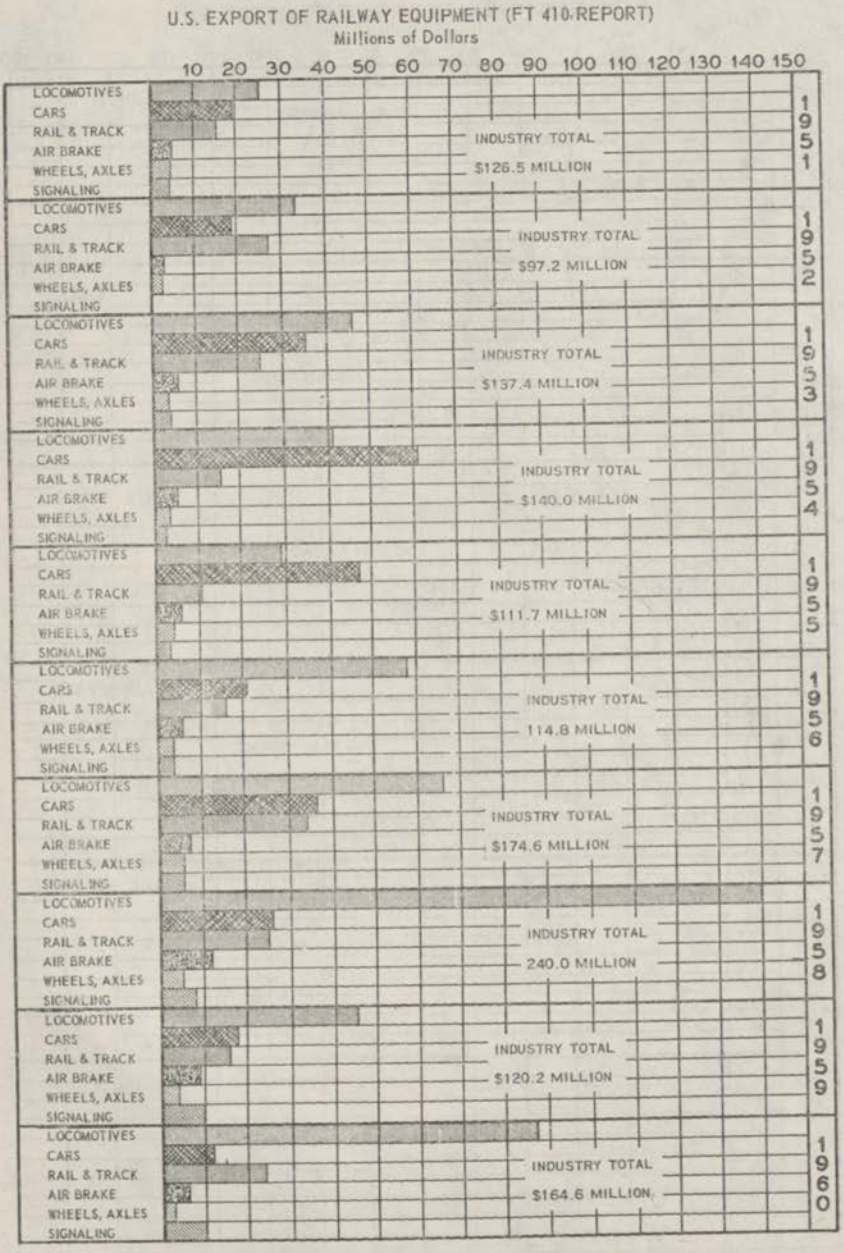

U.S. EXPORT OF RAILWAY EQUIPMENT (FT 410 REPORT)
Millions of Dollars
10 20 30 40 50 60 70 80 90 100 110 120 130 140 150
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
LOCOMOTIVES
10 YEAR AVERAGE
$56.8 MILLION
CARS
10 YEAR AVERAGE
$29.7 MILLION
RAIL & TRACK
10 YEAR AVERAGE
$21.2 MILLION
AIR BRAKE
10 YEAR AVERAGE
$6.5 MILLION
WHEELS, AXLES
10 YEAR AVERAGE
$4.1 MILLION
SIGNALING
10 YEAR AVERAGE
$5.1 MILLION

CHART A–2


U.S. EXPORT OF RAILWAY EQUIPMENT (FT 410 REPORT)
Millions of Dollars
10 20 30 40 50 60 70 80 90 100 110 120 130 140 150
LOCOMOTIVES
CARS
RAIL & TRACK
AIR BRAKE
WHEELS, AXLES
SIGNALING
INDUSTRY TOTAL
$126.5 MILLION
1951
INDUSTRY TOTAL
$97.2 MILLION
1952
INDUSTRY TOTAL
$137.4 MILLION
1953
INDUSTRY TOTAL
$140.0 MILLION
1954
INDUSTRY TOTAL
$111.7 MILLION
1955
INDUSTRY TOTAL
114.8 MILLION
1956
INDUSTRY TOTAL
$174.6 MILLION
1957
INDUSTRY TOTAL
240.0 MILLION
1958
INDUSTRY TOTAL
$120.2 MILLION
1959
INDUSTRY TOTAL
$164.6 MILLION
1960

Mr. SCALLAN. A number of our members license abroad rather than export. You see, a lot of our products are heavy and so there is quite a bit of licensing going on.

Mr. ROGERS of Florida. Yes, I realize that.

Mr. SCALLAN. We are active in Argentina and we have had very fine cooperation from our Embassy there.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Scallan and Mr. Parkes, for your testimony here and presentation.

Mr. SCALLAN. Thank you.

The CHAIRMAN. Mr. C. B. Culpepper?

STATEMENT OF CAUGHEY B. CULPEPPER, SECRETARY AND GENERAL MANAGER, ATLANTA FREIGHT BUREAU

Mr. CULPEPPER. Good morning, Mr. Chairman.

The CHAIRMAN. We are glad to have you back with the committee.

Mr. CULPEPPER. Thank you, sir.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. You may proceed, Mr. Culpepper.

Mr. CULPEPPER. On the record, Mr. Chairman, I would like to thank you and the committee for your consideration and also thank Mr. Triggs. It is deeply appreciated. I also for the record might state that I am authorized to ask you to consider this statement that I shall make as a statement for the Southeast Shippers Advisory Board.

The CHAIRMAN. Since you have asked that, and you shall have the privilege to include the Southeast Shippers Advisory Board, tell us who the Southeast Shippers Advisory Board is.

Mr. CULPEPPER. The Southeast Shippers Advisory Board is a regional association of shippers that coordinate their work with the railroads and meets three or four times a year. They have about 500 members in the Southeast, and I am a member of the legislative committee of that board and the chairman of the legislative committee asked me to state that this statement might also be considered as a reflection of their views.

The CHAIRMAN. And you are here then primarily as the secretary and general manager of the Atlanta Freight Bureau?

Mr. CULPEPPER. That is right, yes.

The CHAIRMAN. Very well, you may proceed.

Mr. CULPEPPER. All right.

My name is Caughey B. Culpepper. I am secretary and general manager of the Atlanta Freight Bureau, which position I have held since 1951. My connection with the bureau dates from July 1, 1937; and, during that time, I have had ample opportunity to become familiar with the workings of the various transportation agencies throughout the country, both from the standpoint of rates and service.

The Atlanta Freight Bureau is not just another local traffic bureau. It has constantly maintained a highly qalified rate staff, familiar with the rates themselves and the adjustments under which such rates have been constructed.

This committee is probably acquainted with the fact that the Atlanta Freight Bureau has participated in all the major general rate adjustments, beginning even prior to ICC Docket 13494 and including such cases as those covered by dockets 28300 and 28310. In fact, the bureau worked closely with the southern Governors rate conference in these latter cases and prepared nearly all of the exhibits presented by the conference in the proceedings on these two cases.

At that time, I was executive assistant to Mr. E. L. Hart, who was then secretary and traffic manager of the bureau; and I personally supervised the preparation of many of these exhibits.

During the last 10 years the Atlanta Freight Bureau has greatly expanded its membership and now carries on its roster many nationally known manufacturing and distributing companies who utilize the full scope of our services, including the handling of rate adjustments and research and survey activities.

We have maintained a highly professional attitude toward our work and enjoy the confidence of everyone with whom we deal, including the bureaus and commissions of the U.S. Government, as well as the various State regulatory bodies.

With this background, I feel that I can with some authority testify as to the content, the intent, and the effect of the bills under consideration, especially House bill 11583.

While we are interested in the H.R. 11583 in its entirety, we are especially concerned with reference to the provisions which would relieve the Interstate Commerce Commission of its power to fix minimum rates.

While we are stanch supporters of the Interstate Commerce Commission and consider it to be the outstanding governmental bureau, both as to integrity and high purpose and as to the qualifications of its individual members to justly and wisely decide the various issues with which it deals, however, we are firm believers in a policy that would tend to relieve all common carriers of as much regulation as is consistent with the public interest.

We have come to the definite conclusion that any transportation agency should be permitted to publish and establish as low a level of rates on any commodity as will provide that carrier with a return adequate to cover the cost of operation plus a reasonable profit. If this procedure results in the loss of business by some other carrier or some other type of carriers, this should not be considered a reason for prohibiting the establishment of such rates; and the only item which the Commission should consider in connection with a minimum basis is whether or not such low rates are compensatory.

Compensatory rates are not, and never have been, cutthroat in nature simply because they are competitive.

We fail to see where the imposition upon the Commission of the duty of developing and preserving a strong and adequate national transportation system either directs or implies that the Commission should undertake to protect any carrier or any type of carriers, when the clear and patent laws of nature are violated by holding over such carrier or type of carriers an umbrella to the detriment of competitive enterprise and the arbitrary denial to any railroad or motor carrier the privilege of seeking business by the establishment of lower rates that are compensatory.

We realize that the Chairman of the Interstate Commerce Commission has offered testimony for this Commission directly contrary to these views. However, the Commission has recently become imbued with the philosophy that its prime duty is to protect the carriers under its regulation both from one another and from the shipping public. In fact members of the Commission have publicly stated that, while previously it was faced with protecting the public from the carriers, it now is forced to protect the carriers from the public.

This is a fallacious premise; and it is our contention that the prime duty of the Commission is to see that both the carriers and the public are treated fairly and that when a carrier, either rail, truck, or water, can establish a compensatory low rate upon a commodity, the shipping public is entitled to the benefits of such low rate, in order that industry might be profitable and develop.

It is realized that the provisions of H.R. 11583 apply specifically to so-called bulk commodities and so-called exempt commodities; and, for this reason, not all the members of the Atlanta Freight Bureau would be directly affected by lower rates and charges which any common carrier might publish or put into effect as a result of the passage of this bill. However, the legislation contains a principle to which we subscribe and for which we emphatically stand.

In fact, if we were going to suggest any changes in, or amendments to, the bill under consideration it would be to strike the words "passenger fares of the air carriers" as carried in line 15 on page 9 of the printed bill in section (d) and insert in lieu thereof the words "rates, fares, and charges of any regulated common carrier" and strike the word "air" from line 18 on the same page, so that the section referred to would read as follows:

(d) It is the intent of Congress that regulatory control of rates, fares and charges of any regulated common carrier be reduced to the greatest extent consistent with the public interest so that business incentives and competition may play a more influential role in the pricing of transportation.

As stated above, we are aware that the Interstate Commerce Commission, through its Chairman, Hon. Rupert L. Murphy, has expressed opposition before this committee to the bill under discussion. However, we fail to find in the expressed opposition of the Interstate Commerce Commission any reasoning that goes beyond the support of its very apparent belief that it has what amounts to an almost single duty to protect the various segments of the transportation industry from one another and to protect the individual carriers within the various categories from each other; and to protect all of the regulated carriers from a criminal-minded, selfish, and predatory shipping public.

This position has two flaws. The first is that, while the Commission is charged with the duty of using its authority to assist in building up and maintaining a strong national transportation system, it is not given the right nor the power to accomplish such end by the illogical protection of any weak, mismanaged, or outmoded transportation agency or group of transportation agencies. We are quite sure that Congress never intended to give to the Interstate Commerce Commission the right nor the power to decide what transportation agency should be favored and what transportation agency should be penalized. In fact, the law specifically instructed the Interstate Commerce Com-

mission to give attention to the inherent advantages enjoyed by each form of transportation.

Second, the Interstate Commerce Commission is in error to even consider that the transportation agencies under its regulation should be protected against the shipping public, except to the extent that it is dutybound to protect either the carriers or the shippers against illegal and unlawful action by either party. To brand efforts by shippers and groups of shippers to secure lower rates which are compensatory as being illegal and predatory takes the Commission about as far from its proper aims and purposes as can be imagined. In fact, this attitude on the part of the Commission is about as illogical as any premise it could adopt or assume.

Of decided and natural interest to members of the Atlanta Freight Bureau and shippers generally is the fact that following the enactment of the Transportation Act of 1958, wherein section 15a was amended to carry the two following subsections:

(a) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

(3) In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act—

the railroads have clearly indicated, through the publication of lower rates on various commodities, a tendency to provide for the shipping public more economical costs in transportation. We think this is germane to the subject. We believe that lower rates and charges by any mode of transportation when published on a sound compensatory basis will do much to retain for, and return to, the common carrier industries immense amounts of traffic that have been, and are being diverted to private carriage.

To us, this is a more logical manner in which to serve the public interest and assist in building a sound national transportation system.

However, the testimony of the Interstate Commerce Commission in this hearing seems to draw an altogether different line of battle. Apparently, the immediate economic welfare of the shipper is considered of no moment and the effect of the level of the rates on the shipper's business is not even discussed.

The opponents of this bill take the position that if it is passed the Commission will not be able to comply with the directive contained in the preamble to the Interstate Commerce Act entitled "National Transportation Policy." We could possibly agree with that line of reasoning if we interpreted the intent of Congress in the same manner that it is interpreted by the Interstate Commerce Commission and its supporters. However, in seeking definitions for "unjust" as it describes discriminations, "undue" as it describes preferences, and "un-

fair" as it modifies competitive practices, we find that "unjust" means contrary to justice and right; wrongful; we find that "undue" means inappropriate; unsuitable; not right; not lawful or legal; and we find that "unfair" means not frank and candid; using or involving trick or artifice; dishonest; unjust.

We fail to see where one mode of transportation can by improved operation, good management, and economical handling move a certain commodity at a reduced rate and make money on the operation will provide discrimination that is contrary to justice and right, unlawful or illegal preferences or dishonest and unjust competitive practices.

Finally, we think it extremely important that the Congress has already given full consideration to the very apparent need of the railroads for assistance in reclaiming their vital position in the national transportation system through the passage of the Interstate Commerce Act of 1958 and point out that the law of the land already states in language adopted by our Congress that—

> Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act.

The passage of H.R. 11583 will not be contrary to the avowed national transportation policy and it will be in thorough keeping with what we believe the intent of Congress to permit any mode of transportation to provide as low a level of rates as is consistent with sound business practices and the economical operation of the transportation agency involved. Just now, I would like to say I would not have this committee or the Congress either misunderstand our attitude toward the Interstate Commerce Commission or discount our respect for the Commission as a whole or its individual members. We are quite sure that there is no bureau or agency of the Government more dependable or trustworthy. We firmly believe that the Commission is convinced that its primary duty is to build up and maintain a sound national transportation system and that, in its efforts to so do, it must regard as secondary and comparatively inconsequential such matters as the effect of its decisions upon the welfare of individual carriers or the different types of carriers, as well as the impact of such decisions upon the shipping public.

We also believe that the Commission is sincere in its philosophy that this is the proper—and maybe the only—manner in which to develop a sound national transportation system.

We can also accept the premise that it is one of the prime duties of the Interstate Commerce Commission to develop and foster a sound national transportation system. However, we believe that one of the best and most acceptable ways in which to accomplish this purpose is to permit the development and strengthening of individual carriers and groups of carriers through the proper lessening of regulation and the encouragement of competitive ratemaking and the improvement of service on a competitive basis.

We also believe that the establishment of lower rates, where they are fully compensatory, and the improvement of service will recapture for the regulated carriers millions of pounds of traffic now moving by unregulated transportation, both for hire and private.

Finally, we are convinced that the Interstate Commerce Commission will never construe the law as it presently reads to allow the Com-

mission to depart from the convictions it now holds and permit the establishment of low competitive rates (compensatory or noncompensatory) when such rates have the tendency to divert traffic from one carrier to another or from one group of carriers to another group of carriers.

Consequently, we are convinced that the Congress should spell out in unequivocal language that the establishment of low competitive rates, where such rates are compensatory, is not to be considered by the Commission as a deterrent to, or a handicap toward, the development of a sound national transportation system. H.R. 11583 does just this; and we, therefore, urge your committee to recommend its passage and the full Congress to approve such recommendation.

The CHAIRMAN. Mr. Culpepper, thank you very much for your very forceful and forthright statement.

Mr. Hemphill, do you have any questions?

Mr. HEMPHILL. No, thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Yes, I have one thing, Mr. Chairman.

In your statement on page 8 at the bottom you refer to the 1958 Transportation Act as follows—

> Rates of a carrier shall not be held up to an active level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act.

In other words, they were instructed not to hold an umbrella over one mode because they did not have the inherent advantage to give a lower rate; is that true?

Mr. CULPEPPER. That is right.

Mr. YOUNGER. All right.

Now, on page 11 you say:

> Finally, we are convinced that the Interstate Commerce Commission will never construe the law as it presently reads to allow the Commission to depart from the convictions it now holds to permit the establishment of low competitive rates (either compensatory or noncompensatory) when such rates have the tendency to divert traffic.

Yet you pay great compliments to the ICC, and in your very statement you say they are not following the law as it was prescribed in 1958. How do you reconcile those two views?

Mr. CULPEPPER. Mr. Congressman, I say they are not following my interpretation of the law or they could follow the law by interpreting it differently. They automatically apparently, and I have given it a good deal of study, feel that if you harm one mode of transportation by permitting another mode of transportation to put in lower rates, you are automatically damaging the national transportation system, and I claim that that is not true, sir.

Mr. YOUNGER. How could you put into effect the 1958 Transportation Act without accomplishing that very purpose?

Mr. CULPEPPER. You could do that very well if you did not have in your mind that automatically to put in a lower rate would hurt another form of transportation, if you would weigh each application on its own basis, but they come along and they won't let the railroads put in a grain rate because it is less than 25 percent higher than the water rate. I am just using one instance. I am not arguing that case, but the Commission has reached the decision that if you

take business away from one mode of transportation you are automatically damaging the national transportation system.

Mr. YOUNGER. That to me is a very, very confusing interpretation of your own statement here.

Mr. CULPEPPER. What I am trying to say is I think the Commission is entirely honest. I think that they have reached the conclusion that they must protect all forms of transportation and they cannot let anybody take a predatory step, one form of transportation, the shipping public, or anybody.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. Just one, Mr. Chairman.

Mr. Culpepper, your organization, the Atlanta Freight Bureau, is composed of railroads?

Mr. CULPEPPER. No, sir, it is composed of shippers from all over the United States. We have over 525 members.

Mr. KORNEGAY. In other words, you are representing the shippers and not any of the modes of transportation?

Mr. CULPEPPER. Yes, sir. In other words, I would feel that this law was good for the trucklines just like it is good for the railroads. I think H.R. 11583 would be just as good for the trucklines as it is for the railroads. I think any form of transportation ought to have a right to put in as low a compensatory rate as it can in order to get business back to the organized and regulated carriers.

Mr. KORNEGAY. Thank you, sir, for a very fine statement.

The CHAIRMAN. Mr. Culpepper, we are glad to have you back with the committee. I wish to thank you again for your statement.

Mr. CULPEPPER. Thank you, Mr. Chairman. I appreciate your letting me come. I appreciate your being so considerate.

The CHAIRMAN. You are always generous in your comments and we are always glad to have you.

Mr. CULPEPPER. If you will let me say it, like the Texan, I am glad you made that remark, sir, because it is very easy to be generous to you, sir.

The CHAIRMAN. Thank you.

It is always hard to get the last word in with you. Very good.

The committee will adjourn until Friday morning at 10 o'clock, at which time Mr. Matt Triggs will be the first witness.

(Whereupon, at 12 noon the hearing was adjourned, to reconvene at 10 a.m., Friday, July 27, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

FRIDAY, JULY 27, 1962

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

The committee met, pursuant to recess, at 10:10 a.m., in room 1334, New House Office Building, Hon. John Bell Williams presiding.

Mr. WILLIAMS. The committee will be in order.

The first witness this morning is Mr. Matt Triggs, assistant legislative director of the American Farm Bureau Federation.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Thank you, Mr. Chairman.

Gentlemen, we appreciate the opportunity of presenting the views of the American Farm Bureau Federation with respect to the two bills under consideration by the committee.

H.R. 11583: Our board of directors has given consideration to the provisions of this bill and has adopted the following policy statement:

> We support the principle of proposed legislation providing for the elimination of ICC minimum rate control for all carriers hauling agricultural or bulk commodities, subject to continued review by the Interstate Commerce Commission with respect to discrimination, and the broadening of the inland waterway bulk commodity exemption to include all bulk commodities irrespective of the composition of the tow.

This is not to be considered as an endorsement of the exact language or detailed provisions of H.R. 11583, but rather as an endorsement of the basic purpose of the bill, which is to provide that rates filed by regulated carriers for hauling agricultural and bulk commodities shall not be suspended solely because they are too low.

As we understand the procedure that would be followed if H.R. 11583 is enacted, rail rates for hauling agricultural and bulk commodities would be filed with the Commission as heretofore. They would not go into effect for 30 days. During this 30-day period the Commission could suspend them and announce hearings if the Commission determines that they are too high, or are discriminatory or violate other specific provisions of the Interstate Commerce Act; but such rates could not be suspended and made the subject of hearings on the sole grounds that they are too low.

H.R. 11583 has been described as extending to the railroads the same exemptions from ICC rate regulation for transportation of agricultural and bulk commodities as are now applicable to truck and/or inland waterway transportation. H.R. 11583 represents a substantial modification of rail ratemaking policy providing a much broader

area for management discretion, but retains a substantial authority in the Commission to prevent excessive or discriminatory rail rates.

In these times of rapid technological change, we believe it is essential to permit efficiencies of new equipment and practices to be reflected promptly in rates to shippers. Where reductions are feasible by reason of cost and competitive factors they should not be denied or long delayed because of their effect on other modes of transportation.

A case in point is the recent petition of Southern Railway to reduce rates on multiple-car shipments of grain to about 40 percent of existing rates. This was made possible by new and more efficient equipment and procedures developed and placed in service by Southern Railway. Yet it has been a year since Southern filed its new grain rate tariffs and they are still pending before the Commission.

H.R. 11583 would place reliance on antitrust law to prevent predatory pricing practices by carriers. We do not take the position that this is necessarily the only or the best approach to the problem. We do not pretend to understand the full significance or effect of this proposal. However, the injunctive remedy available to competitors and the liability for treble damages for losses sustained as a result of predatory pricing practices, would appear to represent a reasonably effective bar to rail rate reductions designed primarily to eliminate competitors. This provision would apply to railroads the same antitrust restrictions currently applicable to bulk inland waterway carriers.

The nature of the rate problem of common carriers is well summarized in a recent Department of Commerce publication (p. 26, "Rationale of Federal Transportation Policy," Department of Commerce, April 1960) as follows:

> The rate structure which regulated carriers and the regulatory authorities alike have sought to preserve, extends an open invitation to the growth of private transportation and of specialized transportation in the exempt areas, as well as marginal and outright unlawful operations. * * * It tends to divert the most remunerative business and to reduce significantly the base of high revenue traffic. * * *

The enactment of legislation to eliminate minimum rate control would give regulated carriers a flexibility in ratemaking that would permit them to move more effectively to prevent inroads on traffic by private carriers.

H.R. 11584: We have no policy with respect to any of the amendments to the Interstate Commerce Act, and other acts provided in this bill, and therefore make no recommendations relative thereto.

The agricultural exemption: The recommendation of the Interstate Commerce Commission in opposition to the enactment of H.R. 11583, and proposing in lieu thereof the modification of the agricultural exemption, necessitates the inclusion of this portion of our statement.

Agricultural interests have historically supported the exemption from economic regulation of trucks hauling farm products as essential to the efficient marketing of farm products.

There is summarized below the principal reasons the exemption is of vital importance to farmers:

A. To a major extent, the efficient marketing of farm commodities involves movement from the farm direct to consuming markets: A major portion of cattle, hogs, and sheep move from the farm or ranch direct to packinghouses. Much feeder livestock, grain, and hay moves

from one farm to another. A substantial amount of farm produce is moved direct from fields to market. This direct movement avoids the costs and delays involved in unloading, handling, and reloading the commodities being shipped.

Exempt haulers are commonly willing and anxious to haul from farms and adapt their time schedule to that of the farmer-shipper. Truck common carriers are not ordinarily interested in loading on farms, nor do their certificates require them to do so. To require farmers to haul their products to the nearest loading facilities of rail or truck common carriers and to reload at such point would involve substantial and unnecessary costs. In some cases a deterioration in quality, in others a delay in the marketing process would prevent a farmer from "hitting the market" at the right time from the standpoint of price and salability.

B. Exempt haulers can reach any market and reach it expeditiously: The exempt truck hauler, because it is not restricted as to routing nor delayed in terminals, can move rapidly from the point of origin to any market in any direction. This flexibility of operation is imperatively necessary to the efficient marketing of agricultural commodities, particularly perishable products. Transportation must fan out from origin in all directions in order that each market may be uniformly supplied and price-depressing gluts avoided.

The fast service of exempt haulers moving in any direction to any market in response to changing prices in each market reasonably assures that each such market will be supplied with the amount of the commodity desired by consumers without oversupplying such market.

Truck or rail common carriers cannot provide this kind of service in many circumstances. Many markets can be reached from specific origins by common carriers only by circuitous routing, interchange of equipment, and delays in transit. This involves extra cost, deterioration of the product, and uneven distribution.

C. Common carriers do not serve many agricultural communities: In many cases it will be a substantial distance from a farm or even from a local assembly or processing plant to a common carrier rail or truck terminal that is equipped to handle specific farm products. Common carriers, both truck and rail, pass through many rural communities without any intention and without facilities to serve such communities. The exemption insures that an agricultural area, no matter how thin its transportation needs may be, will be served. It further assures that competitive factors will provide an incentive to satisfactory service. Otherwise, in many instances farmers would be dependent upon one railroad or one truckline irrespective of the adequacy or efficiency of their service, or the remoteness of loading facilities suitable for handling their products, or the inability of such carrier to reach markets the farmer wants to reach.

D. Exempt haulers commonly provide a fast, superior and personalized service: Exempt haulers are normally local residents known to the farmer-shipper in whom the farmer-shipper has trust and confidence. We are, of course, aware of the aspersions often cast upon "irresponsible gypsies." While there may be such, they are in the minority and no farmer-shipper is required to deal with them. Most of the exempt haulers are high caliber, responsible individuals, small businessmen, competing vigorously for business by providing service.

Because the farmer-shipper is dealing with an individual who can give the cargo personal attention all the way to the market, he can give him instructions with respect to the manner in which service is to be provided and hold him responsible for such service.

No such personalized service can be assured in many circumstances by a common carrier organization. The shipper's instructions do not necessarily filter down to the person or persons doing the work. This is particularly the case where interchange of equipment or responsibility is involved.

E. Exempt haulers provide a transportation pool: Much agricultural movement is seasonal. Shipments from an area may fluctuate from nothing to many truckloads in a few days. The freedom of entry into exempt haulage means that trucks normally engaged in other occupations or in adjoining areas may be pressed into service to meet seasonal or emergency situations. The freedom from rate regulation means that rates may rise to the extent necessary to attract the needed number of trucks into service.

In many situations, common carriers do not begin to have the standby equipment necessary to meet seasonal peaks, which in the case of fruits and vegetables for fresh market or canning, are often only a week or two.

F. Exempt haulers will load or unload at multiple points: Common carriers do not ordinarily provide this service. This is often an extremely important factor in serving an area or in developing a new area. Exempt haulers in many instances perform a marketing function as well as a transportation function.

G. Exempt haulers are not as subject to featherbedding and make-work practices that add costs to rail and truck common carriers: An example of this is the local driver requirement established in a number of cities by an agreement between common carriers and the local Teamsters' Union which provides that an over-the-road truck must be accompanied by a local union man from the common carrier terminal to the ultimate destination. The exempt hauler is not subject to such contractual arrangements and can often avoid the costs incident to such uneconomic practices.

H. The exemption widens the shipper's choice of alternative shipping facilities: The availability of the exempt hauler to serve farmers permits the farmer-shipper to choose the transportation facility best equipped for a specific movement and therefore to market his product to best advantage.

I. In many instances rates of exempt haulers are substantially lower than common carrier rates: The real significance of the exemption is that rates are free to fluctuate depending on relative need and the character of service required. In many instances exempt rates will exceed regulated rates. However, as a general rule exempt rates will be lower than regulated rates.

In "Interstate Trucking of Fresh and Frozen Poultry Under Agricultural Exemption," Marketing Research Report No. 244, the Department of Agriculture points out that truck rates charged by carriers during 1956 and 1957 (after poultry was deregulated by judicial action) were approximately 33 percent below the 1952 rates. This is a high price to pay for regulation.

Furthermore, most shippers reported that service provided by exempt haulers was superior to that provided by common carriers. The reasons advanced for this were: faster service, availability of equipment, willingness to serve out-of-way points, willingness to serve distant markets, direct service to markets, more stopoffs permitted, willingness to adapt service to processor and customer needs, deliveries arrived at markets at designated time, and reliability of the drivers.

In another publication issued by the Department of Agriculture in March 1959, titled "Interstate Trucking of Frozen Fruits and Vegetables Under Agricultural Exemption," Marketing Research Report No. 316, appears the following summary:

> Since the interstate trucking of frozen fruits and vegetables came under the agricultural exemption in 1956, motor carrier rates have been reduced, and, according to the processors, service has improved.

The report further states that:

> Motor carrier freight rates on frozen fruits and vegetables declined 19 percent following the court decisions declaring them to be "exempt commodities" between 1955 and 1957.

J. The elimination of the agricultural exemption would impose an impossible regulatory burden on the Interstate Commerce Commission: The Interstate Commerce Commission is currently regulating about 17,000 truck common and contract carriers, but there are literally tens of thousands, no one knows how many, exempt haulers. It would be a herculean task to bring all of these additional concerns and individuals under economic regulation. How would rates be established? Who would establish them? How can you establish rates from farms to markets or from farm to farm? The complications of ratemaking would be multiplied beyond anything in current experience.

K. Rate regulation of truck transportation of farm products is impractical: Most transportation service for industrial products is standardized as to the character of the service provided. This is not true with respect to much of the carriage of farm products by motor carrier. The character of the service is diverse and therefore not adaptable to fixed rate practices. A few examples will suffice to illustrate this.

In one case the farmer or his employees aid in loading a truck; in another, the trucker does all the loading.

In one case the farmer has loading platforms and loading facilities; in another, he does not.

In one case loading at night may be necessary to reach the market at a specified time; in others, loading at any time may be acceptable.

In one case loading is at central point; in another, the product is picked up at various points in one or more fields.

In one case the farm is located on a major highway; another farm may be located off major highways over rough and narrow roads.

In one case the cargo may constitute a full load; in another, a partial load.

In one case a full load may be picked up on one farm; in another, the trucker may pick up partial loads on a number of different farms.

In one case, unloading labor and facilities are provided at destination; in another case, labor and facilities may not be provided.

In one case fast service and delivery at a specified time may be essential; in the next instance this may not be necessary.

In one case the trucker may be asked to assume a marketing responsibility; in another, this will not be requested.

In one case overnight stops by the trucker may be necessary; in another, the round trip may be completed in 1 day.

These and other variations in the character of the service needed by farmers necessitate rate determination by negotiation rather than by regulation. Regulated rates simply will not fit the varied nature of the transportation service required.

L. The argument that elimination of the exemption would help common carriers is unfounded: We submit that any benefits to common carriers resulting from the elimination of the exemption would be either negligible or illusory.

In the first place Congress has never extended economic regulation in the field of transportation to an unregulated area without affirming the right of those presently engaged in the business to continue to be so engaged. Presumably if the exemption were eliminated or substantially curtailed, the Congress would protect those now in the business by providing "grandfather rights." Thus, the present exempt carriers would become regulated carriers authorized to perform the same service they are now performing. How would this benefit present common carriers?

In the second place, most of the traffic now handled by exempt carriers has such special requirements, best described by the term "flexibility," that even if the exemption were eliminated, we believe this would not resut in a restoration of most such traffic to railroads. A substantial increase in the amount of such commodities shipped by private and cooperative carriers would follow the elimination of the exemption.

That the extension of rate regulation to commodities now exempt from such regulation would not have a major effect upon railroad carriage of such commodities is illustrated by the situation with respect to poultry. The railroads lost most of the traffic in dressed poultry before dressed poultry rates were deregulated by judicial action. There is no reason to suppose they would regain such traffic if rate regulation of transportation of dressed poultry were to be restored.

In the Transportation Act of 1958, rate regulation was extended to cover truck transportation of bananas, coffee, and frozen fruits and vegetables. The elimination of the agricultural exemption for these products has not resulted in any expansion in tonnage of such products shipped by rail despite the increased tonnage of such commodities. This is reflected in the following figures:

Year:	*Tonnage*	Year:	*Tonnage*
1956	2,279,225	1959	1,950,802
1957	2,193,298	1960	2,091,984
1958	1,967,829	1961	1,949,945

This table shows the total rail tonnage of bananas, coffee, fresh frozen fruits and berries and fresh frozen vegetables as reported in Freight Commodity Statistics—ICC.

You will note that the extension of regulation to the transportation of these products by truck did not increase the tonnage handled by railroads.

The agricultural exemption does not constitute any special privilege for agriculture. It was provided because of the nature of farm product transportation. It insures the fast, efficient, and flexible service imperatively necessary for effective marketing of farm products. Farmers would be drastically and adversely affected by any elimination or substantial narrowing of the exemption.

The Commission has now come up with a new and unique proposal, that the exemption should be limited to trucks with two or three axles.

Statistical data concerning the percentage of farm products shipped on trucks with three or less axles compared with trucks with more than three axles is not, to our knowledge, available.

The Commission bases its recommendation—

upon the idea that in all movements of substantial distances, or substantial weight, the economies of the situation will dictate the use of vehicles having more than three axles and thus the exemption would be lost.

The Commission's "idea" would crucially impair efficiency of agricultural transportation with respect to such major traffic movements as the shipment of livestock from farm to slaughtering establishments or to other farms, the shipment of hay from hay farms to dairy or livestock farms, the shipment of grain from grain dryer to mill, the shipment of cotton from cotton gins to warehouses or compresses, the shipment of milk and dairy products to market, the shipment of fruits and vegetables from farms to canneries, the shipment of fresh fruits and vegetables from farm or packing shed to market, and the movement of dressed poultry from dressing plant to market. In all of these movements 4- and 5-axle vehicles are commonly used. If the Commission's proposal were enacted, some of the carriers involved could shift to 3-axle units. Where 3-axle units could not do the job effectively, we believe that a substantial percentage of the above-described traffic would move to private and cooperative carriage rather than to common carriage.

The Commission's proposal would disadvantage small farmers as compared with large farmers, since the latter can more effectively utilize private carriage.

If 4- and 5-axle units could not be called into farm product hauling service during seasonal movements, the pool of transportation equipment available to handle such peak traffic would be substantially reduced.

This effort to limit the agricultural exemption by prohibiting the exempt hauler from using the kind of equipment which may be most suitable to his needs imposes an undesirable limitation upon efficiency of operations.

The Commission's long-existing policy, which they refer to in their statement, that the exemption should be limited to carriage to local markets, would not only raise an impossible interpretative and enforcement problem as to what is a local market and artificially alter marketing patterns, but would destroy the significance of the exemption to farm product transportation for all of the reasons set forth in paragraphs A to L above.

We appreciate the opportunity of presenting our views relative to this issue to the committee.

Mr. WILLIAMS. Thank you, Mr. Triggs.

As I understand, generally speaking, the Farm Bureau endorses the principle, at least, of the bill H.R. 11583, but does not take a position with respect to 11584.

Mr. TRIGGS. Correct.

Mr. WILLIAMS. Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. WILLIAMS. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

You use rather indiscriminately the terms "agricultural exemption" and "exempt haulers."

Will you define those terms, please?

Mr. TRIGGS. Well, I do not mean any distinction in that connection.

Mr. YOUNGER. I can hardly hear you, sir.

Mr. TRIGGS. By use of the term "agricultural exemption," and the term "exempt hauling," we refer to the exemption provided by section 203(b)(6) of the Interstate Commerce Commission Act.

Mr. YOUNGER. That is an exemption for what?

Mr. TRIGGS. This is an exemption from economic regulation of trucks engaged in the hauling of farm products, as defined in the act. And of course in the 1958 Transportation Act, it was defined in great and meticulous detail.

Mr. YOUNGER. That does not mean exempt hauler, then; I mean that does not carry with it because a truck hauls agricultural products it is an exempt hauler, and he can haul anything he wants to without regulation.

Mr. TRIGGS. No, sir.

Mr. YOUNGER. You do not advocate that.

Mr. TRIGGS. No, sir.

Mr. YOUNGER. How about the return haul, from hauling agricultural products?

Does your organization stand by the theory that he should have an exemption only when he hauls agricultural products?

Mr. TRIGGS. Yes, sir. We do not take the position that an exempt hauler should be free to haul anything on the back trip.

We do take the position that the exempt hauler, or the private carrier, should be free to lease his vehicle to a common carrier, to haul whatever products the common carrier is authorized to haul. This was, as you will recall, provided by the so-called trip lease bill that this committee approved a few years ago, which we thought was a good bill and supported at the time. This, of course, involves transportation under regulation.

Mr. WILLIAMS. In the leasing of these vehicles, Mr. Triggs, I would presume that under the Trip Lease Act, which we passed several years ago, the vehicles are subject to all of the safety requirements of the Interstate Commerce Commission.

Mr. TRIGGS. This is correct, irrespective of whether they are leased or not. An exempt hauler in interstate commerce is subject to the safety requirements of the Interstate Commerce Act, and the regulations issued thereunder by the ICC.

Mr. WILLIAMS. I thought that was the situation, but I wanted to be sure.

Mr. YOUNGER. Also, in regard to the leasing bill we passed, as I recall the common carrier has to be responsible.

Mr. TRIGGS. Yes, sir—and the rates are as determined by the ICC, the contract for transportation is between the common carrier and the shipper, and the exempt hauler or private carrier is merely entering into a contract with the common carrier to provide that service. It is quite a convenience to many common carriers, because they do not have at all times available the type of equipment and the amount of equipment necessary to provide service to all their customers.

Mr. YOUNGER. In the normal hauling of agricultural products, the driver of that truck is not a union member, as I understand it.

Mr. TRIGGS. I think this is generally true. I think there are plenty of exceptions to this.

Mr. YOUNGER. Now, if he leases his truck to the common carrier, where they have a contract with Mr. Hoffa's union, does he then have to join the union?

Mr. TRIGGS. I do not know the answer to your question, Mr. Younger—I am sorry—I wish I did.

Mr. YOUNGER. You have had no experience in that field?

Mr. TRIGGS. No, sir.

Mr. YOUNGER. You mention here about the union driver, but you did not carry that on through. I guess it is because you have not had that experience.

Mr. FRIEDEL. Will the gentleman yield?

Is there any way you could get that information?

Mr. TRIGGS. Well, the only way I would know would be to inquire of the American Trucking Association with respect to the character of contracts between the Teamsters Union and common carriers, whether they require union membership of the exempt hauler or the trip-lease hauler or not. I will try to get that and provide it for the record.

(The following information was subsequently received for the record:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., July 30, 1962.

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

DEAR MR. HARRIS: During my presentation to the committee on July 27, concerning our views on H.R. 11583, Congressman Friedel inquired about the contractual provisions of Teamsters Union-common carrier contracts with respect to union membership of carriers who enter into lease agreements with common carriers.

Since I did not have this information, I promised I would get what I could and supply it for the record.

I discover this is a more complex question than I had supposed. It is commonly the subject of negotiation between the common carrier and the Teamsters Union. A wide variety of contractual provisions have been adopted in various contracts. Some contracts provide that the operators of all leased vehicles must be members of the Teamsters Union. Others exclude such operators from membership requirements. Between these two extremes there is a variety of arrangements depending upon the frequency of leasing arrangements or the duration of periods during which a truck is leased and other factors. It would apparently take more of a survey than has been made by anyone to discover the relative frequency of the various contractual arrangements relating to this area.

Very sincerely,

MATT TRIGGS,
Assistant Legislative Director.

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Mr. YOUNGER. There is one other deduction that might be made, Mr. Triggs, from your testimony, where you show that there has been such a decrease in the rates due to the exempt hauler that it might well follow that we would exempt all commodities.

Would then the manufacturer and all shippers be better off, do you think?

Mr. TRIGGS. I think this bill goes in that direction, certainly—the elimination of minimum rate regulation will result in some reduction in transportation costs.

Mr. YOUNGER. With the exemption of minimum rates, do you think that the common carrier then might get into the agricultural hauling business?

Mr. TRIGGS. Well, many of them are in it now. Of course, the railroads are. But you are speaking of the truck common carriers.

Mr. YOUNGER. I am speaking of the trucks.

Mr. TRIGGS. Many of the truck common carriers are in the agricultural hauling business. Many are not. Many are specialized. They are free to engage in agricultural hauling, of course. Whether or not the enactment of this bill would increase their interest in this area, I do not know.

Mr. YOUNGER. Well, are they free to go into it? As you point out, it is a business where it is almost impossible to file rates and to establish rates.

Now, as I understand it, if a regulated carrier, truck company, wanted to go into that business, they would have to file all kinds of rates, would they not?

Mr. TRIGGS. No, Mr. Younger; it is not that way. The carriage of agricultural commodities is exempt from economic regulation, irrespective of who performs it. A common carrier who performs this function is exempt from filing rates and adhering to fixed rates by reason of such exemption.

Mr. YOUNGER. Do you think that the abandonment of the minimum rate might lead to the truckers doing a little better, or going into the agricultural hauling more extensively?

Mr. TRIGGS. I guess I cannot answer that question. I do not have the experience in the trucking business to know.

Mr. YOUNGER. You have not talked to enough of them.

Mr. TRIGGS. I have not talked with them about that feature.

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

Mr. WILLIAMS. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I want to congratulate you on your statement, not that I agree with all of it, but you have made a pretty full statement and pointed out some things that I think we should inquire into. One of them is, as I understand your statement, you say that you approve of 11583, but you say that it will not get for the railroads the business that the railroads claim it will get for them, is that right?

Mr. TRIGGS. No, sir. My statement was this: My statement was made in connection with the agricultural exemption now applicable to truck operations. I do not believe the elimination of this exemption would return a significant amount of traffic to the railroads, and we have given some illustrations that it has not done so, where regulation has been extended.

Mr. HEMPHILL. Do you believe if we pass 11583 that it will bring the business to the railroads that they apparently expect or at least have said they expect?

Mr. TRIGGS. Yes; I think it will.

Mr. HEMPHILL. Now, another question comes from your point C, on page 3, in which you say common carriers do not serve many agricultural communities.

Now, if we pass this particular legislation, will those communities that are not served by common carrier suffer in competition with those communities that are served by a common carrier?

Mr. TRIGGS. Well, not so long as the opportunity of private carriage exists, and the opportunity of exempt carriage exists. There may be an area here outside of agriculture that there would be some difference.

Mr. HEMPHILL. Well, now, what area are you speaking of, that there would be some difference?

Mr. TRIGGS. Well, only this—that any area which gets the benefit of a reduced rate as a result of the increased competition involved if this bill were enacted might conceivably benefit as compared with some area that was not served by a common carrier.

I need to elaborate on this a little bit, though.

When I say there are many agricultural communities not served by common carriers, I am thinking of specialized types of service.

For example, railroads do not have livestock loading facilities at most of their terminals. They do at some. Therefore, for all practical purposes the railroad industry does not serve the livestock shipping people in many areas.

Now, the same is true with respect to many truck common carriers. They simply do not have loading facilities adjacent to livestock-producing areas that they could use to handle this business.

So, so far as the livestock industry is concerned in that area, they simply are not served by common carriers.

Mr. HEMPHILL. Well, is that to their benefit or detriment?

Mr. TRIGGS. As long as we have the availability of private and exempt transportation, it is not harmful to agriculture.

Mr. HEMPHILL. Of course, one of the things that has concerned me is the fact that there has been testimony here presented—they use the word "discrimination" which is overworked. When you want something up here now, you say you have been discriminated against. This has been the pattern since I have been here.

They say there is discrimination in the fact that some methods of transportation are regulated and some are not.

Mr. TRIGGS. Yes.

Mr. HEMPHILL. Now, the question I think we have got to face, because this is a pretty big piece of legislation——

Mr. TRIGGS. Yes; it is.

Mr. HEMPHILL (continuing). And a major change, if effected, in part, even—it is going to be a major change in our transportation concept, as I see it.

It seems to me we have an alternative of either putting everybody under the same regulation or everybody under the same exemption.

Does your statement reflect that, do you think?

Mr. TRIGGS. Well, we would feel that it is desirable to move in the direction of less regulation, that H.R. 11583, if enacted, would provide

for comparable treatment of railroads with respect to ratemaking as compared to their competitors.

Now, we do not think that you can have an exact identity of regulation. The circumstances of transportation service vary so much that to think in terms of an exact identity of regulation is not equality of treatment.

Mr. HEMPHILL. Well, I agree with you there. I thoroughly agree with you there.

But what, in effect, we are being asked to do is to take the railroads in certain instances out from under the ICC as to, let us say, 70 percent of the business.

Mr. TRIGGS. So far as minimum rates are concerned; yes, sir.

Mr. HEMPHILL. And we are asked to substitute for the regulatory agency, which was created by Congress, and known as the ICC, the Department of Justice, in effect.

When we are asked to do that, the question has been asked here—and I want your comment on it, if I may—as to what, in what form is relief going to come? And the answer has been given here that the individual who feels that he has been prejudiced—I don't like to use the word "discrimination"—the individual, or the Government has the right to go into the courts, the Department of Justice under certain circumstances would have the duty as well as the right to go into court. And I suppose a competing mode of transportation would have a right under certain circumstances to go into court.

What is the opinion of your organization as to the adequacy or the facility of that approach?

Mr. TRIGGS. Well, you are asking me a very difficult question, because we are not antitrust experts, and we deliberately avoided dealing with this aspect of the problem in the resolution of our board of directors, I read.

I am not sure that I am competent to advise the commitee in this area. But I think that in view of the treble damage features of antitrust law, that these have more teeth than some persons may have perhaps indicated, and that railroads would have to walk a very careful line in fixing their rates so as to avoid the extreme liability of the treble damage feature of the antitrust law.

This is a horseback opinion. I do not pretend to be an expert in this field, Mr. Hemphill.

Mr. HEMPHILL. Well, it occurs to me also that we are substituting—if we go to the Department of Justice—a stronger hurdle, on the question of rate prejudice—because it is my feeling, my understanding, that the antitrust laws require a greater showing of prejudice than you have to show under the ratemaking processes now.

The reason I ask that is because I think we certainly have some responsibility to explore the impact of that change on the transportation of this country, and how it would be affected.

I have two more questions.

One is, Is your organization convinced that this particular legislation, which you do endorse, will benefit the public who uses the transportation facilities of this country?

Mr. TRIGGS. Yes, sir.

Mr. HEMPHILL. Now, the next question is, Does your organization feel that if this legislation is enacted, that it would drastically affect

the trucking industry and its ability to survive as a transportation entity in our system here?

Mr. TRIGGS. Well, our board of directors, in their discussion of this subject, did not think so.

In fact, they are inclined to believe that in many circumstances the regulated truckers themselves need a greater flexibility of ratemaking procedure to prevent the erosion of their traffic by private carriage, and that the enactment of this measure would permit them to move more rapidly to meet that competition.

Mr. HEMPHILL. Well, I am happy to hear you say that because I have received a number of letters from trucking people who are opposed to the legislation. They say it is going to wreck their industry. They are not particularly specific about it. They just say, "It is going to wreck our industry." It is just like a fellow seeing an object moving through the dark and not knowing what it is and saying, "It is going to run over me."

I think we have a responsibility to the railroads, and to the trucking industry, to all other modes of transportation, and overall to the public.

It concerned me that we get these letters, because apparently they believe this, and apparently that belief has been disseminated among the people who depend on that industry for a livelihood.

Finally, do you believe if we pass this legislation, the people in the trucking business will lose their jobs? I have gotten petitions saying, "We are going to lose our jobs."

Mr. TRIGGS. I do not, sir.

Now, obviously there are certain traffic movements where technological change is enabling the railroads to meet the competition of the trucks far more effectively. The movement of grain as pioneered by the Southern Railway is a good example.

Now, yes, there is going to be some—in the long run, irrespective of the enactment of this bill there are going to be some truckdrivers engaged in hauling grain who are going to lose their jobs. The bill will permit the railroad industry to move more rapidly to reflect new efficiencies and new technological development in their rate structure, and therefore this process will be hastened. But it certainly won't be changed in its basic nature.

Mr. HEMPHILL. Thank you for your courtesy in answering my questions.

Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Kornegay.

Mr. KORNEGAY. Mr. Triggs, do you feel that if H.R. 11583 is enacted into law it will result in rate wars?

Mr. TRIGGS. Well, the proposed bill does open the door to possible rate wars. I think it would be easy to exaggerate the importance and significance of the extent to which this would occur.

I do not know of any reason to suppose that the enactment of this measure would lead to any more rate wars than the bulk exemption has led to below-cost rates in the case of inland water carriers.

Theoretically, producers of steel and automobiles and sewing machines and gasoline can have price wars and occasionally do. But this does not appear to be a reason to extend regulation to them.

Now, the railroads are in business to make money, and they are not going to make money by establishing rates at unprofitable levels.

I think the time is past when railroads could recover the loss on below-cost traffic by increasing rates in other traffic, because private carriage and the competition of other modes that is all prevailing now, prevents them from doing this.

While there may be some situations in which this is possible, I do not think they are very general.

Furthermore, certainly the extension of antitrust law to ratemaking imposes some rather effective deterrents on reckless rate reductions, and selective rate reductions which were not fully warranted by costs or to meet competition would involve an area of antitrust jeopardy.

Now, I do not doubt that there is going to be some substantial rate reductions if 11583 is enacted. But every rate reduction is not a rate war, even though the competitors might be so inclined to regard it. And there are technological changes coming along that the people who are responsible for them should have the opportunity to reflect them rapidly in their rate structure. This is not a rate war. This is just rate competition.

Mr. KORNEGAY. You feel, sir, that setting a rate that is compensatory, that is, reflecting a profit to the carrier, even though it would be a reduction from a former rate, would not be classified as rate war participation?

Mr. TRIGGS. Yes, sir, I would agree with this. I would also comment, as you will appreciate, that it is awfully difficult to determine what a compensatory rate is.

Mr. KORNEGAY. Now, do you have any figures on the movement of grain as between trucks and rail?

Mr. TRIGGS. I do not, sir; no.

Mr. KORNEGAY. I think that is all. I want to take this opportunity to thank you for a very fine statement.

Mr. TRIGGS. Thank you, sir.

Mr. JARMAN (presiding). Does that conclude your questions?

Mr. KORNEGAY. Yes, Mr. Chairman, that is all I have.

Mr. JARMAN. Thank you very much, Mr. Triggs.

Mr. TRIGGS. Thank you, Mr. Chairman.

Mr. JARMAN. Our next witness this morning is Mr. Joseph E. Moody, president of the National Coal Policy Conference, Inc.

STATEMENT OF JOSEPH E. MOODY, PRESIDENT OF THE NATIONAL COAL POLICY CONFERENCE, INC.

Mr. MOODY. My name is Joseph E. Moody. I am president of the National Coal Policy Conference, Inc.

This conference membership includes the Nation's coal-carrying railroads, the coal-producing companies, the coal-using electric utilities, the United Mine Workers of America, and the coal-machinery manufacturers.

I am appearing before this committee on the instructions of my board of directors.

I thank you very much for your courtesy in accepting this statement, sir.

Mr. JARMAN. Thank you, Mr. Moody. Your statement will be printed in the record. Thank you very much.

(The prepared statement of Joseph E. Moody follows:)

STATEMENT OF JOSEPH E. MOODY, PRESIDENT OF THE NATIONAL COAL POLICY CONFERENCE, INC.

Mr. Chairman, my name is Joseph E. Moody. I am president of the National Coal Policy Conference, Inc.

This conference membership includes the Nation's coal-carrying railroads, the coal-producing companies, the coal-using electric utilities, the United Mine Workers of America, and the coal-machinery manufacturers.

In appearing before your committee, I am under instructions of the chairman of the board of the conference, Mr. John L. Lewis, and of the board to express the full support of the conference for the bulk commodity provisions of H.R. 11583, as introduced by the distinguished chairman of this committee, implementing certain of the recommendations contained in the President's transportation message of April 5, 1962.

I don't believe it is necessary to point out to this distinguished committee that our Nation's railroads have long been in a very precarious position, and this has resulted, in considerable measure, from discrimination and unequal treatment accorded the rail carriers in relation to other forms of transportation.

The same precarious economic situation exists within the American coal industry, and its causes are likewise partially due to failure to obtain equal opportunity in the marketplace with other fuels sold at predatory prices which are impossible for coal to meet under present conditions.

These fuels are imported residual oil, which is a waste product of the refining process, and natural gas which is sold for industrial boiler use under so-called interruptible contracts—which means that the pipelines and distributors sell excess gas to utilities and industries when it is available, for example, during off-peak seasons at prices only a fraction of what the homeowner and other small users must pay for it. Both these marketing practices not only take away great amounts of coal sales from the producers and their employees, but also sharply curtail railroad revenue from the hauling of coal.

We are convinced that removing the railroads from ICC control in respect to setting minimum bulk commodity rates would provide a most important degree of flexibility to assist the coal producers in meeting the unfair competition of predatory pricing by foreign oil and dumped gas.

This, in turn, could mean a substantial revenue boost for the coal-carrying railroads, which transport about 75 percent of all U.S. coal.

According to the Association of American Railroads, 304.5 million tons of bituminous coal were originated by class I railroads in the year 1960, providing a gross freight revenue of more than a billion dollars. Total U.S. coal produced that year was just a little over 400 million tons.

These figures indicate the mutual stake that the coal industry and the railroads, as well as coal consumers, have in the legislation under consideration. No other bulk commodity in 45 categories originated by class I railroads amounted to a third of the bituminous coal tonnage. Second to bituminous coal, for example, according to Association of American Railroads, was iron ore totaling 96.8 million tons, with a gross freight revenue of close to $227 million.

Mr. Chairman, I should like to emphasize that neither the coal industry nor the railroad industry are seeking special privileges, or are waiting for the Government to solve their problems with no commensurate effort on their own part.

In recent years the coal industry has spent millions of dollars for modern mechanized equipment, and, with the full cooperation of the United Mine Workers of America, has been able to more than double productivity per man shift. Today, the skilled American miners produce an average of 14 tons of coal per shift—at least 7 times the highest per man production of mines in Europe or Japan. As a result, the price of coal at the mine has been steadily reduced since the late 1940's.

The railroads, likewise, have made strenuous efforts to modernize equipment and service, and have reduced rates time after time in order to maintain coal transportation revenue and to help the coal producers compete with other fuels.

As a result of the strenuous efforts of these two industries, the average price of coal at the mines fell from $5.08 per ton in 1957 to $4.65 per ton in 1961. At the same time, the average rate for coal originated by class I railroads declined from $3.57 per ton to $3.40 in the same period. Thus, the two industries working together have brought the average delivered price of coal down from $8.65 to

$8.05, even during a period of continuing inflation when most other commodities were increasing in cost.

Credit for these accomplishments should be rightfully given to the coal producers, the United Mine Workers of America, and the coal-carrying railroads, working together.

I wish the record to show the reduction of bituminous coal prices and freight rates per net ton for the past 5 years, as follows:

	Average coal price	Average coal rate	Total of average price and average freight rate
1957	$5.08	$3.57	$8.65
1958	4.86	3.58	8.44
1959	4.77	3.45	8.22
1960	4.69	3.40	8.09
1961	4.65	3.40	8.05

But even with this fine record, accomplished at the cost of millions of dollars, coal is still unable to compete in many of its most important markets with foreign waste residual oil and dumped natural gas.

Despite the lowering of coal prices at the mine head and railroad transportation prices for coal, bituminous coal production has declined nearly 100 million tons during the past 5 years, from 492,703,916 tons in 1957 to 400 million tons in 1961.

The decline in bituminous coal production in the past 5 years is shown in the table below:

	Net tons		*Net tons*
1957	492, 703, 916	1960	415, 512, 347
1958	410, 445, 547	1961	400, 000, 000
1959	412, 027, 502		

Mr. Chairman, we are convinced that this is an unhealthy trend, not only for the coal-producing areas and their citizens, but also for the national welfare and security.

As I have pointed out, we are not sitting idly by hoping for someone in Government or the Congress to rescue us. But we submit that the plight of the coal and rail industries is a matter of concern to our whole country, and your favorable action on H.R. 11583 would be a major contribution to the fight we are making.

One of the most exciting developments in the history of railroad transportation is on the verge of happening now, and removal of the railroads from ICC control of minimum bulk carrier rates will make it much more certain of success.

I refer to the so-called integrated, or unit, train which several of the major coal-carrying railroads are now planning to put into operation or already have running on an experimental basis.

Such trains operate on fast schedules, carrying whole loads of coal from one mine or production area to a single customer or a group of customers closely allied by location, with no lost time for loading and unloading, switching cars, layovers, etc. This new transportation concept is certain to make more economical the large-scale movement of coal, as well as eventually other bulk commodities.

Someday, such trains may revolutionize not only railroads but also the locations and design of powerplants.

The integral train's great possibilities are shown by a pioneering example of the Pennsylvania Railroad's new unit train to move coal 395 miles in 5,950 ton trainload lots (70 cars at 85 tons capacity each) from a new mine at Tunnelton, Pa., to the Martin's Creek powerplant of Pennsylvania Power & Light Co.

The Pennsylvania Railroad has filed for a tariff on this haul of $3.30 per net ton, a reduction of $1.04, or 24 percent, under the present temporary rate of $4.34 and a reduction of $1.26 under the normal rate of $4.56.

It is obvious what such efficiency and its consequent transportation rate reductions can mean to the coal industry. However, passage of H.R. 11583 is essential if the railroads are to be assured of being able to make the most of this concept.

The integrated trains envisioned for the future will require expenditures of many millions of dollars for equipment of completely new designs. They

involve trains of as much as 35,000 tons capacity, trains with rolling stock built together as a complete single unit, with power units spaced at intervals throughout the length of the train, and many other innovations.

But unless a railroad can be assured that it has the right to put into effect the rates that will truly reflect the operating cost reductions achieved, and thus to assure their ability to acquire new business on long term, volume contracts, they cannot afford the tremendous capital expenditures involved. Removing them from ICC control on minimum bulk commodity rates is essential to this end.

The integrated train concept will mean much to the entire economy of the Nation, as well as to the coal and railroad industries. For example, it will assure continued supplies of low cost coal to utilities and major industries.

It will also provide a stimulant to the steel industry, manufacturers of equipment and supplies, and similar producers. Not only will it provide a market for evolutionary new-type cars and motive power units, new automated controls and new maintenance facilities, but also the equipment will have a life expectancy of only 10 years, because of constant usage, instead of the present 40. This will mean a continuing market for new equipment, and it will also mean that equipment will be kept up to date, with carriers enabled to take advantage of latest technological developments and freeing them from long-lived, low-utilization equipment.

By extending to the railroads freedom from minimum bulk rate regulation now enjoyed by bargelines in handling bulk commodities and by motor carriers in handling agricultural and fishery products, Congress would not only unshackle the railroads from present inequities confronting them, but also give impetus to the grand design of the integral train.

Railroads, coal companies, and electric utilities would be encouraged, and justified, in making substantial investments in developing the integral train complex to its highest potential.

At this point, I should state, however, that we feel that the value of H.R. 11583 is limited by one major omission, and that this should be corrected by an amendment if the intent of this bill is to be realized.

I refer to the requirement, which is contained in the bill as now written, which provides that all railroad rates must be published for 30 days before becoming effective, and are subject to suspension by the Interstate Commission if someone there decides that the rates violate some other portion of the Interstate Commerce Act.

I am told by the railroad members of the conference that the railroads would be the only carrier subject to this requirement.

This would be a serious restrictive limitation on the right of the railroads to compete freely and on an equal base with other carriers, and would greatly nullify the benefits that are anticipated from passage of this legislation.

If railroads are required to publish bulk commodity rates and then wait 30 days before putting them into effect, it is quite likely that very few of them would ever go into effect, or at least not for a long time. There would be delays, opposition by competing carriers, perhaps injunctions, and no one can foresee the snarl-ups that could result.

We believe the railroads should be given the full benefit of freedom from minimum rate restrictions on commodity rates and seriously urge that your committee amend H.R. 11583 to clearly establish greater equality of opportunity under its provisions.

We cannot afford to overlook another very important responsibility on the part of Congress, and perhaps one that has the most vital bearing on this question. That is the tremendous dependence which our Nation has on a strong rail and coal industry in case of national emergency.

During World War II the railroads moved over 90 percent of all military freight, and over 97 percent of all military passengers moving in groups of 40 or more. Likewise, as water shipments of oil were critically disrupted by enemy submarine action, while the total demand for energy soared, the coal industry was called on to produce—and the railroads to transport—about 200 million tons more fuel per year between the war's beginning and 1944.

This measure will contribute materially to keeping both these industries strong and economically healthy, to assuring that they will be able to meet the extraordinary demands of any other national emergency.

But even more current considerations call for the approval by Congress of H.R. 11583 and, particularly, its provision for freeing the railroads from minimum bulk commodity rate controls. That is the fact of present-day economic

life. The national industrial scene is not as bright as had been hoped a few months ago. The production index has risen more slowly this year than predicted, and some economists are even predicting a serious recession in the foreseeable future. We continue to be plagued by a deficit on our balance of payments, and unemployment remains a serious problem.

Passage of this legislation could provide a crucial shot in the arm for the Nation's railroads, and the hundreds of thousands of American workers they employ. It would also be of great benefit in aiding the coal industry to meet foreign residual oil and dumped gas on a more competitive basis, with consequent stimulation of more employment in the coal-producing areas of America.

Thus, in the interest both of national security and to bolster the current economic state of the Nation, we urge the Congress to approve H.R. 11583 at this session. To delay action and pass this matter over to the next Congress could have a most costly and unwelcome consequence.

Mr. Chairman, I personally find it a matter of great satisfaction that these two great American industries recognize so clearly the interrelationships each has in the other. For many years, coal operators and the railroads have fought each other over rates, and neither profited. Now, the representatives of these two great industries have joined together to seek mutually the solutions to the problems that beleaguer them. Today, as members of the National Coal Policy Conference, they sit together around the table, rather than across the table, and amicably discuss their problems and resolve their differences in the national interest.

I am honored that I, as president of NCPC, can appear before you today and plead on behalf of both coal and the railroads for your approval, and for passage by the Congress of H.R. 11583, which will mean so much to both.

Mr. JARMAN. Our next witness is Mr. Richard M. Boyd, on behalf of the National Industrial Traffic League.

STATEMENT OF RICHARD M. BOYD, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. BOYD. Mr. Chairman, gentlemen, my name is Richard M. Boyd. I am director of traffic and transportation, Pittsburgh Plate Glass Co. Today I appear in my capacity as president of the National Industrial Traffic League, of which my company is a member and in which I have been active for many years.

The National Industrial Traffic League is a nationwide organization of shippers; its membership also includes chambers of commerce, boards of trade, and similar commercial organizations whose members likewise have a substantial interest in transportation matters. The league's more than 1,600 members include companies of all sizes—very large corporations and many small business concerns.

The league has no carriers in its membership. It represents and expresses the interest of those who actually ship and receive freight, the payers of transportation charges. Its membership is drawn from all parts of the United States and includes practically every line of industrial and commercial activity. Members make use of all forms of transportation by rail, motor, water, air, and pipeline. The league is not railroad minded, truck minded, or waterway minded, or slanted in any way other than to foster sound economic transportation.

In the more than 50 years of its existence, the league has endeavored to carry out the purpose for which it was organized. That purpose is succinctly stated in the preamble to the league's constitution as follows:

Believing the requirements of commerce are best served by a thorough understanding upon the part of carriers and the shipping public of each other's needs, this organization stands for and will undertake, through conference, publicity, and other proper means, to promote such knowledge of transporta-

tion affairs as will aid in effecting such result; to assist in the enactment of clearly defined laws covering the traffic subject to congressional enactment and the interchange of views regarding intrastate legislation which does or may affect such traffic; to define clearly and make certain the relation of the public to the carriers; and to acquaint regularly established State and National tribunals with the needs of the shipping interests and the effect on commerce of rulings, decisions, and practices within the jurisdiction of such tribunals.

The object of the league is to promote adequate national transportation. The league strives to obtain legislation that will be helpful to commerce and to secure the modification of laws, rulings, and regulations that may be found harmful. To that end the league has appeared before this committee on many occasions and appreciates this opportunity to present its views with respect to H.R. 11583, a bill to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes.

This statement is directed solely to H.R. 11583—there will be a separate statement relating to H.R. 11584—identified as the Transportation Act of 1962.

In carrying out objectives of the league, its membership at annual and special meetings has adopted policies governing practically all phases of transportation and practices of carriers operating in the field. In keeping with the changing transportation picture, many of these policies have been changed or redrafted on various occasions as changes in the law or circumstances may have dictated.

With respect to the inherent advantages of each mode of transportation, the league has adopted the following policy:

Preserving inherent advantages of each mode of transportation: The inherent advantages of each mode of transportaiton must be preserved so that shippers may have available whatever mode of transportation is best adapted to their particular needs. It is against the best interests of the public and the broad interests of the carriers to allow the Interstate Commerce Commission to allocate traffic among the different modes of transportation, or to direct the channels of traffic which shippers should use.

The league has long advocated greater responsibility and freedom of carrier management as evidenced by the following statement of policy:

Responsibility and freedom of carrier management: There should be the greatest degree of responsibility upon and freedom of carrier management in providing the public with the transportation service which it needs. Regulation should be limited to that reasonably necessary in the public interest and should not encroach upon the proper sphere of managerial discretion and responsibility either in the field of traffic or actual physical operation.

The league supported the change in the ratemaking rule as embodied in section 15(a) by the Transportation Act of 1958 and endeavoring to support the public interest under that rule, the league has participated in various proceedings before the Interstate Commerce Commission and in the courts urging that the shipping public should benefit from fair competition and that no group of carriers should be prevented from reducing its rates to a lower but profitable level simply because such reductions would adversely affect other carriers.

In instances where it has appeared that the Interstate Commerce Commission has improperly interpreted the change made by the Transportation Act of 1958, the league has intervened in the courts in an effort to set aside Commission orders. Prominent among such

interventions have been civil action No. 61 C 380 in the Federal district court in St. Louis involving reduced rates published by western railroads on agricultural implements and roadmaking equipment, and the so-called *New Haven* case involving an Interstate Commerce Commission requirement of a rate differential to protect the water carriers. In both of these cases, the league contended that the Commission was engaging in "umbrella ratemaking" and that to hold up the rates of one carrier to a certain level in order to protect traffic of another carrier was a violation of the Transportation Act of 1958. Both district courts agreed with this contention and the cases are now subject to review by the Supreme Court of the United States.

While the league has advocated greater freedom for carrier management in establishing rates in order to meet competition, the membership, prior to introduction of the regulatory concept embodied in H.R. 11583 had no policy with respect to the exemption from regulation contemplated by this legislation.

Because the proposals embodied in H.R. 11583 are of paramount interest to shippers as well as carriers and most likely to be controversial, league officers polled the league membership in order to have an accurate picture of whether the Nation's shippers favor the exemption of certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers.

In accordance with the policies proviously cited, league members were asked to indicate whether they favored or did not favor the authorization of league support of the basic object of H.R. 11583 provided the orderly rate procedures under section 5(a) are fully preserved.

An overwhelming majority of the league membership voted to support the basic object of H.R. 11583—a minority opposed such support for various reasons prominent among which are concern with the possible effect on the price structure for certain commodities and the fact that in some instances commodities in bulk would be exempt from minimum rate prescription while the same commodities when packaged would be subject to minimum rate control by the Commission.

At this juncture I should point out that election to membership in the league does not abridge the right of individual action by any member even though such action may be contrary to the league's position on any given question.

The position of the league membership with respect to the basic object of H.R. 11583 is clear. A majority of league membership supports the idea of greater freedom and responsibility of carrier management with more discretion in establishing and maintaining rates under which traffic will move freely and produce revenues necessary to adequate service.

The league membership in voting to support the basic object of H.R. 11583 included a proviso that the orderly rate procedures under section 5(a) be fully preserved and, unless the bill is amended to delete the restriction against conference ratemaking, we cannot support the proposed legislation. The conference method of ratemaking which has been followed by the carriers under the provisions of section 5(a) has served both the shipping public and the carriers well, and it is desirable that all rates be established by this method. The orderly proce-

dure of docketing and advertising proposals is important in that it gives all concerned an opportunity to comment on proposed changes and conduct appropriate negotiations prior to publication in tariff form where the rates have the effect of statutes.

As far back as the early 1920's the league considered the problem of orderly rate procedures, joint consideration of rates, and carrier rate bureaus. It concluded that, with maintenance of the right of carrier independent action, shippers' interest could best be served by the continuation of such procedures. To that end an agreement was worked out with the rail carriers in 1921 providing for public docketing of rate proposals, public hearings before the various rate committees, right of appeal, et cetera. That agreement is often referred to as a forerunner of the section 5(a) agreements presently approved by the Interstate Commerce Commission under the so-called Reed-Bulwinkle Act—now section 5(a) of the Interstate Commerce Act.

When the carriers were threatened with antitrust prosecutions following suits in the Supreme Court in *Georgia* v. *Pennsylvania Railroad*, 324 U.S. 439 (1945) and *U.S.* v. *American Association of Railroads, et al.*, 4 FRD 510 (1945), the league and its members supported the passage of the Reed-Bulwinkle bill.

The league believes that the Congress acted wisely in overriding a Presidential veto and approving the Reed-Bulwinkle bill. The league's policy with respect to the antitrust laws states:

> The antitrust laws: Carriers should have continuing relief from the prohibitions of the antitrust statutes when conducting their affairs according to the regulatory provisions of the Interstate Commerce Act and in accordance with rules and regulations prescribed by the Commission within the scope of and pursuant to the provisions of section 5(a) of the act. Cooperation among, and joint action by, carriers, subject to the right of independent action, is essential to the preservation of carrier services and rate structures and is in the public interest.

The pending bill attempts to distinguish between joint and single line rates, by exempting joint actions of the carriers in establishing joint rates on reasonable through routes from the antitrust laws while making those laws applicable to the procedures followed in establishing single line rates.

To shippers this is a highly artificial distinction. Changes in single line rates and in joint rates are of equal importance and have an equal impact on traffic and competition between shippers.

For example, the Santa Fe has a single line running from Chicago to California. A shipper in Chicago using this carrier would pay a single line rate. However, a shipper of the same product in Rockford, Ill., would have to ship over more than one line to reach California and would pay a joint through rate. Both shippers are vitally interested in both their own rates and their competitor's rate. A change in either rate could have a serious competitive effect on both shippers in their California markets. This competitive effect would be the same regardless of whether the change was in the joint rate or in the single line rate.

In both cases the shippers need the advance notice and opportunity to be heard on rate changes which are available under the present conference method of ratemaking. These orderly procedures for ratemaking have been completely satisfactory to the shippers and it is their opinion that all rates should continue to go through these orderly procedures.

The exempted commodities include wheat, whether in bulk or in packages, but do not include flour except when in bulk. The tariff rates on wheat and flour are closely tied together where there are movements of both commodities. However, under these bills the railroads could continue to consider changes in rates on flour in packages in rate conferences under 5(a) procedures but not in the case of rates on flour in bulk or on bulk grain.

The league strongly supports the orderly rate procedures provided for under section 5(a) of the act and urges that the Congress not restrict the application of section 5(a) from rates established under the proposed exemption as embodied in this bill.

Finally, the league supports the change in section 303(b) of the Interstate Commerce Act under which the three commodity or mixing rule would be eliminated. At a hearing on April 11, 1962, before your Subcommittee on Transportation and Aeronautics the league supported H.R. 9046, a bill to permit the application of the bulk commodity exemption when other commodities are concurrently transported in the same vessel.

The league approves retention of the bulk commodity exemptions appearing in sections 303 (b) and (c) of the act, modified or amended by elimination, first, of the present "three commodity" restrictions and, second, of the present "as of June 1, 1939," restriction. Experience under the provisions of section 303 as applied and interpreted through the years since the 1940 amendment providing Commission regulation of water transportation, indicates that the limitation to three exempt commodities in one vessel or tow has unjustly handicapped regulated water carriers in handling bulk commodities and this has been against the general interest of shippers.

In conclusion may I thank this committee on behalf of the members of the National Industrial Traffic League for this opportunity to present their views.

Now I have a statement on 11584. Would you prefer that I proceed with that?

Mr. WILLIAMS. I think we might have your comments on 11584 and then have questions from the committee.

Mr. BOYD. H.R. 11584 contains 13 sections. I shall not attempt to deal with each and every section but will comment only upon those which are of special significance to shippers and on which the league has an established policy.

As indicated in our previous statement, league members through the years at annual and special meetings have adopted policies governing practically all phases of transportation and transportation practices. Those policies are the basis for the league's position with respect to the following sections of H.R. 11584.

The league generally favors section 2 authorizing experiments by common carriers in rate, classification, and documentation systems. It is thoroughly consistent with basic overall policies advocated by the league for many years that carrier management should have the greatest degree of responsibility and freedom in providing the public with the transportation service that it needs. Carrier management should have the authority and should be encouraged to develop new systems of classification and ratemaking which would prove more efficient for the carriers and economical for the shippers.

In furtherance of its policy of advocating greater responsibility and freedom for carrier management, the league actively participated before the Interstate Commerce Commission in I. & S. docket No. 7151, guaranteed rates, Sault Ste. Marie, Ontario, to Chicago, Ill., wherein the ICC found unlawful a reduced rate for shippers who would guarantee to ship, via certain railroads, at least 90 percent of their Sault Ste. Marie, Ontario, to Chicago pipe or tubing traffic.

It should be noted that a special subcommittee of the league's executive committee has been working on the problem of streamlining traffic department procedures. This subcommittee is cooperating with carrier management in developing simpler and better methods of handling the billing and paperwork involved in transportation. It is also exploring the possibility of adapting electronic data-processing methods and machinery to this problem.

It is significant that the experiments contemplated may be proposed by carriers, shippers, or regulatory agencies and that participation by shippers or common carriers shall be voluntary. In order to accomplish this, the carriers should be permitted to institute experimental procedures on a limited scale and subject to the overall supervision by the regulatory agencies to protect the public interest. The provisions and safeguards contained in subsections (b) through (e) should be adequate to accomplish this purpose.

Section 3 of the bill makes it unlawful for common carriers to discriminate as to service or rates in transportation of loaded or empty vehicles or shipping containers tendered by any shipper or carrier whether or not regulated. The league favors this amendment. Piggyback transportation has increased tremendously over the last few years. No doubt it will increase further. The trailers or other shipping container should be accepted and subject to the same rates whether they are tendered by a forwarder, a shipper, a shippers' association, or another carrier. This legislation gives the carrier-shipper the same competitive opportunity as the noncarrier shipper. The league believes this is a furtherance of a sound transportation policy.

Section 4 of the bill provides for the establishment of joint, interagency boards with representatives from the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission. The carriers are charged with the duty to establish, where appropriate, through service and joint rates between all modes of transportation. The league believes that through service via all modes of transportation should be provided to shippers at reasonable joint rates. It also believes that the procedure devised by the proposed legislation is a practical solution to the problem of regulating such rates and charges.

Sections 5 and 6 deal with more effective measures of enforcing the provisions of the act. Section 5 would allow the Interstate Commerce Commission to enter into cooperative enforcement agreements with the various States to enforce the State and Federal laws relating to highway transportation. Section 6 would extend the civil forfeiture provisions of the Interstate Commerce Act to unauthorized motor vehicle operations. The league believes that better enforcement of the provisions of the act is absolutely necessary in order to have effective regulation. Furthermore, the deterrent of civil forfeiture provisions instead of criminal sanctions, which are difficult to prosecute, will aid greatly in effective enforcement.

Section 7 provides that air carriers should be subject to payment of reparations when their charges are found unlawfully high. The league is in complete agreement with this proposal.

The league is on record in an appearance before this committee's Subcommittee on Transportation and Aeronautics on June 14 and 15 1961, favoring H.R. 5596, a bill to amend the Interstate Commerce Act in order to provide civil liability for violations of such act by common carriers by motor vehicle and freight forwarders. H.R. 5596 embodies the Interstate Commerce Commission's legislative recommendation No. 11 in its 74th annual report (1960) and renewed as recommendation No. 16 in its 75th annual report. The league there pointed out that H.R. 5596 is one of several pending bills designed to correct an unfair situation which adversely affects the interest of the shipping public. Under parts I and III of the Interstate Commerce Act, a shipper who is injured by a violation of the act by a railroad or a water carrier, has a remedy at law and can obtain damages or reparation where justified. There are no comparable provisions in parts II and IV of the Interstate Commerce Act governing motor carriers and freight forwarders nor in the Federal Aviation Act of 1958 governing air carriers.

What the shipping public needs and desires is the enactment of provisions with respect to motor carriers, freight forwarders and air carriers similar to those which have long existed with respect to railroads and water carriers. The motor carriers, freight forwarders and air carriers have now come of age and should be made responsible in the same way as the railroads and water carriers. Those who enjoy the benefits of regulation should bear the obligations.

That all of these modes of transportation should be subject to the same provisions for reparations is in conformity with the President's transportation message. It is also entirely consistent with greater freedom and responsibility for carrier management. With the additional ratemaking freedom proposed in H.R. 11583 and in H.R. 11584 should go responsibility. Remedies must be provided for shippers injured by unreasonable rates and charges. Under present regulation even common law remedy is denied.

The league endorses the provisions of section 7 of H.R. 11584 and recommends that it be broadened to include similar provisions for reparations by motor carriers and freight forwarders regulated under the Interstate Commerce Act.

Section 9 provides for simplification of procedures governing the special transportation rates afforded to the Federal Government. The league is wholeheartedly in favor of any procedures which might simply the present methods of procuring rates, but opposes any differentiation between establishment of rates for the Government and for the commercial shipper. The preference accorded by section 22 of the Interstate Commerce Act should be removed since there is no reason why Federal, State or municipal governments should be given preferential treatment in transportation.

Rates paid by the Federal Government, the largest single user of the Nation's transportation system, have a profound effect on the revenues of the carriers, and the Government should pay the full applicable commercial rates. Where existing commercial tariff rates are not considered appropriate or satisfactory for movements of Gov-

ernment freight or where movements of freight or persons appear to have unusual characteristics (such as the movement of troops and equipment), the establishment by negotiation between the Government and the carrier of agreed rates may be appropriate but they should be set forth in published tariffs filed with the Interstate Commerce Commission on statutory notice, or upon short notice subject to the conditions of section 6 of the Interstate Commerce Act.

The league has long favored authority for the Post Office Department which would permit greater flexibility in the use of motor vehicle common carriers for the transportation of mail. In 1943 the league supported a bill, H.R. 1299, authorizing the Postmaster General to require any common motor carrier to transport mail matter. The league supports the principle of section 9 of H.R. 11584 with respect to the transportation of mail by motor vehicle common carriers.

This completes our statement on the specific portions of H.R. 11584 on which policies have been adopted and which are of special concern to shippers. The league appreciates this opportunity of presenting its views to your committee and hopes that they may receive favorable consideration.

Mr. WILLIAMS. One question I would ask is, would you estimate how many responses to the poll as to their position on the two bills did you receive?

Mr. BOYD. I would like to say that this was a mail vote. Normally we resolve questions of changes of policy in open meetings, but because we felt that there was not sufficient time to hold a meeting of the league, to schedule a meeting of its membership, we took a mail vote. There were in excess of 800 responses to this mail vote.

Mr. WILLIAMS. Approximately 50 percent of your membership?

Mr. BOYD. Yes; a little over 50 percent.

Mr. WILLIAMS. Thank you very much for your testimony, Mr. Boyd.

Our next witness is Mr. Charles R. Seal, general and commerce counsel for the Virginia State Ports Authority.

STATEMENT OF CHARLES R. SEAL, GENERAL AND COMMERCE COUNSEL, VIRGINIA STATE PORTS AUTHORITY

Mr. SEAL. Thank you, Mr. Chairman.

I appear as general and commerce counsel for the Virginia State Ports Authority, an agency of the Commonwealth of Virginia, having the duty, among others, of protecting and promoting the interests of the ports of Virginia in respect of transportation rates and charges. I also appear on behalf of the North Atlantic Ports Association, the membership of which embraces port interests from Portland, Maine, to Hampton Roads, Va., inclusive. My statement will deal with those provisions of the bill which would amend the Interstate Commerce Act with respect to described bulk commodities, ordinary livestock, agricultural commodities and fish, and is based upon the general premise that there is no public need for the proposed exemptions from regulation, with their harmful effects upon the regulatory system, the public interest and the carriers themselves, whereas there is urgent need for removal of the existing exemptions (except as to farm products and fish to the first destination) and the chaotic rate situations and destructive competitive practices which flow therefrom.

Speaking first of the water carrier bulk exemption, if this were extended to other modes as proposed by the bill, the result would be that some 70 percent of the railroad carload traffic would be exempt from minimum rate regulation. The bulk traffic thus affected is composed of a great variety of commodities, many of them highly competitive as between carriers of different modes as well as of the same modes, and also as between localities, ports, and shippers. So far as ports are concerned, one commodity in particular that represents a large volume of our foreign commerce; namely, export grain, moves extensively by both water and land carriers. Other large volume bulk commodities from which minimum rate regulation would be removed include coal, an important export item, and iron ore, an important import.

As a further illustration of the effect of the bill, the following list of bulk commodities is taken from the operating authority of a tank motor carrier certificated to serve points in 44 States:

Dry chemicals
Nitric acid
Liquid glue
Latex
Dry feed ingredients
Petroleum coke
Paint and paint materials
Plastic materials
Petroleum
Alcohol
Petroleum wax
Liquid caustic soda
Petroleum treating compounds
Chloral
Fatty acids
Sulfuric acid
Acetic and
Hydrogen peroxide
Lard
Vinegar
Cotton seed oil
Soy bean oil
Coconut oil
Tallow
Chocolate
Peanut oil
Linseed oil
Sugars, liquid and dry
Apple juice
Sand
Synthetic resins
Coal tar pitch
Caustic soda
Aluminum sulfate
Anhydrous ammonia
Liquid chemicals
Paint oil
Varnishes
Aqua ammonia
Lubricating oils
Oakite compounds
Methanol
Fish oils
Fish scrap and meal
Muriatic acid
Phosphoric acid
Ferric sulfate
Coal tar pitch
Dry rosin sizing
Benzene
Nitrogen solutions

The foregoing examples serve to illustrate how widespread the effect of the proposed exemption would be. Some of the commodities mentioned move exclusively or almost entirely by land carriers, and thus the exemption would be extended to commodities and movements that are not competitive with the presently exempt water carriers.

Briefly, with respect to the proposed application of the minimum rate prohibition to agricultural commodities, oridinary livestock and fish, which are now exempt from regulation when transported by truck. The motor carrier exemption was originally intended to apply to transportation from the farm or other origin to the first market, since regulated motor carriers cannot, as a practical matter, provide adequate service in this area. The exemption has, however, been construed to extend far beyond this intended limit and applies to products or commodities that have been sold by the farmer or fish producer and entered commercial trade. It seems somewhat odd in

this connection that foreign tobacco, for example, imported into this country should be treated as an exempt agricultural product when transported by truck.

Some of the commodities coming under the water carrier bulk exemption also move under the truck exemption. One of the more important truck exemptions is grain for export, to which I have previously referred. Information on this point is shown in a decision of the Interstate Commerce Commission of November 14, 1961, and reported at 315 ICC 155, in which there was before the Commission the issue of the lawfulness of rail rates on grain for export from southwestern origins to Texas ports. I quote as follows from page 158 of the Commission's decision in that case:

> There is substantial motor-carrier competition from these origins to the ports of Corpus Christi, Galveston, and Houston. The following table sets out the number of rail cars and unregulated motor trucks which moved grain to these destinations during 1958 through the first 10 months of 1960.

	To Corpus Christi		To Houston		To Galveston	
	Trucks	Rail cars	Trucks	Rail cars	Trucks	Rail cars
1958	4,942	9,605	45,180	22,913	(1)	(1)
1959	13,998	20,036	58,720	31,159	5,128	41,712
1960 [2]	26,208	10,621	60,238	21,834	7,575	33,905

[1] Not shown.
[2] First 10 months of 1960.

Mr. SEAL. It will be noted from the foregoing table that in the first 10 months of 1960, for example, 26,208 unregulated motortrucks of grain moved to Corpus Christi as compared with 10,621 rail cars, and that to Houston the number of unregulated trucks was 60,238 versus 21,834 rail cars. These illustrations emphasize a situation that obviously needs correction, but the answer does not lie in extending the existing exemptions and thereby promoting unregulated and destructive rate competition.

An examination of decisions of the Interstate Commerce Commission will show that in earlier years, including a substantial period following the 1920 grant of minimum rate authority, the majority of rate proceedings to come before the Commission involved the issue of maximum reasonableness or were general rate proceedings not involving the issue of minimum reasonableness. Conversely, in later years, an increasingly large number of rate proceedings has had to do with proposed reduced competitive rates. In this connection, a check shows that of 62 suspension decisions reported in volume 313 of Commission reports, 43 or 70 percent involved proposed reduced rates and that in many instances the protests that resulted in the suspensions were by carriers of the same or a different mode.

In addition to nonbulk commodities, the 43 decisions having to do with reduced rates dealt with various bulk commodities, including wheat products, salt and salt products, bulk cement, lubricating oils, crushed limestone, phosphate rock, phosphate fertilizer, coal, and a variety of acids and chemicals. The other 19 suspension decisions dealt with proposals concerning various matters such as pickup and delivery, route restrictions, assembling charges, switching multiple

car rates, all-freight rates, terminal distribution rates, initial rates, tractor on flatcar rates, with only one, as I recall, involving the issue of maximum reasonableness of line-haul rates.

Passage of the bill in question not only would amount to abandonment of one of the most important and needed phases of rate regulation but would be wholly inconsistent with the declaration in the national transportation policy against destructive competitive practices, and leave this declaration largely meaningless. In my judgment, there is no part of the Interstate Commerce Act for which there is greater need under existing conditions than the provision which grants the Commission the power to determine whether rates are below a minimum reasonable level.

It seems appropriate here to refer to the report of the special study group appointed by the Senate Commerce Committee to study and report upon national transportation conditions and policy. This printed report dated January 3, 1961, comprises 732 pages. The bulk commodity and farm products exemptions are discussed in the report at some length. I should like to add a few quotations from the report that are particularly pertinent to the present exemptions and the proposed minimum rate exemption here under consideration.

Page 517: Except for livestock carriers serving major livestock producing communities where large producers predominate, the principal operations of the exempt commercial carriers is subsequent to the initial farm-to-market movement, between commercial establishments and often for long distances in intercity movement.

The problem, therefore, is not the farm-to-market operation which was the principal justification for the original exemption, but rather the development of a major transportation industry, using large and modern equipment, between commercial centers, exempt from economic regulation and public service costs including the requirement of full insurance coverage, which competes with the regulated intercity motor carriers and the railroads.

Page 524: The common carriers by railroad and highway are certainly among the major losers. Many authorized motor carriers are deprived of what might be profitable backhaul traffic because of exempt carriers. Much volume traffic between major centers is attracted to and moves via a less economic carrier because of economically unsound pricing.

Page 529: The strongest support of this (the bulk) exemption appears to come from volume shippers of bulk commodities who, in the absence of regulation, are able to auction their traffic to the lowest bidder. The resultant reduced earnings ratio of the carriers is not conducive to a healthy transportation system, regardless of the apparent short-run benefit to large shippers.

Page 530: We have concluded elsewhere that a system of private and unregulated for-hire carriage will not adequately serve the national requirements. Therefore, exemption from regulation cannot be permitted to compromise the continued existence of regulated carriers. Furthermore, we have elsewhere concluded that intermodal competition today requires control of minimum rates in competitive traffic. Such control is meaningless if the bulk of the revenue traffic of one of the competing modes is unregulated.

Page 533: In view of an unofficial railroad estimate that extension of agricultural and bulk exemption to the railroads would deregulate approximately 70 percent of their carload tonnage, we conclude that any such action would make regulation of transportation so generally ineffective that it would be, of necessity, abandoned.

The ultimate conclusions in the report of the study group as to basic changes of policy are, as to the present water carrier bulk exemptions:

Page 532: Repeal of the present bulk exemption, sections 303(b), 303(c), and 303(d) of the Interstate Commerce Act.

Among the specific proposals respecting carriers removed from the bulk exemptions are—

(1) Provision for a category of for-hire water carriers licensed to transport bulk commodities only, with grandfather rights for presently operating carriers, and required to hold out this service to the general public; and

(2) That such licensed carriers be required to file a schedule of minimum rates subject to standard tariff filing procedure and approval.

With respect to the motor carrier exemptions, the report concludes that—

Page 525: First, a more liberal policy of extending operating rights of regulated carriers is necessary. Restriction of operating rights has prevented these carriers from proving their ability to meet the needs of perishable food marketing.

Second, interstate for-hire carriage of agricultural commodities beyond the point of first entry into commerce should be brough under regulation gradually, as regulated transportation demonstrates its ability to provide the flexible service required.

The report outlines a number of suggested means of implementing these conclusions with respect to the truck exemptions which I feel need not be enumerated in this statement.

I hope the committee will give careful consideration to the report of this extensive study.

According to published reports which I have read, proponents of this legislation state that those injured or threatened by rate reductions could seek injunctive relief under the antitrust laws. Neither the antitrust laws nor our judicial system are designed for rate regulatory functions such as those now delegated by the Congress to its agency, the Interstate Commerce Commission. With the great number of for-hire carriers in operation, the vastness and intricacies of the overall system of freight rates, and the innumerable competitive situations as between shippers, areas, carriers, and routes, to me it is unthinkable that any worthwhile control toward preventing or correcting destructive competitive rate practices could be exercised by the Antitrust Division, primarily an enforcement unit, or by the courts, the function of which is to determine legal questions.

As I have previously indicated, the existing exemptions necessarily create a situation that is unfair and highly injurious to the regulated carriers, the sound answer to which lies in repeal of these exemptions, with the exception of the movement of farm and fishery products to the first destination. Action to this end, as has been recommended to the Congress by the Interstate Commerce Commission, would be

constructive. The contrary would be true of enactment of this proposed legislation.

Mr. Chairman, I thank the committee for this opportunity to appear.

Mr. WILLIAMS. Mr. Kornegay?

Mr. KORNEGAY. Mr. Seal, I gather the organization you represent is wholly water carriers.

Mr. SEAL. No, the organization by which I am employed is an agency of the Commonwealth of Virginia with the duty of promoting the commerce of the Virginia ports. Now, the North Atlantic Ports Association has a membership which comprises similar agencies as well as terminal operators and others interested in port operations, port commerce, and so forth.

Mr. KORNEGAY. Then could we properly say that you represent both the water carriers and any other modes of transportation that pick up——

Mr. SEAL. I don't represent either; I don't represent carriers in the true sense.

Mr. KORNEGAY. You are just here representing the terminals as such?

Mr. SEAL. I am representing the North Atlantic ports, trying to state their interest in the need for sound regulation of competitive rate of all modes of transportation.

Mr. KORNEGAY. You feel that such could best be accomplished through regulation rather than deregulation?

Mr. SEAL. I am definitely of that opinion. Deregulation would not do anything with competitive rates.

Mr. KORNEGAY. That is all, Mr. Chairman.

Mr. WILLIAMS. Thank you very much, Mr. Seal.

Mr. SEAL. Thank you, sir.

Mr. WILLIAMS. The next witness is J. B. Griffin, director of traffic, Scovill Manufacturing Co., Waterbury, Conn.

If Mr. Griffin is not present this morning, the committee will be glad to receive a statement from him.

The next witness is Mr. E. C. Lasher, president, North American Car Corp., Chicago.

(No response.)

Mr. WILLIAMS. Mr. Taylor, general counsel, Southern States Industrial Council.

(No response.)

Mr. WILLIAMS. Is there anyone here today who represents the North American Car Corp.?

(No response.)

Mr. WILLIAMS. Is Mr. L. E. Ernst still present this morning?

(No response.)

Mr. WILLIAMS. That concludes our list of witnesses this morning. The committee will adjourn, subject to the call of the Chair.

(Whereupon, at 11:40 a.m. the committee adjourned, subject to the call of the Chair.)

TRANSPORTATION ACTS AMENDMENTS—1962

TUESDAY, AUGUST 7, 1962

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

The committee met, pursuant to recess, at 10:20 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The commmittee will come to order.

The first witness this morning will be Mr. Tyre Taylor, general counsel of the Southern States Industrial Council.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL

Mr. TAYLOR. Mr. Chairman, and gentlemen of the committee, my name is Tyre Taylor, my address 1511 K Street, NW., Washington. I appear here on behalf of the Southern States Industrial Council, the headquarters of which are in the Stahlman Building, Nashville, Tenn.

The council was established in 1933. Its membership is comprised of some 2,000 industrial and business concerns in the 16 Southern States from Maryland to Texas, inclusive. This membership includes all lines of manufacturing and processing, mining, transportation, and related industries and accounts for very substantial employment throughout the region.

Mr. Chairman, and gentlemen of the committee, we are deeply grateful for this opportunity to be heard. I shall be brief.

At a meeting held in Ponte Vedra, Fla., last May, the board of directors of the council unanimously approved the following statement:

> It is a generally recognized fact that the financial condition of the railroads has steadily worsened due to governmental discriminatory treatment as compared to other forms of transportation. Under such treatment this defense-vital industry is faced with the possibility of financial collapse and perhaps eventual nationalization.
>
> The council therefore urges prompt action by the Congress in passing appropriate legislation to remove such discrimination.

At the same meeting, the board also unanimously adopted the following resolution and directed that copies be sent to the appropriate committees of the House and Senate:

> Whereas identical bills, Senate bill 3253 and House bill H.R. 11583 were on May 3, 1962, introduced in Congress which will give all forms of common carriage more nearly equal competitive opportunity under our free enterprise system;
>
> Whereas passage of this legislation would greatly strengthen the entire common carrier industry so that it can perform its vital functions in peace and war; and

Whereas these bills are now before the Committee on Commerce of the U.S. Senate and the Committee on Interstate and Foreign Commerce in the House of Representatives, respectively: Now, therefore, be it

Resolved, That the Southern States Industrial Council, through its board of directors in annual meeting duly assembled at Ponte Vedra, Fla., this 23d day of May 1962, does hereby go on record in support of Senate bill 3243 and House bill H.R. 11584, and does hereby direct that a copy of this resolution be transmitted to each of the members of the Senate and House Committees on Commerce; and be it further

Resolved, That copies of the resolution be transmitted to each member of Southern States Industrial Council.

The statement and the resolution make clear the council's position with respect to the two bills now before you—H.R. 11583 and H.R. 11584: It supports them. It supports them for many reasons, including the fact that the railroad industry is in deep financial trouble. Its rate of return on net investment declined from 4.22 percent in 1955 to 1.97 percent in 1961. The Southern railroads did a little better, the rate of return on net investment declining from 4.48 in 1955 to 3.18 in 1961.

The fact that the railroads are the mainstay and backbone of our surface transportation system in war and peace. As the President recognized in his transportation message of April 5, it is

an industry which serves, and is affected with, the national interest.

Continuing, the President said that—

whatever the cause [of the rails' current difficulties], the common carrier * * * performs an essential function that should not be extinguished.

Both of the foregoing considerations suggest that, if a viable solution for this problem is not found, the only alternative will be nationalization.

Most of the council's members are shippers and hence have a direct economic interest in restoring and preserving full and free competition between the different modes of transportation. To the extent that the railroads have lost traffic due to the superior economic capability of other modes of transport, neither they nor the council have any just cause for complaint. That's competition—the free way of the marketplace—the American way.

What the council objects to—what, as we understand their position, the railroads object to—is governmental discrimination against them and in favor of other modes of transportation. I should like to dwell on this for just a few minutes, if I may.

Of what, precisely, does this governmental discrimination consist? It consists of minimum rate regulation for the rail carriers and no corresponding rate regulation for other modes of transportation as to an important (69.9 percent) volume of freight.

As the President said in his message of April 5:

Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt.

This built-in discrimination is specifically provided for in the act itself—section 203(b)(6), agricultural exemption; section 303, dry bulk exemption—and, consequently, can be removed only by Congress.

This, as I understand it, is the purpose of H.R. 11583, which provides that there shall be extended to all carriers—including the railroads—an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities.

It is unnecessary to go into all the delays and bureaucratic redtape with which rate regulation is attended, or the immense competitive advantage which a nonregulated mode of transport has over its regulated competitor. The latter is fully evidenced by the steady and growing shift of traffic away from the rails to the highways and waterways. A witness who preceded me, Mr. Daniel P. Loomis, president of the Association of American Railroads, told you that during the postwar period the railroad percentage of total traffic has been reduced about one-third while the truck percentage has more than doubled and the percentage of water carriers on rivers and canals has tripled.

It is high time that we modernize the laws governing transportation. Complete regulation of the railroads under the ICA, which was originally adopted in 1887, reflects a monopoly concept which is completely outmoded. The transportation business is highly competitive. We believe that decisions as to utilization of alternative modes of transport should be made by users in a free market and not be regulatory edicts.

Thank you.

The CHAIRMAN. Mr. Taylor, thank you for your statement and the position of your council on the subject.

Are there any questions by members of the committee?

Mr. HEMPHILL. I have a question, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. I was much interested in your description of the discrimination. It is sort of an overworked word up here on the Hill, particularly to the people from my part of the country.

Do you think that the Congress has discriminated against the rail carrier?

Mr. TAYLOR. Yes, sir.

Mr. HEMPHILL. You do?

Mr. TAYLOR. Yes.

Mr. HEMPHILL. And the Executive——

Mr. TAYLOR. I think the Interstate Commerce Commission Act and those exemptions, which it contains, are more or less——

Mr. HEMPHILL. I am talking about the Congress per se.

Mr. TAYLOR. Well, of course, the Congress passed the Interstate Commerce Commission Act.

Mr. HEMPHILL. There, I believe the railroads asked for it, did they not?

Mr. TAYLOR. I could not say about that, sir.

Mr. HEMPHILL. And I believe your statement said that you thought it was a necessity because of the fact that at that time we were dealing in what was practically a monopoly in transportation.

That is correct, is it not?

Mr. TAYLOR. Yes.

Mr. HEMPHILL. I am just asking because the criticisms that we sometimes get here, as it is so easy to criticize when there have been no suggestions over the years for improvement.

Now, except for the passage of the Interstate Commerce Commission enabling or creation statute, in what other ways has the Congress discriminated against railroads, if any?

I am very much interested in that as a member of the committee.

Mr. TAYLOR. Well, my understanding is, Congressman Hemphill, that at the time the Interstate Commerce Commission Act was enacted, that a virtual monopoly situation existed in the case of rail transportation; that they played the game very rough with each other, and with their competitors, and they did not hesitate to discriminate in favor of one shipper as against another——

Mr. HEMPHILL. You are talking about the railroads now discriminating and not the Congress.

Mr. TAYLOR. Yes, that is right. One of them, Mr. William H. Vanderbilt, even went so far as to say, "The public be damned."

Well, of course, that condition has totally passed away. There is no longer any suggestion that the railroads have a monopoly on freight or passengers or anything else.

Mr. HEMPHILL. Well, maybe I misunderstood you to say, in answer to my first question, that the Congress had discriminated against the railroads, and I was interested in what way they had done it.

It was necessary to protect the public back when the ICC Act was passed.

Since that time what discrimination are the representatives of the people guilty of?

Mr. TAYLOR. I do not remember when these exemptions were put into the Interstate Commerce Act but, obviously, under the conditions that prevail at present they are discriminatory.

Mr. HEMPHILL. Were they at the time they were put in?

Mr. TAYLOR. I beg your pardon?

Mr. HEMPHILL. Were they at the time they were put in?

Mr. TAYLOR. I could not answer that. I will try to get you an answer.

Mr. HEMPHILL. Well, I do not think I need to pursue that because I think the answer speaks for itself.

Now, in what way has the executive branch of the Government discriminated against the railroads, if any?

Mr. TAYLOR. I would say by administering a law with two discriminatory exemptions in it.

I do not mean that they have intentionally discriminated.

Mr. HEMPHILL. Some of us are of the opinion here that the regulatory Commission should have no choice but to administer the laws which we pass.

Mr. TAYLOR. Well, I think that is probably true. They had an act from Congress which they were bound to administer to the best of their understanding and ability.

Mr. HEMPHILL. Now, you said here also that—

> it is unnecessary to go into all the delays and bureaucratic redtape with which rate regulation is attended, or the immense competitive advantage which a nonregulated mode of transport has over its regulated competitor.

And I agree with you, but then you went on to say that the latter is fully evidenced by the steady and growing shift of traffic away from the rails to the highways and waterways.

Well now, recently, because of some rail—what I call exciting management ideas, for a change, the railroads got back a lot of traffic.

Mr. TAYLOR. I would not know about that.

Mr. HEMPHILL. They have introduced the piggyback, and I assume you are familiar with that?

Mr. TAYLOR. Yes.

Mr. HEMPHILL. And then they try to introduce some particular cars in order to accommodate certain consumers of bulk commodities, grain in particular, and then in the automobile transportation they introduced what is really the piggyback again.

So they are really making some headway.

Mr. TAYLOR. They are fighting for their lives, there is no question about that.

Mr. HEMPHILL. Yes; and they ought to be complimented on their activities.

Mr. TAYLOR. I think so; yes.

Mr. HEMPHILL. Now, would it be your thinking that we have the two alternatives: one is to take the railroads out from under the ICC, so far as these particular commodities are concerned.

We will not take them altogether out, but for all intents and purposes we are taking them out; and the other is to put everybody on the same basis.

Now, would it be your thinking that either alternative would accomplish the objective that you seek by——

Mr. TAYLOR. Well, all we are interested in, Congressman Hemphill, is that everybody play under the same rules of the game.

One thing that has impressed me here about these exemptions is what I regard as their gross unfairness. They are unfair. They are discriminatory.

Mr. HEMPHILL. Well, when I used to be a prosecuting attorney a lot of the fellows that I used to prosecute thought the law was unfair, but I always took the position that if you did away with all laws for 24 hours, none of us would feel safe, and you could not get out of your house or go down the highway.

Mr. TAYLOR. I agree with you——

Mr. HEMPHILL. What bothers me about the unfairness is if you look at some of the tax laws in this country you will see some of the most unfair exemptions ever written on the statute books of this country.

I just wanted to know whether your answer would be yes, that either alternative would accomplish the objective which you seek, which the quality of treatment, to put everybody under ICC or take everybody out from the exemption.

Mr. TAYLOR. I think, take everybody out so far as these exemptions are concerned.

Mr. HEMPHILL. Take everybody out?

Mr. TAYLOR. Yes.

Mr. HEMPHILL. And let the Justice Department be responsible to see that the "cut-throating" is on a gentlemanly basis?

Mr. TAYLOR. That is right. As I understand it, the Antitrust Division has endorsed this bill and Mr. Loevinger said it is OK with them.

Mr. HEMPHILL. I thank you for your patience with my questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Any other questions?

Mr. Taylor, thank you very much for your appearance here today and for your testimony.

Mr. TAYLOR. Thank you, Mr. Chairman and gentlemen of the committee.

The CHAIRMAN. We seem to be taking all of the Taylors first, I guess.

At this time we will hear from Mr. G. C. Taylor.

STATEMENT OF G. C. TAYLOR, PRESIDENT, MISSISSIPPI VALLEY BARGE LINE CO., AND SECRETARY-TREASURER, INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

Mr. TAYOR. Mr. Chairman, my name is G. C. Taylor. I am president of the Mississippi Valley Barge Line Co., of St. Louis, Mo., and secretary-treasurer of the Inland Waterways Common Carriers Association. I am also a member of the Common Carrier Conference of Domestic Water Carriers.

We are appearing here in opposition to H.R. 11583 and H.R. 11584. We appreciate this opportunity to be here this morning.

My purpose here is to introduce very briefly Mr. C. E. Childe, of Cambridge, Md., a transportation economist with some 50 years of experience, consulting with government and industry on the formation of transportation policy.

We believe that if the public interest is to be safeguarded and the process of competition preserved there must be a clear understanding of the nature of the railroad pricing system, and to this end we have asked Mr. Childe to conduct some original research which bears directly on the problem with which these bills are concerned.

Thank you.

The CHAIRMAN. Thank you, Mr. Taylor.

STATEMENT OF C. E. CHILDE, TRANSPORTATION CONSULTANT FOR THE INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

The CHAIRMAN. Mr. Childe, we would be glad to have your statement. I think you had better identify yourself first and give your address and so forth.

Mr. CHILDE. Mr. Chairman, members of the committee, my name is C. E. Childe. I am a transportation consultant, with office and residence in Cambridge, Md. My experience in transportation has extended over 50 years, as a practitioner before the Interstate Commerce Commission and adviser to shippers, carriers, associations, and Government agencies. In 1941–44 I was a member of the Board of Investigation and Research, established by the Transportation Act of 1940 to study the economy and fitness of rail, motor, and water transportation, and how to achieve an economically coordinated national transportation system.

I have a written statement, with some exhibits, that is somewhat voluminous and I would like to have your permission to file the statement for the record and undertake to summarize what I have written.

The CHAIRMAN. Very well. You may do that, Mr. Childe, and also the exhibits and charts, such as are appropriate and can be used, will be included in the record along with your statement.

(The statement of Mr. Childe, together with exhibits, follows:)

STATEMENT OF C. E. CHILDE, TRANSPORTATION CONSULTANT FOR THE INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

My name is C. E. Childe. I am a transportation consultant, with office and residence in Cambridge, Md. My experience in transportation has extended over 50 years, as a practitioner before the Interstate Commerce Commission and adviser to shippers, carriers, associations, and Government agencies. In 1941–44 I was a member of the Board of Investigation and Research, established by the Transportation Act of 1940 to study the economy and fitness of rail, motor, and water transportation, and how to achieve an economically-coordinated national transportation system.

During my lifetime there has always been a railroad problem, serious enough to command the almost constant attention of Congress—a problem primarily of discriminatory freight rates, unsatisfactory services, inadequate railroad earnings and their effect on the public, and in recent years, of maintaining fair competition between railroads and competing modes of transportation.

The railroads, as a whole, have never been profitable, as measured by the profits of other businesses. Their history, with brief exceptions, has been one of low earnings, many bankruptcies, reorganizations, and mergers, and widespread public complaints about discriminations. Basically the trouble has been the railroads' system of pricing for their services, under which one shipper was charged a much higher price than another for similar services, and which, on the whole, has failed to give the railroads adequate profits. Railroad pricing policy, from the beginning, has been to charge what the traffic would bear, rather than to relate rates to the coast of the individual services. The procedure was to make the highest possible charge for which traffic could be obtained, but always to get the traffic; and when competition was encountered, to make the charge low enough to get and hold the traffic from the competitor, with little or no attention to cost. The theoretical justification for this policy was that the railroads have a large investment and they must maintain their properties and run their trains, whether traffic is heavy or light; therefore, it is more profitable after getting as much high-rated traffic as possible, to fill their trains with low-rated traffic than not to carry it at all. The theory is valid, of course, only to the extent that the amount of traffic carried at low rates is relatively small. As soon as it becomes large enough to require added trains, employees, and investment, the costs of carrying the added traffic are as much as any other traffic. A policy of basing rates on what the traffic can bear, obviously, can succeed only under monopolistic conditions, where competition is not strong enough to prevent the maintenance of rates high enough on noncompetitive traffic, to overcome any losses from low rates on competitive traffic. The railroads applied the policy especially to freight transportation; they have always carried passengers at low, unprofitable rates as a means of attracting settlers and developing population and industry along their lines. Their large expenditures on luxurious passenger stations and trains were considered advertising expense; with the thought that freight traffic and earnings would more than cover passenger losses.

As to freight the railroads, as common carriers, had to have tariffs open to the general public, which named their maximum rates and charges. In these tariffs they classified the freight into groups, with high-valued manufactured articles in several separate classes and low-valued heavy-loading commodities in others, and published rates for each class, graded according to distance, with the highest rates on the high-valued manufactured goods. These class rates, however, were not charged on much of the business. On traffic moving in large volume, special rates were negotiated with the shippers, applying on particular commodities between particular points, arrived at by determining how much below the class rate they must go to obtain the traffic. These rates might be secret or published in separate commodity tariffs, but the higher class rates were always kept in effect to apply in the absence of a lower special commodity rate. Wherever the railroads met the competition of water carriers along the inland rivers, canals, and Great Lakes, and between coastal cities, a lower set of both class and commodity rates was established between the points served by water than those which had only rail service. This was a very effective method of wiping out inland water competition, because the financially weaker water carriers could not survive against the rate cuts which the railroads made to whatever level was necessary to get the traffic. The railroads, however, usually did not try to compete against the deepwater carriage of bulk cargo on which the water rates were too low to make competition attractive.

With the rapid expansion of railroad systems throughout the country in the last half of the 19th century, very severe competition developed between the railroads themselves. Big shippers were able to bargain with one railroad against another, and rate cutting went to such lengths, through secret rates and rebating to large shippers, that the railroads were driving each other into bankruptcy. They tried to deal with the situation by establishing rate associations which published tariffs which all the railroads would agree to observe. In these tariffs, more and more special commodity rates on competitive traffic were published, but the higher class rates were kept in effect for shippers who were not given commodity rates. Competition for traffic was so keen, however, that these rate agreements were broken almost as fast as they were entered into, and rebating to the larger shippers below the published rates continued in spite of all efforts of the rate associations to keep rate cutting within bounds.

It was that chaotic situation, in which one shipper could not know what rate his competitor was paying, and smaller shippers were charged higher rates than larger shippers, which led to the enactment in 1887 of the first act to regulate commerce, which provided that the railroads must furnish transportation to all shippers alike at reasonable rates free from unjust discriminations and undue preference. The Interstate Commerce Commission was created with power to investigate and decide complaints and the railroads were required to file tariffs and make reports. The primary purpose of the act was to wipe out all discriminations. At first the act had little effect; the Commission could fix rates only on past shipments; it had no definite standards for determining whether a rate was reasonable and no means of enforcing its decisions. But by amendments to the act in 1903 and 1906, rebating was effectively stopped; the Commission was given power to fix maximum rates for the future; and the era of Commission regulation really began.

From the first, however, the greatest weakness of the Commission was its limited ability to control discriminations. The courts held that a finding of unjust discrimination could be made only when conditions were similar; that the high rate and the low rate must be established by the same railroad, and that differences in competitive conditions justified differences in rate levels. That took most of the teeth out of the law, because the very reason for establishing discriminatory rates was to meet different conditions applying to competitive traffic, as distinguished from noncompetitive. A shipper, however, was hurt just as badly by a higher rate than his competitor's, whether the competitive conditions were the same or not. The only power the Commission had to deal with such situations was to establish reasonable maximum rates, but even this power was limited by the prevailing thought that the railroad may properly charge, as a maximum, a rate much higher than a rate forced down by competition.

Notwithstanding its limitations, regulation of the Commission proved to be of great benefit both to the railroads and the public. With rebates abolished, the period from 1906 up to the depression of the 1930's was the most prosperous the railroads ever had; and the Commission slowly, in case by case, smoothed out a lot of rate inequalities. This progress was aided by legislation strengthening the Commission's powers, the most important of which was the Transportation Act of 1920, which gave the Commission power to prescribe minimums as well as maximum rates, and also directed that railroad rates be maintained at levels which, on the whole, would yield a reasonable return, set first at 6 percent; then 5½ percent, and later, at the Commission's discretion sufficient to enable the railroads to provide adequate and efficient transportation. The minimum rate provisions of the 1920 act gave the Commission for the first time effective control over rate discriminations. But from that time to the present, the general structure and pattern of railroad rates has remained essentially on the basis of what the traffic would bear (modified by the Commission to mean what the traffic could reasonably bear). The Commission still had little or no knowledge of the relation of individual rates to costs, leaving the reasonableness of rates to be determined by comparisons with other rates, rather than any knowledge of whether or to what extent they were profitable or unprofitable.

Beginning about 1910 railroad costs began to rise, causing them to seek general increases in rates, generally by percentages or some other unequal method, which caused increasing dissatisfaction among shippers about discriminations. Increases were made of about 15 percent before the First World War; 25 percent during that war; and 35 to 40 percent immediately after the war's close. And simultaneously with rising railroad rates, revolutionary changes in transporta-

tion began to emerge out of the rapid development of motor transportation on the highways and of modern coastal and intercoastal inland water transportation. Good roads were built all over the country to satisfy the demands of automobile owners; motortrucks took the place of horses hauling farm products to market and industrial goods in and around cities. The Panama Canal was opened providing cheap water transporttion between the Atlantic and Pacific coast cities, and disrupting the markets of interior shippers who depended on higher rail rates. Barge transportation, which was revived on the Mississippi River to relieve railroad congestion during the World War, proved to be much cheaper than railroad rates for hauling bulk freight, stimulating growth of industry in the interior, as well as along the seacoasts and Great Lakes.

Railroad transportation also grew, along with highway and water transportation. During the prosperous 1920's, rail earnings reached highest levels in their history. Then came the depression of the 1930's; and an abrupt slump of the rail earnings, along with other business, to or near the vanishing point. Virtually all other prices fell far below war levels, but the railroads kept their rates up, and sought and received from the Interstate Commerce Commission additional general rate increases. The effect was to stimulate still further the use by shippers of other more economical transportation.

As the railroads saw traffic being increasingly diverted to the motortrucks and inland water carriers, they demanded that the other modes of transportation be regulated. In 1935 the motor carriers, and in 1940 the water carriers were made subject to the same type of regulation as the railroads, except that the rates on agricultural commodities by truck and bulk cargoes by water were exempted from regulation because they were not considered sufficiently competitive with railroads, or to impose a burden on shippers such as to require regulation.

The growing competition between the railroads and the other modes of transport made it apparent that fair rate relationships and competitive practices would have to be maintained, but methods of attaining such fair relationships had not been worked out. Congress in 1933 created the office of Federal Coordinator of Transportation, and in 1940, the Board of Investigation and Research, both temporary bodies to study and report to Congress and the President measures of maintaining an adequate and economically coordinated system of rail, motor, and water transportation. As a part of the 1940 Transportation Act, Congress declared it to be its policy that the Interstate Commerce Commission regulate all modes of transportation under its jurisdiction to "recognize and preserve the inherent advantages of each"; "to foster economic conditions in transportation and among the several carriers"; and forbid "unfair or destructive competitive practices," in addition to maintaining reasonable rates free from unjust discrimination and undue preferences and advantages. It was plain from the debates on the bill that the term "inherent advantages" meant cost advantages, giving shippers the opportunity to use each and all forms of transportation at the lowest possible cost.

Studies of the Federal Coordinator and the Board of Investigation and Research, and concurrent studies of the Interstate Commerce Commission, developed a mass of information about railroad costs and their relation to rates which had never before been available. Starting with 1939, and continued annually since 1947, the Commission has regularly published comparisons of rates and costs which show for the United States as a whole and by regions, relations of rail rates to costs on 258 separate classes of carload commodities. These have not yet brought about a widespread readjustment of rates carrying out the congressional declaration of national policy. But fortunately they are in time to aid in intelligent understanding of the competitive rate problems which now confront us.

The Second World War brought the railroads and other business from the slump of depression into prosperity. Since the war, rail traffic has continued at higher than prewar, and about 8 percent below, war levels. Rail freight revenues have been at an all-time high, reaching $9 billion in 1953, 1956, and 1957, compared with a $7 billion war peak in 1944. But costs have also tremendously incraesed and, to meet this situation, the railroads have asked for and been granted general percentage increases in freight rates amounting on the whole to about 115 percent above the levels of 1946.

However, the railroads have not taken full advantage of the rate increases granted; their average carload freight rates are now about 75 percent over the 1946 level, instead of the 115 percent allowed. The reason is the alarm of the railroads about the increased use shippers are making of highway, water, and

pipeline transportation. The fact that highway and inland waterway transportation has been growing at a faster rate than rail traffic is proof in their minds that the railroads are not receiving their fair share. In the 1950's they began a thorough and systematic overhauling of their rates, to make them more competitive. They applied the full percentage increases granted by the Commission only on traffic they regarded as noncompetitive, or not highly competitive; and on competitive traffic they proceeded to make whatever reductions they thought necessary to keep the traffic on the rails, regardless of how deep the reductions would be, so long as they promised to bring in more dollars to the railroads than they would have if they did not get the traffic. In other words, they undertook to follow in full vigor the old policy of charging what the traffic would bear (which so nearly brought them and the country to disaster 75 years ago), except this time they do not compete with each other, but with the other modes of transport, but on a broad, nationwide scale that never before existed.

Their program of rate-cutting has been in full swing since 1955, checked only by such orders as the Interstate Commerce Commission has made to prevent reductions that would clearly be below out-of-pocket costs of the railroads. It has not resulted, to date, in an increase in their total traffic, but it has drastically reduced their revenues and rate of return on investment. Rail ton-miles went down 10 percent from 1955 to 1960; freight revenues decreased over a billion dollars (which would have been avoided if the 20 percent rate increase authorized by the Commission had been fully applied, assuming that no greater losses of tonnage would have occurred). The rate of return of the railroads went down 50 percent, from 4.4 percent in 1955 to 2.2 percent in 1960. In 1961 it declined to below 2 percent, with an overall deficit in the eastern district.

Revenues of the competing modes of transport have likewise suffered. Their traffic has held its own or increased slightly, but their earnings have gone down sharply. It is plain that, if the railroads' rate-cutting campaign is continued and intensified, there will be wholesale bankruptcies of both railroads and competing carriers.

The question arises why the Interstate Commerce Commission has not succeeded in stopping the rate war up to now. Unquestionably the Commission wants to exercise its powers to see that all modes of transport are fairly treated. The Commission now knows pretty well what the costs of transportation are by the several modes of common carriage. But in dealing with the rate relationships of competing carriers it has failed to develop and apply a consistent policy as to what extent rates should be related to cost, or whether rates must cover full cost or only that portion of cost considered to be "out-of-pocket" cost. It has tried, in several instances, to keep competing rail and truck rates on some high-valued manufactured commodities above the costs of both modes of transport, at levels which would permit both to compete fairly. The railroads, claiming in these instances they were the low-cost carriers, objected vigorously, and persuaded Congress to amend the law in 1958, forbidding the Commission to hold up the rates on one carrier to protect the traffic of another mode. There is still doubt about the meaning of this amendment. It has no bearing, however, on the question of competitive rate relationships on bulk commodities which are under consideration in the bills now pending.

As to bulk commodities, it is undisputed that the railroads have complete liberty to reduce their rates, so long as they cover the full cost of the service, and do not unjustly discriminate. The crucial problem is whether the railroads, when they are the high-cost carriers, should be permitted to reduce rates below the level of the water lines' rates when those lines are the low-cost carriers. In the competitive struggles before the Commission about bulk commodities, the railroads insist that their rates should be measured not by their full costs but by what they consider are their out-of-pocket costs. The water carriers show that the full costs of the railroads are higher than full water costs, and insist that the railroads canot reduce their rates below low-cost water rates without compelling higher-rated noncompetitive traffic to absorb the deficits. The Commission's policy has been to approve the rail reductions where it thinks even a slight margin over out-of-pocket costs may be realized, but the Commission has not been consistent in its findings as to how far the rates can go below full costs and still be considered as yielding something over out-of-pocket costs. It is important here to note that the Commission accepts as true the railroad theory that any revenues they get on competitive traffic, above the assumed out-of-pocket cost, are compensatory in the sense that the railroad is supposed to come out with more dollars than if it loses the traffic, even if the rate fails by a wide margin to meet the railroad's full costs. The railroads insist that they can go as much as 50

percent below full cost, or even more, in some cases—and still make a profit. The Commission's Cost Section accepts the view that, for the short term at least, out-of-pocket costs are lower than full costs.

In early studies in the 1930's of statistics of some railroads thought to be fairly comparable, the Commission's experts thought that the trends indicated that possibly railroad operating expenses would, over the short term, increase about 80 percent as much as traffic would increase; although they agreed that in the long run, all railroad expenses, including general and overhead, would rise or fall according to the rise or fall of traffic. So far as I know, no further studies of the subject have been made. And what seems to be of much more importance is the fact that the statistics of the railroads for the past 25 years fail to support the theory, and on the contrary show that railroad expenses rise and fall in almost exactly the same percentage as their traffic. (In a period of rising costs such as we have had over the past decade, expenses rise faster than traffic.) In spite of this, the Commission continues to assume that out-of-pocket costs of railroads should be considered 80 percent of their operating expenses (with a slightly different allowance for rate of return), and on the strength of that assumption permits the railroads to reduce competitive rates on bulk traffic far below full costs, while at the same time the Commission tries to keep noncompetitive rates high enough to comply with the law's mandate that rail rates as a whole shall yield a fair return.

The result of the selective rate-cutting program of the railroads is plainly apparent from examination of the revenue and cost statistics published by the Commission for the years 1955–60. (1960 is the latest year available.) The records of these years show a continuous and drastic decline in rate levels and margins of profit, especially on bulk traffic. So many reductions have been made that the average rates on most bulk traffic, for the United States as a whole, have fallen below cost, and in many cases below the computed out-of-pocket costs. The only traffic on which the railroads now make an overall profit above the full cost, with a few rare exceptions, is manufactured and packaged goods, and even a considerable number of these are now being carried below cost.

The picture is to me an amazing one. In 1960 carload freight revenues per ton, as a whole, including the high-rated and low-rated traffic, were $6.09 per ton, compared with $6.42 per ton in 1958 and $5.66 per ton in 1955. If the railroads had fully applied the 20-percent increase in rates granted since 1955, the 1961 average rate would have been about $7.80 per ton. The railroads' margin of profit on carload rates declined 33 percent from 1955 to 1960. Their rate of return went down 50 percent. By 1960, the average revenue for the United States on 120 of the 258 carload commodity classes reported to the Commission, comprising over 70 percent of their tonnage, was less than full cost; and on 50 commodity classes—more than 20 percent of the tons—the yield was less than the ICC out-of-pocket cost. The Commission's annual cost figures show that railroad revenues must be at least 140 percent of the computed out-of-pocket costs to cover full costs, including a return to 4 percent. In 1955, revenues were 146 percent of the computed out-of-pocket cost and the rate of return was 4.4 percent; by 1960, the revenues had fallen to 129 percent of out of pocket and the return to 2.2 percent. The greatest reduction for any single year occurred from 1959 to 1960, when revenues fell from 135 to 129 percent.

On bulk commodities the situation is worse than for commodities as a whole. Products of mines which, in 1960, comprised 54 percent of carload railroad tons, yielded on the whole 109 percent of out-of-pocket costs; bituminous coal, the largest item, 110 percent; sand and gravel, 76 percent; stone, 87 percent; gasoline, 93 percent, and other refined petroleum, 96 percent of out-of-pocket cost. These items—petroleum, coal, gravel, sand, and stone—constitute 80 percent of the tonnage of inland water carriers, and the principal bulk commodities on which the railroads would have to reduce rates still further in order to regain tonnage. The Commission's cost statistics prove, however, that lowering rates which are already far below full cost will certainly reduce, instead of increase, their net revenues. Discriminatory differences between the reduced competitive rates and the nonreduced noncompetitive rates would become wider and wider, and call for still further increases in noncompetitive rates. If the Interstate Commerce Commission's power to fix minimum rates were eliminated, the country would, in my opinion, be left helpless to stop ruinous rate cutting by the railroads and competing modes of transport, and would return to chaotic conditions the country found intolerable 75 years ago, which Congress then

found necessary to regulate and for which regulation is even more necessary now than it ever was in the past.

I have prepared some exhibits, which I believe support the views expressed and which I should like to explain briefly.

The first statement, entitled "How the Railroads Fared Before and After Regulation," shows the recorded investment, income, and rate of return on book investment for the whole period covered by the Interstate Commerce Commission's statistics, from 1890 to 1960, with a column on the right giving the high spots of regulation in the period. You will note that before 1900 the average rate of return was less than 4 percent, but if at that time charges had been made on the books for depreciation reserve, the rate of return would have been much smaller. After regulation became effective, the rate of return went up more than 50 percent above the 1890–1900 average, which was 3.7 percent. From 1908 through the 1920's the trend was upward; in 1916, for the first time, earnings reached 6 percent; in the 1920's, they averaged more than 5 percent; then in the depression 1930's, fell below 3 percent, and in 2 years (1932 and 1938) below 2 percent. The Second World War brought the return up to the record high of 6.6 percent in 1942; returns were lower in 1944–46 because of huge writeoffs of wartime capital expenditures. Postwar earnings have ranged from 4.4 percent down to the low of 2.2 percent in 1960, and in 1961 they sagged below 2 percent. The statement shows how, on the whole, the railroads fared much better under regulation than they did before, and how Congress and the Commission have taken continuous steps to keep them as prosperous as possible, but the railroads' pricing system has not succeeding in bringing them as high an overall return as contemplated by Congress in the 1920 Transportation Act.

The next table is a statement of operating expenses and gross ton-miles for the years 1935 to 1960, showing the percentage change of each from the preceding year. This table, in my opinion, shows that the railroad theory that they can increase tonnage without corresponding increases in their expenses is disproved by their own experience. In the columns headed "Percent change," starting at the bottom, you will note that in 1936 ton-miles went up 17 percent, and expenses 16 percent. In 1937 the increase in ton-miles was 5 percent, expenses 6 percent; expenses showed almost exactly the same percentage change as ton-miles. In 1938 traffic and expenses both declined by about the same percentages; in 1939 and 1940 expenses went up at a slightly lower rate than ton-miles. But in almost every year since 1941 expenses have gone up at a rate as high as, or higher than, ton-miles. In 1941 they both went up 22 percent; 1942 to 1944 expenses went up more than ton-miles; in 1945 ton-miles went down and expenses up; in 1946 both declined in about the same ratio. From 1947 to 1960 expenses have, on the whole, increased more than ton-miles. In 1955–56 ton-miles went up about 12 percent and expenses about 13 percent; 1957–58 expenses declined about the same as ton-miles; in 1959 and 1960 ton-miles and expenses increased in almost precisely the same ratio. There is no indication anywhere of any tendency of expenses per ton-mile to increase less, relatively, than ton-miles. If there were any substance to the railroads' contention that expenses increase only about 50 percent as much as ton-miles, or the Commission's theory that expenses increase only about 80 percent as much as added tonnage, the smaller rate of increased expense on added traffic would show up in the annual figures. The actual record is to the contrary. It necessarily follows, I think, that the out-of-pocket cost theory that traffic can be added without correspondingly increasing expenses per ton and per ton-mile, is demonstrated by experience to be false.

My next statement, entitled "Ratio of Carload Freight Revenue to Out-of-Pocket Cost, By Commodity Classes," shows the ratio to ICC out-of-pocket cost which each commodity class yielded in 1960, taking the U.S. average of all rates, high and low, in each class; also the percentage of total tons and ton-miles in each class. The statement is accompanied by a chart which shows graphically how far the revenues are above or below out-of-pocket cost. The height of the vertical lines shows how much each class is above or below cost. The width of the vertical lines indicates the importance of each class, measured by ton-miles. The horizontal lines on the chart show the scale above and below out-of-pocket costs. The out-of-pocket line and the line representing 140 percent of out-of-pocket cost are shown in red. The commodity classes which pay their full costs extend above the 140-percent line; those below the 140-percent line are less than full cost; and commodities below the 100-percent line do not pay even ICC out-of-pocket costs. All of the important bulk commodities are below the full cost line and others, as I have stated, are, on the average, below out-of-pocket cost

today. Most of the commodities which are now carried by the railroads at less than out-of-pocket cost are either bulk or agricultural commodities, on which the railroads propose to make still greater reductions, if they are exempted from minimum rate regulation.

My next statement, "Carload Freight Tonnage Revenues and Out-of-Pocket Cost," shows for all the years for which the Commission has compiled cost statistics the carload tonnage and revenues, and the amounts revenues exceeded the Commission's computed out-of-pocket costs, and in the last column on the right, the rate of return to the railroads. The significant figures here are those showing the continuous decline in rate of return, as margins above out-of-pocket cost grew smaller. The railroads have never earned as much as 4-percent return when their carload rates yielded less than 142 percent of the computed out-of-pocket costs. In every year since 1956, as revenues declined from 139 to 129 percent of out-of-pocket cost, the rate of return declined steadily from 3½ percent in 1957, to 2.2 percent in 1960.

My next statement shows the percentage increases in rail freight rates authorized by the Interstate Commerce Commission since 1946, compared with actual carload rates. It shows that the postwar decline in railroad earnings has not been due to the Commission's failure to grant increases sufficient to cover rising costs, but to the railroads' failure to apply the full increases. Reductions on competitive traffic have been so extensive that average carload revenues have gone much lower than the levels authorized. This trend is especially noticeable in the years from 1955 to the present. From 1947 to 1954, average carload rates were within 10 percent of the authorized increases. But in 1955 the authorized rate exceeded the actual by 19 percent. The authorized rate in 1960 was $7.73. The actual rate went down from $6.42 in 1958 to $6.09 in 1960, and thus brought the excess of authorized over actual rate to 27 percent. In 1961 the authorized rate went up to $7.85, and, while we do not have the 1961 actual rate, we know that rate reductions have been continuing since 1960, so that the average actual and authorized rates continues to widen. Accompanying this statement is a chart showing graphically how the gap has widened from year to year between the rates authorized and the rates actually charged.

My final statement is a summary of recent trends of carload freight costs, rates, revenues, and rate of return, on which I have recapitulated the figures showing how costs have gone up, revenues have not kept pace with costs, and margin of profit and rate of return have drastically fallen.

I think it is clear from what I have presented that low competitive freight rates have been in the past, and are now, the main cause of the railroads' low earnings, and certainly of the drastic slump in earnings since 1955. It is impossible, of course, to show in detail the vast number of rate reductions the railroads have made in the past few years, but I have here some charts which I think fairly represent how far the railroads have already gone, with Interstate Commerce Commission approval, in cutting competitive rates below cost and below noncompetitive rates.

My first chart deals with rate reductions the southern railroads made on coal to Tampa, Fla., in 1958, and again in 1960, to meet water competition. The electric utility company at Tampa, and other large industrial users, had been depending largely on oil for their fuel, up to about 5 years ago, when a coal mine at Uniontown, Ky., began to ship coal by water down the Mississippi River to New Orleans, and thence across the gulf to Tampa, at a rate competitive with oil; and the utility and another large industry at Tampa began using large quantities of coal. The water rate was $3.14 per ton. The railroads at that time had a rate of $6.20 per ton from East Tennessee, and $5.97 per ton from Alabama mines to Tampa. When the coal movement began by water, the railroads went to the Tampa consumers to find out what rate they would have to make from East Tennessee and Alabama to compete with the water movement from West Kentucky. They were told that a reduction of $1.65 per ton would be sufficient; whereupon the railroads established the reduced rates, and they were approved by the Commission in 1958. Later the consumers said it would be necessary for the railroads to make further reduction of 86 cents a ton if they wanted to stay in business; whereupon in 1960 the railroads made the reduction asked, and have continued to move large quantities of coal to Tampa at lower rates. They have, however, maintained the higher former level of coal rates at the intermediate points which do not have water transportation, so that now the Southern Railway hauls coal to Tampa—a distance of 802 miles from East Tennessee—for $3.76 a ton; and from Birmingham, 715 miles, for $3.46, which are lower rates than to Atlanta, Ga., which is only 166 miles from Birmingham, and

226 miles from East Tennessee. Grading upward from the Atlanta rate of $3.96 from East Tennessee, is a rate of $5.06 to Jacksonville, Fla., which is $1.30 higher, for a distance 245 miles shorter, than Tampa. Between Jacksonville and Tampa the rates grade still higher, so that the rate from East Tennessee to the nearest stations inland from Tampa is now $6.27—7 cents higher than the old, and $2.51 higher than the present Tampa rate. Similar rates and rate relationships are in effect from Alabama. The chart shows the water route from Uniontown, Ky., the Southern Railway's route from East Tennessee and Birmingham through Atlanta and Jacksonville to Tampa, and the intermediate territory where the rates are now higher than the Tampa rates.

My next chart shows the relationship of the Tampa rate to ICC out-of-pocket cost and full cost, and how the rate compares with the average coal rates of the southern railroads. The vertical scale on the chart shows the rates per ton, and the horizontal scale, the distance; the straight lines sloping upward on the chart show out-of-pocket and full costs; the jagged line shows the average coal rates by mileage blocks; the rates to Tampa are shown by the circled dots on the chart. The chart shows that while the average coal rates are considerably higher than out-of-pocket costs, for the shorter distances which most coal moves, the Tampa rate is $2 per ton, or 35 percent below 1960; and the Alabama rate 33 percent below out-of-pocket cost. The Tampa rates are more than 50 percent below the full costs. I think these charts show how far the Southern Railway is willing to go, and how far the Interstate Commerce Commission permits it to go, in cutting rates to take traffic from the water lines. And I hardly need comment on how different this picture is from that given to you by the president of the Southern Railway when he said that it is the policy of the Southern Railway never to go below costs in cutting rates, and to extend to communities off the water the same low rate as communities located on the water.

The next chart deals with a water-competitive rate on limestone from Prairie du Rocher, a point in southern Illinois on the Mississippi River, to Baton Rouge, on which large tonnages of stone have moved to a chemical industry in Baton Rouge, La. In 1960 the Missouri Pacific Railroad, in order to prevent the limestone from moving by barge, established a multiple-car rate of $2.30 per ton, leaving, in effect, however, higher rates on single-car movements to shorter distant intermediate territory. This rate was approved by the Interstate Commerce Commission, although its cost experts found that it was below out-of-pocket cost.

The chart compares the rate with Western District out-of-pocket cost and full cost; also with the average carload rates on crushed stone in the southwestern region and in the United States as a whole. The rail rate, as you will notice by the chart, is far below Western District costs, is only 43 percent of the out-of-pocket cost of $5.40 and 25 percent of the full cost of $9.08 per ton. Since the rate was established, the entire movement has been by rail.

The average stone rates, are, as indicated on the chart, above or slightly below out-of-pocket costs for the shorter distances, and grade upward according to distance, except for the sharp dip in the southwestern rate in the 700-mile block, which shows the influence of the Missouri Pacific's below-cost rate to Baton Rouge. The western lines say they want to reduce rates still further. This chart shows how low they would have to go below out-of-pocket cost to make further reductions on stone.

The next chart deals with another multiple-carload rate established by the railroads, with Interstate Commerce Commission approval, from New Orleans to Peoria, on blackstrap molasses. This was also established to keep the traffic from moving by barge, and has had that effect. The rate is below the regional out-of-pocket cost of the railroads, and lower than the rates on single carloads in the intermediate and surrounding territory. The chart compares the rate from New Orleans to Peoria, which is 32½ cents per 100 pounds for the 820-mile haul, with the nonwater competitive rate from Houston to Amarillo, Tex., which is 14 cents per 100 pounds higher than the Peoria rate for a haul 224 miles shorter. The rate per ton-mile to Amarillo is twice as high as the rate to Peoria. This comparison is typical of differences between the railroads' competitive and noncompetitive rates, and indicates, I think, how much weight should be given to statements that the railroads' policy is to keep their inland rates competitive.

The next chart deals with a water-competitive rate the railroads established on newsprint paper after barges began to haul newsprint from Calhoun, Tenn., to Houston, Tex., which received considerable newspaper publicity because newsprint is an important item of expense to newspapers. When the railroads re-

duced the rate to Houston, they refused to make reductions to cities in the intermediate inland territory, such as Oklahoma City, Dallas, and Fort Worth. The newspapers there could not see why, if the railroads could make a profit on the lower rate from Calhoun to Houston, they should maintain higher rates to other points which depended exclusively on the rail service. If the lower rate to Houston was profitable, the other cities wanted like treatment, and if it was not profitable, they objected to subsidizing the railroads' low rate to keep the traffic off the waterways. The chart shows how the present rate to Houston, 56 cents per hundred pounds for 854-mile rail haul, compares with the rate to Oklahoma City, which is 85 cents a hundred for 828-mile haul. The Oklahoma City rate is 29 cents per hundred, or 52 percent higher than the Houston rate for a haul which is 3 percent shorter. This is typical of the present disadvantages of the inland rates on newsprint.

The next chart indicates how much higher noncompetitive rates of the railroads on grain are than water-competitive rates. The rate from St. Louis to New Orleans, 26½ cents per hundred pounds for a rail distance of 890 miles, is compared on the chart with the rate of 28 cents per hundred from Lamonte, Mo., to St. Louis, 191 miles. You will notice that the railroad charges more for a non-water-competitive haul of 191 miles than for a water-competitive haul of 890 miles.

The next chart deals with the rail rates on grain from Buffalo and Pittsburgh to eastern markets, and points out how the rates from Pittsburgh discriminate against moving grain by barge into Pittsburgh from the West. A large part of the grain consumed in, or exported from, the eastern cities moves by lake vessel to Buffalo, thence rail beyond, making Buffalo one of the great grain and milling centers of the country. Pittsburgh is not a grain and milling center, although, since grain began to move on the rivers by barge, some effort has been made to develop a movement through Pittsburgh. The chart shows why that is impossible at the present time. The rail rates from Pittsburgh to the seacoast cities are so much higher than rates from Buffalo that Pittsburgh cannot compete. The chart gives a typical illustration—the rate from Pittsburgh to Philadelphia, 360 miles, is 47½ cents per hundred pounds, and the rate from Buffalo to Philadelphia, 406 miles, is 37½ cents per hundred pounds. The distance from Pittsburgh is 46 miles shorter, but the rate is 10 cents a hundred higher, which effectively prevents competition.

The last chart, dealing with rates on sugar from San Francisco to Chicago, shows how the railroads have reduced rates on sugar from San Francisco to Chicago to compete with a water movement through the Panama Canal and Mississippi River. The present rate for the 2,258-mile haul to Chicago is 89½ cents, in contrast with higher rates for shorter intermediate distances extending from Nevada, 300 miles from San Francisco, almost to the Mississippi River, within 200 miles of Chicago. The chart shows, as illustrative of the higher rates to intermediate points, Ogden, Utah, and Denver, Colo. The rate to these cities in 95½ cents per hundred pounds, 6 cents higher than to Chicago, although the distance to Ogden is 1,400 miles less, and to Denver nearly 900 miles less, than to Chicago. As the chart shows, the rate to Chicago is below full cost, while the intermediate rates are above cost.

These discriminations against the intermediate territory effectively prevented competition between industries in the intermediate territory with similar industries at Chicago. I lived in Omaha at the time the railroads cut the rate to Chicago, and remember how a candy manufacturer at Omaha pleaded with the railroad that unless it could give him a rate as low as the rate to Chicago, he could not continue in business. But his request was denied and the consequence was that the Omaha factory moved to Chicago. So the effect was not only to hurt Omaha, but the railroad had to haul the sugar 500 miles farther through Omaha to Chicago, at a rate less than cost, instead of to Omaha at a profit above cost.

I hope the illustrations I have given will make clear how ratecutting on bulk commodities has already brought the rates down to or below the point of no return to the railroads and imposed on shippers in the interior a constantly increasing burden of higher and discriminatory rates. The argument is sometimes made that industries on the waterways have the lower rates anyway, but the fact is that the rate reductions of the railroads increase the disadvantage of the inland industries. Establishment of joint barge-and-rail rates would enable the people in the interior to participate in the benefits of low-cost water transportation, but the railroads refuse to enter into such arrangements.

May I say, in conclusion, that, in my opinion, the transportation situation today is indeed a serious one. The illness of the railroads cannot be called a crisis—it is a chronic, deep-seated disease which, for want of a better name, could be called what-the-traffic-will-bearitis. The only hope for cure is regulation. Elimination of regulation would be fatal. Stronger, not weaker regulation is necessary. I am personally convinced that the only effective remedy is to require that rates of all modes of transportation, including rates on bulk and agricultural commodities, bear a reasonable relationship to their costs. I respectfully recommend for your consideration that, in addition to eliminating bulk and agricultural exemptions, there be added, to the declaration of policy and the ratemaking provisions of the act, language defining reasonable rates as "related to the full cost, with due consideration of the value of the service," and that the provisions dealing with unfair and destructive competitive practices be amended to prohibit specifically the reduction of a competitive rate to a point below the full cost of the service that would require a lower-cost carrier to reduce its rates below its full cost, in order to compete.

How the railroads fared before and after regulation

Year	Book investment			Net railway operating income	Rate of return on book investment
	Road, equipment, and materials	Depreciation reserve	Net book investment		
	Thousands	*Thousands*	*Thousands*	*Thousands*	*Percent*
1890	$8,197,451		$8,197,451	$329,978	4.0
1891	8,509,507		8,509,507	322,822	3.9
1892	8,765,100		8,765,100	357,658	4.1
1893	9,013,301		9,013,301	357,760	4.0
1894	9,136,185		9,136,185	305,391	3.3
1895	9,263,615		9,263,615	311,505	3.4
1896	9,569,072		9,569,072	339,219	3.5
1897	9,772,934		9,772,934	328,446	3.4
1898	9,828,012		9,828,012	387,424	3.9
1899	10,034,287		10,034,287	412,244	4.1
1900	10,370,188		10,370,188	481,171	4.6
1901	10,508,241		10,508,241	511,421	4.9
1902	10,773,607		10,773,607	560,077	5.2
1903	11,121,683		11,121,683	590,056	5.3
1904	11,670,263		11,670,263	579,476	5.0
1905	12,100,720		12,100,720	633,168	5.2
1906	12,605,516		12,605,516	719,824	5.7
1907	13,257,049		13,257,049	766,846	5.8
1908	13,440,017		13,440,017	634,794	4.7
1909	13,816,034		13,816,034	710,474	5.1
1910	14,557,816		14,557,816	805,097	5.5
1911	15,857,311	$210,466	15,646,845	744,669	4.8
1912	16,251,535	259,661	15,991,458	727,458	4.5
1913	16,889,204	327,847	16,561,357	805,266	4.9
1914	17,432,726	435,835	16,996,891	674,190	4.0
1915	17,690,308	511,452	17,178,856	694,276	4.0
1916	18,176,138	628,934	17,547,204	1,058,506	6.0
1917	19,088,349	796,395	18,291,954	950,557	5.2
1918	19,626,515	936,979	18,689,536	646,223	3.5
1919	19,908,648	1,009,322	18,899,326	454,132	2.4
1920	20,616,587	1,081,342	19,535,245	12,101	.1
1921	21,005,349	1,237,030	19,768,319	601,139	3.0
1922	21,136,261	1,335,453	19,800,808	769,411	3.9
1923	22,065,936	1,408,461	20,657,475	974,918	4.7
1924	22,721,957	1,549,969	21,202,000	984,463	4.6
1925	23,752,335	1,681,291	22,071,044	1,136,728	5.2
1926	24,361,747	1,811,002	22,550,745	1,229,020	5.5
1927	24,985,934	1,946,798	23,039,136	1,077,842	4.7
1928	25,354,579	2,043,976	23,310,603	1,182,467	5.1
1929	25,942,087	2,169,736	23,772,351	1,262,636	5.3
1930	26,488,375	2,360,767	24,127,608	874,154	3.6
1931	26,474,891	2,520,738	23,954,153	528,204	2.2
1932	26,408,586	2,632,922	23,775,664	325,332	1.4
1933	26,198,031	2,707,942	23,490,089	477,326	2.0
1934	25,983,954	2,764,726	23,219,228	465,896	2.0
1935	25,785,025	2,771,404	23,013,621	505,415	2.2
1936	25,744,126	2,809,063	22,935,063	675,600	2.9
1937	26,028,453	2,950,848	23,075,605	597,841	2.6
1938	25,917,900	3,044,972	22,872,928	376,865	1.6
1939	25,869,873	3,102,779	22,767,094	595,961	2.6
1940	25,985,170	3,095,237	22,889,933	690,554	3.0
1941	26,135,243	3,240,145	22,895,098	1,009,592	4.4
1942	26,348,099	3,561,570	22,786,529	1,499,364	6.6

How the railroads fared before and after regulation—Continued

Year	Book investment			Net railway operating income	Rate of return on book investment
	Road, equipment, and materials	Depreciation reserve	Net book investment		
	Thousands	*Thousands*	*Thousands*	*Thousands*	*Percent*
1943	26,684,637	3,939,562	22,745,075	1,370,568	6.0
1944	27,243,126	4,382,604	22,860,522	1,113,153	4.9
1945	27,570,035	5,549,720	22,020,315	858,864	3.9
1946	27,938,227	5,800,975	22,137,252	624,868	2.8
1947	28,459,517	6,037,033	22,422,484	790,534	3.5
1948	28,529,408	6,279,892	23,249,516	1,014,815	4.4
1949	30,253,835	6,438,177	23,815,658	693,957	2.9
1950	30,908,357	6,607,231	24,301,126	1,055,309	4.3
1951	31,996,513	6,812,085	25,184,428	956,699	3.8
1952	32,617,511	6,926,771	25,744,740	1,091,657	4.2
1953	33,265,432	7,009,758	26,255,674	1,122,512	4.3
1954	33,415,474	7,175,101	26,240,373	887,817	3.4
1955	33,709,013	7,313,951	26,395,062	1,144,347	4.3
1956	34,457,976	7,542,856	26,915,120	1,083,708	4.0
1957	35,335,562	7,800,925	27,534,637	934,645	3.4
1958	35,525,594	8,043,497	27,482,097	772,898	2.8
1959	35,723,459	8,295,563	27,427,896	760,140	2.8
1960	36,073,516	8,532,411	27,541,105	594,618	2.2
1961					[1] 1.9

[1] Association of American Railroads' statement.

REGULATION HIGH SPOTS

Period of nonregulation: Before 1903 there was no effective governmental regulation. In the 1860's to 1890's railroads were subsidized by land grants, bonds, cash, and other aids.

1890's to 1903: Railroad rate associations partly succeeded in controlling, rebating, and maintaining rates by agreements.

1903: Elkins Act prohibited rebating.

1906: Hepburn Act gave ICC power to fix rates and require published tariff rates to be charged and collected.

1910–18: Railroads given first general freight rate increases by ICC.

1911: Railroads required by ICC to set up reserves for depreciation.

1918: Government took over and operated railroads, under guarantee of prewar earnings. Freight rates increased 25 percent.

1920: Congress restored railroads to private owners; authorized payments to restore properties to good physical condition; directed ICC to maintain rates that would yield fair return; ICC granted general increases in freight rates of 25 to 35%. (These were more than traffic could bear, and reduced 10 percent in 1922.

1932: road credit supported by creation of RFC.

1932–35: Congress established Office of Federal Coordinator of Transportation to determine ways of helping railroads.

1935: Motor carriers placed under ICC regulation.

1932–37: ICC tried to maintain railroad earnings by general freight rate increases, followed by reductions to avoid losses of traffic.

1938: ICC authorized 10 percent general increase in freight rates.

1940: Transportation Act defined national policy; placed domestic water carriers under ICC regulation; created Board of Investigation and Research to study taxation, public aids, economy, fitness of rail, motor, and water transportation.

1944–46 et seq.: Accelerated amortization of capital expenditures.

1948: Reed-Bulwinkle Act exempted from antitrust laws rate agreements between common carriers of like type.

1957: Railroads relieved from long-short-haul provisions over circuitous routes.

1958: Transportation Act amended providing for Government-guaranteed loans to railroads, giving ICC authority to discontinue unprofitable passenger trains, and directing Commission not to forbid rate reductions by one mode of transport to protect the traffic of another mode.

1946–61: Series of percentage freight rate increases authorized by ICC totaling 115 percent.

1951–62: Selective competitive rate reductions by railroads offset rate increases granted.

Source: "Transport Statistics in the United States," Interstate Commerce Commission.

U.S. class I railroads, freight operating expenses and gross ton-miles, showing annual percentage changes, 1935–60, inclusive

Year	Freight operating expenses		Gross ton-miles		Freight operating expenses per gross ton-mile
	Amount (in millions)	Percent change from preceding year	Number (in billions)	Percent change from preceding year	
					Mills
1960	$6,072	[1] 1	1,460	[1] 0.5	4.16
1959	6,130	4	1,467	4.0	4.18
1958	5,898	[1] 8	1,412	[1] 9.0	4.18
1957	6,434	2	1,555	[1] 4.0	4.14
1956	6,299	7	1,613	2.0	3.91
1955	5,897	6	1,578	10.0	3.74
1954	5,566	[1] 10	1,429	[1] 8.0	3.90
1953	6,175	2	1,558	[1] 1.0	3.96
1952	6,075	None	1,575	[1] 3.0	3.86
1951	6,090	14	1,618	6.0	3.76
1950	5,324	4	1,524	8.0	3.49
1949	5,114	[1] 9	1,408	[1] 14.0	3.63
1948	5,636	10	1,630	[1] 3.0	3.46
1947	5,144	9	1,673	8.0	3.07
1946	4,700	[1] 12	1,548	[1] 11.0	3.04
1945	5,372	13	1,737	[1] 7.0	3.09
1944	4,746	10	1,874	2.0	2.53
1943	4,302	21	1,841	9.0	2.34
1942	3,549	27	1,693	25.0	2.10
1941	2,799	22	1,357	22.0	2.06
1940	2,296	7	1,113	10.0	2.06
1939	2,143	9	1,013	12.0	2.12
1938	1,968	[1] 15	907	[1] 16.0	2.17
1937	2,310	6	1,080	5.0	2.14
1936	2,171	16	1,029	17.0	2.11
1935	1,873	----------	882	----------	2.12

[1] Decrease.

Source: ICC, "Transport Statistics in the United States."

U.S. class I railroads—1960 ratio of carload freight revenue to out-of-pocket cost by ICC commodity classes and by percentage of total tons and total ton-miles in each commodity class

Number	Item	Ratio to out-of-pocket cost	Percent of total tons	Percent of total ton-miles
1	Explosives	413	0.04	0.12
2	Magnesium metal	367	(1)	.01
3	Military vehicles	328	.01	.02
4	Office machines	279	(1)	(1)
5	Lead and zinc, n.o.s.	254	(1)	(1)
6	Railroad equipment set up on cars	250	(1)	(1)
7	Machinery parts	249	.06	.14
8	Liquors, alcoholic	246	.05	.14
9	Machinery machines	246	.16	.38
10	Automobiles, freight	245	.01	.02
11	Manufactured tobacco, n.o.s.	238	----------	.01
12	Glass	234	.06	.11
13	Railroad equipment parts	230	.07	.10
14	Building materials	228	.01	.02
15	Athletic equipment	226	(1)	(1)
16	Luggage, handbags, n.o.s.	226	(1)	(1)
17	Cigarettes	223	.04	.13
18	Guns and parts, n.o.s.	222	(1)	(1)
19	Hides, skins, pelts	222	.06	.16
20	Leather, n.o.s.	219	(1)	.01
21	Flaxseed	218	.03	.02
22	Electrical equipment	217	.09	.23
23	Hardware, n.o.s.	215	(1)	.01
24	Airplanes and parts	214	(1)	.01
25	Vehicles, motor, n.o.s.	214	.04	.10
26	Alloys for steel	212	.09	.15
27	Railroad track material, iron and steel	210	.04	.06
28	Tanks, n.o.s.	204	.02	.04
29	Insecticides	204	.01	.03
30	Agricultural implements, parts	201	(1)	.01
31	Acids, n.o.s.	201	.12	.22

[1] Indicates less than 0.005 percent.

U.S. class I railroads—1960 ratio of carload freight revenue to out-of-pocket cost by ICC commodity classes and by percentage of total tons and total ton-miles in each commodity class—Continued

Number	Item	Ratio to out-of-pocket cost	Percent of total tons	Percent of total ton-miles
32	Rubber, crude	201	0.14	0.26
33	Barley, rye	197	.46	.49
34	Matches	196	(1)	.01
35	Wheat	196	3.11	2.92
36	Vehicle parts, n.o.s.	195	.76	1.43
37	Tanning material, n.o.s.	195	(1)	(1)
38	Manufactured iron and steel	193	2.28	2.65
39	Tools and parts	192		.01
40	Iron and steel pipe	191	.45	.80
41	Iron and steel, n.o.s.	191	.17	.07
42	Plastics	190	.09	.24
43	Aluminum bar, etc.	189	.10	.26
44	Lead, zinc bar	188	.10	.22
45	Iron and steel borings	187	.13	.06
46	Autos, passenger	187	.10	.29
47	Iron, pig	187	.27	.20
48	Blacks, n.o.s.	187	.05	.13
49	Broken brick, etc.	186	.01	.01
50	Iron and steel bar, rod	184	.36	.25
51	Copper ingot	184	.10	.31
52	Cloth and fabrics	182	.01	.02
53	Bathroom fixtures	182	.01	.04
54	Furniture parts	181	(1)	.01
55	Vehicles, not motor	181	.01	.04
56	Iron and steel nails, wire	181	.10	.18
57	Copper, brass, bronze	181	.07	.25
58	Stone, finished, n.o.s.	181	.01	.01
59	Abrasives, not crude	180	.01	.02
60	Tobacco waste	180	(1)	(1)
61	Bags, burlap, cotton	179	(1)	(1)
62	Asbestos articles	179	(1)	(1)
63	Paint putty	179	.09	.20
64	Chemical, n.o.s.	179	.65	1.16
65	Cotton cloth	178	.02	.05
66	Floor covering	178	.02	.07
67	Barytes	177	.09	.09
68	Vegetables, dried	177	(1)	(1)
69	Aluminum, n.o.s.	176	.04	.11
70	Gases, not petroleum	175	.28	.35
71	Boots, shoes, findings	173	(1)	.01
72	Synthetic fiber	173	.01	.02
73	Cast iron pipe	173	.07	.14
74	Sodium products	173	.74	.97
75	Buildings, houses, portable	171	(1)	.01
76	Newsprint paper	171	.14	.24
77	Wrapping paper	170	.16	.34
78	Rubber goods, n.o.s.	170	.01	.02
79	Soap, cleaning compounds	169	.09	.17
80	Paperboard, fiberboard	168	.70	1.47
81	Scrap for remelting	167	.16	.22
82	Laundry equipment	167	.04	.10
83	Household utensils	166	(1)	.01
84	Sulfuric acid	166	.22	.12
85	Furnaces, etc.	165	.02	.07
86	Wallboard	165	.53	.70
87	Paper bags	165	.08	.18
88	Seeds, n.o.s.	165	.02	.08
89	Containers, wooden	164	.01	.01
90	Bagging, burlap, etc.	164	.01	.02
91	Tires, tubes	164	.11	.21
92	Cellulose articles	164	.01	.02
93	Metals, alloys, n.o.s.	163	.07	.03
94	Wool, mohair, n.o.s.	162	(1)	(1)
95	Fruits, dried, n.o.s.	162	.01	.07
96	Scrap iron	161	1.60	.52
97	Woodpulp	161	.34	.78
98	Agricultural implements	161	.04	.08
99	Sugar	160	.47	.78
100	Tar, pitch, creosote	160	.12	.11
101	Printing paper, n.o.s.	159	.33	.62
102	Copper ore	156	.13	.06
103	Iron and steel billets, blooms	156	.35	.15
104	Drugs, toilet preparations	155	.01	.06
105	Sorghum grain	154	.76	.93
106	Cement, n.o.s.	154	.04	.08
107	Oats	153	.24	.22
108	Cotton bales	152	.31	.57
109	Chinaware, crockery	151	(1)	.01

[1] Indicates less than 0.005 percent.

U.S. class I railroads—1960 ratio of carload freight revenue to out-of-pocket cost by ICC commodity classes and by percentage of total tons and total ton-miles in each commodity class—Continued

Number	Item	Ratio to out-of-pocket cost	Percent of total tons	Percent of total ton-miles
110	Autos, autotrucks, knocked down	151	0.02	0.01
111	Clay and bentonite	151	.70	1.12
112	Cotton factory products	150	.02	.04
113	Refrigerators	150	.07	.17
114	Wool in the grease	150	.01	.05
115	Cotton linters	150	.04	.08
116	Building paper, roofing	149	.18	.23
117	Oils, n.o.s	147	.02	.04
118	Grain, n.o.s	147	.01	.01
119	Stoves, ranges, parts	146	.02	.05
120	Soybeans	146	.72	.36
121	Fertilizer, n.o.s	145	1.52	2.32
122	Rice	145	.14	.15
123	Containers, metal	144	.13	.13
124	Artificial stone	144	.03	.03
125	Rosin, turpentine	144	.03	.05
126	Insulating material	143	.05	.09
127	Linseed oil	143	.01	.03
128	Lime, n.o.s	142	.33	.27
129	Cement, portland	142	2.25	.91
130	Zinc ore	142	.12	.19
131	Beans, peas, dried	142	.08	.19
132	Corn	142	1.71	1.41
133	Containers, fiberboard, knocked down	141	.10	.14
134	Food products, frozen	141	.04	.20
135	Games and toys	141	.01	.02
136	Furniture, n.o.s	141	.08	.22
137	Rope, cordage, twine	140	.01	.01
138	Woodenware	139	.01	.03
139	Refractories	139	.15	.26
140	Ore concentrates	139	.43	.51
141	Peanuts	139	.02	.04
142	Containers, n.o.s	138	.04	.06
143	Glass bottles, jars	138	.16	.19
144	Plaster, stucco wall	137	.12	.14
145	Starch	136	.10	.18
146	Paper, paper articles	136	.22	.40
147	Lumber shingles	136	1.41	5.55
148	Railroad equipment on wheels	135	.08	.06
149	Animals and products, n.o.s	135	.12	.14
150	Cottonseed cake meal	135	.07	.06
151	Glassware, n.o.s	134	.03	.07
152	Salt	134	.40	.46
153	Margarine, n.o.s	134	[1]	.01
154	Alcohol, n.o.s	133	.07	.15
155	Box materials	133	.07	.12
156	Coffee	133	.05	.09
157	Tobacco, unmanufactured	133	.04	.04
158	Ties, railroad	132	.08	.05
159	Sirup, molasses, refined	131	.11	.23
160	Products of mines, n.o.s	131	1.29	1.00
161	Cheese	131	.02	.06
162	Hay	131	.01	.02
163	Asphalt	130	.21	.29
	Average of all commodities	129	100.00	100.00
164	Food products, n.o.s	127	.99	2.82
165	Printed matter, n.o.s	127	.04	.16
166	Veneer, plywood	127	.39	2.01
167	Sand, industrial	124	.81	.59
168	Fruits, frozen	124	.01	.08
169	Lubricating oils, n.o.s	123	.23	.36
170	Posts, poles, piling	123	.21	.29
171	Malt, n.o.s	122	.11	.18
172	Manufactures and miscellaneous, n.o.s	120	.70	1.21
173	Scrap, paper, rags	120	.26	.28
174	Sulfur	120	.23	.18
175	Anthracite coal	120	.68	.42
176	Seafood, n.o.s	120	[1]	.02
177	Forwarder traffic	119	.24	.79

[1] Indicates less than 0.005 percent.

U.S. class I railroads—1960 ratio of carload freight revenue to out-of-pocket cost by ICC commodity classes and by percentage of total tons and total ton-miles in each commodity class—Continued

Number	Item	Ratio to out-of-pocket cost	Percent of total tons	Percent of total ton-miles
178	Packinghouse products, edible	119	0.08	0.14
179	Liquors, malt	118	.25	.48
180	Cottonseed oil	118	.06	.09
181	Candy, confectionery	117	.04	.12
182	Molasses, residual	117	.09	.11
183	Lead, ore	117	.07	.04
184	Butter	117	.03	.07
185	Vegetables, frozen	116	.03	.18
186	Iron ore	114	10.06	4.22
187	Brick, building tile	112	.25	.31
188	Poultry, dressed	111	.02	.06
189	Meat, cured	111	.05	.14
190	Waste materials, n.o.s.	110	.32	.21
191	Bituminous coal	110	25.12	20.46
192	Flour, edible, n.o.s.	110	.11	.17
193	Sewer pipe, not metal	109	.01	.02
194	Brick, common	109	.05	.06
195	Products, forests, n.o.s.	109	.27	.21
196	Meats, fresh, n.o.s.	109	.17	.53
197	Building woodwork, millwork	108	.05	.17
198	Vegetable nut oils	108	.04	.10
199	Horses, mules, ponies	108	(1)	(1)
200	Vegetable oil, cake	108	.03	.03
201	Cottonseed	106	.01	(1)
202	Soybean oil	105	.13	.22
203	Fish, sea animal, oil	105	(1)	(1)
204	Fuel, road oils, n.o.s.	104	.58	.40
205	Products, agriculture, n.o.s.	104	.23	.20
206	Coke	103	1.24	.99
207	Cereal, food preparations	103	.09	.16
208	Bananas, fresh	101	.05	.08
209	Soybean oil, cake	100	.44	.52
210	Phosphate rock	99	2.16	1.20
211	Calves, d.d.	98	(1)	(1)
212	Flour, wheat	97	.84	1.42
213	Oil, foots sediment	96	.01	.01
214	Refined petroleum, n.o.s.	96	.74	1.43
215	Watermelon	96	.01	.03
216	Aluminum ore	95	.26	.99
217	Gasoline	93	.54	.25
218	Fluxing stone	93	1.23	.44
219	Cottonseed hulls	93	(1)	(1)
220	Wood, fuel	91	.01	.01
221	Stone, rough, n.o.s.	89	.14	.05
222	Mill products, n.o.s.	88	.48	.55
223	Wine	87	.04	.25
224	Stone, crushed	87	3.88	1.32
225	Containers, returned, empty	86	.06	.08
226	Swine	84	.04	.11
227	Potatoes, not sweet	84	.27	.92
228	Peaches, fresh	84	.01	.05
229	Apples, fresh	84	.02	.13
230	Beverages, n.o.s.	82	.01	(1)
231	Oranges, grapefruit	82	.06	.31
232	Meal, corn	81	.03	.05
233	Feed, A. & P., n.o.s.	79	1.24	1.19
234	Furnace slag	76	.49	.18
235	Cattle, calves, s.d.	79	.14	.31
236	Pears, fresh	78	.01	.08
237	Tomatoes	77	.01	.07
238	Gravel and sand, n.o.s.	76	4.08	1.03
239	Sheep goats, d.d.	76	.02	.05
240	Pulpwood	75	3.36	1.26
241	Cabbage	75	.01	.04
242	Onions, dry	74	.02	.10
243	Citrus fruits, n.o.s.	74	.01	.10
244	Celery	72	.03	.16
245	Cantaloups, melons	72	.03	.17
246	Lettuce	71	.07	.44
247	Grapes, fresh	71	.02	.16
248	Ice	70	.01	(1)
249	Dairy products, n.o.s.	69	(1)	(1)

[1] Indicates less than 0.005 percent.

U.S. class I railroads—1960 ratio of carload freight revenue to out-of-pocket cost by ICC commodity classes and by percentage of total tons and total ton-miles in each commodity class—Continued

Number	Item	Ratio to out-of-pocket cost	Percent of total tons	Percent of total ton-miles
250	Vegetables, fresh	69	0.05	0.26
251	Petroleum, crude	67	.15	.18
252	Fruits, fresh, n.o.s	66	.01	.05
253	Logs	65	.47	.13
254	Straw	64	(1)	(1)
255	Swine, s.d	63	(1)	.01
256	Sheep goats, s.d	56	(1)	.01
257	Sugarbeets	54	.73	.12
258	Anthracite to washers	27	.52	.03

[1] Indicates less than 0.005 percent.

SUMMARY

137 commodity classes yield more than full cost of transportation (140 percent of out-of-pocket cost)—ICC formula:	
Ratio revenue to out-of-pocket cost	176
Percent of total tons	27.50
Percent of total ton-miles	34.18
72 commodity classes below full cost of transportation but above out-of-pocket cost—ICC formula:	
Ratio revenue to out-of-pocket cost	118
Percent of total tons	50.18
Percent of total ton-miles	50.09
49 commodity classes yield less than out-of-pocket cost of transportation—ICC formula:	
Ratio revenue to out-of-pocket cost	83
Percent of total tons	22.32
Percent of total ton-miles	15.73
Grand total, commodity classes	258
Ratio revenue to out-of-pocket cost	129

SOURCES

ICC Carload Waybill Statistics, 1960, Statement TD-1, "Territorial Distribution Traffic and Revenue by Commodity Classes" (supplement).

ICC Bureau of Accounts, Statement No. 2-62, "Distribution of the Rail Revenue Contribution by Commodity Groups—1960."

U.S. class I railroad carload freight tonnage, revenues, out-of-pocket costs (ICC formula), and ratio of revenues to out-of-pocket costs: also excess or deficiency of revenues versus 140 percent of out-of-pocket costs, and rate of return, years 1939 and 1947 to 1960, inclusive

Year	Carload tons	Average load	Average haul per ton	Carload revenue per ton	Carload revenue	ICC out-of-pocket cost	Ratio revenue to out-of-pocket cost	Contribution revenue above out-of-pocket cost	Revenue at 140 percent of out-of-pocket cost	Excess or deficiency actual versus 140 percent of out-of-pocket cost	Rate of return, ICC value
	Millions	*Tons*	*Miles*		*Millions*	*Millions*	*Percent*	*Millions*	*Millions*	*Millions*	*Percent*
1960	1,203	45	361	$6.09	$7,324	$5,667	129	$1,658	$7,934	[1] $610	2.2
1959	1,195	44	368	6.41	7,658	5,687	135	1,972	7,962	[1] 304	2.9
1958	1,169	44	364	6.43	7,522	5,505	137	2,016	7,707	[1] 185	2.9
1957	1,355	44	350	6.07	8,229	5,917	139	2,312	8,284	[1] 55	3.5
1956	1,444	44	345	5.75	8,302	5,831	142	2,472	8,163	139	4.1
1955	1,381	43	340	5.66	7,810	5,321	146	2,489	7,449	361	4.4
1954	1,227	42	344	5.90	7,237	5,136	141	2,101	7,190	47	3.4
1953	1,399	43	337	5.91	8,275	5,567	149	2,708	7,794	481	4.4
1952	1,347	42	346	5.90	7,943	5,236	152	2,707	7,330	613	4.5
1951	1,416	42	344	5.46	7,730	5,152	150	2,578	7,213	517	4.2
1950	1,307	41	339	5.38	7,038	4,482	157	2,555	6,275	763	4.6
1949	1,195	41	337	5.38	6,431	4,101	157	2,330	5,741	690	3.1
1948	1,440	42	337	4.95	7,133	4,514	158	2,619	6,320	813	4.6
1947	1,515	41	----------	4.55	6,887	4,867	141	2,020	6,814	73	3.7
1939	886	37	----------	3.53	3,124	1,817	172	1,307	2,544	580	----------

[1] Deficiency.

Source: ICC "Distribution of the Rail Revenue Contribution by Commodity Groups."

Rate of return, U.S. class I railroads, by regions, 1955–60, inclusive, with percentage changes since 1955

Year	United States	Percent of 1955	Eastern district	Percent of 1955	Pocahontas region	Percent of 1955	Southern region	Percent of 1955	Western district	Percent of 1955
1955	4.4	----------	3.7	----------	8.2	----------	5.4	----------	4.2	----------
1956	4.1	93	3.4	92	8.6	105	5.0	93	3.9	93
1957	3.5	80	2.5	68	9.6	117	4.3	80	3.4	81
1958	2.9	66	1.2	32	8.1	99	3.7	69	3.5	83
1959	2.9	66	1.5	41	8.4	103	3.6	67	3.1	74
1960	2.2	50	.7	19	8.0	98	2.9	54	2.6	62

Percentage increases in rail freight rates authorized by the Interstate Commerce Commission, 1946–61, inclusive, compared with actual average carload rates

Year	Date of increase authorized	Percent increase authorized	Authorized rate		Actual carload rate	Amount authorized rate exceeds actual	
			Index (1947=100)	Average carload rate			
				Cents per ton	*Cents per ton*	*Cents per ton*	*Percent*
1946	July 1	6.5					
1947	Jan. 1	10.4					
	Oct. 13	8.9	100	436	436		
1948	Jan. 5	7.6					
	May 6	3.6					
	Aug. 21	1.0	119	519	495	24	5
1949	Jan. 11	5.2					
	Sept. 1	3.7	129	562	538	24	4
1950			132	575	539	36	7
1951	Apr. 4	2.4					
	Aug. 28	4.0	137	597	546	51	9
1952	May 2	6.8	147	641	589	52	9
1953			150	654	591	53	9
1954			150	654	590	54	9
1955			150	654	566	88	16
1956	Mar. 7						
	Dec. 28	5.5	157	684	575	109	19
1957	Feb. 23						
	Aug. 26	5.0	167	728	607	121	20
1958	Feb. 15						
	Sept. 15	2.1	174	759	642	117	18
1959			177	773	641	132	21
1960	Oct. 24	1.5	177	773	609	164	27
1961			180	785			

Sources: Percentage increases authorized—ICC, "Transport Economics," December 1961; average carload rates—ICC, "Carload Waybill Studies."

SUMMARY OF RECENT TRENDS OF RAILROAD CARLOAD FREIGHT COSTS, RATES, REVENUES, AND RATE OF RETURN

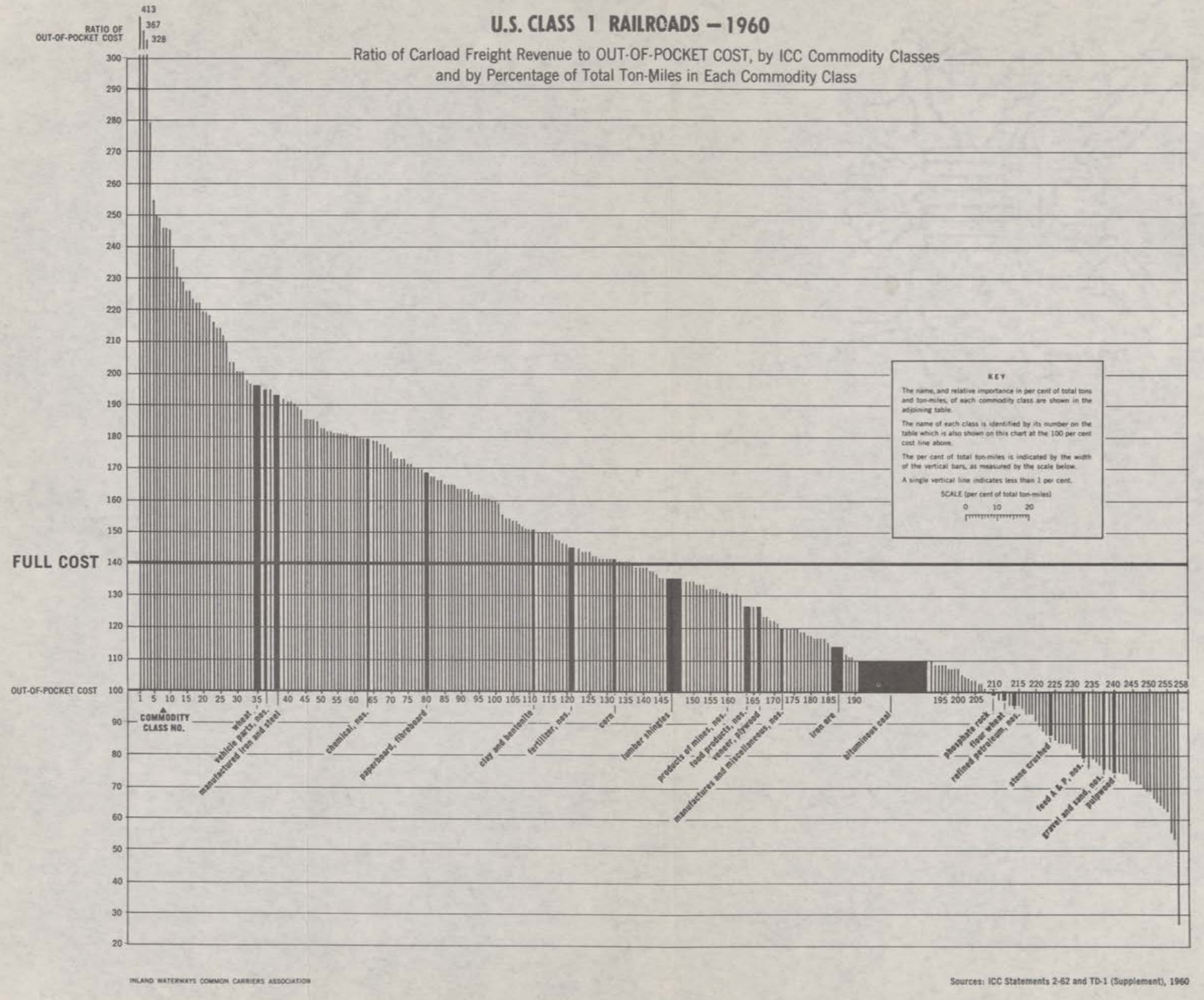
From 1955 to 1960 costs of carload transportation by railroad went up 22 percent per ton and 15 percent per ton-mile. (Costs probably increased further in 1961, but 1961 figures have not yet been released by the Interstate Commerce Commission):

	1955	1960	Ratio, 1960 to 1955
Out-of-pocket cost:			
Per ton	$3.86	$4.71	122
Per short-line ton-mile (cents)	1.14	1.31	115

In the same period (1955 to 1960) the Interstate Commerce Commission granted additional general increases in freight rates of about 20 percent, which were made to meet increased costs. But the railroads applied the full authorized increases only to traffic they considered noncompetitive, and made so many rate reductions on competitive traffic that the overall increase in carload rates,

U.S. CLASS 1 RAILROADS — 1960

Ratio of Carload Freight Revenue to OUT-OF-POCKET COST, by ICC Commodity Classes
and by Percentage of Total Ton-Miles in Each Commodity Class



INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

Sources: ICC Statements 2-62 and TD-1 (Supplement), 1960

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1955 to 1960, was only 9 percent per ton, and 2 percent per ton-mile. (There was an actual reduction from 1959 to 1960 of 5 percent in average rate per ton, and 3 percent per ton-mile:

	1955	1959	1960	Ratio, 1960 to 1955
Average carload revenue:				
Per ton	$5.66	$6.41	$6.09	108
Per short-line ton-mile (cents)	1.66	1.74	1.69	102

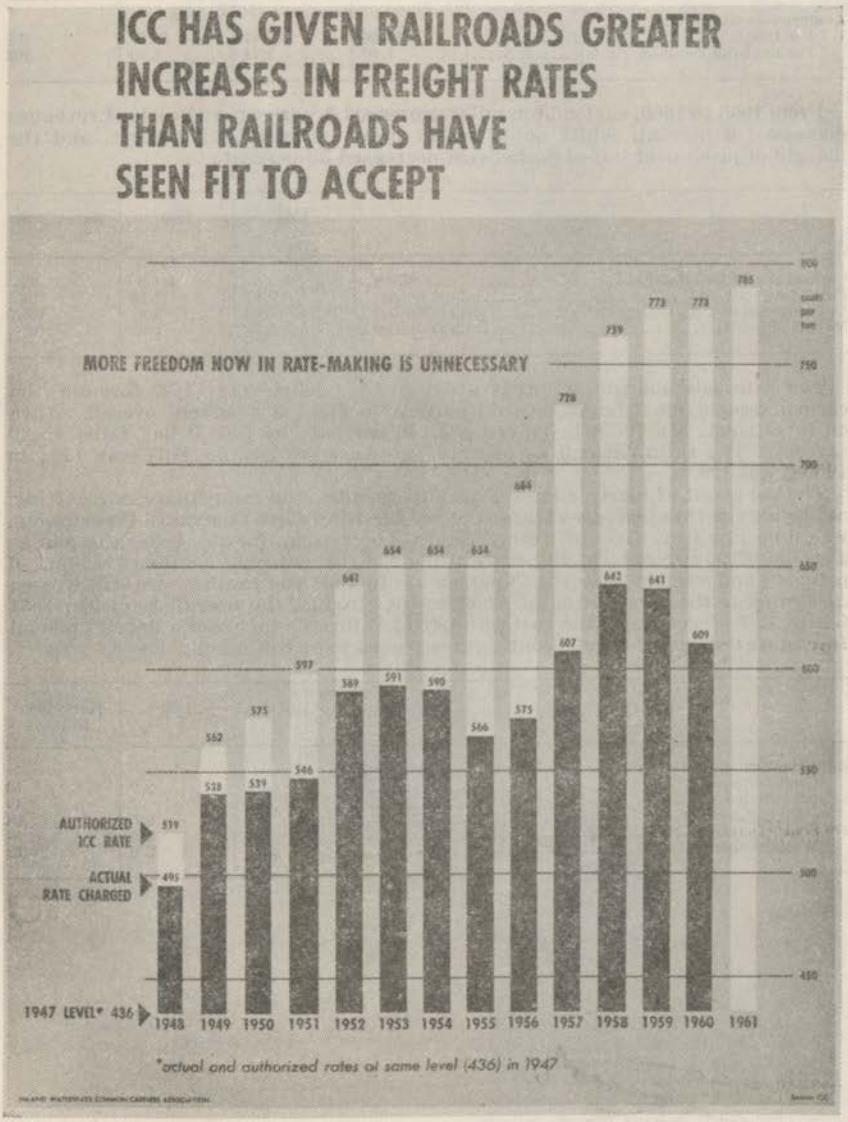
From 1955 to 1960, carload ton-miles decreased 8 percent, and carload revenues decreased 6 percent, while out-of-pocket costs increased 6.5 percent, and the margin of profit over out-of-pocket cost decreased 33 percent:

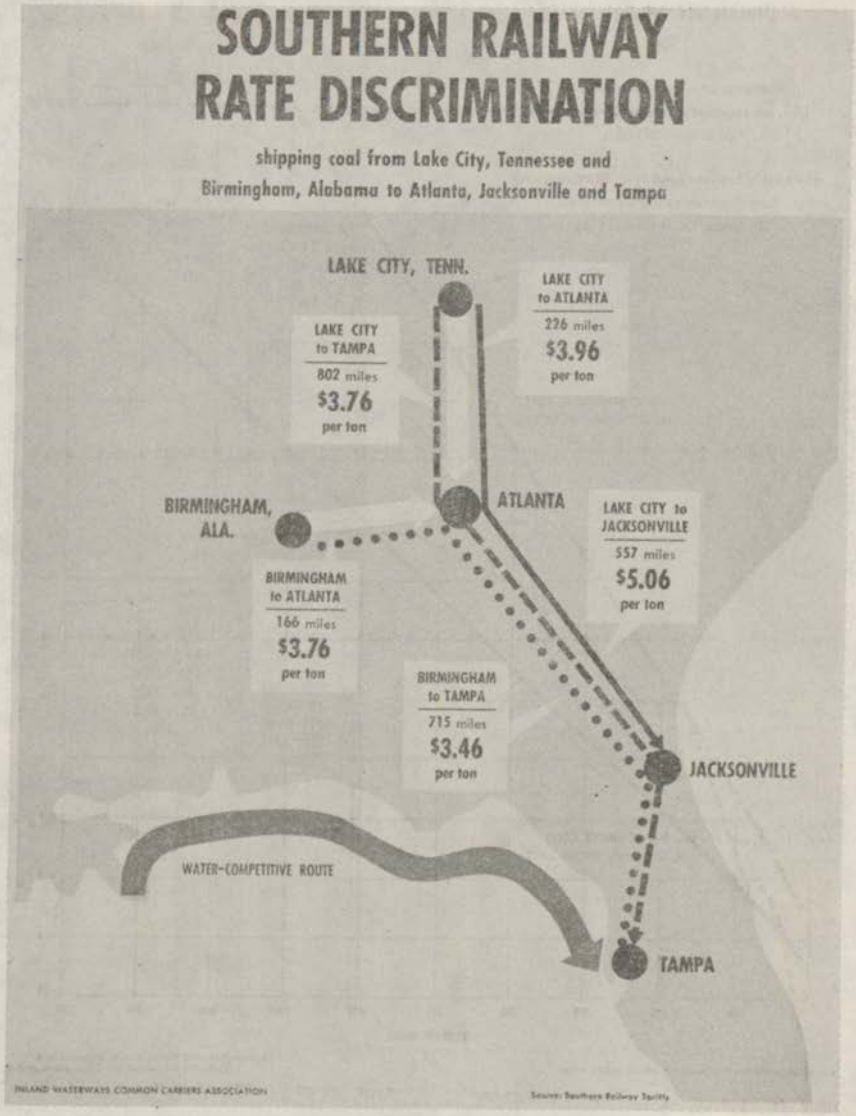
	1955	1960	Ratio, 1960 to 1955
Carload short-line ton-miles, billion	469.6	434.0	92
Freight revenue, billion dollars	7.81	7.32	94
Out-of-pocket cost (ICC formula), billion dollars	5.32	5.67	106.5
Margin of profit, billion dollars	2.49	1.65	67

The railroads' margin of profit above out-of-pocket cost (ICC formula) on carload freight must be at least 40 percent to yield a 4-percent overall return on investment. In 1955 the margin was 46 percent; by 1960 it had fallen to 29 percent. The ratio carload revenue to out-of-pocket cost in 1955 was 146; in 1960 it was 129.

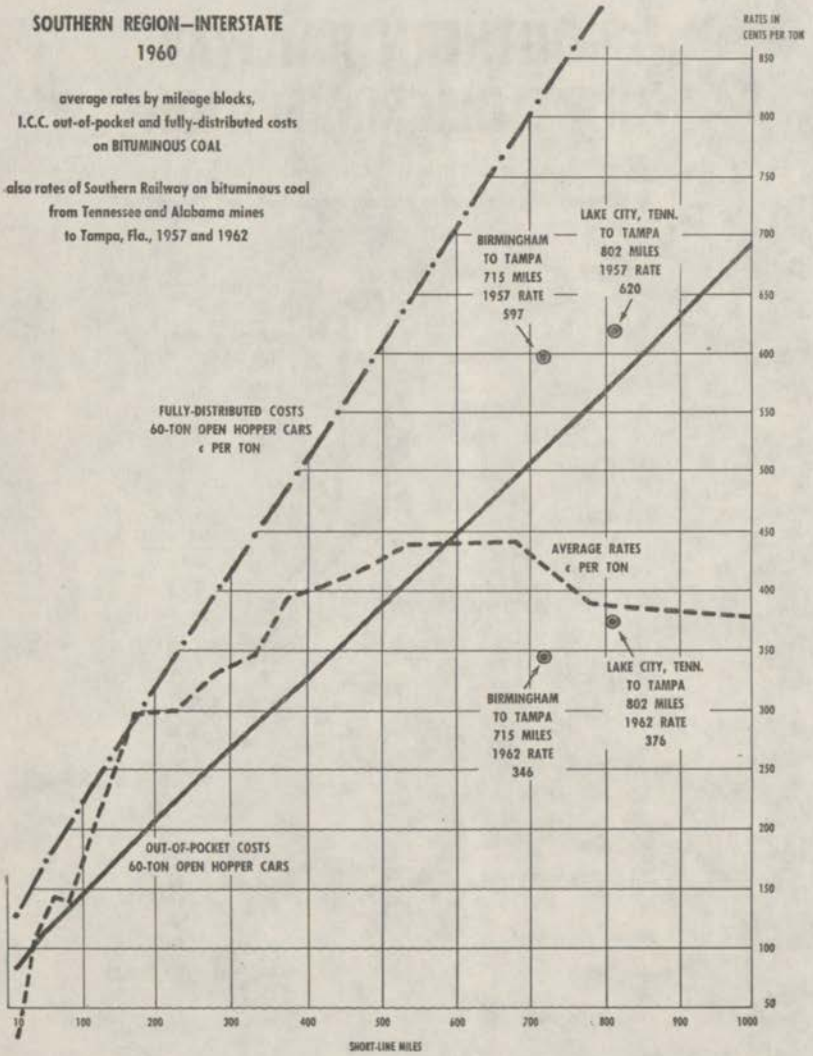
The net result of increased costs, declining traffic, and competitive rate cutting, nullifying the rate increases authorized by the Interstate Commerce Commission, was a decline from 1955 to 1960 of the rate of return, for the U.S. railroads as a whole of 50 percent; in the eastern district, 81 percent; southern region, 46 percent; and western district, 38 percent. (In 1961 the results were still worse: According to the Association of American Railroads, the overall return in 1961 fell to 1.97 percent, and the eastern district railroads incurred a deficit; official Interstate Commerce Commission figures are not yet available.)

	1955	1960	Ratio 1960 to 1955
Rate of return on ICC value, class I railroads (percent):			
United States	4.4	2.2	50
Eastern district	3.7	.7	19
Pocahontas region	8.2	8.0	98
Southern region	5.4	2.9	54
Western district	4.2	2.6	62


ICC HAS GIVEN RAILROADS GREATER INCREASES IN FREIGHT RATES THAN RAILROADS HAVE SEEN FIT TO ACCEPT
MORE FREEDOM NOW IN RATE-MAKING IS UNNECESSARY
AUTHORIZED ICC RATE
ACTUAL RATE CHARGED
1947 LEVEL* 436
539
495
562
528
575
539
597
546
647
589
654
591
654
590
634
566
684
575
728
607
773
642
773
641
785
609
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
*actual and authorized rates at same level (436) in 1947

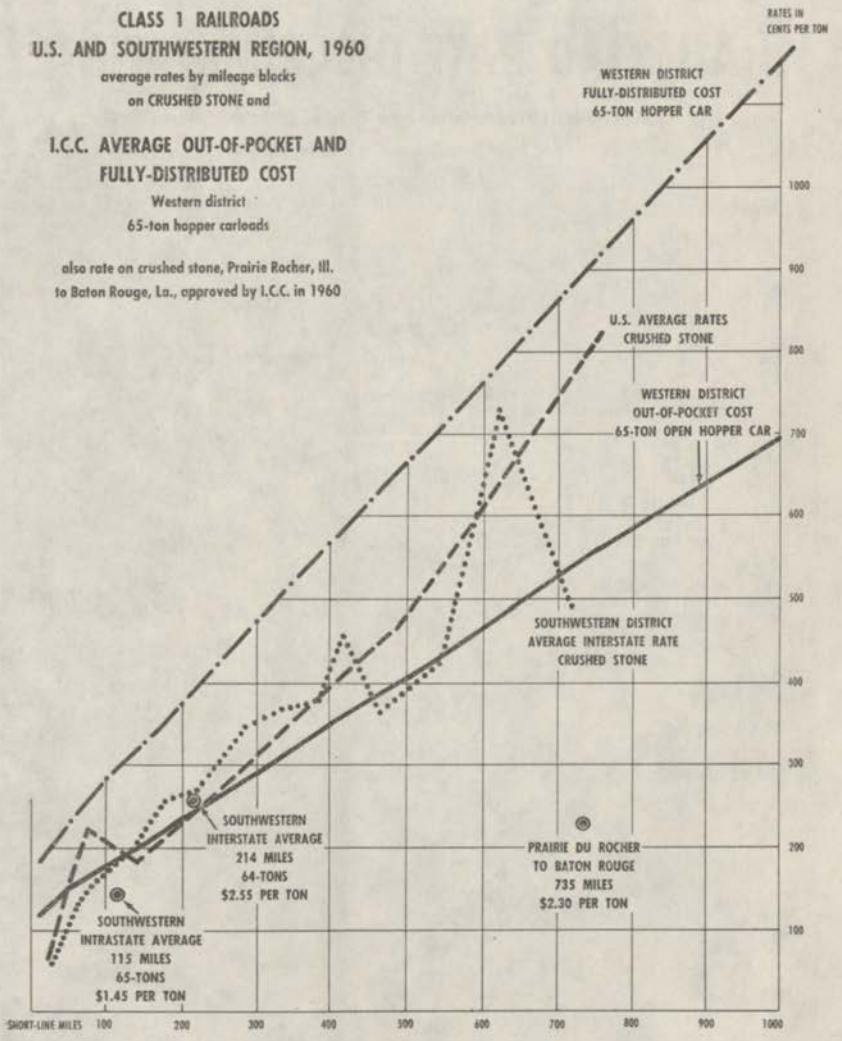

SOUTHERN RAILWAY
RATE DISCRIMINATION
shipping coal from Lake City, Tennessee and
Birmingham, Alabama to Atlanta, Jacksonville and Tampa
LAKE CITY, TENN.
LAKE CITY to ATLANTA
226 miles
$3.96
per ton
LAKE CITY to TAMPA
802 miles
$3.76
per ton
BIRMINGHAM, ALA.
ATLANTA
LAKE CITY to JACKSONVILLE
557 miles
$5.06
per ton
BIRMINGHAM to ATLANTA
166 miles
$3.76
per ton
BIRMINGHAM to TAMPA
715 miles
$3.46
per ton
JACKSONVILLE
WATER-COMPETITIVE ROUTE
TAMPA
INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

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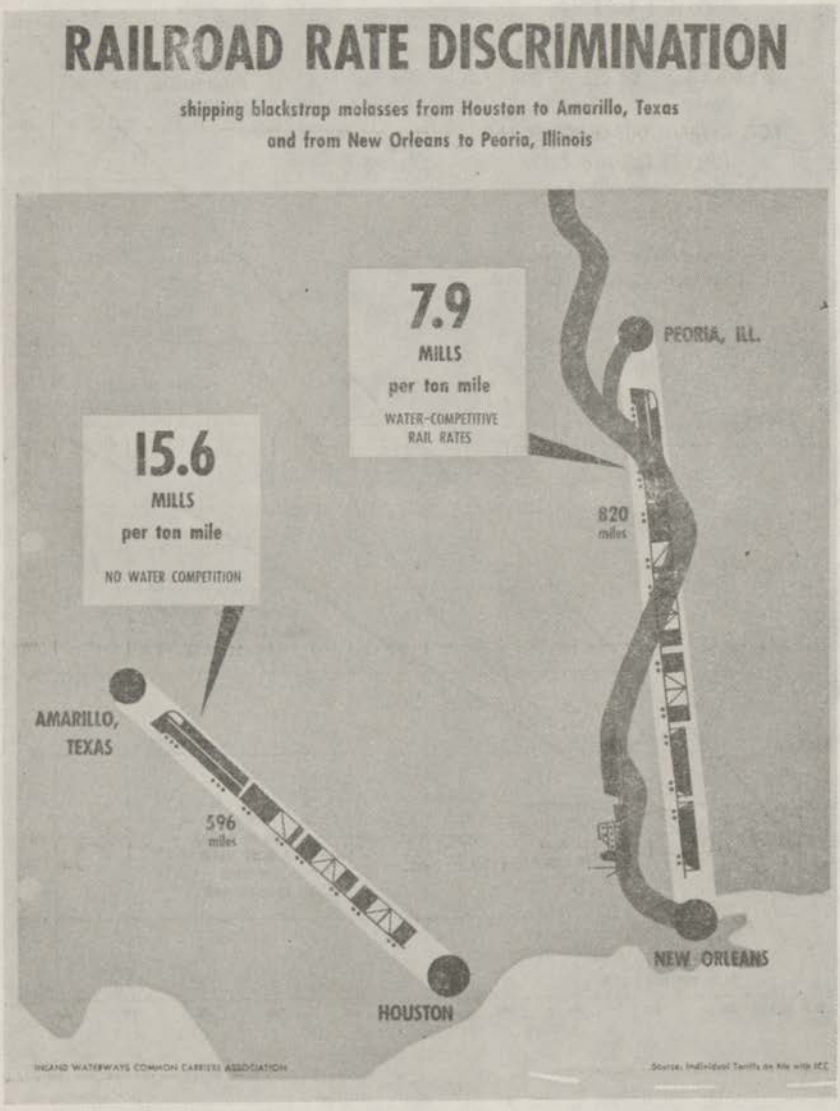
INTERSTATE WATERWAYS COMMON CARRIERS ASSOCIATION

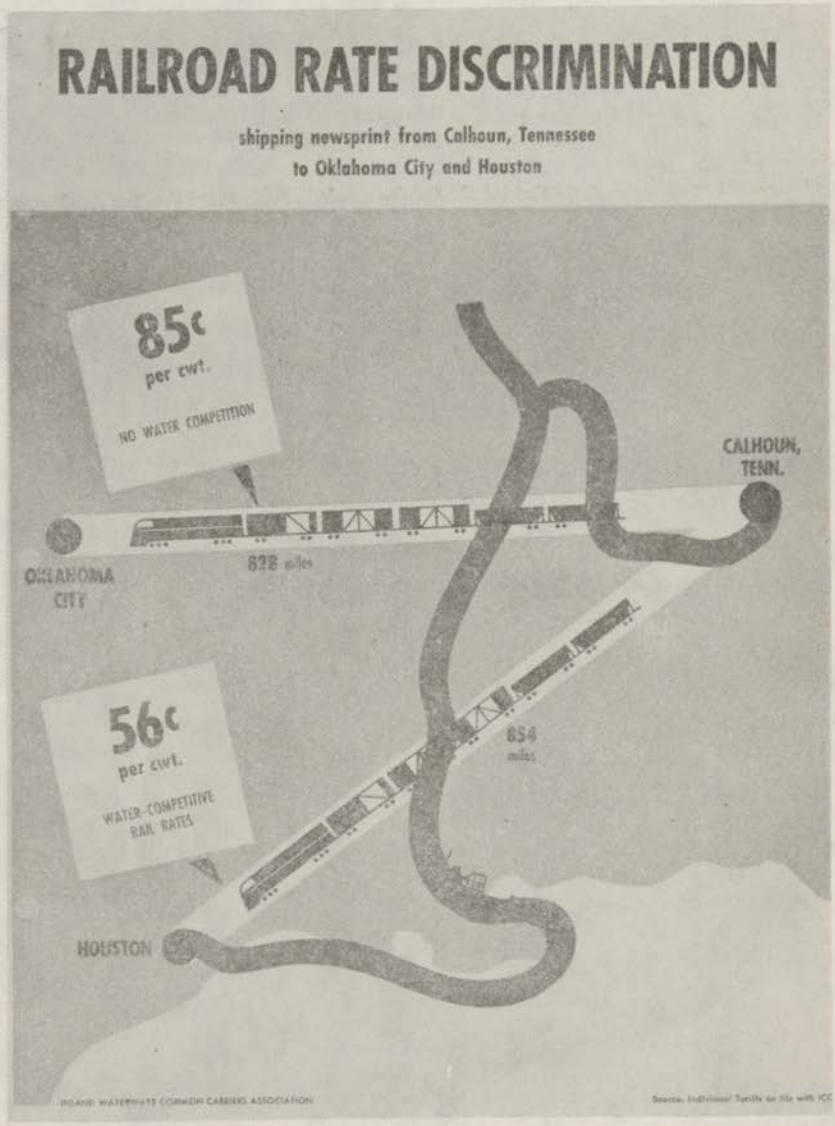
Sources: Rates—ICC Waybill Analysis Statement MB-3
Costs—ICC Rail Carload Cost Scales, Statement 3-63

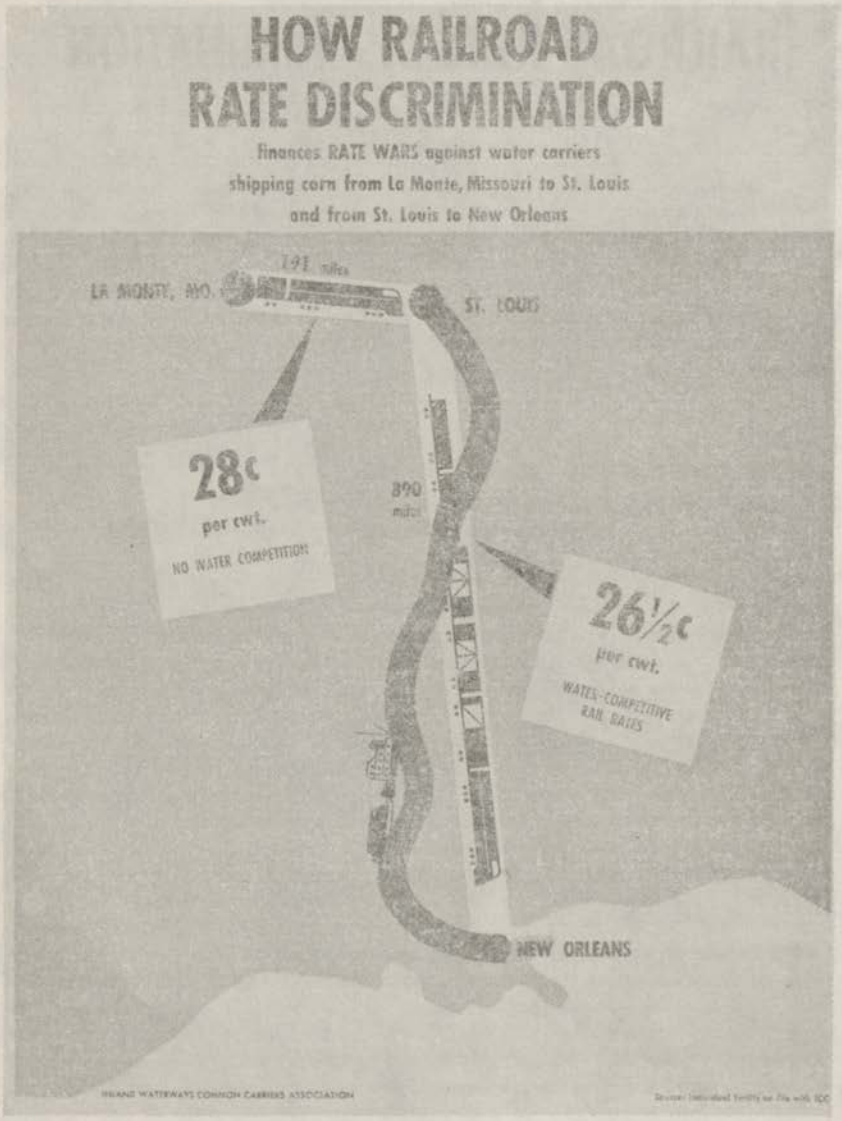


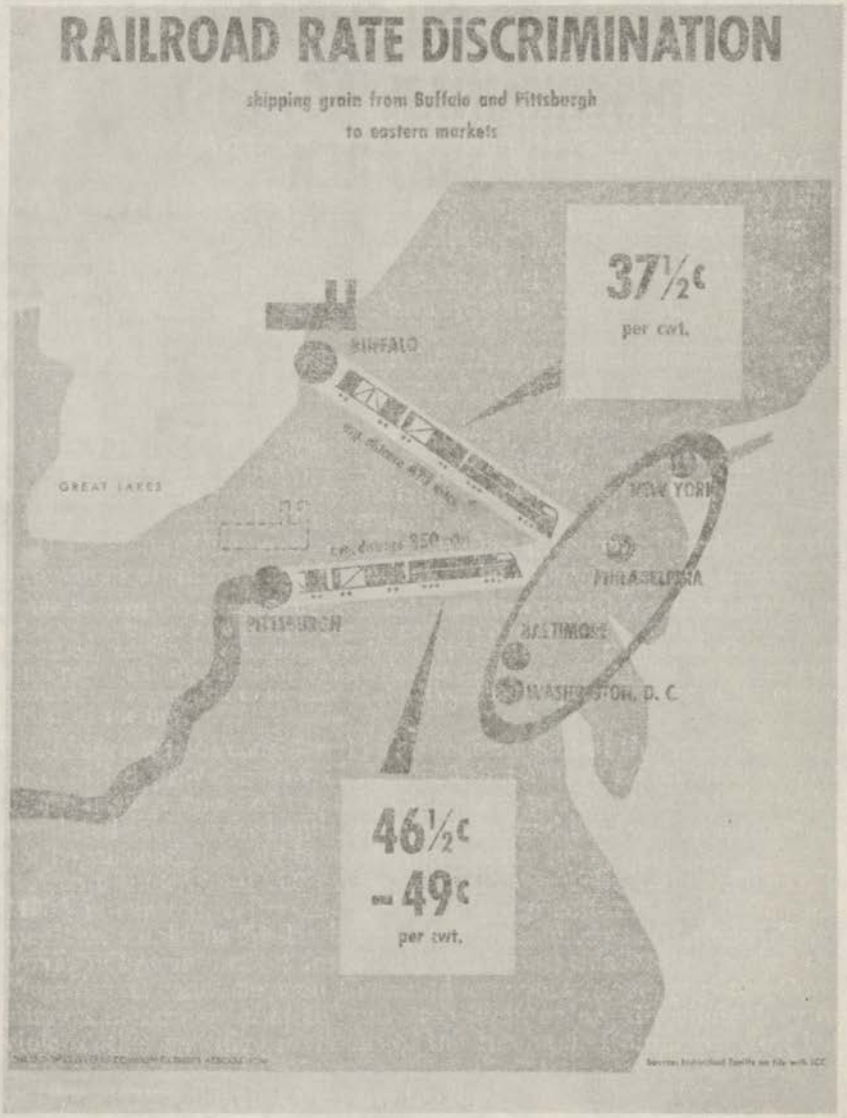
INTERSTATE WATERWAYS COMMON CARRIERS ASSOCIATION

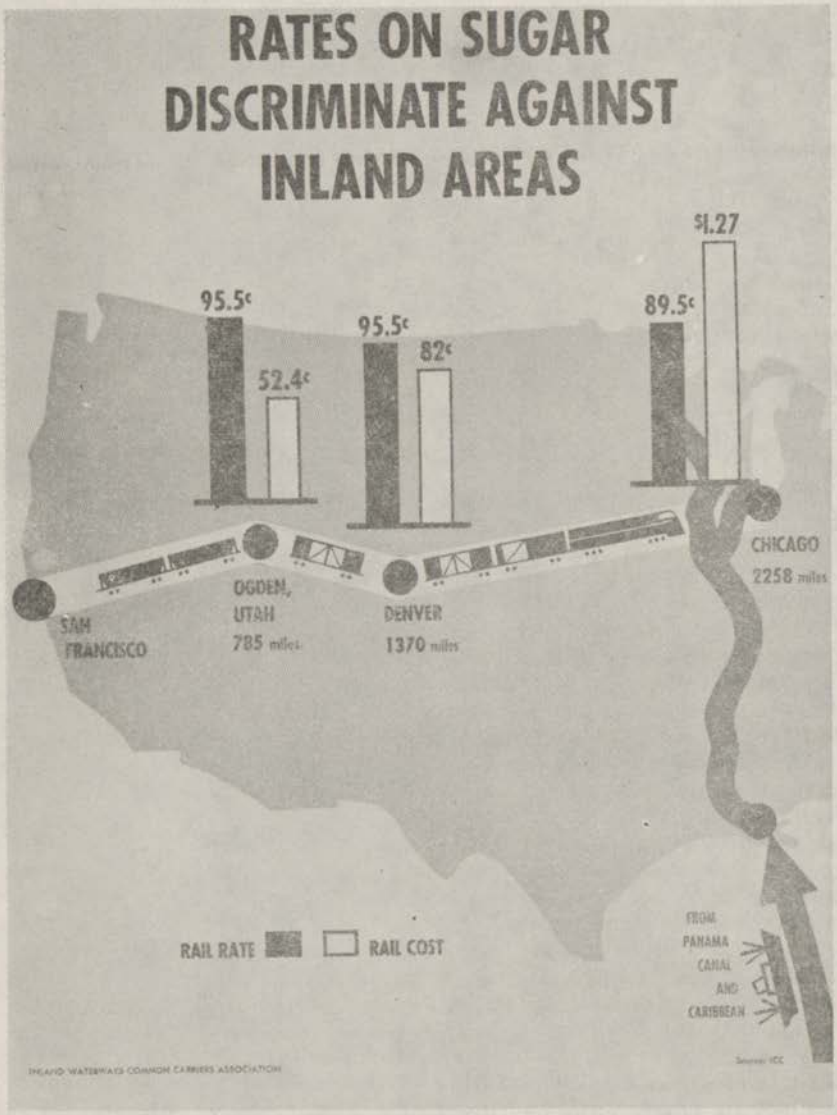
Sources: ICC Statements MB-3 (1960), MB-6 (1960) and 3-62


RAILROAD RATE DISCRIMINATION
shipping blackstrap molasses from Houston to Amarillo, Texas
and from New Orleans to Peoria, Illinois
7.9
MILLS
per ton mile
WATER-COMPETITIVE
RAIL RATES
15.6
MILLS
per ton mile
NO WATER COMPETITION
PEORIA, ILL.
820
miles
AMARILLO,
TEXAS
596
miles
NEW ORLEANS
HOUSTON
INLAND WATERWAYS COMMON CARRIERS ASSOCIATION


RAILROAD RATE DISCRIMINATION
shipping newsprint from Calhoun, Tennessee
to Oklahoma City and Houston
85¢
per cwt.
NO WATER COMPETITION
CALHOUN, TENN.
OKLAHOMA CITY
828 miles
56¢
per cwt.
WATER-COMPETITIVE RAIL RATES
854 miles
HOUSTON
INLAND WATERWAYS COMMON CARRIERS ASSOCIATION


HOW RAILROAD
RATE DISCRIMINATION
finances RATE WARS against water carriers
shipping corn from La Monte, Missouri to St. Louis
and from St. Louis to New Orleans
LA MONTE, MO.
191 miles
ST. LOUIS
890 miles
28¢
per cwt.
NO WATER COMPETITION
26½¢
per cwt.
WATER-COMPETITIVE
RAIL RATES
NEW ORLEANS


RAILROAD RATE DISCRIMINATION
shipping grain from Buffalo and Pittsburgh
to eastern markets
37½¢
per cwt.
BUFFALO
GREAT LAKES
NEW YORK
PHILADELPHIA
PITTSBURGH
BALTIMORE
WASHINGTON, D. C.
46½¢
to 49¢
per cwt.


RATES ON SUGAR DISCRIMINATE AGAINST INLAND AREAS
95.5¢
52.4¢
95.5¢
82¢
89.5¢
$1.27
SAN FRANCISCO
OGDEN, UTAH
785 miles
DENVER
1370 miles
CHICAGO
2258 miles
RAIL RATE
RAIL COST
FROM PANAMA CANAL AND CARIBBEAN
INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

The CHAIRMAN. I believe you are appearing here as a transportation consultant for the Inland Waterways Common Carriers Association?

Mr. CHILDE. That is correct, sir.

The CHAIRMAN. All right. You may proceed.

Mr. CHILDE. In my lifetime there has always been a railroad problem; it has been before the Congress most of those years and it has always been essentially the same: dissatisfaction of the shippers about excessive and discriminatory rates, sometimes inadequate service and, on the part of the railroads, as to poor earnings, and in late years the emphasis has been on competition between the railroads and other modes of transportation.

At the root of all these troubles has been, and is, the railroads' system of pricing for their services on the basis of what the traffic will bear.

Since this is true, it seems to me that, in considering the present aspects of the problem, it will be helpful to look at what has happened and what steps have been taken to correct past evils and to what extent they have succeeded or failed as a guide to what course we ought to follow now.

The railroad policy has been to obtain the highest possible charges on their traffic, but always not so high as to lose the traffic, and where competition was encountered, to make their rates low enough to get and hold the traffic from their competitors.

The theory behind all of this is that they have a large investment and must maintain their properties and run their trains anyway, and it is more profitable, after getting such high-rated traffic as they can, to fill their trains with low-rated tonnage than not to haul the traffic at all.

They have always applied this system of ratemaking especially on freight, because their passengers have always been carried at low rates to promote settlement and industry along their lines, and their luxurious passenger trains and stations have been considered advertising, and freight earnings were expected to cover passenger losses.

As to freight they have maintained a dual system of charges. They have published their maximum rates in the form of tariffs classifying freight into groups, according to the value of the commodity, risk, weight density, and so forth, and have named rates on the classes, graded according to distance, with the highest rates on the high-valued manufactured commodities and the lowest on the low value, heavy density bulk commodities.

These class rates have not been charged on much of their business because on the tonnage moving in considerable volume their practice has been to establish special rates, lower than the class rates, by negotiation with the shippers to determine how much below the class rate they had to go to get the business, considering the market and competitive conditions.

The only effective competition the railroads had in the early days was water transportation, and between the points served by water they maintained lower sets of rates on both the classes and the special commodities than those between points which only had rail service.

And as to inland water transportation their policy was very effective in wiping out the financially weaker water carriers, who could not survive against rate cuts that went down to whatever level was necessary to get the traffic. There was one exception, that usually the bulk cargo of deepwater carriers had rates so low that the railroads did not think they could compete against them. But the traffic on the inland rivers and canals was fair game, and the carriers on the inland waterways were mostly put out of business.

Now, the what-the-traffic-will-bear system of pricing obviously could succeed only under monopolistic or semimonopolistic conditions, where the railroads were able to maintain rates high enough on the noncompetitive traffic to cover the deficits from low rates on competitive traffic. And the fact is that in the working out of this system of freight rates the railroads never have been, on the whole, a profitable business, as compared with business generally.

And that has been because they have not been able to obtain enough high-rated traffic to get the revenues to offset the low rates that they have considered necessary to establish on the competitive traffic.

As the railroads expanded in the last half of the 19th century very severe competition developed between the railroads themselves, and rate cutting became so extensive that through secret rates and rebating to large shippers the railroads were driving each other into bankruptcy.

They established rate associations to try to deal with that situation, which published tariffs that the railroads agreed to observe. In those tariffs the special commodity rates, which applied on the heavier traffic from the larger shippers were, of course, much lower than their class rates which were the maximum.

The agreements, however, to observe these published rate association rates were broken about as fast as they were established, and rebating to large shippers continued as before.

The situation became so exceedingly bad by the 1880's that one shipper could not know what his competitor was paying and small shippers could not compete with the larger ones, and areas of sparse population and traffic could not develop industry as against those with heavier traffic.

Congress found it necessary, because of those conditions, to enact the first act to regulate commerce in 1887 which, as you know, required railroads to render transportation services to all alike, at just and reasonable rates, free from unjust discrimination.

The railroads had to file tariffs and make reports to the Interstate Commerce Commission, and the Commission was given power to investigate and hear and decide complaints.

At first the act had little effect because the Commission could only fix rates on past shipments; it had no definite standards of determining what rates were reasonable and which ones were not, and no way of enforcing its decisions except by appealing to the courts.

It was not until 1906 that the Commission was given power to fix rates for the future, and rebating was effectively stopped and the era of regulation really began.

The primary purpose of the act was, of course, to wipe out discriminations, but from the very first, its greatest weakness was the Commission's limited ability to control discrimination.

The act was construed, that a finding of unjust discrimination could be made only when the high rate and the low rate was made by the same railroad, and under similar competitive conditions. That took most of the teeth out of the law for the reason that freight rate discriminations were based on differences in competitive conditions; that was their reason for existence. So if differences in competitive conditions justified a difference in rates, why, discriminations thus became lawful and the Commission could not remove them except through its power to establish maximum rates.

Well, a discrimination hurts a shipper just as badly, when a discriminatory rate is made by the same or another railroad, whether the competitive conditions are alike or whether they are not.

But the Commission had no power to remove them, except its maximum rate power, where the competitive conditions were different, and that condition prevailed until 1920 when the act was amended to give the Commission minimum rate power.

Notwithstanding the limitations of the act before 1920, the regulation was beneficial. It helped the railroads by stopping rebating and it helped the public, not only because those secret rates were eliminated but because the establishment of maximum rates smoothed out a lot of inequalities.

In that period, from 1906 to the end of the 1920's and afterward, the railroads were much better off under regulation than they had been before. Their earnings improved after 1906 about 50 percent above what they were from 1890 to 1900, and they have continued consistently higher except during depression periods and except for the last few years, than the levels that prevailed befroe regulation.

Perhaps this would be a good time to refer to the first table that I have in the list of exhibits before you, which is entitled, "How the Railroads Fared Before and After Regulation." There I have shown their investment and operating income and rate of return for all the years which the Commission has kept statistics, from 1890 up to 1960 or 1961.

The rate of return appears in the last column of figures on the right, and the column to the right of that gives some of the high spots of regulation during the period.

From 1890 to 1900 the average return of the railroads was less than 4 percent, it was about 3.7 percent, even though they did not make any charges to depreciation reserves at that time. If they had done so their rate of return, of course, would have been considerably lower.

After 1906, when regulation became effective, the rate of return promptly went up to nearly 6 percent, and it continued from about 4 up to 6 percent until the First World War.

Then it went down during the war period, when the railroads were under Federal management, but the railroads' return then was on the basis of their 3 previous years so that they were really getting the higher rate of return during the war period.

The year 1920 was a milestone in railroad history because then Congress, in addition to giving the Commission power to fix the minimum as well as the maximum rates, provided that when the railroads were returned to private ownership the Commission should maintain rate levels that, on the whole, would yield the railroads a reasonable return.

That was first considered to be 6 percent. It was later 5½, and still later it was fixed at the discretion of the Commission to be high enough to maintain adequate railroad service.

All of this time, however, the what-the-traffic-will-bear system of ratemaking has been followed and it has been modified by the Commission only to what the traffic will reasonably bear. While the Commission has frequently stated that rates should be based on cost, as well as the value of the service, it never had, until after the Second World War, much information about costs. And so the dual system of higher rates on noncompetitive traffic and low rates on competitive traffic continued.

Railroad costs began to rise about 1910 and were sharply increased during the war in Europe and especially after the United States entered it; and between 1910 and 1918 the Commission granted several general increases in rates, amounting to about 15 percent. The rates went up 25 percent more in 1918 and another 35 to 40 percent in 1920. They were reduced a little in 1921.

The railroad earnings averaged around 5 percent in the 1920's, but in the great depression of the 1930's their earnings went way down, but their rates held up, and the Interstate Commerce Commission even granted them a couple of increases in 1932 and 1934, which were temporary, and a 10-percent permanent increase in 1938.

The Second World War came along and the railroads' prosperity returned along with the prosperity of other business but, in the meantime, while the rates had been going up by percentage increases other modes of transportation had been rapidly developing.

A network of good roads was built all over the country to meet the demands of the automobile transportation and the trucks used those highways, supplanting the horse and wagon transport and were often cheaper than the railroad rates on the short haul high-rated traffic.

The Panama Canal was opened and inland waterway channels were extensively improved which provided much cheaper transportation on bulk commodities along the inland waterways than the railroad rates. All that contributed to the country's prosperity and the railroads, of course, participated in it.

In the depression of the 1930's their revenues got so low, however, that there was the question whether they could survive under private ownership, and the railroads demanded that the trucks and inland waterway carriers, that heretofore had not been regulated, be placed under Interstate Commerce Commission regulation. That was done in 1935 for the trucks and 1940 for the water carriers.

Congress, realizing the necessity for developing each mode of transportation, adopted the famous declaration of national transportation policy in the 1940 act, that the Commission should so regulate all modes of transportation as to preserve their inherent advantages and avoid unfair and destructive competitive practices, and to prevent uneconomical conditions in transportation.

After World War II there was a series of general rate increases, aggregating 115 percent on the average, which were granted by the Interstate Commerce Commission to meet rising railroad costs. Most of those increases were on a percentage basis. The effect of all of these percentage increases, of both before and after World War II, was to increase the high-rated traffic more than the low-rated traffic,

and so widen the differences between the so-called noncompetitive and the competitive rates.

And, especially after the large percentage increases in the postwar period, the shippers turned more and more to other modes of transportation as a means of lowering their transportation costs or, avoiding increases as much as possible.

Well, the railroads became so alarmed about the growth of the inland waterway and the truck transportation that although the actual volume of their traffic held up pretty well, except in 1954 and the later recession periods, they engaged, especially since 1955, in a systematic revival of competitive rate-cutting that is comparable only to the old wide-open rate wars of the 19th century and, indeed, worse in some respects.

There are no rate associations now to try to keep them within bounds, and the only means of stopping them is the intervention of the Interstate Commerce Commission through the exercise of its minimum rate powers.

The effect of the railroads' rate-cutting campaign of the last 5 years has been almost disastrous to their earnings. The 115 percent general increase in rates granted by the Commission since 1946 had been so eroded that the average rate level of the railroads is now only about 75 percent above 1946 and some of their individual cut rates have gone below prewar levels.

All of this time it must be borne in mind that the full increases of 115 percent have been applied by the railroads on noncompetitive traffic or what they consider noncompetitive, and it is the selective individual rate cuts that they have made on competitive traffic that have pulled their average rate levels down and have pulled their rate of return down in the past 5 years from above 4 percent to below 2 percent. And in the eastern district, as you know, there has been an actual deficit.

The competing modes of transport have suffered along with the railroads in this rate-cutting program, which has been directed more especially against barge transportation, so far as bulk commodities were concerned, than any other.

And it is now plain that if the rate war continues at its present intensity, to say nothing of stepping it up, there will be many bankruptcies of railroads and also water and motor carriers.

That is the situation that is outlined, before and after regulation, in this full statement that I have called to your attention and there are some subsequent statements and exhibits that I would like to talk about briefly.

Now, the railroads' contention is that the slump in their earnings is because they have not had enough freedom to reduce rates on bulk and agricultural commodities, and they say that if the minimum rate powers of the Commission are eliminated, so that they can reduce rates still further on bulk commodities and agricultural commodities, they would gain enough traffic and revenues to increase their net profits and pull themselves out of their slump.

What they rely upon is the theory of what-the-traffic-will-bear rates, that they can add to their traffic without correspondingly increasing their expenses and, therefore, increase their net profit.

It seems to me, in analyzing the present contentions, that the first step should be to find out how much, if any, truth there is in the out-of-pocket costs theory. If they can carry additional traffic at low rates, if their expenses do not rise as rapidly as traffic rises, well, that should show up in the past experience. I have undertaken in the next statement you have before you, which is entitled "Freight Operating Expenses and Gross Ton Miles" to compare the increases in gross ton-miles with the increases in operating expenses, and see whether as the ton-miles go up their expenses go up any less.

If you will start at the bottom of the page of this statement you will see that I have gone consecutively over the last 35 years starting with 1935. I show that in 1936, for example, traffic went up 17 percent. That is in the column of "gross ton-miles percent change from preceding year."

Their operating expense, in the column to the left of that, went up just about the same, 16 percent.

In the next 2 years traffic went up another 5 percent. Expenses went up another 6 percent.

In 1938 traffic and expenses both went down about the same amount. In 1939 and 1940 traffic rose faster than expenses, but in 1941, and almost all the succeeding years, the expense has gone up faster than the traffic.

In 1941, for example, there is a 22-percent increase in both the traffic and expenses.

In 1942 traffic was up 25 percent and expenses were up 27 percent and, looking at the most recent years, expenses have gone up more than traffic, and in 1959 and 1960, the latest available years, in which freight rates have been going down, their expenses have gone right along with the volume of traffic.

There is no indication of any trend that shows anywhere that expenses increased relatively less than traffic. In other words, there is no indication whatever that the out-of-pocket costs theory has any validity.

Well, next I thought it was important to find out what effect the what-the-traffic-will-bear theory has had on the freight rates of the railroads, and what traffic is profitable and what isn't, and what the trend has been—especially over this period of the railroads' rate-cutting program.

As I have said, we have some pretty elaborate cost records now. The Commission has been keeping for every year, since 1947 up to 1960, records of the ratio of railroad freight revenues to what the Commission calls out-of-pocket cost.

Out-of-pocket costs is about 70 percent of the full cost of the railroad, but it does provide a useful yardstick to see what the trend of revenues is with relation to costs.

The Commission's figures disclose what to me is an amazing picture of the majority of railroad traffic today failing to cover full cost and a considerable and growing part of it failing to cover even out-of-pocket cost, on the average; and bear in mind that the average is an average of relatively high noncompetitive rates and low competitive rates.

If you will refer to the next statement you have before you, No. S–3, "Ratio of Carload Freight Revenue to Out-of-Pocket Cost," it shows

for 258 commodity classes that are reported to the Commission the ratio of each in the year 1960 to out-of-pocket costs and also the importance of the commodity in percentage of total tons and total ton-miles.

Perhaps the clearest way to show what the picture is, is to refer to a chart before you, which is on the easel here.

This chart shows by the vertical lines, the ratio of the respective 258 commodity classes to out-of-pocket costs—above or below costs as the case may be.

The horizontal lines on the chart show the ratio to cost, and the heavy horizontal lines on the map show the out-of-pocket cost level as computed by the Commission, and the full cost level which, on the average, is 140 percent of the out-of-pocket cost.

The width of these vertical lines shows the volume of the tonnage, in ton-miles, of the more important commodities.

You will notice that a very considerable number of the commodities are below the 140-percent full-cost level and quite a large number of them are below the out-of-pocket cost. Those commodities, which you see pictured there, in the aggregate, comprised more than 70 percent of all of the 1960 carload tonnage of the railroad.

Most of the commodities in the below-cost category are the bulk commodities and the agricultural commodities that the railroads now want to have the freedom of reducing to still lower levels.

The summarization of all of this is that out of the 258 commodity classes 49 of the commodity classes yield less than out-of-pocket costs. That is over 15 percent of the total ton-miles and 22 percent of the tons. And 72 of the commodity classes are, on the average, below full cost, that is, below the 140-percent line, and their average ratio to the out-of-pocket cost is now only 118 percent; those commodities comprised over 50 percent of the total tons and of the total ton-miles.

The remaining 137 commodity classes, which are only 27½ percent of the tons, 34 percent of the ton-miles are the only ones which pay more than full cost on the average, and their average ratio to the out-of-pocket cost is 176 percent.

That trend, especially on the bulk commodities, has been growing progressively worse, especially in the last 5 years during the rate-cutting program.

To give you an example of that, I will refer to bituminous coal, the railroads most important commodity, also one of the most important commodities on the inland waterways.

Now, bituminous coal, on the average, in 1950, and before that time, paid more than 140 percent of out-of-pocket costs. So it fully paid its way.

In 1955, this had gone down to 126 percent of out-of-pocket; in 1959, it had gone down to 114 percent of out-of-pocket, on the acreage, and in 1960 it took a dive to 110 percent of out-of-pocket costs. Although there are still a quite considerable number of coal rates applying on rather large traffic that do yield a higher revenue of out-of-pocket cost than the average, the low rates, on the water competitive traffic, especially, have pulled the averages down to this very low, and, on the whole, unremunerative level of 110 percent of out-of-pocket costs.

To show the effect of all this on revenues of the railroads, I would like to call your attention to my next statistical statement, No. S–4,

which shows the carload freight tonnage, revenues, and out-of-pocket costs and the ratio to revenues for the years 1939 and 1947 to 1960. That is all the years for which the ICC had kept these records.

I want to call your attention to the reductions in the margins above out-of-pocket costs that have been in evidence especially since 1956 when the rate-cutting program went into full vigor.

If you refer to the carload revenue column and the ICC out-of-pocket costs and the ratio of revenue to out-of-pocket costs, you will notice that in 1956 the ratio was 142 percent; and if you will look at the rate of return in the column to the extreme right, you will notice that the return was 4.1 percent.

In 1957, the ratio went down to 139 percent of revenue to out-of-pocket cost. The return went down to 3½ percent.

Since 1956, there has been a steady decline in the ratio of revenue to cost and a steady decline in the railroad rate of return.

In 1958, the ratio was 137; the rate was 2.9. And in the latest year for which we have the figures, 1960, the ratio had gone down to 129 and the rate of return to 2.2 percent.

The statement also shows that this decline in revenues is because the revenue per ton has gone down. It went down from an average of $6.41 a ton in 1959 to $6.09 a ton in 1960, and costs have stayed up, and that is why the rate of return went down to a much lower level in 1960.

The decline in rate of return occurred in all regions of the country. On page 2 of this statement, S–4, I show the rate of return by regions from 1955 to 1960, how in the eastern district the percentage of the rate of return has gone down to 19 percent of 1955. In the southern region, the return has gone down from 5.4 percent in 1955 to 2.9 in 1960, and in the western district from 4.2 to 2.6.

It is only in the Pocahontas region, the region the coalcarrying roads are in, carrying coal from the Appalachian mines to tidewater and the Great Lakes, primarily, that the rate of return has stayed up, and that is a region where rates have also stayed up. There hasn't been the competitive rate cutting in the Pocahontas region that there has in the other regions.

The next statement I have, S–5, shows that the decline of the railroad revenues has not been because of regulation—because of failure to get sufficient rate increases from the Interstate Commerce Commission but because they haven't fully applied those increases.

The statement shows the actual average carload rate per ton for every year since 1947 to 1961 and the authorized rate if the full percentage increases had been applied since 1946 and the amount the authorized rate exceeds the actual rate.

I have shown that also on a chart which might make it clearer to you.

The chart shows the 1947 rate level, $4.36, and how far it has gone up or down in the years since 1948 compared with the authorized ICC rate levels.

In the years from 1947 up until 1953, the actual rate levels held quite close to the authorized levels, within 10 percent. But since 1955, there has been a sharply widening gap. In 1955, the actual rate level went down from 590 to 566 per ton, and the authorized rate level continued at 654.

Since that time, there has been a series of increases in authorized rates that have brought the presently authorized rate level to an average of $7.85.

The actual rate levels, you will notice, have gone up very much less than the authorized rate increases. In 1958, they reached their highest peak, $6.42 per ton, compared with $7.59 which the Commission authorized.

In 1959 they went down a little bit. In 1960, however, they took a sharp decline from $6.41 a ton to $6.09 a ton, while the authorized levels went up.

We don't know what the actual carload rate levels for 1961 and 1962 are now, but we know the rate cutting has continued so that the average carload rate must be somewhat below the 1960 level of $6.09. So that by now we know that the actual rate is about $6 on the average as compared with the authorized rate of nearly $8 a ton.

I summarize in statement S–6 before you these recent trends of rates, of revenues and rates of return, to show how costs have gone up and revenues have gone down.

The whole picture, it seems to me, of the trends is because of competitive rate cutting and the trend of higher costs and lower rates is the reason why railroad revenues are so extremely low today.

I think I can show you by representative examples how low competitive freight rates are the cause of the erosion of the railroad revenues.

It is impossible, of course, to show in detail each of the thousands of competitive rate reductions that have been made in the last 5 years, but I have some charts here which I think fairly represent how far the railroads have gone already, with Interstate Commerce Commission approval, in cutting competitive rates below costs and below noncompetitive rates.

The first chart deals with the rates of the Southern Railway on bituminous coal to Tampa, Fla. The chart shows the route of the Southern Railway from Lake City, Tenn., which is the key point in the east Tennessee coal mining district and from Birmingham, Ala., which is the Alabama coal-producing district, to Tampa, and it shows what the rates are now from east Tennessee and Alabama to Tampa as compared with what they were in 1957 and what they are now to points intermediate to Tampa on the line of the Southern Railway, which are not served by water.

Tampa is a water competitive point. The electric utilities and the largest industries there used little coal and had been depending largely on fuel oil for their fuel supply up until a few years ago when a coal mine at Uniontown, Ky., over in western Kentucky, began shipping coal by barge down to Mississippi to its mouth and thence across the gulf to Tampa, at a rate which was low enough to compete with oil, and the utility and other industries there began to use coal in large quantities.

When that happened, the Southern Railway went to the utility and said, in effect, "We would like to ship some coal to Tampa and what rate will it take for us to move coal into Tampa by rail?"

Well, the water competitive rate at that time was $3.13. That is what they charge. The Southern Railway's rate from east Tennessee was $6.20 a ton, and from Birmingham $5.97 a ton. The railroad

was told, "If you reduce your rates $1.65 a ton, you will be competitive; we will use coal shipped in by railroad."

Well, the reduction was made with the Interstate Commerce Commission approval. It was not applied to intermediate points. In 1960 the utility told them that they would have to reduce the rate still further; they were able to get coal still cheaper by water, and they would have to have another 86 cents a ton reduction of rates, and the railroad complied with that request. They had been hauling a lot of coal to Tampa ever since. But they still held up the rate to all their intermediate points, and today the rate from east Tennessee to Tampa, which is a distance of 802 miles on the Southern Railway, is $3.76 a ton. The rate from Birmingham to Tampa is $3.46 a ton; that is for a haul of 715 miles.

That rate is lower than in all the intermediate territory from Atlanta right up to the outskirts of Tampa. Today the rates from East Tennessee to Atlanta for a distance of only 226 miles is $3.96 a ton, 20 cents higher than Tampa.

From Birmingham to Atlanta, which is only 166 miles, the rate is $3.76 a ton, as compared to $3.46 and 715 miles to Tampa.

These high intermediate rates grade up from Atlanta all the way so that at Jacksonville, for example, the rate from East Tennessee is $5.06 a ton, from Birmingham to Jacksonville it is about 20 cents a ton lower.

Mr. WILLIAMS. Mr. Childe, may I interrupt you for clarification on a point?

As I understand you to say, the rate from Lake City, Tenn., to Tampa, by water, was roughly $3.13; was that what you said?

Mr. CHILDE. Yes, sir, that is correct.

Mr. WILLIAMS. Now, the rate by mail from Lake City, Tenn., to Tampa is what?

Mr. CHILDE. It is now $3.76 a ton.

They have made it that figure because the utility told them that the B.t.u. content of the Tennessee haul was higher and it cost us more to get the coal in by water to transfer it, and so forth, so that if they would make the rate $3.76, they could keep on using the rail. So the rate is fixed at exactly what the shipper told them the traffic would bear to enable the railroad to compete with the water carrier.

Mr. WILLIAMS. How did the water carrier derive their rate of $3.13?

Mr. CHILDE. It is a combination of the barge lines rate to New Orleans——

Mr. WILLIAMS. That is not a regulated rate, is it?

Mr. CHILDE. It is not a regulated rate, no, sir.

Mr. WILLIAMS. Then if the barge line wanted to, it could cut the railroad——

Mr. CHILDE. The rate is charged the Tampa consumer if he gets coal by water. He is charged the mine price plus a water rate of $3.13 a ton.

Mr. WILLIAMS. From the statistics you give us, the railroads are still about 63 cents above the water carriers. Now, I fail to see, frankly, that that is discriminatory.

Mr. CHILDE. Well, that is very commonly true, that a railroad can charge a higher rate than the water carrier. In fact, the water carrier must in practically every instance have a lower rate than the railroad in order to compete, because the water carrier has the disad-

vantage of slower service, higher transfer costs, so that the cost of the water service to the shipper, which includes these other things, is always higher than the cost by rail if the rail rate is the same as the water rate.

So there is and must be, if there is to be any competition, a lower water rate than the rail rate.

Mr. WILLIAMS. Is it your contention or your suggestion that the $3.76 figure is not a compensatory rate?

Mr. CHILDE. Yes. I intend to show you that the rail rate is way below their cost and they couldn't handle that business unless they went below cost to Tampa and maintained higher intermediate rates.

Mr. HEMPHILL. Before you leave that chart, could I ask a question, please?

Mr. CHILDE. Certainly.

Mr. HEMPHILL. Mr. Chairman?

Mr. WILLIAMS. Mr. Hemphill.

Mr. HEMPHILL. You have described the differential in the rate of $3.46 from Birmingham to Tampa, and I believe it is $3.76 for 802 miles to Tampa, on that chart.

Mr. CHILDE. Yes, sir.

Mr. HEMPHILL. Were you present the other day when Mr. Brosnan, the President of the Southern Railway, testified that it was now the policy of his rail not to discriminate against inland or intermediate points in meeting rates for competition?

Mr. CHILDE. I wasn't here, but I read about it.

Mr. HEMPHILL. Would that mean your particular chart reflects something in the past or something in the present?

Mr. CHILDE. It is something that is in effect today and the Southern Railway is still engaged in a case before the Commission trying to obtain its approval of its last rate reduction, which is in effect. It is still under investigation.

Mr. HEMPHILL. Well, you say the Southern Railroad has not yet changed its rate from Lake City, and Birmingham has not?

Mr. CHILDE. It has not.

Mr. HEMPHILL. It has not changed its rate from Lake City to Birmingham and Atlanta?

Mr. CHILDE. That is correct.

And I want to say that it is not now the policy of the Southern Railway to maintain rates in the inland territory at the same relative levels of their water competitive rate.

Mr. Brosnan was talking about some rates on some grain which are in controversy now before the ICC.

Mr. HEMPHILL. He specified grain, or did he make the statement as to the generalities?

Mr. CHILDE. Well, he made the general statement, but to my knowledge the grain rate I am talking about is the only one in which they have undertaken to make rates as low to inland territory as the water competitive rate.

The picture I am giving you is typical of the adjustment of the Southern Railway and every other railroad in the South and every other railroad in the United States, practically, of establishing low, very low, competitive rate to a point served by water, and at the same time maintaining much higher rates in the inland territory.

I know that my picture is very different from the one that Mr. Brosnan gave you.

Mr. HEMPHILL. Well, if he made a statement of policy, which I assume he did, then under your theory, it would benefit the shipper, wouldn't it?

Mr. CHILDE. Well, I——

Mr. HEMPHILL. It would benefit the inland shipper anyway, wouldn't it?

Mr. CHILDE. It might temporarily, but I want to show you why I believe that a railroad cannot possibly establish or maintain a policy of cutting rates on water competitive traffic to the level that it now cuts them, to say nothing of going lower, and at the same time reducing rates into the interior to the same relative levels. It is mathematically certain, as I shall try to show you, that any such policy as that would bankrupt the railroads in very short order and, of course, they would bankrupt a lot of other competitive lines, too. That is why I am trying to show you by these charts what the real situation is.

Mr. HEMPHILL. I am very much interested in your statement, and that was the reason I was asking.

Thank you.

Mr. WILLIAMS. Will you yield?

Mr. HEMPHILL. Certainly.

Mr. WILLIAMS. If the Southern Railroad reduced its rates, it did so with the approval of the ICC, I presume, Mr. Childe?

Mr. CHILDE. Pardon me. I didn't get that.

Mr. WILLIAMS. I say that in reducing its rates, as you indicated, to meet the water competition from Lake City to Tampa, I would presume that the Southern Railroad had to file that rate and secure approval of the ICC before the rate went into effect or they filed a rate and it was acted on by the ICC.

Mr. CHILDE. That is right. They filed a rate and the rate went into effect.

Mr. WILLIAMS. Doesn't the ICC require that these rates be compensatory?

Mr. CHILDE. It should, but it does not, and I would like to make that clear.

Mr. WILLIAMS. Does the law require that the rate be compensatory?

Mr. CHILDE. The law merely requires that the rate shall be just and reasonable, that it shall be not unjustly discriminatory and that there should be no unfair and destructive competitive practices.

Mr. WILLIAMS. Yes.

Now, did the water carriers intervene in this case? Did the water carriers file objections to those rates as being discriminatory?

Mr. CHILDE. The water carriers have intervened at least in the later proceedings.

Mr. WILLIAMS. I am speaking of the case that you mentioned, the hauling of coal from east Tennessee to Tampa.

Mr. CHILDE. Yes.

Mr. WILLIAMS. They did intervene?

Mr. CHILDE. I understand that they are intervenors in the proceeding now going on.

Mr. WILLIAMS. And that proceeding is presently before the ICC?

Mr. CHILDE. Yes.

Mr. WILLIAMS. It hasn't been concluded?

Mr. CHILDE. It has not been finally concluded. There is an examiner's report approving the rate, but it awaits the final approval of the Commission.

Mr. WILLIAMS. I see. Then the rates actually haven't gone into effect?

Mr. CHILDE. Yes. The rate went into effect in 1960.

Mr. WILLIAMS. Well, the rates are still subject to final approval by the ICC?

Mr. CHILDE. That is correct.

Mr. WILLIAMS. And the railroads are subject, as I understand it, to paying reparations in case the rate—well, of course, if the rate is——

Mr. CHILDE. Mr. Chairman, the rate reduction has already been approved by the Commission down to the first $1.65 reduction.

Mr. WILLIAMS. Yes.

Mr. CHILDE. It is only the latest 86 cents further reduction that is still before the Commission.

Mr. WILLIAMS. I see.

Mr. CHILDE. I would like to show you by the next chart how the reduced rate to Tampa compares with the average coal rates that are maintained now by the southern railroads in relation to the cost of the services under ICC's cost formula.

This chart shows by the sloping lines the full cost, the fully distributed cost, so called, of carrying coal or any other commodity of similar character in a 60-ton open hopper car, which is the average weight, in the southern district.

The solid sloping line shows the out-of-pocket costs.

The staggered line in between the full cost and the out-of-pocket costs, shows the 1960 level of the coal rates by mileage blocks along the distances in the southern region today.

You will notice that the average rates are well above the out-of-pocket cost level and they even reach the full cost level in some of the shorter distances in which most of the coal moves. But when you get up beyond 700 miles, where the incidence of this Tampa rate comes in, the average rate is pulled down to way below the out-of-pocket cost level and the actual rate to Tampa, which is shown by these circles on the chart, is so far below even the out-of-pocket cost that the average of the whole is pulled down.

You will notice that the rate from Birmingham to Tampa is $3.46, and this is about $2 lower than the out-of-pocket costs, and it is about $5 a ton below the full cost level, which is way up here [indicating].

From Lake City, Tenn., to Tampa, the present reduced rate of the railroads is $3.76. It is about $2 a ton lower than out-of-pocket costs and correspondingly way below the full cost level.

Now, if that kind of ratemaking should be applied to the average coal levels in the South, you can see what would happen. They would all be below out-of-pocket cost level. The railroads wouldn't have any net revenue at all on this coal.

Mr. WILLIAMS. Mr. Childe, may I inquire how much more time is going to be needed for your formal presentation?

Mr. CHILDE. I would guess perhaps a half an hour.

Mr. WILLIAMS. Well, the House is now in session. I think perhaps it would be best if you would be available for this afternoon for the committee to recess and we could continue at 2 o'clock.

Will that be convenient with you?

Mr. CHILDE. Yes, sir. I would be glad to be here.

Mr. WILLIAMS. Thank you. Then the committee will resume its sitting at 2 o'clock this afternoon.

(Whereupon, at 12 noon, the committee was recessed, to reconvene at 2 p.m., on the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Childe, you may proceed.

STATEMENT OF C. E. CHILDE—Resumed

Mr. CHILDE. Mr. Chairman, at the time of adjournment I was talking about some of my rate charts.

I would like to proceed with the next chart.

The CHAIRMAN. Will you indicate about where along in your statement you have reached?

Mr. CHILDE. Yes. I have gotten to page 19.

The CHAIRMAN. Page 19?

Mr. CHILDE. Yes, sir.

The CHAIRMAN. All right.

Mr. CHILDE. The next chart deals with the competitive rate established by the Missouri Pacific Railroad, with the approval of the Interstate Commerce Commission, on multiple carload movements of crushed stone, from a point in southern Illinois, Prairie du Rocher, to Baton Rouge, La., on which there has developed a large rail movement.

The Missouri Pacific, in 1960, in order to prevent that limestone from moving by barge, established a rate of $2.30 per ton for a haul of 735 miles, and they left, in effect, the higher rates that are, and were formerly, in effect in the intermediate and surrounding territory.

Now, on this chart I have shown the water competitive rate to Baton Rouge with the average level of stone rates of the southwestern lines, and how they both compare with the out-of-pocket and fully distributed costs of the western district.

You will observe that the present rail rate to Baton Rouge is far below the western district's cost. It is only 43 percent of the out-of-pocket cost, which is $5.40 for that distance, and it is 25 percent of the full cost, which is $9.08 per ton.

Since the rate was established the entire movement has been by rail. The average stone rates, are shown by the jagged line on the chart, which shows that they are either slightly higher, or in the case of the intrastate rates, are below, out-of-pocket cost levels except for a distance beyond 600 miles, and this Baton Rouge rate had the effect of pulling down the average far below the out-of-pocket cost.

The next chart I have deals with another multiple carload rate established by the railroads with ICC approval on blackstrap molasses from New Orleans to Peoria, Ill., which was for the purpose of elimi-

nating barge transportation on that commodity and which has had that effect.

The rate approved by the Commission is below the Commission's computed out-of-pocket costs, and it is below the rates on blackstrap in the immediate and surrounding territory, and I have compared the rate on this chart with the rate on blackstrap from Houston, Tex., to Amarillo, as a representative inland movement.

There, for 596 miles, the rate is now 46½ cents a hundred as compared with the 32½-cent rate for 820 miles, from New Orleans to Peoria along the river.

The noncompetitive inland rate yields a revenue to the railroads of just about twice the amount per ton per mile as to the lower water competitive rate.

The next chart deals with the competitive rate that the railroads established on newsprint paper after the barges began to haul newsprint from Calhoun, Tenn., which, by the way, is a point on the Southern Railway, to Houston, Tex.

That rate received a lot of newspaper publicity at the time the reduction was made because newsprint is an important item of expense to newspapers, and when they learned that the railroad had reduced the rate to Houston and had refused to make reductions to cities in the intermediate inland territory, such as Oklahoma City and Dallas and Fort Worth, newspapers could not see why, if the railroad made a profit on the lower rate to Houston, they could not afford to maintain the same rate to the intermediate points, with a shorter distance, and if the lower rate of the railroads to Houston was not profitable, the newspapers objected to subsidizing an unprofitable railroad rate just to keep the traffic off of the waterways.

The chart shows how the present rate to Houston, which is 56 cents for 854 miles by rail, compares with the rate to Oklahoma City, which is 828 miles and which has a rate of 85 cents a hundred pounds, which is 29 cents or 52 percent higher than the Houston rate for a somewhat shorter haul to Oklahoma City.

That is typical of the disadvantages of the present inland rates on newsprint.

The next chart shows how much higher noncompetitive rates of the railroads on grain are than water competitive rates.

The chart shows that the rate from St. Louis to New Orleans, which is water competitive, is 26½ cents a hundred pounds for a rail distance of 890 miles.

Compared with that is the rate from La Monte, Mo., to St. Louis, which is 191 miles, but it is 28 cents a hundred pounds—higher than the water competitive haul of four times as much.

That same relationship applies from inland points in Arkansas and Oklahoma, and other inland areas to the water ports for an inland haul as compared with the low rate for the water haul.

The next chart deals with an eastern railroad competitive situation. It shows the rail grain rates form Buffalo and from Pittsburgh to Philadelphia, and it indicates how maintenance of higher rates from Pittsburgh to the eastern market point, on grain which might move by barge into Pittsburgh, deprives Pittsburgh of the opportunity to compete with grain coming in over the Great Lakes to Buffalo and moving by rail from Buffalo.

Buffalo is one of the great grain milling centers of the country and Pittsburgh is not a grain milling center now; although since grain began to move by barge some effort has been made to develop a movement through Pittsburgh.

The railway from Pittsburgh to the seacoast cities is so much higher than from Buffalo to the seacoast that Pittsburgh cannot compete and that shuts out the barge or the prospect of moving barge grain into Pittsburgh, to compete with the lake grain into Buffalo.

The illustration from Pittsburgh to Philadelphia is typical. You will note the rate from Pittsburgh to Philadelphia is 9 cents a hundred higher, although the distance from Pittsburgh is 46 miles shorter.

The last chart I have, which deals with the rates on sugar from San Francsico to Chicago, as compared with intermediate points, shows how the western railroads discriminate against interior points not on the water as compared with the rate to Chicago, which is competitive with a water movement through the Panama Canal and via the Mississippi River barges.

These rates, by the way, were also established with Interstate Commerce Commission approval.

The rate presently in effect to Chicago for a 2,258-mile haul is 89½ cents in contrast with higher rates for the shorter intermediate distances.

For example, from San Francisco to Ogden, which is 785 miles, and to Denver, which is 1,370 miles, they are both higher than the rate to Chicago—the Ogden and Denver rate is 95½ cents, Chicago is 89½ cents, and the rate to Chicago is below the ICC full cost level; the rate to the intermediate points is higher than the full cost level.

I lived in Omaha at the time the railroads cut the rate to Chicago, and I remember how that rate ran a candy manufacturer in Omaha out of business in spite of his plea that unless he had a lower rate to Chicago he could not continue in business. His request was denied and the effect was not only to hurt Omaha but the railroad had to haul the sugar 500 miles farther, right through Omaha, at a rate less than the total cost, instead of to Omaha at a rate above its cost.

And that, I think, is a pretty definite illustration of how discriminatory rates against the noncompetitive points hurts the interior, and, incidentally, reduce the profit of the railroad.

I would like to say a word, before I conclude, about the question which has been raised as to why does the Interstate Commerce Commission permit these things, in view of the declaration of congressional policy that unfair and destructive competition should be eliminated and that each mode of transportation should have its opportunity to develop its full inherent advantages for the public which, in my language at least, means that it should be allowed to give the public the benefit of whatever lower cost it has.

Well, the answer is I think that the Interstate Commerce Commission has been trying to follow the old traditional policy of making rates according to what the traffic will bear and at the same time has recognized that it is necessary to give some attention to relating rates to cost, and it seems to be quite uncertain and without a definite policy as to what extent the one system of ratemaking should prevail over the other.

The Commission has declared that it must use its minimum rate powers sparingly. It does not like to interfere with competition between the carriers any more than necessary. Its greatest trouble is, in my opinion, that it has accepted the railroad theory that a rate which pays anything over out-of-pocket costs is compensatory, and that out-of-pocket costs are considerably less than full costs.

I have tried to show here that there is no evidence to support either of those theories in the experience of the railroads up to date. Nevertheless, the Commission regularly permits the railroads to reduce competitive rates down to about 70 percent of the full cost and sometimes much below that on multiple carload movements and so forth on which special circumstances and specially low costs are claimed.

But, according to the Commission's own formula, out-of-pocket costs yield 80 percent or even less of the operating expense of the carrier. And the Commission realizes that the carriers must recover full costs if they are to survive.

But it clings to the old what-the-traffic-will-bear idea, that rates should be high enough on higher value, noncompetitive freight, to offset deficits below the low full cost on the low value competitive freight, and so the rate war goes on.

Already the average rail revenues on almost all bulk commodities, and many of the agricultural exempt commodities, are below the full cost as computed by the Commission, and a goodly number of them are below out-of-pocket costs.

Of the three principal commodities which comprise over 80 percent of all the inland waterway tonnage—coal, petroleum, and the sand and gravel and stone group—coal is already close to out-of-pocket cost on the average.

Petroleum is now below out-of-pocket cost. Gasoline and other refined petroleum products just slipped below the out-of-pocket cost level in 1960.

Sand, gravel, and stone are all below out-of-pocket costs.

So that most of the tonnage on which the railroads say they hope to recover traffic from the water carriers is already at or even below out-of-pocket cost levels or, at any rate, below full cost levels.

That is true of almost all the commodities that make up the tonnage of the regulated inland water carriers as well as the unregulated carriers.

Now, the railroads say they are going to reduce the rates on all of these commodities and, of course, that means that the rates on which the inland water carriers depend for their existence are all in jeopardy.

Now, I think that without any doubt, when the railroads say they won't and don't reduce rates on bulk commodities below cost, they refer to their out-of-pocket cost theory, under which, however, they reduce rates whenever they choose down to or below half of the full cost level.

And when they say that it is their policy to give inland points the benefit of low water rates they are saying something which is not true as to their present rates and which, according to their own records and the records of the Interstate Commerce Commission, is a mathematical impossibility without going hopelessly into the red.

Now, I agree that that presents a very serious situation. The rate war is bad for the carriers. It is bad for the public, but there is no way of stopping it, in my judgment, except by enforcing the rule against destructive and unfair competition, by requiring that a rate, which is below the cost of the carrier, which has the effect of taking traffic from a lower cost carrier, is unfair and destructive.

Let me say that, in my opinion, this illness of the railroads is not a crisis. It is a chronic deep-seated disease.

For want of a better name, I termed it what-the-traffic-will-bear-itis.

The only hope for a cure, as I see it, is regulation. Elimination of regulation would be fatal. Stronger and not weaker regulation is necessary.

I am personally convinced that the only effective remedy would be to require not only that the rates of all modes of transportation be regulated, including the rates on bulk and agricultural commodities, but they all must be regulated so that they will bear a reasonable relationship to the costs of the different modes of transport.

Now, I respectfully recommend for your consideration that, in addition to eliminating the bulk and the agricultural exemptions, you add to the declaration of policy in the act and in the ratemaking provisions, language specifically defining reasonable rates as rates related to the full cost with due consideration to the value of the service, and that the provisions dealing with unfair and destructive competitive prices be amended to prohibit specifically the reduction of a competitive rate to a point below the full cost of the service that would require a lower cost carrier to reduce its rates below its full cost in order to compete.

The CHAIRMAN. Mr. Childe, thank you very much for your full and complete statement and explanation.

It raises a lot of questions. I, myself, have been asking questions of the railroad witnesses about rate discrimination in certain areas of the country which are given favorable rates under certain conditions and unfavorable rates in certain other areas.

In my judgment, we have to bring about some kind of a procedure that would provide greater equality or more equal opportunities.

How we can do that, under our system, I do not know. It certainly would be desirable, in my judgment.

I may ask you some questions along this line a little later, but I think, first, Mr. Hemphill has some questions he wants to ask.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I, too, appreciate your statement and the trouble you have apparently gone to in detailing so much information.

Now, looking at the exhibits in which you treat the book investment, net railway operating income, and rate of return on book investment, you have a column over on the right, "regulation high spots."

And, in keeping with what I asked the previous witness, it seems to me, and I would like your opinion, that instead of discrimination by the Congress and the ICC that the ICC, as created by the Congress and the Congress as the representatives of the people, have always been quick to try to help the railroads when they are in trouble.

Is that not true?

Mr. CHILDE. That is true.

Mr. HEMPHILL. Well, I want to clear that up, because it is so easy to get up here and criticize the Congress, and I wanted the people to realize this, as I am of the opinion that we should be very zealous in protecting the integrity of the Congress of the United States. I think it is absolutely necessary.

On page 4 of your prepared statement you said that—oh, before I get to that, in the depreciation reserve figures which you have in the first three pages of your chart, in the accounting processes, have there been any material changes in the treatment of that depreciation reserve through the years?

Mr. CHILDE. There were provisions for an accelerated depreciation and amortization during the Second World War.

Mr. HEMPHILL. That was on capital expenditures?

Mr. CHILDE. Yes. Of course, that is a factor in reducing temporarily the return on investment.

Mr. HEMPHILL. Surely, because you could write it off for depreciation purposes instead of including it in your gross profit?

Mr. CHILDE. Yes.

Mr. HEMPHILL. Just a matter of adding one place and subtracting another, or vice versa? Is that right?

Mr. CHILDE. Yes. That is true, but the regular rules of the Commission as to depreciation reserve have remained substantially the same ever since they started to require the railroads to charge off depreciation.

And that was back in——

Mr. HEMPHILL. 1944 to 1946, according to your statement here.

Mr. CHILDE. Well, it started about 1911, but you will notice that the——

Mr. HEMPHILL. Yes.

Mr. CHILDE (continuing). Depreciation reserve is shown for the earlier years to be quite small, but it got above $1 billion in 1919 and has progressed since, so that it is now up to $8.5 billion.

Mr. HEMPHILL. Well, I was not critical of it because I would favor it, but I just wanted to point that out or have it clear in your testimony now.

Mr. CHILDE. Yes, sir.

Mr. HEMPHILL. On page 4 of your prepared statement, beginning in the second paragraph, you make this statement.

> From the first, however, the greatest weakness of the Commission was its limited ability to control discriminations.

I believe the word you used is "undue" discriminations.

Is that not right?

Mr. CHILDE. The words are "unjust discrimination," and "undue and unreasonable preference and advantage."

Mr. HEMPHILL. Now——

Mr. CHILDE. Those two terms, "unjust discrimination" and "undue preference and advantage" have been defined a little differently in court decisions but, to me, they mean the same thing.

Mr. HEMPHILL. Well, what effect has the fact that there was competition had on the interpretation?

Mr. CHILDE. Well, the trouble was, first, that wherever there was competition and it was possible to show a difference in competitive conditions, as justifying a different treatment of the rate, then the

Commission and the courts had to hold that the preference and the advantage or disadvantage, as the case might be, was not undue; it was caused by a difference in conditions and, therefore, they could not cure it.

The only cure, as I pointed out, was to establish reasonable maximum rates to smooth things out somewhat——

Mr. HEMPHILL. Like the 115 percent they did not use?

Mr. CHILDE. I beg your pardon?

Mr. HEMPHILL. Like the 115 percent that they had not used between 1946 and——

Mr. CHILDE. Well, I wanted to say about that, in 1920 when the Commission got the power to fix minimum rates then it could cure those discriminations, whether the conditions were different or not, whenever it felt that the low discriminatory rate was less than a reasonable minimum.

Since that time they have had, I think, adequate control over the undue preference and advantage of one shipper as against another, but they have not exercised it to the extent that they have changed the rate structure very much.

Mr. HEMPHILL. Well, I have in mind a question accentuated by the remarks of my distinguished chairman, because we have had situations in my own State where the rate of certain commodities from South Carolina to the Northeast is higher than from the west coast.

And you talk about discrimination, we know something about discrimination. Of course, we have had that word overworked——

Mr. CHILDE. That is something like that rate on sugar from San Francisco to Nevada, which is higher than the rate to Chicago.

Mr. HEMPHILL. Well, the theory was that it was not unjust or undue discrimination because the west coast people could ship by water.

Mr. CHILDE. That is right.

Mr. HEMPHILL. And we were penalized, and are still being penalized, because we could not ship by water.

So, apparently, you have touched upon a pretty sensitive area here.

Now, you said in your statement, as I understood the general philosophy—and I am sorry I missed a little of it, but I have some guests here today—as I gathered, you are not in favor of H.R. 11583, that is, the taking off of regulation.

You are in favor of more regulations?

Mr. CHILDE. Yes, sir, that is right.

Mr. HEMPHILL. Now, suppose we passed this legislation and the Justice Department was really given a big hand, as I see it, not in the ratemaking procedures but in the rate adjustment, actually what would happen is, instead of consideration being given to the justice or the fact that it is undue where competition exists, actually you would be traveling along and if it was a question of comparative commodities, comparative distances, comparative cost of hauling, all of that would go into the picture if the Justice Department had something to do with it, would it not?

Mr. CHILDE. I do not think so. If there were not minimum rates then, so far as discrimination is concerned, we would be right back where we were before 1920 when the only way to cure a discrimination would be by establishing maximum rates or relationships where the competitive conditions were similar.

And it has always been held that water competition is a condition justifying railroads to cut their rates lower in the interior because the competition is different.

Therefore, it seems to me that if the Department of Justice had the responsibility of trying to wipe out unjust discrimination and unfair competitive practices it would not have any standards left by which it could prove whether a rate was unduly low in comparison with another or not.

Mr. HEMPHILL. Well, suppose railroad A ran parallel to railroad B, which is true in certain parts of the country, as I understand it, or almost parallel, and railroad A cuts the rate per hundredweight to 9 cents and railroad B knows that that is below cost.

Now, what could they do about it if it was under the Department of Justice?

Mr. CHILDE. I do not think the law presently prohibits the making of a rate below cost unless it is an unfair competitive practice or an unjust discrimination.

And by definition, even a rate below cost is not an unfair discrimination unless the competitive conditions are similar.

Mr. HEMPHILL. Well, suppose there were no competitive conditions? If there was no regulation by the ICC, if there was no comparison, the only possible ceiling would be a maximum if there be any ceiling at all, would it not?

Mr. CHILDE. That is right. If your noncompetitive rate was considered above the maximum rates level you could get it reduced to a maximum reasonable level.

But the precedents established and the precedents that the ICC follows, at least, are that the maximum reasonable level may be two or three or four times as much as a competitive rate level.

Mr. HEMPHILL. One other question:

In your opinion, what traffic will the railroads of this country pick up, if any—and maybe you can give me some reasonable figure of a percentage as to the amount of that sort of traffic—if this legislation is passed?

Mr. CHILDE. Well, of course, the only traffic they could pick up would be bulk commodities, and the exempt agricultural commodities on which they would have an opportunity then of reducing their rates still below the levels that are now in existence.

Now, I pointed out, I believe, that those are the very commodities today that are below full cost and many of them below out-of-pocket cost.

So that whatever traffic they picked up of that character would be traffic unprofitable to the railroads.

How much the reduction would be in total dollars I have not attempted to figure out, but I believe the witness who will follow me has made some such calculations and, if you would like to have the information, I could work it out myself.

Mr. HEMPHILL. Well, if he is going to give it, sir, I would not burden you.

I certainly do thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. While you are talking about that, we have heard a great deal about this but can you give us a definition of what "out-of-pocket cost" is?

Mr. CHILDE. You mean the ICC definition or the railroad definition or my definition?

The CHAIRMAN. Well, whatever definition is used.

Mr. CHILDE. Well, the one that is used by the ICC today is that an out-of-pocket cost is 80 percent——

The CHAIRMAN. Eighty?

Mr. CHILDE (continuing). Eighty percent of the freight operating expense, including what they pay for joint facilities and what they pay for payroll taxes, social security, and that sort of thing, and including also a 4-percent return on investment on part of the property, which amounts to about 65 percent. So that what they come out with is a rate level which is about 70 percent of the level which they show is necessary for the railroads to cover their full cost, including a 4-percent return.

So what out-of-pocket cost amounts to then is 70 percent of a full cost, including that low rate of return. However, the Commission does not hold even to that formula.

I have pointed out here in specific cases——

The CHAIRMAN. Well, I just wanted to get the general rule. I will find out what "out-of-pocket cost" is as related to full cost, and you have used a great deal of statistics here and showed of these 258 commodities what has been the ratios both by your statements and by your charts, and so I wanted to get, if I could, a simple definition.

Maybe I am asking too much.

Mr. CHILDE. Well, I think I have given you that.

The CHAIRMAN. I learned a long, long time ago that in ratemaking there is nothing simple, but I have got to understand what these things are, and I am trying without much success so far.

Thank you very much. Just a minute, Mr. Younger may have some questions.

Mr. YOUNGER. Mr. Childe, agreeing with the former remarks, there is a lot of material here and a lot of statistics, but very little about the inland waterways common carriers.

It is all about railroads.

Mr. CHILDE. Well, I think you will hear about the inland waterways from the next witness. I tried to concentrate on what the railroad rate structure and what the railroad proposals amount to, and while I think the effect on the waterways was as indicated by my figures, I am sure the next witness will tell you a lot more about waterways.

Mr. YOUNGER. Now, you used the figure or some figures about out-of-pocket expenses.

Where did you get those figures?

Mr. CHILDE. Out-of-pocket costs?

Mr. YOUNGER. Did you get them from the railroads?

Mr. CHILDE. Those are the Interstate Commerce Commission's compilations from the railroads' statistics.

Mr. YOUNGER. From the Interstate Commerce Commission?

Mr. CHILDE. Those are all from Interstate Commerce Commission reports, that is reports of their Cost Section.

Mr. YOUNGER. On your inland waterway carrier routes are there any sections of a route that has a higher rate than the full route where there is an intermediate section that has no competition?

Mr. CHILDE. I have never heard of such a situation. I do not think it exists.

The water carrier, I think, always charges less for a shorter haul on the same route than it would for a longer one, or at least not any more.

Mr. YOUNGER. In your first statement you would indicate that all the inland waterway common carriers make money.

Mr. CHILDE. Did I say that?

Mr. YOUNGER. Well, you did not say it in so many words, but you intimated that it was only the railroads who were losing money.

Mr. CHILDE. Well, I tried to say that the railroads are losing money, and the inland waterway carriers are losing money.

Just how much is their profit compared with the railroads' I do not know, but I think the next witness can tell you more about it.

Mr. YOUNGER. I know. We had some experience on that because the Government owned an inland waterway for some time. It cost about $1 million a year——

Mr. CHILDE. Yes, sir; I know that. They lost money, and the business was acquired by private carriers, or that is to say, a privately owned carrier, a common carrier, and that carrier has been making a profit.

I do not know about its latest years' figures, but it has been a profitable operation.

Mr. YOUNGER. You agree fundamentally with the principle that each mode of transportation ought to be protected in its inherent advantages——

Mr. CHILDE. Yes——

Mr. YOUNGER (continuing). Or inherent advantages of transportation?

Mr. CHILDE. It ought to be protected against unfair and destructive competition. Outside of that, I think it is up to them——

Mr. YOUNGER. Well, that is not what the 1958 transportation policy states.

Do you agree with the policy that was set forth in 1958 or do you not?

Mr. CHILDE. Yes, I do, and that does not apply to any bulk transportation.

It only applied to the holding up of rates by the Interstate Commerce Commission——

Mr. YOUNGER. It is very clear and concise.

It just says that each mode of transportation ought to be protected in its inherent advantages to serve the public.

Mr. CHILDE. Oh, I fully agree with that.

Mr. YOUNGER. And its inherent advantages. Now, do you believe in that principle?

Mr. CHILDE. I certainly do.

Mr. YOUNGER. Then you would be willing to give the railroads the same right that the water carriers have?

Mr. CHILDE. I will give them every right that the water carriers have except the right to unfairly compete.

I do not believe any——

Mr. YOUNGER. Then you do not believe in the policy?

Mr. CHILDE. I do not believe in unfair competition and that applies to all business.

Mr. YOUNGER. Well, you say you believe in the policy but you do not, because when you come to analyze it you say, no, that you want to have the waterways have an advantage over its competitors.

Now, if our philosophy was right in 1958, when we made that as a transportation statement——

Mr. CHILDE. I am afraid——

Mr. YOUNGER (continuing). Then it ought to be right now, and I am trying to find out how you feel about it.

And I cannot find anything in this bill which you oppose, which is 11583, that is contrary to the policy which we set forth in 1958.

Now, is there anything in this bill which is wrong as compared with that policy and, if so, where is it?

Mr. CHILDE. Yes. The thing that is wrong is that it permits unfair and destructive competition, and your 1958 amendment certainly did not do that.

Mr. YOUNGER. There is no authority in here that gives any destructive competition.

There is no authority for that.

Mr. CHILDE. Well, I believe that is the inevitable effect of it.

Mr. YOUNGER. Well now, you are jumping way ahead. You say it is in the law.

It is not in the law.

Mr. CHILDE. I am trying to look beyond the words, Mr. Congressman, and point out to you the effect.

Mr. YOUNGER. I do not get your analysis at all in saying that you believe that all the modes ought to have the right to perform to the best advantage to the shipper and in their inherent advantages or, rather, still have their inherent advantages, and if we are not doing that then we are not carrying out the policy.

Mr. CHILDE. Well, may I disagree with you on that?

The very same declaration of policy that you quote specifically declares that there should not be unfair and destructive competitive practices.

Mr. YOUNGER. Well, that is up to the courts. This law does not give the authority or it does not give any legalistic authority to go ahead and do that.

Mr. CHILDE. Well, it directs the Commission to follow that policy and the Commission, I am sorry to say, has not been doing it very thoroughly.

Mr. YOUNGER. Well, I would judge from your criticism of the ICC, and what they have permitted to be done, that it was probably worse than what the Attorney General might be willing to do if it were under his supervision.

Mr. CHILDE. I doubt that.

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

The CHAIRMAN. Well, we have heard a great deal about what the Attorney General would do and about what his responsibilities would be here.

Now, if the Attorney General's responsibility, as proposed, as I understand it, and if I am wrong I hope somebody will straighten me out on it, but as I understand the responsibility of the Attorney General, it would be under the proposal submitted by the President here to us, to take action where antitrust laws were involved.

Mr. CHILDE. That is my understanding.

The CHAIRMAN. And then there have been several references made during the course of the hearing about "Let the Attorney General do it."

I do not understand that the Attorney General would get into the ratemaking business or have anything to do with the ratemaking business, but he would have or it would be his responsibility to step in where there have been violations of the antitrust laws affecting the general public.

Now, under the proposal also, which gets me a little confused about your statement, Mr. Childe, there is the fact that the Interstate Commerce Commission would still be required, under the law, to prevent the unjust discrimination that you are talking about.

Mr. CHILDE. Well, only to the extent that it did so under the old law before it had minimum rate power, and that, as I tried to point out, was a very imperfect and inadequate method of stopping unjust discrimination.

The CHAIRMAN. Well, that is another thing that bothers me about the whole thing.

The Commission, under the law now, is supposed to do something about discriminatory practices. Well, obviously, from what you have said and from what we have observed there must be some difficult problems for the Commission.

I know they have made a determined effort to do something about it but when you have a problem that is so big that you cannot get to the bottom of the pile, much less get to the middle, then——

Mr. CHILDE. Well, I would hope——

The CHAIRMAN. The regulatory processes are just not working.

That is all there is to it, and where you have thousands upon thousands of these things coming in every day, you just cannot expect it. After all, they are human beings like we are and everybody else.

And that is the other thing that puzzles me about this whole business of making provisions for greater and greater regulatory authority, and I might say this for the benefit of everybody on all modes, where it seems to me that the big difficulty here in carrying out the policies that the Congress laid down, and evidently those the Interstate Commerce Commission tries to administer, is the procedures that we have necessarily required in order to be sure to give everyone his day in court, but it works to the point that the competitive forces cannot very well work because of the long-drawn-out delays. And that is where the one mode has the right to contest rates that another mode has, and so on, and they go to the ICC and go through all of these procedures and then they go on and on and on.

That is what we have been trying to meet for the last 4 years. We hope the Reorganization Act has helped them some.

We will get a report on it very soon to see how we are progressing on it, but the glaring example, during these hearings, has been hearing of a new method or something brand new which has come into the picture where a mode of transportation wants to provide a service with an outright new facility, and it has already been held up 8 months, and there is no end in sight yet to utilize it.

Now, that is just one example. So that is one of the things that sort of bothers me about this whole thing and about your—I think from your own viewpoint well justified—position that we should have more and more regulations.

Some people call it more and more redtape.

Mr. CHILDE. Well, may I comment on that a minute?

The CHAIRMAN. Yes, I will be glad to have somebody try to help out on it.

Mr. CHILDE. The delays of the law bothered me, too. I think they ought to be cut down.

The CHAIRMAN. They bother anybody that practices before the ICC or who are regulated by the ICC or who uses the facilities that are regulated by the ICC.

Mr. CHILDE. Well, my experience is that one of the reasons for these long-drawn-up hearings is that we do not have definite standards to measure rates by; where we fill these records with everything in the world that has not any relation at all to the controversy, and then the Commission has to use its judgment, that is what it gets down to, as to what to do about it. If we had a definite rule, such as I am advocating now, that the cost standard should be the measure of comparative rates, at least to the extent that you cannot go below cost, I think these hearings would be shortened a great deal, and we would have a precise way of going ahead and deciding these things which we have not got now.

The CHAIRMAN. Well, Mr. Childe, I think with your long experience you know that not everyone agrees on the cost method, and the figures that will come up.

I know you took yours from the ICC but I can get all kinds of arguments on what you presented here as to whether or not it is the actual fact.

Mr. CHILDE. That is true enough. We ought to have some better cost accounting, but I think we need it.

The CHAIRMAN. Well, I like that procedure. I think that is what makes us as great and strong a Nation as we are.

We have the greatest transportation system in the world and the most effective, but I am getting somewhat concerned about what is taking place with reference to the regulatory procedures, and the results that we are getting and the effects that we have along with the competitive developments which we have, which we like, and which we want to keep, if we just do not do abuse it to the point of destruction.

I think you have not touched on here a fact which we have been working on and trying to do something about over the years without much success, and that is to protect and preserve our common carrier system. We see because of these complications and many complicated problems, controversies and all, that our common carrier system is giving way to private carriers. And the more we go into this kind of complicated administration and see the results we can see where we are going to have more and more of them. That concerns me a great deal.

So I am not only concerned about the discrimination so far as rates in Arkansas or the rest of the country, but I am concerned about what has happened to our common carrier system the way we have been going the last few years, and we have got to do something about it.

Mr. CHILDE. I am concerned about it also.

It has been a concern of mine most of my life. I do not think, Mr. Chairman, that you have given Congress enough credit for what it has done to improve conditions when they got bad.

I tried to point that out briefly and right now, as conditions are growing worse, you are spending a lot of time trying to determine what you can do to prevent them from getting worse and to make them better.

That is why I am here. I only hope that what I have said will help you a little bit.

The CHAIRMAN. Well, you have presented a lot of facts and statistics, but I still am worried about discriminatory practices, the dual principle that we have of regulating part of our common carriers and letting other parts of it go.

I mean, as a matter of sound principle, we are bogging down in regulatory procedures, through the processes that we cherish and hold to, giving everybody his day in court, and we have to maintain that, and then, finally, the greatest problem in many years is that it looks as though this business is being driven to private carriers.

And I want to say to you people in the waterways operation and the air carriers, and the railroads, and the motor carriers, and all, that you are concerned about your own business as competing with those other modes, and yourselves, too, but there are two things that could happen. You would not have to worry about them or, at least, you would not worry about it.

One is to drive it into nationalization, the whole system, and the other is to drive them all into private carriers.

Mr. CHILDE. I do not believe either will happen.

The CHAIRMAN. No, it is not going to happen tomorrow or the next week, but when you survey what has been happening for 20 years that I have been here on this committee, I would hate to think what may happen in the next 20 years if we keep going in the direction we are going, and if we do not do something.

We thought in 1958 that we did something to help out, and I think we did. There are those who, because of the competitive situations, which I can appreciate and certainly understand the attitudes, and the——

Mr. CHILDE. Well, is not the question now whether the alternative of no regulation of minimum rates is better than some regulation of minimum rates?

The CHAIRMAN. Well, I have a feeling that if something could be worked out to bring about as little regulation as we can and not bog down on the regulatory procedures but yet provide safeguards for the general public and for the prevention of the things that you have expressed great fear of, we would be working toward some solution.

Mr. CHILDE. I would be for that.

The CHAIRMAN. Thank you very much.

Mr. Jacob W. Hershey.

STATEMENT OF JACOB W. HERSHEY, PRESIDENT, INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

The CHAIRMAN. Mr. Hershey is board chairman of the American Commercial Barge Line Co., of Houston, Tex., and president of the Inland Waterways Common Carriers Association.

I believe that is correct, Mr. Hershey?

Mr. HERSHEY. That is correct, Mr. Chairman.

I want to thank you and the committee for giving me an opportunity to be here this afternoon. I hope that maybe some of the questions which you asked of Mr. Childe will be made clear or the answers may be forthcoming from what I have to say.

I would like to just touch on one question which was asked, because it is capable of a finite and exact answer.

I believe Mr. Younger asked whether there were situations on the inland waterway system where a lesser charge was assessed for a shorter distance than for a—that is, a greater charge was assessed for a shorter distance than for a longer distance when the shorter one was intermediate.

This, to my knowledge, does not exist any place in the inland waterway system. In other words, the fourth section situation, as it is known in railroad operations, does not exist on the inland waterway system.

Now, these debates will revolve to a very large degree around the economic roles of the various modes of transportation, and it may be of some interest to know that my own experience covers a number of different types of transportation, the pipeline industry, both exempt and common carrier bargelines, and the trucking industry.

I began my water transportation experience as an exempt operator, and I know now that that business would benefit a good deal by regulation even though at that time I testified before the committees of Congress in opposition to elimination of any of these exemptions.

I have a rather lengthy statement, Mr. Chairman, and I do not propose, with your permission, to read it in full.

I would like to file it and I would like to highlight it, if I may.

The CHAIRMAN. Very well. Your statement will be included in the record in full.

(The statement of Mr. Jacob Hershey follows:)

STATEMENT OF J. W. HERSHEY, PRESIDENT, INLAND WATERWAYS

My name is Jacob W. Hershey, and I am board chairman of American Commercial Barge Line Co. of Houston, Tex., and Jeffersonville,, Ind. I appear here today as president of the Inland Waterways Common Carriers Association, a group of the leading common carrier bargelines operating on the Mississippi-Ohio River system and the Gulf Intracoastal Canal.

Since the debate on these measures will revolve to a very large degree around the economic roles of the various modes of transportation, it will be of interest to the committee that my own personal executive experience covers the pipeline industry, both exempt and common carrier bargelines and the trucking industry. I started my transportation career in the pipeline business working for the Pan American Pipeline Corp. I then began my river career as an exempt operator transporting bulk materials. I know this business well and I know the benefits that can come to this group through the extension of regulation. As a result of a merger of my original company with American Barge Line Co., I have detailed experience in the common carrier barge industry. At the same time, a trucking subsidiary, specializing in the hauling of automobiles, gives me insights into the trucking industry.

I appear here today as a representative of the regulated bargelines on the Mississippi-Ohio River system and the Gulf Intracoastal Canal. The members of our association, besides my own company, are as follows: Arrow Transportation Co. of Sheffield, Ala., Coyle Lines of New Orleans, Federal Barge Lines of St. Louis, Mo., John I. Hay Co. of Chicago, Ohio River Co. of Cincinnati, Ohio, the Mississippi Valley Barge Line Co. of St. Louis and Union Barge Line Corp. of Pittsburgh. Together, these companies perform approximately 80 percent of the service provided by the regulated carriers on the Mississippi River system and the Gulf Canal.

Let me summarize briefly why we believe this committee should not vote to approve H.R. 11583 and H.R. 11584. The removal of effective public control of rate minimums would result in far greater discrimination in the transportation marketplace than exists today. Trade barriers, in the form of discriminatory freight rates, higher than those now in place would develop to keep separate those areas where there is lively competition and those where there is not. We believe this to be against the public interest. We also believe that there is a reasonable alternative that is in the public interest.

The proposals before you are basically designed for the benefit of the railroad industry. We understand, indeed, that the railroads even had a hand in drafting the language of the bills. The rest of the transportation industry opposes them. It is therefore necessary for us to talk about the railroad problem as it exists today in our economy. Many of us in the transportation industry have long been seeking an equitable accommodation of the issues which divide the industry. We worked long and hard to help make the Doyle committee's recommendations commonsense compromises of the ancient problems of the transportation industry. Now these proposals come before you, and they are railroad proposals which will benefit exclusively a particular group which actually does less than half of the Nation's transportation work and damage those who do most of the work.

The railroads are asking us to believe that the transportation industry as a whole, which is in financial difficulties, can regain prosperity through a desperate and bitter rate war. Mr. Bhosnan of Southern Railway talks of rate reductions amounting to a billion dollars. Mr. Langdon of the Baltimore and Ohio says there will be considerable dislocation. Mr. Loomis reminds us that the railroad industry is forced to work for a rate of return of less than 2 percent on its investment. Economists have pointed to the obvious fact that any industry which has to work for that low a rate of return is, in effect, subsidizing its customers.

In its present financial state, the railroad industry obviously cannot afford widespread rate reductions unless compensating rate increases are made on traffic that is regarded as noncompetitive. The railroads apparently are willing to gamble on the prospect of eliminating competition through selective reductions, relying on their ability to raise rates after the competition has disappeared. Obviously such a camapign will greatly intensify present discriminatory rates to the detriment of the general public and at the same time deprive the public of a more economical means of transportation.

The question of relative efficiency of rail and barge service can be determined in several ways.

(1) Average revenues: According to the ICC, railroad average revenues are about a cent and a half a ton-mile. Barge average revenues are about one-third of a cent. Rail lines, of course, can go down below a cent and a half and operate profitably, depending on the circumstances; bargelines too can go below one-third of a cent in certain circumstances, but the difference in the average revenues is certainly indicative.

(2) Fuel consumption: Railroads consume 4 gallons per 1,000 net ton-miles; barge lines 3.15 gallons.

(3) Labor productivity: Railroads produce 3½ million ton-miles per operating employee. Bargelines produce 11 million ton-miles per operating employee.

(4) Cost of equipment: Railroads pay $320 for 1 ton of freight capacity. Bargelines pay $120.

What is the impact of this in the marketplace and on the consumer?

On the whole, the barge rate is half or less than half of the rail rate. Coarse grain is transported by barge from St. Louis to New Orleans for $2.76 a ton. The rail rate is $5.30 a ton.

Iron ore moves from New Orleans to St. Louis by barge for $2 a gross ton; the rail charge is $5.05.

Iron and steel plates move from Chicago to Houston by barge for $8.25 a ton; the rail rate is $16.20.

Sugar moves from New Orleans to Chicago by barge for $6.55 a ton; by rail for $13.10.

Sulphur moves from Galveston, Tex., to Pittsburgh by barge for $5.87 a gross ton; by rail for $14.

Ferroalloys move from Keokuk, Iowa, to Moline, Ill., for $1.38 a gross ton; by rail for $3.46.

Scrap iron moves from Chicago to New Orleans by barge for $5.66 a ton; by rail for $10 a ton.

Pig iron moves from Birmingham, Ala., to Peoria by barge for $4.35 a ton; by rail for $10.53.

Of course each and every one of these movements can be diverted to rail by selective rate reductions to below rail cost levels.

The railroads have talked at length about new techniques and new equipment which will reduce their costs and justify their promises of rate reductions. But the industry statistics prove that they have not applied their technological advances to all their customers. According to the ICC annual reports, the average revenues per ton-mile of the railroads have steadily increased over the past 20 years. In 1942, the average revenue was 9 mills per ton-mile, a little less than a cent. After 20 years of technological advance including complete dieselization and the introduction of modern classification yards and the 50-foot boxcar, the average revenue per ton-mile has increased 50 percent, rising to 1.4 cents per ton-mile or almost a cent and a half. In the same period barge overall revenues have slightly declined, per ton-mile.

The very large boats capable of handling 40,000 tons at a time, about which we have testified in previous hearings, have doubled our productivity on the lower Mississippi. This has offset rising fuel, labor, and material costs so that we are able to show a 10-percent reduction in our average revenues over a year or two ago. The barge economy is a shifting target.

As the low-cost operator on the transportation scene, we have only one fear; that a higher cost operator will be allowed to go below his costs to undercut us. Already, under the present rules, rates far below rail cost have been permitted by the Interstate Commerce Commission. Discriminatory pricing, where a low rate is permitted on traffic that is barge-competitive and a very high rate permitted elsewhere for identical service, as Mr. Childe has demonstrated, is widely practiced. This combination of discriminatory and below-cost pricing has already virtually destroyed the coastwise and intercoastal shipping industry and is daily squeezing every other low-cost water service to death. At this point, to give the railroads a license to ignore their costs, as this legislation does, is simply to sign our death warrant. The struggle becomes one of relative size and the law of the jungle will prevail. The inland barge industry would be at a 100-to-1 disadvantage based on gross revenues, and the outcome would be entirely predictable. We would be destroyed. While it might be argued that after many years of litigation under the antitrust laws, it is possible, but not at all certain, that we would recover damages, the public, in the meantime, would be deprived of the low-cost services. In the case of small companies such as ours, justice delayed is justice denied.

At the same time, there is a perfectly logical and equitable alternative to this proposed adventure in chaos. It is to adopt President Kennedy's second recommendation and to repeal the exemptions on bulk freight on the rivers, thus providing the equity so long sought by the railroads and ourselves. The railroads have until now advocated this. While exempt bargelines are in favor of the status quo, and the large shippers are in favor of any proposal that will continue the transportation industry's subsidy of their businesses, the fact is that a strong effort in this direction now might well win very widespread support from all transportation companies who are independent of shipper ownership or control. The large and very vocal shippers, not surprisingly, have a self-serving monetary interest in continued chaotic price wars.

This is our position: the public deserves relief from the present rate discriminations which have erected trade barriers throughout the country; the transportation industry clearly cannot afford a bitter and extended rate war in its present financial state—and no one doubts that this legislation will precipitate such a war.

The alternative of repeal of the exemptions is practical, offers the public much better protection from discrimination and will insure more reliable, frequent, privately owned service by all modes at fair and nondiscriminatory rates. To the extent it encourages the free flow of traffic, as advocated by Mr. Langdon, by the most economical means of transportation, it should make unnecessary the very high rates assessed against interior areas to subsidize the so-called competition-compelled rates.

Finally, we believe the extension of regulation will go a long way toward solving the problem of the growth of private carriage. We agree with the railroads that this is by far the most serious problem facing the independently owned transportation industry, just as we agree with the railroads on the need for equal treatment in rate control. The common carrier can always provide more frequent and cheaper service except in the single circumstance where a private company

has a locked-in two-way haul of its own goods. Only the very largest of the Nation's corporations normally can be expected to have enough volume to achieve this situation. But the exemptions provide the opportunity for the private operator with a one-way haul to go into the "for hire" market at uneconomic rates to cut the throats of the common carriers. Once remove the exemptions, and large blocks of traffic, now lost to private carriage, will return to the common carrier railroads, bargelines and trucklines.

We have heard a lot of fantastic statements so far in testimony from the railroads. It will be my task here to try to describe what actually goes on in the transportation marketplace. First, of course, you have heard Mr. C. E. Childe describe the pricing system of the railroads—a system unique to private enterprise. I will attempt to connect that testimony with the present proposals. I will describe the significance of the bargelines to industry and agriculture and our relative place in the economics of transportation, and why the public interest requires that low-cost water transportation be protected against uneconomic and discriminatory pricing. Finally, I will try to deal briefly with some of the individual proposals of the bills as we see them.

It is typical of the unreal approach of the railroad industry to these proposals that they do not seem to have a clear grasp of the proportions of traffic handled by the various branches of the industry. Mr. Brosnan, attempting to prove how badly off the railroads are, even went so far as to say they only handle 8 percent of the total. He omitted to mention that he included, in the total expenditures for transportation, the enormous expenditures of the public on automobile travel. But the familiar proportions should be repeated here, just to emphasize once again that the railroads account for less than half of the total workload expressed in ton-miles. A program aimed solely at benefiting them should not be at the expense of those who do most of the work.

	Percent
Railroads	43
Trucks	23
Water carriers (9.5 percent inland barge)	17
Pipelines	17

But it is when they deal with the proportion of traffic on the inland rivers handled by the regulated carriers that the railroads fall into their most serious error. They describe their decline in their proportion of the traffic handled, and the rise of the trucking industry in the normal measure of transportation service, ton-miles. But having described both these services correctly in terms of apples, they then proceed to compare apples with oranges. Barge service is not described in terms of ton-miles but of tons and the regulated bargelines are dismissed as handling only 10 percent of the traffic. This is no minor error. It distorts, beyond recognition, the true role of the regulated bargeline in the handling of traffic.

On the basis of our estimates, it may surprise you to hear that the regulated bargelines handle a larger proportion of inland water traffic than the regulated trucks control of the total traffic on the highway. For the Mississippi-Ohio-Gulf Canal system on which we operate, the ICC regulated carriers handle about 40 percent of the total traffic, measured on the basis of ton-miles. The regulated trucks, on the other hand, are said to handle 35 percent of the total highway traffic.

Why the difference between participation in tons versus ton-miles? Simply this: tonnage counted by the Corps of Engineers includes huge semimining operations where sand and gravel and oystershells and other products are taken from the bottom of the river and transported to the bank or a mile or two up and down the river to storage areas. These are entirely local operations, and there is no conceivable need to regulate them as transportation.

Obviously, the discrepancy between 40 percent and 10 percent is important because it bears directly onto the question of the chances of success of any campaign to extend regulation to presently exempt carriers. If those who handle 40 percent of the traffic are for regulation, and if you have no intention of regulating the huge purely private carrier operations, then the hard core of the independently owned exempt operators may account, as an estimate, for perhaps 20 percent or less of the total picture. And these operators may well be amenable to persuasion if proper safeguards are offered them in the form of grandfather rights. Hence, the possibility of extending regulation to the rivers which, if you look at one set of statistics, seems hopeless, may, when measured by the true yardstick of transportation service—ton-miles—be a problem which

is fundamentally different in character and far more possible of resolution to the satisfaction of everyone. We believe that extension of regulation on a basis that would be satisfactory to both independently owned exempt and common carriers is entirely possible. Despite the official defense of the status quo by certain exempt carriers, there is one objective and infallible sign that, indeed, they anticipate that regulation will be extended and may not be too unhappy at the prospect. Every exempt carrier in the business is scrambling today—and has been for the past 2 years—to place a barge in as many river ports as possible to establish his future rights under grandfather provisions. Never has the climate been so propitious for the achievements of President Kennedy's second alternative. Certainly, when they appear before you, they should be asked whether they prefer deregulation of the railroads or the extension of regulation to the rivers. We can see no logical defense of the status quo.

Our witness, Mr. C. E. Childe, has described the pricing system of the railroads in dramatic detail. Our long acquaintanceship with this fantastic rate structure dulls us to the difference between it and a normal pricing system in industry generally. Mr. Childe is saying three essential things:

1. The system is basically a discriminatory one by definition. 2. Below-cost pricing on the railroads is routine. 3. Most important, the economic theory on which the system is based is either entirely wrong or else the railroads don't know how to make it work.

The railroads are asking us to accept this proposition. Assume the largest steel company in the country is operating at 60 percent of its capacity. Assume also that the normal price for its steel is $100 a ton, and full cost is $90. From the purely selfish point of view of the steel company, discriminatory pricing of its product, if allowed, might be attractive. If permitted to cut its price to $50 a ton, below its full cost, where it had severe competition it might have a good chance of capturing all the volume. Where it had less intense competition, a cut to $85 a ton might increase its volume. Where it had no competition at all, it might charge $150 a ton. It would be no trick to maintain 100 percent capacity for the steel company. If the company was very careful that the proportion of its business at levels above cost overbalanced the proportion of its business at below cost levels, then at the end of the year the company might show a healthy net. Needless to say, no industry would be allowed to do this under the present antitrust laws.

But this is the railroad system of pricing and is allowed only because there is public control, imperfect though it is, of the rate levels to prevent abuses. Now these bills propose to remove public control of minimum prices without any change in the pricing system described above.

In his analysis, Mr. Childe demonstrates from ICC statistics, that 72 percent of rail freight in 1960 was carried at less than full cost and 22 percent at less than direct cost. He thus is suggesting that the discriminatory pricing practices and the selective rate reductions have gotten far out of hand.

But Mr. Childe goes further than this. The key rail theory is that they can take additional volume at marginal price because of their excess capacity. They claim to have such large fixed charges that an increase in volume can be carried at below full cost rates and add to their net.[1] Hence the record should show that when the railroads increase their volume, for example, 10 percent, their expenses should rise much less than 10 percent. When their traffic declines 10 percent, their expenses should, according to the theory, remain relatively constant. But Mr. Childe has examined 25 years of railroad statistics and he finds that the theory does not work out in practice. An increase of 10 percent in volume is accompanied almost exactly by a 10-percent increase in expenses. A decrease in volume of 10 percent results in a decrease in expenses of 10 percent.

Mr. Childe has presented official figures demonstrating that the theory doesn't work, or, at the very least, that the railroads don't know how to made it work.

Now let us look at the railroads whose chief executives are asking you to allow them to achieve prosperity through selective reductions of their rates.

There is the Chicago & North Western. They say they have been reducing rates as much as the ICC will allow. Not unexpectedly, this railroad has lost money in 5 of the last 6 years.

How about the Baltimore & Ohio? In 1956, a date generally believed to be the beginning of the all-out selective rate-cuting campaign, the Baltimore & Ohio

[1] In point of fact both rail and barge costs have a similar variable to fixed cost relationship, namely, approximately 60–40 percent.

Railroad had a handsome profit of $34,853,000 before taxes. In each succeeding year this profit has declined until, finally, last year the B. & O. sustained a net deficit for 1961 of $31,347,000.

How about the Southern Railway system? There's a railroad which makes a profit. For the moment it is profitable, but the same trend is clearly marked. Note the following figures from the ICC records:

	1955	1960	Percent 1960 of 1955
Net investment in transportation property, including materials, supplies, and cash (thousands)	$810,656	$869,960	107.3
Net railway operating income (thousands)	$63,759	$42,222	66.2
Rate of return (percent)	7.86	4.85	61.7
Freight revenue (thousands)	$324,076	$291,842	90.1
Revenue ton-miles (millions)	21,849	19,582	89.6
Revenue per ton-mile (mills)	14.83	14.90	100.5

Property investment has increased 7 percent, but the rate of return over the 5-year period is down 38 percent. Between 1955 and 1960, the Commission granted rate increases of 20 percent which the Southern applied on noncompetitive traffic. But these increases were just about exactly offset by selective rate reductions which left its revenues per ton-mile virtually unchanged. A heavy campaign of rate reductions promised by Mr. Brosnan would quickly change the profit to a loss.

What clearer demonstration of the commonsense conclusion with which we began—the promised rate reductions of the railroads will either be offset by increases on noncompetitive traffic or will result in disastrous loss of revenues for the railroads. Clearly, the road to prosperity is not through rate reductions.

A year and a half ago, Samuel A. Towne, Chief of the ICC's Cost Section, had this to say about the trend of affairs in the railroad industry in a speech to railroad men. He was commenting on his analysis, based on 1958 figures, that 20 percent of rail tonnage failed to meet out-of-pocket costs and 66 percent failed to meet full costs. As Mr. Childe has demonstrated, the latest figures show that this picture is now worse.

Mr. Towne said: "Recently some railroad men were discussing cost matters with me and as the meeting came to an end, I asked how their operations were at the present time. One replied, 'There is nothing wrong with the present situation that additional volume would not help.' I am afraid this is a characteristic answer, but it does not go to the heart of the problem. The desired additional volume must be associated with a price structure which insures the making of a profit."

What conclusion would an objective businessman make today? The removal of public control of minimum rates as proposed by the present legislation would be a disaster to the railroad industry, leading, as it inevitably will, to further rate-cutting sprees.

The railroads themselves are beginning to be aware that there is a major problem of pricing within their own ranks. Mr. Jervis Langdon, at the time vice president and general counsel of the railroad of which he is now president, addressed a letter to the law committee of the Association of American Railroads recommending an elaborate program of cost research. In his letter of recommendation, dated April 5, 1961, Mr. Langdon said: "On the average railroad, as is well known, only the crudest types of cost techniques are employed today." Mr. Langdon's recommendation was adopted and the study is still going on.

Surely it should be obvious that the railroads cannot be given a license to undercut the lower cost bargelines and that some objective standards of cost measurement must be established.

On the issue of both cost and discrimination, railroad men often describe their pricing system in terms that no competitor would dare to use. Here is a frank passage from a foreword by Mr. James G. Lyne, editor of Railway Age, to a book on railroad costs. The book was published this year. In the light of Mr. Childe's researches, Mr. Towne's statement and Mr. Langdon's admission, is there any doubt that the system Mr. Lyne is describing as applying to the late 1920's is in reality a description of the railroad pricing system today.

"The fact is that, as railroads were operated until the end of the 1920's, the need for detailed cost information was much less than urgent. Railroads were required to provide a great deal of service that was obviously unprofitable. They

accepted the obligation, without complaint, with its corollary that they were permitted large profit margins on traffic that could 'bear' such rates. The shippers of such commodities could not escape paying the prescribed rates—since, usually, no alternative form of transport was available to them.

"Under such circumstances, just what would have been the use of knowledge of detailed costs? Such information would certainly not have persuaded legislators or regulatory authorities to allow the railroads to increase their charges on basic commodities of low value in relation to weight. Revelation of the generous profit margins on the transportation of commodities of high value would (it was feared) have given shippers of such products evidence with which to support contentions that rates on their goods were 'unreasonable.'

"Better let sleeping dogs lie. As long as there was a substantial black figure on the bottom line of the income account, why worry (especially in figures available to the curious public) about the details of how that attractive net figure was attained?"

We are indebted to Prof. John R. Meyer of Harvard for this unequivocal statement following his description of the railroad pricing system in his book, "Competition in the Transportation Industries":

"The railroad rate structure thus constitutes a most elaborate system of price discrimination."

I quote this to highlight some of the absurdities the railroads have been talking in these hearings about their plans to eliminate discrimination in the rate structure. They have no such plans.

What could be more transparent doubletalk than the following from Mr. Heineman's testimony: "We have great difficulty in lowering rates. The Commission tends to permit rate reductions with less difficulty, not without difficulty, but with less difficulty, where we may demonstrate that the lower rate is what we might call competition-compelled or water-compelled."

Mr. Heineman went on: "The consequence of this is that, being human, having only so much time, only so many lawyers, only so many accountants on our staff, that we do tend to move in the area of rate reductions where there is water-compelled differentials and the like."

He went on to say that "the inequalities * * * will tend to disappear far more rapidly" if the current bill is passed.

In other words, he says that the ICC prevents him from cutting his rates in inland areas. Nothing could be further from the truth.

The true refutation of this statement is highlighted by testimony by the ICC Chairman in 1958. At that time, the Commission noted that 98.3 percent of the rail tariffs "became effective without protest or restraint by the Commission. Of the remaining 1.7 percent which were protested, about 85 percent were nevertheless permitted to go into effect without suspension. This left about one-fourth of 1 percent of the total in which the voluntary action of the carriers was restrained by the Commission's exercise of its investigation and its suspension powers. In almost one-half of the cases suspended pending investigation, the proposed rates were approved upon completion of the proceedings. And so, instead of the spector of a meddling Government unwarrantably preventing what the carriers regard as the proper exercise of their managerial responsibilities, we find that a bare one-eighth of 1 percent of their proposals are condemned."

A check with the Commission would undoubtedly demonstrate that this situation has not changed. It is, therefore, ludicrous and misleading for Mr. Heineman to suggest that rate reductions at inland points would be held up by the Commission.

Our position on this question of discriminatory rates is a simple and logical one. We object only when the rail rate is unprofitable to the railroad and when a river competitive point is being singled out for a selective reduction.

If you will recall the example of coal to Tampa, Fla., from the two mine origin points of Birmingham, Ala., and Lake City, Tenn., as described by Mr. Childe. If the rate is profitable to Tampa, as Mr. Brosnan claims, because he has testified that the Southern Railway "is not interested in any business that we can't handle at a profit," then what justification does he have for gouging the people of Atlanta and Jacksonville and all the cities in between? If the rate at Tampa is unprofitable, then, in our view, it is unfair competition against the water carriers who could profitably bring coal from Kentucky via the Mississippi and the gulf canal.

Or take Mr. Jervis Langdon's statement that he won't permit discriminatory rates if he can help it, and his boast that the B. & O. takes more independent action than any other railroad in rate matters.

Let us look at the situation on grain rates out of Pittsburgh. Here the three major eastern railroads, the B. & O., the Pennsylvania, and the New York Central, have been sitting for months on a request from the city of Pittsburgh, the State of Pennsylvania, the Allegheny County Port Authority, and a major milling establishment, the Bay State Milling Co. of Boston, for equalization of the Pittsburgh and Buffalo rates to the east.

In one case, the grain comes in from the Great Lakes by lake steamer, in the other, the grain could come in to Pittsburgh by barge. But the railroads have for years built a trade barrier around Pittsburgh to prevent the development of a milling center there.

This is no small matter to the Pittsburgh area, but they are helpless in the face of the railroad decision, so far, that the milling industry will be in Buffalo and not in Pittsburgh. By what right, with the Bay State Milling Co. anxious to build a mill at Pittsburgh do the railroads decide that they will erect a rate barrier to prevent Pittsburgh grain products from reaching New York, Philadelphia, Baltimore, and Washington, although those cities are actually closer to Pittsburgh than is Buffalo?

How can you describe a rate of 46 to 49 cents per hundredweight from Pittsburgh to the eastern consuming centers as anything but a trade barrier when compared to the 37½ cents per hundredweight for the longer haul from Buffalo? Would the railroads lose money at 37½ cents per hundredweight? If they don't lose money on the rate from Buffalo, which is more distant, how can they lose money by providing shorter haul service from Pittsburgh?

The current proposal has been under study since last October. Hearings have been held. Buffalo, of course, opposes the rate, but Mr. Langdon's hometown of Baltimore is much in favor of the proposal, and, indeed, Baltimore's representative testified that the 37½-cent rate for Pittsburgh is too high. Why doesn't Mr. Langdon take independent action in this situation?

If these were isolated instances of discrimination, the railroads could perhaps shrug them off. But Professor Meyer's comment is a fact; railroad rates are by definition a vast discriminatory structure. Some years ago, in my State of Texas, my company introduced barge transportation of newsprint to Houston, saving the newspapers almost $7 per ton on the newsprint they bought from Calhoun, Tenn.

The railroads tried to meet our rate and were perfectly willing to go below their costs to drive us out of the business. We put up a vigorous protest, as did some of the inland newspapers such as the Dallas Morning News.

In its protest to the ICC, the News said: "* * * We are not willing to continue to pay higher rates in order to provide a war chest out of which the railroads arm themselves to battle for business which inherently belongs to a cheaper type of transportation. If the $10.40 rate is fair and reasonable for Houston, it should be the same for a closer destination such as Dallas."

But the Dallas Morning News could not avoid paying the prescribed rates because, as Mr. Lyne so delicately put it, "no alternative form of transport was available to them." And these high rates are being charged newspapers in the landlocked areas to this day.

But a final objective test of the fraudulent nature of the promise of the railroad witnesses on the question of the elimination of discrimination in the rate structure is easy to calculate.

A principal category listed among the 27 percent of the tonnage which subsidizes the 72 percent of the rail traffic on which the rates do not meet full cost is iron and steel. Most iron and steel products are carried at rates far above full cost.

Between Portsmouth, Ohio, and Evansville, Ind., along the Ohio River, the railroads recently proposed a rate of $4.55 per ton on iron and steel sheets. We had been carrying about 12,000 tons a year by barge and began our investigation to discover whether we had grounds to protest or not. We noted that the full cost on the movement as developed from ICC cost data was $4.18; hence the proposed rate was well above full cost. The common carrier bargelines made no protest, and the rate has gone in. Now, if that single iron and steel product, among the dozens of steel products carried by the railroads, were to set the rate level for the railroads on steel sheets everywhere, the railroad industry would suffer a reduction annually of $50 million.

Let us take the Southern Railway's grain rate case which Mr. Brosnan has been arguing before this committee as well as before the ICC. A rate cut of 66 percent (from $10.50 for a typical haul such as St. Louis to Gainesville, Ga., to less than $4) is proposed. The bargelines have entered evidence to show that this proposed rate is below the out-of-pocket cost of the Southern. At the same time, we have demonstrated that the barge-rail route via Chattanooga and other points on the Tennessee River from your shipping areas is the low-cost method of delivering grain into the Southeast. Hence, we argue that a reduction of rates to the levels proposed by the Southern represents destructive competition designed to destroy barge transportation on the Tennessee River.

But we were curious to know what would happen if similar rates as those proposed by the Southern were introduced by all the railroads. The answer is illuminating. If, as the railroad witnesses have declared, they plan no discrimination in rail rates, then, of course, the proposed rates will, if the witnesses are sincere, become standard for the industry. A simple calculation shows the effect: the railroads as a whole would lose $215,496,457 in revenues on existing traffic, according to the latest available ICC statistics. The rate level so achieved would then fail by $8,632,457 to meet the rail out-of-pocket costs of handling the traffic. And, of course, if the railroads then managed to divert the entire tonnage handled by the bargelines—some 5,332,000 tons a year—they would simply add to their deficits. Is it likely that the railroads are sincere in their promises?

Or take that Tampa coal rate. If the railroads, as they have solemnly promised, plan to eliminate discrimination in the handling of coal, they should reduce all their coal rates to the level of the Tampa rate. If they did this, they would have to give up revenues amounting to $256 million. Are they likely to do this?

So, on only three items—a steel product, grain, and coal—eliminating discrimination would mean wiping out revenues equaling almost the entire net profit of the railroad industry. Obviously, the railroad witnesses are trying to mislead you.

One test of their sincerity would be to write into a piece of legislation a proposal to strengthen section 3 of the Interstate Commerce Act which Mr. Childe has demonstrated has failed to protect the public from railroad rate discrimination. If the railroads are sincere that, to quote Mr. Brosnan, "My company is determined to give every inland town the rate advantages now enjoyed by the waterway ports," they should be quite willing to have you write this into the law. Both Mr. Heineman and Mr. Langdon specifically adopted Mr. Brosnan's testimony on this matter. Mr. Langdon went further and said he knew of no railroad that would not adopt Mr. Brosnan's position. If this is correct, it would be interesting to ask them whether they would be willing to translate this promise into binding legislation.

So far I have dealt extensively with the absurdity of removing public control of minimum rates. We have demonstrated that the railroad industry pricing system is actually the type of pricing system that a monopoly would impose. It assesses charges based on the ability of the customer to pay and particularly based on the availability of alternative means of transport.

The role of the inland bargelines, during the past 20 years particularly, has been to break up this monopoly pricing system throughout the half of the Nation served by the Mississippi River system.

Now, the critical question here is the question of cost of service. We were amazed to read in the President's message how lightly this issue is passed over. The message simply concedes that "considerable research and analysis, going far beyond our present findings, will be required before we know enough about the costs and other characteristics of various forms of transportation to guarantee the achievement of these objectives in full. In the meantime, it is clear that the following fundamental reforms in our transportation policy are needed now."

Cost of service is the most critical factor and the one where the railroads like to promote the most confusion. Certainly, if you ignore the cost of providing the service, you can undercut anybody temporarily. Or if you have a theory that you can ignore your overhead and fixed charges and just charge the strictly added cost of handling the traffic, you can undercut suppliers of goods and services who include overhead and other costs in their charges.

On the subject of costs, much has been said about the "integral train" moving like a "ship on the rails." This proposal has been around for years. But one way or another the answer on the integral train is always the same. It assumes that the only costs assessed to the train will be the cost of purchasing the equip-

ment, and the added cost of running it on the rails. When the railroads assess to the "integral train" a fair share of the railroad overhead, the advantages disappear into thin air. But as a propaganda notion to delude the public into thinking the railroads have made a technological advance, the phrase "integral train" is a good one. However, the extent of any difference between an integral train and the full trainloads on ore and coal that the railroads have been running for decades is at best very difficult to evaluate.

Relative cost of the different modes should be an object fact beyond dispute. Surely this committee would not recommend to the passage of a law which would have the effect of putting out of business a lower cost means of transportation without establishing first on a fair and generally agreed basis the cost relationship between the competing modes. The admission that no agreed basis exists for determining relative costs would seem to us, more than any one point, to invalidate any proposal to take public controls off minimum rates.

You are familiar with the remarkable reductions in the electricity rates per kilowatt hour owing to the vigorous engineering research of the electricity industry. Low-cost transportation of steam coal by barge has played a part in this reduction which has a significance for everyone who pays a light bill.

We have contributed to the increasing productivity of the coal industry, we have been a major factor in keeping the products of the Midwest competitive in the foreign market, and, above all, as I noted earlier, we have been a major factor in breaking monopoly pricing of the railroads. This is how that has worked, in the words of the Chicago Coal Merchants Association. Testifying in 1960, in the ICC hearings in opposition to the acquisition by two railroads of a Mississippi bargeline, Mr. Elmer Berg, executive secretary of the association, had this to say:

"Since the year 1946 there have been eight general freight rate increases on coal, not including the several interim increases which were later consolidated into the final increase. These increases were allowed in the following ex parte proceedings: Ex parte 115, ex parte 162, ex parte 166, ex parte 168, ex parte 175, ex parte 196, ex parte 206, and ex parte 212. Before the first of the general increases went into effect, the rate on southern Illinois coal to Chicago was $1.95 per ton. After the ex parte increases set forth above, the rate was $3.73 per ton, an increase of $1.78 per ton, or approximately 91 percent. With respect to west Kentucky coal, the rate was originally $2.30 per ton. After the ex parte increases, the rate became $4.10 per ton, an increase of $1.80 per ton, or approximately 78 percent.

"With the advent of barge competition there was a definite slowing down of rail freight increases. The last rail freight increase was authorized in February 1958. In September 1958 to meet the barge competition, the railroads established a 50 cents per ton reduction for the volume shipments of 1,000 tons or more, which is still in effect.

"In the opinion of the Chicago Coal Merchants Association, based upon the experience referred to above, barge competition had a very salutary effect on coal freight rates. Barge competition was largely responsible for stopping the numerous periodic freight increases and, in fact, was the cause of the volume reduction referred to above."

These are the facts of the transportation marketplace, and wherever you go along the thousands of miles of the Nation's waterways, you will find confirmation of the strong influence of water competition in the final price paid by the consumer for the products every one of us buys. No one in the transportation industry doubts that this legislation would have the effect of permitting the railroads to destroy their lower cost competitors, regardless of how the words are sugar coated. The results of this for the consumer will be very drastic.

There will be other witnesses to give you a more technical discussion of the shortcomings of the proposed bills. I will here only try to summarize briefly our chief problems with them.

First, on H.R. 11583, we were most interested in the proposal to control predatory and discriminatory pricing through the Clayton Act. The language proposed does not do the job.

Our association has made a considerable study of whether or not the application of antitrust laws would be helpful as a way of strengthening the present Interstate Commerce Act. We started at the point we consider to be the one of chief public interest and potential public benefit, the discriminatory nature of the railroad pricing system.

Some of the research we conducted was later embodied in a bill which is currently before the Senate, S. 1089, which has been vigorously opposed by the railroads, in speeches and industry statements. The proposal is to add to section 3 of the Interstate Commerce Act, the section dealing with discrimination, phrasing similar to that found in the Robinson-Patman Act.

We simply suggested that any rate reduction that would be considered discriminatory in the absence of competition shall be unlawful "where the effect thereof may be substantially to lessen competition, or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with said carrier."

This is close to Robinson-Patman Act language which says that it shall be illegal "to discriminate in price between purchasers of commodities of like grade and quality * * * where the effect of such discrimination may be substantially to lessen competition."

We learn from Mr. Loevinger's testimony that the Robinson-Patman Act would probably not be among the "applicable" antitrust laws as the word "applicable" is used in 11583. We learn from Mr. Heineman that he wants no overlapping between the Justice Department's authority over discriminatory prices and that of the Interstate Commerce Act. We are not surprised. The ICC has not been entirely effective in controlling discrimination. "Let us not," he is saying, "risk applying a statute that might be effective."

Hence the chief public protection of the antitrust laws—public control of discrimination—is left out of the legislation before you. What's left, we believe, is no protection at all. Mr. Loevinger tried very hard to convince you that the injunction procedures of the courts would be ample protection. And yet, if this is true, why is the administration advocating a type of suspension proceeding for the Federal Trade Commission as recommended earlier this year in a Presidential message? If, in ordinary FTC cases, the injunctive provisions are not sufficient, what hope would there be for us under H.R. 11583?

In the law as proposed, the railroads would not be subject to criminal proceedings. Hence, the Antitrust Division, as we understand the proposal, could not use grand jury subpenas to obtain prefiling evidence and testimony. The Federal Trade Commission would have no jurisdiction over transportation. Thus, there would be no way for a court to establish, for example, simple cost facts to indicate whether below-cost pricing existed.

One very brief view on H.R. 11584. The proposal to encourage experimental rates sounds very attractive on the surface. But the experience in the transportation marketplace is that a railroad experimental rate—for example, the railroad guaranteed rate which has been struck down by the ICC—would simply be used as another device to establish monopolistic-type pricing.

The section which purports to encourage joint rates and through routes hardly meets the necessity facing Congress for legislation that will put real teeth in the present provisions of the law requiring joint rates. For 20 years, the railroads have defied the plainly stated order of Congress to encourage the coordination of service between water and rail carriers. The water carriers have carried the issue to the Supreme Court several times in that period and won our cases every time, to no avail. The shipper is still, as you will hear in more detail from other witnesses, unable to buy rail service at reasonable rates to and from port cities if there is an onward water haul. This refusal to join rail economy to the economy of water transportaiton is a principal reason for high rates in inland areas. The national railroad conspiracy to circumvent congressional policy requiring that the low-cost benefits of water transportation be permitted to spread inland through the establishment of reasonably related water-rail routes must be broken up. It will not be through the presently proposed legislation.

In summary, I would like to state what is perhaps, by now, obvious. Far from being overregulated and restrained in the exercise of pricing judgments, the railroads have much greater pricing freedom than is to be found in industry generally. They can discriminate among their customers without really effective interference. And whatever Mr. Langdon may say about the unwisdom of doing so, when the customer has no alternative means of transportation, they do not hesitate now to take advantage of their local monopolistic opportunities. They have no hesitancy in putting in a rate far below cost to grab traffic from their lower-cost competitors and say they believe, despite all the evidence to the contrary, that this actually helps their position.

As usual, the railroads are here before you quite alone in the transportation industry, despite strenuous efforts on the part of the truckers and the water

carriers through the Transportation Association of America and the Doyle committee, in the past 2 years, to meet them half way and stop this ridiculous annual performance where one-half of the transportation industry cancels out what the other half has to say. There are wide areas where the arilroads and the water carriers and the truckers could reach agreement—and one large area is bringing about equality of regulation through extension of regulation. The truckers are for it, the water carriers are increasingly for it; the railroads were for it as recently as last January. Now suddenly these bills have revived dreams of railroad monopoly.

To the complaint that the large shippers are against regulation, the answer is that they have always been against regulation. But they do not necessarily speak either for the small shippers or for the public interest.

And finally we hear, as we heard in 1940, that regulation means increased rates. It shouldn't and it doesn't. The electric utility industry is fully regulated and, as noted before, has an unbroken record of reducing prices to its consumers as its productivity improved. The common carrier barge lines have the same record. The transportation industry as a whole, relieved of the complete chaos of partial regulation, would undoubtedly show the same results.

Our positive suggestion is simple. Establish fair standards to test the relative cost advantages in a given situation. Encourage, as Mr. Langdon suggests, the traffic to move by the means that is most economical. Control the chiseling which inevitably results from inequality in regulation by extending regulation equally to each mode. Control the uneconomic invasion of the "for hire" field by private carriers. Encourage the development of a cost-oriented pricing system using the same or similar standards of cost as are used in industry generally. It seems to us that this prescription would return the transportation industry to reasonable prosperity and go a long way toward ending the discriminations now so prevalent.

All this cannot be accomplished overnight. But a first step would seem to us to be the repeal of the exemptions. On the rivers, this step is now possible.

The issue before you is the same as it was in 1939 and 1940 when the Congress passed the original act regulating water carriers. At that time, Senator Wheeler explained the congressional intent succinctly: "All we say is, 'if you are competing with a common carrier which is regulated, you must be regulated. If you are not competing, you are in the clear and you are exempt.' It seems to me that is all there is to it."

That is still all there is to it.

Deregulation of everyone will lead to the bitterest rate war in history. And when you come to pick up the pieces afterward, the public will have lost some of its most useful servants.

Mr. HERSHEY. The members of the association which I represent are as follows: Arrow Transportation Co. of Sheffield, Ala.; Coyle Lines of New Orleans; Federal Barge Lines of St. Louis, Mo.; John I. Hay Co. of Chicago; Ohio River Co. of Cincinnati, Ohio; The Mississippi Valley Barge Line Co. of St. Louis; and The Union Barge Line Corp. of Pittsburgh.

Together, these companies perform——

The CHAIRMAN. Now, while you are right there, how many companies is that?

Mr. HERSHEY. Those are eight companies, Mr. Chairman, and they account for about 80 percent of the common carrier service provided on the Mississippi River system, and the Gulf Intercoastal Canal.

The CHAIRMAN. In other words, eight companies——

Mr. HERSHEY. There are eight companies, and they provide about 80 percent of the service provided by the common carrier group on the Mississippi River system and the Gulf Intercoastal Canal.

The CHAIRMAN. Now, are these eight companies under regulation?

Mr. HERSHEY. Yes, sir, they are.

The CHAIRMAN. That is insofar as class commodities are concerned or class cargoes?

Mr. HERSHEY. They are under regulation with respect to those commodities which are specifically regulated by the Interstate Commerce Act.

Most of these companies also perform in a dual role as an exempt carrier.

This has been a development of somewhat recent years which has been occasioned by the competitive influences of the many hundreds of exempted private carriers which are now operating on the waterways.

The CHAIRMAN. That means that this eight companies also are exempted completely from agricultural commodities——

Mr. HERSHEY. They are exempted from bulk agricultural commodities provided they move them in accordance with the specific mandate of the Interstate Commerce Act, which relates to no more than three such commodities, and certain mixing arrangements which I think you are familiar with.

The CHAIRMAN. In order to get these preliminary questions straight, how do you distinguish between bulk agricultural hauls and other hauls?

Mr. HERSHEY. Well, bulk grain would clearly be an exempt commodity.

The CHAIRMAN. What about a bale of cotton?

Mr. HERSHEY. A bale of cotton would definitely not be an exempt commodity. It would be a regulated commodity.

The CHAIRMAN. Now, are these eight companies that operate in the waterways barge companies, regulated as to your haul of bales of cotton?

Mr. HERSHEY. Yes, they are.

The CHAIRMAN. Are there any kind of barge operations that are permitted to haul, say, bales of cotton that would be exempt?

Mr. HERSHEY. Let me say that I know of no baled cotton moving, because the railroads have successfully driven that commodity off of the water lines many, many years ago, but someone who owned a bargeload of cotton could still barge his own cotton, but that would be the only way that I would know that cotton could move on the waterways exempt.

The CHAIRMAN. Well, let us use some other commodity then that would not be a bulk agricultural commodity.

Mr. HERSHEY. But you would like to confine this part of the discussion to bulk?

The CHAIRMAN. No, I am just trying to find out what is a bulk commodity and what is not a bulk commodity.

Mr. HERSHEY. Yes, that is generally defined as something that is subject to mark or count or moved in wrappers.

The CHAIRMAN. Well, so far as an agricultural product is concerned, what kind of a product would not be considered bulk?

Mr. HERSHEY. Well, your cotton certainly is one——

The CHAIRMAN. Well, you say you do not haul that on water. I mean something you do haul.

Mr. HERSHEY. Sacked grain would be one.

The CHAIRMAN. Sacked grain?

Mr. HERSHEY. Yes, grain in sacks would be regulated.

The CHAIRMAN. What about fertilizer?

Mr. HERSHEY. Fertilizer in sacks would be regulated. Fertilizer in bulk would not be regulated.

The CHAIRMAN. It would not be?

All right, I just wanted to get that distinction.

Mr. HERSHEY. At the outset I would like to say that the common carriers whom I represent agree entirely with the principle enunciated in H.R. 11583 and enunciated by the President with respect to the equality of treatment of bulk commodities by various modes.

We agree that it is unfair and unwise for the railroads to suffer regulation of bulk commodities so long as other modes of transportation have the privilege of transporting these commodities without regulation.

Where we sharply disagree, however, is in the method of how to effect this equality.

As my testimony will indicate, and I hope persuade to some extent, we believe that the way of achieving this equality is by intelligent regulation of the bulk commodities which move by all modes. The removal of effective public control of rate minimums would result in far greater discrimination in the transportation marketplace than exists today.

Trade barriers in the form of discriminatory freight rates, other than those now in place and, as described by Mr. Childe and as indicated in those charts, would develop to keep separate those areas where there is lively competition and those where there is not.

We believe this to be against the public interest. We also believe that there is a reasonable alternative that is in the public interest.

The proposals before you are basically designed for the benefit of the railroad industry. It can and should be called a railroad bill.

The rest of the transportation industry opposes the bill. No truckers support it. No pipe lines support it. No steamship lines support it and no lake carriers and no barge lines support it.

This makes it necessary for me to talk about the railroad problem, and I do it with a good deal of reluctance because, obviously, my qualifications are better to talk about barges or even trucks than they are about the railroads, but I see no way of attacking the problem without talking about the railroad problem.

The railroads are asking us to believe that the transportation industry as a whole, which is in financial difficulties, can regain prosperity through a desperate and bitter rate war.

Mr. Brosnan, of the Southern Railway, talks of rate reductions amounting to a billion dollars. Mr. Langdon, of the B. & O., says that there will be considerable dislocation.

And Mr. Loomis reminds us that the railroad industry is forced to work for a rate of return of less than 2 percent on its investment.

Economists have pointed to the obvious fact that any industry which has to work for that low a rate of return is, in effect, subsidizing its customers.

Now, I would like to say a word here about out-of-pocket costs, Mr. Chairman, which you questioned Mr. Childe about.

I could no more give you a mathematical definition of out-of-pocket costs than he can or anyone can, but I can say one thing about it.

An out-of-pocket cost is a cost which, if you charge just that as a freight rate or as the price of anything you sell, will cause you eventually to go bankrupt.

And I do not believe that there is a great deal of argument on that score or division of opinion on the part of practical businessmen.

Now, in its present financial state, the railroad industry cannot afford widespread rate reductions unless compensation rate increases are made on traffic that is regarded as noncompetitive.

The railroads apparently are willing to gamble on the prospect of eliminating competition through selective reductions, relying on their ability to raise rates after the competition has disappeared.

Obviously such a campaign will greatly intensify present discriminatory rates to the detriment of the general public, and at the same time deprive the public of a more economical means of transportation.

Now, when I use the phrase "economical means of transportation" I should immediately talk about the relative economy and efficiency of rail and barge services. This could be determined in several ways, and I can irrefutably demolish the railroad contention that they are the low-cost carrier.

First, I would like to deal with average prices.

According to the ICC railroad average revenues are about a cent and a half a ton-mile. Barge average revenues are about one-third of a cent.

Rail lines, of course, can go down below a cent and a half and operate profitable, depending on the circumstances.

Barge lines, too, can go below one-third of a cent in certain circumstances but the difference in the average revenues is certainly indicative.

Let's look at the question of fuel consumption.

Railroads consume 4 gallons per 1,000 net ton-miles and barge lines consume 3.15 gallons.

On labor productivity: Railroads produce 3½ million ton-miles per operating employee.

Bargelines produce 11 million ton-miles per operating employee, more than three times as much.

On the cost of equipment, railroads pay $320 for 1 ton of freight capacity. The bargelines pay $120.

Now, this should have an important and helpful effect on the relative costs in prices to the consumer, and they do.

Coarse grain, for instance, is transported by barge from St. Louis to New Orleans for $2.76 a ton. The railway is $5.50 a ton.

Iron ore moves from New Orleans to St. Louis by barge for $2 a gross ton, and the rail charge is $5.05.

Iron and steel plates move from Chicago to Houston by barge for $8.25 a ton. The rail rate is $16.20.

I will not enumerate the others but they go on and on, and you have sugar, sulfur, ferroalloys, pig iron, and many others.

The railroads have talked at length about new techniques and new equipment which will reduce their costs and justify their promise of rate reductions.

But the industry statistics prove that they have not applied their technological advances to all their customers.

According to the ICC annual report, the average revenues per ton-mile of the railroads have steadily increased over the past 20 years. In 1942, the average revenue was 9 mills per ton-mile, a little less than a cent. After 20 years of technological advance including complete

dieselization and the introduction of modern classification yards and the 50-foot boxcar, the average revenue per ton-mile has increased 50 percent, rising to 1.4 cents per ton-mile or almost a cent and a half. In the same period barge overall revenues have slightly declined, per ton-mile.

The very large boats capable of handling 40,000 tons at a time, about which we have testified in previous hearings, have doubled our productivity on the lower Mississippi. This has offset rising fuel, labor, and material costs so that we are able to show a 10-percent reduction in our average revenues over a year or two ago. The barge economy is a shifting target.

As the low-cost operator on the transportation scene, we have only one fear; that a higher cost operator will be allowed to go below his costs to undercut us. Already, under the present rules, rates far below rail cost have been permitted by the Interstate Commerce Commission. Discriminatory pricing, where a low rate is permitted on traffic that is barge competitive and a very high rate permitted elsewhere for identical service, as Mr. Childe has demonstrated, is widely practiced. This combination of discriminatory and below-cost pricing has already virtually destroyed the coastwise and intercoastal shipping industry and is daily squeezing ever other low-cost water service to death. At this point, to give the railroads a license to ignore their costs, as this legislation does, is simply to sign our death warrant. The struggle becomes one of relative size rather than relative efficiency and the law of the jungle will prevail. The inland barge industry would be at a 100-to-1 disadvantage based on gross revenues, and the outcome would be entirely predictable. We would be destroyed. While it might be argued that after many years of litigation under the antitrust laws, it is possible, but not at all certain, that we would recover damages, the public, in the meantime, would be deprived of the low-cost services. In the case of small companies such as ours, justice delayed is justice denied.

At the same time, there is a perfectly logical and equitable alternative to this proposed adventure in chaos. It is to adopt President Kennedy's second recommendation and to repeal the exemptions on bulk freight on the rivers, thus providing the equity so long sought by the railroads and ourselves. The railroads have until now advocated this. While exempt bargelines are in favor of the status quo, and the large shippers, many of whom control exempt bargelines, are in favor of any proposal that will continue the transportation industry's subsidy of their businesses, the fact is that a strong effort in this direction now might well win very widespread support from all transportation companies who are independent of shipper ownership or control. The large and very vocal shippers, not suprisingly, have a self-serving monetary interest in continued chaotic price wars.

This is our position: the public deserves relief from the present rate discriminations which have erected trade barriers throughout the country; the transportation industry clearly cannot afford a bitter and extended rate war in its present financial state—and no one doubts that this legislation will precipitate such a war.

The alternative of repeal of the exemptions is practical, offers the public much better protection from discrimination and will insure more reliable, frequent, privately owned service by all modes at fair and nondiscriminatory rates. To the extent it encourages the free flow

of traffic, as advocated by Mr. Langdon, by the most economical means of transportation, it should make unnecessary the very high rates assessed against interior areas to subsidize the so-called competition compelled rates.

Finally, we believe the extension of regulations will go a long way toward solving the problem of the growth of private carriage. We agree with the railroads that this is by far the most serious problem facing the independently owned transportation industry, just as we agree with the railroads on the need for equal treatment in rate control. The common carrier can always provide more frequent and cheaper service except in the single circumstance where a private company has a locked-in two-way haul of its own goods. Only the very large and the very vocal shippers of the Nation's corporations normally can be expected to have enough volume to achieve this situation. But the exemptions provide the opportunity for the private operator with a one-way haul to go into the "for hire" market at uneconomic rates to cut the throats of the common carriers. Once remove the exemptions, and large blocks of traffic, now lost to private carriage, will return to the common carrier railroads, bargelines, and trucklines.

It is typical of the unreal approach of the railroad industry to these proposals that they do not seem to have a clear grasp of the proportions of traffic handled by the various branches of the industry. Mr. Brosnan, attempting to prove how badly off the railroads are, even went so far as to say they only handle 8 percent of the total freight and passengers. He omitted to mention that he included, in the total expenditures for transportation, the enormous expenditures of the public on automobile travel, yet when the railroad propaganda runs to the indispensability they speak of handling about one-half of the total intercity ton-miles. But the familiar proportions should be repeated here, just to emphasize once again that the railroads account for less than half of the total workload expressed in ton-miles. A program aimed solely at benefiting them should not be at the expense of those who do most of the work. The figures are in percentages of total intercity freight ton-miles: Railroads, 43 percent; trucks, 23 percent; water carriers, 17 percent, of which 9.5 percent is accounted for by the inland barge industry; and pipelines, 17 percent.

But it is when they deal with the proportion of traffic on the inland rivers handled by the regulated carriers that the railroads fall into their most serious statistical error. They describe their decline in their proportion of the traffic handled, and the rise of the trucking industry in the normal measure of transportation service; namely, the unit of ton-miles. But having described both these services correctly in terms of apples, they then proceed to compare apples with oranges. Barge service is not described by them in this testimony in terms of ton-miles but of tons and the regulated bargelines are dismissed as handling only 10 percent of the traffic. This is no minor error. It distorts, beyond recognition, the true role of the regulated bargeline in the handling of traffic.

On the basis of our estimates, it may surprise you to hear that the regulated bargelines handle a larger proportion of inland waterway traffic than the regulated trucks control of the total traffic on the highway. For the Mississippi-Ohio-Gulf Canal system on which we operate, the ICC-regulated carriers handled about 40 percent of the

total traffic, measured on the basis of ton-miles. The regulated trucks, on the other hand, are said to handle 35 percent of the total highway traffic.

Why the difference between participation in ton-miles? The explanation is fairly simple; tonnage counted by the Corps of Engineers includes huge and semimining operations where sand and gravel and oystershells and other products are taken from the bottom of the river or the base and transported to the bank or a mile or two up and down the river to storage areas. These are entirely local operations, and there is no conceivable need to regulate them as transportation.

Obviously, the discrepancy between 40 percent and 10 percent is important, because it bears directly on the question of the chances of success of any campaign to extend regulation to presently exempt carriers. If those who handle 40 percent of the traffic are for regulation, as my group is, and if you have no intention of regulating the huge purely private carrier operations, then the hard core of the independently owned exempt operators may account, as an estimate, for perhaps 20 percent or less of the total picture. And these operators may well be amenable to persuasion if proper safeguards are offered them in the form of grandfather rights. We believe that extension of regulation on a basis that would be satisfactory to both independently owned exempt and common carriers is entirely possible. Despite the official defense of the status quo by certain exempt carriers, there is one objective and infallible sign that, indeed, they anticipate that regulation will be extended and may not be too unhappy at the prospect. All exempt carriers in the business are scrambling today—and have been for the past 2 years—to place a barge in as many river ports as possible to establish their future rights under grandfather provisions. I do not believe the climate has ever been so favorable for the achievement of President Kennedy's second alternative. Certainly, when they appear before you, they should be asked whether they prefer deregulation of the railroads or the extension of regulation to the rivers. We can see no logical defense of the present inequitable status quo.

May I go on now to a question of costs?

Our railroads are fond of using all kinds of analogy with respect to the marginal cost theories, the out-of-pocket cost theories, the added traffic theories, and so forth.

In a nutshell, they try to persuade us that the following proposition would be an accurate one.

Let us assume that the largest steel company in the country is operating at 60 percent of its capacity and it wants more business, naturally. Assume also that the normal price for its steel is $100 a ton, and full cost of manufacturing it is $90. From the purely selfish point of view of the steel company, discriminatory pricing of its product, if allowed, might be attractive. If permitted to cut its price to $50 a ton, below its full cost, where it had severe competition, it might have a good chance of capturing all the volume. Where it had less intense competition, a cut to $85 a ton might increase its volume. Where it had no competition at all, it might charge $150 a ton. If the company were very careful that the proportion of its business at levels above cost overbalanced the proportion of its business at below cost levels, then, at the end of the year, the company might show a heavy net. Needless to say, no industry would be allowed to do this under the present antitrust laws.

But this is the railroad system of pricing today and it is allowed only because there is public control, imperfect though it is, of the rate levels to prevent abuses. Now these bills propose to remove public control of minimum prices without any change in the pricing system described above by analogy.

In his analysis, Mr. Childe demonstrates from ICC statistics, that 72 percent of rail freight in 1960 was carried at less than full cost and 22 percent at less that direct cost. He thus is suggesting that the discriminatory pricing practices and the selective rate reductions have gotten far out of hand.

But Mr. Childe goes further than this. The key rail theory is that they can take additional volume at a marginal price because of their excess capacity. They claim to have such large fixed charges that an increase in volume can be carried at below full cost rates and add to their net.

Now, in point of fact, both rail and barge costs have a similar variable to fixed cost relationship, namely, about 60–40 percent.

If the railroads are right, then the record should show when the railroads increased their volume, for example, by 10 percent, their expenses should rise much less than 10 percent. When their traffic declines 10 percent, their expenses should, according to the theory, remain relatively constant. But Mr. Childe has examined 25 years of railroad statistics and he finds that the theory does not work out in practice. An increase of 10 percent in volume is accompanied almost exactly by a 10 percent increase in expenses. A decrease in volume of 10 percent results in a decrease in expenses of 10 percent.

Professor Myer, in his book on competition in transportation industry, points out that in the long run all costs are variable.

Mr. Childe has presented official figures demonstrating that the theory does not work, or at the very least, that the railroads do not know how to make it work.

Now let us look at the railroads whose chief executives are asking you to allow them to achieve prosperity through selective reductions of their rates.

There is the Chicago & North Western. They say they have been reducing rates as much as the ICC will allow. Not unexpectedly, this railroad has lost money in 5 of the last 6 years.

How about the Baltimore and Ohio? In 1956, a date generally believed to be the beginning of the all-out selective rate-cutting campaign, the Baltimore & Ohio Railroad had a handsome profit of $34,853,000 before taxes. In each succeeding year, this profit has declined until, finally, last year the Baltimore & Ohio sustained a net deficit of $31,347,000.

How about the Southern? There is a railroad which makes a profit. For the moment it is profitable, but the same trend is clearly marked.

Property investment has increased 7 percent between 1955 and 1960, but the rate over the 5-year period is down 38 percent. Between 1955 and 1960, the Commission granted rate increases of 20 percent which the Southern applied on noncompetitive traffic. But these increases were just about exactly offset by selective rate reductions which left its revenues per ton-mile virtually unchanged. A heavy campaign of rate reductions promised by Mr. Brosnan would quickly change the profit to a loss.

What clearer demonstration of the commonsense conclusion with which we began, the promised rate reductions of the railroads will either be offset by increases on noncompetitive traffic or will result in disastrous loss of revenues for the railroads. The road to prosperity is not through rate reductions.

A year and a half ago, Mr. Samuel A. Towne, Chief of the ICC's Cost Section, stressed the need of a price structure which insures the making of a profit. Unfortunately, his advice has not yet been heeded.

The railroads themselves are beginning to be aware that there is a major problem of pricing within their own ranks. Mr. Jervis Langdon, at the time vice president and general counsel of the railroad of which he is now president, addressed a letter to the law committee of the Association of American Railroads recommending an elaborate program of cost research.

In his letter of recommendation, he said:

> On the average railroad, as is well known, only the crudest types of cost techniques are employed today.

Mr. Langdon's recommendation was adopted and the study is still going on.

It should be obvious that the railroads cannot be given a license to undercut the lower cost bargelines and some objective standards of cost measurement must be established.

We are indebted to Professor Myer again for this unequivocal statement following his description of the railroad pricing system in his book. He says:

> The railroad rate structure thus constitutes a most elaborate system of price discrimination.

I quote this to highlight some of the absurdities the railroads have been talking in these hearings about their plans to eliminate discrimination in the rate structure. They have no such plans.

What could be more transparent doubletalk than the following from Mr. Heineman's testimony, who said:

> We have great difficulty in lowering rates. The Commission tends to permit rate reductions with less difficulty, not without difficulty, but with less difficulty, where we may demonstrate that the lower rate is what we might call competition compelled or water compelled.

Mr. Heineman went on:

> The consequence of this is that, being human, having only so much time, only so many lawyers, only so many accountants on our staff, that we do tend to move in the area of rate reductions where there is water-compelled differentials and the like.

He went on to say that "the inequalities * * * will tend to disappear far more rapidly" if the current bill is passed.

The true refutation of this statement is highlighted by testimony by the ICC chairman in 1958. At that time, the Commission noted that 98.3 percent of the rail tariffs—

> became effective without protest or restraint by the Commission. Of the remaining 1.7 percent which were protested, only about 85 percent were nevertheless permitted to go into effect without suspension.

It is, therefore, ludicrous and misleading for Mr. Heineman to suggest that rate reductions at inland points would be held up by the Commission.

Our position on this question of discriminatory rates is a simple and logical one. We object only when the rail rate is unprofitable to the railroad and when a river competitive point is being singled out for a selective reduction.

If you will recall the example given by Mr. Childe of coal to Tampa, Fla., from the two mine origins of Birmingham, Ala., and Lake City, Tenn., showing per ton-mile rates more than four times as great into inland areas as into Tampa, we say if the rate is profitable to Tampa, as Mr. Brosnan claims, because he has testified that the Southern Railway "is not interested in any business that we cannot handle at a profit," then what justification does he have for gouging the people of Atlanta and Jacksonville and all the cities in between? If the rate at Tampa is unprofitable, then, in our view, it is unfair competition against the water carriers who could profitably bring coal from Kentucky via the Mississippi and the gulf canal and the gulf.

Or take Mr. Jervis Langdon's statement that he won't permit discriminatory rates if he can help it, and his boast that the B. & O. takes more independent action than any other railroad in rate matters.

Let us look at the situation on grain rates out of Pittsburgh. Here the three major eastern railroads, the B. & O., the Pennsylvania, and the New York Central, have been sitting for months on a request from the city of Pittsburgh, the State of Pennsylvania, the Allegheny County Port Authority, and a major milling establishment, the Bay State Milling Co. of Boston, for equalization of the Pittsburgh and Buffalo rates to the East.

In one case, the grain comes in from the Great Lakes by lake steamer; in the other, the grain could come in to Pittsburgh by barge. But the railroads have for years built a trade barrier around Pittsburgh to prevent the development of a milling center at that point.

This is no small matter to the Pittsburgh area, but they are helpless in the face of the railroad decision, so far, that the milling industry will be in Buffalo and not in Pittsburgh. By what right, with the Bay State Milling Co. anxious to build a mill at Pittsburgh, do the railroads decide that they will erect a rate barrier to prevent Pittsburgh grain products from reaching New York, Philadelphia, Baltimore, and Washington, although those cities are actually closer to Pittsburgh than is Buffalo?

The current proposal has been "under study" since last October. Hearings have been held. Buffalo, of course, opposes the rate, but Mr. Langdon's home town of Baltimore is much in favor of the proposal, and, indeed, Baltimore's representative testified that the 37½-cent rate for Pittsburgh is too high. Why doesn't Mr. Langdon's railroad take independent action in this situation?

If these were isolated instances of discrimination, the railroads could perhaps shrug them off. But Professor Meyer's comment is a fact; railroad rates are by definition a vast discriminatory structure. Some years ago, in my State of Texas, my company introduced barge transportation of newsprint to Houston, saving the newspapers almost $7 per ton on the newsprint they bought from Calhoun, Tenn., which is on the Tennessee River.

The railroads tried to meet our rate and were perfectly willing to go below their costs to drive us out of the business. We put up a

vigorous protest, as did some of the inland newspapers such as the Dallas Morning News. In its protest to the ICC, the News said:

> We are not willing to continue to pay higher rates in order to provide a war chest out of which the railroads arm themselves to battle for business which inherently belongs to a cheaper type of transportation. If the $10.40 rate is fair and reasonable for Houston, it should be the same for a closer destination such as Dallas.

They could not avoid paying the prescribed rates because no alternative form of transportation was available to them. And these high rates are being charged newspapers in the landlocked areas to this day.

But a final objective test of the fraudulent nature of the promise of the railroad witnesses on the question of the elimination of discrimination in the rate structure is easy to calculate.

Let us take the Southern Railway's grain rate case which Mr. Brosnan has been arguing before this committee as well as before the ICC. A rate cut of 66 percent (from $10.50 for a typical haul such as St. Louis to Gainesville, Ga., to less than $4) is proposed. The bargelines have entered evidence to show that this proposed rate is below the out-of-pocket cost of the Southern. At the same time, we have demonstrated that the barge-rail route via Chattanooga and other points on the Tennessee River from your shipping areas is the low-cost method of delivering grain into the Southeast. Hence, we argue that a reduction of rates to the levels proposed by the Southern represents destructive competition designed to destroy barge transportation on the Tennessee River .

But we were curious to know what would happen if similar rates as those proposed by the Southern were introduced by all the railroads. The answer is illuminating. If, as the railroad witnesses have declared, they plan no discrimination in rail rates, then, of course, the proposed rates will, if the witnesses are sincere, become standard for the industry. A simple calculation shows the effect; the railroads as a whole would lose $215,496,457 in revenues on existing traffic, according to the latest available ICC statistics. The rate level so achieved would then fail by $8,632,457 to meet the rail out-of-pocket costs of handling the traffic. And, of course, if the railroads then managed to divert the entire additional tonnage handled by the bargelines—some 5,332,000 tons a year—they would simply add to their deficits. Is it likely that the railroads, in the face of that financial result, are sincere in their promises of treating all the inland areas alike?

Or take that Tampa coal rate. If the railroads, as they have solemnly promised, plan to eliminate discrimination in the handling of coal, they should reduce all their coal rates to the level of the Tampa rate. If they did this, they would have to give up revenues amounting to $256 million.

So on only three items, a steel product, grain, and coal, eliminating discrimination would mean wiping out revenues equaling almost the entire net profit of the railroad industry. Obviously, the railroad witnesses are trying to mislead somebody.

It is not without significance these are the two most important dry commodities moving by barge.

One test of the sincerity of any promise to avoid and eliminate any discrimination would be to write into a piece of legislation a proposal to strengthen section 3 of the Interstate Commerce Act

which Mr. Childe has demonstrated has failed to protect the public from railroad rate discrimination. If they are sincere, to quote Mr. Brosnan, who says, "My company is determined to give every inland town the rate advantages now enjoyed by the waterway ports," they should be quite willing to have you write this into the law. Both Mr. Heineman and Mr. Langdon specifically adopted Mr. Brosnan's testimony on this matter. Mr. Langdon went further and said he knew of no railroad that would not adopt Mr. Brosnan's position. If this is correct, it would be interesting to ask them whether they would be willing to translate this promise into binding legislation.

So far I have dealt extensively with the absurdity of removing public control of minimum rates. We have demonstrated that the railroad industry pricing system is actually the type of pricing system that a monopoly would impose. It assesses charges based on the ability of the customer to pay and particularly based on the availability of alternative means of transport.

The role of the inland bargelines, during the past 20 years particularly, has been to break up this monopoly pricing system throughout the half of the Nation served by the Mississippi River system.

Now, the critical question here is the question of cost of service. We were amazed to read in the President's message how lightly this issue is passed over. The message simply concedes that—

> Considerable research and analysis, going far beyond our present findings, will be required before we know enough about the costs and other characteristics of various forms of transportation to guarantee the achievement of these objectives in full. In the meantime, it is clear that the following fundamental reforms in our transportation policy are needed now.

Cost of service is the most critical factor and the one where the railroads like to promote the most confusion. Certainly, if you ignore the cost of providing the service, you can undercut anybody temporarily. Or if you have a theory that you can ignore your overhead and fixed charges and just charge the strictly added cost of handling the traffic, you can undercut suppliers of goods and services who do include overhead and other costs in their charges.

Relative cost of the different modes should be an objective fact beyond dispute. Surely this committee would not recommend the passage of a law which would have the effect of putting out of business a lower cost means of transportation without establishing first on a fair and generally agreed basis the cost relationship between the competing modes. The admission that no agreed basis exists for determining relative costs would seem to us, more than any one point, to invalidate any proposal to take public controls off minimum rates.

You are familiar with the remarkable reductions in the electric rates per kilowatt-hour owing to the vigorous engineering research of the electric industry. Low-cost transportation of steam coal by barge has played a part in this reduction acknowledged by the industry which has a significance for everyone who pays a light bill.

We have contributed to the increasing productivity of the coal industry, we have been a major factor in keeping the products of the Midwest competitive in the foreign market, and, above all, as I noted earlier, we have been a major factor in breaking monopoly pricing of the railroads. This is how that has worked, in the words of the Chicago Coal Merchants Association. Testifying in 1960, in the ICC hearings in opposition to the acquisition by two railroads of a Missis-

sippi bargeline, Mr. Elmer Berg, executive secretary of the association, stressed the useful role of barge competition in improving the efficiency of his industry.

These are the facts of the transportation marketplace, and wherever you go along the thousands of miles of the Nation's waterways, you will find confirmation of the strong influence of water competition in the final price paid by the consumer for the products every one of us buys. No one in the transportation industry doubts that this legislation would have the effect of permitting the railroads to destroy their lower cost competitors, regardless of how the words are sugar coated. The results of this for the consumer will be very drastic.

There will be other witnesses to give you a more technical discussion of the legal shortcomings of the proposed bills and, particularly, the relationship of the bill with the necessary requirements on revision of the antitrust laws.

Our association has made a considerable study of whether or not the application of antitrust laws would be helpful as a way of strengthening the present Interstate Commerce Act. We started at the point we consider to be the one of chief public interest and potential public benefit, the discriminatory nature of the railroad pricing system.

Some of the research we conducted was later embodied in a bill which currently is before the Senate: S. 1089, which has been vigorously opposed by the railroads, in speeches and industry statements. The proposal is to add to section 3 of the Interstate Commerce Act the section dealing with discrimination, phraseology similar to that found in the Robinson-Patman Act.

As usual, the railroads are here before you quite alone in the transportation industry, despite strenuous efforts on the part of the truckers and the water carriers through the Transportation Association of America and the Doyle committee in the past 2 years to meet them halfway and stop this ridiculous annual performance where one-half of the transportation industry cancels out what the other half has to say. There are wide areas where the railroads and the water carriers and the truckers could reach agreement—and one large area is bringing about equality of regulation through extension of regulation. The truckers are for it, the water carriers are increasingly for it, the railroads were for it as recently as last January. Now suddenly these bills have revived dreams of railroad monopoly.

To the complaint that the large shippers are against regulation, the answer is that they have always been against regulation. But they do not necessarily speak either for the small shippers or for the public interest.

And finally we hear, as we heard in 1940, that regulation means increased rates. It shouldn't and it doesn't. The electric utility industry is fully regulated and, as noted before, has an unbroken record of reducing prices to its consumers as its productivity improved. The common carrier bargelines have the same record. The transportation industry as a whole, relieved of the complete chaos of partial regulation, would undoubtedly show the same results.

Our positive suggestion is simple. Establish fair standards to test the relative cost advantages in a given situation. Encourage, as Mr. Langdon suggests, the traffic to move by the means that is most eco-

nomical. Control the chiseling which inevitably results from inequality in regulation by extending regulation equally to each mode. Control the uneconomic invasion of the "for hire" field by private carriers. Encourage the development of a cost-oriented pricing system using the same or similar standards of cost as are used in industry generally. It seems to us that this prescription would return the transportation industry to reasonable prosperity and go a long way toward ending discriminations now so prevalent.

All this cannot be accomplished overnight. But a first step would seem to us to be the repeal of the exemptions. On the rivers, this step is now possible.

The issue before Congress is the same as it was in 1939 and 1940 when the Congress passed the original act regulating water carriers. At that time, Senator Wheeler explained the congressional intent succinctly:

> All we say is, "if you are competing with a common carrier which is regulated, you must be regulated. If you are not competing, you are in the clear and you are exempt." It seems to me that is all there is to it.

And we think that that is still all there is to it.

Deregulation of everyone will lead to the bitterest rate war in history. And when you come to pick up the pieces afterward the public will have lost some of its most useful servants.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hershey.

Mr. Younger, have you any questions?

Mr. YOUNGER. No.

The CHAIRMAN. I think there is some merit in your suggestion from the viewpoint presented here with reference to everyone being given the same treatment—that is, equality. I am sure, however, you are aware of the difficulties extending regulation as an example to agricultural commodities.

Mr. HERSHEY. I am sure that there are many difficulties involved in extending regulation just as there were what appeared to be almost insurmountable difficulties at the time that the trucking industry, with its hundreds of thousands of units, finally came partially under regulation at the time of passage of part II of the act.

The CHAIRMAN. How far would you suspect we would get if this committee were to report a bill that would bring under regulations all transportation affecting agricultural commodities?

Mr. HERSHEY. I imagine, Mr. Chairman, that you could answer that question much better than I can.

The CHAIRMAN. We both do not know, then.

Mr. HERSHEY. Obviously, there is certain type of transportation which is not competitive with the public common carrier transportation which should remain exempt. In my remarks I talked about the purely local sand and gravel operations, for instance, as more of a mining operation.

Certainly, the primary movement of certain agricultural products over a short distance might fall into that category. I am not qualified, really, to speak on that subject. But, clearly, some exemptions would have to remain.

Mr. YOUNGER. Would the gentleman yield for one question?

The CHAIRMAN. Are you concluded?

Mr. HERSHEY. Yes, sir.

The CHAIRMAN. Yes, sir.

Mr. YOUNGER. You do recommend to go so far as the recommendations of Mr. Murphy, of the ICC, when he appeared before the committee?

Mr. HERSHEY. Basically, I endorse his recommendations.

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

The CHAIRMAN. Who was that?

Mr. YOUNGER. The ICC Chairman when he appeared before the committee.

The CHAIRMAN. What you are primarily concerned with is rate wars that would be brought on because of no regulation, that is the minimum rate provision of these particular bills?

Mr. HERSHEY. That is correct, sir; yes.

The CHAIRMAN. And No. 2, the discrimination that it would lead to, which, as I gather from what you said Mr. Childe said that exist today, I guess, they are going to keep on.

Mr. HERSHEY. I hope it will not keep on. I am surprised that the communities who are paying the bills are as quiescent under this type of taxation by transportation as they are. I hope that I made myself clear, that the relationship between discrimination and what the barge-lines fear comes about because the high rates which are charged to the inland communities provide the substance with which the railroads can afford to charge below-cost rates which are directed at eliminating the water transportation competition.

The CHAIRMAN. In other words, of course, it has been clearly stated to this committee that the railroad would not be interested in transportation in which they could not ultimately make a profit out of.

Mr. HERSHEY. This is true.

The CHAIRMAN. One of them says as a businessman they would not go off the beam completely. They would not be interested in something they could not make profit out of it or get along.

Mr. HERSHEY. And yet, Mr. Chairman, we see that they handle about the same amount of traffic every year, if you take the long-term trend over the last, say 7 or 8 or 10 years. They reduce their rates all the time. They do not make more money by reducing these rates. They lose money. Their rate of return is down to the point much less than one-half of what the Government can borrow money for, and so, therefore, one is compelled to examine the motives of what they are trying to do.

The CHAIRMAN. If the antitrust provisions that you have raised some question on could be made effective and something could be done about arbitrary below-cost transportation and the discriminatory practices that cause higher rates to one community and lower to another because of the very efforts to meet certain competition and thereby alleviate the possibility of rate wars, would that meet your objection?

Mr. HERSHEY. You had a number of conditions.

The CHAIRMAN. You just believe in regulation anyway.

Mr. HERSHEY. All business that I know anything about is regulated with respect to pricing. It is inconceivable that a manufacturer of radios or television sets could charge four times as much for an identical set in one area than he does in another under the present

regulatory aspects of pricing as contained in the various antitrust laws. So there may be certain things such as advertising and certain services which seem to be completely free of all rate regulation. I do not know. But in the main the pricing of everything is subject to some kind of public control.

It is conceivable, Mr. Chairman, in my opinion, that if all of the provisions of the antitrust law, such as the Federal Trade Commission Act, a Sherman Act, a Clayton Act, with the Robinson-Patman amendment, if they were all applied to the pricing of transportation and treble damages were available to both customers and competitors injured by price discrimination, it is conceivable that that might be a very effective way of regulating transportation pricing. But it seems to me at this juncture to be somewhat impractical because it would require the creation of tremendous bodies of staff in another agency not within the ICC to perform many, if not most, of the functions that the ICC is now charged with.

The CHAIRMAN. Of course, you would get right back in the same dilemma that the ICC is in if you do that.

Mr. HERSHEY. That is true.

The CHAIRMAN. And with a group that has different ideas——

Mr. HERSHEY. That is true.

The CHAIRMAN (continuing). And different trends of action and thoughts and all.

Mr. HERSHEY. I do not mean in anyway to minimize the problem. I do feel, if I may be permitted this observation, that perhaps one of the reasons that there are so many cases before the Commission is that the standards are so vague, that no carrier knows what he can get away with, to use the phrase loosely, and, furthermore, the penalties are not very great. If someone tries to discriminate, if someone tries to run a competitor out of business, the penalties are basically suspension and order to withdraw the rate.

The CHAIRMAN. According to what you said here today and Mr. Childe said, it is very easy to determine what the cost of such transportation is.

Mr. HERSHEY. Mr. Chairman, I believe it is no more difficult to determine the cost of moving a particular piece of freight by truck, by barge, by railroad between two points than it is to calculate the cost of making an article by one of the large manufacturing companies who may have a line of goods numbering into the thousands and ranging in value from a two-cent nut and bolt up to a $100,000 piece of equipment. It is difficult to determine cost. It is one of the most difficult parts of business. But I think that the transportation industry has led itself to believe that cost determination is just almost impossible in its field, and I do not believe it. We think in my company, and I am sure we are not different than our competitors, that we know within a range of 1 or 2 percent accuracy exactly what our costs are on every piece of business that we handle.

The CHAIRMAN. But if there were safeguards that such transportation should not be proposed at below cost, that would meet your major problem?

Mr. HERSHEY. Yes, it would.

The CHAIRMAN. Thank you very much. We appreciate your testimony here today.

Mr. HERSHEY. Thank you.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning.

(Thereupon, at 4:20 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 8, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

WEDNESDAY, AUGUST 8, 1962

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

The committee met, pursuant to recess, at 10:17 a.m., in room 1734, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

Mr. WILLIAMS (presiding). The committee will be in order, please.

If it is satisfactory with the other witnesses who are here, we have one witness who is here all the way from California and who, I understand is having to meet a deadline on getting back, and I understand that his testimony will not take but about 10 or 15 minutes.

I hope that the other witnesses will not object to our calling him first in order to accommodate him.

That is Mr. A. P. Heiner, vice president of public relations and traffic, of the Kaiser Field Corp.

STATEMENT OF A. P. HEINER, VICE PRESIDENT, PUBLIC RELATIONS AND TRAFFIC, KAISER STEEL CORP., OAKLAND, CALIF.

Mr. WILLIAMS. Mr. Heiner, as I understand it, your testimony is quite brief and will not take too long.

Is that correct?

Mr. HEINER. I would guess, about 15 minutes.

Mr. WILLIAMS. All right, sir, come around.

Mr. HEINER. Thank you, sir.

Mr. Chairman and members of the committee, my name is Albert P. Heiner. I am vice president, public relations and traffic of Kaiser Steel Corp. with headquarters in Kaiser Center, Oakland, Calif. I have been actively engaged in the field of traffic and transportation since 1938. I joined Kaiser Steel Corp. in the summer of 1942 and have been in charge of the traffic and transportation department for our company since that time.

I am appearing today to testify in favor of H.R. 11583 and H.R. 11584. I am doing so on behalf of myself as well as Kaiser Steel Corp. I am also authorized to state that my views reflect those of the other principal Kaiser companies, Kaiser Aluminum & Chemical Corp, Permanente Cement Co. and Kaiser Gypsum Co.

It might be of interest for the committee to know that the combined freight bill of these Kaiser companies last year came to more than $85 million. All of these companies are major users of rail transportation and for-hire trucking, and also use the services of many steam-

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ship lines operating from and between U.S. ports. Some of these companies are engaged in proprietary truck transportation.

One of my responsibilities to Kaiser Steel is to follow all major developments in traffic and transportation which might have a bearing on either our rates or service. This means keeping in touch with improvements throughout the transportation industry and studying the various proposals which are aimed at improving transportation.

I believe that in general the transportation companies in this country are efficient and reasonably well managed. I am sure they have made a significant contribution to the strength of this country. At the same time, my experiences of the past 24 years have brought home to me the conviction that even greater progress and greater efficiency can be attained in important segments of this industry.

As this committee well knows, an endless number of studies, reports, recommendations, and speeches have been made over the years, all aimed at improving some phase of our transportation system. However, of all of these different proposals, the one that holds the greatest promise, in my opinion, is that contained in President Kennedy's message to the Congress on April 5 of this year.

In my judgment this is the most comprehensive, most penetrating, and most constructive proposal made in the years I have been following this subject. It clearly describes some of the forces which are stifling progress in the transportation industry. At the same time, it outlines a broad series of recommendations which are very basic and far reaching. If these proposals are translated into new law, they hold the promise of providing a significant new stimulus to the transportation industry.

The primary stimulus will come from the increased freedom and responsibility that will be given to carrier managements if they are exempted from minimum rate regulation in the transportation of bulk commodities, agricultural, and fishery products, as well as passengers. I personally don't think the value of this new emphasis on greater management initiative can be overestimated. Good management makes the difference between success or something less than success. Management cannot be hemmed in with restrictions and still be fully effective. Management cannot be dictated to by outsiders—whether they be customers, competitors, or Government people—and still be as progressive as it would be under the force of competition. No matter how sincere or how well informed the outsider might be, he can't make the reliable decisions demanded of a management which has the responsibility to end up with a profit.

There is another side to this coin, and that is management's need to feel the full burden of its responsibilities. Too many carriers find it too convenient to blame their troubles on the Government. Too many carriers excuse their failure to make improvements on the grounds that they are restricted by regulations of one kind or another. Too many carriers, I fear, have lost the incentive for action that can come only when they stand or fall on the merit of their own decisions.

I think it is very significant that railroad managements—many of them representing companies which are in serious financial trouble—are so strongly in favor of this bill. If they are willing, and indeed eager, to assume these responsibilities, this is a very healthy situation. They should be given the opportunity, it seems to me, to prove that

they can strengthen their position through these new managerial freedoms.

I do not share the belief that such new managerial freedom would result in chaotic conditions, predatory practices, and the so-called law of the jungle. This is an altogether too easy indictment offered by those who are in favor of continued regulation. If we were to accept this, it would become an indictment against our whole free enterprise system. Competition is not intrinsically destructive; its intrinsic merit is that it serves as an incentive for better methods, greater efficiency, and lower costs. This has been true in the rest of American industry, and it should be given expanded opportunity to prove itself in transportation.

If businessmen, responsible for running transportation companies, are presumed to be incapable of establishing compensatory and reasonably stable prices, how can we run the risk of allowing businessmen, and nearly all other American industries, to set their own prices without Government control or regulation?

In my opinion railroads neither could nor would they seriously try to drive trucks out of existence. Shippers who have benefited from the flexibility and serviceability of trucks would never let them do it. They would continue to demand trucks for countless types of service, regardless of any efforts on the part of the railroads. Obviously, there are some transportation jobs a truck can do better and cheaper, and no tactics of any other type of carrier can overcome this fact.

By the same token, any unfair efforts of the rail lines to drive water carriers out of existence would most assuredly backfire, in my opinion. In this day of wide open communications, predatory practices can be readily exposed. The pressures of public opinion are much more powerful today than they were 75 years ago. And I do not think we have provided a full opportunity to establish this principle. I think that we take it on allegation that these predatory practices would run rampant and destroy the whole industry.

On the other hand, no particular type of carrier should be placed in a straitjacket just to protect another kind. Shippers are entitled to the services of whichever kind of transportation might be most practical and most efficient in a given situation. I personally believe the declaration of policy as set forth in the act of 1958 is sound; namely, that each mode of transportation should be free generally to render the service and rates in accordance with its natural and inherent advantages.

The original basis for the establishment of transportation regulation was the monopolistic nature of the industry. As this committee has heard in great detail, conditions are radically different today, with trucking greatly on the increase throughout the country, both for commercial hauling and private carriage. The growth of transportation by pipelines is not an insignificant factor itself.

The ironic development, however, is that the Interstate Commerce Commission, which was originally established to hold down rates because of the monopolistic nature of the transportation industry, is now primarily engaged in trying to stabilize or curb the effects of what is alleged to be too much competition.

It is my belief that there is really only one reason why regulation of the transportation industry is still in effect today to the extent that

it is. This is simply that the laws have been on the books such a long time that the industry and the users of transportation have become accustomed to them. We have grown up with regulation, and the assumption exists that it is the only possible way of transportation life, and that anything else would be chaos.

Unfortunately, it has become accepted as the only way to conduct transportation business. Even though conditions have changed today, some people in the industry are fearful of what might happen without regulation. Some people are afraid to give competition a freer hand. I submit that this alone is an indication that regulation is a definite deterrent to progress.

Another concern raised over the reduction in regulation is the possibility that small shippers might be at a disadvantage. Even though Kaiser Steel's freight bill is quite substantial, we are not large in terms of the rest of the steel industry. As a matter of fact, we are ninth in size. However, we are not concerned as to our ability to negotiate favorable rates and services in competition with any other steel company. We are confident that carriers will give us whatever rates and services we might be entitled to.

I likewise believe that any energetic and aggressive shipper, no matter how small he may be, is capable of protecting his interests in competition with a large shipper. There are always ways and means of turning to other competitive transportation companies or bringing the discrimination out into the open in order to achieve equitable treatment.

One further important reason for the passage of H.R. 11583 is to give the carriers the flexibility required to meet proprietary competition. Although Kaiser Steel itself does not have its own fleet of trucks, this possibility is always open to us and we have never completely eliminated it from our minds. Both Permanente Cement and Kaiser Aluminum do a certain amount of proprietary trucking. If a shipper is free to take a course of action which he deems to be in his own best interest, it is only fair and equitable that the carriers themselves should have greater freedom in setting their rates and services to meet such competition, either existing or threatened.

Mr. Chairman and committee members, I am, however, against the proposed change in section 5–A of the Interstate Commerce Act as contemplated in H.R. 11583. I believe it is essential for the carriers to have the right to meet with connecting carriers and even competing carriers to arrive at decisions on freight rates, joint routes, and divisions of revenue. A large share of transportation service requires more than one company; hence these carriers must have the right to meet together to work out their joint problems. To this extent, the transportation industry is markedly different from most other American industries.

My support of the present section 5–A is predicted, however, on the following considerations:

(1) That the rules of procedure for such bureau action continue to be approved in advance by the Interstate Commerce Commission and be open to the public;

(2) That the portion of the Interstate Commerce Act which guarantees each carrier the right of independent action be retained; and

(3) That rates and routes be published and tariffs filed with the Interstate Commerce Commission.

I have never found carriers abusing the right to get together in bureau meetings. Their primary purpose is to exchange useful information leading to intelligent decisions. Furthermore, shippers are given a full opportunity to tell their story. The different proposals are widely publicized so every party has an opportunity to protect his best interest. In the event any joint decision is adverse to a shipper, he is not without recourse. He can turn to other forms of transportation or he can consider providing his own proprietary transportation. Finally, individual carriers have consistently proved over the years their willingness to take independent action whenever they feel that it is in their best interest.

My support of H.R. 11584 will be much more brief. I do think, however, that it is eminently desirable to encourage experiments by common carriers in rate, classification, and documentation systems. This would allow the voluntary testing of new service combinations between different modes of carriage. Such new experiments could lead to many progressive and worthwhile innovations.

As a corollary to that, it seems very essential to me that the right should be established to ship vehicles or containers on carriers of other modes without price discrimination. This would promote the maximum utilization of such services and give greater freedom of action to each kind of carrier. It could be a very helpful step forward in the coordination of transportation between the different modes. It could be a real stimulus in promoting containerization as well as piggybacking, both of which could be of benefit to American shippers.

Section 4 of H.R. 11584 provides for the establishment of through service and joint rates by carriers governed by the Civil Aeronautics Board, Interstate Commerce Commission, and the Federal Maritime Commission. Here again, I believe that through service, via all modes of transportation, should be provided at reasonable joint rates.

If I am standing for more management freedom for carriers, the same principle should be granted to Government agencies which use common carriers. Therefore, the proposal calling for simplification of Government transportation rates and procurement and calling for more latitude by the Post Office Department in the selection of carriers for the transportation of mail appears to me to be very desirable.

Without elaborating on any of the other specific recommendations in H.R. 11584, I would like to say that they appear to be worthwhile improvements for the industry. At one time or another I have heard businessmen speak out in favor of each of these recommendations.

I should like to summarize my position as follows:

(1) The transportation industry is a very vital segment of our industrial economy, and indispensable to our national defense.

(2) It is therefore essential that we have strong, progressive, profitable transportation companies.

(3) At the present time there are many transportation companies which the record will show are not making adequate earnings or which are operating at a loss.

(4) There are certain segments of this industry which are not as progressive and forward-looking as they might be.

(5) In order to stimulate progress in the industry and build healthier companies, greater managerial freedom and greater managerial responsibilities should be given to the transportation industry.

(6) The reduction in Government regulations, as contemplated in H.R. 11583 and H.R. 11584, could make an early and substantial contribution in this direction, resulting in a strengthening of the transportation industry and, in turn, benefiting the shippers of the country.

Again, I would like to tell you, gentlemen, that I appreciate this chance to express my views because I feel them very deeply. I think that this legislation has an important opportunity of making a worthwhile contribution to the vigor and vitality of our transportation system.

I am very hopeful that it will be passed because I believe it can be a major turning point in the history of our transportation system.

Thank you very much.

Mr. WILLIAMS. Thank you, Mr. Heiner, for an excellent presentation.

The other day I received a letter from a constituent, who told me that he felt that when it became more difficult to reduce freight rates than it did to increase them, he thought something should be done.

I take it that is the theme of your statement, too?

Mr. HEINER. Essentially; strictly.

Mr. WILLIAMS. Mr. Younger?

Mr. YOUNGER. I have no questions, but I do want to compliment Mr. Heiner for the very fine statement and to say that you, being a large shipper, have made a fine contribution to this hearing by your statement.

What we are trying to do is see that the service to the shipper is made better and cheaper. And that is the purpose of the legislation, and I am glad to get your views.

Mr. HEINER. Well, I am so appreciative of that, Mr. Younger, because I have been preaching, out in California, that all of the shippers should come back and testify even if they differ with me.

I said, "Please come back and let Congress know how you feel about it."

I wanted to have this opportunity to express my honest convictions.

Mr. YOUNGER. That is all.

Mr. WILLIAMS. Mr. Friedel?

Mr. FRIEDEL. I just wanted to say that Mr. Heiner made a very fine statement.

Mr. HEINER. Thank you.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. No questions, Mr. Chairman. I share Mr. Younger's views in connection with the testimony of this witness.

Mr. WILLIAMS. Mr. Hemphill indicated that he had some questions, but he had to step out of the room. So I think we might as well proceed with the next witness.

Thank you very much.

Mr. HEINER. Thank you very much.

Mr. WILLIAMS. Mr. John Weller.

STATEMENT OF JOHN L. WELLER, PRESIDENT, SEATRAIN LINES, INC., IN BEHALF OF THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS, EDGEWATER, N.J.

Mr. WILLIAMS. Mr. Weller is president of the Seatrain Lines, Inc., and is speaking in behalf of the Common Carrier Conference of Domestic Water Carriers.

Mr. WELLER. Thank you, Mr. Chairman, and members of the committee.

My name is John L. Weller. I am president of Seatrain Lines, Inc., 595 River Road, Edgewater, N.J., and I appear today in behalf of the Common Carrier Conference of Domestic Water Carriers in connection with H.R. 11583 and H.R. 11584.

The Common Carrier Conference is an association of companies engaged primarily in common carriage of goods by water under certificates issued by the Interstate Commerce Commission. A list of the 30 companies comprising this association is attached; it includes operators of deep water vessels, coastwise and intercoastal; operators on the Great Lakes, and operators of barges and tow boats on the inland rivers all over the United States.

Although I represent the views of all these water carriers in connection with the proposed legislation, my own company is engaged in the coastwise trade, and I shall illustrate my comments primarily with examples from that experience.

I might say at this point, Mr. Chairman, that I have been in the transportation business for some 37 years which has included quite a number of years in the railroad industry, also in the airline industry, and now in the water carrier industry.

So that I feel that I have had some experience in this field.

The President's message on transportation of April 4, 1962, pointed out that, as a matter of equity, either the present agricultural and bulk commodities exemptions should be repealed, or exemption from minimum rate control of these commodities should be extended to all common carriers. The Common Carrier Conference agrees that the present inequity should be eliminated, but the simple and proper way to do this is to repeal or at least reduce the present exemptions.

Mr. Jervis Langdon of the Baltimore & Ohio Railroad, in his testimony to you, emphasized that H.R. 11583 would not eliminate the present inequity because:

> When handling bulk commodities, water carriers would continue to be subject to no regulation at all; they could make secret rates, contract or otherwise; rebate at will; and discriminate without restraint. No publication of their rates is required, and no notice to the public. Motor carriers, when moving agricultural and fishery products, would continue to have the same freedom.

I agree with Mr. Langdon on this. Unfortunately, I do not agree with Mr. Langdon about many things, but I do agree with him on this.

And, in addition, I wish to point out that in certain important aspects H.R. 11583 goes far beyond the scope of the bulk exemption presently contained in section 303(b) of the Interstate Commerce Act. That exemption applies only to the transportation of not more than three exempt commodities in the same vessel or tow, and it is further limited to commodities carried in bulk in accordance with the existing custom of the trade as of June 1, 1939.

When Congress passed the 1940 act it took that specific step to see that the practices approved then did not spread.

H.R. 11583 contains no limitation as to the number of commodities which might be carried together, and it is not limited to the practices of the trade as of any date.

The bill does not say who would have the duty or the right to determine what is a bulk commodity within the meaning of this language, and it seems to me that at a very minimum there would be years of litigation and uncertainty before this is determined.

I understand, for instance, that there are still cases in the Commission with respect to the scope of the exemptions granted in 1940.

If you open this door wide now, just think how many years it is going to be before you will find out what this thing means.

A little later in my testimony, I wish to demonstrate that the proposal in H.R. 11583 would foster an expansion of proprietary or private carriage, to the detriment of common carriage.

Certain witnesses before this committee have urged that, while elimination of the exemption would be a logical course, it might generate political opposition in certain quarters, and therefore they recommend the opposite course proposed in H.R. 11583. I must admit to considerable surprise that anyone would have the temerity to appear before this committee of dedicated Congressmen and suggest that they take action not in the best public interest because the correct action might generate some political opposition.

The members of the Common Carrier Conference of Domestic Water Carriers believe that in its regulation of interstate commerce, Congress will continue, as it has in the past, to be guided by the public interest. We believe the public interest clearly indicates the reduction or elimination of present exemptions, and we urge that Congress take that action.

When the water bulk exemptions were established in the Transportation Act of 1940, this was done on the stated premise that the transportation under these exemptions would be noncompetitive with regulated carriers, and it was also stated in the Congressional Record that at such time as this exempt transportation was proved to be competitive with regulated transportation, the exemptions would be repealed. It is generally agreed that that time has long passed, and the simple and straightforward course for Congress is to repeal the exemptions. We oppose strongly the approach in H.R. 11583, which greatly extends the scope of these exemptions both by enlarging their definition and by extending them to rail, highway, and water carriers including ourselves, to which they presently do not apply.

This legislation appears to be based on the premise that the primary problem in transportation today is one of excessive freight rates and of undue profits to the carriers. I respectfully submit that that is not the problem in transportation today. The primary problem is the precarious financial position of major segments of transportation.

Despite numerous increases in the maximum allowable level of freight rates, the actual rates for the movement of major commodities have been generally declining for the last several years under the impetus of a cutthroat rate war. This in turn has seriously affected the financial stability of major eastern railroads, of some highway carriers, and—what is most important to me—it has practically eliminated the coastwise and intercoastal shipping industry.

As this committee knows, the coastwise and intercoastal shipping industry has almost disappeared, with serious consequences to our national defense. My own company is one of the last two common carrier coastwise companies remaining in business; we have suffered severe operating losses in each of the past 5 years, during which time the average level of freight rates applicable to our service has declined more than 20 percent. This decrease in freight rates has been forced by selective rate manipulations of the railroads.

I realize, of course, that the shippers would like freight rates as low as possible, and that low transportation costs as well as low production, distribution, and merchandising costs, contribute to the health of our economy.

But in recent years there has been a tendency for major shippers to make up for increases in their production and merchandising costs by forcing down freight rates, although the costs of the carriers have not been reduced. Generally speaking, they have increased.

The inevitable end result of constantly declining freight rates without reduced transportation costs will be bankruptcy of the carriers, with ultimate harmful effect on the economy as a whole.

Now, if the committee will pardon me I would like to show you a cartoon which I think is somewhat to this point.

This cartoon appeared in the Scripps-Howard newspapers about 2 months ago, and since I am in the transportation business, it caught my eye.

You will note the two witches who are agreeing that they have to economize, but they wind up riding on one broomstick, and one suggests that there must be some better way to save money.

I think that enactment of this bill, for instance, is going to wind us up, all of us, riding on a broomstick, and I think we ought to think about it.

Mr. HEMPHILL. Would it make everybody witches?

Mr. WELLER. Well, I think this is a witches' brew, Congressman.

I believe, after careful study, that enactment of H.R. 11583 would mean the end of the coastwise and intercoastal shipping industry, as well as serious financial distress to other forms of transportation. I shall proceed to develop my reasons for this as briefly as possible.

All of the common water carriers are small companies, relatively small. The largest member of the Common Carrier Conference of Domestic Water Carriers had gross revenues last year of $20 millions. In 1960, the last year for which figures are available, the combined gross revenues of all the coastwise and intercoastal common water carriers, which are my particular concern, were $57 millions—and I might point out that that is about two-thirds of the net income after taxes of a single railroad, the Santa Fe—and their net income was a red figure of $6 millions. This compares with railroad gross revenues of nearly $10 billions.

The water carriers typically are able to serve only limited areas adjacent to ports, and are dependent for their sustenance on a limited number of basic commodities. For example, in my own company's service from the gulf to New York, 10 commodities account for 87 percent of the freight revenues. Further, my company is dependent upon railroads for the rates which move traffic to and from the ports it serves.

It is a simple matter for the railroads, by joint action in their rate bureaus, to select these specific major movements of traffic, reduce the all-rail rates even below cost if necessary, while holding up to high levels the rates for movement to and from the ports, and thus drive the water carrier out of business. The railroads have many other sources of revenues and a 1,700-to-1 ratio of financial resources, so that if unhindered in this activity, they can survive while the small water carrier expires.

I know it has been said to you by certain railroad witnesses that the railroads never do this, that they never discriminate, but the fact is that they do—Mr. Childe's testimony yesterday was full of examples of this—and the record is replete with examples of their attempts to do it.

The only present recourse of the water carriers for protection against these discriminatory actions is an appeal to the Interstate Commerce Commission. My company presently has pending in the Interstate Commerce Commission 18 separate and distinct cases in which actions of this type by the railroads are involved, and the outcome of these cases affects practically every pound of our traffic.

Our counsel advised me that enactment of H.R. 11583 would seriously impair the ability of the Commission to deal with these cases, or others like them.

It has been testified to you that the effect of H.R. 11583 would be to leave with the Interstate Commerce Commission the regulation of maximum rates and of discriminatory rates, but to turn over to the Justice Department and the courts responsibility for preventing monopolistic and predatory trade practices in transportation.

The water carriers do not believe that the powers remaining with the Interstate Commerce Commission upon passage of this legislation would permit it to deal adequately with discrimination, and they also do not believe that the provisions against monopolistic and predatory trade practices are adequate, but the point I wish to make at this time is that turning two elements of regulation over to different agencies can lead only to confusion, uncertainty, and endless litigation.

Mr. Jervis Langdon testified to you that his objection to regulation by the Interstate Commerce Commission did not arise from any "special ICC inability or incapacity.

"That must be comforting to the Commission.

"It is simply too tough a job for any regulatory body to do."

In my view, it is naive to believe that, if regulation is imperfect under one agency, it will be improved by dividing the responsibility between two agencies.

For many years, the favorite aim of railroad propaganda was the necessity for a "single regulatory agency" to regulate all transportation. Now they have completely switched objectives and ask for regulation of themselves—and us—by two agencies. If I am confused by this, I think that the passage of H.R. 11583 would leave the courts, the regulatory agency, and the carriers in confusion for a number of years as to the rules under which they are supposed to operate.

I sometimes think, gentlemen, that the current dance craze, the twist, arises out of the efforts of the younger generation to keep up with the gyrations of railroad propaganda.

The President's message of April 4 properly pointed out that—

> the common carrier is declining in status and stature with the consequent growth of the private and exempt carrier. * * * Whatever the cause, the common carrier with his obligations to serve all shippers, large or small, on certain routes at known tariffs and without any discrimination, performs an essential function that should not be extinguished.

There are many reasons for the growth of private carriage both by highway and by water in recent years; sometimes, and I think relatively rarely, there is a genuine need for service which no common carrier is available to provide; sometimes it results from uneconomic empire building in corporations—the Government is not the only place where you have bureaucracy—sometimes it involves the desire of very large shippers to disguise transportation costs. But in a very large number of cases it stems from an ability of the shipper to combine limited movements of his own high-rated traffic in one direction with backhauls of some other shipper's exempt traffic.

To enlarge the exemptions, as H.R. 11583 proposes, is certain to enlarge the possibilities for private-exempt combinations, and thus to further deplete the revenue sources of the common carriers upon which the general public must depend.

Allow me to cite a specific example. One of the major commodities produced in the gulf area, and to which we have to look, is synthetic plastics, the production and use of which has grown rapidly in recent years. About 2 years ago, a major chemical company, which was the largest single producer of plastics, decided to purchase and convert two tankers to combination chemical tankers and plastic container ships. It invested large sums in these vessels and in bulk plastic containers, highway containers, and proceeded to engage in private carriage. We in Seatrain, and the other common carriers in the trade, asserted to no avail that the proposed private operation would be uneconomic; no published rate we could quote appeared to be persuasive. They were not interested in any published rates.

A few weeks ago, representatives of this company advised us that the private traffic available to these vessels—they now have them—was insufficient; therefore, they planned to apply to the Interstate Commerce Commission for a special exemption to permit them to carry liquid commodities of other chemical producers for hire. They desired us to assent to such an exemption, and we very regretfully declined.

The point is that under present law, such special permission would be required, because plastics (even in bulk in containers) do not come within the present exemptions in the act. Were H.R. 11583 to become law, this big company would need no permission to combine with the other plastics producers, none of which presently feels able to afford the luxury of private vessels, and divert from common carriage the remainder of the plastics traffic. And the result of this would be disaster for the two common carrier shipping companies remaining in the Atlantic-gulf trade, with resultant hardships for the many smaller shippers of other commodities who are dependent on these shipping lines. Even, I believe, it would in the long run disadvantage the big chemical company which started the process, but it would happen all the same.

Although H.R. 11583 states that "notwithstanding any other provisions" of the Interstate Commerce Act, in the case of rates, fares, or

charges for the transportation of bulk commodities or agricultural commodities, the Commission shall have no authority over minimum rates; but it remains the duty of the Commission to prevent discrimination in such rates between shippers, between ports or regions, and between connecting carriers.

Now, at this point I would like to show you a couple of charts which would indicate the importance of this kind of thing to a company in our circumstances.

This is just a typical example of the situation which deals with the movement of magnesium metal from Velasco, Tex., to Port Newark, N.J.

I think the name of "Velasco" has been changed. Velasco is about 58 miles by rail by Texas City, which is our port in Texas, and Port Newark is about 20 miles by rail from Edgewater.

It is 2,180 statute miles by water around from Edgewater to Texas City. It is some 1,906 miles by all rail from Velasco through St. Louis, by combination of the Missouri Pacific and Pennsylvania Railroads to Port Newark.

Prior to October of 1956 there was an all rail rate on magnesium metal of $2.36 per hundred pounds by the movement of the Missouri Pacific and Pennsylvania from Velasco to Port Newark.

And there was a joint rail and water and rail rate of $1.85 from Velasco through Texas City, and then shipped to Port Newark, the differential in favor of the water rate being 78 cents per hundred pounds.

I think Mr. Childe, in his testimony yesterday, pointed out the reasons why there always has to be a differential in water rates as against the rail rates. Nobody would ship any traffic by the combination of rail and water routes as against all rail unless they were lower rates, because it is so much slower and the ship goes once a week instead of a freight train every day and so forth.

Now, a substantial quantity of this magnesium metal traffic did move by rail and water routes because of this differential in rate.

You will note that out of this joint rail and water rate the eastern railroads, for their 20-mile haul, received 29.6 cents and the southwestern line down here, for its 58 miles, 53.65 of a cent, and that left out of a dollar and 85 cents, less 101.75 cents for Seatrain's share.

Now, in October of 1956 these railroad gentlemen got together in their rate bureau and they had some discussions and they revised this situation.

First of all, I would like to say that that rate of $2.66 and the rate of $1.85 were rather high rates. The shipper came to Seatrain and said he needed a lower rate.

Seatrain went to the railroads, with whom we connected, and said, "This shipper needs a lower rate; let's make a joint rate that is lower."

The railroads met in their rate bureau and said, "We will not make it a joint rate with Seatrain," but they cut their rail rate to $1 for the 1,900 miles of these two railroads. They refused to make a joint rate with Seatrain.

Now, if Seatrain wants to participate in this business the combination rate method has to be used. The first thing they did was to raise the local rate which applied between Edgewater and Port Newark, which was then 31 cents, to 35 cents.

They raised the local rates which applied down here so that it is now 52 cents. For Seatrain to have any differential in this rate, so that there is a 10-cent differential, we have to first pay out these two local rates. You subtract the 35 cents and the 52 cents from the 90 cents, and you have 3 cents left for Seatrain.

There is no question whatever, gentlemen, that this route, the rail and water route, is a much lower cost route than the all rail.

I am just asking you to accept that as so, because there is no question whatever that this is a lower cost operation. But the railroads are able, by colusive action in their rate bureau, to jackup these two rates, refuse joint rates with the water carrier, and then cut it down to this rate, and we are just squeezed right out of the business.

Another interesting facet of this is that out of this $1 the Missouri Pacific, if it participates in this haul, carries this traffic 866 miles from Velasco to St. Louis, and out of this $1 it gets 46 cents.

It is willing and anxious to haul this traffic 866 miles for 46 cents rather than haul it the 58 miles here for 52 cents.

This is the practice known in the railroad industry as "getting your long haul." It builds up your ton-miles, makes your statistics look good, and drives you into bankruptcy.

This is the kind of practice that is going on. I do not show you this chart because it is anything exceptional. This is the standard procedure.

I could show you another dozen charts on another dozen commodities. They all show the same thing. You can see why the question of discrimination and the question of joint rates are vital to a company such as ours and to most water carriers.

Now, the other day the Chairman of the Interstate Commerce Commission, Mr. Murphy, testified that the Commission would be hampered by this legislation in its ability to deal with discrimination such as that.

I note that Mr. Jervis Langdon, the president of the Baltimore & Ohio Railroad, takes issue with this, and in a supplemental to his testimony indicated:

(1) That questions of discrimination are largely academic in today's world; and

(2) It is not the minimum rate power that the ICC employs to eliminate unjust discrimination or undue prejudice or preference.

Rather, it is the ICC's power to prescribe the precise or exact reasonable rate that is accorded by section 15 of the Interstate Commerce Act.

I suppose this is intended to convey to those who are worried about discrimination that they should relax.

I wish to assure this committee that questions of discrimination and the Commission's ability to control it are by no means academic to a coastwise water carrier such as Seatrain—they are vital. As I testified earlier, our own small company presently has 18 cases pending before the Interstate Commerce Commission—affecting practically all of our traffic—which hinge upon questions of railroad rate discrimination.

That is one of them. It has been there 2 years. Academic, indeed.

I am not an attorney, and therefore I am somewhat reluctant to intrude upon a discussion between Mr. Langdon, who is a highly

qualified attorney, and the Chairman of the Commission, who is also highly qualified in law. However, in the conduct of such a business as Seatrain's, I find it unfortunately necessary to spend a great deal of time on lawyers, because of things like that, and even more unfortunately, a great deal of money. I should like to offer this committee two observations on the dispute between Chairman Murphy and Mr. Langdon resulting from my hard-won experience in this area:

(1) That it will be the Commission, not Mr. Langdon, which has the problem of dealing with discriminations, and if the Commission is concerned as to its ability to do so, the committee ought to give great weight to that concern.

(2) Unfortunately, my experience indicates that the best of attorneys, and Mr. Langdon is one of the best attorneys, are able to and do present differing and equally persuasive legal citations according to the side of the case they are on.

I remember rather bitterly the discussions before this committee and the Senate Commerce Committee in the hearings which resulted in enactment of the present section 15a(3) of the Interstate Commerce Act in 1958; several witnesses raised questions concerning the possible effect of the proposed amendment on joint rail and water rates, on discriminatory practices, and in particular on section 307 of the Interstate Commerce Act. They were assured that enactment of section 15a(3) would have no effect on other sections of the act.

In succeeding Commission and court proceedings, we have met with repeated arguments from railroad attorneys that section 15a(3) altered in some way practicaly every other section of the act.

In particular, my company has a joint rates complaint pending in the Commission (docket No. 33479), which involves sections 1(4), 1(6), 3(4), and 307(d) of the act. In their briefs, the railroad attorneys have argued that enactment of section 15a(3) in 1958 modified or eliminated the Commission's power to act under any of these sections.

We have, as I earlier stated, another series of cases pending involving rate discriminations violative of section 3(4) of the act. One of these is I. & S. docket No. 7552, still pending before the Commission, and on March 7 of this year I sat in the Commission hearing room and heard railroad lawyers argue that enactment of section 15a(3) modified the Commission's power to deal with such a case arising under section 3(4).

In ICC docket FSA 36166, the railroad lawyers have argued that section 15a(3) overrides section 4—the long-and-short-haul clause.

Further, I recently had occasion to study a case in which—and this is a rare kind of a case in today's world—two groups of railroads were arguing about discrimination. The Erie-Lackawanna and New York Central Railroads had filed rates on iron ore (a bulk commodity) through the port of New York competitive with those existing through the ports of Baltimore and Philadelphia. The Baltimore & Ohio Railroad, together with Baltimore port interests, successfully urged the Interstate Commerce Commission to require cancellation of these New York iron ore rates on the grounds (*a*) that the New York rates were below a minimum reasonable level, and (*b*) that equal rates for the port of New York on iron ore would violate section 3(1) of the act, creating undue prejudice against the port of Baltimore. Mr. Jervis Langdon was on the brief for the Baltimore & Ohio.

It is interesting to met that Mr. Langdon did not in this case believe that the question of discrimination as between ports was academic. Neither did the Baltimore & Ohio argue that the Commission was obliged to deal with the matter solely under section 15a. Also, he did not then believe that the Commission should allow the rates of the New York Central and Erie-Lackawanna to seek their lowest level without interference.

It is further interesting to reflect that had H.R. 11583 been law when this case arose, the Baltimore & Ohio would have had to take up its claim, if it had any, that the New York rates were unduly low in the courts or the Justice Department; it would have to take up its claim of undue preference and prejudice in the Commission. Therefore, it would have had to conduct two cases.

Further, it seems to me that the Commission would have been unable to determine the case as it did determine it—by disallowing the New York rates. So far as the Commission was concerned, it could only allow the New York iron ore rates to go to the bottom and if it agreed with Mr. Langdon that the Baltimore rates must be lower, it would have had to implement its findings by requiring reduction of the Baltimore rates, resulting in a diminution of the Baltimore & Ohio's revenues from iron ore.

As stated earlier, I am not a lawyer, and I would shrink from involvement in a legal argument on the matter disputed between Mr. Langdon and the Chairman of the Commission. However, since the Commission has raised doubts about this matter, and since I consider it vital that the Commission be able to deal adequately with questions of discrimination, I believe it is urgent that this committee insure that if any legislation may result from these hearings it leaves no doubt whatever as to the Commission's power and ability to deal with discrimination between ports, localities, shippers, and carriers.

The water carriers have long felt that in their competition with railroads they were subjected to joint, collusive behavior and discrimination which in other industries would be forbidden by the antitrust statutes.

For example, I note from the public press that Billy Sol Estes and the Commercial Solvents Corp. are under indictment in Texas on allegations of collusive behavior in selling anhydrous ammonia below cost. We wonder why it is immoral and improper to sell anhydrous ammonia below cost but entirely admirable for railroads to meet in rate bureaus and agree on below-cost rates to drive water carriers out of business.

The water carriers have long sought some improvement in the antitrust laws to protect them and the communities they serve against the geographic discriminations presently practiced by the railroads.

I am advised by my counsel who have made careful analysis of H.R. 11583, that this bill does not accomplish what the President recommended, in respect of subjecting monopolistic and predatory trade practices of the railroads to the antitrust laws.

I understand that there will be another witness, a lawyer, who will go into this matter, and therefore I shall not discuss it in detail. I should merely like to emphasize two aspects of competition between the coastwise water carriers and the railroads which may not have been understood by the drafters of this legislation.

You will note from that chart that Seatrain for example, is always in competition with the through routes of two or more railroads which require joint action to make through rates. It is never in competition with a single line of railroad. There is no single line of railroad, for example, between the Northeast and the gulf. This situation would be true of most water carriers.

Seatrain, in turn, is dependent upon the individual railroads serving its ports for rates and divisions which permit movement of traffic to and from the ports for water carriage. So are many other water carriers.

The railroads with which Seatrain competes are permitted under section 5a of the Interstate Commerce Act to meet with impunity from the antitrust laws and collusively decide upon through joint rates as between themselves which will divert Seatrain's traffic. What is not generally understood is that in these matters they not only decide what joint rates they will make, but they also agree upon what joint rates they will not make. They also decide in these rate bureaus what will be the level of the rates to and from the ports served by water carriers.

The railroads are directed by sections 1(4) and 307(d) to maintain joint rates with water carriers such as Seatrain which will permit the movement of traffic by rail and water through routes. In practice, the railroads in their rate bureaus frustrate these requirements of the act by agreement among themselves not to make such joint rates with water carriers. And if any individual railroad violates this code, and once in a while it does, the other lines in their rate bureaus have the machinery for bringing that errant carrier into line by refusing approval of joint all-rail rates which that carrier requires and thus depriving it of important rail-connecting traffic.

The President's message comments upon the lack of joint rates between railroads and other modes of transportation, and congressional committees in the past have noted the almost complete frustration of the congressional policy in favor of joint rail and water rates expressed in the Transportation Act of 1940. The ability of the railroads collusively to deny joint rates to water carriers is, in my opinion, the primary explanation for this failure.

H.R. 11583, in lines 3 through 15 on page 3, subjects carriers exempted from minimum rate regulation to certain provisions of the antitrust laws. Those, as will be more fully detailed by another witness, are inadequate, but apparently the proviso on lines 15 through 21 of page 3 confers antitrust immunity again on railroads which meet collusively to establish joint rates. It would permit these railroads collectively to make predatory rates below cost, and apparently it would also convey the same immunity they now enjoy to refuse joint rates to Seatrain and other water carriers.

H.R. 11584 is a so-called omnibus bill intended to implement various other recommendations of the President's message. Section 2 of this bill authorizes experiments in ratemaking by common carriers and between common carriers. It seems to me that this is extremely vague legislation which does not set forth any standards which rates under the proposed experiments would be required to meet.

There is no need for legislation to permit experiments in ratemaking, provided that experimental rates comply with standards of lawfulness and the public interest. In fact, the Commission has authorized

numerous such experiments. The enactment of this proposed legislation would leave the Commission and the other regulatory agencies involved in a complete vacuum as to its intent or purpose. We recommend against this section.

Section 3 of H.R. 11584 adds a new subsection to section 2 of the Interstate Commerce Act, and modifies section 216(d) and 305(c) to the following effect:

> (b) Common carriers * * * shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated.

Apparently this proposal arises out of certain evils which have arisen in the transportation of piggyback trailers. The water carriers have no objection to its general purposes.

However, the words "loaded or empty vehicles" in this section could be construed to relate, inter alia, to railroad boxcars, flatcars, gondolas, and privately owned tank cars or refrigerators. If construed in this sense, the enactment of this language could have far-reaching consequences on the present-day scheme of transportation. For example, railroads commonly make joint rates for through movements as between themselves, and the division of those rates over any particular railroad may differ considerably from the local rates available to shippers for the same local movement. If this proposed amendment were construed to render such a difference as discriminatory, common carriers could not in the future enter into joint rates under presently lawful divisions, and thus the whole joint rate structure of the country would be upset. I recommend that this proposal if enacted, be clarified to insure that it will not have the harmful effects which it could be construed to have.

Section 4 of the bill deals with the establishment of through service and joint rates, and provides for the creation of joint boards of such purposes.

Again, we endorse the general purposes of this section, but the language is confusing. And we are certainly in favor of joint rates and through services.

Under the language a new rule is provided relative to joint rates between, inter alia, water carriers and railroads. The Interstate Commerce Act presently provides in section 1(4) and 307(d) that railroads and water carriers must enter into joint rates, and enforcement is under the jurisdiction of the Interstate Commerce Commission.

The amendment of section 1003 of the Federal Aviation Act, provided in section 4 of H.R. 11584, might be interpreted to amend or repudiate the present provisions of sections 1(4) and 307(d) of the Interstate Commerce Act. We doubt very much that it was the intention of the drafters of this legislation to have this effect, and we urge that the section, if enacted, be amended to insure that it does not have that effect.

We have no comments with respect to sections 5, 6, and 7 of H.R. 11584.

Section 9 of H.R. 11584 deals with simplification of Government transportation rates and procurement; and also transportation of mail by motor vehicle common carriers.

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We have no interest in the provisions with respect to transportation of mail, but we are vitally interested in the provisions with respect to the procurement of other transportation by Government agencies. In essence, this section provides that Government agencies may procure transportation of Government materials without respect to the laws regulating such transportation for commercial shippers.

It has always been the position of the common carriers by water that the Government should pay the same rates for transportation of Government property as would apply for commercial shipments of the same property. No one has ever provided a satisfactory reason why the Government, which has become the biggest single shipper of property, should be entitled to discriminatory rates, thus transferring a portion of its transportation burden to commercial shippers.

We favor, in fact, repeal of those provisions in the present section 22 of the Interstate Commerce Act which entitle Government agencies to purchase transportation at rates below commercial levels.

We therefore strongly oppose the enactment of section 9 of this bill as it is presently written.

Section 10 of H.R. 11584 transfers to the Secretary of Commerce certain functions of the Civil Aeronautics Board and the Interstate Commerce Commission, including the present authority of the Commission to guarantee loans to railroads. It seems to us that this is a constructive proposal; we never approved of placing the power in the Interstate Commerce Commission to guarantee loans to railroads, because that placed the Commission in the position of being both creditor and regulator of a single mode of carriage under its regulation. We do not believe that a Commission composed of angels, which it is not, could equitably discharge such a responsibility, and we therefore heartily endorse this transfer of functions.

Now, Mr. Chairman, to sum up the position of the water common carriers, this legislation before you—in particular H.R. 11584—is just another step in the continuous propaganda effort of the big railroads conducted over many years to free themselves of regulation by the Interstate Commerce Commission without coming under effective regulation of the antitrust laws.

In this campaign you have had proopsal after proposal in every Congress. The newspapers are continuously filled with the railroads' repeated characterizations of the Interstate Commerce Commission as a brutal and domineering overseer of their affairs. In this respect

they resemble the Communist agitators who continually shout "police brutality."

We of the water carriers say that, on the contrary, the Commission, under the constant bludgeoning of this massive railroad propaganda barrage, has been, if anything, lax in its enforcement of present laws against rate discrimination and requiring rail-water coordination.

Mr. Ben Heineman said to you that if you will but turn back the clock to the "good old days" of the 19th century—before the Interstate Commerce Act and the antitrust laws—the discriminations which appear throughout the railroad rate structure today would disappear like magic through the exercise of their benevolent and unhampered managerial judgment. Mr. Jervis Langdon threatens you that if you do not remove the restrictions on the railroads' monopolistic powers the Government will have to buy them. I am sure that the members of this committee are aware that big business never likes regulation or the antitrust laws, and that General Motors, United States Steel, Du Pont, and many other big corporations also fret continually about the restraints on their exercise of management discretion.

If I had $10 billion I would fret about it too.

But this is the 20th century not the 19th. I am sure this committee is not going to turn the clock back to the "good old days" of the last century, and that if it decides a monopoly of transportation is a good thing, it will accept Mr. Langdon's challenge and make it a Government monopoly. In the meantime, if transportation is to be privately owned and operated, as has been the principle in this country, it should be subject to equitable regulation in the public interest.

Meanwhile, there is agreed to be a big gap and an inequality in the regulation—the agricultural commodities exempt from regulation by highway, and the bulk commodities exempt from regulation by water. The constructive step for Congress to take is to remove this inequity by repealing or severely modifying these exemptions.

I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Weller, I thank you very much for your statement.

Now, did you want to include the roster and the appendixes to your statement in the record?

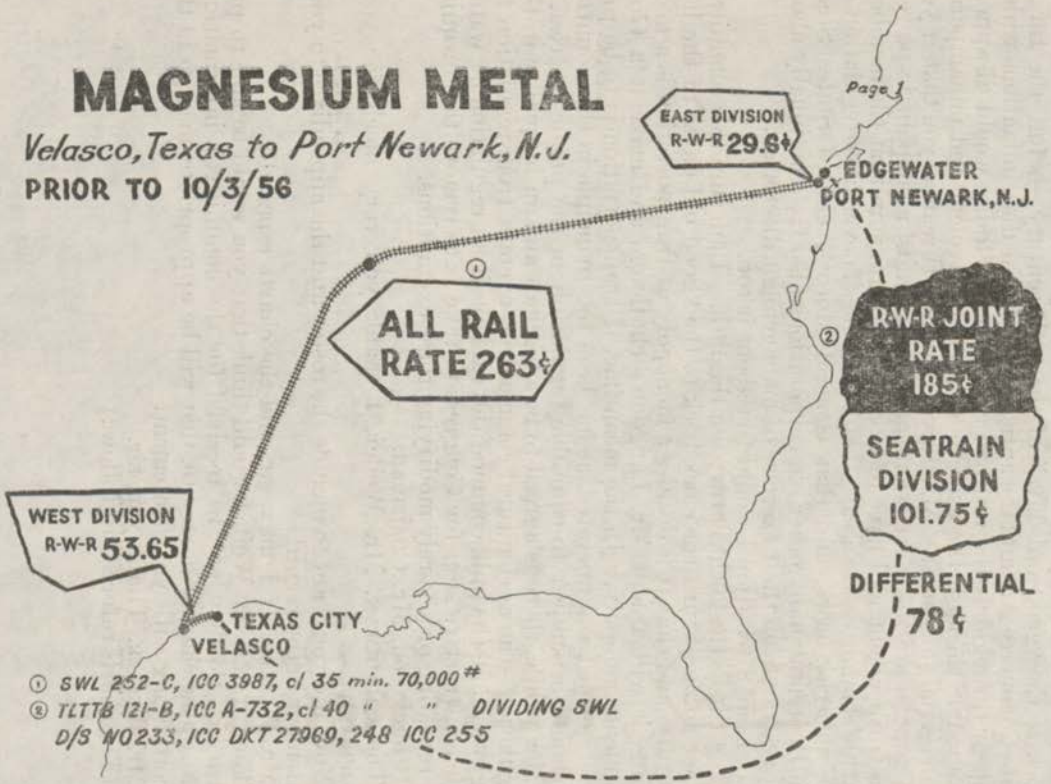
Mr. WELLER. If I may, sir, and the charts especially.

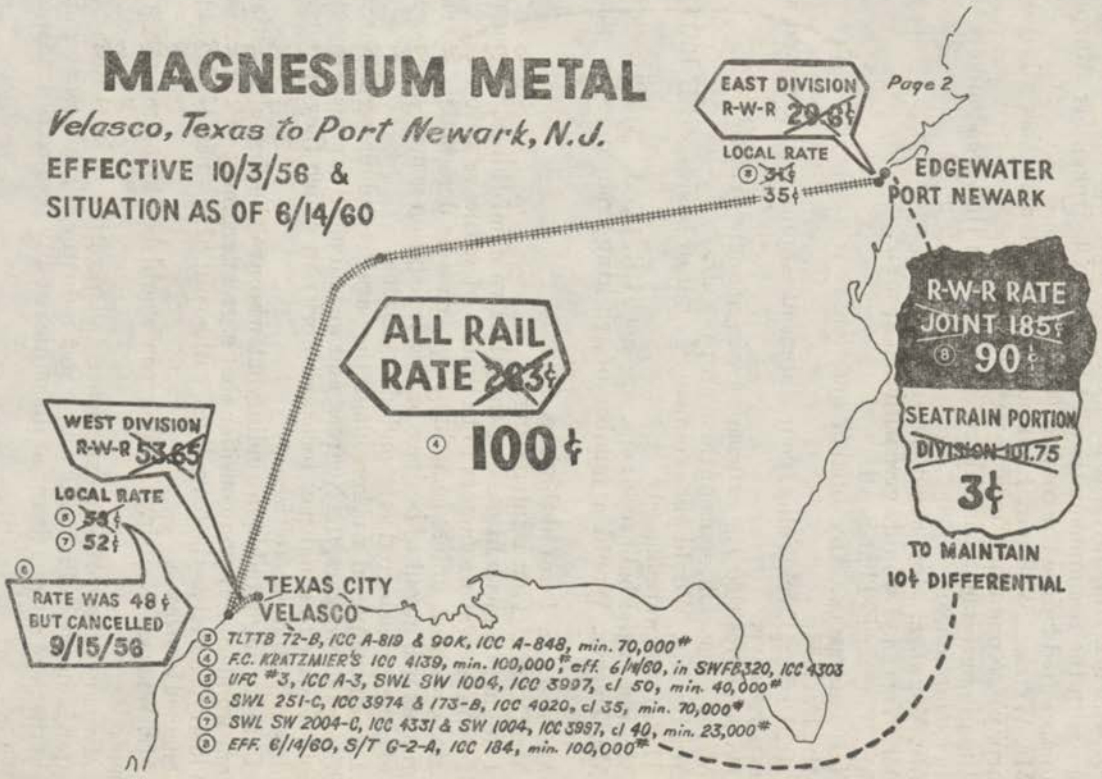
The CHAIRMAN. Well, I would think that you would be able to put them in. So they will be received for the committee's information.

Now, the charts referred to, that will be appropriate, may go in the record along with your statement.

Mr. WELLER. Thank you, sir.

(The charts referred to follow:)


MAGNESIUM METAL
Velasco, Texas to Port Newark, N.J.
PRIOR TO 10/3/56
Page 1
EAST DIVISION
R-W-R 29.6¢
EDGEWATER
PORT NEWARK, N.J.
①
ALL RAIL
RATE 263¢
②
R-W-R JOINT
RATE
185¢
SEATRAIN
DIVISION
101.75¢
DIFFERENTIAL
78¢
WEST DIVISION
R-W-R 53.65
TEXAS CITY
VELASCO
① SWL 252-C, ICC 3987, cl 35 min. 70,000#
② TLTTB 121-B, ICC A-732, cl 40 " " DIVIDING SWL
D/S #0233, ICC DKT 27969, 248 ICC 255


MAGNESIUM METAL
Velasco, Texas to Port Newark, N.J.
EFFECTIVE 10/3/56 &
SITUATION AS OF 6/14/60
EAST DIVISION
R-W-R 29.8¢
LOCAL RATE
⑧ 34¢
35¢
Page 2
EDGEWATER
PORT NEWARK
R-W-R RATE
JOINT 185¢
⑧ 90¢
SEATRAIN PORTION
DIVISION 101.75
3¢
TO MAINTAIN
10¢ DIFFERENTIAL
ALL RAIL
RATE 203¢
④ 100¢
WEST DIVISION
R-W-R 53.65
LOCAL RATE
⑧ 54¢
⑦ 52¢
⑥
RATE WAS 48¢
BUT CANCELLED
9/15/56
TEXAS CITY
VELASCO
③ TLTTB 72-B, ICC A-819 & 90K, ICC A-848, min. 70,000#
④ F.C. KRATZMIER'S ICC 4139, min. 100,000#, eff. 6/14/60, in SWFB320, ICC 4303
⑤ UFC #3, ICC A-3, SWL SW 1004, ICC 3997, cl 50, min. 40,000#
⑥ SWL 251-C, ICC 3974 & 173-B, ICC 4020, cl 35, min. 70,000#
⑦ SWL SW 2004-C, ICC 4331 & SW 1004, ICC 3997, cl 40, min. 23,000#
⑧ EFF. 6/14/60, S/T G-2-A, ICC 184, min. 100,000#

The CHAIRMAN. Are there any questions by the members of the committee?

Mr. YOUNGER. I have one.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Mr. Weller, in substance, do I understand that you agree with Mr. Hershey, who testified yesterday, that you are in agreement with the recommendations of the ICC Chairman, Mr. Murphy, who appeared before the committee?

Mr. WELLER. Well, sir, I am not sure that I remember all of Mr. Murphy's recommendations.

I am in agreement with his recommendation that we eliminate this bulk exemption, sir.

Mr. YOUNGER. How about the agricultural exemption?

Mr. WELLER. I would agree with that also, sir.

Mr. YOUNGER. That is all.

The CHAIRMAN. Any further questions?

Mr. Devine?

Mr. DEVINE. Mr. Weller, your statement is quite well prepared and it is persuasive.

Do you agree that the railroads are in financial trouble?

Mr. WELLER. Oh, some of them are; yes, sir.

Mr. DEVINE. Would your company go out of business if H.R. 11583 or H.R. 11584 were passed?

Mr. WELLER. I believe so; yes, sir—not H.R. 11584. 11583; yes, sir.

Mr. DEVINE. Would a number of trucking companies go out of business?

Mr. WELLER. I would think so.

Mr. DEVINE. That is interesting.

I might comment in passing that the two chief things, which seem to be the motivating factors in testimony of witnesses before the committees, are that unless something does pass or does not pass certain segments will go out of business or that legislation is necessary because every one is considered as second-class citizens.

I mean the postal workers claim they are second-class citizens; the white collar workers, the Negroes, and we had a bill over here the other day (relative to equal pay for equal work) in which they claimed all ladies as second-class citizens.

I am having trouble in finding out who are the first-class citizens. I am wondering if you consider that a great segment of the trucking industry, as well as the bargelines, will go out of business if H.R. 11583 is enacted into law.

Mr. WELLER. No, sir. I think you would be expanding my statement.

My particular present experience and position is in the coastwise water industry. The coastwise water industry is the most serious or is in the most serious financial difficulties of any portion of transportation.

I think this committee knows that.

It has suffered a decline in the number of ships and the volume of business, or anything that you want to measure by, over the last 20 years on the order of 80 percent.

There is in existence today no coastwise common carrier water transportation on the west coast. For a while we had no intercoastal water transportation.

There are only two companies in existence on the east coast, mine and one other.

There are many ports on the east coast which once had coastwise water transportation which no longer do have, such as Boston, Charleston, Philadelphia, and many big ports.

As I pointed out in those charts, the thing that is driving the coastwise water transportation industry out of business is the manipulation of rates by the railroads, which has been going on.

If you now give these people a free hunting license, as is proposed in this bill, that would be the end of that business. I am sure that the bill or that there will be witnesses, rather, from the trucking industry before you.

I would rather let them speak as to whether they think it is going to drive any portion of their business out.

Mr. DEVINE. Perhaps I am——

Mr. WELLER. As to the bargelines, it certainly would drive a lot of the bargelines out of business.

Mr. DEVINE. Well, I say that you appear to be an exeprt in your field of this much more than I am and I, perhaps, am a little oversensitive in this going-out-of-business argument, because back in the days when I was in the Ohio Legislature we had a proposal there to enact what was called an axle tax on the trucking industry, and we heard continuously that all the truckers would go out of business.

It has been the law now for 6 or 7 years, and they are doing quite well.

Mr. WELLER. I know this is so, that you have complaints of that kind, and people, for instance, in ICC cases, when they speak of destructive competition, frequently say that they are going to be driven out of business by a certain rate or for this or the other.

We had an experience in that respect in my own company about 2 years ago when the railroads published some reduced rates to deprive us of our pulpboard business out of Savannah.

We asked the ICC to suspend those rates and we urged that we would have to give up our business at Savannah if they did not.

The Commission, I think, heard the kind of conversations that you referred and the Commission did not suspend those rates.

Upon receiving this advice we notified them of the date, a week after that, at which we were going to have to discontinue our service at Savannah, because there would be no traffic left for us at Savannah.

The Governor of Georgia and the citizens of the port of Savannah then had to become interested in this matter and they filed a complaint with the Interstate Commerce Commission.

They asked us to stay in business in Savannah while this complaint was tried. The complaint involved a discrimination just such as I pointed out there.

The railroads reduced the all rail rates on pulpboard from St. Marys to New York very drastically, but they had a rate for a little haul from St. Marys to Savannah which was very high.

The Commission, acting on this complaint from the State of Georgia, acted with unusual rapidity—in about 10 months and that is very fast for the Commission—and they said that, yes, there was a discrimination and they ordered the railroads to remove it by reducing the rate to the port of Savannah.

So that we have been able to continue our service there as a result of that decision.

I think I am taking a long way of pointing out to you that once in a while these things do happen and once in a while people are driven out of business. In this case if it had not been for the intervention of the State of Georgia, which felt that it was vitally affected by the loss of its water transportation, we would have been out of business.

Two years ago the water carrier on the west coast was driven out by some railroad reductions on newsprint. I am sure that that water carrier said in its petition for suspension of those rates that it would be driven out of business.

The Commission did not suspend the rates and the water carrier is out of business. There is no coastwise water transportation on the west coast.

So the point is that it does happen sometimes, you know.

Mr. DEVINE. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Weller, this whole matter gives me a great deal of concern.

In the first place, I do not think the Congress or the people are going to permit one mode to drive another mode of service out of business. As you mentioned in the case of the State of Georgia and the railroads, the public does have an interest.

I think there is a place for all modes of our common carrier systems and, under a principle enunciated by Congress, I think it is intended that each of these modes perform a service to the public and I for one, am not going to stand by and see a particular mode destroyed when we are spending money and efforts to provide programs to try to strengthen the common carrier system.

Your appeal and that of the other water carriers interest me a great deal. It also disturbs me. And I cannot see how the conditions which you mention here could necessarily bring about the results that your fear.

Now, having said that, I will say one other thing, that I am very strong in the proposition that we ought not to be holding up umbrellas necessarily on any mode of transportation in order to protect or keep another one in business. We had that in 1958.

That is a sound policy, in my judgment, so far as the public is concerned. It affects our competitive situation, to develop service, but here the waterways are provided by the U.S. Government.

You do not have to maintain them. You do not have to build them. You do not have to pay taxes, no use tax of any kind, and then you say you cannot compete with low-cost transportation.

We heard, for instance, that the trucks have got to, and do, pay a rather high tax on gasoline, the fuel that they burn, the vehicle itself, and the tires and so forth.

Railroads maintain their ways, pay taxes, high taxes, and I just do not get it.

I do not see how you are being jeopardized, as you indicated that you are, and I am somewhat disturbed about the approach that is made here.

If, under the circumstances, you cannot compete then I do not know who in the world could. You have exemptions in agricultural commodities and bulk commodities.

You are free to operate and you have these exemptions which other modes do not have. I would like to hear some different discussion on the competitive situation some time.

Mr. WELLER. Mr. Chairman, may I comment just a little on that?

The CHAIRMAN. Yes, sir. I would be glad to hear you.

Mr. WELLER. No. 1, my company, the Coastwise Water Carriers—I think you are aware that our ships run in the ocean, and the ocean is not provided by the Government. It does not cost them a dime.

I understand it was provided by God, and I go to church every Sunday and——

The CHAIRMAN. Well now, let's not get ridiculous. This bill is applicable to the common carriers of the United States and it does not go across the ocean.

Mr. WELLER. I know, and I do not mean to get into an argument, sir, but I wanted to make it plain that the coastwise carriers do not use Government improved waterways except when they come in the harbor——

The CHAIRMAN. Well, you use the Panama Canal when you go from the east coast to the west coast, and that is a Government facility.

Mr. WELLER. That is true, and they pay tolls for it, heavy tolls.

I do not mean to make an argument of that, but I do say that the coastwise water carriers—I agree with your point in this sense—that the coastwise water carriers, since they do have the free use of the ocean, which requires no maintenance and I agree with you that we do not pay any taxes for using it, that we are a low-cost form of transportation and we can compete with railroads.

We are a lower cost form of transportation than the railroads for the traffic that we are able to serve.

We cannot compete with railroads, however, if the railroads are allowed to discriminate in their rates in the way that I am demonstrating to you here.

Now, you speak of umbrellas, Mr. Chairman, and we do not ask, in most of these cases, for the railroads to hold their rates up.

In the example I gave you there, we are not complaining about the $1 rate of the railroads. We are asking that, if the railroads can make the all rail rate a dollar, why can they not make a lower rate to and from the ports?

That is our question.

I did not mean to prolong the discussion, because I have had my turn but I did want to make those comments.

The CHAIRMAN. Yes. Well, of course, in making my comment I was revealing to you what worries me about this whole thing.

And, of course, we want to hear from you and others because we are seeking advice and information and——

Mr. WELLER. I understand.

The CHAIRMAN (continuing). Some answers to our questions.

Mr. Friedel?

Mr. FRIEDEL. Mr. Weller, with reference to this chart, from Velasco to Texas City's port they charge 52 cents?

Mr. WELLER. Yes, sir.

Mr. FRIEDEL. And then from the port of Newark to Edgewater, they charge 35 cents?

Mr. WELLER. Yes, sir.

Mr. FRIEDEL. But these rates used to be much lower.

Mr. WELLER. Previous to that, sir, they had a joint rate with us. There were local rates there about on those levels or a little lower, but they had a joint rate with us in which there were divisions for those moves.

Mr. FRIEDEL. Well, my question is: Do you go into Baltimore?

Mr. WELLER. Not directly; no, sir.

Mr. FRIEDEL. I just wanted to know what the railroads' charges are at the port of Baltimore.

Mr. WELLER. I have not had the experience, sir; no.

Mr. FRIEDEL. That is all.

The CHAIRMAN. Thank you very much on behalf of the committee for your appearance and for your testimony.

Mr. WELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Howard King.

STATEMENT OF CAPT. A. C. INGERSOLL, JR., PRESIDENT, FEDERAL BARGE LINES, ON BEHALF OF COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS, ST. LOUIS, MO.

Captain INGERSOLL. Mr. Chairman, Mr. King is in Alabama today. If I may, I would like to take his place. I am next on your schedule, anyhow.

The CHAIRMAN. Yes. Do you want to speak for Mr. King, too, Captain?

Captain INGERSOLL. Yes, sir.

The CHAIRMAN. Very well, we are glad to have you here.

This is Capt. A. C. Ingersoll, Jr., president of the Federal Barge Lines, and he is appearing in behalf of the Common Carrier Conference of Domestic Water Carriers.

Captain INGERSOLL. My name is A. C. Ingersoll, Jr.

I am president of the Federal Barge Lines of St. Louis, Mo. I am appearing here today in opposition to H.R. 11583 on behalf of the Common Carrier Conference, as a last-minute substitute for Mr. Howard King, the president of the Arrow Transportation Co., in Sheffield, Ala.

Mr. King is not here today because he is down in the Federal courts in Alabama fighting for the life of his company against the attacks of the Southern Railway.

He was hoping to have the opportunity to tell this committee what is happening to him now and to relate this situation to this proposed legislation which, he believes, and which his colleagues in the river business believe, would destroy him.

I would like to make a little review of the development of the Tennessee River, which is Mr. King's scene of operations.

Prior to 1939 it was not a navigable stream in the modern sense. Navigation had disappeared to all intents and purposes before World War I under the impact of railroad competition.

The packet boats had just been driven off the river completely, and it had not been made navigable for barge transportation until the TVA development made the Tennessee one of the finest inland waterways in the world from its mouth on the Ohio down into the Southeast to Chattanooga and Knoxville.

This improvement was completed very recently, just before World War II.

In 1939, for example, I happened to be the captain of the first towboat that took a barge of grain into Chattanooga when the locks were completed. So I know whereof I speak in the Tennessee Valley.

In the 23 years since that time, water transportation has developed very rapidly in that country, which was pretty well landlocked until the opening up of the Tennessee.

Very heavy movement of grain has developed, a movement of iron and steel, a movement of oil, a movement of chemicals, and a movement of pig iron, a movement of fertilizers, a movement of paper, and, more recently, one of the most romantic movements in the country, which is the water transportation of Saturn missiles from Huntsville, Ala., about 450 miles up the Tennessee.

These missiles, which are too big to move by any other form of transportation, go down the Tennessee and down the Ohio and down the Mississippi, and across the gulf and around Florida up to Cape Canaveral.

Barge transportation has brought cheap grain into the Southeast. We like to believe that we played a great part in giving impetus to the development of the chicken industry in the Southeast and to the growth of the livestock industry that has become a larger and larger feature of agriculture in the Southeast.

Other commodities are moving in increasing quantities. Industries are moving to the river on the Tennessee, not only because of the TVA power and plentiful supplies of fresh water, but because of the availability of water transportation.

A great variety of industries are using the river either to move their products or as a lever to beat down the rail rates.

The Southern Railway, whose president appeared before you gentlemen last month, feels this water competition very keenly. To use a familiar phrase, it is a bone in Mr. Brosnan's throat.

He wants to get rid of us.

How can he get rid of us? The easiest way to get rid of water competition on the Tennessee is to knock out the grain transportation, because grain is the backlog of water transportation on the Tennessee. All of the other business on the Tennessee is in a large measure keyed to the barge transportation of grain.

But to go out deliberately to price rail transportation, to knock out water transportation, invites restraint, and so he has created a "red herring" to divert attention from his real purpose, the "paper tiger" of itinerant trucking.

There is a certain amount of itinerant trucking of grain down into that country, but the amount has been blown up out of all proportion as though it controlled the competitive situation.

When we heard this argument advanced, we were astonished, because we had been moving grain down into that country for 20 years and never knew about this truck competition that was supposed to control the situation.

The CHAIRMAN. Do you believe, Captain, that we ought to have a principle or pursue a principle that each mode be allocated certain transportation and hold it to that?

Captain INGERSOLL. No, sir. No, sir.

I think that that is an improper concept and to the extent that this concept influences decision, I believe, it is a mistake.

The CHAIRMAN. Well, I am certainly glad to hear you say that because I was afraid, from what you say, that you do not want the trucks and the railroads to be hauling agricultural commodities in that area.

I thought you wanted to say to the bargelines, "You haul this and the trucks will haul that and the railroads will haul that."

Captain INGERSOLL. The Southern Railway is complaining in this situation that they are restrained from making available to the public substantial savings in moving grain down into that country, and they are having to spend thousands of dollars to try to make their rates effective.

I think that it is appropriate to say that the bargelines for 30 years have been trying to get the railroads to take grain into the Southeast for reasonable and nondiscriminatory rates from the ports, first on the Mississippi and then, after the Tennessee River was made navigable, from the ports on the Tennessee. Going clear back into the beginning of the 1930's, the Southern Railway and the others in the Southeast have bitterly and singlemindedly fought and resisted in the Commission and in the courts the establishment of any kind of reasonable rates away from the river down into the Southeast.

We have gone to the Supreme Court time after time after time, and every time we went the Court has said that there must be nondiscriminatory rates away from the river.

The railroads, led by the Southern in the Southeast, have successfully, up to now, resisted putting in effect any rates from the river ports down into the Southeast.

Their plea that all that they wanted to do is to make cheap transportation available for grain in the Southeast has a hollow ring against the background of 30 years of refusal to publish rates from the river ports so that grain can move into the Southeast without discrimination, and——

The CHAIRMAN. You interest me very much, because I have been dwelling on this matter of discrimination ever since these hearings started.

You say the Congress has continued to pursue a policy that the rates of inland locations are the same as those on waterways?

Captain INGERSOLL. The Congress has said, beginning back in the 1920's, and every time they have dealt with the subject since, and most recently in 1940, that railroad rates, or anybody's rates, when they are a part of a combination haul, cannot be discriminatory.

To be plain, Congress has said that a rail rate from a river port into the interior cannot be any higher if a commodity comes into that river port by barge than if it comes to the port by rail.

The CHAIRMAN. Captain, I have been quoting and referring to some specific examples where just the contrary has happened, and I have not yet received any such information from, including the railroads or the Commission.

I have had no satisfactory answer to them yet, and if that was the policy which was last enunciated in 1940, why, it seems to me that most everybody except you and me have forgotten about it.

I am glad to hear somebody say that that is supposed to be the policy in the country. If it is, we ought to get somebody to carry it out.

Captain INGERSOLL. I do not think there is any question but that the policy of Congress has been consistent on the subject of discrimination, and in the kind of discrimination that I am talking about it has been repeated and reaffirmed every time the Congress has dealt with the subject.

The courts have not been the least bit hesitant about consistent interpretations of what the Congress has meant.

The railroads in the Southeast have consistently refused to be governed by this policy and have erected rate barriers against the grain coming into the Southeast by water so that it cannot go beyond without discrimination.

The Southern Railway also says that the kind of a rate program that they are trying to put in effect on grain in the Southeast is a technological advance.

I think that we ought to say that the water carriers cannot properly object to economies in ratemaking which are the results of technological advance. We are proud, ourselves, when we are able to effect technological advances.

We believe that the hope of the future of the railroad industry lies, in large measure, in that direction.

We do not believe that this drastic and controversial rail rate reduction on grain into the Southeast, is the result of a technological advance. We believe that the measure of the reductions that have been put in, the two-thirds reductions, far exceed the technological advance that can be demonstrated to result from the service changes that have been made.

I think that the best evidence that we are right can be found in the testimony of the L. & N. Railroad, which has said, as to this situation in the Southeast, that they can move grain into the Southeast with ordinary steel boxcars cheaper than the Southern can do it with aluminum hoppers.

The water carriers retained a man by the name of John McWilliams, who is one of the most outstanding cost experts in the country, the man who set up the cost section in the ICC and ran it for a number of years. He has been in private practice since then as one of the more respected cost experts in Washington.

His analysis of the situation indicates that these proposed rail grain rates return, on the average, about 57 percent of the total cost of performing the service.

If all of the rates on the Southern Railway were made on that basis, the Southern Railway would go out of business.

Mr. Brosnan says that he does not seek any special favor nor ask for "paternal protection from folly." We suggest that he cannot engage in this folly in a vacuum, and that while he might be in a proper position to say that he does not want any protection against his own folly, we do ask for protection from the consequences of his folly, if it is folly.

We do not suggest we are qualified to be the judge of what is folly in his actions, but we suggest that neither is he.

We desperately need an umpire. When the Southern Railway, with $870 million worth of net investment, is pitted against the Arrow Transportation Co., with $3 million, unless there is an umpire, there can be no question as to how the struggle will come out.

The Southern Railway does not want any restraint.

In this court proceeding that is just coming to a head in Alabama today the judge, last week, informally took a poll of the railroads and said, "Before we consider whether we shall make a restraining order, will you six railroads voluntarily postpone the effectiveness of your rates until the Commission finishes this investigation that is going on?"

All five of the other railroads quickly agreed that they would, in fact, voluntarily postpone the effectiveness of their rates until the ICC had finished their investigation.

The Southern would brook no restraint and refused to agree to that. Today the Federal courts are going to decide whether or not to do something about it.

The Southern Railway now asks you to take away the Commission's authority to review its more reckless actions.

Mr. Brosnan wants the right to compete on equal terms. And I say to you, gentlemen, that this is like releasing an elephant and a mouse to trample each other to death "on equal terms." What chance would the $3 million Arrow Transportation Co. have against a $870 million railroad in competing on equal terms?

This story is the perfect example of the problem before this committee. Water transportation has brought low cost transportation into the Southeast by mechanical efficiency, and not by destructive competition, based on below-cost ratemaking.

The railroads understandably resent this intrusion, and would like to extinguish our competition by the exercise of pure financial strength. They have the will and the power to do so.

The Congress has given the ICC the difficult task of overseeing these intermodal conflicts, and the responsibility to weigh the conflicting interests of all concerned in refereeing these contests.

They do a pretty fair job. The decisions frequently go against the water carriers. We, and others, would be happy if the baselines were marked a little plainer to help the umpire call the close ones "fair" or "foul," but we do not scream "Kill the umpire."

This legislation is "kill the umpire" legislation, and if it is passed, Mr. King's little bargeline on the Tennessee, as well as a great many other small but useful public servants in transportation, will probably disappear from the scene.

Thank you, Mr. Chairman.

The CHAIRMAN. Captain, thank you very much. Personally, I am very glad to have you appear before the committee.

I know that you have been interested in the development of the waterways for transportation for many years. As a matter of fact, I go back to the days when you operated the Federal Barge Lines and the pleasant visits that the members of our committee had with you from St. Louis to New Orleans, and when we observed the kind of transportation that you ran or directed at that time.

So we know that you have had years of experience in this business.

We appreciate having your comments on this legislation.

Mr. Younger?

Mr. YOUNGER. I just wanted to ask Captain Ingersoll this:

I failed to understand just what you meant by saying that your bargeline could not compete with the railroads on equal terms.

What do you mean by that?

Captain INGERSOLL. I mean that we cannot make rates at 57 percent of cost and stay in business very long.

Mr. YOUNGER. Well, that is not on equal terms. You do not mean on equal terms.

You mean on unequal terms, do you not?

Captain INGERSOLL. It becomes unequal when this sort of a situation can take place.

Mr. YOUNGER. What we are trying to do is to permit the various modes of transportation to exercise their inherent advantages and not the disadvantages.

So what we are trying to do is say to the bargelines, "You can compete with your inherent advantages and the railroads can compete, and so can the trucks."

That has been the policy that has been laid down and, as I get the burden of your talk, it is that, unfortunately, the umpire has not been able to say to the Southern Railway, "You are unfairly competing."

Is that not the burden of your testimony?

Captain INGERSOLL. We have heard railroads take the position that one of their inherent advantages is the ability to charge a low rate in a competitive area and recover their losses in a noncompetitive area.

This is an advantage that they have, as compared to the waterlines.

We hoped that this committee would not consider that as an inherent advantage.

In this particular grain case in the Southeast it is fair to say that this is the most bitterly fought suspension case in recent times. The hearing has been going on for 7 months almost without interruption, except when one of the lawyers had a heart attack.

It has been going on for almost 7 months without interruption. The statutory period of suspension is only 7 months.

Within that period the Commission is supposed to deal with these questions and decide whether a rate that has been questioned, and which they think there is reason to suppose might be unlawful, whether it is or it is not unlawful.

They have not yet been able to finish the hearings in this case. It is the worst case that has been tried in recent times as to the amount of testimony and cross-examination, as it is a "milestone" case.

Mr. YOUNGER. That probably is a true statement of fact, but I still cannot understand where you would get any better results if we do what you say, eliminate these exemptions on various bulk commodities and agricultural commodities and put more supervision in the ICC.

If they cannot carry out the supervision now, how are they going to function if you put more supervision on their back?

That is the logical point that I do not get in your final recommendations to the committee.

Captain INGERSOLL. I think the situation is really improving, considering how much more complicated the transportation industry is getting all the time.

Just in the space of one generation we have changed from one form of transportation economy to an economy with many forms of transportation. The problems of competition have multiplied tremendously, and the Commission has had a time keeping up with it.

I think they do a pretty good job.

I think they would do a better job if you fellows could make the standards that guide their decisions a little bit plainer.

But I do not think that the situation would be helped if you would take away the umpire.

Mr. YOUNGER. But you think it would be better and it would better mark progress by doing away with those exemptions than by equalizing, by cutting out the minimum rates?

Is that your philosophy?

Captain INGERSOLL. I can only speak to the water exemption. I do not want to express an opinion about the agricultural exemption.

The question of the agricultural exemption is a matter, in my opinion, in the trucking industry, and between the trucking industry and the agricultural industry, and I just do not feel competent to speak to that one.

But as to the water exemption it is obsolete.

Mr. YOUNGER. Well, you carry agricultural products, grain, in bulk which is exempt, is it not?

I am speaking about agricultural products.

Captain INGERSOLL. Well, as I say, we—the water carriers do not consider that we are in competition with the motor carriers whether they are regulated or not.

So that I do not think that we have any particular basis to take a position about agricultural exemption.

It does not affect water transportation.

Mr. YOUNGER. But you do feel that the bulk exemption should be done away with?

Captain INGERSOLL. Yes, sir, I think it is plainly obsolete.

Mr. YOUNGER. That is all.

The CHAIRMAN. Thank you very much, Captain.

Mr. WILLIAMS. Let me ask the captain a question.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Captain, I am sorry I did not get to hear your statement. I was called out of the room when you gave your formal statement.

One thing that concerns me about this legislation is the principle of approving minimum rate regulations.

That was pointed out in a letter that I received the other day from a constituent friend who admitted that he had an ax to grind, a personal ax to grind.

He was a lawyer who represented, presumably, one of the railroad companies.

He said, however, disregarding that, that it appeared to him that when the time came that it would be more difficult to reduce freight rates than it would be to increase them and if that were so, something should be done about it.

Now, would you like to comment on that?

Captain INGERSOLL. I think there is no question but what the mechanisms of regulating competition need to be constantly under scrutiny and reviewed right along.

I think that it would be fair to say that the manner in which the regulation of competition actually works from day to day could stand a great deal of improvement.

I think that the Commission itself is working on it just as hard as it can.

They have just instituted, this spring, a proceeding to review the cost formulas of the railroads and get an established cost formula for water transportation, review the cost formulas for the trucklines, and try to establish some clear-cut policies within the Commission as to how they are going to deal with the question of costs, a very vital thing on which policy should be more formally established than it is today.

By these proceedings, which will involve a lot of adversary argument amongst the modes of transportation, the science and the practice of rate regulation would be considerably advanced, I am satisfied.

I think that this committee can be very usefully reviewing the mechanisms right along.

The standards that should govern the Commission in deciding a case should also be reviewed. They are far too general now, I believe.

I think this is probably at the bottom of a great deal of restlessness of the transportation industry, and the shippers, because the standards that guide rate regulation are too general and susceptible of being interpreted too widely—it is too hard to predict how a piece of litigation is going to come out.

And this encourages, let us say, irresponsible ratemaking that would not take place if the standards were more clear in advance.

I think that there would be a great deal less litigation if the guidelines, to tell the Commission how to regulate rate competition, were plainer.

Mr. WILLIAMS. Of course, Captain, the argument is rather difficult to refute that if we are permitting a situation wherein it is easier to raise freight rates than it is to lower freight rates that in case this legislation is not reported to the House and not adopted, I will probably be calling to you to help me try to answer that argument because frankly, I do not know how to answer it.

Captain INGERSOLL. I do not think it is true, to start with.

Mr. WILLIAMS. You do not think the situation should be one wherein it is more difficult to reduce freight rates than it is to increase them?

That is the point he made in the letter.

Captain INGERSOLL. I do not think that it is true that that is the case now.

Mr. WILLIAMS. But you do not think that is the case now?

Captain INGERSOLL. No.

Mr. WILLIAMS. Of course, I understand the competitive aspect of this and the idea of discriminatory rates, and the points you brought out in that regard, but I was simply generalizing on what he said.

And I realize that it is subject to debate as to whether that situation now exists.

I have no further questions.

The CHAIRMAN. Captain, thank you very much.

Captain INGERSOLL. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will recess until 3 o'clock this afternoon. We have three other witnesses scheduled today.

We have got to get to them because tomorrow we have others scheduled coming and we have simply got to reach all of these witnesses who are scheduled to be here this week.

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I am announcing today, however, that after this week we will necessarily have to suspend the hearings on these proposals in order to get back to hearings on the bill, H.R. 11581, the Federal food, drug, and cosmetic bill.

And we are going to make a determined effort to conclude the hearings on that bill not later than August 24.

We will resume hearings on that bill on August 20. That is a Monday morning, and there are many witnesses to be heard.

In view of recent developments, the legislative situation with regard to drug legislation has changed materially and it is the purpose of the Committee on Interstate and Foreign Commerce to complete hearings on H.R. 11581 even if it should take night sessions to do so.

We, therefore, will be required to suspend these hearings until a later date that I will announce as soon as we can, but we have got to go into the other bill as we developed it during this session.

The Committee has a bill on the floor of the House today which will take most of the afternoon, so we will adjourn the hearings until 10 o'clock in the morning.

(Whereupon, at 12:17 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, August 9, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

THURSDAY, AUGUST 9, 1962

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

The committee met, pursuant to recess, at 10:15 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee), presiding.

The CHAIRMAN. The first witness this morning will be Mr. Lew Russell, president, Tidewater Barge Lines. Mr. Russell.

Mr. RUSSELL. Mr. Chairman, I have two statements here from the Northwest: One of the Columbia Basin River Operators which represents 16 carriers which I would like permission to hand to the clerk to put in the record. I do not have enough copies for all the people here, I do not believe, but I won't try to add anything to that.

The other is for my own company and I would like to read that for the record, if you please.

The CHAIRMAN. Very well. You may proceed. We will be glad to look over the material that you have requested to be included in the record. Is it the letter referred to—I thought you said there were 16 copies.

Mr. RUSSELL. Mr. Chairman, the letter was just received by myself to put in this hearing and the statement of my own.

The CHAIRMAN. In other words, all you are asking to have put in the record is the letter addressed to me dated August 1, and signed by your chairman—that is, chairman of the Columbia Basin River Operators—and that you will present your own statement?

Mr. RUSSELL. Yes, sir.

The CHAIRMAN. Very well. The letter referred to will go in the record immediately following your statement.

STATEMENT OF LEW RUSSELL, PRESIDENT, TIDEWATER BARGE LINES, PORTLAND, OREG.

Mr. RUSSELL. My name is Lew Russell, and I am president of the Tidewater Barge Lines of Portland, Oreg. I have been an operator of boats and barges on the Columbia River and all its tributaries since 1932.

I am a member of the Common Carrier Conference of Domestic Water Carriers, a group of regulated water transportation companies who are concerned with the growing problems of uneconomic competition in the transportation industry.

I have spent all my life in transportation. I first operated jerkline mule teams in Arizona and Nevada, then trucks on the Pacific coast, and then boats on the Columbia River and in the coastwise trade.

The bargelines on the Columbia River perform the essential low-cost transportation function enabling the farmers of Washington and Oregon to get their grain to market cheaply. Other important commodities carried on the river are petroleum and chemicals which we transport both up and down the river. We have a large trade in military ammunition. During the Korean war we transported over 175,000 tons of ammunition for the military services.

Barge operators on the Pacific coast are convinced that transportation agencies exist for the purpose of serving the public in the movement of goods and should not be regarded or treated as a vehicle for social or economic experiments, for changing our economic pattern, or for solving social problems.

I agree that there should be the greatest degree of responsibility upon, and freedom of carrier management in providing the public with the transportation service it needs. I feel present regulation could be extended in the field of exempt commodities rather than less regulation, but regulation should not encroach upon the proper sphere of managerial discretion and responsibility over actual physical operation.

The carriers are entitled to an opportunity to earn a fair return on their investment under honest, economical, and efficient management, but this the shallow-draft carriers on the Pacific coast could not accomplish if elimination of minimum-rate control as proposed in this bill (H.R. 11583) is allowed to become law. Shallow-draft carriers on the Columbia River hauls consist of about 95 percent of commodities in bulk now under exemption. We, on the Columbia River, want regulation on these commodities. Remove minimum-rate control on bulk commodities when moving by rail and I am certain that barge operation on the Columbia River system will cease to exist. Elimination of barge transportation will then leave the rail carrier as the only transportation agency in our area, and you are well aware what happens to freight rates where only one mode serves an area.

Passage of the elimination of minimum-rate control bill before you will remove inherent advantages of each mode of transportation, approval of exemption from regulation of bulk commodity movements by rail would immediately create chaos in transportation, and I am certain small shippers as well as communities that are served by all modes of transportation besides the barge operators would get hurt.

I, as a barge operator on the Columbia River, know what barge operators will face with no control minimum rates on traffic moving by rail.

Oregon State has no minimum-rate control over rail rates. This lack of control over minimum rates by the public utilities commissioner of Oregon is bad enough even though section 13 of the Interstate Commerce Act does restrict rail carriers on Oregon intrastate traffic when such traffic is in competition with interstate traffic.

Today, in the State of Oregon, the Southern Pacific Co., a rail carrier, has contract rates with large shippers on movements of logs and wood chips with written-in guarantees that outbound movements

on the finished products move long haul completely or 80 to 90 percent by the rail carrier. These contract rates are much below the published rates and the only rates available to small shippers or large shippers that do not wish to be told how to move their outbound finished products are the published rates.

Today, the Interstate Commerce Commission does have control over the minimum rail rates and the rail rates on grain and grain products in territory competitive with barge and truck-barge in the Columbia River Basin system, but today the rail rates are below rail rates published in the year 1930. Average rate increases on rail rates where there is no barge competition were increased under ex parte since 1946 over 100 percent but the barge-competitive rates are below rates paid in 1930. I do not have to elaborate here that the operating cost since 1930 went up both for the rail carriers, barge operators, and the highway carrier. Barge operators have not taken any increase since 1950 on rates of petroleum products. Barge operators on the Columbia River haul today less petroleum products than they did in 1950. Much of our tonnage has been diverted to rails and pipelines.

Removal of minimum rate control will send us back to the days of the jungle. In those days on the Columbia River when the packet boats plied, the river rails would reduce rates until the boat operator could not compete. Railroads then bought out the boat operators' equipment. The rail carrier then laid up the water equipment; canals on the river bypassing the rapids filled in with silt. When this happened and the rail carriers had monopoly, the railroads increased their rates.

Removal of minimum rate control on rail rates will also endanger future navigation development of the Columbia River system, which is not only of great importance to the economic growth of the Pacific Northwest, but also endangers the military defense of this country during emergency or war.

The role played by the bargelines on the Columbia River during World War II is now a matter of history, but it is an unrefuted fact that during this period the Army Air Forces were able to maintain their aircraft fuel requirement in the Pacific Northwest only through the use of the bargelines on the Columbia River, and without such bargeline service, operation in this area would admittedly have been impossible for the reason that the rail carriers, because of lack of equipment, were wholly unable to meet the transportation needs of the Air Force during that critical period.

I respectfully submit that to permit the rail carriers to destroy an admittedly essential lower cost water carrier service on the Columbia River through needless and wholly uncontrolled selective rate cutting could result in disastrous consequences in the event of another national emergency.

The rail carriers have contended, I am certain, before this committee that removal of minimum rate control may help recapture grain and petroleum traffic lost to the barge and truck lines and will prevent diversion of such traffic from competing forms of transportation. This contention—and I am speaking for the Pacific coast—is wholly without merit, for the rail carriers have in the past and are presently transporting the majority of all grain traffic and petroleum—other than pipelines—moving to and from the Pacific coast terminals. These facts have been documented by the barge operators in many cases be-

fore the Interstate Commerce Commission. It is apparently the position of the rail carriers that they are entitled to the entire movement of bulk commodity products where they compete with bargelines.

The Federal Government, in order to foster, protect, and advance the public interest has expended a vast amount of money in improving the Columbia and Snake Rivers for navigation.

The expenditure already made and those planned have been, and are, made only after a thorough investigation by the U.S. Army Engineers who require that the improvement under consideration must be predicated upon three-point Federal program of hydroelectric power, irrigation, and navigation. If any one of the three points is found not justified by the investigation made, the project is not approved for construction. If this bill before you becomes law, it will destroy the water carriers on the Columbia River system and thus nullify the huge investment of public funds for the improvement of navigation on the rivers involved and will further stifle additional improvement presently in the authorization or planning stages.

Is the Congress going to stand by and allow these navigational improvements now made and those planned to become silent monuments to the railroads' victory in its war against the bargelines, seeking their complete elimination and thus depriving the public of the use and benefit of barge transportation upon the Columbia River?

Historically, barge transportation attracts new industry; therefore, new movements in and out of the territory of raw material and finished products. Due to the physical limitation of barge transportation to serve producers and buyers of materials, most of the new tonnages move by rail and highway transportation.

We barge operators recognize that if we are to increase our tonnages with rates that will give us a fair return, the area that we serve must be also served by financially healthy rail and highway carriers. In most cases, as in the case of grain, origins and destinations are not on the banks of the rivers. To receive a fair share of the grain tonnage we must encourage construction of grain elevators on the banks of the rivers so that the grain may be consolidated there in bargeload lots. These elevators also are served by rail.

The barge operator is also cognizant, under the rail rate structure, that barge legal and lawful rates must be somewhat below all-rail or all-truck rates if he is to participate in the traffic that can be also handled by other modes of transportation.

Barge operators also are cognizant that the waterway over which they have authority to operate is a public highway while a railroad owns its own plant and has a monopoly over its own line.

If this bill before us becomes a law, we will have punitive and destructive rate reductions by rail carriers. Punitive and destructive rate reduction weakens the financial position of the healthy and deprives the weak and eventually rates must rise sufficiently to restore service and a fair return, but possibly with only one mode surviving the battle, the rail carriers.

Gentlemen, you are aware that the Pacific Northwest, where White wheat is grown, is the only area not burdened with tremendous surpluses.

Pacific Northwest White wheat found export markets mainly in Orient oversea markets where it is a substitute for rice in diets.

How fortunate for the farmer of the Pacific Northwest that his grain movement may be hauled by rail or barge and the competition for his traffic results in low rates not available for his fellow farmer not served by bargelines seeking the same markets. In fact, the freight rate of the farmer not served by the bargeline has increased over 100 percent since 1946. This is mainly due to the need to make up the loss of revenue to rail carriers due to depressed rates where they compete with bargelines.

The farmer served by all modes of transportation, when export markets are good and movements are heavy to tidewater terminals or during the harvest when the farmer is turning his crop under mortgage to the Government under the subsidy program, is not as liable to feel the boxcar shortage as does the farmer not served by bargelines.

Barge transportation in the Pacific Northwest not only made it possible to establish low grain rates, it also makes it possible for the farmer to receive his fertilizer under the low water competitive rates as well as fuel oil that heats his house and barn and operates his farm equipment during plowing and harvesting. As I mentioned, the Pacific Northwest farmer gets the full benefits of rate reduction today, but this will not be true if this bill before us becomes law and I am certain, as past history tells us, the rail carrier will eliminate barge competition on the Columbia River.

If this bill becomes law, the farmer not served by barge must carry the burden of the rail operating losses not due to tonnage losses but due to revenue losses because the rail will publish rates below barge rates, and, to offset these losses, the railroads will charge higher rates from a zone where rails do not have barge competition. If this is allowed—and it would be if this bill becomes law—the Nation may lose valuable production. The freight rates will become so high that the farmer cannot market grain with fair return.

Gentlemen, give the Interstate Commerce Commission authority to regulate bulk commodities when moving by bargelines and retain minimum regulation upon the railroads' traffic and we all can live and do our job for the benefit and economy of our Nation.

I thank you, Mr. Chairman, for the opportunity of presenting this statement to you.

The CHAIRMAN. Mr. Russell, thank you very much for your statement. Any questions from members of the committee?

Mr. YOUNGER. Just one, Mr. Chairman.

On page 2 you talk about "the elimination of the barge transportation would then leave the rail carriers the only transportation agency in that area."

As I recall—I am somewhat familiar with the Northwest; I have lived there many years—the trucks seem to operate along the Columbia, don't they?

Mr. RUSSELL. The trucks operate along the Columbia; yes, they do. I did not quite get that reference there.

Mr. YOUNGER. Well, you said that left the rail carrier the "only transportation agency in our area."

Mr. RUSSELL. I might elaborate on that a bit to this extent, that the lowering of the rates and doing away with minimums by rail would make it impracticable for a truckline to operate unless it used it as a backhaul only. The experience through the State of Oregon has followed along that pattern.

Mr. YOUNGER. You still have a transportation agency there in the trucking. I am just trying not to depreciate the value of the trucking industry in the Northwest.

Mr. RUSSELL. It is very important, Congressman Younger, but what I am trying to say is that, if the revenue is only 15 cents a mile and it is costing them 25 cents, they would be in the same position as the bargeline as far as wheat is concerned.

Mr. YOUNGER. Just one other question. On page 3, I do not understand what you mean there when you say that the contracts are much below the published rates. Now, if the rails are allowed to establish any rate they want to now by contract, what is the difference from that situation than if the minimum rates were removed?

Mr. RUSSELL. Well, due to the fact that there is no minimum rate within the State of Oregon and on all intrastate traffic they do not have to file for rates or go to a hearing as I understand the procedure, that the contract rate can be entered into with a carrier, the rail alone without the regulation on minimum rates for a shipper whereby the bulk commodity such as chips, wood chips, logs which are regulated, can be negotiated for under a contract intrastate without any regard to a Federal tariff.

Mr. YOUNGER. Yes, but you say they make contracts to carry the finished product on the long haul on the Southern Pacific and that their contract rate is 'way below the published rate?

Mr. RUSSELL. Yes, I get the point now. In other words, the contract is between the chip haul bulk, the log haul regulated and part of it written in the paragraph is that they take this at an extremely low rate provided that a certain proportion, 80, 90, or 100 percent of the finished product is shipped under regulated rates on the long haul.

Mr. YOUNGER. Well, if they can establish a minimum rate for chips that way——

Mr. RUSSELL. There is no minimum rate.

Mr. YOUNGER. I say, if they can establish any rate they want to, wherein would there be any difference if you abolished the minimum rate. They still could establish any rate they want to?

Mr. RUSSELL. Congressman, I am not a traffic expert. I am an operator, but the way I understand that application of that lack of minimum in the State of Oregon is that they are permitted to quote any rate they wish to intrastate railroads. Therefore, they do not have to file any rate at all on minimums.

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

The CHAIRMAN. Any further questions?

Mr. Russell, thank you very much.

(The letter from Columbia Basin River Operators to Representative Oren Harris dated August 1, 1962, follows:)

COLUMBIA BASIN RIVER OPERATORS,
Portland, Oreg., August 1, 1962.

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

DEAR REPRESENTATIVE HARRIS: We here on the Columbia River have been following the testimony of the hearings on H.R. 11583, H.R. 11584, S. 3243, and S. 3242. These, of course, are bills that came out of the Kennedy transportation message (which a railroad president, by a slip of the tongue, called the railroad transportation message), and these bills are now, of course, before the Senate Commerce Committee and the House Interstate and Foreign Commerce Committee.

We appreciate the fact that the administration would like to do something to straighten out the transportation problems that we are faced with in the United States, but certainly we do not feel that it has a clear understanding of the entire transportation problem.

We sincerely believe that the whole transportation law should be rewritten, and that every mode of transportation in the United States be given a fair and equal representation before a neutral body, and that every mode should come with clean hands.

The administration's message seeks to remove all regulation from the railroads, and thereby putting them back where they were before the interstate commerce law was passed, and that is the very reason that it was passed, to prevent them from killing each other off through cutthroat competition. Actually what the transportation message and these bills propose to do is to give the railroads a hunting license to go out and shoot down all of their competition wherever they can, and make the shipper who is in a poor geographical position and who is unable to enjoy competition, will have to pay the bill. This naturally will lead to the monopoly of one mode of transportation and eventually Government control and Government ownership and the end of private industry.

We will say this, that the freedom from regulation of minimum rates in these bills for the railroads certainly is the road to chaos for everyone: the shipper, the carrier, and the general public. Railroads, trucklines, airlines, and water carriers are public utilities and the public interest requires that they be regulated just as the public interest requires an electric power utility or telephone company to be regulated.

The complaint of the railroads that they are at a disadvantage that they have to compete against carriers who are not now regulated is true, and they have good justification for their complaint. But the solution to that is in the extension of regulation to the water carriers and the removal of section 303B from part 3 of the Interstate Commerce Act which allows the water carriers exemption on bulk commodities; and also the removal of some of the motor carriers' exemptions on agricultural products as this has been badly abused throughout the years. In fact, this is the alternate proposal in the President's message. If this is done, then the railroads will have equality in opportunity for fair competition.

This action has been recommended by a majority of the Interstate Commerce Commission itself, and we fully believe that the ICC suddenly realizes the seriousness of the situation as far as the water carrier is concerned. Heretofore, the water carriers have not felt, especially in our own area, that we stood a chance at all if we took off the exemptions, of ever being able to get a fair hearing when it comes to competing with the railroads, because of the fact that there are so many smoke screens thrown up in regard to costs of railroads that no one could ever arrive at what the real cost of transportation was when they were cutting rates in competing with another mode of transportation. Actually, the water carriers have felt that the Water Carrier Bureau of the ICC is an orphan child that nobody cares about.

Certainly if the railroads insist and these laws are passed, then they must accept the burden along with the rest of us, in living under all facets of the antitrust laws, but the trouble is by the time an investigation could be made and it was properly processed, the other carriers who do not have the finances of the railroads, would be out of business.

We are a new country in the Pacific Northwest, developing our great Columbia River system with the dams which are built today, and the water carriers are not financially able to take what has been happening to them lately when it comes to railroad competition. In the last 2 years, the railroads have cut the price for transporting grain by 50 percent. If they do it now, why couldn't they do it before, especially when the cost of operations have been going up for all modes of transportation.

To be sure, all water carriers are not in agreement with the writer's views, but I still feel that if the commodity carried by one mode of transportation is regulated, that same commodity must be regulated if carried by another mode of transportation.

Each mode of transportation should be judged upon its ability to handle the commodity and also upon its cost of transporting the commodity, as we all know that water transportation is the most economical way of transporting large volumes and slow moving products. We also know that the elimination of the water carrier on our great river systems will eliminate our big industrial plants

that have come to the water on account of the water itself and cheap transportation.

We sincerely hope that our views in this matter will be favorably considered by the Senate Commerce Committee and the House Interstate and Foreign Commerce Committee in opposition to the bills in the House and in the Senate.

Respectfully submitted.

GEORGE H. SHAVER, *Chairman.*

The CHAIRMAN. Mr. Arthur Sullivan, president of the Gartland Steamship Co., for the Great Lakes Ship Owners Association, Chicago, Ill.

Mr. Sullivan, you may proceed.

STATEMENT OF ARTHUR SULLIVAN, JR., PRESIDENT, GARTLAND STEAMSHIP CO.

Mr. SULLIVAN. My name is A. C. Sullivan, Jr. I am vice president of the Great Lakes Ship Owners Association. Our association represents substantially all of the regulated common carriers on the Great Lakes and St. Lawrence River. All of this group have been engaged in water transportation for 50 years or more, and all hold themselves out to the public as "for hire" common carriers.

We appreciate very much the opportunity to appear before this committee and to respectfully make known to you our feelings and position concerning H.R. 11583 with particular emphasis on certain parts of this proposed legislation.

The vast majority of traffic moving on the Great Lakes is in bulk commodities. The members of our association operate vessels ranging in size from 5,000 to 25,000 tons capacity and capable of negotiating a round trip between Duluth, Minn., and Buffalo, N.Y.—a distance of 1,000 miles in 5 days, including time for loading and discharging. The annual capacity of such a vessel is close to 1,250,000 tons and over shorter routes, much greater. All of our vessels have been built with private capital and are neither shipper owned or controlled.

The Great Lakes communities served by these ships were not originally located by their founders through happenstance. These far-seeing people settled on water, realizing the need to exploit a geographic position. The growth of these communities has been phenomenal. Chicago, as a steelmaking center, receives over 90 percent of its iron ore by water. Vast quantities of utility coal and grain move outbound each year. This city lies also on the connecting waterway between the Great Lakes and the Mississippi River system. The all-water movement of cargo between New Orleans and Lake Erie ports is an accomplished fact. Cleveland as a steel center, Milwaukee and Detroit as manufacturing centers, Buffalo as a steel and flour milling center, are all closely tied by a highly efficient water transportation system.

We feel this system would be hampered in growth, if not seriously injured, should competing rail carriage be freed from regulation on bulk commodities under existing law. Furthermore, the repercussions will be reflected directly and indirectly on regulated commodities which remain under regulation. Every one of our shippers moving a regulated commodity will want the same reduction as the railroads voluntarily make on unregulated commodities. And, finally, the interior landlock points will necessarily have to make up the railroad

deficit. Much of our traffic originates on the rails, moving relatively short distances to lake terminals. Much traffic also terminates on the rails, again moving relatively short distances from the lake terminals to destination. The railroads have a time tested and highly successful method of dealing with such water movements. They maintain or increase their short rates to and from the water terminals and lower their all-rail rates from origin to destination.

The effect here is to discriminate against the water carrier, and by so doing, deny to the user the benefits of low-cost water transportation. The ultimate effect sought is to drive the water carrier out of business after which the rail rates can be raised. Present regulation by the ICC goes a long way toward preventing such practice. Yet even today the water carriers are forced into the courts to seek relief from this type of discrimination. Without exception the Federal courts have upheld the water carriers. This process of appeal to the Federal judiciary is so expensive and time consuming—taking 3 to 5 years—that the smaller and less financially able water carriers cannot hope to survive during the time it takes to see a case through the courts.

It has been stated here before your committee that with the removal of rail traffic from regulation by the commission, competing common carriers and shippers would have the protection of the antitrust laws against discrimination and rate wars. We submit that even the most casual observer of the workings of our Federal judiciary is fully aware of the heavy burden under which it now labors. To place the added burden of regulating and settling disputes in the entire transportation industry would seem impossible. From experience, it is evident to us that reliance upon the antitrust laws for enforcement of the transportation statutes will result in many shippers and carriers alike being denied "due process" through the effect of the time element alone.

The common carriers on the lakes have sought many avenues of escape from our problem. One such experiment has had successful progress. This is the joint rate with railroad concept. At present, our members are moving bulk commodities on joint rates with several eastern and one midwestern railroad. These rates have generated traffic for both types of carrier. This wedding of service was not easily accomplished and was accompanied by long litigation and much recrimination—not so much between rail and water carriers, as among rail carriers themselves. These single factor joint-through rates represented substantial savings to the hard pressed coal industry, yet even today a substantial railroad group are still fighting the joint rail-water concept. These people do not want to join with us even though we can show them increased tonnage and revenues; and the shippers better service. It appears to us that these people do not mean what they say. They seek to fight modern concepts of transport and deny the volume rate theories expounded here—particularly when they are on a joint basis with the water common carriers. One is led to believe that there is substantial disagreement among the railroads themselves as to what is best for the common carriers. Whether they want more rate regulation to include their unregulated competitors or less regulation to give them a hunting license against their common carrier competitors.

It is our understanding that this legislation has been hopefully designed to improve the profit margins of the railroad industry by removing certain types of railroad traffic from minimum rate regulation. It is here assumed that this is the single largest problem in surface transportation today and once it is removed, railroad profits will increase and the public will ultimately receive a benefit. If this reasoning is correct, the fact must be that the railroads are financially able to reduce rates on bulk commodities—that there is a large volume of bulk traffic that would be attracted from other modes of transport by these reduced rates—and further that this increased volume would overcome rate reductions to reflect increased profits. On this we have serious doubts.

It seems to us that the burden should rest on the railroads to prove without question that they are the low-cost carriers. We have all heard repeatedly of late that old saw that "nothing is more efficient than a steel wheel rolling on a steel rail." We say that a propeller behind a modern 9,000-horsepower turbine pushing 25,000 tons of cargo is far more efficient; to which is added the fact that many of the lake vessels can discharge their own bulk cargo direct into the shippers' plant at rates of 2,000 to 4,000 tons per hour. It is our feeling that these efficient low-cost carriers should receive the protection of the law rather than the higher cost competition.

It seems to us that there is a high degree of freedom to be had under carefully conceived and well administered Government regulation. We feel it is an error to suppose that regulation holds rates up and removal from regulation brings rates down. The present plight of all common carrier transportation is not due to regulation of the transportation industry, but to lack of regulation. Perhaps what we need is a wider scope of regulation with better administration to protect the common carrier from raids on his traffic by his unregulated competitor.

When the railroads come before Congress, they come as a group—the rich and the poor, the well-managed and the inferior, the profitable and the unprofitable—and ask that there be adopted the "least common denominator" theory of administering to their needs. Thus, the ills of the few control the welfare of the majority.

We agree that there is need for equality of regulatory treatment between the various forms of transportation. A year ago our group, in response to a request by the Secretary of Commerce, urgently recommended that the administration seek legislation to alleviate the serious financial trouble facing the common carriers in all modes of transportation. Specifically we recommended, as common carriers, that action be taken to end the increasingly ruinous rate wars besetting the transportation industry. We urged that the Congress face up to the problem of exempt for-hire transportation, remove the special treatment provisions on Government traffic, and take steps to insure the coordination of rail and water service under joint rates and through routes.

The regulated common carriers on the Great Lakes make a major contribution to the economy of that region through providing modern low-cost bulk transportation. The movement of wheat from Duluth to Buffalo is an example. Buffalo is the largest flour milling center in the world. Grain elevators at that port are completely oriented to water transportation. The same principle holds for the all-water

movement of Southwestern wheat from Kansas City to Buffalo via the Missouri, Mississippi, and Illinois Rivers to Chicago and lake vessel beyond. These are large movements of a bulk commodity which have been in the hands of the water carriers since the turn of the century for two reasons—efficiency and cost. The railroads do not compete for this traffic because they are unable to meet the common water carrier cost. The movement of utility coal to the electric generating stations on the lakes is another example.

No one wants regulations just for regulations' sake—all we ask is a competitive opportunity with the ground rules laid for us as they are for other American industries operating in the public domain.

The CHAIRMAN. Mr. Sullivan, thank you for your statement.

Are there any questions?

Mr. Younger?

Mr. YOUNGER. No, Mr. Chairman.

The CHAIRMAN. Does any other member of the committee have any questions?

Thank you very much. We are glad to have had your statement.

I want to specifically refer to the recommendations you make, three very important recommendations to which the committee will obviously give consideration.

Mr. Sam Moerman.

STATEMENT OF S. H. MOERMAN, ATTORNEY, WASHINGTON, D.C.

Mr. MOERMAN. Mr. Chairman and members of the committee, my name is S. H. Moerman. I am a partner in the Washington law firm of La Roe, Winn & Moerman with offices in the Investment Building.

I have for approximately 30 years been an active practitioner before the Interstate Commerce Commission and the Federal maritime agencies. In those years I have represented railroads, bargelines, deep sea domestic carriers, trucking lines, and pipelines.

I appear here today to present the views of regulated water carriers on H.R. 11583, introduced May 3, 1962, by the Honorable Oren Harris. Specifically, I am appearing on behalf of Common Carrier Conference of Domestic Water Carriers and Inland Waterways Common Carrier Association.

The stated purpose of H.R. 11583 is to exempt certain carriers from minimum-rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers. As this would remove approximately 70 percent of railroad tonnage from minimum-rate controls, as I am advised, this is of serious concern to domestic regulated water carriers.

The assumption underlying H.R. 11583 is that transportation and the public interest would be better served through a greater degree of competition and a lesser reliance on Government regulation. The key issue for the water carrier industry is: Will the antitrust standards of Witness Brosnan as presented on July 13, 1962, before your committee be the safeguard for water carriers or will, on the other hand, the philosophy of the Association of American Railroads, Mr. Heineman of the Chicago and North Western, and Mr. Langdon of the Baltimore and Ohio, be substituted so as to make easy the early elimination of barge traffic on our inland rivers and coastal waterways? Mr. Brosnan is president of the Southern Railway System. He stated,

"It is high time that the main reliance be placed on competition * * * subject to * * * the usual antitrust controls" and that "all modes of common carriage must have the right to compete fairly and equally * * *."

President Brosnan wants transportation placed in the same category as any other type of business concern. He is quite clear on this point:

> Other carriers and other businesses are free to charge for their services or goods whatever the management chooses to charge. If such charges violate the antitrust laws, the proponent of the charge must suffer the consequences. On Southern we are prepared to take our chances on this.

Unfortunately, however, the Southern Railway system is alone among railroads in taking this position. H.R. 11583, in removing minimum-rate control over 70 percent of rail tonnage, does not make the antitrust laws applicable to railroads. Because, as I will explain more fully below, anticompetitive practices are to be continued under H.R. 11583, we oppose this legislation. As presently written, this bill will enable railroads to eliminate inland water commerce as happened before World War I. We are unalterably opposed therefore to H.R. 11583.

A lesson from the past may be constructive and assist the committee in its deliberations. In 1943 the Department of Justice brought an antitrust suit in the district court at Lincoln, Neb., charging a vast conspiracy between and among all railroads in the western district in combination with banking interests. The complaint specifically named Kuhn, Loeb, and J. P. Morgan & Co. as defendants. It appeared that for 11 years a committee of directors met at No. 40 Wall Street in the offices of the Bank of Manhattan's board room whose stated purpose was to discuss—

> any questions adversely affecting net revenues arising among any of the railroads in the western district upon which it has not been possible to secure unanimity of action by the interested railroads. (U.S.D.C.-Nebr., Lincoln Division, CA No. 246, Counts 25–30 *U.S.* v. *Association of American Railroads*, 4 FRD 510).

This was the so-called western commissioner plan for private financial control over the ratemaking of western railroads. A brief description of its operation is contained in the statement of W. A. Harriman to the Senate Committee on Interstate and Foreign Commerce, 79th Congress, 2d session, in hearings on H.R. 2536 at page 1398.

In 1944 the State of Georgia filed an original action in the U.S. Supreme Court alleging conspiracy by defendant railroads to fix noncompetitive rates to and from the State of Georgia (*Georgia* v. *Pennsylvania Railroad Company, et al.*, 324 U.S. 439 (1945)).

These two antitrust suits stirred up much controversy. Arne C. Wiprud, who was in charge of the Lincoln suit for the Department of Justice, wrote about this transportation problem in "Justice in Transportation" (Ziff-Davis, 1945) as did John G. Shott in "The Railroad Monopoly" (Public Affairs Institute, 1950). A rebuttal book was written by Charles D. Drayton, entitled "Transportation Under Two Masters" (National Law Book, 1946).

Now, I have these books in the hearing room if the committee is interested in looking at them now or having them furnished to the staff.

The fundamental thesis of Drayton, and later that of the Congress in passing the Reed-Bulwinkle legislation, was that there is an inherent inconsistency between regulation by the Interstate Commerce

Commission, on the one hand, and regulation by the Department of Justice and private lawsuits under the antitrust laws, on the other hand.

Congress, in enacting the Reed-Bulwinkle legislation, conferred certain authority upon the Interstate Commerce Commission to review ratemaking conference agreements. The Commission also has authority to inquire into the conduct of these conferences and require reports.

I might say that I was much interested to notice in the transcript that the chairman was active at the time of the passage of the Reed-Bulwinkle legislation and is quite familiar with it.

Since H.R. 11583 would do away with what is today, in my opinion, the most important ICC regulatory power—minimum rate regulation—over the preponderance of rail traffic, the water carriers represented by me urge that the railroads be subjected to the same antitrust standards as any other business enterprise. I think most people will agree that this would be only fair. If, on the other hand, railroads are to be free from minimum rate regulation and, at the same time, not to be subject to the same antitrust standards as the rest of the business community, then it will be a short time indeed before the water carriers are driven out of business. Furthermore, such tremendous concentration of economic power in the hands of the railroads would result, in my opinion, requested remedial action by Congress.

Let me say in that connection that it was precisely such a situation as would occur as the result of the enactment of this bill in our opinion which led originally to the enactment of the Interstate Commerce Act in 1887.

Now, Joseph B. Eastman is a name known to all of us. It is one of the great administrators in the transportation field. In a famous case, Petroleum Products from the New Orleans, La., Group decided in 1933 and cited 194 I.C.C. p. 31, the Commissioner in concurring in the decision stated simply that the railroads in their earlier years encountered stiff competition from many steamboat lines plying on the waters of the southeast and the central part of the Nation. And they proceeded to meet this competition ruthlessly. Eventually they swept the waters clean of the competing craft except on the ocean and the gulf and even there the competition was greatly weakened. This was done by cutting rates where the competition existed to whatever extent was necessary to paralyze it and at the same time maintain rates at a very high level elsewhere. The steamboats did not have this reservoir of noncompetitive traffic to help them out and hence perished in the unequal struggle.

Some large interior cities which did not have water competition were able to utilize the competition of the railroads with each other to break down their rates in somewhat the same manner but interior points which had little or no competition of any character were out of luck. The rates were on what the railroads call a normal level which was preposterously high. All this made, of course, for a very uneven development of the country and it was one of the main factors which precipitated the creation of this Commission in 1887.

Turning to the specific language set forth in H.R. 11583, it is noted that the railroads are to be subject to the antitrust laws as defined in the Clayton Act except as modified in section (b) whereby immunity will remain for joint rates. Mr. Heineman and the witness for the National Industrial Traffic League have already pointed out the

inconsistency in this partial immunity. It is impossible for shipper and market considerations to divorce local rates from joint through rates. Railroads simply cannot concur in a joint rate without knowing what the connecting railroad is going to charge for its local. For example, there are many routes running between Omaha and Chicago. The Chicago & North Western Railway could handle a carload of grain directly between these points. Yet, perhaps for transit reasons, the carload could move to Kansas City by the Burlington, thence St. Louis by the Missouri-Pacific, and then by the North Western to Chicago over Mr. Heineman's railroad. Now, the Burlington and Mo-Pac are going to have a big say over the Omaha-Chicago local of the North Western rate before entering into a joint rate with Mr. Heineman via St. Louis.

Since H.R. 11583 purports to put all carriers on an equal basis in substituting competition for regulations, we think it only fair to repeal completely the Reed-Bulwinkle antitrust immunity on this traffic. However, rail carriers will still be able to meet to discuss joint rates under the duty imposed upon them by section 1(4) of the Interstate Commerce Act. Nevertheless, they would be subject to antitrust action if they conspire to destroy a water line, injure a particular shipper in collusion with another shipper, or take any other predatory action.

Another major objection that we have to H.R. 11583 is that it does not propose to amend the antitrust laws in all instances where they contain explicit exemptions for railroads. Because of ICC power over minimum rates, Congress has seen fit to exempt railroads from the full reach of the Clayton and Federal Trade Commission Acts. If transportation minimum rates are to be removed from regulation, it is only proper that these specific antitrust exemptions be eliminated.

Section 7 of the Clayton Act is an example. This is the antimerger section as amended by the Celler-Kefauver bill in 1950. Prior to the Transportation Act of 1920, railroads were fully subject to antitrust prosecution on mergers. That is mergers which were unlawful.

In 1920, Congress gave the Interstate Commerce Commission power to approve mergers under certain conditions without application of antitrust standards.

Let me say that in the Interstate Commerce Act today there is nothing in connection with the standards laid down to govern the merging of railroads that says anything which relates to the lessening of competition. The standard is a vague one. It is the public interest. Now back to my statement.

The same Transportation Act of 1920 gave the ICC its power over minimum rates.

It is important to domestic water carriers that the full antitrust standards be applicable to railroad mergers in the event minimum-rate control is removed. If railroads and barges are to be allowed selective rate cutting in competing against each other, relative size or lasting power becomes paramount. A comparison of annual revenues of leading rail carriers with that of their leading barge counterparts would show convincingly that the railroads have overwhelming strength.

Placing railroads under the same merger standards applicable to all other nonregulated industries would mean, in my opinion, that most of the current merger proposals would, without doubt, be barred.

Northern Securities Company v. *United States*, 193 U.S. 197 (1903). Further, it would probably impel the Department of Justice to attack some of those which have already taken place. Of course, there are railroad mergers which could meet the antitrust standards. The above discussion on mergers is not academic. Seatrain Lines, Inc., a coastwise water carrier, has had considerable difficulty with the all-rail competitive route between New York and Savannah, Ga.

The Atlantic Coast Line and Seaboard Air Line Railroads, running in a north-south direction, have a different rate policy with respect to Seatrain than the Central of Georgia. The latter carrier operates in an east-west direction. But the Southern, also a north-south railroad, has an application pending to acquire the Central of Georgia. If the minimum rates are to be removed from regulation, it is only proper that Seatrain have the opportunity to challenge this Southern Railway acquisition under the usual antitrust standards. In addition, since so much rail tonnage is to be deregulated, we think a good case can be made for the proposition that the ICC will not have the day-to-day expertise in rail rate matters that it has today. In other words, it will not be qualified to judge mergers affecting transportation matters largely no longer subject to its jurisdiction.

Another antitrust standard which should be made applicable to the railroads, if minimum rates are to be removed from regulation, is section 5 of the Federal Trade Commission Act. This statute prohibits unfair competitive practices but is not now applicable to the railroad industry.

I should like to interpolate here that, if this bill passes as it is now written, the railroad industry will be the only industry in the entire United States which has no antitrust provisions applicable to it except to the extent now applicable and that is very small, because the railroad industry operates largely under exemptions.

Furthermore, section 3 of the Robinson-Patman Act has been held not to be an antitrust law within the definition of section 1 of the Clayton Act. See *Nashville Milk Co.* v. *Carnation Co.* 355 U.S. 373 (1958). Section 3 of the Robinson-Patman Act makes it unlawful to (1) make a sale which discriminates in that any discount, rebate, or allowance or advertising service charge is granted one purchaser over that available to the purchaser's competitor in respect of a sale of goods of like grade, quality, or quantity, or (2) to sell goods in one part of the United States at prices lower than another for the purpose of destroying competition or eliminating a competitor, or (3) to sell goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor. Therefore H.R. 11583 is defective because it only makes reference to the antitrust laws as defined in section 1 of the Clayton Act. Accordingly, to be consistent with Mr. Brosnan's desire to put railroads on a par with other industry, the term "antitrust" should be broadened to include all of the antitrust laws to which business is subject.

The foregoing are only a few of the many revisions of the antitrust laws that would be required to conform with the Southern Railway's suggestion that transportation be placed on a par with business generally.

In conclusion, if the Congress in its wisdom should decide to remove minimum rate regulation, then the full measure of the protection of

the antitrust laws should be made available to all carriers. This follows quite naturally because it was fundamentally the grant of power to the Interstate Commerce Commission to regulate minimum rates which gave rise to the several exemptions from the antitrust laws.

For the foregoing reasons, we are opposed to H.R. 11583 as it is now written. Many months of careful study would be required to perfect what, in our judgment, would be a measure that would restore the full reach of the antitrust laws to the transportation industry. We are quite willing to assist the committee staff in this matter and any assistance that we are asked to give will be readily forthcoming.

Mr. Chairman and members of the committee, I appreciate very much the opportunity of appearing here today to testify on behalf of the regulated water carriers on this proposed measure.

The CHAIRMAN. Thank you very much for your suggestions and the information you have provided to the committee.

Are there any questions?

Mr. YOUNGER. Just one.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Do I understand in general you are advocating about the same recommendations as made by Mr. Murphy of the ICC?

Mr. MOERMAN. I take no position on the question of whether or not exemption should be eliminated on agricultural commodities and bulk commodities. My testimony is narrowly directed to the proposition that if the bill passes, it should incorporate complete coverage, antitrust coverage, affecting railroads.

Mr. YOUNGER. Would that apply if you just eliminated the exemptions?

Mr. MOERMAN. Well, the bill is addressed to the elimination of regulations as to minimum rates.

Mr. YOUNGER. I realize that. I am talking about the people that you represent, the water carriers have repeatedly recommended that the exemptions be abolished.

Mr. MOERMAN. Yes, sir.

Mr. YOUNGER. Now, if the exemptions are abolished, is it necessary to go into all of this antitrust matter?

Mr. MOERMAN. I do not think so.

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

Mr. JARMAN. As a practical matter, Mr. Moerman, do you think it is possible to eliminate the exemptions? Think of it in terms of the pressures and the interests and the opposition that would be voiced from so many segments of our economy. As a practical matter, do you think those exemptions could be eliminated?

Mr. MOERMAN. I just do not have an opinion on it because I am not qualified to state. Congressman Jarman, I do not have an opinion on the subject. You asked me about, as a practical matter the exemptions on agricultural commodities and bulk commodities could be eliminated. This is a political matter. It depends on pressure as I said, on Congress and how many voters would want one side or the other and I am just not qualified to express an opinion on it. I am just a hard-working transportation lawyer.

Mr. JARMAN. I would have thought with your legal practice as varied as you have indicated it has been in this general field and the contacts that you had with carriers and all those concerned, that you would have a background on which to express an opinion.

Mr. MOERMAN. Well, Congressman Jarman, I just do not have that background. I spend most of my time in the hearing room at the ICC fighting for or against railroads, truckers, pipelines, and others and I do not get up here very often and I do not get out through the country at large very often and I just do not have enough experience to express an opinion that would be helpful.

The CHAIRMAN. In other words, you are merely testifying as a technical witness on the antitrust laws.

Mr. MOERMAN. Precisely.

The CHAIRMAN. I am glad, personally, to have your testimony because I think it is most important that should anything be done to make adjustments in the present situation, very careful consideration be given to it.

I am somewhat interested in your comparisons, however. I do not think that we can merely compare what happened in 1920 and prior days. I do not think that the antitrust situation in 1920 is anything comparable to what the antitrust situation would be in 1962. That is very interesting. Don't the antitrust laws apply to the water transporation industry?

Mr. MOERMAN. Yes, sir. The problem is that, if the bill passes with what it has in in the way of antitrust protection, the railroads will, in Commissioner Eastman's words be unleashed and have freedom from rate regulation while at the same time also having freedom from obeying in a sense the antitrust laws of the country. They will be freer than any other segment of our business community and I think that, as a matter of public policy, as a matter of public interest, this would not be a good thing to do, not only for the railroads but for the country at large. I think that history has shown that all business needs restraints and I urge that in this situation it would be in the best interests of all concerned if minimum rate regulation is removed to see to it that the same antitrust laws which the bargelines who are the railroads' competitors, affect the railroads. Otherwise, Mr. Chairman, there will not be that equality which seems to be something that everyone is agreed upon in the event minimum rate regulation is removed.

The CHAIRMAN. I think there is a lot of merit to that recommendation. But I was never of the opinion and I certainly had the impression throughout that section 3 of the Robinson-Patman Act did not apply to water carriers and I, frankly, do not believe it does.

Mr. MOERMAN. I stand corrected, Mr. Chairman. You are a better expert than I on that point.

The CHAIRMAN. Well, I suppose one compliment leads to another one, however. I did participate in the Reed-Bulwinkle debate rather extensively. It is quite interesting to me that the recommendation of the President and the bill submitted here repeals that provision and that there has been some suggestion by the railroads that that particular recommendation of the President be modified. I do not know just what we will be able to do with it but I think there is a lot of merit in what you say with reference to the application of the provision.

I cannot agree, with what limited knowledge that I have of this entire subject matter, that the provisions of the Federal Trade Act, which were adopted by the Congress for a specific purpose and to

meet specific problem ought to be applicable as such to the transportation industry that is supposed to be regulated by another agency. I cannot see the justification of having the transportation industry—whether railroads, waterways, trucks, airlines, or whatever it might be—to have to run all over the lot, to be regulated by a half a dozen Government agencies. They have got enough now to meet all the regulated requirements and get bogged down all over as the industry is experiencing. I will say, frankly, as I have said, Mr. Moerman, that the one reason that we are having these problems is because of what our committee has found out and pointed up, a lot of people knew it just as we did. We were not uncovering anything that was not known but it has been emphasized in the last 4 years that our regulatory processes have bogged down in many instances and stymied our people—that is, business—in serving the public as they are supposed to serve them. That is basically the problem that we have got and it is going to get worse and worse as the transportation industry expands and more transportation is necessary. More people are served.

Now these agencies are hollering for more space and more employees, more work to be piled up and business to get lost. Requests come to my desk that almost fills it up every day about their problems before a regulatory agency or some agency of the Government. It has been lost and we cannot do anything. I have been months or weeks or so trying to get some relief and cannot. That is a problem.

Mr. MOERMAN. Mr. Chairman, I have been 10 years on one railroad case involving bulk commodities. In my judgment the case could have been decided in the first 6 months if an agency had been charged with the duty of deciding it and getting it out. I was out in California. I had a law case out there and I worried the local California lawyers about how soon I would get a decision and they told me it had to come out in 60 days because the law provided if the judge did not hand the decision down in 60 days, he would not get his salary check. I recommend, with respect to regulatory proceedings, they be ordered out, say, within the 7-month suspension period and get on with the country's business.

The CHAIRMAN. Well, we tried that, too, in some instances, particularly in the railroad industry, if you recall. We ran into difficulties there. So we have to wrestle with these problems as we meet them head on. We have reorganized and provided reorganization procedures for all the major regulatory agencies except one. The SEC is coming up on the floor this afternoon as the fifth major reorganization plan which we hope will do some good.

I know it is not going to solve the problem. We hope it will help expedite the business. But I am afraid the shipper business, and certainly the public—who are not supposed to be intimate with these highly technical problems of regulation and so forth, but the agencies, themselves—fail to see, it seems to me, is the fact that we are expanding and growing, and it is piling up all the time and we are doing nothing to meet it and remain in the same rut. That is the reason I say you cannot compare 1920 with 1962.

I thank you for this very fine statement which you have given pointing up what I think are some of the basic problems that we must wrestle with here. I have great sympathy for trucklines and bargelines, and the trucklines and the railroads are all having their prob-

lems. But I am not too much impressed with this status quo business: Let us stay where we have been all the time. We cannot ever hope to meet these problems. We will do nothing except bring on more and more and bigger and bigger ones and the point that I have said time after time is, that this is going to do one of two things: It is going to drive us completely to private carriage without any common carriage and the American public will never put up with that and that will mean only one final action and that is the nationalization of the transportation industry.

Now, for 7 years I have been preaching that warning. It is my own viewpoint. I may be as far wrong as I can be. There are a lot of people smarter than I am in this business but I do feel that way.

Thank you for your very fine statement.

Mr. Braxton B. Carr.

STATEMENT OF BRAXTON B. CARR, PRESIDENT, THE AMERICAN WATERWAYS OPERATORS, INC., WASHINGTON, D.C.

Mr. CARR. Mr. Chairman, my name is Braxton B. Carr. I am president and chief executive officer of the American Waterways Operators, Inc., which has executive offices at 1025 Connecticut Avenue, Washington, D.C., and field offices in New York City and New Orleans.

I have a comprehensive statement setting forth our positions on H.R. 11583 and H.R. 11584 and the reasons therefor.

We request permission to have the full statement incorporated in the record, Mr. Chairman, and then we would like, with your permission, to condense and summarize our position with respect to these bills under consideration.

The CHAIRMAN. You have what I observe to be a very lengthy statement and we certainly will grant you the permission of having it included in the record for the information of the committee. I think I am going to have to say that we are not going to be able to give each of you time to present long statements like this with all the time consumed that is involved because we simply do not have that much time.

I would like to inquire of the other members of the committee with a statement of this kind, how much time do you intend to consume?

Mr. CARR. Not more than 30 minutes.

Mr. YOUNGER. Will the gentleman yield? I am wondering how many organizations the water carriers have. We have had more different organizations, five or six of them here, representing various organizations of water carriers and here yours is the American Waterways Operators. Apparently that is a nationwide organization over everything of inland waterways and seacoast. I am wondering if it is not possible to just give what difference there is in his testimony from that of the other associations who have already testified, and not plow the same field all the time. We have been plowing the same field for the waterways now for 2 days. I do not think that that is very good progress.

The CHAIRMAN. I might say to the gentleman from California, we have got three others to follow this one.

Mr. YOUNGER. Three other associations?

The CHAIRMAN. Three other water carriers.

Mr. YOUNGER. Whether associations or individual water carriers, this is an association.

The CHAIRMAN. I had hoped to be able to make more progress than this today. I do not like to start telling the witnesses how to present their testimony. I say to you, gentlemen that, ordinarily, when we do, we consume a lot more time than we would if we had not said anything about it.

I would ask you to be as brief as you can under the circumstances.

Mr. CARR. Thank you, Mr. Chairman.

As a further qualification for this statement, I might say that this is a trade association, representing 181 shallow draft water carriers who provide transportation services over the entire length of the 25,000 miles of navigable channels in this country.

The association also represents 34 other companies which include the builders and repairers of towboats, tugboats, and barges and self-propelled shallow-draft freighters and tankers as well as the operators of terminals and other service facilities.

Thirty-one commodities, all of which are handled in bargeload lots ranging from 600 tons to 3,000 tons, make up 93.8 percent of all commerce handled by these inland carriers. The other 6.2 percent of traffic is made up of miscellaneous commodities generally moving sporadically but still handled in bargeload lots generally. Bargeline operators depend on 10 bulk commodities for better than 80 percent of their traffic, and the average bargeline operator usually engages in the transportation of just three commodities.

In 1960 the last year for which complete figures are available, the inland water carriers moved 395 million tons of traffic and provided 120.7 billion ton-miles of service in the movement of bulk traffic. This represented 9.4 percent of the total intercity freight traffic in the United States.

All of the traffic handled by the barge and towing vessel industry and by shallow-draft freight vessels operating over the inland channels is in some degree competitive with other modes, principally with the railroads, portions of whose 217,552 miles of main line track parallel and crisscross every inland channel in the United States. Obviously, the railroads with their superior trackage which reaches all nonwater points as well as water points provide a flexibility in traffic handling which the comparatively slow-moving water carriers cannot hope to match, thus adding another phase of inferiority to water carrier services in addition to the large loadings required for barge services—500- to 600-ton barge minimums as compared to 50-ton rail cars. The water carriers must have joint ratings and routings to achieve flexibility—and these the railroads deny us.

Barge line service in the United States costs the shipper an average of about 4 mills per ton-mile as compared to almost four times the average cost for the next lowest cost mode, the railroads. Yet the railroads on water competitive traffic even under minimum rate regulation, in many cases drive their rates down to the level of water rates, which, incidentally, because of the economic characteristics of water carriers, must in almost every instance, be compensatory rates.

The inland water carriers are seriously affected by the proposals embodied in H.R. 11583 and 11584 which are under consideration by this committee.

Water carriers oppose the proposal to free bulk commodity traffic from minimum rate controls as provided in H.R. 11583 and the proposed experiments in ratemaking embodied in H.R. 11584.

It is not only the interests of the carriers that are involved in any such undertaking as is under consideration to rewrite basic transportation policy, but the public interest as well.

In no transportation field is the public interest more definitely at stake than in the whole field of water transportation. For here we employ the facilities of the whole field of water transportation, ocean, seas, rivers, lakes, harbors, bays and canals, vouchsafed to the public by nature and the vast improvements made thereon with public support and at public expense. Their maximum use, therefore, rebounds implicitly in the public interest, both local and national.

This interest has been the concern of practically every administration and every Congress since the turn of the century, or since 1900. At the turn of the century, water carriers were at their lowest ebb in the history of this country. They had been completely subordinated and in some respects destroyed by unrestrained, unregulated railroad competition and incident thereto (1) there was little or no incentive to continue the development of industry which had had its first roots planted on waterside sites; (2) our economy was totally reliant on higher cost transportation; and (3) the waterways had not been developed for recreation, flood control, power production and other national interests associated with navigation; and (4) above all, there were no incentives then to restore or improve water carriage because the belief was widespread that one mode, the railroads could adequately serve all our needs.

This sad state of affairs had come about largely because the railroads in rate wars with the water carriers had skillfully used their overbearing economic power to destroy water carrier competition as is documented in the industrial and legislative history of the nation.

It was at this juncture of our water carrier community's history that the Federal Government, finally realizing what was happening and what the consequences would be, stepped into the picture to restore water transportation in the public interest.

President William McKinley and his administration took the stand that inland water transportation must be restored, improved, and thereafter preserved, because it would improve transportation service generally and further the economic and industrial development of the country.

President Theodore Roosevelt appointed a distinguished commission in 1907 to study the status of waterways and water carriers. This Inland Waterways Commission established the philosophy of his administration which was to the effect that Congress should "make more suitable provision for improving the inland waterways" for commercial use. In 1908, President Roosevelt told Congress that—

it was unregulated railroad competition that prevented or destroyed the development of commerce in our inland waterways.

In 1910 when William Howard Taft was President, Congress enacted the Mann-Elkins Act which gave the Interstate Commerce Commission power to suspend rates before they became effective, established a Commerce Court to speed up adjudication of Commission cases, and put teeth in the long- and short-haul clause, all of which was done to check the tendency of carriers to increase rates beyond their needs for revenue and beyond the shippers' ability to pay and to provide for relief for the railroads under the long- and short-haul clause in cases where water carrier competition was real and significant. President Roosevelt's Commission had found that theretofore railroads had carried rate cutting under section 4 to an almost "unlimited extent."

In 1912 the Congress reacted legislatively in favor of water carriers and the public interest and enacted the Panama Canal Act which, in effect, took railroads out of the water carrier business which they had held subservient and in dormacy. Passage of the Panama Canal Act thereby gave water carriers a new chance to develop on their own under Federal protection from railroads.

Prior to this time, in 1906, the Congress had given to the Interstate Commerce Commission only power to approve rates as just and reasonable and to prescribe maximum rates. This power proved to be insufficient to curb railroad rate competition which, even after the enactment of the Panama Canal Act, was ruinous to water carriers.

In 1918 President Woodrow Wilson stated to the Congress:

> The one conclusion that I am ready to state with confidence is that it would be a disservice alike to the country and to the owners of the railroads to return to the old conditions unmodified. What the country chiefly needs is that all its means of transportation should be developed, its railways, its waterways, its highways, and its countryside roads.

Thus, President Wilson, reiterating the sentiments of President William H. Taft in advocating the enactment of the Panama Canal Act, laid the groundwork for passage of the 1920 Transportation Act which set out the national transportation policy charging the Interstate Commerce Commission with the responsibility to preserve and foster the inherent advantages of each mode.

These four Presidents—McKinley, Roosevelt, Taft, and Wilson—all paid due deference to the need for water transporation and for continuing its protection and fostering under regulatory law. The new philosophy now urged upon Congress blithely ignores this historical background and fails utterly to prove the need for the legislation with which we are here concerned.

It was a concomitant result of such declared policies that the Interstate Commerce Commission in 1919 told the Congress, to which it reported, that "competition between and among carriers is beneficial" but that "competition that is wasteful * * * lays an unnecessary burden upon taxpayers." Specifically, the ICC said:

> Rates should not be higher than the shipper may reasonably be required to pay and should not be lower than the carrier may reasonably be required to accept. The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge, but also the minimum. This power would restrain an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments.

The House committee report underlying the Transportation Act of 1920, in which the Commission was finally given authority to fix minimum rates stated that:

> With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service by establishing a minimum below which such carrier could not fix its rate. It would also prevent a rail carrier from destroying water competition between competitive points by prohibiting such carrier from so reducing its rates as to destroy its water competitor.
>
> Circumstances have been cited where the rail carrier destroyed its water competitor by such a reduction of rates as to make it impossible for the water carrier to survive. When once competition was thus driven off the rail rates would be restored and would rise to even higher levels.

Chairman Esch of the House Interstate and Foreign Commerce Committee stated on the House floor in 1919—concluding his plea for enactment of this minimum rate power—that:

> The water carrier must be permitted to live. To do this we must provide for the minimum rate.

Permit me, Mr. Chairman, to emphasize that the basic fundamentals which lead Mr. Esch to conclude and the Congress to agree that the water carriers must be permitted to live and to do so "we must provide for the minimum rate" are unchanged, regardless of what other happenings have taken place. It is as true today as it was in 1919–20, that if the water carrier is permitted to live, the minimum rate must be provided, and it cannot be done by use of the antitrust statutes.

All of this legislative background lies behind the Transportation Act of 1920 which contains the minimum rate power. In the same act, the Congress declared it to be a mater of congressional policy "to foster and preserve in full vigor * * * water transportation."

It was not, therefore, in an era when the railroads were a monopoly that minimum rate regulation was enacted, as has been contended. Minimum rate power had been sought by the Interstate Commerce Commission as early as 1893, but it was not until 1920 that it was obtained. Such legislation was designed to keep railroads from destroying each other as well as water carriers and to stabilize the rate situation in the public interest, for, as the Commission declared:

> Patrons of the transportation companies must also pay rates that will yield revenues sufficient to justify rendering the quantity and character of service demanded.

Such power was given to the ICC 20 years before water carriers themselves came under ICC regulation. Congress was thus convinced that such power should be at hand for the Commission to exercise even though water carriers were exempt from regulation.

This is important to bear in mind since the philosophy of this legislation seems to be to attempt to equalize economic regulation by relieving the railroads from response to minimum rate control in a portion of the area in which Congress has determined there should be controls despite the fact that transportation scholars universally agree that the minimum rate powers "make it possible to prevent cutthroat competition with all of its attendant damages to railroad service and credit" as well as to other carriers and the public.

We suggest that the present administration has not squarely faced up to these historical reasons and continuing needs justifying the minimum rate power.

In the history of rate regulation, the Transportation Act of 1920 gave water carriers not only status and protection policywise and ratewise generally, but in the minimum rate clause specifically guarded them from predatory and destructive competition which is still a genuine and continuing threat. This was congressional policy at the time and we conceive it to be so today.

The Nation's shallow-draft carriers in 1962 as in 1940 are, for the most part, small business organizations that cannot stand up against the tremendous economic power of the railroads in a competitive struggle.

We are not here to advocate slavish adherence to precedent for the sake of adherence. But we do respectfully call this committee's attention to the fact that the fundamental circumstances that led to the Congress giving the Commission authority to control minimum rates insofar as water carrier competitive relationships with the railroads are concerned are basically unchanged. Water carriers serve limited routes in the carriage of a limited number of commodities. Water carriers are in competition on all routes for all their traffic. They have no noncompetitive reservoirs of traffic as do the railroads. They are susceptible to destruction in rate wars perpetrated by railroads. On the other hand, water carriers do not have the economic ability to destroy their railroad competition, and they never will have.

There is no denying that the railroads want this legislation passed to permit them to go after the traffic handled by the water carriers. They have said it directly and indirectly. They call for it as a means to compete equally. Suggesting nonumpired, noncontrolled competition between the railroads and the inland water carriers we think is suggesting the doom of the line-haul water carriers on the inland channels in this country.

The Interstate Commerce Commission at this very moment is engaged in exercising its minimum rate powers in a number of cases to forestall ruinous competition. The evil at which the ruinous rate power strikes is a contemporary one as well as a historical evil. It would be easy under the proposed legislation for railroads to pick off water carriers like sitting ducks because they collectively haul

only about 30 bulk-loading commodities. Many water carriers haul only 1, 2, or 3 of these, the loss of any one of which would put these water carriers out of business.

Since railroad transportation is estimated to be made up of 70 percent bulk commodities, it is a rightful conclusion that virtually any traffic that the water carriers have would be fair game for the railroads if minimum rate controls were relaxed.

In 1955 inland water carriers in the United States hauled 362 million net tons of bulk-loading commodities. By 1960 the figure had increased to 395,250,101 net tons.

It is to be noted that these totals show a percentage of growth in the industry that is closely related to the percentage of growth of the national economy itself. It is fair to conclude, therefore, that the growth in traffic has not been, as alleged, at the expense of the railroads.

The railroad spokesmen, Mr. Chairman, have said that they must have minimum rate control lifted on bulk commodities in order to compete with the water carriers for these commodities.

Using statistics obtained from the official records of the Corps of Engineers and the ICC, we have made a list of the principal commodities handled by bargelines and a tabular comparison of the tonnages of these commodities handled by water carriers and by railroads. The results are most interesting; and we ask the chairman's permission to have this comparison inserted in the record. The tabulation shows the railroads in overwhelming control of the carriage of the very commodities they say they cannot compete for under maximum rate control exercised by the ICC. These figures are not in the statement, Mr. Chairman, and I would like to present them to you.

I think an examination of them will show that the railroads today are absolutely in control of bulk commodities. Just looking at one of these on grain and grain product in 1960 the railroads carried 83 million tons as compared to 9 million tons hauled by the water carriers. We think this table, Mr. Chairman, as I have said, demonstrates the fact that the railroads are, in fact, in control of bulk-loading commodities particularly those bulk-loading commodities with which they compete with the water carriers and with your permission I would like to introduce this table.

The CHAIRMAN. Let it be received in the record.

(The table referred to follows:)

Comparison of commodities transported on the inland waterways and class I railroads in net tons of 2,000 pounds for calendar years 1956, 1957, 1958, 1959, and 1960

Commodities	Class I railroads					Inland waterways				
	1956	1957	1958	1959	1960	1956	1957	1958	1959	1960
Sea shells, unmanufactured						21,670,728	21,047,508	21,508,685	22,203,976	21,301,860
Animal products, inedible, not elsewhere classified	887,395	851,156	755,874	724,952	742,542	1,132,513	2,329,341	983,072	1,246,129	1,265,307
Grain and grain products	74,118,204	73,862,445	83,614,612	78,613,611	83,687,395	5,216,548	5,930,212	7,039,133	7,762,227	8,891,464
Coffee, raw or green	828,199	788,983	718,474	778,234	747,644	173,728	131,084	178,204	222,581	234,364
Sugar	5,430,384	5,009,941	5,161,945	5,352,007	6,262,804	971,887	812,656	805,000	878,462	893,459
Molasses	1,300,894	1,114,911	1,175,681	1,216,910	1,280,447	697,184	641,082	651,267	590,244	588,387
Soybeans	6,746,400	7,044,837	7,612,475	8,647,643	8,939,585	1,150,238	1,764,852	1,946,860	1,744,450	2,238,820
Logs	11,413,683	7,783,763	6,715,119	7,186,168	6,069,629	20,775,607	18,872,905	17,689,059	21,324,013	20,559,400
Lumber and lumber products	31,891,407	27,263,878	24,621,100	28,011,852	25,366,611	1,454,055	1,559,470	1,669,757	1,373,621	1,261,811
Pulpwood	40,391,028	38,838,904	38,732,768	41,598,386	43,732,769	1,480,082	1,565,525	1,716,287	2,174,163	2,058,477
Woodpulp	4,116,357	3,957,128	3,925,083	4,135,686	4,197,304	607,559	634,616	332,086	377,573	398,677
Paper and paper products	21,293,023	20,463,224	20,279,594	22,819,087	23,031,563	1,090,567	1,102,991	1,179,242	1,222,733	1,217,135
Anthracite coal	35,106,120	30,284,505	23,770,316	20,358,249	16,839,139	1,089,117	628,627	577,781	449,551	444,273
Bituminous coal and lignite	380,727,410	372,194,054	307,491,712	307,226,132	304,500,304	97,207,111	99,381,919	83,800,994	86,776,396	88,508,544
Coke	21,527,773	19,563,630	12,635,366	16,155,193	16,452,862	373,491	275,929	239,258	220,463	347,792
Petroleum and petroleum products	33,489,200	31,102,481	28,918,938	28,868,523	27,435,252	129,348,123	136,621,029	134,056,522	134,215,943	139,378,661
Building cement	35,769,221	32,147,727	33,486,674	34,278,834	27,982,871	1,736,644	1,785,818	1,809,938	2,274,722	2,256,690
Clays and earths	10,911,227	10,000,391	9,196,391	9,770,488	9,322,387	2,180,029	2,165,655	2,139,712	2,158,285	1,993,431
Sulfur	4,663,313	4,015,645	3,648,556	4,001,451	3,203,289	2,869,833	2,711,903	2,515,848	2,990,520	2,423,567
Fertilizer and fertilizer materials	17,012,818	17,320,513	17,395,371	18,686,936	19,455,221	688,382	883,855	1,218,228	1,162,213	1,537,562
Sand, gravel, crushed rock	136,115,272	119,752,000	118,089,727	124,649,297	112,672,105	52,989,963	50,604,797	46,803,925	55,217,411	[1] 50,768,306
Nonmetallic minerals and manufacturers						1,833,708	1,868,586	1,555,527	1,142,394	1,207,495
Iron and steel	74,068,377	69,267,013	45,642,945	53,921,638	51,681,426	8,596,574	9,245,838	7,148,227	7,566,204	9,691,800
Aluminum ores, concentrate and scrap	3,581,824	3,750,318	3,229,790	3,314,772	3,208,085	191,619	93,018	152,342	1,253,752	1,788,874
Copper ores, concentrate and scrap	7,549,040	6,460,552	5,513,037	3,927,356	7,590,021	370,702	376,139	254,548	336,191	196,995
Construction, mining machinery and parts	4,241,298	4,161,723	3,148,874	2,880,778	2,882,889	549,065	426,102	85,998	90,538	100,800

Coal-tar products	1,857,909	1,672,524	1,449,282	1,463,920	1,480,341	1,457,942	1,658,495	1,452,750	1,084,038	2,075,310
Sulphuric acid	3,398,158	3,238,252	2,934,931	3,080,214	2,833,756	1,644,393	1,680,653	1,903,737	1,979,028	1,884,686
Industrial chemicals	12,722,818	12,124,762	11,217,607	12,349,843	11,926,563	3,038,595	3,203,914	2,939,247	4,148,553	4,946,798
Chemical specialties, not elsewhere classified	9,206,129	8,988,066	7,982,472	9,080,538	8,751,465	48,098	30,704	176,068	355,436	192,899
Subtotal	900,364,881	933,023,326	829,064,714	853,098,698	832,276,269	362,634,085	370,035,223	344,529,302	364,541,810	370,653,644
All other commodities	457,056,943	447,303,466	361,288,065	379,102,362	408,512,423	21,463,530	21,854,752	21,964,521	24,448,408	24,596,457
Grand total	1,447,421,824	1,380,326,792	1,190,352,779	1,232,201,060	1,240,788,692	384,097,615	391,889,975	366,493,823	388,990,218	395,250,101

[1] Includes limestone.

Source: Waterborne commerce statistics of the United States, pt. 5, U.S. Army, Corps of Engineers. Known duplications resulting from reporting of identical shipments over 2 or more waterways have been eliminated, represents originated traffic. Transport statistics of the United States, pt. I, Interstate Commerce Commission. Originated traffic of class I railroads.

LIST OF COMMODITY NUMBERS FOR CLASS I RAILROADS AS INCLUDED ON TABLE, TRANSPORT STATISTICS OF THE UNITED STATES, PART I

Grain and grain products, 1, 3, 5, 7, 9, 11, and 13.
Coffee, 75.
Sugar, 759.
Molasses, 757.
Soybeans, 43.
Logs, 401.
Lumber and lumber products, 403, 405, 407, 411, 413, and 415.
Pulpwood, 409.
Woodpulp, 653.
Paper and paper products, 655, 657, 659, 661, 663, 665, 667, and 669.
Anthracite coal, 301 and 303.
Bituminous coal and lignite, 305.
Coke, 307.
Petroleum and petroleum products, 501, 503, 505, and 507.
Building cement, 633.
Clays and earths, 323.
Sulfur, 345.
Fertilizer and fertilizer materials, 539.
Sand, gravel, crushed rock, 325, 327, and 329.
Nonmetallic minerals and manufacturers, no listing.
Limestone, no listing.
Iron and steel, 573, 575, 577, 579, 581, 583, 585, and 587.
Aluminum ores, concentrates and scrap, 311.
Copper ores, concentrates and scrap, 313.
Construction, mining machinery and parts, 595 and 597.
Coal-tar products, 543.
Sulfuric acid, 529.
Industrial chemicals, 531, 533, and 535.
Chemical products, not elsewhere classified, 527.
Sea shells, unmanufactured, no listing.

Mr. CARR. Thank you, sir.

Water carriers, it is true, have made substantial gains in ton-mileage, particularly since World War II ended. The gain reflects the interest of shippers in using low-cost transportation for longer hauls made possible by added improvements of channels throughout the country.

We think that shippers would be seriously hurt if the railroads captured this traffic which is now handled by the water carriers by rate cutting, then drove the water carriers out of business, and then raised rail rates to suit and meet their own needs. Such uncontrolled rate competition could seriously disrupt market competition, involving the distribution of products from and to these industrial sites, which competition is now based on the availability of water carrier service.

Not only industries but ports, localities, regions, districts, and territories would also suffer from the discriminations that would arise. The present means of controlling such discrimination in large part is by means of the Interstate Commerce Commission's minimum-rate powers.

The citizens of this country have a tremendous investment in improved waterways, resulting from expenditures by Federal, State, and local governments and private organizations amounting to more than $5½ billion. This investment Congress has found time and again needs and deserves protection. Without navigation, trade, and commerce these improved waterways would lose much of their significance in the public interest. H.R. 11583 would, we believe, discourage and minimize such use. There are 25,153 miles of commercially navigable inland waterways exclusive of the Great Lakes that need such protection.

Low-cost water transportation through the stimulus that it gives to the general economic development of the area it serves creates new traffic for the railroads probably in greater volume and profitability than traffic diverted from the railroads to the waterways in such instances where diversions occur. The experience of the river valley railroads in comparison with all other line-haul railroads in the United States with respect to indexes of freight revenue, indexes of ton-miles of revenue freight, and operating ratios, indicates that the railroads serving the water routes are more prosperous than the average class I railroads of the country as a whole and this is set forth in three tables in the basic statement, Mr. Chairman, on pages 41, 42, and 43.

We would like to point out that ICC has used its minimum-rate powers sparingly to keep competition from degenerating to a dog-

eat-dog level. The Commission has, itself, declared that this power should only be used in cases where it clearly appears its exercise is necessary in order that substantial public injury may be avoided.

Also there are many reasons for the employment of this power other than those involving intermodal competition. Some of these uses are just as important as the rate competitive reason. Whoever dreamed up the legislation under consideration has completely overlooked that fact. For instance, minimum rates may be prescribed, or rate reductions disapproved, even though the rates themselves are not below a reasonable minimum, if they result in the creation of undue preference and prejudice or unjust discrimination. The ICC, for instance, cannot deal effectively with preference and prejudice and discrimination under its other rate-regulating powers unless controllability of minimum rate is also available.

In other words, what is being attempted in H.R. 11583 in short is an emasculation of the Interstate Commerce Act and the time has not come when this should be allowed.

Finally, with respect to 11583, Mr. Chairman, I wish to point out that the substitution of the sanction of the antitrust laws for the minimum rate powers of the ICC would be, to a large extent, meaningless, ineffectual, and impractical of application. Because a proposed rate is ruinous to a water carrier, that fact alone would not make out a case of action under the antitrust laws.

A following witness will deal in detail with our objection to the proposal to substitute the antitrust statutes for minimum rate control authority, Mr. Chairman, and I will not deal with it further.

The other part of the statement which has been submitted for the record deals with our opposition to H.R. 11584 which would authorize experiments in ratemaking. We believe this to be open-end legislation, perhaps a back-door approach to agreed rates.

We think that the ICC, in the present posture of the law, has a great deal of latitude for authorizing experiments in ratemaking and we suggest that, if there are areas where this cannot be accomplished in the interest of better services to the shippers, that more specific legislation than that proposed in H.R. 11584 be presented.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Carr.

The committee will have to adjourn now. We are going to go into session. We have legislation on the floor of the House and will have all afternoon. The committee will adjourn until 10 o'clock in the morning and Mr. Alvis Layne will be the first witness.

(The full statement of Mr. Carr is as follows:)

STATEMENT OF BRAXTON B. CARR, PRESIDENT, THE AMERICAN WATERWAYS OPERATORS, INC.

My name is Braxton B. Carr. I am president and chief executive officeer of the American Waterways Operators, Inc., which has executive offices at 1025 Connecticut Avenue, Washington, D.C., and field offices in New York City and New Orleans.

The American Waterways Operators, Inc., is a nationwide, voluntary, nonprofit, educational trade association representing 181 shallow-draft water carriers who provide transportation services in the operation of barges, towboats, tugs, and self-propelled freighting vessels over 25,153 miles of commercially navigable inland waterways, including the rivers, canals, intracoastal waterways, bays, harbors, and sounds of the United States. The association also represents 34 other companies which include the builders and repairers of tow-

boats, tugboats, and barges and self-propelled shallow-draft freighters and tankers, as well as the operators of terminals and other service facilities.

Thirty-one commodities, all of which are handled in bargeload lots ranging from 600 tons to 3,000 tons, make up 93.8 percent of all commerce handled by our inland water carriers. (The other 6.2 percent of traffic is made up of miscellaneous commodities generally moving sporadically but still handled in bargeload lots generally). Bargeline operators depend on 10 bulk commodities for better than 80 percent of their traffic. The average bargeline operator usually engages in the transportation of just three commodities.

In 1960, the last year for which complete figures are available, the inland water carriers moved 395 million tons of traffic and provided 120.7 billion ton-miles of service in the movement of bulk traffic. This represented 9.4 percent of the total intercity freight traffic in the United States.

All of the traffic handled by the barge and towing vessel industry and by shallow-draft freight vessels operating over the inland channels is in some degree competitive with other modes, principally with the railroads, portions of whose 217,552 miles of main line track parallel and cross-cross every inland channel in the United States. Obviously, the railroads with their superior trackage which reaches all nonwater points as well as water points provide a flexibility in traffic handling which the comparatively slow-moving water carriers cannot hope to match, thus adding another phase of inferiority to water carrier services in addition to the large loadings required for barge services—500- to 600-ton barge minimums as compared to 50-ton rail cars. The water carriers must have joint ratings and routings to achieve flexibility—and these the railroads deny us.

Bargeline service in the United States costs the shipper an average of 4 mills per ton-mile as compared to almost four times this average cost by the next lowest cost mode, the railroads. Yet the railroads on water competitive traffic, even under minimum rate regulation, in many cases drive their rates down to the level of water rates.

The inland water carriers are seriously affected by the proposals embodied in H.R. 11583 and H.R. 11584 which are under consideration by this committee. The water carriers oppose the proposal to free bulk commodity traffic from minimum rate controls as provided in H.R. 11583 and the proposed experiments in ratemaking embodied in H.R. 11584.

Further in qualification for this statement in opposition to these provisions of the legislation under consideration: The American Waterways Operators, Inc., in which is banded together for mutual voluntary benefit the largest group of inland water carriers in any single trade association, is goverened by a board of directors made up of 35 operating executives, and who are elected on a regional geographic basis and therefore represent carriers and other water carrier interests as reflected in the membeship from every waterway throughout the country. The AWO board of directors, meeting in Chicago on June 28, 1962, directed that I appear before this committee in opposition to H.R. 11583 and H.R. 11584, specifically directing to the committee's attention the extreme concern of our members as to the proposal to repeal minimum rate regulation on the carriage of bulk commodities as proposed in H.R. 11583, and as to the provision to authorize experiments in ratemaking as proposed in H.R. 11584. The AWO board of directors also authorized that expert witnesses appear before this committee and, with the committee's permission, testify specifically to the overall economic impact of the minimum rate deregulation proposal and specifically with respect to the proposed substitution of the antitrust laws for Commission control of minimum reasonable rates. We have requested permission for two expert witnesses to appear on these subjects and we are hopeful that they will be permitted to do so in the interest of shedding the greatest possible light on these proposals.

With all due respect to the sources of these proposals, we nevertheless find that removal of the minimum rate powers of the Interstate Commerce Commission and rate experimentation provisions of the bills under consideration commend our sober, earnest, and considered opposition because the enactment of such legislation would affect the welfare of hundreds of water carriers, thousands of their employees, and seriously injure the public interest. In this context we use the words "public interest" to include all of the citizens of this country, not merely those who work for or have a financial interest in a particular carrier or mode of transportation. We use the words to include the interests of local, State, and Federal Governments who must rely on and support the welfare of the transportation communities—and I use that word in the plural—who serve

the needs of the Nation's transportation as regards commerce, its postal services, its agriculture, its production industry, its labor force, and its national defense. The inland water carrier community for which I speak is one such transport medium and it serves all of these interests.

Permit me at this point to elaborate on the inland water carrier community. I have mentioned that there are 181 carriers in the nationwide membership of AWO and that this is the largest single group of water carriers banded together for mutual interest in any single organization. There are, however, a total of approximately 1,300 for-hire shallow-draft water carriers operating in the United States. This is a substantial transportation community, operating over 4,100 towboats and tugs which provide propulsion power for 14,100 dry cargo barges and scows and 2,400 tank barges, and operating 472 self-propelled freighting vessels. Substantial though the community as a whole is, there are only about 15 companies operating in excess of 100 vessels per company. Thus it becomes apparent, I am sure, that individually these companies are essentially small business enterprises in every sense of the term.

We are here opposing the enactment of H.R. 11583 insofar as it relates to the interests of these water carriers. Specifically, we oppose unreservedly the following language in section 1 of the bill:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) section 1 of the Interstate Commerce Act, as amended (49 U.S.C. 1), is amended by adding thereto a new paragraph (23) to read as follows:

"'(23) Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, * * * the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. If any carrier or carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations:' * * *"

Enactment of this legislation, stripping the Commission of its minimum rate powers, would make it possible for railroads, water carriers, motor carriers, and pipeline carriers to quote and publish any rate necessary to get the business however low or ruinous such rates might be, subject only to such "controls" as might be available under the antitrust laws.

As we view the language in question, even the national transportation policy which the Congress in 1940 made a binding preamble to the entire Interstate Commerce Act would be superseded and nullified, in particular those portions of the policy which provide that:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; * * *"

Why do we say the national transportation policy will be nullified? On its face, this legislation has been recommended on the theory, or the new philosophy as the Commerce Department calls it, that regulation will be equalized by passage of H.R. 11583. We respectfully take the position that as regards water carriers (and particularly as regards water carriers in their competitive relationship with railroads) this plea for supposed equality of regulation is fictional, misleading, and dangerous. It is such a far-reaching and radical change of governmental philosophy as to warrant analysis in depth which for your patient legislative consideration I now propose to do. We are convinced that you cannot fairly act upon this proposed legislation unless you understand and appreciate

the background of the Interstate Commerce Commission's minimum rate powers and the exercise thereof in connection with intermodal competitive relationships, particularly as they relate to water carriers vis-a-vis rail carriers.

I should like first to consider with you the historical status of water carriers and their present status in terms of congressional policy and treatment.

It is a well-known fact that domestic water transportation was at its peak of eminence in the midpart of the 19th century. However, the emergence of the railroads captured the national interest and waterway traffic declined precipitously after the Civil War until it had become relatively insignificant by 1900. The reasons for the decline can be summarized as follows:

1. The States ceased their investment of funds to improve the waterways and the Federal Government played a relatively passive role prior to 1920.

2. The railroads offered very definite advantages over water service as it existed after the Civil War. They had the advantages of speed, year-round operation, a much more complete and extensive system of routes, and, in many cases, actually lower economic costs than the water carriers.

3. The railroads engaged in deliberate programs to destroy water competitors so they could monopolize the Nation's traffic.

4. In rate wars with the water carriers, the railroads skillfully used their great financial staying power and the ability to recoup their losses on routes where they had no water competition.

5. The railroads purchased waterlines both on the inland rivers and in the intercoastal service and used them as tools to destroy independent water carriers. In some instances they purchased canals outright to eliminate that competition.

Finally, when water carriers reached their lowest estate about the turn of the century, not only the Congress but the McKinley administration were moved to action.

A ground swell of public interest in waterways and water carrier redevelopment got underway about 1901. The record clearly shows that much of the agitation for developing the Nation's waterways and water carrier service came from citizens who had no proprietary interest, including President McKinley and his administration, who believed that inland water transportation should be preserved because it would improve transportation service generally and further the economic and industrial development of the country. The important consideration is that the Nation, as a whole, through Congress, soon adopted a policy of promoting transportation service on the inland waterways.

President Theodore Roosevelt appointed the Inland Waterways Commission in 1907 to study the status of the waterways and water carriers. This Commission recommended in 1908 that Congress should "make more suitable provision for improving the inland waterways of the United States." The Commission made its study under the able leadership of Theodore E. Burton who had been the chairman of the Rivers and Harbors Committee of the House of Representatives. The President held a conference in May 1908, of State Governors, economists, and representatives of national organizations to consider the general question of conservation of natural resources including water resources. The following year Congress took a major step when it established the U.S. National Waterways Commission, composed of Members of the House and the Senate. Recommendations of this Commission were embodied in both the Transportation Act of 1910 and the Panama Canal Act of 1912.

President Theodore Roosevelt transmitted the original report of this Commission to the Congress in 1908, stating:

"The Commission finds that it was unregulated railroad competition which prevented or destroyed the development of commerce on our inland waterways. The Mississippi, our greatest natural highway, is a case in point. At one time the traffic upon it was without a rival in any country. The report shows that commerce was driven from the Mississippi by the railroads * * * later they prevented the restoration of river traffic by keeping down their rates along the rivers, recouping themselves by higher charges elsewhere. They also acquired waterfronts and terminals to an extent which made water competition impossible. Throughout the country the railways have secured such control of canals and steamboat lines that today inland waterway transportation is largely in their hands."

The public awakening to the fate of water carriers had its first congressional manifestation in the enactment of the Panama Canal Act in 1912. Prior to its enactment, the National Waterways Commission presented a comprehensive study to the Congress citing reasons for the decline in water transportation.

One such reason was the lack of public funds for waterway improvement. A second and more compelling reason had to do with the so-called artificial advantages that the railroads had created on their own behalf in the form of rate wars against water carriers, purchase of waterways, and acquisition of water carriers.

The memorandum of the Board of Engineers for Rivers and Harbors in connection with the National Waterways Commission explicitly stated "the prevalent cause leading to the decline of water transportation is without doubt the railroad." The primary reason, here cited, was that the railroads could muster together greater resources with which to compete, not only by purchase or establishment of bargelines with which to harass independent carriers, but also through the lower rates device. The point here was to set rates so low on the rail shipments as to make the movement by water unprofitable.

The 1908 report of the National Waterways Commission also indicated that the purpose of the Federal Government in regulating those water carriers in 1887 which were operated in conjunction with a railroad was simply to protect those water lines which were not under railroad control. The same fear that the railroads would ruin the water carriers was widely held then, in 1887.

The Commission's report enumerated the elements of a constructive policy for the protection of the waterways against the railroad. The essential elements were that railways must be prevented from cutting rates; they must not be allowed to acquire any undue advantage through ownership or control of boat lines and terminal facilities; and, finally, through movement in water-rail service on joint ratings and routings, must be facilitated.

It was for these reasons that the Congress in the Panama Canal Act caused railroad divestiture of water carriers and put stringent limitations on their right thereafter to own or control water carriers.

There were many specific instances of railroad attempts to destroy water carriers by rate devices which are part of the legislative history of the enactment of the Panama Canal Act. Let me cite just a couple to illustrate—

In *Jennison Co.* v. *Great Northern Railway Co.*, 18 ICC 113 (1910), the Commission found that prior to 1898 the lines on the Great Lakes were independent of the railroads and there was a well-recognized differential of 5 cents under the all-rail rate on the rail-lake-rail route. The railroad gradually absorbed the lake lines and then, in 1898, increased the rail-lake-rail rate on flour by 2 cents, with a subsequent increase of 1 cent in 1902. This indicates that the Great Northern Railway Co. had little interest in promoting water transportation in the public interest through its acquisitions.

In *Bowling Green Business* v. *L. & N. R.R. Co.*, 24 ICC 228 (1912), a general freight agent of the Louisville & Nashville Railroad also was president of the only packet company offering service between Bowling Green and Evansville. The steamboat captain testified that he was instructed not to solicit freight in competition with the L. & N. Railroad except that which originated or terminated in Evansville. When an independent steamship operator attempted to enter the service in 1901, the L. & N. and the original steamboat company immediately cut their rates and put the new steamboat line out of business. Testimony brought out the fact that the railroad had guaranteed to cover the losses of the original steamboat in fighting the new line.

In *Railroad Commission of Nevada* v. *Southern Pacific Co.*, 21 ICC 329 (1911), ICC pointed out that transcontinental rates originally quoted to meet clipper ship competition did not divert the traffic from the ships. Then the railroads established a "Special Contract System" similar to the agreed rates being discussed today. Special, secret contract rates were offered shippers who would commit all their traffic for 1 year to the railroads; ICC stated:

"Whatever competition there had been before was insignificant when compared with that which followed the year 1877. At that time, the railroad interests evidently determined upon driving the ships from the sea and they very proudly admit that they succeeded in this effort at least to the extent of nullifying or controlling water competition."

It was during the time that this renascent congressional and administration policy vis-a-visa water carriers was developing and prior to the enactment of the Panama Canal Act in 1912 that the Congress gave to the ICC power to fix maximum rates after determining that an existing rate was unreasonable. This was done in 1906 in the Hepburn Act. No longer, as had been the case since 1887, was the Commission to be hampered in its regulation of railroad rates by possessing only the purely negative power to say that the rate was unreasonable.

I ask you to note, however, that in 1906 the congressional policy concerning

water carriers was only in the process of being born. At that time the need to give ICC power to fix minimum rates had not been demonstrated to the Congress.

It is significant that power over minimum rates and the power to suspend proposed rates was given ICC in 1920 in the same Transportation Act in which Congress gave water carriers a new and invigorated status.

The need for minimum rate power in the hands of ICC was forecast as early as 1910 when the Mann-Elkins Act gave the Commission enlarged power to control predatory railroad rate competition under the long- and short-haul clause of the act (sec. 4).

The President's National Waterways Commission had found in its preliminary report in 1908 that the railroads had carried rate cutting under the relief clause of section 4 of the act of 1887 "to an almost unlimited extent" where water competition existed.

Section 4, the long- and short-haul clause of the Interstate Commerce Act, has been, since the minimum rate power was added to the act in 1920, of special help and consequence as far as water carriers are concerned. Time and again it has been invoked to stop the railroads from indirectly reducing rates to defeat water carrier competition. Without the minimum rate power, section 4 would be in part at least rendered ineffectual as we see it, for as ICC Chairman Murphy so well pointed out in testimony before this committee:

"A question arises, however, as to whether the Commission can, if this bill is enacted, continue to find that a rate is or is not 'reasonably compensatory' in accordance with the provisions of section 4, if it has no authority to determine that such a rate is lower than a reasonable minimum rate. Heretofore, a finding to the effect that a rate is 'not reasonably compensatory' or 'is below out-of-pocket costs' has, in general, been equivalent to a finding that the rate 'is lower than a reasonable minimum rate.'

"It might even be urged that by enactment of this proposal Congress, in effect is directing the Commission to find that all such rates are 'no lower than a reasonable minimum rate' and, therefore, are 'reasonably compensatory,' so that the Commission could no longer deny a fourth-section application in this type case. Clarification of this point seems to us to be essential."

Another important clause in the 1910 act, as far as water carriers were concerned, resulted from a recommendation by President Roosevelt's National Waterways Commission. The Commission stated that if a railroad reduced rates temporarily and locally to secure traffic from a competing waterline or to force the waterline out of business, the railroad should not be allowed to raise subsequently the rates unless the Interstate Commerce Commission found that the proposed increase was based upon changed conditions other than the decrease or the elimination of water competition (Interstate Commerce Act, sec. 4(2)). This law constituted an important step of the Congress to restrict the capacity of the railroads to erode or destroy water service through rate manipulation. Enactment of H.R. 11583 would appear to render this provision of the law administratively void inasmuch as its application to a dead water carrier would be of no benefit to any one.

This same law gave the Commission power to suspend proposed rate changes.

In the Transportation Act of 1920, the Congress for the first time laid down a national policy with respect to water carriers, stating:

"It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation."

As early as December 2, 1918, President Wilson, in an address delivered to Congress, asked for a legislative solution to the problem of the railroads after their pending return to their owners, stating:

"The one conclusion that I am ready to state with confidence is that it would be a disservice alike to the country and to the owners of the railroads to return to the old conditions unmodified. What the country chiefly needs is that all its means of transportation should be developed, its railways, its waterways, its highways, and its countryside roads."

President Taft had said much the same thing in recommending the enactment of the Panama Canal Act to Congress. Thus, four Presidents—McKinley, Roosevelt, Taft, and Wilson—all paid due deference to the need for water carriers and for continuing their protection and fostering under regulatory law. The new philosophy urged upon this Congress seems to ignore the historical fact that what is now recommended has already been tried, found wanting, and deliberately rejected by the Congress.

It was the 1920 act that also contained the minimum rate power that H.R. 11583 would in substantial part abrogate by repeal or relegate to nonuse.

Why were these minimum rate powers granted to the Commission in the first place?

The House committee report, the Committee on Interstate and Foreign Commerce, 66th Congress, 1st session, House Report No. 456, says at page 19 under the heading "Minimum and Maximum Rates":

"Under section 412 [that is, the proposed amendment to sec. 15 of the Interstate Commerce Act] the Commission is authorized to fix minimum as well as maximum rates under the Interstate Commerce Act. The Commission ever since 1887 has only been empowered to declare the maximum rate to be charged. As a result of the testimony the committee believes that the Commission should also be granted authority to prescribe joint rates or maximum and minimum joint rates. With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service by establishing a minimum below which such carrier could not fix its rate. It would also prevent a rail carrier from destroying water competition between competitive points by prohibiting such carrier from so reducing its rates as to destroy its water competitor. Circumstances have been cited where the rail carrier destroyed its water competitor by such a reduction of rates as to make it impossible for the water carrier to survive. When once competition was thus driven off the rail rates would be restored and would rise to even higher levels."

The House sponsor of the Transportation Act was Mr. Esch, of Wisconsin, chairman of the House Committee on Interstate and Foreign Commerce in the 66th Congress. Mr. Esch made a speech before the House on November 11, 1919 (Congressional Record, vol. 58, pp. 8309–8318), with respect to the amendment to section 15.1 of the Interstate Commerce Act, in which he said in part:

"We give [the Commission] the right of fixing the minimum rate in order that it may meet some of the problems arising out of the long- and short-haul clause as contained in the fourth section. We give it the right of fixing a minimum rate in order that it may protect a water carrier against the destructive competition of a rail carrier. You know the story—you can read it upon every mile of every inland waterway of the United States—how the water carrier started, and then the rail carrier paralleled the river bank and made a rate so low that the water carrier had to abandon its line and its route, and after such abandonment the rail carrier raised the rate and the public was no better off and was, in fact, worse off than before. If the Commission fixes a minimum rate, it can say to the rail carrier: 'Thus far you can go, but no farther.' The water carrier must be permitted to live. To do this we must provide for the minimum rate."

Note that title 5 of the 1920 act, section 500, stated:

"It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service and facilities in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation."

Permit me to emphasize that the basic fundamentals which led Mr. Esch to conclude—and the Congress to agree—that "the water carrier must be permitted to live [and] to do this we must provide for the minimum rate" are unchanged regardless of what other happenings have taken place. It is as true today as it was in 1919–20 that if the water carrier is permitted to live the minimum rate must be provided, and it cannot be done by use of the antitrust statutes.

Another answer to the question of why ICC was given minimum rate powers comes from the Commission itself: In its 1919 report to Congress, the Commission stated, inter alia:

"In our last annual report we said, with regard to the future of the railroads, that whatever line of policy is determined upon the fundamental aim or purpose should be to secure transportation systems that would be adequate for the Nation's needs even in time of national stress or peril and that will furnish to the public safe, adequate, and efficient transportation at the lowest cost consistent with that service, and that to that end there should be provisions for the following:

"4. Development and encouragement of inland waterways and coordination of rail and water transportation systems. This means the coordination of rail and water transportation systems by establishment and maintenance of through routes between rail and water carriers and reasonable joint rates applicable thereto, divided upon reasonable bases, whenever and wherever such through routes will facilitate or economize in the movement of traffic and serve a real

public interest. The law now prohibits a rail carrier from increasing a rate which has been reduced to meet water competition unless some justification for the increase can be shown other than the elimination of water competition. Where there is legitimate water competition and legitimate reason or occasion therefor, neither the railroads nor the water carriers should be permitted to reduce their competitive rates below a reasonable compensatory level for the purpose of stifling the competition. Rates that are on a level lower than is reasonably compensatory are not a public benefit. If they cover all the traffic the carrier's bankruptcy and destruction are inevitable. If it has other traffic it is certain that it will endeavor from that other traffic to recoup its losses under the noncompensatory rates. A well-directed and proper coordination of rail and water transportation systems will of itself be an encouragement to the development of inland waterways.

* * * * * * *

"In the event, therefore, of a continuance of the policy of private ownership and operation under governmental regulation, we think that the following matters, mentioned in our annual report, require legislative consideration, in connection with which the following suggestions should be carefully weighed:

"1. Revision of limitations upon united or cooperative activities among common carriers by rail and by water. Under the policy theretofore followed by our Government all efforts to restrict the full play of competition between carriers have been frowned upon or prohibited. Obviously competition between carriers that is wasteful or unnecessarily expensive lays an added burden upon the ratepayers. Elimination of wasteful or unduly expensive competition in rates or service is desirable and under the exercise by the Government of its power to regulate the service and the rates which the carriers may charge and to require an abatement of all unjustly discriminatory, unduly prejudicial, or unduly preferential charges, regulations, or practices, carriers might well be permitted and encouraged to coordinate their activities and merge or consolidate their lines to such an extent as is, after thorough investigation and full hearing, sanctioned by the regulating body. The rates should not be higher than the shipper may reasonably be required to pay and should not be lower than the carrier may reasonably be required to accept. The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge, but also the minimum. This power would restrain an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments. If the rates and charges are by regulation confined within the reasonably narrow limits between the maximum and minimum reasonable charges, no public interest can be injured by the carriers all maintaining charges within these limits. If, without unduly lowering or restricting the standard of service, economy in maintenance and operation can be secured by cooperative agreement or consolidation, under governmental supervision and approval, of two or more lines, the public is not injured, while the sum available for improvements and betterments of the carrier properties is augmented."

It should be kept in mind that this minimum rate power was sought by and given to the Interstate Commerce Commission 20 years before water carriers themselves came under ICC regulation. Congress was convinced that such power should be at hand for the Commission to exercise in its railroad rate-regulating processes even though the water carriers were at that time totally exempt from regulation.

Authority to fix minimum rates had been requested by the Commission several times, the first as early as 1893. The Commission's reasons for requesting this authority should be noted briefly. In the first place, the Commission had discovered that discrimination can arise out of rates which are unreasonably low as well as rates which are unreasonably high. Unduly low rates at competitive points burden the rates charged at noncompetitive points, except in those cases where the long-and-short-haul clause applies, and unduly low rates on certain commodities may place a burden on rates charged for moving other commodities. It is true that the Commission could move indirectly against low rates which burdened other traffic by ordering a reduction in the higher noncompetitive rates, thus possibly forcing the offending carrier to increase unduly low rates. But it might not always be possible for the Commission to reduce the noncompetitive rates, and carriers might, for reasons of their own, persist in charging unduly low rates to certain points or on certain commodities. In any event this was

a much less satisfactory method than a direct approach to the offending rates themselves.

Prof. Russell E. Westmeyer in his distinguished book on "Economics of Transportation" states:

"It [granting the Commission authority over minimum rates] made it possible to prevent cutthroat competition with all of its attendant damage to railroad service and credit. It made it possible for the Commission to act against carriers applying unduly low rates at certain points for the sole purpose of forcing water carriers out of business. It is possible, too, that the power to fix minimum rates was necessary to a proper control of the rule of ratemaking. If the Commission was to fix individual rates in such a way that they would, in the aggregate, bring a fair return on the fair value of the property, it would seem to be essential that it have the power to prevent the application of rates which were too low. Otherwise, rates which were too low would necessitate increases elsewhere in order for the carriers to earn a fair return."

In its documentation of reasons justifying the legislation under consideration, the administration has not squarely faced up to the historical reasons justifying the need for granting minimum rate powers in the first instance, nor has the administration evaluated whether these reasons are still sound for continuing minimum rate control. The administration suggests either (1) water carriers can now survive railroad rate competition because the water carriers are stronger or the railroads are weaker or both, or (2) the benefits of competition in the form of lower rates and improvement of railroad earnings justify eliminating minimum rate control without regard to what happens to the water carriers.

Enactment of H.R. 11583 would create the anomaly of leaving the ICC in possession of its minimum rate powers insofar as all traffic but bulk commodity and agricultural and fishery traffic are concerned. Yet it is in the bulk commodity field that the water carriers have the greatest need for the occasional exercise by the Commission of this rate-regulating power. I will go so far as to say that without the power being held by the ICC, however infrequently it is exercised, there would be no thriving, healthy, water carrier industry on our inland waters as we know it today.

(Shallow draft carriers (i.e., bargelines) would feel the impact of the relief sought in the bill for and by the railroads immediately since they carry principally bulk commodities.)

But, I am getting ahead of my story. Let me return again to the history of rate regulation as it affects water carriers. As I have stated, the Transportation Act of 1920 gave water carriers status and protection—policywise and ratewise—from selective rate cutting which had prevented the establishment and maintenance of transportation on our inland waters.

We turn next to the Transportation Act of 1940. Between 1920 and 1940, motor carriers and air carriers came under Federal regulation. The area, perhaps I should say the arena, of control of transportation competition was thus extended.

By 1940, it also became apparent to the Congress that some kind of a national transportation policy governing domestic surface transportation would have to be stated and enforced. Accordingly, as a preamble to the 1940 act there was enacted a national transportation policy.

And, again, therein water carriers together with the other forms of transportation were given due recognition. The congressional policy provided specifically for, as I have set forth above in this statement, the avoidance of "unfair or destructive competitive practices" in ratemaking since the policy specifically relates to all of the provisions of the act. It would be difficult, if not indeed impossible, for the ICC to support and sustain this policy without its minimum rate power.

It is difficult to understand why the ICC should be handicapped in application of the policy by eliminating the authority or power to determine that a rail rate is lower than a reasonable minimum on the commodities involved.

This brings me to the next point, which is this: The Congress in the 1940 act placed water carriers under economic regulation, but exempted therefrom transportation of certain bulk commodities provided certain conditions were met. Among the several reasons advanced by Congress for the exemption were that Great Lakes water carriers had to compete with Canadian water carriers and could not do so as controlled carriers. The Congress reasoned at that time that since the lake carriers were exempted, there was reason for exempting from rate controls also the carriage of a class of commodities on other inland waterways.

Again, Congress felt that since many carriers on the waterways were small organizations, family setups, little carriers serving one or two shippers, they neither needed or required rate regulation.

As found by the ICC in a recent case involving the attempt of two railroads to acquire a bargeline:

"During the developmental stages of modern barge operations, most carriers commenced as independent small business enterprises, and of the presently active operators many still occupy that status. Some of the larger bargeline carriers represent combinations of small carriers acquired by and merged into, or otherwise corporately unified, with a stronger carrier. As in the earlier days some carriers are owned entirely by an individual or by members of the same family. Several now operating were started as bargelines or packet lines in the era prior to railroads and have passed from generation to generation in the same family. Others came into being during the depression period of the 1930's. Probably most of the lines, including some of the most successful, were founded since World War II by individuals who made small capital investments in secondhand vessels which they personally converted for use as towboats and continued to maintain and improve until business permitted acquiring additional equipment. Often traffic was transported by use of leased barges or barges owned by the shippers, and involved short hauls or purely local service. As the carriers developed, the owners succeeded in attracting more traffic, and additional towboat and barge equipment was constructed, purchased, and leased. Expansion of the fleets, and the lengthening of the distance which traffic moved required the carriers to solicit traffic to transport in the direction which the equipment otherwise would be returned unloaded. The carriers thus attacted types of traffic which previously has not been handled by water carriers. In so doing, some of the carriers specialized in the operation of a particular type of equipment and provided a service tailored to suit the shippers. Among the smaller carriers, many restrict their operation to the transportation of only one or two exempted bulk commodities such as liquid petroleum, ores, coal, sulfur, and sand and gravel." (ICC Finance Docket No. 20940.)

It was also true in 1940 as now that the operations and traffic of inland water carriers cannot withstand ruinous competitive rate practices. The costs of inland water carriers are largely direct costs which vary with the amount of traffic handled. There is, therefore, little incentive to charge less-than-cost rates in order to obtain traffic. Nor is there any possiblity of profitably doing so because of the absence of other noncompetitive traffic which can be made to bear high rates to make up losses. There was found by the Congress at that time no need, therefore, to have minimum rate power over these particular carriers to keep them from destroying themselves or other carriers by selective rate cutting or by maintaining unreasonably low rates.

There have been no changes in rail-water competition for traffic that would warrant such a dislocating change in congressional policy as proposed in H.R. 11583. It is implicit in railroad testimony in support of the bill that they intend to take traffic from the water carriers wherever and however they can get it. This is a philosophy that the water carriers know and understand, having risen from the graveyard where exercise of the philosophy put them at the turn of the century. It is a philosophy that the Congress should understand and know that it must be controlled if the water carriers are to live. More than 60 years of water carrier struggle to achieve status under congressional policy would be nullified almost overnight by such a departure in basic policy as here proposed.

Why should this be so? For the principal reason that the railroads, the chief proponents of the legislation under consideration, have not changed their stripes. They are still tigers in the arena of rate and traffic competition. They can be stopped short of destructive practices only under regulation.

The Commission itself has found this assertion to be substantially true in the recent *John I. Hay* case which we have referred to. The Commission found that given an opportunity to own ships and compete with water carriers the rail competition would be "overbearing." The Commission was, in part, led to this conclusion by factual reference to the ratemaking practices of the railroads. The Commission found in a restrained statement of fact that:

"28. In attempts to recover traffic diverted by the water carrier level of rates, the railroads reduced all rail rates on particular articles between specific water terminal points; published rates and accorded transit privileges and switching service more favorable in regard to movements solely by railroad than movements partly by railroad and partly by water carrier; and in revising effective

rates pursuant to Commission approval of general rate increases, invoked 'hold-downs' as to rates affected by competitive water carrier service.

"29. To combat rate and service adjustments by railroads seeking to recover traffic formerly handled, water carriers reduced rates practically to the level of their out-of-pocket costs, thus providing substantial savings to the users of water carrier service." (ICC Finance Docket No. 20940.)

Certainly, if the railroads would, as found, again use the "fighting ship" means of destruction of water carriers they would also use their freedom from control under minimum rate powers to do the same thing.

As a matter of fact, in the presence of such powers, they are attempting to sink the water carriers by rate reductions. There are a number of cases now pending before the ICC in which the railroads have reduced their rates on important bulk-loading commodities to a level barely covering out-of-pocket costs and in certain instances, according to some cost findings referred to the Commission, below out-of-pocket costs. It would not be appropriate for me to refer specifically to pending cases here. Suffice it to say, however, that in the light of such cases, and there have been a number of them in the last few years, all dealing with bulk commodities, without the availability of minimum rate powers the Commission would have been helpless to prevent destructive rate practices, unless it were done solely under the terms of the national transportation policy, which, absent the minimum rate power, would be ineffective. The proposed legislation would nullify even that policy.

Why are the railroads able to undertake rate cutting and other campaigns against the water carriers and with a substantial degree of success?

The answer is in part because of the relative financial size of the water carrier community as compared to the railroad community. No precise figures are available on the water carriers, but in a recent proceeding we surveyed the members of AWO to determine their investment in carrier properties. Using the basic figures obtained in this survey and extending the averages to all water carriers, we estimate that the inland water carrier community has a total capital investment of $1.6 billion in vessel equipment. Class I railroads, according to part I, Transport Statistics in the United States, December 31, 1960, issued by Interstate Commerce Commission, have a total capital investment of $32 billion. The Illinois Central Railway System, which closely parallels the Mississippi River System, alone has a capital investment in excess of $839 million, equal to one-half of the total equipment investment of all inland water carriers of the United States.

The economic power of the railroads to destroy water carriers if H.R. 11583 is enacted will be aided and abetted by the fact that the water carriers handle principally bulk-loading commodities as the following table based on 1960 traffic shows:

Ten principal commodities carried on the inland waterways of the United States

Commodity	1960 tonnage	Percent of total
Petroleum and petroleum products	139,378,661	35.3
Bituminous coal and lignite	88,508,544	22.4
Sand, gravel, crushed rock	47,516,590	12.0
Sea shells, unmanufactured	21,301,860	5.4
Logs	20,559,400	5.2
Iron and steel	9,691,800	2.5
Grain and grain products	8,891,464	2.2
Industrial chemicals	4,946,798	1.3
Limestone, crushed	3,251,716	.8
Sulfur	2,423,567	.6
Subtotal	346,470,400	87.7
All other commodities	48,779,701	12.3
Grand total	395,250,101	100.0

It is apparent in the light of these figures that the legislation proposed strikes at the heart of water transportation. The railroads haul thousands of commodities. The water carriers transport about 30. Take any representative number of this 30 away and there remains no water carriage. It is that simple.

Could this be done by the railroads in the absence of minimum rate controls? The answer is "Yes."

Many water carriers handle only one, two, or three of these commodities. Although others handle more, most water carriers rely on one, two, or three of these bulk-loading commodities to sustain their going operations.

One respected Mississippi River carrier recently testified before ICC in the course of a rate case that if it lost either its southbound grain traffic or its northbound phosphate hauls (both bulk-loading commodities), its operating ratio would go above 100 percent. This would mean either that the company would have to cease operations entirely or fall back into the category of a sand and gravel carrier hauling commodities in local traffic that the railroads did not want to haul.

If minimum rates on grain and phosphate cannot be controlled, the inevitable fate of this water carrier, judged by past actions of the railroads, will be written upon the legislative wall as an epitaph—and the same can be said of many other water carriers. There has been a considerable amount of speculation in the questioning by members of the committee of witnesses as to what constitutes bulk commodities. For the information of the committee, I offer the table on the following page which shows the principal commodities carried on the inland waterways, the overwhelming majority of which are bulk-loading:

Principal commodities carried on the inland waterways of the United States (exclusive of the Great Lakes) in net tons of 2,000 pounds, for the calendar years 1955, 1959, and 1960

Commodity	1955	1959	1960
Sea shells, unmanufactured	19,070,145	22,203,976	21,301,860
Animal products, inedible, not elsewhere classified	791,259	1,246,129	1,265,307
Grain and grain products	4,836,785	7,762,227	8,891,464
Coffee, raw or green	150,740	222,581	234,364
Sugar	842,625	878,462	893,459
Molasses	826,626	590,244	588,387
Soybeans	1,142,731	1,744,450	2,238,820
Logs	19,419,798	21,324,013	20,559,400
Lumber and lumber products	1,773,537	1,373,621	1,261,811
Pulpwood	1,735,419	2,174,163	2,058,477
Woodpulp	362,785	377,573	398,677
Paper and paper products	1,124,054	1,222,733	1,217,135
Anthracite coal	1,077,553	449,551	444,273
Bituminous coal and lignite	90,417,566	86,776,396	88,508,544
Coke	504,676	220,463	347,792
Petroleum and petroleum products	121,235,062	134,215,943	139,378,661
Building cement	1,727,196	2,274,722	2,256,690
Clays and earths	1,839,090	2,158,285	1,993,431
Sulfur	2,623,219	2,990,520	2,423,567
Linestone, crushed	2,931,884	3,203,078	3,251,716
Fertilizer and fertilizer materials	637,480	1,162,213	1,537,562
Sand, gravel, and crushed rock	48,232,775	52,014,333	47,516,590
Nonmetallic minerals and manufactures	1,935,827	1,142,394	1,207,495
Iron and steel	8,777,016	7,566,204	9,691,800
Aluminum ores, concentrate and scrap	171,351	1,253,752	1,788,874
Copper ores, concentrates and scrap	319,249	336,191	196,995
Construction, mining machinery and parts	317,818	90,538	100,800
Coal-tar products	1,275,878	1,084,038	2,075,310
Sulfuric acid	1,705,216	1,979,028	1,884,686
Industrial chemicals	2,691,306	4,148,553	4,946,798
Chemical specialties, not elsewhere classified	42,703	355,436	192,899
Total, principal commodities	340,539,369	364,541,810	370,653,644
All other commodities	22,016,541	24,448,408	24,596,457
Grand total	362,555,910	388,990,218	395,250,101

Source: Corps of Engineers, U.S. Army.

Note that the percentage of growth in bulk commodity loadings by water carriers is no more than the growth of the national economy.

These are the commodities that the rails will go after on a rate war basis if the means of stopping such a war are taken away from the Interstate Commerce Commission. They are already in control of the majority of some of this traffic even in the presence of the minimum rate powers of ICC. In this connection, I refer to such commodities as grain, asphalt, residual fuel oil, industrial chemicals, and coal.

On behalf of the railroads, it has been represented that they are in perilous plight because they cannot now compete for this bulk-loading traffic ratewise. This is sheer bunkum. They can and do successfully compete for this traffic. Were it not for the fact that most of the barge line customers are located on navigable waterways, where they can be served on a port-to-port basis, the rails would be even more successful in their rate campaigns even under minimum rate regulation.

There is a popular idea to the effect that inland waterways transport facilities are making steady and sensational gains in their traffic movements. This, too, is an overdrawn contention. The facts are set forth in the following table:

Traffic transported on inland waterways of United States (exclusive of Great Lakes), for calendar years shown

Year	Net tons of 2,000 pounds [1]	Ton-miles	Year	Net tons of 2,000 pounds [1]	Ton-miles
1931	179,735,000	9,233,369,320	1956 [2]	384,097,615	109,313,274,000
1940 [2]	366,835,582	22,411,961,000	1957 [2]	391,889,975	114,561,469,000
1947 [2]	262,282,074	34,548,917,000	1958 [2]	366,493,823	109,131,151,000
1950 [2]	297,694,832	51,656,637,000	1959 [2]	388,990,218	116,678,739,000
1954 [2]	319,780,826	82,503,839,000	1960 [2]	395,250,101	120,784,337,000
1955 [2]	362,555,910	97,662,567,000	1961 [3]	396,000,000	(4)

[1] Known duplications resulting from reporting of identical shipments over two or more waterways have been eliminated except that the figures for 1947 and subsequent years represent originated traffic.

[2] Figures for 1947 and subsequent years appear low as compared with those of previous years for the reason that the traffic for 1947 and subsequent years was compiled by the Corps of Engineers for Rivers and Harbors under a new statistical system with mechanical tabulating processes which analyzed the traffic and eliminated duplications more thoroughly than in the years prior to 1947.

[3] This is an estimated figure from the Army Corps of Engineers. The final figure will not be available until later this year.

[4] Not available.

You will note that there has been reasonably steady increases in tonnages, about equal to the rate of national economic growth. The ton-mileage increases are somewhat higher. This simply reflects longer hauls over better water channels by more efficient equipment; and to some extent reflects changing marketing and production patterns which affect all modes of transportation.

The inland water carrier community is presently in a fairly healthy state. This can be attributed in part to the efficiency, ingenuity, energy, and perserverence of management as well as to cost of service factors. But it is in large part due to the continuing location of many industries along the Nation's waterways which use or produce bulk commodities and who want the competitive advantages offered by low-cost water transportation.

One of the major keys to production industry's ability to compete in our intensely competitive economy is the availability of transportation suited to all of the variety of needs for bringing together raw materials and for shipping out finished or semifinished products. This is recognized. And industry looks to barge transportation to fill a major need for moving bulk raw materials in mass quantity at low rates.

This need has generated a massive industrial development at waterside sites on rivers and canals which make up the principal routes of the barge and towing vessel industry throughout the United States. Not only is industry putting a large share of its capital investment dollar into new plants along these water routes, but industry is also expanding existing plant facilities along the water routes at an accelerated rate.

Admittedly other factors influence plant location. Admittedly the availability of adequate industrial water supply itself in our navigable streams is an attraction for certain industries. Nevertheless, the availability of low-cost water transportation increasingly has become a recognized major ingredient in the attraction of industrial production facilities to specific locations. So much so that since 1952, when the American Waterways Operators, Inc., first began keeping records on waterside site plant locations and expansions, literally thousands of industries have put their facilities on such sites.

Today industries feed approximately 400 million tons of freight into river and canal traffic.

The barge and towing vessel industry in handling this tonnage produces almost 120 billion ton-miles of service, more than 9 percent of the total intercity freight service of the United States.

Average cost of this service to the shipper is about 4 mills per ton-mile.

The growth of commerce on the inland waterways of the United States in the period 1947-61, when it rose from 3.5 percent of total intercity freight movements to 9.4 percent, indicates the value which shippers have put on this mode of transportation. Very simply, more and more shippers have discovered that the floated ton is the most economical ton of transportation and are taking advantage of safe, efficient, low-cost barge transportation for their bulk commodity movements.

This approach to the problem, to wit, the commodities hauled by water carriers and the public served by them gives rise to another pertinent question in which members of this committee have already shown an interest—that is the possible effects of unrestrained or uncontrolled rate cutting on the public interest. The present situation is fairly well stabilized. Plants on waterside sites have sought water locations for economic reasons and are being served by water carriers toward that end. They are in competition with interior plants in many instances, that is to say, plants not located on waterways. If the railroads were to cut rail rates on bulk-loading commodities to or from interior plants, the watersite plants would suffer intense market competition. The ICC takes market competition into account in determining the legality of rates. If the ICC is stripped of its minimum rate control power as provided in H.R. 11583, the shipping public will suffer. It will suffer not from the immediate lower rates that the railroads will put into effect on competitive traffic, but from the elimination of an alternative method of transportation and from the serious dislocation of industry that will occur. We do not believe that the residual powers of the ICC under section 3 relating to preference and prejudice and section 2 relating to discrimination can overcome these results.

The dislocative effect on industry merits consideration. Waterside shippers have made substantial investments in shore facilities to accommodate their water transportation needs. These investments would be imperiled if H.R. 11583 is enacted. These waterside shippers and receivers, of course, can be and are served also by the railroads. However, it has always been and still is the case that the freight rates on the commodities that water-oriented shippers move in or out are controlled by the water carrier rate. This has been one of the major public benefits of water transportation. If the rail rates can be lowered without minimum rate restraints so as to capture the traffic and drive the water carriers out of business, the rails can then as they have done so often in the past, raise their rates afterward to the detriment of the shipper. I know of nothing in the Clayton Act that would stop the chain of events. The rails undoubtedly want this traffic and are prepared to go after it. And when they do it, we believe it will be on a below out-of-pocket cost basis. They will imperil their own fiscal integrity and stability, imperil the water carrier community, and in the long run imperil the public interest.

It is submitted that the public has a valid interest in the continued welfare (maintenance and development) of waterways and that this interest would be stifled if the navigational use of such waterways were substantially impaired as it could be if H.R. 11583 passes. Let me be more specific: According to findings made by the Select Committee on National Water Resources, U.S. Senate (Committee Print No. 11, 86th Cong., 2d sess.):

"In 1824 the Corps of Engineers received its first appropriation for river improvement work. Appropriations of Federal funds for the construction, operation, and maintenance of navigation works during the 135-year period ending June 30, 1959, have amounted to approximately $5.5 billion, of which about $0.6 billion was spent for navigation works no longer in use. The distribution of the remaining $4.9 billion is indicated by the following tabulation:

"Dollars in billions

	New work	Operation and maintenance	Total	
			Amount	Percent
"Inland waterways	$1.73	$1.05	$2.78	57
Great Lakes	.32	.21	.53	11
Seacoast harbors	.93	.66	1.59	32
Total	2.98	1.92	4.90	100"

"The total cost to the Federal Government of constructing, operating, and maintaining the inland waterway system, as it existed on June 30, 1959, was approximately $2.8 billions. About 38 percent of this amount was expended for operation and maintenance.

"*Non-Federal contributions.*—In addition to the Federal expenditures, considerable amounts have been spent by States, cities, and other non-Federal entities to bring the Federal waterways system into existence."

This investment, made strictly in accord with continuing congressional policy, deserves protection. Surely we do not want our inland waterways used only for recreation, fishing, power production, and related activities. We want them used, in the public interest since they belong to the public, for purposes of navigation and commerce. It is our firm conviction, that if H.R. 11583 is enacted, it would do much to discourage if not to eliminate the navigational use of our Nation's waterways.

The insistent public demand in the United States for waterway improvements, in part at least to maintain a floor under basic transportation pricing, would be frustrated.

There are a total of 25,153 miles of commercially navigable inland waterways (exclusive of the Great Lakes) in the United States, including those that have been improved by the Federal Government, those improved by non-Federal agencies, and those not needing improvements. Since the Corps of Engineers undertook its first river improvement project in 1824, the Federal Government has improved, to some extent, 22,757 miles of inland waterways. There are an additional 1,871 miles of bays, sounds, and harbors which required no improvement, and 525 miles that were improved with non-Federal funds. There are 15,121 miles which range from 9 feet to over 14 feet in depth, representing 60 percent of the commercially navigable waterways of the United States. Ten thousand and thirty-two miles of navigation channels are under 9-foot depth, the depth generally proven the minimum for most efficient use of modern towboats, tugs, and barges.

It will be, AWO submits, a serious, unthinkable derogation of the public interest for this or any other Congress to legislate out of the picture, even in part, navigation on this wonderful waterway system which is the envy of the rest of the world.

It has been considered a truism in the past that waterways traffic being slow moving, of large-hauling volume, and of low value could be moved much more cheaply on inland waterways than on railroads. The users of water transportation services, therefore, reaped economic benefits by such use. We believe that this is still largely true, but its being true would not prevent the railroads from meeting or bettering such rates if they could do so freely without minimum regulation. In a sense, their being unable to do so is a boon to them if they would only realize it.

Low-cost water transportation, through the stimulus that it gives to the general economic development of the area it serves, creates new traffic for the railroads, probably greater in volume and profitability than traffic diverted from the railroads to the waterways. A study of rail traffic hauled by railroads paralleling the Nation's improved inland waterways would show, we believe, that such railroads have not had a net loss of traffic tonnage but on the contrary have gained tonnage commensurate with the growth of industry along such waterways. This was reported as a fact in "A Water Policy for the American People" issued by the President's Water Resources Policy Commission in 1950 and it is still believed true. Certainly the experience of the river valley railroads in comparison with all other line-haul railroads in the United States with respect to indexes of freight revenue, indexes of ton-miles of revenue freight, and operating ratios, as shown in the three following tables, indicates that the railroads serving the water routes are more prosperous.

Postwar experience of river valley railroads compared with all other line-haul railroads, U.S.A., 1946–60

INDEXES OF FREIGHT REVENUE

Year	4 Ohio Valley railroads [1] (1)	All other line-haul railroads, U.S.A.[3] (2)	4 Mississippi Valley railroads [2] (3)	All other line-haul railroads, U.S.A.[3] (4)	8 Ohio and Mississippi Valley railroads (5)	All other line-haul railroads, U.S.A.[3] (6)
1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	127.7	120.9	126.2	121.4	127.2	120.4
1948	141.2	137.4	143.5	137.5	142.0	136.9
1949	118.7	122.4	127.8	121.5	121.8	121.9
1950	136.2	135.1	145.5	134.5	139.5	134.2
1951	157.4	148.1	159.0	148.6	157.9	147.2
1952	153.0	151.8	166.0	151.0	157.5	150.6
1953	153.9	154.9	166.1	153.9	158.2	153.9
1954	131.5	135.4	147.2	134.0	136.9	134.4
1955	152.6	147.0	156.0	147.1	153.7	146.3
1956	171.1	152.6	176.8	153.3	173.1	150.5
1957	176.2	151.3	173.0	153.2	175.1	149.5
1958	149.0	138.3	163.0	138.0	153.9	136.2
1959	149.1	143.2	168.5	142.1	155.8	141.0
1960	146.3	137.9	161.9	137.3	151.8	135.9

INDEXES OF TON-MILES OF REVENUE FREIGHT

1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	119.4	108.9	114.5	110.3	117.8	108.4
1948	114.2	106.6	113.2	107.3	113.9	105.9
1949	85.9	89.5	94.5	88.5	88.6	89.0
1950	99.1	99.5	107.8	98.8	101.9	98.7
1951	114.3	108.3	116.9	108.6	115.2	107.5
1952	103.3	104.0	114.5	103.0	106.9	103.0
1953	99.2	102.9	111.8	101.6	103.2	102.1
1954	87.9	93.7	103.7	92.0	93.0	92.8
1955	109.1	104.7	113.8	104.7	110.6	103.8
1956	120.9	107.3	125.6	108.2	122.4	105.6
1957	121.3	101.4	119.9	103.3	120.8	99.7
1958	98.5	92.2	112.1	91.7	102.8	90.3
1959	97.9	97.1	119.0	95.5	104.6	95.1
1960	98.5	96.4	116.1	95.2	104.1	94.5

OPERATING RATIOS

1946	81.2	83.6	81.1	83.5	81.2	83.8
1947	77.0	78.4	77.0	78.3	77.0	78.5
1948	76.9	77.2	76.0	77.3	76.6	77.3
1949	80.7	80.2	79.2	80.4	80.2	80.3
1950	74.0	74.5	72.7	74.9	73.5	74.6
1951	74.5	77.7	77.2	77.3	75.5	77.7
1952	74.6	76.2	74.1	76.2	74.5	76.4
1953	74.7	76.4	75.1	76.3	74.9	76.5
1954	77.9	78.8	77.3	78.8	77.7	78.9
1955	73.2	75.8	74.9	75.6	73.8	75.9
1956	73.2	77.3	75.9	76.8	74.2	77.4
1957	74.0	79.0	78.5	78.3	75.6	79.0
1958	74.7	79.4	78.1	78.8	76.0	79.5
1959	75.0	78.8	77.6	78.4	76.0	78.9
1960	76.2	79.9	79.1	79.4	77.3	80.0

[1] Four Ohio Valley Railroads: Baltimore & Ohio; Chesapeake & Ohio; Louisville & Nashville; Norfolk & Western.

[2] Four Mississippi Valley Railroads: Gulf, Mobile & Ohio; Illinois Central; Missouri Pacific; St. Louis-San Francisco.

[3] Col. 2: All line-haul railroads, U.S.A., other than four Ohio Valley Railroads. Col. 4: All line-haul railroads, U.S.A., other than four Mississippi Valley Railroads. Col. 6: All line-haul railroads, U.S.A. other than eight railroads of Ohio and Mississippi Valleys.

Source: Interstate Commerce Commission. Data adjusted for mergers.

The philosophy reflected in H.R. 11583 apparently does not take such factors into account. This same policy Commission concluded that:

"The Nation should continue the improvement of its inland and intracoastal waterways to standard depths as an important objective of comprehensive multiple-purpose basin programs. This part of water resource development should be integrated into a broader program designed to provide the Nation with an economical and efficient coordinated transportation system including railroads, motor transport, waterways, and airways. In such a coordinated system all forms of transportation should be considered as complementary rather than competitive with each other.

"Waterway charges should not be considered as yardsticks for railroad rates, but rather as rates for traffic which, in the coordinated transportation system, can move more economically by water than by rail. In order to assure the greatest overall contribution of the transportation system to the Nation's well-being, railroads should not be permitted to establish discriminatory rates on railroads paralleling waterways."

The Truman administration endorsed this approach. The Kennedy administration would do well to consider it.

The water carriers I represent would like to coordinate hauls with railroads on a joint rate and route basis. We have held ourselves out to accomplish this end for many years, but the railroads, in general, will have no part of it. Rather than destroy us by free action on minimum rates for the commodities we depend on for our livelihood they should be compelled to establish the kind of coordination that is contemplated by the national transportation policy.

A review of the ICC's administration of its minimum rate powers has convinced us that the power should not be rescinded for another reason and that is that the power is but sparingly and cautiously used, but it is there when it has to be used and its very presence in the statute keeps rate competition from degenerating into predatory rate cutting that would be ruinous and hurtful to carrier and shipper and public alike.

The Commission may exercise its minimum rate power as a result of complaints brought before it that some rate is unreasonably low; but more often it is exercised as a result of a suspension proceeding; that is, a case in which rates proposed by railroads have been suspended pending an investigation of their lawfulness. If the proposed rates represent reductions they are often opposed by rival carriers or by parties which would be adversely affected by the resulting change in rate relationships. In classifying the circumstances under which the Commission will prescribe minimum rates or find proposed reductions not justified, and in citing illustrative cases, it should be recognized that frequently two or more circumstances combine to justify the exercise of the minimum rate power.

As early as 1922 the Commission said: "We believe * * * that this power should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided." Similar statements have been made by the Commission many times since.

An examination of cases in which the Commission has interfered with rate reduction reveals the following situations which will call forth the exercise of the minimum rate power or will cause the Commission to disapprove reductions proposed by the railroads:

1. The Commission will interfere to prevent noncompensatory rates or rates which are barely compensatory. The term "compensatory," although not precisely defined, carries some of the meaning, at least, associated with the term "reasonably compensatory" found in section 4 of the act (the long- and short-haul clause) and defined by the Commission in *Transcontinental Cases of 1922*. Rates are not compensatory unless they cover, and more than cover, the out-of-pocket expenses of providing the service in question. This means, of course, that they may be compensatory even though considerably below "reasonable" or normal rates on the article in question. The Commission does not hesitate to condemn rates which are so low as to be noncompensatory, or barely compensatory. Even in these cases, however, the Commission is inclined to resolve in the carrier's favor any doubts as to the compensatory character of the rates.

2. The Commission will sometimes find rates "unreasonably low" when they are compensatory in the sense that they cover direct or out-of-pocket costs, but are nevertheless low in comparison with rates on similar traffic, or yield less revenue than seems appropriate. Other circumstances which also justify interference with the proposed rates are usually found in cases of this type. This standard of reasonableness suggests that the adequacy of the rates is to be determined by the process of comparing them with other rates on similar traffic—the usual procedure when maximum reasonable rates are to be determined. In *Salt Cases of 1923* the Commission asserted that it could use tests of the same character as are used in determining maximum reasonable rates. This means that rate comparisons, and comparisons of earnings per car, per car-mile, and per ton-mile are pertinent. It should not be inferred, however, that minimum reasonable rates and maximum reasonable rates are the same thing. The Supreme Court of the United States has said that there is a "zone of reasonableness" between maximums and minimums "within which a carrier is ordinarily free to adjust its charge for itself." The Commission, in thousands of cases, has permitted the railroads to maintain low rates to meet competition.

3. Minimum rates may be prescribed, or rate reductions disapproved, even though the rates themselves are not below a reasonable minimum, if they result in the creation of undue preference and prejudice or unjust discrimination. Cases occur in which proposed reduced rates have been condemned for this reason.

4. Closely allied with the above are cases which arise under section 13 of the Interstate Commerce Act; i.e., cases which involve a level of intrastate rates so much below interstate rates as to create unjust discrimination against interstate commerce.

5. Minimum rates are prescribed, or proposed reductions are disapproved, when collateral losses of revenue to the carriers proposing the rates seem likely to offset revenue from new traffic to be obtained by the reduced rates. This happens when reductions are proposed for competitive reasons, even though a considerable volume of traffic moves by the carrier in question at the higher rate. Cases are found in which rate reductions have been prevented because of the collateral losses. The Commission recognizes, however, that the question of whether a reduction in rates on particular items of traffic will increase or reduce revenues cannot be determined with certainty. Since the question is one which is primarily within the province of management, the Commission is not likely to interfere on the grounds that the revenue results are uncertain.

6. The Commission will condemn rates which are reduced to meet competition if they are lower than necessary to meet the competition encountered. Cases are found in which minimum rates have been prescribed, or reductions denied, because proposed rates were lower than necessary to meet competition. In cases of this type doubts as to whether the proposed rates are lower than necessary to meet competition may be resolved in favor of the carrier proposing the rates.

7. Lastly, the Commission exercises the minimum-rate power to prevent rate wars, or what amounts to nearly the same thing, to prevent the disruption of an established rate structure which is deemed to be reasonable. This is done in order to prevent the loss of revenues which would result when a chain of reductions is started. The Commission early asserted that its power over minimum rates might be exercised for this purpose. [*See Trunk Line and Ex-Lake Iron Ore Rates*, 69 ICC 589, 611 (1922)]. This interpretation of the act has been approved by the courts, which have recognized the close connection between the minimum-rate power and the Commission's obligation under section 15a of the act to maintain a rate level, so far as possible, that is adequate to support the railroad system. There are cases in which the Commission has interfered with rate reductions or prescribed minimum rates for the purpose of preventing the breakdown of a rate structure deemed to be reasonable in exercising its obligation to maintain a strong national transport system made up of all modes.

Any exercise of minimum rate power for such purpose is apparently anathema to the railroads. This proposal to eliminate minimum rate control has caused them to give voice openly to a cynical public-be-damned expression of attitude. These railroad proponents of H.R. 11583 have testified that, in their opinion, the Interstate Commerce Commission is incompetent to handle minimum rate regulation, and thereby afford protection from selective ratecutting, which can be injurious not only to modes of transportation but the shipping public as well, but more particularly injurious to the financially weaker forms of transporta-

tion who must compete with the railroads. On the other hand, these railroad spokesmen who want to strip the Commission of its powers over minimum rates because the Commission is, in their words, "incompetent" have the audacity to tell the committees of the Congress that ICC is competent to administer maximum rate controls and therefore protect this area of the public interest.

It should be noted that the Commission will not exercise minimum rate power for the purpose of settling disputes between competing shippers over their markets when no undue preference or prejudice under section 3 exists. In *Sugar cases of 1922* the Commission said: "We are really being asked * * * to fix such rates for the purpose of giving each refining point what we may deem to be its 'fair share' of the sugar business in the destination territory under consideration, a purpose which considered alone rather than as a mere incident of other purposes, clearly does not justify the use of this power." A minimum-rate order of the Commission was set aside by a court in *Anchor Coal Co.* v. *United States*, 25 Fed. (2d) 462 (1928), on the grounds that the Commission had (although the Commission stoutly denied it) prescribed rates for the purpose of dividing markets between competing producers.

Of course, cases are bound to arise in which the wisdom of interfering or not interfering is problematical, and differences of opinion will necessarily appear. The Commission has, however, exercised its powers with restraint and it has not attempted to freeze the rate structure, nor has it unduly interfered with the efforts of the railroads to make reasonable competitive adjustments in rates. And, finally, the Commission has not exercised this power to protect the high-cost carrier from the low-cost carrier. The Commission is bound, by law, to recognize the "inherent advantages" of all carriers. Low cost is one such advantage. In recent years, the Commission has been laying great stress on costs in determining whether a rate is reasonable. Some commissioners are even advocating that the value-of-service principle in ratemaking be abolished. To the extent that the cost factor is employed, minimum rates become that much easier for management to justify, and for the ICC to find unreasonable and unjust.

Section 3 of the act gives the Commission power to deal with preference and prejudice as regards rates bearing upon companies, firms, corporations, associations, localities, ports, gateways, transit points, regions, districts, territories, etc. Chairman Murphy has pointed out that:

"In port-equalization cases, protestants frequently urge that a rate to a competitive port is below a reasonable minimum rate and request the Commission to prescribe a minimum reasonable rate. Under this bill, ports not having the advantage afforded by strong competitive lines could be at a disadvantage and might suffer seriously."

He added that the Commission's power to deal with discrimination affecting points and places and shippers would be hamstrung without the power to eliminate discrimination by prescription of minimum as well as maximum rates. This point is certainly valid as regards the service now being rendered by rail carriers in competition with each other or with other modes.

It is clear, therefore, that the Commission is not abusing this minimum-rate power to the detriment of the railroads. As a matter of fact, the Commission is prohibited by section 15(a)(3) of the act from holding up railroad rates for the mere purpose of protecting another carrier. The use of managerial discretion on the part of railroads still achieves the publication and use of almost all of the rates they propose. If a rate comes along that is obviously and probably noncompensatory, as does happen, it should be condemned as unjust and unreasonable and perhaps otherwise unlawful regardless of the desire of the proponents to have it made effective. We cannot understand how anyone sees evil in this kind of regulation.

Now, for your consideration, let me put on this record the facts with respect to the manner in which a rate below minimum level can presently be stopped. Consideration of such facts are necessary since the Department of Commerce and the Department of Justice are insisting that application of the antitrust laws to the ratemaking modifications of the carriers will adequately take the place of the Commission's minimum-rate powers.

As it is now, the various carriers that respond to these and other Commission ratemaking powers file their rates in the form of tariffs and tariff supplements. Thousands of such tariffs flow into the ICC yearly—so many, in fact, that only a percentage of them can be inspected by ICC work forces to see whether they comply with the law.

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These tariffs can be protested by parties (carriers and shippers) who may be aggrieved thereby. If their protests and the replies thereto show that the rates are below minimum standards, the Commission can and will suspend these rates for 7 months. The process normally takes about 30 days during which the rates are suspended pending effective date. The protest process is fairly uncomplicated and can be handled with the Commission by managerial forces of the interested parties.

If the rate is suspended, it is also set for investigation, but it can go into effect, automatically, 7 months after the first-named effective date regardless. The investigation is a formal process. It involves rate experts, cost experts, and sometimes, lawyers or practitioners. If the case is a small or uncontested one, the Commission allows the record to be made by verified statements instead of under oath before an examiner. Many such cases are disposed of by the Commission in routine fashion before the 7-month period has elapsed. The more important cases take longer to decide. They run the gamut, ordinarily, of a proposed report by the examiner, exceptions, a division report, and a petition for reconsideration. The Commission makes the ultimate decision. Under recent procedures, it has been speeding up the process by establishing employee boards and divisions of the Commission to render the decision. The process, over the years, has become well understood. Although it is somewhat technical in nature, the end result is seldom questioned. If it is, the party or parties can always resort to the Federal courts.

If the proposed rate is allowed by the Commission to become effective on the first date set forth in the tariff, which it does in the vast majority of cases, the opposing parties then must file a complaint if they want to attack the rate. This is a formal legalistic process which also requires experts at all levels to deal with its disposition. The interested parties and the Commission's bar through the years have established effective liaison with the Commission for disposing of such complaints.

The Commission is even now in the process of devising new cost formula procedures that will facilitate the assembly, presentation, and evaluation of cost data so as to expedite consideration of such material in ICC proceedings (Order No. 34013).

The Commission has employed and trained a substantial work force of experts to deal with these matters. The Commissioners themselves, as time goes on, become conversant with the intricacies involved. The end decision reflects the expertise that goes into the case at all levels. The end results through the years have come to be respected, and, in the main, honored.

A subsequent statement by one of our witnesses will show that the ICC processes are much more expeditious than those involving the Federal courts.

As a layman, I cannot understand how comparable results to those I have outlined can be accomplished under the existing antitrust statutes.

Let us suppose a water carrier is affected by a ruinously low rate made by a railroad. The fact that the rate was ruinous to the water carrier would not of itself make out a basis for an action under the antitrust laws. The action under the antitrust law would not attack the rate as such. Instead, the water carrier would have to show that the rate was a product of an unlawful conspiracy to destroy the water carrier or of an unlawful attempt to obtain a monopoly. It is far more difficult to prove an attempt to monopolize or a conspiracy to restrain trade than to show to an expert and experienced transportation agency, such as the Interstate Commerce Commission, that a particular rate is below fully distributed or out-of-pocket costs. Even if we assume that it would be possible under judicial procedures and standards of proof to establish that a rate or group of rates is below the costs of performing the service, would that prove monopoly or conspiracy to restrain trade? I seriously doubt it. A conspiracy to monopolize or to restrain trade would depend upon other factors of proof.

It is quite plain to me that the Sherman Antitrust Act can not seriously be claimed to be a regulator of the day-to-day rate changes in transportation rates required by our dynamic economy. The Sherman Act is enforced primarily through investigations and prosecutions by the Department of Justice in Federal district courts. Persons injured in their business or property by violation of the antitrust laws may also bring suit in a Federal district court for damages sustained and for injunctive relief. Such enforcement procedures necessarily place emphasis upon punitive rather than preventive measures. We are not interested in having railroads prosecuted by the Department of Justice or in

filing damage suits after the water carriers have been severely damaged or driven from the inland waterways.

Enforcement through proceedings in the Federal district courts would make impossible the application of any single, consistent policy with respect to transportation. We would suppose that enforcement activities under the antitrust laws might vary from one administration to another, depending upon the energy and interest the Department of Justice would be willing or able to devote at any one time to the subject of transportation. May I point out that Congress has always endeavored to keep administration and enforcement of regulatory laws affecting transportation in the hands of an independent, nonpolitical, bipartisan agency responsible to the Congress? It has been a fundamental principle that ratemaking, being a legislative function, should be supervised and controlled by a congressional rather than an executive agency. To do otherwise would be openly to invite the uncertain hand and changing face of politics as a factor in the intricate port, city, and regional rate relationships upon which all industrial and business activity depends.

Further, since each antitrust case under the Sherman Act is necessarily tried on its own particular facts before a particular judge or jury, involving particular parties, the result in one case is not controlling in another. It is entirely possible to have a different judge or jury reach a different, even a contradictory, decision on the same facts in a case involving different parties. Thus, the interests of thousands of shippers, carriers, industries, and localities affected by depressed rates brought about by rail, water, and motor competition, would depend upon the diverse judgments of the Federal courts. It cannot be pretended that such procedure would bring about any consistent enforcement or development of the national transportation policy as laid down by the Congress in the Interstate Commerce Act.

Finally, in connection with H.R. 11583, may I earnestly reinvite your attention to the entire pattern of transportation regulation in this country. Private initiative, managerial discretion, ratemaking freedom, or whatever you may want to call it, still is in basic control of the system. It is only the abuses that the Interstate Commerce Act seeks to regulate—specifically in this field—a rate or rates so low as to be adverse to the public interest. This is in keeping with our American tradition. Where, as here, experience has demonstrated that the public suffers as a consequence of harmful practices, statutes are enacted to regulate or prohibit them. This was the impetus that lay behind the congressional grant of power to the Interstate Commerce Commission to fix minimum rates. For all of the reasons that I have indicated, and doubtless many other good and sufficient reasons that will be brought before you by alarmed and interested carriers and shippers, I urge you to refuse to enact the legislation in question.

I should like now to make some brief observations and a pointed protest concerning H.R. 11584.

The particular section of this bill that I am authorized to oppose by the members of the American Waterways Operators, Inc., is section 2 which would empower the transportation regulatory agencies to sanction experimental freight rates. Specifically, the Interstate Commerce Commission, Civil Aeronautics Board, and the Federal Maritime Commission would be "empowered to authorize experiments by individual common carriers, between common carriers of the same mode of transportation, between common carriers of different modes of transportation, or among common carriers of all modes of transportation subject to the regulatory authority of agencies of the United States."

So far as the ICC is concerned, in its rate dealings with water carriers and railroads, it is believed that the provisions of the Interstate Commerce Act are now sufficiently broad to enable that Commission to make or authorize almost any kind of rates that are in the public interest. The power to authorize just and reasonable rates is a very broad power. Traditionally, this power has been exercised in formalistic terms with emphasis upon the law of reasonableness and the keeping of rates within that zone by assaying them in terms of shipping conditions such as the nature of the commodity, the value of the commodity, the risk of loss and damage, average loading and volume of movement; under the value of service concepts; and under the influence of carrier conditions such as operating conditions, terminal expenses, special facilities or extra services, length of haul, traffic density, and the carriers' need for revenue.

During the era when rates were made mainly to accommodate shippers and in the public interest per se, these rate considerations were germane and pertinent. They are still so in cases where the public interest must be safeguarded.

Where the major question, as in many rate cases today, involves carrier competition, cost of service becomes a predominant ratemaking factor.

Within this broad habit of rate measurement the Commission can range widely in allowing rates to be made. It cannot, of course, go beyond the boundaries of the other provisions of law relating to discrimination, preference, prejudice, long and short haul restrictions, and rate publication requirements. A just and reasonable rate, in other words, may be otherwise unlawful. The Commission recently found itself confronted with such a situation in the now famous rug case in which the respondent railroad wanted to make so-called guaranteed or agreed rates and charges, which would have benefited large shippers. The Commission said this could not be done because of the anti-discrimination features of the act which we hope no one is ready to discard.

We wonder, of course, whether what is now being sought by H.R. 11584 is a back-door method of allowing such agreed charges to be made legal as experimental rates. This we resist wholly and strongly since such a rate scheme even though experimental would destroy small carriers.

I have said that experiments are now approved within reason. The Commission recently authorized multiple car rail rates on petroleum, salt, soybean oil, asphalt, and molasses, and trainload rates on coal, for instance, which the so-called old Commission always frowned upon. Very recently the Commission endorsed a so-called constant charge plan for certain motor carriers calling the plan feasible for a "reasonable, test period"—a "fair trial"—calling the same a bold innovation.

In the piggyback field, many kinds of rates and rate arrangements are being experimented with to the point where the Commission has now found it necessary to conduct a widespread investigation into such practices. There are 20 or more classes of motor carriers, all of which have diverse ways and means of publishing rates and minimum charges. Water carriers, with Commission permission, "experiment" with different kinds of rates.

In short, there is no need for this legislation. It could be wrongly construed as a prod from Congress to go faster than is presently warranted in the field. This would be disastrous to many carrier interests including the water carriers, particularly the small business water carriers we represent.

On top of the foregoing, there must be consideration given to the shipper—public interest in such an undertaking. To be sure, the Commission has declared that "frozen rate structures are not conducive to the fullest use of railroad transportation facilities," but the preservation of rate stability is important to shippers and communities and this is widely recognized.

Unrestrained or encouraged experimentation in carrier ratemaking would have to take such circumstances into account. It is sufficient, we believe, for the ICC to have to report its progress in this connection annually to the Congress. We should make haste slowly in a field so fraught with economic dynamite.

Some of the arguments I have set forth relating to the question of minimum rates would also relate to experimental rates and should be so construed.

Basically we believe that portion of H.R. 11584 dealing with experiments in ratemaking is dangerous open-door legislation because it can be construed so as to sanction practices which otherwise would be illegal and which, if they are to be sanctioned, should be accomplished under more specific authority. In other words, if there is a public need for some specific kind of experiments in ratemaking, we believe the Congress would be on much sounder legislative ground if the definitions of these practices were better defined. As we pointed out, ICC already has a great deal of leeway to permit experiments, and we are confident that the Commission is ready to permit full exploration of experimental practices so long as they are in the public interest, and so long as they will not contravene other tried and tested provisions of law.

In closing, I want to thank this committee for permitting me to make this extended statement. We deem the issues involved of such great importance that we cannot pass them over lightly. We urge you to give them careful consideration and we know you will.

(Whereupon at 12 noon the committee recessed to reconvene at 10 a.m., Friday, August 10, 1962.)

TRANSPORTATION ACTS AMENDMENTS—1962

FRIDAY, AUGUST 10, 1962

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

The committee met, pursuant to recess, at 10:14 a.m., in room 1314, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is Mr. A. Alvis Layne.

STATEMENT OF A. ALVIS LAYNE, ATTORNEY, ON BEHALF OF THE AMERICAN WATERWAYS OPERATORS, INC., WASHINGTON, D.C.

Mr. LAYNE. Thank you, Mr. Chairman.

I am A. Alvis Layne.

The CHAIRMAN. Yes, Mr. Layne.

Mr. LAYNE. And, Mr. Chairman, if it is satisfactory with the committee, I will not read the prepared statement that has been circulated to the committee, but I would like to, instead, present an oral summary of that which, I believe, will save the committee some time, and if it is satisfactory to allow my written statement to be before the committee and make an oral summary, I will proceed in that fashion, Mr. Chairman.

The CHAIRMAN. Mr. Layne, you may present your statement and it will be included in the record in full and, under the regular procedure of the committee, you may give such analysis of it as you desire.

Mr. LAYNE. Thank you, Mr. Chairman.

(The full statement of Mr. Layne follows:)

STATEMENT OF A. ALVIS LAYNE ON BEHALF OF THE AMERICAN WATERWAYS OPERATORS, INC.

My name is A. Alvis Layne. I appear on behalf of the American Waterways Operators, Inc. My testimony relates specifically to the proposal in H.R. 11583 to substitute antitrust remedies for Interstate Commerce Commission regulation of minimum rates on bulk and agricultural commodities.

I am an attorney in private practice. I have been practicing law for some 15 years, and had prior experience as an economist in the Department of Justice and in the Department of State. Antitrust matters are a substantial part of my law practice. I have investigated, prepared for trial, tried, and appealed antitrust cases before Federal courts and administrative agencies. It may be of particular interest here that I was a trial counsel for the plaintiff trucking companies in *Riss* v. *Association of American Railroads, et al.*, a private treble damage antitrust case in the District of Columbia. One of the principal charges in the *Riss* case was that the railroads had used rate cuts as a means to eliminate competition and to obtain a monopoly in transportation of Govern-

ment ammunition and explosives. The *Riss* case consumed almost 8 years from filing of the complaint in 1954 through the last appeal in 1962; it involved a jury trial that lasted 10 months. Judgment was entered on the jury verdict for the plaintiff, but was reversed on appeal. I believe therefore that I am generally familiar with the problems and procedures involved in the application of antitrust statutes in the transportation field.

H.R. 11583 would permit rail carriers freely to reduce rates on bulk and agricultural commodities; to reduce them to levels that are not now lawful under the Interstate Commerce Act. The Interstate Commerce Commission now has power to prohibit the use of any railroad rates, except rates on Government traffic, when it is found that the rates are unreasonably low, judged by the standards specified in the Interstate Commerce Act and in the national transportation policy. These standards include carrier costs, the inherent advantage of each type of carrier, and the prevention of unfair or destructive competition.

H.R. 11583 would eliminate the Commission's minimum rate power on bulk and agricultural commodities. H.R. 11583 further provides:

"If any carrier or carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the 'antitrust laws,' as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained herein shall be construed to prohibit a common carrier from establishing reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through rates."

This definition of "antitrust laws" in H.R. 11583 would make the prohibitions of the Sherman Act applicable to carrier activities with respect to bulk and agricultural commodities. However, the antitrust provisions of the Clayton, Robinson-Patman, and Federal Trade Commission Acts would not be made applicable under the definition of "antitrust laws" in H.R. 11583. H.R. 11583 would not, therefore, make applicable to railroads or other carriers the provisions of the Clayton or Robinson-Patman Acts concerning competitive injuries resulting from price discrimination or unreasonably low prices, or the Federal Trade Commission Act prohibition against unfair methods of competition.

H.R. 11583 further provides that the exemption from the Sherman Act now extended to common carriers under section 5a of the Interstate Commerce Act (the Reed-Bulwinkle amendment) shall apply "solely" to the establishing of joint routes, rates, charges, etc., for the through movement of traffic. H.R. 11583 by this provision will, if enacted, apply the Sherman Act to present joint ratemaking activities among competing railroads on traffic in bulk and agricultural commodities.

This committee has heard a lot of testimony concerning deregulation of rates, but so far as I am aware there has been no detailed statement on the Sherman Act as applied to price cutting, the procedures for Sherman Act enforcement, or the history of Sherman Act enforcement up to 1920, when Congress gave the Interstate Commerce Commission power to regulate minimum rates.

The following points are, I believe, important in your consideration of the proposal to rely upon the Sherman Act as a substitute for minimum rate regulation by the Interstate Commerce Commission:

First: The proposal represents a revolutionary shift from the national transportation policy as stated by Congress in the Interstate Commerce Act. Congress in the national transportation policy has since 1920 directed the maintenance of an adequate rail and water transportation system. The Interstate Commerce Commission is required under that policy to administer the Interstate Commerce Act so as to preserve the inherent advantages of all forms of transportation and to prevent unfair and destructive competitive practices.

The Sherman Act, on the other hand, is not concerned with the maintenance of water carriers or railroads or even a common carrier transportation system. The Sherman Act forbids contracts, combinations, and conspiracies to restrain trade or commerce; monopolization, attempts, and conspiracies to monopolize trade or commerce. These prohibitions of the Sherman Act are directed to the elimination of restraints on competition. The organization and existence of any

industry or any part of industry is to be determined by the free play of competitive market and economic forces. Nothing in the Sherman Act prohibits unfair or destructive competition—that language is not found in the act. On the contrary, the command of the Sherman Act is to compete even if competition means destruction.

The Federal Trade Commission Act, rather than the Sherman Act, is the statute that prohibits the use of unfair methods of competition among industries and commercial activities generally in interstate commerce. The Federal Trade Commission Act has not, in the past, been made applicable to common carriers subject to comprehensive regulation under the Interstate Commerce Act, which directs the Interstate Commerce Commission to prevent unfair and destructive competitive practices. Among the reasons for the enactment of the Federal Trade Commission Act was the fact that the Sherman Act did not reach unfair or destructive competition—short of actual monopolization—unless proved in a court proceeding to be part of an unlawful conspiracy to restrain or an attempt to monopolize a part of trade or commerce. Parenthetically, it should be noted that Congress provided for administrative proceedings before the Federal Trade Commission, rather than court cases, for the determination of unfair methods competition prohibited by the Federal Trade Commission Act.

There is nothing in the Sherman Act necessarily to preclude the elimination of existing commercial water carriers as a result of railroad reductions in rates on bulk and agricultural commodities. The water carriers would have no case under the Sherman Act unless they could establish that the rate reductions either were part of a conspiracy by two or more railroads to eliminate water carriers; or were made in an attempt to obtain a monopoly; or did in fact result in a monopoly. No antitrust violation could be established by the mere fact of rate reductions to a level water carriers could not meet and also stay in business. A violation would not be established by the mere fact that rates were reduced below the railroads' cost of performing the service. These facts, assuming they could be established in a court case, might be relevant evidence. The important question under the Sherman Act, however, is the purpose for which the rate reductions were made. In an industry as complex as rail transportation, with a high proportion of fixed cost, it wouldn't be difficult to find a great many reasons for reducing rates to levels water carriers could not meet—reasons entirely apart from any unlawful purpose to eliminate competition or to monopolize. The point is well illustrated by the testimony on this bill, H.R. 11583. The railroads surely don't support the bill so they can cut rates on their existing traffic in bulk and agricultural commodities. The proposition is that the railroads will be free to cut rates to levels the Interstate Commerce Commission would find below a reasonable minimum rate, and thus to increase the railroad share of total available traffic by taking traffic from some other form of transportation.

The water carriers are concerned lest Sherman Act prohibitions prove inadequate to prevent their elimination by way of railroad rate cuts directed at competing water operations. The concern of the water carriers finds strong support in the history of the Interstate Commerce Act and the Sherman Antitrust Act. H.R. 11583 would put railroads and water carriers into precisely the same position they occupied with regard to minimum rate regulation from 1890 to 1920. Before 1920 the Interstate Commerce Commission had no power to establish reasonable minimum rates. The 1890 Sherman Act was, prior to 1920, fully applicable to railroad activities. During this 30-year period there were repeated public reports and findings by Presidential commissions, the Interstate Commerce Commission, and this committee that the railroads had in fact destroyed water competition by establishing rates so low that it was impossible for the water carriers to survive. Mr. Braxton Carr, president of the American Waterways Operators, Inc., has thoroughly documented these findings and reports in his statement to this committee. I could find only one case, during this entire period from 1890 to 1920, that involved charges against any railroad for railroad rate practices in relation to water carriers. That case, *United States v. Pacific & Arctic Navigation Co.*, 228 U.S. 87 (1913), related moreover only to joint rail-water rates to Alaska. No other cases were brought under the Sherman Act to restrain or prosecute railroads for rate practices destructive of water carriers. This committee, as Mr. Carr has pointed out, reported to the Congress that regulation of minimum reasonable rates was essential to prevent a rail carrier from destroying water competition (H. Rept. 456, 66th Cong., p. 19). The existence of Sherman Act prohibitions obviously did not serve to pro-

tect water carriers in the period from 1890 to 1920. There is nothing to suggest it will be effective under present conditions.

Second: The Sherman Act is enforced through criminal and civil proceedings brought by the United States through the Antitrust Division of the Department of Justice in Federal district courts. Conviction in a criminal proceeding may result in a fine of as much as $50,000 for each offense and imprisonment not to exceed 1 year. In civil proceedings the court may, upon appropriate findings, issue injunctive relief. Further, a person injured in his business by a violation of the Sherman Act may himself bring an action in a Federal district court for damages and injunctive relief.

The judicial process for antitrust actions differs in substantial and important ways from the administrative procedure in Interstate Commerce Commission rate proceedings. Suppose a water carrier is seriously affected by a rate cut made by a railroad. Suppose further that the water carrier believes the rate cut to be the product of a conspiracy to destroy water competition. Under H.R. 11583 the water carrier could request the Department of Justice to prosecute. The water carrier could also file a private action under the Sherman Act, if—and it's a big if—he is able to finance the litigation. Whether the Department of Justice would bring a court action, if requested to do so, would depend upon whether the Antitrust Division agreed that there was a probable violation of law. Whether the Department would act might depend upon the staff of attorneys available, the state of the budget, and the volume of work required in industries other than transportation. Staff and budget might well become critical factors in the Antitrust Division if the rate proceedings now being processed by the Interstate Commerce Commission were transferred to the Department of Justice for antitrust action. The Antitrust Division in 1961 filed a total of 60 antitrust cases, civil and criminal. A study prepared for the Administrative Conference of the United States indicates that in the fiscal year 1961 the Interstate Commerce Commission had 224 investigation and suspension proceedings involving rates, not counting proceedings involving motor carrier rates. Most of those 224 cases were proceedings in which rail rates were claimed to be below a reasonable minimum rate. I should point out that the number 224 represents proceedings in which a suspension and investigation order was issued. The Commission handled many more protests requesting suspension, as well as rate complaint proceedings.

The preparation and trial of an antitrust case presents a number of difficult, time-consuming, and expensive problems of procedure and proof—problems usually not present in the more flexible administrative proceedings of the Interstate Commerce Commission. For example, there is the issue of venue: Can a judicial district be found in which an antitrust action can be brought against all of the necessary defendants? There is no venue problem before the Interstate Commerce Commission.

There is an important difference in the burden of proof. In antitrust actions the plaintiff has the burden of proof. That includes, if necessary to the case, the burden of proving the defendants' costs of operation. Before the Interstate Commerce Commission the carrier filing the proposed lower rate has the burden of justifying the reduction.

The Interstate Commerce Commission is much more experienced and familiar with the transportation industry, its cost and competitive problems, its concepts and terminology, than are Federal courts and juries. The Commission has an experienced staff trained to deal with costs, profits, rate relationships, and other factors relating to transportation. It is precisely for these reasons that courts with increasing frequency refer issues requiring technical and expert evaluation to the Interstate Commerce Commission and other regulatory agencies for findings and decision.

Proof and disproof of antitrust issues such as conspiracy and intent to monopolize is necessarily by way of circumstantial evidence. The scope of evidence in an antitrust case tends accordingly to be wide ranging and complex. Private cases are further complicated by the issue of whether the plaintiff has sustained a loss and whether the loss was caused by the violation charged or by some other factor.

This is enough to point up the fact that no water carrier injured by railroad rate action will have, under the Sherman Act, anything like the protection now available in a relatively inexpensive, informed, and expert forum for prevention of unfair and destructive competitive rate practices.

The suggestion implicit in some of the testimony given to this committee—that antitrust litigation would provide a more expedited procedure for the resolution of controversies over unreasonably low rates—is not correct. Anti-

trust litigation in general takes more time, is far more burdensome, and far more expensive, than the Commission's procedures for determining rate issues. The Interstate Commerce Commission handles a substantially larger number of competitive rate cases than the courts do antitrust cases, and handles them on the average with much greater dispatch. Compared to antitrust cases, Commission rate proceedings are marvels of speed and efficiency.

From the Administrative Office of the United States Courts I have obtained statistics on all civil antitrust cases terminated in Federal district courts during the fiscal year 1961. The statistics cover all civil cases brought by the Government or private parties to recover damages or to obtain injunctive relief. The statistics show that it took on the average more than 4 years to process a civil antitrust action from the filing of the complaint through trial to a judgment in he district court, and this does not include any time for an appeal. It took an average of 4 years and 3 months to process the civil antitrust suits brought by the Department of Justice through a trial to judgment, again not including any appeal time. The average time for all civil antitrust cases brought by the Government, including those dismissed, settled, or for other reasons never tried, was 2 years and 9 months, not including appeal time.

The Commission, as I have indicated, closed 224 investigation and suspension cases involving rates other than motor carrier rates, in the fiscal year 1961. Included in this group, therefore, are the cases in which railroad rates were suspended and investigated as being unreasonably low. The average length of time required for final Commission disposition after suspension in these cases was 9 months. It took an average of 14 months for the Commission to process such a rate proceeding from suspension through hearings, reports, and final order.

These statistics demonstrate that the Commission handles more rate controversies more rapidly than courts handle civil antitrust proceedings. Moreover, the Commission has the power to suspend a proposed rate reduction for a period of 7 months pending an investigation of reasonableness.

Dispatch in securing a judgment is of critical importance to the carrier faced with ruinous rate competition. The business of a carrier relying on an antitrust remedy may have entirely disappeared before the case is decided even in the district court. Theoretically in antitrust cases the courts have power to grant temporary injunctions pending a final determination. In practice, however, temporary injunctions are rarely granted in either Government or private antitrust cases. Moreover, under existing court rules a temporary injunction in a private suit will be issued only after a bond or other security is posted for payment of costs and damages to defendants if it ultimately appears they were wrongfully restrained. This requirement makes temporary injunctions of little practical help to most antitrust plaintiffs.

Assume a successful civil antitrust action; one in which at the end of 4-plus years a judgment is entered for the plaintiff. No possible court judgment could repair the injury suffered by public interest—the interest of the public in developing, coordinating, and preserving water transportation, as defined in the national transportation policy. It may be possible by an award of damages to compensate a particular water carrier for damages sustained, but damages can never restore the water carrier to the position it once had or might have obtained as a part of the national transportation system. As for injunctive relief, no court can by injunction direct and supervise indefinitely the day-to-day competitive rate relationships among transportation agencies, even in a limited area or on a limited number of commodities. The Interstate Commerce Act is, on the other hand, pitched in terms of preventive action based upon continuing supervision of all rates.

Third. H.R. 11583 would make the Sherman Act specifically applicable to carrier ratemaking activities on bulk and agricultural commodities. The sole exception is in connection with through routes and rates. Under H.R. 11583 the Sherman Act would be applicable to collective ratemaking among competing railroads on traffic in bulk and agricultural commodities. The competition enforced by the Sherman Act is competition among railroads as well as between railroads and water carriers. H.R. 11583 would eliminate the minimum rate power of the Interstate Commerce Commission. It would also eliminate the Commission's authority to exempt from the antitrust laws the conferences, rate bureaus, and other organizations carriers have for collective ratemaking, so far as bulk and agricultural commodities are concerned.

Since the *Trans-Missouri* case in 1897 (*United States* v. *Trans-Missouri Freight Association*, 166 U.S. 291), the position of the railroad industry has been that collective ratemaking among competing railroads is vital to the establishment

and maintenance of a national rate structure and an efficient rail transportation system—these being essential to interstate commerce. A national system of ratefixing among competing railroads is a settled fact and has never been denied. On the contrary, railroads and other carriers, with the support of shippers, have asked for immunity from the Sherman Act to continue these practices.

The Reed-Bulwinkle bill was supported in 1946 by railroads, other carriers, shippers, and the Interstate Commerce Commission. Enactment of that bill was urged as vital to the maintenance of a fair and proper rate structure. The bill made provision for an exemption from the Sherman Act for those carriers who secured Commission approval of their agreements establishing procedures for the consideration and initiation of tariff rates. The Reed-Bulwinkle Act (H.R. 2536, 79th Cong.) received its main impetus from the decision of the Supreme Court in *Georgia* v. *Pennsylvania Railroad Co., et al.*, 324 U.S. 439 (1945), and the filing of the so-called *Lincoln* case. That was an action under the Sherman Act in which the Department of Justice charged that railroad rate bureaus, conferences, and committees had been used to eliminate rate competition among competing railroads, and to eliminate the competition of competing modes of transportation. Congress enacted the Reed-Bulwinkle Act and it now appears as section 5a of the Interstate Commerce Act.

The railroads and others supporting the Reed-Bulwinkle bill pointed out that the power of the commission to establish both minimum and maximum reasonable rates was adequate protection for the public and the maintenance of competition. The Sherman Act, it was maintained, was inappropriate for application in the area of fully regulated transportation rates.

Again in 1957 the railroads told Congress that Sherman Act penalties could not be applied to their ratemaking activities. This time the subject was passenger fares quoted to the Defense Department. The impetus was another case, *Atchison, Topeka & Santa Fe Ry. Co.* v. *Aircoach Transport Ass'n.*, 253 F. 2d 877. In *Aircoach* a group of irregular air carriers charged that the railroads quoted low-level passenger fares to the Defense Department for the purpose and with the effect of driving the air carriers out of business. Under the terms of section 22 of the Interstate Commerce Act, the Interstate Commerce Commission did not then, and does not now, have any power to regulate rates on transportation for the Government. The district court held in the *Aircoach* case that the Sherman Act applied to the collective ratemaking activities of the railroads; this notwithstanding the Reed-Bulwinkle Act and in view of the Commission's lack of power to regulate rates quoted to the Government under section 22. Again the railroads insisted before Congress that it was impracticable and impossible to apply Sherman Act prohibitions to their ratemaking activities, whether or not the minimum level of rates was regulated. Congress in 1957 enacted (S. 939, 85th Cong., 1st sess.) an amendment to section 22 of the Interstate Commerce Act, extending the Reed-Bulwinkle antitrust exemption to include section 22 rate activities.

None of the representatives who have appeared here to support H.R. 11583 has indicated, so far as I am aware, any radical change since 1957 in the organization of the railroad business, or in the procedure and technique of making railroad rates, to warrant the present railroad support for applying the Sherman Act to ratemaking on bulk and agricultural commodities. Nowhere in the testimony have I been able to find any reason for considering collusion essential to ratemaking on packaged commodities, but not essential to ratemaking on the same commodities when shipped in bulk between the same points. The unspoken premise, is, I believe, that the Sherman Act will not effectively deter the railroads from using their economic power to take bulk commodity traffic away from the water carriers. I agree with that premise.

Mr. LAYNE. For the record, my name is Alvis Layne. I appear on behalf of the American Waterways Operators.

My testimony relates specifically to the proposal in H.R. 11583 to substitute antitrust remedies for Interstate Commerce Commission regulation of minimum rates on bulk and agricultural commodities.

I am an attorney in private practice. I have been in private practice for some 15 years.

I have investigated, prepared for trial, tried, and appealed antitrust cases before Federal courts and administrative agencies.

It may be of particular interest to the chairman, and to the members of the committee, that I was a trial counsel for the plaintiff trucking company in *Riss & Company* v. *The Association of American Railroads, et al.*, a private treble damage antitrust case in the District of Columbia.

One of the principal charges in the *Riss* case was that the railroads had used rate cuts as a means to eliminate competition and to obtain a monopoly in transportation of Government ammunition and explosives.

The *Riss* case consumed almost 8 years from filing of the complaint, in 1954, through the last appeal, in 1962. It involved a jury trial that lasted 10 months.

Judgment was entered on the jury verdict for the plaintiff, but was reversed on appeal.

I believe, therefore, that I am generally familiar with the problems and procedures involved in the application of antitrust statutes in the transportation field.

I should like to make three points with respect to the proposal that is now before the committee in the form of H.R. 11583 with respect to the substitution of the Sherman Act remedies for the minimum rate regulation of the Interstate Commerce Commission.

In the first place, I think, as undoubtedly the committee and its chairman are aware, this proposal to substitute the Sherman Antitrust Act for the Interstate Commerce Commission's regulated competition, represents a very substantial, a revolutionary shift in the policy toward transportation agencies in the United States.

The Interstate Commerce Act has, in the national transportation policy and also in the various sections of the act relating to its regulation of carriers, the overriding premise, among others, of the elimination of unfair and destructive competitive practices among carriers themselves; that is, for example, among railroads themselves, one railroad with another, and between railroads, on the one hand, and other forms of transportation, on the other.

The Sherman Antitrust Act, on the other hand, dictates the policy of competition between every form of transportation or between every unit until it hurts; competition, until it may be destructive, or until one of the weaker competitors, at least, may be driven from the field, unless it results in a monopoly.

Under the policy of the Sherman Act, and under the kind of competition that is dictated by the Sherman Act's elimination of restraints on competition, price cutting would be a normal competitive activity.

Loss leaders price cutting is a normal aspect of everyday competitive activity in the business world. Accordingly, therefore, when you look at this legislation presently proposed, rate cutting would be, under the Sherman Act, a normal consequence of competition.

It may not be a normal consequence under the Interstate Commerce Act's definition of unfair and destructive practice or the desire to maintain reasonable rates as between the carriers themselves, but it certainly is a normal regular competitive kind of practice.

Accordingly, under the Sherman Act, if you are applying the Sherman Act, to rate-cutting activities of carriers, whatever their kinds or modes of carriage may be, the cost involved in the transportation is not the controlling factor.

The controlling factor, under the Sherman Act, is whether or not in a price-cutting or a rate-cutting case, the rate cuts were taken for a nongood business purpose, whether they were taken as a part of a conspiracy to drive the competitor out of the field, whether they were taken as a part of an attempt to monopolize, as the Sherman Act uses that form or that term, or whether they, in fact, resulted in a monopoly, as the courts have defined "monopoly."

Therefore, under the application of this theory to the transportation field, the fact that a rate was cut below the cost to the carrier quoting the rate to perform the service, would not make out a Sherman Act violation.

That might be relevant evidence of a conspiracy, but it certainly, of itself, would not make out the violation.

The fact that a rate was quoted below the water carrier's ability to meet that rate would not make out a case of Sherman Act liability.

The Sherman Act does not protect against that kind of rate cutting. It protects it only to the extent that it is a product of a conspiracy among two or more competitors.

And in a joint cost field, with high fixed costs, such as the transportation field and particularly the railroad industry, it is not difficult to find a number of good business reasons for the reduction of a rate below the out-of-pocket, for example, cost as a good business purpose in railroad operation.

Now, yesterday, Mr. Chairman, there was some reference to the 1920's and the situation before 1920, and the fact that the Interstate Commerce Act in 1920 was amended to give the Interstate Commerce Commission, for the first time, power over the minimum reasonable rates of carriers.

Now, I think that the 1920 act is relevant to your consideration and important to your consideration of the legislation before you for two reasons.

One of them is that the present bill proposes to return the transportation industry, in terms both of the antitrust laws and the Interstate Commerce Act, to precisely the position it occupied prior to 1920.

Prior to 1920 the Sherman Act which was enacted in 1890, applied to the transportation industry in its full force. Prior to 1920 there was no minimum rate regulation.

The philosophy of the Interstate Commerce Act was that they were regulating a monopoly, and when you have a monopoly you do not necessarily or, at least, theoretically have to regulate the minimum rates of the monopolists.

Accordingly, this bill would return, in general, the transportation industry to that era.

Now, there have been a number of statements made to this committee some of which, or, a number of which have been, before the committee, in which they summarized the history of the use of rate cutting during the period 1890 to 1920 as a means of eliminating competition between the railroads and water carriers.

There are a number of congressional hearings, congressional reports, Presidential commissions, and others who reported the use of that kind of a device as a part of the competitive pattern between railroads and water carriers.

I think what I regard as important in that, and perhaps it may be of interest to you, is that during the period 1890 to 1920 there was only one Sherman Act case brought that had any relation to rate practices used by railroads to, as the committee found in 1920 and as the Interstate Commerce Commission found, drive the water carriers off of the inland waterways. And the one case that I refer to is the case that involved joint water-rail rates between points in the United States and points in Alaska.

Now, I think there is nothing in the present conditions to suggest that the Sherman Act would be more effective today, in the protection of water carriers against rate-cutting activities, that would drive them off the inland waterways of the United States.

It say this despite the fact that I recognize that between the early adoption of the Interstate Commerce Act and the present time there has been a change in the number of, and character of, competition among transportation agencies. But minimum rate regulations are not designed, and do not come in the Act, for the purpose of regulating a railroad monopoly.

It came into the act in order to put a limit on the competition between carriers, both between railroads and other railroads, and between railroads and the other forms of competition.

The fact that there exists today heightened competition in the transportation field is, in fact, under the antitrust law, the reason for the minium rate regulation and the application of a limit on competition, a limit that is not found in the Sherman Act.

So that, really, the issue before the committee in that respect is for you determine whether or not the greater public interest lies, if you apply only the Sherman Act, whether the greater public interest lies in having the competition effect whatever changes, whatever eliminations in the industry that may come about as a result of it; whether or not water carriers continue to exist, whether or not railroads continue to exist, whether or not trucklines continue to exist or whatever may happen, or, for you to determine that you think that the railroads now do not have the economic power to be effective in eliminating water carriers from inland waterways.

And it would be pretty difficult, in the light of the concentration of power, economic power, revealed by the figures here, to conclude that a railroad, even large individual railroads, could not, if they wanted to, reduce the rate to a point to make in uneconomic for individual water carriers to operate.

Secondly or the second point I should like to make is that the procedures and relief under the Sherman Act are entirely different and considerably more burdensome and expensive than rate proceedings before the Interstate Commerce Commission.

This is necessarily so because the Sherman Act prosecutions are cases looking for the proof of entirely different facts than rate proceedings before the Interstate Commerce Commission. For example, the U.S. Department of Justice, in the year of 1961, filed 60 cases, civil and criminal, under the Sherman Antitrust Act. In the fiscal year 1961 the Interstate Commerce Commission processed 224 investigation and suspension rate cases involving rates which did not include any motor carrier rates.

Within that 224 number, therefore, were all the cases and most of those were cases involving minimum rates of railroads and were cases in which the rate was charged as being below a reasonable level.

Now, if, as I think sometimes witnesses have erroneously assumed, all of these cases were turned into antitrust cases by the Department of Justice, you would have something like four times as many antitrust cases brought.

Now, further, I think that would impose a very substantial problem both in the courts and on the Department of Justice if they were treated in that fashion.

Secondly, under the Sherman Act you have entirely different kinds of problems of burden of proof than you have in the Interstate Commerce Commission rate proceedings. For example, if you are a plaintiff under the Sherman Antitrust Act, complaining of a rate cut as a means of destroying your business, if the cost of the railroads becomes important, or the cost of the carrier making the rate becomes important to your case, you, the plaintiff, have the burden of establishing that kind of proof.

Before the Interstate Commerce Commission the burden of proof is on the party that has the information in his possession and particularly on the carrier that proposes the change in the rate.

You have venue problems under the Sherman Act. You may not be able to sue all of the railroads or all of the associations or all of the groups that are necessary to be sued in the judicial district.

All of these are problems which relate to the kind of application of judicial process, to a judicially determined fact, that is, the existence of a conspiracy or an intentional attempt to monopolize.

Now, furthermore, there has been, I think, sometimes a suggestion that the procedures in antitrust cases, because they are before courts, would be more expedited than the procedures before the Interstate Commerce Commission in the determination of the competitive rates relationships.

That is just not the fact.

I have obtained, from the Administrative Office of the United States Courts, their records on the length of time it took to complete all of the civil cases completed in antitrust cases, brought by the United States or by private parties, that were ended in the year 1961.

Those figures show that to complete a case through the district court procedure, a civil case, it took more than 4 years. It took the Department of Justice more than 4 years and 3 months to complete civil antitrust cases that went to trial in district courts.

It took the Department of Justice, through the court procedures, in antitrust cases 2 years and 9 months, according to these statistics, to handle all civil cases through the district courts, including those that were dismissed, those that were never tried, those that were for some other reason disposed of without any procedures in the district courts.

Now, I have also obtained, from a study of the Interstate Commerce Commission's rate processes, prepared for the Administrative Conference of the United States, some statistics regarding their disposition of rate controversies.

I refer to the 224 rate controversies that involved nonmotor rates; that is, that involved rates other than motor carrier rates.

They involved the investigation and suspension proceedings where the railroad rates were attacked as unreasonably low. Those statistics show that the Interstate Commerce Commission disposed of those 224 cases in an average time of 9 months, and that they disposed on an average of the cases, the investigation and suspension cases involving these rates, nonmotor rates, in an average of 14 months even where a hearing was had and where they went through the entire procedure of the final report of the Interstate Commerce Commission.

Now, I think that would demonstrate that there is some difference in not only the scope of the problem in an antitrust case but also in the flexibility of procedure, in the ability to handle the problem as compared to the courts and the Interstate Commerce Commission.

Now, finally, with respect to antitrust procedures, there is a substantial difference in the terms of relief that are available to a plaintiff under the antitrust laws than there is under the Interstate Commerce Act.

There is available to a party before the Interstate Commerce Commission one substantial difference, and that is the Interstate Commerce Commission has the power, without bond and without security for costs, to restrain a rate proposal for a period of 7 months.

Under the court procedure you would have to obtain, and they are only very rarely issued, a temporary injunction and then if you are a private party you have to post a bond to secure the defendants for any losses that they might obtain.

Permanent injunctions, moreover, do not go to individual rates. They would go to the general proposition of conspiracy.

Finally, one further point, Mr. Chairman, I would like to make in connection with this proposal:

This proposal, H.R. 11583, proposes that the whip and spur of competition will be applied not only between railroads, but in competition between the railroads, on the one hand, and water carriers, on the other.

The assumption underlying the bill, and the language of the bill would impose competition among the railroads in the establishment of the rates themselves.

Now, this committee knows that the railroads have, along with the other carriers, repeatedly maintained that it is impossible, without exemption from the antitrust laws, to publish and have in effect a national rate structure with all of the complexities and multiplicity of rates necessary to interstate commerce.

The railroads and other carriers have been before this committee on two occasions. One was mentioned yesterday, the Reed-Bulwinkle Act, in which Congress gave the railroads an exemption from the antitrust laws for their joint activities in the establishment of all rates; local competitive and connecting-line rates.

I do not know that this has as yet been mentioned before the committe, but here at a later time, in 1957, the railroads, with the support of the U.S. Government at that time, asked the committee and the Congress for an exemption from the application of the antitrust laws to their quotation of section 22 quotations for the Government.

Rates quoted to the Government are not under minimum rate regulation and never have been under minimum rate regulation.

All carriers are free to quote rates to the Government without regard to the rates on file or the published rates on file.

In 1957 the U.S. District Court for the District of Columbia held that the railroads were not exempt under the terms of the Reed-Bulwinkle Act for concerted section 22 rate-cutting activities aimed at the large independent air carriers, and it purported to restrain them from any concerted price cutting in that respect.

The railroads then, with the support of the U.S. Government, came to this committee and other committees on the Senate side and proposed to Congress, and urged, that the antitrust laws should not be applied to them because, they said, it was impossible and impractical to apply the antitrust laws to ratemaking activities.

This act would apply the antitrust laws to the ratemaking activities, precisely those kind of ratemaking activities that were covered presumably by the decision of the U.S. district court in that air carrier case.

Now, I have seen nothing in the testimony of the committee or before the committee to suggest that there has been any change, any modification, in the way in which railroad rates are made, or in the possibilities of the ways in which rates are made, that would justify a change in the attitude and yet, presumably, the railroad industry supports this bill.

I suggest, or it seems to me, that the support of the premise of the bill must come from either one of two factors, both of which are kind of terrifying to water carriers.

One is that the bill will not be enacted, without a further exemption allowing full Reed-Bulwinkle protection to rairoad ratemaking activity.

If that is done, then this committee not only has the question before it of whether competition among individual carriers is a good thing for the transportation industry and for the public and for the country, but you have the question before you of whether it is a good thing for the country at large to have the railroads, as a group, competing in rates against individual water carriers.

And you have the second proposition, that the support might spring from an unspoken premise, as I put it in the statement, that the antitrust laws will not be effective or, at least, will not be effective in bringing a lot of cases or in allowing water carriers to maintain cases in rate-cutting activities.

Mr. Chairman, I thank you very much for the opportunity to appear before the committee.

The CHAIRMAN. Thank you, Mr. Layne, for your statement.

I was thinking, from your discussion of the antitrust laws and procedures, that suppose we consider the matter or, that is, the antitrust laws that you have discussed, in reverse.

Instead of the antitrust laws that apply to the railroads, under the proposal in this bill, H.R. 11583, what antitrust laws now apply to water carriers?

Mr. LAYNE. Well, first, of course, as the chairman noted yesterday, the provisions of the Clayton Act, section 3, relating to price discrimination, would not apply to water carriers because the Clayton Act covers commodities and not services.

Secondly, the Federal Trade Commission Act would not apply to water carriers——

The CHAIRMAN. I am not asking you what laws would not apply. I am asking you what laws would apply.

Mr. LAYNE. The Sherman Act would apply.

The CHAIRMAN. To what degree?

Mr. LAYNE. It would apply to the extent that the activities are not regulated by the Interstate Commerce Commission, in my judgment, to a full degree, to the full scope of the antitrust laws of the Sherman Act.

The CHAIRMAN. Well, is it correct that the water carriage of the exempt commodities, not subject to the Interstate Commerce Commission, is subject then to certain antitrust laws under the Sherman Act?

Mr. LAYNE. In my judgment they are, Mr. Chairman.

The CHAIRMAN. Well, then, if that be true, suppose we take two water carriers, and I am seeking advice and information now about this application:

Suppose we have two water carriers, or we have one water carrier and a shipper, which conspire by lowering rates in order to get the traffic away from somebody else or to discriminate in favor of a particular shipper against another shipper, does the shipper have a case under the antitrust laws today?

Mr. LAYNE. I should certainly think so.

The CHAIRMAN. Do you know of any instance where the railroads have ever instituted a case against a water carrier?

Mr. LAYNE. No, I do not.

The CHAIRMAN. Well, apparently, that speaks very well for the water carriers.

Mr. LAYNE. I would think it did.

The CHAIRMAN. Mr. Friedel, do you have any questions?

Mr. FRIEDEL. No, sir.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Just one, Mr. Chairman.

Mr. Layne, in your arguments you use various reasons why it would be difficult to apply the various antitrust laws, and I am wondering whether that reasoning was probably one of the causes for all the waterway carriers' recommendations to rescind the bulk commodity and the agricultural exemptions rather than the minimum rate to the railroads.

Mr. LAYNE. As I understand your question, Mr. Congressman—let me see if I do understand it correctly.

You are asking me whether or not the difficulties in the application of the antitrust laws are one of the reasons for the proposal to extend the exemption or to eliminate it?

Mr. YOUNGER. Eliminate.

Mr. LAYNE. Eliminate the exemption?

Mr. YOUNGER. Rescind, rescind the bulk commodity in agricultural exemptions.

Mr. LAYNE. It may have been, sir.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Layne, are there provisions in antitrust laws now that permit an individual, who feels that he is being discriminated against because of pricing, to bring a suit against the carrier if this law were enacted?

Mr. LAYNE. If this law were enacted—I think we have to go back to the chairman's question. Let me answer you this way, Mr. Rogers:

In the first place, I find it extremely difficult to conceive of a case in which, if this law were enacted, a shipper would have a cause of action under the antitrust law. I cannot think of a case in which a shipper would have a cause of action that he does not now have under the antitrust law.

At the present time, a shipper, feeling himself—and this would be true if this statute were passed, as I understand it—a shipper would have a cause of action under the Interstate Commerce Act against a carrier, regulated by the Interstate Commerce Commission, for discrimination, for preference, for undue or unjust advantage, or the like.

And those would be, as far as railroads are concerned, under sections 2 and 3 of the act, and he could bring that case before the Interstate Commerce Commission, and that would be true of all carriers regulated by the Commission.

To the extent that they are not regulated by the Commission, as Mr. Harris, the chairman, has suggested to me, if there is no regulation by the Commission, the present relief would be, if the discrimination amounts to a violation of the Sherman Act, then that shipper would have a cause of action under the Sherman Act.

But discrimination, under the Interstate Commerce Act would not necessarily amount to a conspiracy or a violation of the antitrust laws.

Mr. ROGERS of Florida. Yes, but the point I am making is that an individual could bring a suit without having to go through the Government at all?

Mr. LAYNE. Under the antitrust laws an individual may sue for treble damages, that is for damages his business has sustained, and recover three times the amount he is able to prove plus injunctive relief.

Of course, a 4-year-and-3-months' case, civil case, for that, requires a substantial amount of capital to process that kind of litigation.

The ability of a person to maintain that kind of a case may be sharply limited——

Mr. ROGERS of Florida. Well, now, suppose the Government, with the passage of this law, keeps a pretty close eye on it, and it is the intent, I imagine, of the Antitrust Division to keep a very close eye on this in any such cases processed through the Government, then what would be your reaction to that?

Mr. LAYNE. Well, if the case were processed by the Government, my reaction to that is that it would be largely after the fact.

The preventive nature of it would be in the form of preventing or giving a warning to somebody else not to do the same thing in the future and, so far as the unfortunate victim is concerned, he is evidence of the offense, but he is not compensated in any Government case for what has happened to him.

Mr. ROGERS of Florida. Would the antitrust laws also apply to the water carriers?

Mr. LAYNE. Yes.

Mr. ROGERS of Florida. They do now?

Mr. LAYNE. Yes; to the extent that they are unregulated by the Interstate Commerce Commission; in my judgment, they are.

Mr. ROGERS of Florida. And an individual could bring suit against them, too?

Mr. LAYNE. Yes.

Mr. ROGERS of Florida. I see.

All right, thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. You heard the witness testify yesterday that case of 10 years, however, before the Interstate Commerce Commission, too?

Mr. LAYNE. Yes, sir; I did.

The CHAIRMAN. And that is a problem that is presented over and over again, that under our regulatory procedures the ingenuity of our legal profession, practicing before the Commission, has been such that—I started to say "foul everything up," but I will not use that term—but they bog it down, bringing about these interminable delays which, in my judgment, have jeopardized our regulatory processes.

And that is one reason why we have this problem before us now.

Mr. ROGERS of Florida. Will the gentleman yield?

The CHAIRMAN. If it will not work one way we have got to do something to make it work another way.

Yes?

Mr. ROGERS of Florida. What is your attitude to the proposal that some have suggested here, that the water carriers and trucks be brought into the regulation on minimum rates by the ICC?

What would be your reaction to that?

Mr. LAYNE. I just do not know enough of the facts about it. I am an antitrust man. I do not know the answer to your question, sir. I wish I did.

Mr. ROGERS of Florida. I see.

Mr. LAYNE. And let me also respond about this business of delay before the Interstate Commerce Commission in the processes, and I can only say that the lawyers who practice in antitrust cases before the U.S. District Courts have likewise found no way in which to expedite the procedure there.

As a matter of fact, as these statistics indicate, it takes much longer to process the enormous economic complexities of an antitrust case than it does, apparently, a rate case.

Mr. ROGERS of Florida. I see. Thank you.

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

Mr. LAYNE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. David A. Wright.

STATEMENT OF DAVID A. WRIGHT, CHAIRMAN, WATERWAYS BULK TRANSPORTATION COUNCIL, INC., WASHINGTON, D.C.

The CHAIRMAN. Mr. Wright, I believe you are chairman of the Waterways Bulk Transportation Council, Inc.?

Mr. WRIGHT. That is correct.

The CHAIRMAN. You may proceed.

Mr. WRIGHT. Thank you, Mr. Chairman.

My name is David A. Wright, I am president of National Marine Service, Inc., of 21 West Street, New York City, a contract water carrier engaged in the transportation of liquid and dry bulk materials

for the petroleum, cement, and chemical industries, and for agriculture. I appear today, however, as chairman of Waterways Bulk Transportation Council, Inc. The council is a nonprofit organization established originally in 1953 to defend the exemptions from regulation provided in section 303 of the Interstate Commerce Act, and particularly the so-called dry bulk exemption contained in section 303(b). The council is composed of about 125 members, including regulated common carriers by water, exempt water carriers, shippers, public bodies, and a few individuals. I should like to file, as an exhibit to my statement, a list of our members arranged by geographical areas.

With your permission, I would like to file this list of our members arranged by geographical area.

The CHAIRMAN. It may be included in the record.

(The material referred to follows:)

MEMBERSHIP OF WATERWAYS BULK TRANSPORTATION COUNCIL, INC.

EAST COAST REGION

Bouchard Transportation Co., Inc.
Chemical Barge Lines, Inc.
Cities Service Oil Co.
Cleary Brothers, Inc.
Cornell Steamboat Co.
Cornell Transportation Co. Agents, Inc.
Dalzell Towing Co., Inc.
A. W. Frey
Frontier Oil Refining Co.
Graham Transportation Co.
Gulf Atlantic Towing Corp.
Horan Transportation Corp.
International Salt Co., Inc.
Interstate Oil Transport Co.
Lewis Transportation Corp.
National Marine Service
National Molasses Co.
New York Trap Rock Corp.
Olin Mathieson Chemical Corp.
Pennsalt Chemicals Corp.
Poling Transportation Corp.
Preferred Oil Co., Inc.
Reinauer Transportation Cos., Inc.
Seaboard Shipping Corp.
Shell Oil Co.
Sheridan Transportation Co.
Socony Mobil Oil Co., Inc.
Stauffer Chemical Co.
Sun Oil Co.
Texaco, Inc.
M. & J. Tracy, Inc.
Turecamo Coastal & Harbor Towing Corp.
John A. Wells, Inc.
H. Newton Whittelsey, Inc.

GREAT LAKES REGION

Acme Petroleum Co.
Cleveland Tankers, Inc.
Erie Navigation Co.
C. H. Hepperla
Illinois Grain Corp.
The Jupiter Steamship Co. and subsidiaries
Lake Michigan Corp.
Lake-River Terminals, Inc.
Marine Inspection Engineers
Marquette Cement Manufacturing Co.
Martin Oil Service, Inc.
Material Service Division of General Dynamics Corp.
A. L. Mechling Barge Lines, Inc.
The Pittsburg & Midway Coal Mining Co.
Rose Barge Line
Seneca Oil & Transport Co.
The United Electric Coal Cos.

GULF COAST REGION

Anderson Petroleum Transportation Co.
Avondale Shipyards, Inc.
B. & M. Towing Co.
J. W. Banta Towing Co.
J. W. Banta Towing, Inc.
Baton Rouge Coal & Towing Co.
Brent Towing Co., Inc.
Canal Barge Co., Inc.
Elmer D. Conner
J. S. Gissel & Co.
Greenville Towing Co., Inc.
Gulf States Marine Corp.
Houston Barge Line, Inc.
Industrial Molasses Corp.
Ingram Barge Co.
J. & S., Inc.
Koch-Ellis Marine Contractors, Inc.

MEMBERSHIP OF WATERWAYS BULK TRANSPORTATION COUNCIL, INC.—Continued

GULF COAST REGION—Continued

L. M. McLeod
Oil Transport Co., Inc.
Olympic Towing Corp.
Ormet Corp.
Ouachita River Valley Association
Plaquemine Towing Corp.
Port Arthur Towing Co., Inc.
Red River Barge Line
Tex-Mex Towing Co., Inc.
Vicksburg Towing Co., Inc.
A. P. Ward & Son, Inc.
G. B. Zigler Co.

MISSISSIPPI RIVER REGION

Alter Co.
Archer-Daniels-Midland Co.
Walter Caldwell, Inc.
Cargo Carriers, Inc.
A. V. Gardner
G. W. Gladders Towing Co., Inc.
Huffman Towing Co.
Hutchinson Barge Line, Inc.
Industrial Marine Service, Inc.
Inland Molasses Co.
Joy Feed Mill
Mid-America Transportation Co.
Midwest Towing Co., Inc.
Missouri Barge Line Co.
Northwest Cooperative Mills, Inc.
Phillips Petroleum Co.
Quincy Soybean Products Co.
Richards Oil Co.
St. Louis-East Side Traffic Conference
Simpson Oil Co., Inc.
Simpson Towing Co.
Smith Oil & Refining Co.
Southern States Towing Division of Triangle Refineries, Inc.
J. D. Streett & Co., Inc.
Upper Mississippi Towing Corp.
Vollmar Bros. Construction Co.
Waxler Towing Co., Inc.
Wayne Bros.
Western Illinois Grain Co.

OHIO RIVER REGION

Amherst Industries, Inc.
Ashland Oil & Refining Co.
Atlas Towing Co.
Central Soya Co., Inc.
Hillman Transportation Co.
Hougland, Inc.
Island Creek Fuel & Transportation Co.
Nashville Bridge Co.
Portsmouth Docking Co.
O. F. Shearer & Sons
Thomas Petroleum Transit, Inc.
West Kentucky Coal Co.

WEST COAST REGION

Inland Empire Waterways Association
Lewiston Grain Growers, Inc.
Pendleton Grain Growers, Inc.
Port of Walla Walla

Mr. WRIGHT. We are grateful for this opportunity to present to the committee our views on sections 1 and 2 of H.R. 11583.

Let me turn first to section 2. This section would amend section 303(b) of the Interstate Commerce Act to broaden the bulk commodity exemption for water carriage. The effect of the proposed change in section 303(b) would be threefold: First, the change would eliminate the requirement that, in order to qualify for the exemption, not more than three bulk commodities can be included in any tow. Second, it would eliminate the reference to June 1, 1939, as a test date in determining which bulk commodities are eligible for the exemption. And, lastly, it would eliminate the so-called mixing rule. This rule is an interruption of section 303(b) which requires that exempt tows contain no nonbulk commodities.

The three-commodity limitation has no logical basis. A study of the legislative history of section 303(b) fails to disclose any reason for the inclusion of the limitation. It is possible that the limitation is to be traced to the practice of Great Lakes carriers, who normally carry not more than three bulk commodities in any single vessel. In any event, the limitation is purely artificial as applied to such water-

ways as the Mississippi, and, to the extent that it is observed, it only makes for less efficiency and higher costs.

As for June 1, 1939, test date, this has largely been ignored in practice. There is not a single decision of the Interstate Commerce Commission which has denied the exemption of a bulky commodity on the ground that the commodity was not carried in bulk "in accordance with the existing custom of the trade * * * as of July 1, 1939."

If this test were strictly enforced, it could be the cause of many difficulties and hardships. In the first place, the meaning of the words referring to 1939 is far from clear. Do they require that the bulk transportation of a particular commodity in 1939 should have been by water or is it sufficient that the commodity was then transported in bulk by other means, such as rail or truck? Do they require that, in order to secure the exemption today on a certain waterway, a showing must be made that the same commodity was being carried in bulk on the same waterway in 1939? And what about new commodities, commodities which were either not manufactured in 1939 or which were not of commercial importance at that time? Many of such commodities are similar in character to commodities that were being shipped in 1939 and some are replacements for commodities then shipped in bulk.

The importance of this problem was highlighted by a proceeding brought in 1958 before the Interstate Commerce Commission. A number of the larger regulated water carriers sought to have the Commission deny the availability of the exemption to a long list of commodities on the alleged ground that they were either not moving in water carriage on June 1, 1939, or were not transported in bulk on that date. This list included the following important dry bulk commodities: Ammonium nitrate; ammonium sulfate; cement; zinc concentrates; feldspar; fluorspar; ferroalloys; ferromanganese; flue dust; fly ash; dead burned magnesite; manure salt; milo maize; drilling mud; ores, viz: barytes, chrome, illmenite, iron, manganese, zinc; dicalcium phosphate; phosphate rock; salt; sludge; soya beans; superphosphate; triple superphosphate, etc.

Fortunately, the Commission refused to rule on the petition, saying that the availability of the exemption should be decided on a case-by-case basis. However, the threat remains that these commodities may be denied the advantages of the exemption available to other similar, and in some cases competing, commodities. If the position of the petitioners in the Commission proceeding were upheld, the effect would be to freeze the situation as of 1939. In the course of time, as new commodities take the place of old, the effect would be to narrow the availability of the exemption.

Aside from the illogicality and unfairness of thus confining the availability of the exemption, the test is becoming more and more impractical to apply. With the passage of time, it becomes increasingly difficult to ascertain just what the custom of the trade was on June 1, 1939. This is so simply because, as the years pass, witnesses are dying off, memories are becoming dim, and records are disappearing. Companies which may have shipped and carriers which may have transported particular commodities in 1939 may have gone out of business. Moreover, since water transportation was not, as such, subject to regulation in 1939, there are few official records of the Commission to help establish whether particular commodities were transported in bulk by water at that time.

From the point of view of fairness and practicability, the test as to whether a commodity should now be entitled to the exemption should depend on whether it is handled in bulk today rather than whether it was handled in bulk in 1939. This result is accomplished by section 2 of H.R. 11583.

As the mixing rule stands today, the exemption is open on exactly even terms to both regulated and unregulated carriers. To gain the exemption, neither type may include nonbulk commodities. If a change in this rule is to be made, we believe that section 2 of H.R. 11583 is much fairer to the unregulated carriers than is H.R. 9046, a bill which has been under consideration by your Subcommittee on Transportation and Aeronautics. That bill would have suspended the mixing rule only for the regulated carriers.

Our organization appeared before your subcommittee to oppose that one-sided proposal. Our very strong objections to the earlier bill were set forth in detail by Mr. Gale Chapman, of Minneapolis, in a statement presented in the hearings on April 10, 1962, to which I should like to refer. To summarize those objections very briefly:

(1) That bill was submitted as an emergency measure. We pointed out that there was no emergency; the essential ruling it sought to reverse had been on the books for years.

(2) The regulated carriers, who alone would have benefited from the proposal, would acquire a great competitive advantage over the unregulated carriers. They could, by mixing bulk and nonbulk commodities in the same tows, subsidize the rates on bulk traffic, in which there is keen competition between the two classes of water carriers, out of the high rates they charge on the nonbulk traffic, in which they have little or no competition. The unregulated carriers could not, under the terms of H.R. 9046, combine bulk and nonbulk commodities in their tows and thus would have been at a great competitive disadvantage.

(3) The destruction of competition that would tend to follow the enactment of such a provision would in turn injure the interests of shippers and the general public.

(4) The proposal was limited to the Mississippi system. We objected to this discriminatory approach. If the mixing rule, which it sought to suspend, was sound for other waterways of the country, the Columbia, Chesapeake Bay, or the Hudson, it should not be suspended on the Mississippi. We urge that your subcommittee and committee reject the proposal.

The change which H.R. 11583 would make in the mixing rule, on the other hand, would benefit unregulated carriers too. It would allow them to combine bulk and nonbulk commodities in their tows, so long as, in handling the nonbulk commodities, they were performing incidental towing services for unregulated carriers within the meaning of section 303(f)(2) of the act.

Indeed, the combination of changes in the dry-bulk exemption contained in section 2 of H.R. 11583 represents a proposal on which a committee of the entire water carrier industry agreed last year as reasonably fair to both regulated and unregulated water carriers. It is, indeed, almost identical to the compromise then worked out by the regulated and unregulated carriers as an industry-backed proposal.

If this combination of changes can be enacted, the result will facilitate the use and confirm the availability of the bulk commodity exemp-

tion for both the regulated and unregulated water carriers. Both regulated and unregulated carriers would benefit from these changes, but, above all, the general public, including shippers and consumers, would benefit from the increased availability of low-cost water transportation.

Although the council supports section 2, we are, on the other hand, strongly opposed to section 1, which would relieve the railroads from minimum rate regulation with respect to the transportation of bulk commodities. This position has not been taken without careful consideration of the interests of all members of the council. As I have said, the membership includes, not only water carriers, but also shippers, and public bodies as well. In view of this fact, a poll of the membership of the council as to its position on section 1 was taken. This poll has now been completed and a strong majority of both shippers and carriers have voted to oppose railroad deregulation.

The reasons for our opposition are those which have been voiced by witnesses for American Waterways Operators, Inc. We endorse and join in their statements and I will not repeat the arguments which they have made.

For a number of years now the railroad industry has been sounding the alarm and demanding legislative changes to make possible a cure for the financial woes of that industry. In this hearing the principal spokesman for the railroads began his testimony with the basic premise that the railroads are in financial difficulty and showed us a picture of progressive decline in their earnings and in their share of total traffic from the booming base year of 1929 to the present. Both sets of figures are nationwide averages and are presented so as to support the slogan that "something has to be done for the railroads."

Although I do not have figures presently available to demonstrate the point, I am certain that the share of total intercity freight which was carried by the seagoing ships 20, 30, and 40 years ago was far greater than it is today. This intercity freight traffic, which we estimate to be some 20 percent of the total, is entirely ignored in Mr. Loomis' table.

If the share of the total traffic is to be the measuring stick for determining who should benefit from legislation so as to restore their former position, then by all means we should turn back the clock not 30 years, but a hundred. We should recognize the huge share of total traffic which moved by water before the railroads discovered how easy it was to kill off their water competitors in the absence of restraints against their rate cutting.

No, share of total traffic must not be the measuring stick for Congress to use in determining its policies. The logical pursuit of this criterion would find us taking steps to restore the horse and wagon.

Turning again to the ton-mileage figures presented by the railroad spokesman, it is most significant that in the period from 1939 to 1961 the railroads' traffic grew from 339 to 570 billion ton-miles, an increase of 230 billion. The increase in rail traffic over the period is double the total traffic carried in the most recent year on the Great Lakes and rivers and canals combined. The increase in rail traffic since 1939 is about equal to what we estimate to be the total of the coastwise and intercoastal steamship traffic equated approximately to overland mileage. The increase in rail traffic since 1939 is about equal to the total

ton-mileage of all the oil moved in all of the pipelines throughout the Nation. Of all of the modes sharing the total only the traffic of our trucking industry shows substantially more ton-mileage in 1961 than the increase in rail traffic since 1939. Certainly, as far as volume of traffic is concerned, the railroads have demonstrated a vigorous growth during the period.

The evident hope of the railroads is that, with freedom to cut rates on water-competitive routes, they will take more, if not all, of the bulk traffic away from the water carriers. But there have been many ICC cases which reveal that rail rates proposed to meet water competition would recover less than rail out-of-pocket costs. Those cases are indicative of the relative levels in rail and water transportation costs. As Mr. Childe and Mr. Hershey have pointed out, it seems clear that the capture of water traffic by the railroads would seriously injure their financial position; that of the railroads, that is. As an example, the rate per ton-mile for rail carriage of coal from the West Virginia coalfields to Hampton Roads, a route on which the railroads have no water or other competition, is approximately 11 mills. By contrast, the rate per ton-mile for water carriage of coal on the Ohio River is between 3 and 4 mills. Only, therefore, if the railroads managed permanently to destroy all water competition could they possibly charge rates high enough for carrying coal on routes paralleling the waterways to produce any net income.

The basic difficulties of the railroads are not to be found in water competition. It is true that water transportation is far cheaper than rail, which is an inherent natural advantage within the meaning of the national transportation policy. But this competition does not explain the railroads' plight. But the fact is that in the areas where water transportation has been growing most rapidly the railroads have also been prospering to a higher degree than the average of the rest of the Nation. This point has been demonstrated in Mr. Carr's statement for the American Waterways Operators.

The most highly significant fact, one which is recognized widely by railroad security analysts and other statistical experts, is that the railroads' troubles are most acute among the roads serving megalopolis, the thickly settled and industrially mature region stretching from Richmond to north of Boston, and including much of New York and Pennsylvania. In this region I believe it can be demonstrated that the rate of industrial growth, as distinct from economic growth, is lower than anywhere else in the country. The fact that it contains the financial and political headquarters of the Nation has no relationship to the transportation problem except as it affects passenger traffic. In proportion to total traffic, there is less bulk traffic in this area than anywhere else in the Nation.

Not only are the railroads' problems accentuated here, but in this same area inland water traffic has been suffering a long and progressive decline.

I have heard it said that the New York Central's troubles are primarly east of Buffalo and that if the Pennsylvania could chop off its services east of Harrisburg the rest of it would be highly profitable.

The rail statistics of the ICC are not grouped in such a way as to make it readily possible to compare this particular area with the rest of the Nation. The so-called eastern district includes not only New

England, but the Great Lakes region and the gerrymandered central eastern region covering the triangle between New York, Washington, and Pittsburgh, and a huge region north of the Ohio and east of the Illinois Rivers, where many railroads are prosperous.

Nevertheless, a simple analysis of ICC reports on net railway operating income as compared with net railway investment will prove my point.

In the year 1960, for example, the percentage of return on net investment of railroads in the eastern district amounted to less than one-quarter of the percentage of return on investment of the railroads of the rest of the country.

In this eastern area, water carriers, too, have been losing ground as compared with their own records of earlier years, and there is, as I have said, proportionately less bulk traffic than in other areas. If deregulation of bulk traffic by rail will help them take tonnage away from water carriers they will have much less to gain here, where both modes are having difficulty, than in other parts of the country, where the railroads are generally more prosperous.

Nationwide averages for the railroads are heavily influenced by the unhappy results of the roads serving the thickly populated East.

In short, insofar as rail and water transportation are concerned, the eastern area of densest population is a distressed area. The new plants of heavy industry have almost all been located elsewhere in recent decades, while, in the area in question, the growth has been in other directions—banking and insurance, industrial and scientific research and development, education, recreation, headquarters of all kinds, residential development, the technical and electronics industries and similar enterprises which employ our highly skilled labor, but involve no heavy tonnage of freight.

But none of these requires the transportation of the bulk materials of industry and agriculture whose growth in other parts of the country has brought prosperity to railroads and water carriers alike.

Congress has been asked to do something for the railroads. What a tragedy it would be if, because of the serious financial distress of the railroads in one region of the country, strong legislative medicine were applied to upset the delicate balance of competitive forces in transportation in the rest of the country, where the healthy competition among all modes of transportation has produced a steady growth of traffic of benefit to the carriers as well as to the public.

In all humility, I recommend that Congress look upon the problem of transportation in the Northeast as only a symptom of an industrial change of far wider incidence than the transportation field alone, with broad repercussions in the unemployment problem and other aspects of the regional economy. Let Congress determine whether the rapid industrial development of other areas of the Nation has not now been so successful as to leave the Northeast in a condition of relative decline. If industrial growth in the Northeast needs to be stimulated, let some means be found to do that.

If, however, it is in the public interest for heavy industry in the Northeast to continue its decline while other areas of the country grow in this respect, then special measures should be taken in the Northeast to adjust for the change. Let the commuter problems and other rail passenger service be separated from the freight service.

By all means, let's do something for sick railroads to preserve essential services, but first let us study the basic problem instead of merely the symptoms.

The population explosion is upon us. The logistical problems of the thickly populated region which is now only a portion of our total area will, in fact, be nationwide in another couple of generations. The lessons we can learn from such a study now will be all the more important in the solution of the problems of our grandchildren.

I should like, now, to anticipate questions which the committee may have as to the consistency of the position of the Council in advocating a broadening of the bulk commodity exemption for water carriers while at the same time opposing the grant of such an exemption from minimum rate regulation for railroads. Such apparent inconsistency is only superficial. The fact that one mode of transportation is unregulated does not necessarily mean that another mode of transportation must be unregulated.

The policy of the Congress has been clear up to now that bulk transportation by water carriers does not need to be regulated in the public interest, while such transportation by railroads does.

Even the draftsmen of the bill before you recognized a vast difference in the need for regulation as between water carriers and railroads. They have not proposed to exempt the railroads from maximum rate regulation or from regulation seeking to eliminate discrimination with respect to bulk commodities, although they continue and expand the exemption of water carriers from such regulation.

The reason for their distinction in treatment is obvious. Railroads generally enjoy a natural monopoly of railroad services, based on their ownership of their roadbeds. Many shippers are entirely dependent, for railroad service, upon single railroads. And in many instances rail is the only feasible means of transportation.

This is particularly true for dry bulk commodities. For overland hauls of such commodities beyond 300 miles or so the cost of trucking is generally too great and rail service is irreplaceable. To protect shippers against the possible abuse of such monopoly, regulation is essential.

On the other hand, water carriers operate on publicly owned rights-of-way physically open to all the public, and no carrier is irreplaceable. The existence and the possibility of competition on the waterways are sufficient to provide protection against the charging of exorbitant rates and against unjust discrimination among shippers.

This is why, so far as we are aware, no shippers have ever asked for the extension of regulation to the water transportation of bulk commodities.

There are, therefore, sound grounds for treating railroads and water carriers differently where maximum rates and discrimination are concerned. The superficial sweeping argument for so-called "equality of treatment" in the regulation or exemption of all carriers alike thus breaks down.

A repetition of the slogan will not justify the proposal to exempt railroads from minimum rate regulation in the transportation of bulk commodities merely because water carriers have such an exemption. It is necessary to examine the purpose served by minimum rate regulation and to determine whether such regulation is equally needed in the case of railroads and water carriers.

The unequal nature of competition between railroads and water carriers, as described by former Commissioner Joseph Eastman, has been referred to by an earlier witness, Mr. Sam Moerman.

Present distinctions in the provisions for regulation of transportation were evolved only after careful consideration and study and years of experience. They were not produced by inadvertence. While of course we do not contend that changes should not be considered, it would be wise to observe the old maxim against tearing down a fence until one finds out why it was put up in the first place.

When Congress, after careful consideration, in 1920, amended the Interstate Commerce Act to give the Commission specific power to establish minimum rates for railroad transportation, it was, of course, conscious that it was treating water transportation differently. The committee report on the bill which became the 1920 act states that one of the important purposes for giving the Commission the minimum rate power was that of protecting water carriers against selective rate cutting by the railroads. It said:

> * * * With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service, by establishing a minimum below which such carrier could not fix its rate. It would also prevent a rail carrier from destroying water competition between competitive points by prohibiting such carrier from so reducing its rates as to destroy its water competitor. Circumstances have been cited where the rail carrier destroyed its water competitor by such a reduction of rates as to make it impossible for the water carrier to survive. When once competition was thus driven off the rail rates would be restored or would rise to even higher levels * * *. (H. Rept. 456, 66th Cong., 1st sess., 1919, p. 19.)

Congress saw no need to impose similar minimum rate regulation on the water carriers. There was no danger that they could injure the railroads by a selective rate-cutting process.

There are obvious reasons why this was true in 1919 and is true today. Railroads generally operate networks. Bargelines, on the other hand, operate on a linear basis. The railroads have a vast amount of land-locked traffic on which they can rely to make up for the losses which they may temporarily incur by cutting their water-competitive rates to eliminate water competition.

As I have pointed out, this opportunity is particularly effective in the case of dry bulk commodities on long hauls beyond the economical trucking distance.

No such opportunity to recoup from other traffic exists for the bargelines. The bargelines cannot afford to cut their rates generally below cost in order to take traffic away from the railroads, because they have no traffic protected by nature against railroad competition out of which they can recoup their losses. Their rates must, on an average, cover their costs or they will soon be out of business.

Moreover, the vastly greater resources available to the railroads make it possible for them to absorb losses due to temporary selective rate cutting designed to destroy water competition.

We, therefore, urge the continuance of minimum rate regulation of rail transportation of bulk commodities. For the reasons indicated in the testimony for American Waterways Operators, we do not consider that the proposed subjection of the railroads to the antitrust laws will provide adequate protection of water transportation.

It has been a policy of the Congress ever since the original enactment of the Interstate Commerce Act to attempt to protect water carriers

against destructive practices of the railroads. In the congressional debates on the bill which the Interstate Commerce Act, Senator John Sherman said:

> They
>
> the railroads—
>
> can run anything out of the water and they did impair the boating interests in the great Northwest, and actually laid up boats that would otherwise have been running at abnormally low rates; and then when they drove the boats out of business they resumed operations again. It is to prevent that that I desire to see the railroads compelled by the rule of equity to maintain a reasonable rate.

Despite the long-standing purpose of Congress to protect water carriers against the railroads, it was not until after a considerable series of amendments having this purpose had proved ineffective that in 1920 the minimum rate power was given to the Commission. If this is now withdrawn, we will be remitted to the situation existing in the era when the railroads were able, without effective regulation or opposition, to run the water carriers, as Senator Sherman said, "out of the water."

We do not want to turn the clock back, and we feel fully warranted in urging Congress to continue a distinction in treatment that has existed for 42 years and a policy intended by the Congress, if only imperfectly realized at times, since 1887.

Mr. Chairman, I am grateful for the opportunity of appearing here.

The CHAIRMAN. Mr. Wright, thank you very much for your statement to the committee on this subject matter.

Are there any questions, Mr. Williams?

Mr. WILLIAMS. No, I have no questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Just one.

Mr. Wright, you have not followed the recommendations of most of the water carriers which is to, rather than rescind the minimum rate, they would prefer to have the exemptions abolished.

Do you still believe that, or is that a belief of your organization, if you had a choice between the two?

Mr. WRIGHT. We do not feel that these are the only choices available, Mr. Younger.

The unregulated water carriers, as well as other members of our organization, have vigorously and repeatedly opposed the extension of regulation to the water transportation of bulk commodities.

We are now opposing the deregulation of railroads. We do not concede that it is necessary for us to choose between the alternatives which you have presented.

We advocate another alternative, namely, continuation of the present distinction in regulation made by Congress in enacting the 1920 act.

Mr. YOUNGER. Thank you very much. You have added some new material here that has not been given before.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

I am sorry, Mr. Wright, that I was a little late in getting here to hear your statement.

As I understand, from your statement to Mr. Younger, you feel that we should continue the present system with no minimum rates on water carriers for bulk products——

Mr. WRIGHT. That is correct.

Mr. KORNEGAY. But with regulations on the rail carriers in the same field?

Mr. WRIGHT. That is correct. Our organization supported the broadening of the exemptions applicable to water carriers, as recommended in section 2 of H.R. 11583, but opposed the extending of the exemptions to the rail industry.

Mr. KORNEGAY. You do not consider that discriminatory against the railroads?

Mr. WRIGHT. Mr. Kornegay, I am sorry you were not here earlier. I devoted a good portion of my statement to this superficial inconsistency.

There is nothing more to it than recognition of the fact that the rail industry operates in one system of economics, owning their own roadbeds, operating a network, and in order for a water carrier system, operating a linear service, a small business, to exist in competition with the railroad industry, there must be restraints upon the railroad industry.

This was recognized by Congress, which sought a means of protecting water carriers from 1887 until 1920, when the minimum rate regulation of railroads was enacted.

Water carriers were being put out of business by railroads, since the date when railroads were invented up until about 1900. There was no water transportation to about that time.

And it took Congress literally from 1887 to 1920 to find out what measures were necessary, in order to make it possible for a water carrier industry to exist in competition with the rail industry.

The mechanism discovered was the minimum rate regulation which it is now proposed to repeal.

Mr. KORNEGAY. You feel, sir, then if it were repealed we would revert back to what we had prior to 1900?

Mr. WRIGHT. That is correct. Our industry cannot exist if rails are permitted to indiscriminately cut rates.

Mr. KORNEGAY. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Wright. We are very glad to have had your presentation.

Mr. Walter G. Baskerville, Sr.

STATEMENT OF WALTER G. BASKERVILLE, SR., PRESIDENT, UPPER MISSISSIPPI TOWING CORP., MINNEAPOLIS, MINN.

The CHAIRMAN. Mr. Baskerville, you may identify yourself and proceed.

Mr. BASKERVILLE. Mr. Chairman, and members of the committee, my name is W. G. Baskerville, Sr. I am president of the Upper Mississippi Towing Corp. of Minneapolis, Minn. We wish to extend our thanks for this opportunity to appear before you today.

The Upper Mississippi Towing Corp. is a Minnesota corporation, incorporated in 1937. Its business is that of transporting liquid and dry bulk commodities via barge on the inland waterways.

We are an exempt carrier of bulk commodities owning and operating a substantial fleet of dry and liquid cargo barges as well as diesel towboats. The geographical area of our operations may be

described roughly as from Texas to Florida on the Intercoastal Canal and the navigable length of the Mississippi and Ohio Rivers together with their various tributaries.

Grain represents a substantial portion of the volume of dry bulk commodities we transport. The remainder consists of such commodities as coal, salt, and agricultural fertilizer. Some of the liquid commodities moved by our company are soybean oil, molasses, chemicals, tallow, lard, and petroleum products. Our annual sales are approximately $10 million which, of course, classifies us as a small business in the transportation field.

As a public servant we solicit all shippers desiring transportation of bulk commodities via barge.

We are here to offer for the committee's consideration our comments in opposition to section 1 of bill H.R. 11583.

In declaring the national transportation policy, the President set forth certain basic objectives. They may be summarized as follows:

(1) Economical transportation services at the lowest cost.

(2) Equality of opportunity for all forms of transportation.

(3) The prevention of predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency.

(4) A more coordinated Federal policy and a less segmented approach.

Gentlemen, it is our firm belief that section 1 of H.R. 11583 will not implement the objectives the President recommends in changing our national transportation policy; instead it will quickly and effectively defeat them.

(1) There is inherent in the bill, the invitation and temptation to predatory trade practices.

The removal of minimum rate regulation of bulk commodities by the ICC will invite those predatory, discriminatory trade practices or rate wars which the President condemns and with such practices equality of opportunity for all forms of transportation will be impossible.

Whereas, the bargeline traffic is confined to a limited number of bulk commodities, on the other hand, these commodities represent only a small portion of total railroad traffic. Presently rail rates on certain bulk commodities are relatively high on shipments from the interior away from the inland waterway, while rail rates on the same commodities moved paralleling the inland waterways are relatively low. These water compelled rates have been granted to the railroads by the ICC. Therefore, even though presently regulated by the ICC, a good share of the present rail rates on bulk commodities paralleling the inland waterways are moved by the railroads below cost.

Purely and simply section 1 of H.R. 11583 is an invitation and temptation to further predatory rate practices by the railroads as was so ably pointed out in the statement of Mr. Rupert L. Murphy, Chairman of the Interstate Commerce Commission, when he appeared before you on July 10.

In view of the fact that the railroads have combined assets in excess of 40 times that of the bargelines they stand in the position of very big business with no minimum rate control only awaiting the

opportunity to destroy small competitors. It would be a relatively simple matter for the railroads, with over half of their tonnage relieved from minimum rate regulation, to further reduce their rates paralleling the inland waterways and to recover these losses from landlocked or interior points.

(2) The enforcement provisions under the antitrust laws are wholly inadequate to prevent irreparable harm to injured parties.

Under present procedure the Interstate Commerce Commission may suspend a predatory or discriminatory rate during the notice period before it goes into effect.

By way of contrast, proposed section 1 gives only the remedies available under the antitrust laws upon a showing that:

(1) There is collusion; or

(2) There is a question of monopoly.

These remedies are available only after the predatory or discriminatory rate has gone into effect. For protection water carriers—small business—would only have recourse to a complicated court procedure and could be forced out of business before court action is obtained months, or even years, later.

The plain fact of the matter is that the antitrust laws are not designed for immediate remedies required to halt predatory practices before they have resulted in irreparable harm and possible total destruction.

This is not to mention the fact that proposed section 1 would impose extensive administrative responsibilities on the Justice Department, whereas at present a single agency, the ICC, administers all regulation regarding land and inland water carriage. It seems to us that such segmentation of authority will lead to needless confusion and duplication of effort.

(3) True freedom of competition in the public interest can be realized only if minimum rate regulation is maintained.

The testimony of Mr. Murphy vividly describes this situation as follows:

> If transportation history teaches any one thing, it is that while competitive forces generally are effective in reducing prices and improving standards of service, these very same competitive forces in the transportation field, unless subject to reasonable restraints, will result in eliminating competition and in disrupting reasonable and fair rate relations as between competing shippers, geographical areas, and territories.

Government witnesses have testified that proposed section 1 will result in reduced freight charges to the Government. This testimony overlooks the fact that the Government is already enjoying reduced rates under section 22.

Government witnesses testified that the reason for not deregulating airline rates was due to the precarious financial condition of many airlines. It is difficult for us to understand this area of inconsistency as many railroads are also in precarious financial condition.

Again, we may point to a portion of Mr. Murphy's testimony which so ably sums up the consequences of enacting section 1:

> The exemption of all bulk traffic from regulation as to minimum rates could foster rate wars on such traffic, and the freight charges thereon could be driven down to rock bottom, perhaps below out-of-pocket costs. This could occur within a short period of time on a large part of the bulk tonnage now moving by rail. Under such circumstances, not only would the proposed exemption from regulation as to minimum rates be harmful to barge traffic, but it would bring about a substantial loss of revenues to rail and motor carriers.

As a consequence, the rail carriers would probably petition for a general increase in freight rates to make up the revenue lost from the exempt traffic, and with the showing of revenue need which probably could be made, the Commission might well feel impelled to grant a general increase. Such an increase would be applied, in all probability, not on the exempt bulk traffic (which could more readily bear increased rates if that traffic on all modes were under regulation), but rather on the remainder, or regulated traffic, which even now is bearing most of the overhead burden of the common carrier system of this country.

In conclusion, it is our studied and earnest conviction that section 1 of H.R. 11583 would effectively defeat the objectives of our national transportation policy for the following reasons:

(1) There is inherent in the bill, the invitation and temptation to predatory trade practices.

(2) The enforcement provisions under the antitrust laws are wholly inadequate to prevent irreparable harm to injured parties.

(3) True freedom of competition in the public interest can be realized only if minimum rate regulation is maintained.

Section 1 of H.R. 11583 is simply a license to destroy. Such legislation is in no wise consistent with the public interest.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Baskerville, for your statement, which I was very interested in following, and I want to compliment you on your presentation on the position that you take and your viewpoint, and the information you have given the committee.

Any questions, Mr. Thomson?

Mr. THOMSON. Mr. Chairman, I would like to ask Mr. Baskerville if the barge traffic on the upper Mississippi has been increasing in the past decade.

Mr. BASKERVILLE. I would say slightly, yes.

Mr. THOMSON. Well, what has been the volume of increase in recent years?

Mr. BASKERVILLE. I am sorry, but I do not have that figure. If you would like that, I could get it. I could get it from the Corps of Engineers, but I do not have that figure.

Mr. THOMSON. Well, has it tripled?

Mr. BASKERVILLE. No, I would not say so. No, sir.

Mr. THOMSON. Do you bring, by barge, lampblack from down in Texas up to the rubber mills at Chippewa Falls, Wis.?

Mr. BASKERVILLE. No.

Mr. THOMSON. Do you bring coal to the generating plants at Cassville and Alma?

Mr. BASKERVILLE. Yes, sir.

Mr. THOMSON. Would you furnish for the record the increase in barge traffic?

Mr. BASKERVILLE. From what period would you like it, sir?

Mr. THOMSON. Oh, say, the last 10 years.

Mr. BASKERVILLE. Yes, sir, I will be very glad to.

Mr. THOMSON. Thank you very much.

Mr. KORNEGAY. Mr. Chairman, with your permission, may I go back and ask Mr. Baskerville a question?

The CHAIRMAN. Yes.

Mr. KORNEGAY. Mr. Baskerville, I, like the chairman, want to commend you on a fine statement from your viewpoint. I think it was presented very cogently.

You raised a point here that is of concern to me, and I think a lot of people. You put it very plainly on page 3 when you stated, in effect, that rail rates on certain bulk commodities are relatively high on shipments from the interior away from inland waterways, while rail rates on the same commodities, moving parallel to the inland waterways, are relatively low.

Unfortunately, there are tremendous areas of this country which are not adjacent to or even close to the inland waterways or any other waterways which seem to suffer as a result of the thing that you pointed up right here.

I think particularly of my own section of the country, the Southeast, where there is little or no water transportation, and we are the victims of these relatively high rates on bulk commodities.

And I am thinging particularly of grain.

Do you have any comments or suggestions on what could be done in the absence of this legislation to prevent that type of discrimination against people who are not fortunate enough to live on the riverbank?

Mr. BASKERVILLE. Well, I do not feel that the people who live inland—if this bill were passed, they would not benefit from it.

In other words, their rates would go higher rather than lower. The railroads would reduce their rates along the river, where they are lower now, and to make up that loss they will raise the rates back in the hinterland.

Mr. KORNEGAY. Let me call your attention to the fact, that I think it was Southern Railway who proposed a substantial reduction in its rates on bulk grain, and immediately, as I understand it, the barge companies protested and the ICC suspended the rate at a time when there was a grain shortage in the Southeast.

Mr. BASKERVILLE. Well, there is quite a question as to whether the grain shortage was as great, but I do not think that is the point here but that particular rate was directed at water. In other words, if you will go back to that particular case, that is a good example of where they will cut rates against the water carriers and if they destroy the water carriers, then they can raise their rates back up.

And, naturally, the water carriers contested that rate.

Mr. KORNEGAY. I am no expert in the field, but how can the ICC justify a cheap rate running along the bank of the Mississippi River, and a substantially higher rate in the eastern portion of the United States away from the river?

Mr. BASKERVILLE. That goes back to what is known as water-compelled rates.

In other words, the ICC, in my personal opinion, have leaned over backward in allowing the railroads, against water competition, to reduce their rates below their cost.

Mr. KORNEGAY. Is that to keep your rates down or the water rates down?

Mr. BASKERVILLE. No, that is for the railroads to try to endeavor to get some of that business.

Mr. KORNEGAY. In other words, to get business away from the water carriers.

Mr. BASKERVILLE. That is right, even though it is at a loss——

Mr. KORNEGAY. As a matter of fact, it forces you to reduce your rates, does it not?

Mr. BASKERVILLE. It will in the end.

In other words, if the railroads are not regulated they will drop their rates considerably.

Take, here is a good example: The rate from Greenville, Miss., to New Orleans, on corn I believe is $3.60 a net ton, but you go inland to Camden, and the mileage from there to New Orleans is roughly the same from Greenville, and if I remember correctly, I think it is about $11.40 a ton.

Mr. KORNEGAY. About three times as great, is it not?

Mr. BASKERVILLE. That is right.

Mr. KORNEGAY. Well, do you not think that the people inland then are being discriminated against?

Mr. BASKERVILLE. Yes, sir, I think this will cause greater discrimination against them, because the rails will have to make that loss up on their reduced rates along the water.

That is exactly the point. The inland people—I cannot understand why the inland people——

Mr. KORNEGAY. Of course, the truckers would probably take a contrary view to that, would they not? Because they would be competing with the railroads on these inland routes, whereas you are competing with them on water routes.

Mr. BASKERVILLE. Well, on your long hauls, not so much, but, to me, I do not understand why the inland people are not up in arms against this because they are the ones that are going to get hurt, because the bargelines certainly are going out of business.

To me, I cannot understand why——

Mr. KORNEGAY. Let me inject this thought:

Maybe the inland people just figure that they cannot get much higher than they are already.

Mr. BASKERVILLE. Well——

Mr. KORNEGAY. I say that somewhat facetiously, of course. Go ahead, sir, I am sorry to have interrupted you.

Mr. WILLIAMS. Will the gentleman yield?

Mr. KORNEGAY. Yes; I will be delighted to yield to you.

Mr. WILLIAMS. As I understand it, it is the fear of the bargelines that the railroads will undercut them in their lines that run along the bargelines, and the truckers, of course, fear that the railroads will reduce their rates to where they cannot compete with the railroads on the inland routes, and if the railroads should reduce all of their rates, both inland and along the water routes, to less than compensatory rates, it will not be long before the railroads will go broke and you would be back in business with a complete monopoly; would you not?

Mr. BASKERVILLE. Well, I think personally, if you deregulate the railroads, I think we are going very close to nationalization of the railroads.

I think it very readily could come to that.

Here is the thing with me. I cannot understand——

Mr. WILLIAMS. What I am trying to say is that there is so much competition to the railroads that it seems to me that the railroads

could hardly eliminate all of that competition and still stay in business.

Mr. BASKERVILLE. Well, that is why I say there is a very good chance of the railroads becoming nationalized, just exactly for that reason.

Mr. WILLIAMS. I do not think railroads are interested in becoming nationalized.

Mr. BASKERVILLE. They may not be interested in it, but that may be the end result, sir.

Mr. WILLIAMS. In other words, they will commit suicide in order to become nationalized?

Mr. BASKERVILLE. They might commit suicide and get nationalized.

This bulk river traffic, we all believe, or I feel we must admit that water is the cheapest method of transportation for bulk commodities for particular movements.

Why should we give some other form of transportation a license to make or to force us out of business and to reduce our rates when it is not business that they should have to start with.

Mr. KORNEGAY. Are you through, Mr. Williams?

Mr. WILLIAMS. Yes; I want to ask one more question, though.

Mr. KORNEGAY. All right.

Mr. WILLIAMS. How long would it take the railroads to put the bargelines out of business, assuming that they had complete freedom by doing that?

Mr. BASKERVILLE. Well, you are asking——

Mr. WILLIAMS. Assuming that the railroads haul this free of charge, how long would it take them to run the bargelines completely out of business?

Mr. BASKERVILLE. Well, if they did that they would close up shop now.

Mr. WILLIAMS. Why, of course. How long would it take the railroads to put the bargelines out of business by reducing their fares?

Mr. BASKERVILLE. I think they could drive the bargelines out of business within the first year.

Mr. WILLIAMS. Then when they went back up on their rates, the bargelines would be back in business, would they not?

Mr. BASKERVILLE. Well, I do not know. Would you want to come back and get burned again?

I do not know. I would question it.

As far as our company is concerned, I would say no, because we came into this under——

Mr. WILLIAMS. Well, would not the railroads have to keep their rates down——

Mr. BASKERVILLE. No, sir.

Mr. WILLIAMS (continuing). In order to keep the bargelines out of business?

Mr. BASKERVILLE. That has not been the history of the railroads.

The history of the railroads is that they have not reduced rates until it was too late. In other words, take back in our area, when the Great Lakes pipeline came in for transportation of petroleum products, they were begged to reduce rates to come up in there.

They would not do a thing about it, and they let the pipelines be built.

They could have stopped it back then, but they waited.

Mr. WILLIAMS. That is all.

Mr. KORNEGAY. Mr. Baskerville, the bargelines, of course, haul commodities other than bulk. Is that not true, sir?

Mr. BASKERVILLE. Yes, sir, some of that.

Mr. KORNEGAY. In other words, you have an operation insofar as the commodities hauled, which is comparable to the railroads.

Mr. BASKERVILLE. We do not. We handle nothing except bulk, and we are limited to bulk.

Mr. KORNEGAY. I am not referring particularly to your organization, but to the bargelines generally.

Mr. BASKERVILLE. Yes, sir.

Mr. KORNEGAY. As a matter of fact, you haul goods up and down the Mississippi and the inland waterways.

It is conceded by everybody that the water transportation is considerably cheaper, that is, the cost of it is cheaper than any other mode of transportation.

Is that not right, sir?

Mr. BASKERVILLE. Yes, sir.

Mr. KORNEGAY. And the bargelines have no minimum rate regulations on bulk commodities?

Mr. BASKERVILLE. That is right, sir.

Mr. KORNEGAY. And yet all of the barge people consistently contend that to give the railroads the same right or privilege; that is, the elimination of minimum rate regulations, that the railroads could immediately put the bargelines out of business.

Again I say I am no expert in the field, but I cannot quite understand why, when the bargelines are in the business to make a profit, the railroads are supposed to be in the business to make a profit, and, conceivably, the bargelines can transport cheaper than the railroads, why would giving the railroads the same privilege or right that you now have—would put the bargelines out of business?

Mr. BASKERVILLE. Well, No. 1, sir, the packaged traffic, I believe—now, I am not an expert on this because we do not handle it—but I believe the packaged freight, as far as the bargelines are concerned, is a very, very small percentage of their business.

Their main business is bulk.

And, furthermore, the bargelines have only a certain area that they can go into and that they can haul their bulk commodities from, while the railroads have——

Mr. KORNEGAY. Well, I understand that.

Well, in my statement I should have included in that question this: Assuming the ICC enforces the nondiscriminatory provisions in the law.

Mr. BASKERVILLE. I did not quite understand that.

Mr. KORNEGAY. The regulation against discrimination.

Mr. BASKERVILLE. Who?

Mr. KORNEGAY. The ICC.

Mr. BASKERVILLE. I think the ICC has handled that pretty well to date.

Mr. KORNEGAY. I say, assuming—and I am putting in my question as to how the railroads could force the bargelines out of business—assuming that portion of our law were enforced to avoid a situation where the railroads haul free and, of course, make up the difference in the inland traffic.

Mr. BASKERVILLE. Well, if the ICC has the ratemaking regulation of them——

Mr. KORNEGAY. Well, they can do that in the absence of the ratemaking regulation, can they not?

Mr. BASKERVILLE. Not under this law or under this proposed law.

Mr. KORNEGAY. But under some other section of the existing authority to prohibit the discrimination——

Mr. BASKERVILLE. Not to my knowledge. In other words, I do not know where it is.

Mr. KORNEGAY. Well, I do not, either, but I have heard so much talk about it here that I assumed that it was in there.

Mr. BASKERVILLE. Well, I will tell you: I would certainly hate to have to come in and try a case against it.

In other words, whether it is in there or whether it is not, what is the purpose of this bill? The purpose is to deregulate the railroads so then that, if that would be the purpose of Congress, it would be a pretty tough one to defend, would it not?

At least, I would not want to be——

Mr. KORNEGAY. That is all, Mr. Chairman.

Mr. WILLIAMS. Let me ask you a question at this point, if you will.

May I be recognized, Mr. Chairman?

The CHAIRMAN. Yes, Mr. Williams.

Mr. WILLIAMS. To put the bargelines out of business, for instance, on the Mississippi River, the Mississippi and Ohio Rivers, which I presume are the main arteries of the barge transportation, it would be necessary for a couple of railroads to join rate cutting, would it not?

Mr. BASKERVILLE. Just those that are along the waterways.

Mr. WILLIAMS. Just those that are along the waterways.

Well, when two of these railroads joined in this, under the legislation that is presently before us, would not the antitrust laws take over?

Mr. BASKERVILLE. Oh, I am not——

Mr. WILLIAMS. In other words, could one single railroad put the barges out of business?

Mr. BASKERVILLE. There are probably—undoubtedly there are places where that is true.

I cannot name them offhand, but two railroads or three could put them out and, you see——

Mr. WILLIAMS. But if two railroads go in to put them out of business, then they are subject to the antitrust laws, are they not?

Mr. BASKERVILLE. Yes; but by the time the antitrust laws get into effect, and I do not know whether the antitrust laws under this bill will apply—in other words, you would have to prove—you would have to prove monopoly or collusion, I believe.

But I am not an antitrust expert. But I do know this: By the time you have that tried in the courts we would be out of business. In other words, we would be getting the doctor after our death.

Mr. WILLIAMS. You mean the courts are almost as slow as the ICC?

Mr. BASKERVILLE. Well, I have heard that they are slower. In other words, the little experience that I have had with the courts, they are not very fast.

Mr. WILLIAMS. All right, sir.

Mr. BASKERVILLE. And I think it is better to call a doctor before the patient dies.

Mr. WILLIAMS. That is all, Mr. Chairman—of course, an injunction can be imposed by the courts.

Mr. BASKERVILLE. Well, now, you are into legal phases, and there is quite an argument as to how long that would last and what the effects would be.

Mr. WILLIAMS. But if there was evidence to support the contention that the antitrust laws were being violated and the court could be so convinced, could it issue an injunction of an indefinite duration?

Would not that be the protection for the bargelines?

Mr. BASKERVILLE. Well, why not have the protection before the damage is done, so that you do not have the damage?

Mr. WILLIAMS. Well, the public interest enters into this.

Mr. BASKERVILLE. Well, I think the public interest is well taken care of.

There is an awful lot of competition between bargelines. There is no love lost between them.

Mr. WILLIAMS. I do not think anybody on the committee would be disposed to go along with legislation which the committee felt would give one mode of transportation a cutthroat advantage over another mode of transportation.

At the same time, the question has been posed to me, and I would like to have your comment in response to it, that when it becomes more difficult to reduce freight rates than it is to increase them, then something should be done about it.

Would you agree with that, and that is in the public interest?

Mr. BASKERVILLE. Well, I do not think I could quite agree with that statement from the standpoint——

Mr. WILLIAMS. Do you think you would agree to that if you were a shipper?

Mr. BASKERVILLE. Sir?

Mr. WILLIAMS. Do you think that you would agree to that if you were a shipper?

Mr. BASKERVILLE. Well, I tell you, we are all of a human nature, and shippers—we are always paying too much.

When we are buying something we are always paying too much. If we get it below cost—we do not care, no matter what price we get something at, we think the other fellow is making a fortune.

In other words, that is just human nature for all of us.

Mr. WILLIAMS. Well, it is quite true, and it is human nature for the carrier to want to make as much as he can and get the rates as high as possible and for the shipper, as low as possible.

Mr. BASKERVILLE. Yes, but competition among carriers will take care of the carriers.

Mr. WILLIAMS. All right.

Mr. KORNEGAY. Will the gentleman yield?

Mr. WILLIAMS. Yes; I am through.

Mr. KORNEGAY. Mr. Baskerville, you made a statement there a while ago that raises this question in my mind, and I would like to ask you about it.

You stated there was quite a bit of competition between the various bargelines.

Mr. BASKERVILLE. Yes, sir.

Mr. KORNEGAY. None of them is regulated as to minimum rates.

What is it that keeps one bargeline from forcing the others out of business? In other words, why would not the same principle apply between the various bargelines as you contend would apply between the bargelines and the railroads?

Mr. BASKERVILLE. Well, because the bargelines have only a certain amount of business that they can make their living on, that they can do, while the railroads are in a different position.

They can cut against the water and make it up in the hinterlands, as we said before. But the bargelines cannot. They can only go so far.

Mr. KORNEGAY. If some means could be devised to prevent the railroads from having different rates along the water's edge and inland routes then the same economic principle would apply.

Mr. BASKERVILLE. Well, I would say that would have merit. Maybe if the railroads would have to have the same rate, it might have.

Now, I do not say that this is correct, but it might not be too far away that if the railroads have to have the same rate per mile everywhere it might be different.

Mr. KORNEGAY. Then the same rule of the law of economics would apply between the railroads and the barges as now apply among the various bargelines.

Is that right?

Mr. BASKERVILLE. That might be. I would have to think that out, but that would be a possibility there.

Mr. WILLIAMS. Would that same principle be acceptable to the bargelines?

Mr. BASKERVILLE. I cannot tell you offhand, but I would say roughly, I think it has merit, but you would have to be awfully careful how it was done and how it was worded.

The CHAIRMAN. Of course, that would be very difficult. I think under our system, recognizing certain advantages in some areas against others and the cost involved and the maintenance of equipment, and many other things to be included, I do think there is something in the fact that if the rate in the general area can be justified as compensatory, that if it is given to one community, that the general rate in that area should be available to another.

I am interested in this "hinterland" thing that you have mentioned, and I have been talking about it in these hearings.

You mentioned Camden and Greenville.

Well, now, I have talked about Jerome, which happens to be sort of in between, to use examples, and it seems to me that if the railroads can justify a rate from Greenville to New Orleans as being compensatory, it is just as logical that a similar rate or in the general area of that rate would be compensatory from Jerome to New Orleans.

That just seems to me like good sound practice.

We talk about discrimination. Yes, the Interstate Commerce Act has, for all intents and purposes, a provision that says that discriminatory practices shall not be permitted, but it is almost impossible for that to be carried out.

Mr. BASKERVILLE. I believe those are water compelled rates in which they disregard cost and so on. I do not think they are compensatory at all.

In other words——

The CHAIRMAN. But if they were required to give it to other areas within the general range, that would meet the same cost and so forth requirements, why, I think they would be a little bit careful about going to lower cost, but the railroads insist that they do not do that, and you insist that they do.

I am not willing to say that they are or are not. I do not know.

But if there were a provision added to this that said that these hinterland areas, as you call them, and I call them "inland communities," if there was a provision that required the communities within a given area to be given the same rates, where all conditions were the same, now would that meet some of the serious fears that you have advanced today?

Mr. BASKERVILLE. I have tried to say a few moments ago that I thought that that had merit, but I would not want to commit myself offhand here like this.

But I think that has merit.

The CHAIRMAN. Yes, and you said in your statement that you were surprised that the inland communities were not in here raising "cain."

Well, now, I am interested in this whole matter. I am interested in maintaining all modes of transportation, and we are going to do it.

Now, there is no need to be uneasy about the barge carriers being put out of business. I think that is getting a little bit on the ridiculous side.

As long as you have got the Congress, you need not be afraid of that. Let me say this: The Government, through appropriations, provides your waterways. The Treasury of the United States maintains and keeps them up.

Now, I want you to know that I am not working to get navigation on the Ouachita River in my area, through the heart of it, and on the Arkansas River through the heart of our State for the purpose of not utilizing it.

I want you to know that and everybody else.

I am not going to sit back and see that kind of a situation develop, but I am also interested in developing a policy whereby Hot Springs, Ark., or Marvell, Ark., be given the same treatment as far as rates are concerned as Little Rock and Camden.

I just do not think that it is a sound practice for a government to pursue a course of building and maintaining a waterways program, of building and providing or keeping highways for motor carriers, and the railroads serving these inland places, and then trying to get away from them.

We are faced with that problem all the time.

Why? Because they cannot meet it. And the railroads have to build their own ways and maintain them and suffer heavy taxes within the areas. And when we talk about equity and discrimination and all of that we have got a long way to go.

I just do not think a policy or any policy, say, to Camden or Greenville, that you are entitled to privilege brought on by the Government of the United States, or that the people of Jackson, Miss., or Marvell, Ark., within the same general area, are not entitled to the same privileges.

Now, we have suffered tremendous setbacks in these rural areas because of many such things which have been brought on by policies of the Government.

And I, for one, am seeking and listening toward the policies that are going to correct some of it. I am going to do all I can to do it.

And you water carriers and motor and railroads might as well get ready for it. But, so far as I am concerned, I am not going to keep working, appropriating funds, building up and building up opportunities and privileges for one area and let the other area over there within 20 miles of it or 40 miles of it suffer as a result of it, because they would not give them the same opportunities.

Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

As I recall, the Chairman of the ICC testified that he thought a better approach to this problem would be to bring in the water carriers on a minimum-rate regulation as the railroads now are operating on.

What would be your reaction to that?

If you want to treat them all the same, he said this would be the way to do it.

Mr. BASKERVILLE. In other words, you are asking the question——

Mr. ROGERS of Florida. Whether you would want to be under ICC to get equal treatment with the railroads and the barge and the motor carriers for bulk commodities.

Mr. BASKERVILLE. Well, my company's position would be that we would prefer not to be regulated.

However if, in the opinion of Congress, they thought that something had to be done or some change had to be made in the national transportation system or policy, that if it was a question of either regulating the bargelines or deregulating the railroads, that we would then favor regulation of the bargelines provided the regulatory bill did not adversely affect our operations and it gave us equal rights.

Mr. ROGERS of Florida. So that you would be treated the same as the railroads?

Mr. BASKERVILLE. So that, in other words, we would have to consider such items as liberal grandfather rights, and we would have rights for all bulk commodities and not just a few.

So that if the regulatory bill was such that we could live, that would be our choice of the two, if we had the choice of the two.

Mr. ROGERS of Florida. All right.

Thank you, Mr. Chairman. Thank you.

Mr. WILLIAMS. Mr. Chairman, may I make this observation?

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. It would appear to me that the bargelines have a tremendous advantage over other forms of transportation taxwise and in every other respect.

Let's take going down the Mississippi River from Memphis to New Orleans. There is Highway 61 which, more or less, parallels the river over which trucks go.

In order to help to pay their way on Highway 61 these trucks pay a gasoline tax and oil tax, tax on rubber, and camelback on their tires to help maintain that highway.

I believe the Illinois Central Railroad parallels that. The Illinois Central Railroad must maintain its own roadbed and, in addi-

tion to that, must pay its share of taxes to the State and local governments.

What taxes do the bargelines pay that might be compared to the taxes that the railroads pay, property taxes that the railroads pay, and the user taxes that the motor carriers pay running parallel to it?

Mr. BASKERVILLE. Well——

Mr. WILLIAMS. In spite of the fact that some—well, up in the hundreds of millions of dollars are spent each year to maintain that channel between Memphis and New Orleans in order that you can operate, you do not have to pay anything in the way of user charges?

Mr. BASKERVILLE. No, sir.

Mr. WILLIAMS. So you get the roadbed free.

You get your roadbed free of charge?

Mr. BASKERVILLE. Yes, sir.

Mr. WILLIAMS. No taxes except income taxes?

Mr. BASKERVILLE. And you have various State taxes and you have various other taxes.

Mr. WILLIAMS. And the Government maintains your roadbed for you?

Mr. BASKERVILLE. Yes, sir.

Mr. WILLIAMS. Well, does that not give you a very distinct advantage over these other modes of transportation that parallel your coasts?

Mr. BASKERVILLE. I think we should consider that the waterways—the Government must maintain the waterways for national defense and have them navigable.

Mr. WILLIAMS. That same argument applies to the rails and the highways, too.

Mr. BASKERVILLE. Now you are getting back to user charges of which the Government has always contended that the waterways—that they would always maintain the waterways free of tolls and taxes.

Mr. WILLIAMS. I understand that.

Mr. BASKERVILLE. And I think it has helped the economy of the country.

Mr. WILLIAMS. My question was not as to whether or not user charges should be imposed. My question was this: Does not the fact that you do not have to pay user charge, the fact that you operate on a publicly owned and publicly maintained waterway give you a distinct competitive advantage over the other modes of transportation, who are required to pay at least a portion of the burden of the taxes that are required to maintain their facilities?

Mr. BASKERVILLE. Yes, and also our type of transportation for bulk commodities inherently is a cheaper method.

Mr. WILLIAMS. That is quite true. Then you do have at least a tax advantage over the others?

You do not have to pay any local property taxes, do you?

Mr. BASKERVILLE. Oh, yes, we do; oh, yes.

Mr. WILLIAMS. On the roadbed?

Mr. BASKERVILLE. Oh, no, sir; no sir.

Mr. WILLIAMS. All right; that is all.

The CHAIRMAN. Thank you very much, Mr. Baskerville, for your statement.

Mr. BASKERVILLE. Thank you, sir.

Thank you, gentlemen.

The CHAIRMAN. The committee will be in recess until 2 o'clock. Mr. Wells will be the first witness.

(Whereupon at 12:17 p.m., the committee recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Mr. ROGERS of Florida (presiding). The committee will come to order, please.

It is the pleasure of the committee now to have before us Mr. Maxwell W. Wells. It is particularly pleasing to me to greet him as a fellow Floridian. We will be glad to hear your testimony.

STATEMENT OF MAXWELL W. WELLS, ORLANDO, FLA.

Mr. WELLS. Mr. Chairman, and members of the committee, my name is Maxwell W. Wells. I am an attorney and a member of the law firm of Maguire, Voorhis & Wells, with offices at 135 Wall Street in Orlando, Fla. I have been registered as a class A, or attorney practitioner, before the Interstate Commerce Commission since the first registration was authorized by it in 1929. Since 1926, I have appeared before that Commission, and in various courts, in numerous proceedings affecting transportation of Florida citrus fruits and vegetables. Except for the hearings in Ex parte 148 during World War II, when I was absent on active duty with the Navy, I have represented Florida citrus and vegetable interests in every general revenue proceeding from and including Ex parte 123 in 1937 down to the present time (with the sole exception of Ex parte 223 in which these Florida interests did not appear), as well as other rates cases and proceedings affecting rail, motor vehicle, and express transportation of Florida's fresh vegetables and Florida fresh citrus fruits and citrus fruit products. I participated in Ex parte MC–43, the trip-leasing case, and in MC–C–968, the determination of exempt commodity proceeding. Also, I have appeared on several occasions before this committee and committees of the Senate in hearings respecting proposed transportation legislation.

The Florida citrus and vegetable industries have always endeavored to support not only sound transportation legislation but also sound and practical interpretation and application of the laws as enacted. At the outset, I want to make it entirely clear that we are not among those who may always oppose proposed legislation. We actively supported the trip-leasing legislation a few years ago. We participated in the initiation of and the so-called roll-back legislation as to frozen foods in 1958. We supported the legislation for repeal of the transportation taxes. We joined with the Railway Express Agency in supporting the enactment of H.R. 1896, in 1961, for the repeal of section 557 of the 1916 mail pay act. More recently, during July 1962, we filed a statement supporting the REA Express position seeking repeal of the express fourth section, the enactment of H.R. 4272.

Of course, consistently since the initial introduction of the Motor Carrier Act we have supported the enactment and the retention of the agricultural exemption of section 203(b)(6) of the Interstate Commerce Act.

I am appearing here today as attorney for Growers & Shippers League of Florida and Florida Fruit & Vegetable Association. The latter is a nonprofit agricultural trade association incorporated under the laws of Florida representing fresh fruit and vegetable growers and shippers, with its principal office at 4401 East Colonial Drive, Orlando, Fla. The former is a voluntary nonprofit organization whose members are growers and shippers of citrus fruits and vegetables in and from Florida, with offices at 45 West Central Avenue, Orlando, Fla.; and it is the transportation agency of Florida Citrus Mutual, Florida Canners Association, and Florida Citrus Commission, the latter commission being the State agency created by the Florida Legislature and charged with the statutory duty of protecting interests of the Florida citrus industry with respect to transportation facilities and transportation rates and charges.

Citrus fruits and vegetables are grown in Florida, principally for sale, either in fresh fruit and vegetable channels, or as canned products or as frozen concentrates. Because of the huge volume produced, the amounts consumed in the fresh form in Florida are relatively insignificant.

The major consuming area of our fresh fruits and vegetables is the eastern part of the United States, the great centers of population extending from Kansas City to the eastern seaboard. The Florida citrus and vegetable industries use all modes of transportation. We need all modes to transport our products in great volume to the great consuming markets of our Nation. We are convinced that our shippers have, and ought to have, the free right and choice to select the proper form or mode of transportation which they believe to be best suited to the individual needs of each. Both the carriers and the shipping public, producers and consumers alike, are entitled to continued advances in technological improvements; and they are entitled to share in the benefits therefrom. Also, we supported the 1958 legislation in the belief that each mode of transportation has the right to exploit its inherent advantages by the making of rates which will permit the free movement of traffic by that mode; that such right also benefits the general public, including the growers and shippers; and that no carrier should be required to maintain rates which would be unreasonable, for the purpose of protecting the traffic of a competing carrier.

We support the statements in the President's message on transportation that:

> Less Federal regulation and subsidization is in the long run a prime prerequisite of a healthy intercity transportation network. The basic objective of our Nation's transportation system must be to assure the availability of the fast, safe, and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security, and other broad public objectives.
>
> Users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the service they desire at the lowest total cost, both public and private.
>
> This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately owned facilities, operating under the incentives of private profit and the checks of competition to the maximum extent practicable.

We do not disagree that there should be "equal competitive opportunity," "equality of opportunity for all forms of transportation and their users and undue preference to none." Nor do we disagree with

the President's views that "extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for" agricultural commodities.

We understand that the major purpose of H.R. 11583 and H.R. 11584 (and the companion bills in the Senate, S. 3243 and S. 3242) is to promote this objective.

We do not understand that either bill contains any proposal to repeal, alter or modify the existing agricultural exemption in section 203(b)(6) of the act. Indeed, the opposite is true, for it is to remove the minimum rate shackles from the railroads and other carriers, to permit the forces of competition to operate more freely, to restore more equal opportunity to each of the carriers, to enable them more freely to implement their managerial discretion—in short, to accomplish what the President characterized as "the preferable way to eliminate the existing inequality."

I think it is unfortunate that the Chairman of the Interstate Commerce Commission in his recent statement to this committee attempts to inject a new and different proposal, not embodied in the pending legislation. There have been suggestions in recent years for the repeal, modification, limitation, and other restriction of the agricultural exemption, all of which is but a repetition of the Commission's stand before 1935 that there be no exemption. All of those, the "primary market" concept, the "local market" suggestion, and now this new "three axle" maximum restriction, have been and are completely unacceptable to the growers and shippers of Florida citrus fruits and vegetables. We urge that as the former suggestions have been discarded by the Congress, this new proposed emasculation of the agricultural exemption be not further considered.

Mr. Chairman, there is an excellent legislative history, interpretation and discussion on the exemption, in the very carefully prepared opinion of the district court for the northern district of Iowa, 1953, in the case of *Interstate Commerce Commission* v. *Allen E. Kroblin, Inc.*, that report, in its entirety was incorporated in the Senate report on a bill H.R. 3203, July 8 and 9, 1953, in the testimony of Mr. Karl Loos, who was then Solicitor for the Department of Agriculture. It appears on pages 126 to 156 of that report. The court's opinion in the district court is reported in 113 Fed. Supp. 599 and it was affirmed by the Eighth Circuit Court of Appeals in 212 Fed. 2d 555, and certiorari was denied by the Supreme Court in 348 U.S. 836. That was in 1954.

And if I may, I should like to submit a certified copy of that opinion as an appendix to my statement before this committee.

Mr. ROGERS of Florida. Without objection, we will be glad to have it made a part of the files of the committee.

(The document referred to will be found in the files of the committee.)

Mr. WELLS. I believe that the logical and practical approach to this recurring subject over the years was clearly and properly stated by Mr. Jervis Langdon, president of the B. & O., that—

> there is the very practical consideration that regulation of * * * motor carrier rates on agricultural * * * products is "deadlocked" and thus impossible to achieve.

He made what he termed his principal point, that—

> equal treatment of the several forms of transportation * * * can only be approached (by legislation such as H.R. 11583) * * * by exempting the railroads and not by regulating the other forms.

Indeed, it is my understanding that the railroads are not here seeking to repeal, alter, or impair the agricultural exemption of section 203(b)(6), and that the president of the Association of American Railroads stated, in substance, to this committee that they are in favor of less regulation for all modes of transportation, including of course, relief from minimum rate regulation, rather than more regulation for all.

Since there is no proposal in H.R. 11583 for altering section 203(b)(6), I shall not here repeat the many compelling reasons submitted on former occasions for the retention of the exemption. Therefore, I shall say merely that the Florida citrus and vegetable industries concur in the 1962 statement of reaffirmance of transportation policy by the United Fresh Fruit & Vegetable Association with regard to the continued exemption from economic regulation of carriers of agricultural products, where it was said:

> Rapid, dependable, efficient, low cost, and flexible transportation is essential to the fresh fruit and vegetable industry, and the free choice of modes of transportation has always been essential to growers, shippers, handlers, and retailers, and has been beneficial to consumers.
>
> Great confusion exists because of the failure on the part of some to distinguish between valid, legal, and beneficial exempt transportation on the one hand and illegal "gray area" violations on the other. * * *
>
> Therefore, in this reaffirmation, we believe the beneficient agricultural exemption of section 203(b)(6) of the Interstate Commerce Act must be preserved and must not be in anywise curtailed or restricted for fresh fruits and vegetables.

Now, specifically as to H.R. 11583, the only section which affects substantially and practically the fresh fruits and vegetables in which we are interested is section 1. To the extent that section 1 is intended to free the railroads from control as to minimum rates on agricultural commodies, that is—

> the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge—

the Florida interests for whom I appear support the enactment of that provision. The elimination of the minimum rate powers of the Commission will leave intact and in full force and effect the shippers' basic protection of the Interstate Commerce Act, sections 1, 2, 3, 4, and 6, as well as the rule of ratemaking in section 15(a) and the provisions of sections 13 and 15. I believe that the elimination of the minimum rate control is entirely in keeping with the basic purpose and policy of the act that rates for each mode of transportation ought to be based on considerations and factors affecting the particular mode and the latter given effect so as to preserve the inherent advantages of transportation by that carrier. In other words:

> Sound transportation legislation ought not to require one carrier to raise its rates or to maintain a higher level of rates for the purpose of permitting another type of carrier to share the traffic.

Instead of elaborating in more detail on this point here, may I respectfully refer to a part of my statement filed with the Senate Committee on Commerce in May 1961, with respect to S. 1197, pages

322 to 324 of that printed record, in which I reviewed some of the statutes and decisions thereon.

I refer to the pages of that record where I reviewed some of the statutes and decisions.

I do not share the fears of some who have expressed the suspicion that when minimum rate control is lifted the rail carriers would place in effect such low noncompensatory rates as would destroy their competition and then when competition had been eliminated they would increase the rail rates to an unprecedentedly high level. In the first place, I do not know of any responsible rail management in this day of keen competition and need of the rails for all the net operating revenue they can obtain who would adopt such destructive tactics. Also, the suggestion ignores the nature of the present day competition, the many thousands of private carriers and owner-operators engaged in transporting fresh fruits and fresh vegetables, who have shown an amazing ability to survive under the most adverse circumstances, and who have demonstrated the superior advantages in some situations of exempt motor carrier transportation. I do not believe that the rail carriers would dare to risk the hazards of unduly low rates on some commodities and the possible effects thereof on their entire rate structure and continued economic life.

Again, I suggest that those who express such fears of self-destructive lowering of rates have entirely overlooked the historical fact that absence of minimum rate control is not something new and radical. For more than 30 years, the Interstate Commerce Act was administered without any minimum rate powers. There was never any minimum rate provisions until the Transportation Act of 1920.

On this point, I believe the following language of Mr. Justice Brandeis, speaking for the Supreme Court in 1919 opinion in *Skinner and Eddy* v. *United States*, 63 L. ed. 772, 249 U.S. 557, text pages 564 to 567, is pertinent:

> In construing this provision (the fourth section) it is important to bear in mind the limits of the Commission's control over rates. Neither the act to regulate commerce nor any amendment thereof has taken from the carriers the power which they originally possessed to initiate rates; that is, the power, in the first instance, to fix rates or to increase or to reduce them. Legislation of Congress confers now upon the Commission ample powers to prevent by direct action the exaction of excessively high rates. The original act, proceeding upon the common-law rule which prohibits public carriers from charging more than reasonable rates, gave the Commission power to declare illegal one unduly high; but even after such a determination the Commission lacked the power to fix the rate which should be charged. * * *
>
> Effective control was not secured until the act of 1906 * * * had given to the Commission the power to fix, after such hearing, the rate which should be charged * * *, and the act of 1910 had given it power to suspend, during investigation, tariffs for new rates, and placed upon the carrier the burden of proof to establish the reasonableness of the increased rates.
>
> Congress, however, steadfastly withheld from the Commission power to prevent by direct action the charging of unreasonably low rates. The common law did not recognize that the rate of a common carrier might be so low as to constitute a wrong; and Congress has declined to declare such a rule. Despite the original act to regulate commerce and all amendments, railroads still have power to fix rates as low as they choose. The Commission's power over them in this respect extends no further than to discourage the making of unduly low rates by applying deterrents. One such deterrent is found in the fact that low rates, because voluntarily established by the carrier, may be accepted by the Commission as evidence that other rates, actual or proposed, for comparable service, are unreasonably high. * * * The voluntary making of unremuneratively low rates

in important traffic may also tend to induce the Commission to resist appeals of carriers for general rate increases on the ground of financial necessities. But the main source of the Commission's influence to prevent excessively low rates lies in its power to prevent unjust discrimination. * * * The order prohibiting the unjust discrimination, however, leaves the carrier free to continue the lower rate; the compulsion being that if the low rate is retained, the rate applicable to the locality or article discriminated against must be reduced. That is, the carrier may remove the discrimination either by raising the lower rate to the relative level of the higher, or by lowering the higher to the level of the lower, or by equalizing conditions through fixing rates at some intermediate point. * * *

A special group of cases in which the Commission may indirectly prevent unduly low rates through its power to prevent unjust discrimination is that provided for by the long- and short-haul clause. It was enacted to remedy one large class of discriminations by creating a legislative presumption that the charge of more for a short haul under substantially similar circumstances and conditions than for a longer distance over the same line in the same direction was unjust. As originally enacted, the provision was construed to authorize the carrier to determine primarily whether the required dissimilarity of circumstances and conditions existed, and also to authorize the acceptance of competitive conditions as a justification of a lower rate for the longer distance. So construed, the provisions proved inefficacious, and the act was amended in 1910 by striking out the "substantially similar circumstances and conditions" clause and making the prohibition absolute except to "the extent to which such designated common carrier may be relieved from the operation of this section" by the Commission. * * * But the lack of power to prevent by direct action excessively low rates remains; the carrier still having the option, if relief from the operation of the fourth section is denied, to keep in effect the low rate to the more distant point by lowering the rates to intermediate points.

The last paragraph of section 4, here in question, which was added by the act of 1910, was designed to prevent the railroads from killing water competition by making excessively low rates. But again Congress refrained from prohibiting the carrier to reduce the rate, and declined to confer upon the Commission power to prevent by direct action a reduction. The act still leaves the carrier absolutely free to make as low a rate as it chooses; and merely provides another deterrent, in declaring that, if the rate is once reduced in competition with a water route or routes, it cannot, thereafter, be increased, "unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

As already noted, a major purpose of H.R. 11583 is to give to the railroads wider opportunities, freed from unnecessary restrictions, to compete for traffic which it may efficiently handle. It appears to us that section 1(b) for amendment of section 5(a) of the Interstate Commerce Act is not in conformity with the basic purpose. In our opinion the Reed-Bulwinkle bill has served a useful and beneficent purpose, and it ought not now to be restricted. Under the terms of that bill, much needless litigation over rates has been avoided. Shippers and carriers have been enabled to discuss needed rate adjustments among themselves, and new rate proposals appearing on the public dockets of rate bureaus not only have informed all interested parties of such proposals but also have permitted free interchange of views by all concerned in advance of the effectiveness of new rates.

It has long been the established fact that the Federal Trade Commission has been empowered and directed to prevent persons, partnerships, or corporations from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce (15 U.S.C. sec. 45). However, there are several well-recognized exceptions, viz: banks, common carriers subject to the acts to regulate commerce, air carriers and foreign air carriers subject to chapter 9 of title 49, and packers and stockyards subject to sections 181, and so forth, of title 7. By those exceptions, dual responsibility has been avoided. It

appears to us that the injection of new agencies, whether Federal Trade or the Department of Justice in connection with the administration of the antitrust laws as they affect railroads would create new difficulties, greater uncertainty by reason of two agencies being in control, and duplication of administrative effort, costs and control of operation. It is our view that the Interstate Commerce Commission should remain the sole administrative agency with whom the rail lines will have to deal.

Because of the same reasons, we respectfully oppose section 11 of H.R. 11584, which is intended to transfer administration of loan guaranties from the Interstate Commerce Commission to the Department of Commerce. Part V of the Interstate Commerce Act, 49 United States Code sections 1231–1240 vests that power in the Commission with respect to guaranty of loans. The proposed amendment, in my view, superimposes an additional authority required to act. It seems to be the intent of the proposed bill that the Commission shall continue to give consideration to such matters, to consult with the Secretary, to develop and prepare its views thereon, and to make recommendations with respect thereto. It is respectfully submitted that the Commission is fully capable of continuing its administration of the loan guaranty laws. It receives the reports of the carriers. It keeps the records. It prepares analyses from time to time of operating results, and it is in better position to perform the necessary services economically and expeditiously.

In his statement to the committee, the Chairman of the Interstate Commerce Commission devoted five pages of his prepared statement to recommending that section 6 of H.R. 11584 to amend section 222(h) of the act be enacted with a suggested change. His objections to the present law includes (*a*) that "criminal prosecutions must be brought in the district in which the violations occurred," (*b*) that "civil forfeiture proceeding may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found," (*c*) that for civil proceedings "less time is needed for investigating violations because of the difference in quantum of proof," (*d*) that in "a number of vehicle arrangements" believed by the Commission to be illegal "it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and willfulness and proving guilt beyond a reasonable doubt," (*e*) that "the possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, have very little effect as a deterrent to would-be violators," (*f*) that "investigations looking toward" criminal prosecutions are "extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense," and finally (*g*) he objects to "proceeding through the Department of Justice" because of "the time consumed in convincing the U.S. attorney that an action should be filed."

I believe that the mere recital of his reasons shows the fallacy of the proposed amendment. I am sure that the time-honored remedy of the injunctive process is a practical deterrent used in many different situations. His reference to "a civil injunction action" being one "where there is no pecuniary penalty" is contrary to the normal concept of the powers of the judiciary to enforce its injunctive orders by contempt proceedings, involving fines as well as possible imprisonment in flagrant cases.

There is no doubt that whether a penalty is recovered in a civil action or by a criminal prosecution, "it is still a punishment for the infraction of the law. The term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution" (Mr. Justice Field speaking for Supreme Court in 1881, 102 U.S. 611 text).

It would be an anomaly to provide for a civil penalty for an unintentional violation in a greater amount than a criminal fine for knowingly and willfully violating the same provision of law, or rule, regulation, requirement, or order thereunder, or any term or condition. Section 322(a) of title 49, United States Code, already provides a fine for knowingly and willfully violating the act or a rule, et cetera, thereunder.

I respectfully suggest that the proposed amendment of section 222(h) is unnecessary and unreasonable. A greater use of the injunctive process under the existing provisions of section 222(h) would provide adequate relief. The discovery procedures of the Federal Rules of Civil Procedure, if used, will make investigations by the Commission's staff less burdensome and at the same time more effective.

I should like to suggest, Mr. Chairman, if I may, that the recent S. 2560 which, I believe, has been passed by the Senate and is under consideration by this committee, likewise contains a provision for the amendment of section 222(h) of the Interstate Commerce Commission Act, and while it does contain the elimination of knowingly and willfully provision which I discussed a moment ago, it, also contains a provision for a civil penalty but in the lesser amount that is suggested in the proposed bill. And, certainly, both of them cannot be necessary.

Thank you very much.

Mr. ROGERS of Florida. Thank you very much, Mr. Wells, for your very fine statement. We certainly appreciate it. Do you have any questions, Mr. Younger?

Mr. YOUNGER. Thanks, Mr. Chairman. I, also, want to thank the witness for a very good statement.

Would you say that it would be a fair analysis that the policy of rescinding the minimum rate would actually be the same as extension of the bulk commodity exemption provision and extension of the agricultural exemption provision to the railroads?

Mr. WELLS. I do not believe that you can go quite that far. I doubt whether it does the same thing that the complete elimination of all controls—all regulatory controls do. In the first place, you have your provision of the requirements for certificates of public convenience and necessity, or in the case of contract carriers for permits.

Then again, you have, insofar as the railroads are concerned, even with this deregulation as to minimum rates in effect—you still have the provision as to all rates, that they must not be in excess of a just and reasonable maximum—there must be no unjust discrimination or unlawful prejudice or preference; the long-and-short-haul clauses of the fourth section and the general rule of ratemaking in section 15(a) which gives the general policy, and to that extent does provide a bit of regulation that is in excess of that now and in the future applicable to the exempt carriers.

Mr. YOUNGER. Then you would say that H.R. 11583 does not give to the railroads all of the current rights which are given to the other modes by these exemptions?

Mr. WELLS. I think that is correct.

Mr. YOUNGER. The railroads would still have to publish their rates, would they not?

Mr. WELLS. The railroads would still have to publish the rates, and the rates would still have to conform in every respect to the sections I have mentioned and, also, to the discretionary suspension power of the Commission under section 15(7) of the act.

Mr. YOUNGER. You do a lot of business with trucks?

Mr. WELLS. In Florida, yes, sir, principally as to our fresh fruits and vegetables. Our citrus industry, of course, is divided into fresh fruit deals and, also, into our canned goods and frozen citrus products.

Mr. YOUNGER. You still do a lot of business, though, by trucks?

Mr. WELLS. Quite a lot, yes.

Mr. YOUNGER. Do you think that they could live under this legislation?

Mr. WELLS. I do not think there is any question but that they can, yes, sir.

Mr. YOUNGER. It would not be your feeling that if this bill were passed that it would kill the trucking business or that it would kill the inland waterways?

Mr. WELLS. We, certainly, do not feel that way, or otherwise I would not be here suggesting the enactment of the deregulation of the minimum rates of the railroads.

I must confess, since you included both the trucks and the inland waterways, that insofar as our fresh citrus and vegetables are concerned the inland waterway is rather an insignificant factor in that.

Mr. YOUNGER. I inferred that from your testimony.

Mr. WELLS. Yes. I think that we will have to say that at the least it is highly speculative, is my view of it.

Mr. YOUNGER. Thank you.

Mr. ROGERS of Florida. Mr. Devine.

Mr. DEVINE. Your testimony was most refreshing, particularly in that you point out that the Chairman of the Interstate Commerce Commission and others have brought into this controversy matters that are not even the subject of this legislation.

Mr. WELLS. That is right, yes, sir.

Mr. DEVINE. Thank you.

Mr. ROGERS of Florida. I wonder about your feeling about the Department of Justice coming in under the provisions of the antitrust laws—that could happen under the proposed bill. I wonder if you would expand that a little bit.

Mr. WELLS. Of course, the Department of Justice, Mr. Chairman, has been before the Interstate Commerce Commission in a number of cases and proceedings, particularly under the part V, or the Reed-Bulwinkle bill. We have no objection to that, but we do think that if you superimpose upon the Commission's control and regulation some matter not where the Commission would still make its determination according to the recognized standards of the Commission, but to have a different agency make its own interpretation and possibly a different interpretation, that it would be subjecting the carriers to

an additional unecessary control and regulation, and when it comes to serving two masters we have a very substantial record of difficulty and that is our general position as to the thought that I have tried to express about bringing the Department of Justice in as a policeman, acting alongside and, possibly, with similar powers, but a different approach, possibly to that of the Commission. We think the Commission could do just as well, and that it would be much cheaper and more expeditious to have it handled that way, as it has in the past.

Mr. ROGERS of Florida. What I was thinking about is if the legislation now would remove controls of the Interstate Commerce Commission over the bulk commodities on the rails, it has been suggested that in case someone gets into the situation of trying to put another person out of business by lowering the rates, and so forth, then it would be something for the Justice Department to handle in its antitrust department.

Mr. WELLS. Of course, Mr. Chairman, as you know, the inland waterway and bulk commodity movement in and out of Florida is very small, because of the face that we are at the end of the line, so to speak, for one reason. And my thought has been expressed with relationship to our agricultural exemption with which we have, probably, had as much experience as anybody in the country, so that I do not think that anything that I could add as to the bulk commodities would be based on any experience we have had; and, probably, would not be of much value to the committee.

Mr. ROGERS of Florida. All right, thank you.

Mr. Kornegay, any questions?

Mr. KORNEGAY. No questions.

Mr. ROGERS of Florida. Thank you very much.

Mr. WELLS. Thank you.

Mr. ROGERS of Florida. Our next witness will be Mr. C. J. Harriss, vice president, Continental Grain Co., New York.

We will be glad to hear you now.

STATEMENT OF C. J. HARRISS, VICE PRESIDENT, CONTINENTAL GRAIN CO., NEW YORK, N.Y.

Mr. HARRISS. Mr. Chairman and members of the committee, my name is C. J. Harriss. I am employed as a vice president of Continental Grain Co., with offices at 2 Broadway, New York, N.Y. My duties include supervision of transportation activities.

With the exception of a comparatively short period in 1944 and 1945, when I was in the armed services, I have been active in grain transportation matters for well over 30 years. Prior to coming to Continental Grain Co. in January 1956, I was executive secretary and transportation commissioner of the Corn Exchange of Buffalo, N.Y., for 4 years and, prior to that was, for many years, traffic manager of the Enid (Okla.) Board of Trade. These latter organizations are grain exchanges, located at important grain centers.

Continental Grain Co., operating over 100 million bushels of grain storage capacity at strategic marketing centers in the United States, is engaged in the handling, merchandising, and exporting of all grains, and in substantial volumes. We are vitally interested in a sound and competitive transportation system for the movements of grains in

interstate and foreign commerce. We wish to be recorded here as supporting, in general, H.R. 11583 and those portions of H.R. 11584 dealing with experimentation in ratemaking.

I am sure your committee is well aware of the heavy volume of grain moving in interstate commerce.

We are appreciative of this opportunity to present to your committee the viewpoint of a heavy grain receiver and shipper, using all modes of transportation.

Insofar as I know, I believe this is the first appearance, at these hearings, of a grain shipper. I know organizations of many kinds have appeared.

Bulk grain in interstate transportation is freighted via rail, via truck, and via waterway. Each of thest three modes is heavily utized. As an example, using our own bulk grain traffic, nationwide (the latest year available to me) 64.19 percent of the grain unloaded is from rail transport; 21.95 percent of the grain unloaded is from truck transport; and 13.86 percent is from water transport. On grain loaded out, excluding grain loaded into vessels at ports of export, our experience, nationwide, is: 66.97 percent into rail cars; 7.98 percent into trucks; and 25.05 percent into water transport. The percentages by rail, of course, have been, over the past several years, steadily shrinking. Grain moving in interstate commerce via motor truck is exempt from any rate regulation whatsoever by the Interstate Commerce Commission. Grain moving in interstate commerce, in bulk, via waterway, is exempt from any rate regulation whatsoever by the Interstate Commerce Commission.[1]

As to the very rigid regulation of grain rates on interstate commerce moving via rail, little comment should be necessary to this committee, since you know full well that part I of the act applies to rail grain movements, just as it did when rail was a monopoly mode of transport.

Thus, you gentlemen, are confronted with the problem of correcting an obviously unjust situation, under which there are three principal modes of grain transportation. (I am speaking of bulk grain, now, gentlemen) and only one of them is subject to Federal rate regulation—rate regulation designed and enforced as if grain could be transported only by a rail monopoly.

This situation can be subject to only two actions; either (*a*) lighten the statutory regulation of interstate commerce in grain moving via rail; or (*b*) draw up a rigid statutory provision, or provisions, closely regulating all rates and practices in connection with the interstate movement of grain via truck and via waterways.

This morning you heard of a third solution, that is, to maintain the status quo.

We urge upon you what we believe to be the only practical and proper solution, and that solution is considerably less regulation, when moving via rail, as is provided in H.R. 11583. The alternative of rigid truck and barge Federal rate regulation we think impractical because: (*a*) first and foremost, the free competitive enterprise system of ratemaking for trucked and barged grain is working, and, we believe, will continue to work via the waterways and via the highways.

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[1] Interstate Commerce Act, pt. II, sec. 203(b)6, and pt. III, sec. 303(b).

Such free system should be extended to the third mode—the rail mode—of transportation insofar as possible; (*b*) an extension of rigid rate regulation to grain moving via highway would, in our opinion, be almost unenforceable, and (*c*) an extension of rigid regulation to include the highway and waterway modes could result in higher transportation costs—costs the public ultimately pays. When we say an extension of regulation could result in higher transportation costs, we do not want to be understood as just theorizing. As a concrete example, we can cite the following: In Texas, the Railroad Commission of Texas does exercise rate regulatory authority over bulk grain moving via highway in intrastate commerce. However, grain moving from the Texas Panhandle to a Texas port for export through the State of Oklahoma is, of course, not subject to the jurisdiction of the Railroad Commission of Texas and, when such grain is moving via motortruck, it is, of course, exempt from any interstate rate regulation under the exemptions in part II of the Interstate Commerce Act, section 203(b)6. Now, from Spearman, Tex., to Houston for export, our Texas office reports that the going exempt (interstate) rate to Houston was, on July 6, 1962, 24½ cents per wheat bushel. Contrasted to this rate, for like distance, the Railroad Commission of Texas, Motor Freight Commodity Tariff 8–B, names a rate of 31.2 cents per wheat bushel. That is 52 cents per 100 pounds.

Going to our support of H.R. 11584, specifically, section 2(a) therein, we would like to point out that the presently effective law seriously inhibits rail technological innovations being proven, or tested. As an example, our company has made extensive investigation into a plan wherein we would have built for us, and our ownership, special high-capacity rail grain equipment, which could economically move huge quantities of bulk grain by rail. The proper utilization of such equipment which, incidentally, would handle 135 tons of grain per car, would require rates on a completely different basis than those now available—that is, our plan would call for rates in cents per carload, which would actually amount to little more than towing rates. We believe these rates would be very profitable to rail carriers. Now, while we are able and ready to invest heavily in these cars, and to innovate such types of rail transportation it would, under the present regulatory provisions, be the height of foolishness to cause the cars to be built in the face of the almost inevitable lengthy and costly delay pending litigation which not only would be expected, but would be almost certain under the present law. Via truck or via barge, however, one can more safely enter into experimentation involving special equipment. Again, I am speaking of bulk grain here.

For example, our company participated in an experiment, now proven successful, of a specially designed self-unloading grain barge, utilized now by us on the Columbia River. There is, of course, no fear of prolonged delay or any awaiting for approval of innovations involving rates on barge transported bulk grains. We think, therefore, that, that portion of President Kennedy's message dealing with the allowing of experimentation by common carriers in ratemaking without the hazards to an investment as results from suspension peril is most important, and should be promptly effectuated into law.

We are fully aware of the tasks facing the present Congress, and of the fact that the public press and many private opinions accept as a

fact that these bills will not be acted upon, but will be discussed and rediscussed and resubmitted for further discussion and possible action in 1963 or later. We cannot accept the premise that Congress will delay. The situation, which we have outlined as to rate regulation, is one under which this Congress and this committee should promptly approve legislation now before you. Too much delay and two much study from here on out is endangering continuance of essential public transportation of freight.

We reiterate, therefore, our belief, that the present regulatory situation, as it applies to bulk grain, needs to be changed now, not later. And that competition in the transportation market should be allowed to become a greater significance in the setting of rail rates on grain. The recommended legislation does, as you know, closely follow recommendations by the President in his message on transportation released April 4. It is difficult to see how another year's investigation and study can be justified.

Thank you very much.

Mr. ROGERS of Florida. Thank you, Mr. Harriss. We appreciate your appearance before the committee. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman. Mr. Harriss, you made a very excellent contribution to the committee's hearings. You are one shipper who uses all modes of transportation, as I understand it.

Mr. HARRISS. Yes, we do. This is shown in my percentages. We operate about 40 barges.

Mr. YOUNGER. Yes; you use the barge and rail and trucks?

Mr. HARRISS. Yes.

Mr. YOUNGER. Is it your conviction or feeling that if H.R. 11583 were enacted that it would put all of the truckers out of business and all of the bargelines out of business?

Mr. HARRISS. Certainly not, sir.

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

Mr. ROGERS of Florida. Mr. Devine?

First, Mr. Kornegay.

Mr. KORNEGAY. I just want to commend Mr. Harriss for a very fine statement and to say I have appreciated it. And I want to ask a very pertinent question, that is, whether or not the passage of this legislation would result in the railroads forcing all other modes of transportation out of business?

Mr. HARRISS. No, sir; I do not think that. I just want to add this, it seems to me it is a rather bad situation when rates cannot be lowered. I think that free competition should be allowed. As an example of lower rates being held up, if you please, I live in New Jersey, and would cite a New Jersey happening. I think it was just last week there was a press item from Governor Hugh's office—and I am not criticizing anyone here as to this fact—that, as the result of a request made by the State of New Jersey, and by the U.S. Department of Agriculture upon the Interstate Commerce Commission they were glad to announce, for the drought stricken farmers of New Jersey, that the Interstate Commerce Commission had issued an order allowing the railroads to cut their rates on hay 25 percent—allowing them to do that. If a carrier by rail can cut rates, why can't he be allowed to do it, without an ICC order? Well, this situation at present just does not seem, to a businessman, believable, but, of course, it is true.

Mr. KORNEGAY. No further questions.

Mr. ROGERS of Florida. Mr. Devine?

Mr. DEVINE. No questions, Mr. Chairman.

Mr. ROGERS of Florida. Mr. Harriss, it is interesting to note your testimony. On page 2 you have quoted figures of the shipment of grain. You say that grain unloaded by rail is 64.19 percent, I believe, 21.95 by truck, and 13 percent by water. And grain loaded out on water transport jumps up to 25 percent, and the trucks go down to 7 percent. I wonder if you would expand on that just a little, why there would be that difference?

Mr. HARRISS. In the first place, these are the only figures that I could accurately give you, and they reflect the consolidation of all of our major terminal plants. I left out the country elevators.

Secondly, in answer to your question I might say that this reflects water locations operated by us, sizable elevators, which bring grain in by motortruck and ship out by barge. That would reflect that situation that you spoke of.

Mr. ROGERS of Florida. Would these figures be affected greatly, do you think, if this bill were enacted, taking off the rate regulation of the railroads?

Mr. HARRISS. I do not know. This is a difficult question—I do not know.

Mr. ROGERS of Florida. Thank you very much, Mr. Harriss. Your testimony has been helpful to the committee.

Mr. HARRISS. Thank you.

Mr. ROGERS of Florida. The next witness is Mr. Robert Corber, counsel for the National Association of Motor Bus Owners. We shall be glad to hear you now.

STATEMENT OF ROBERT J. CORBER, COUNSEL, NATIONAL ASSOCIATION OF MOTOR BUS OWNERS

Mr. CORBER. Mr. Chairman and members of the committee, my name is Robert J. Corber. I am appearing as counsel for the National Association of Motor Bus Owners.

NAMBO is the national trade association for the intercity motorbus industry. It serves as spokesman for nearly 1,000 carriers which account for about three-fourths of the intercity motorbus transportation in the United States.

The members of NAMBO are both large and small and they are found in every part of the country. They serve all the major cities in the United States. A large part of their operations are also devoted to furnishing the only means of public passenger transport in thousands of small communities which, for economic reasons, the railroads and airlines do not serve. I might add, parenthetically, that the bus lines serve more communities and carry more passengers than the railroads and airlines combined. Their service includes small package express and pouch mail operations as well as passenger transportation.

The objectives set forth in the President's message on transportation, dated April 4, 1962, for a strong, dynamic public transport system capable of providing safe transfortation at low cost to the public, clearly recognize fundamental problems in the industry today. As a vitally interested member of the public transport system the intercity bus industry welcomes the efforts of Government to deal with these

problems with a view to reaching the goals expressed in the President's message. It is in this light that we have reviewed H.R. 11583 and 11584. Some of the proposals in these bills strongly reinforce the President's goals and should, we believe, be adopted. In this category are proposals for greater use of commercial facilities by Government and encouragement of through routes and joint rates. However, our experience over the last quarter century and more leads us to the conclusion that four of the proposals in these bills would not serve the desired goals. Accordingly, we urge that they be rejected by your committee.

First, we think the proposal for elimination of minimum rate regulation for passenger operations is objectionable. Several times within the past 5 years Congress has considered proposals to restrict minimum rate regulation by the Interstate Commerce Commission. The attempt to establish the "three shall nots" in H.R. 5523 and H.R. 5524 in the 85th Congress is an example of this approach to new forms of rate regulation. Congress found that idea for reduced minimum rate protection undesirable and we believe it should, a fortiori, reject this proposal for total abolition of minimum rate control with respect to passengers.

Mr. ROGERS of Florida. Excuse me, a minute. Does this legislation propose to take off all minimum rates?

Mr. CORBER. Insofar as passengers are concerned, Mr. Chairman, it would eliminate the authority of the Interstate Commerce Commission to regulate minimums there.

Mr. ROGERS of Florida. Thank you.

Mr. CORBER. The antitrust laws, suggested in this legislation as the alternative to minimum rate regulation, are not adequate protection against unfair competitive practices. The laws would presumably prevent fare and rate reductions for predatory purposes. But this is an uncertain standard by which to judge the propriety of rates and fares. And even if it were capable of precise definition, it leaves open the important question of cost standards. In the absence of predatory intent there would probably be no restriction on the cost level which could be used to support rate and fare reductions.

There could well be a return to the disastrous rate wars which plagued transportation prior to enactment of the regulatory statutes if the powers implicit in minimum rate control were transferred from the ICC to the courts under the antitrust laws. No carrier should be relegated to tribunals lacking the experience, expertness, and procedures for dealing effectively with complex rate issues that are available to the Interstate Commerce Commission for protection against the consequences of below cost rates published by competitiors, much less for protection from rate wars.

The financial makeup of bus companies leaves them unable to absorb losses from below-cost fares to the same extent as rail carriers. Bus companies can, for this reason, be at a tremendous disadvantage with rail carriers if fares are not based on fully distributed cost of the service.

The typical bus company is highly sensitive to revenue changes. This stems from the fact that the bus industry is primarily a service industry—I mean by that it depends upon the service which it sells for survival more than it does on the property which is devoted to

the service—its investment in property is small compared to services performed. Attached hereto as appendix A is a table showing the value of property owned by bus carriers in relation to revenues. As the table indicates, the property required for bus operations averages less than 50 cents for each annual dollar of revenue.

Appendix B shows similar information for rail carriers. Their investment in property averaged $2.83 in 1960 for each dollar of revenue—over five times that of the bus carriers.

The corollary of these figures is that a much higher proportion of bus company costs of operations are variable or out-of-pocket costs than is true of railroads. Stated differently, the fixed costs attributable to investment are much greater in the case of railroads than they are in the case of bus companies. Over 90 percent of bus company costs are directly assignable or out-of-pocket costs. Rail passenger service has about 75 percent of these costs which are directly assignable, and the figure is even lower in the case of the airlines. Thus, if passenger fares or express rates were based on out-of-pocket costs instead of full costs, bus companies would be at a competitive disadvantage of more than five to one.

Railroads are far less vulnerable to revenue changes than bus operators. They operate with a greater margin of revenue over expenses. Further, their diversified transportation interests enable them to absorb losses from passenger service through revenues derived from freight operations. In fact, the rail carriers for years have underwritten passenger deficits with profits from freight operations.

Appendix C, attached hereto, shows that the revenue per passenger-mile is roughly similar for rail coach and bus services. It was 2.78 cents for buses and 2.86 cents for rails in 1961. While the railroads are nearly competitive with buses in passenger-mile revenues, the former have continued to incur large passenger deficits; insofar as their coach operations are concerned the former has continued to incur large passenger deficits. As set forth in appendix C, the passenger deficit of rails was $402.2 million in 1961. The deficit has been declining with the abandonment of passenger services. This is reflected in the comparison in appendix C of rail passenger-car-miles with the deficit during the period 1956 through 1961. Rail passenger-car-miles have decline from nearly 890 million in 1956 to about 679 million in 1961. Although this decline in operations is reducing the deficit, these figures show that rail carriers are continuing to compete with bus carriers at below-cost fares.

The proposed legislation would encourage railroads to prolong this kind of competition in the passenger field and would cause them to step up passenger operations. They enjoy financial resources not available to bus lines. They can bring about fare reductions which cause ruinous revenue losses for bus lines without corresponding effects on their own overall financial situation. They would thus be in a position to make temporary, selective use of below-cost fares in areas of competition with bus operators with the effect of driving bus lines swiftly out of business, sustaining little damage to themselves.

The legislation would also create further problems between bus companies and airlines. Section 5(d) of H.R. 11583 states the intent of Congress to reduce regulatory control over "minimum passenger fares of the air carriers * * * to the greatest extent consistent with

the public interest." Today local service and trunkline carriers are reducing air fares below coach levels for a minimum service designed to take passengers from buses. One carrier calls its service an "airbus" operation even though it is in no way related to bus operations. The purpose is to divert busline passengers to air service. Bus companies could not complain of these new developments if the fares for the air service were based on cost. However, the fares are substantially below costs of operations. When the airline is on subsidy, as some are, the losses from these services are made up by the taxpayer. This is unfair competition for buslines. But companies receive practically no aid from the Civil Aeronautics Board—which prefers to promote the airlines—under present provisions for minimum fare regulation. The situation would be even worse under the proposed legislation. Accordingly, we oppose section 5(d) of H.R. 11583.

Elimination of the exemption from the antitrust laws for joint action in regard to fares for passengers would be grievously injurious to the intercity bus industry. The development of efficient, safe and low-cost transportation for the thousands of communities served by intercity buses—many of which have no other form of public transportation service—has depended, to a large degree, on joint rate action in the industry.

Prior to enactment of the Motor Carrier Act in 1935, the motorbus industry was in a highly unstable condition. There were incessant rate wars which were destroying the capacity of the industry to sustain safe and reliable service. And there was no system of traffic interchange—joint through-route arrangements—to provide an integrated and cohesive network of bus transportation throughout the Nation. The cooperative action allowed carriers under the Motor Carrier Act corrected this situation. There is now stability and uniformity within the industry which has assured the public of safe, reliable, and low-cost transportation all over the country. This could not have been achieved without rate regulation by the Interstate Commerce Commission and joint action by motorbus carriers.

In our industry joint rate publication has been undertaken through the National Bus Traffic Association which was established by the carriers and exists independent of NAMBO. Without NBTA, many carriers would be simply unable to effectuate joint service and rate arrangements.

Most intercity bus operators are small businesses. Of the more than 1,000 bus companies furnishing intercity service, only about 15 percent are class I carriers with annual gross revenues of $200,000 or more. A number of these class I carriers actually operate as few as 10 buses. The smaller carriers do not maintain, and could not afford, traffic departments or rate experts. They must rely on NBTA for these services.

It is estimated that intercity buses serve 40,000 communities in the United States that have no other form of public passenger transportation. As a practical matter, most intercity carriers would be physically unable to contact other carriers serving these thousands of places and go through the infinite detail required to prepare individual tariffs. And even if they were able to undertake such extensive operations, they would necessarily engage in conferences and agreements which would raise serious questions under the antitrust laws. Thus, it is

operationally impracticable to forgo joint tariff and service arrangements through an agency such as NBTA and it would be impossible to comply with the law if there were no antitrust immunity. The only alternative to bus carriers would be a refusal to enter into joint arrangements with ultimate business failure and untold inconvenience and harm to the traveling public.

At the present time there are at least 25,000 establishments throughout the country which are equipped to sell a bus ticket to almost any destination in the United States or Canada, whether the trip be 50 or 3,000 lines in length and irrespective of the number of carriers over whose routes the journey is to be performed—often as many as a half dozen or more. Many of these establishments are small-town restaurants, filling stations, drugstores, or travel agencies. Their facilities are becoming even more important as carriers make long haul—even coast-to-coast—bus transportation available to the small communities these ticket-selling agencies serve. But with their limited facilities they could not handle numerous tariffs published by a multitude of carriers and must, as a practical matter, depend on a single integrated tariff of the kind published by NBTA on behalf of the carriers. These agencies and the service they offer would be jeopardized by the elimination of cooperative tariff action among the carriers.

There is no danger that cooperative action among the carriers will produce increased fares. Prior to Federal regulation in 1935, bus fares averaged 4 to 6 cents per passenger-mile. Today passenger fares average 2.78 cents per passenger-mile despite substantially increased costs. Increases in fares in recent years required by cost rises have consistently been less than increases in consumer and wholesale prices.

In addition, competition puts a ceiling on bus passenger fares. There is competition from the private passenger automobile and from other modes of carriers. The private automobile accounted for 90 percent of intercity travel in 1961. Railroads and buses accounted for 2.6 percent (a total of 5.2 percent) each of such intercity travel last year. Bus companies cannot meet that kind of competition and increase fares.

We do not approve and would never seek authority for joint action which would stifle competition or produce discriminations and preferences. However, we know from experience that cooperation in rates and service is essential to the stability of bus transportation and that, if it is not permitted, the public will most certainly be deprived of the kind of safe, reliable service it now receives. Regulation by the Interstate Commerce Commission prevents joint action from resulting in injury to the public and assures its use for improved services. It has worked to the advantage of the public in the past. It can continue to do so in the future. Accordingly, we strongly oppose amendment of the so-called Reed-Bulwinkle Act (section 5(a) of the act) to remove antitrust exemption for joint fare activities by passenger carriers.

Section 9 of H.R. 11583 would grant broad powers to Government agencies to enter into agreements for transportation services without advertising for bids. These powers extend to all kinds of transportation including mail transportation services.

For several years, NAMBO has attempted, on behalf of the bus industry, to generate interest in legislation to grant motor carriers equal-

ity of treatment with rail and air carriers in the transportation of mail. At the present time, there are no provisions in the Interstate Commerce Act for regulation of the transportation of mail by bus companies. As a result, mail is transported under a variety of arrangements with the Post Office Department outside the jurisdictional authority of the Interstate Commerce Commission.

Bus companies would prefer a sound regulatory approach to mail transportation which would be similar to the method of dealing with rail and air carriers. However, in the absence of appropriate legislation to that end, the industry urges adoption of the present legislation as it pertains to mail. I might interject there, Mr. Chairman, that the proposed legislation would not appear to change the existing law, insofar as bid requirements for mail are concerned. The existing law does not require the Post Office Department to advertise for bids where common carrier service is sought. And, apparently, the proposed law would not make any change in that respect. The procedure of advertising for bids has proved where it has been used by the Post Office Department cumbersome and unnecessary for Post Office needs. It results in administrative redtape and delays. It does not encourage responsibility in carrying out the transportation of mail. It enables unlicensed and unregulated carriers to engage in cutthroat bidding practices which are detrimental to long run postal service interests. It can result in needed revenues being diverted from responsible carriers subject to the regulatory jurisdiction of the Commission. For these reasons, the proposed system of negotiation is preferable to advertising for bids.

We are opposed, however, to extending the negotiation principle to other kinds of traffic. The compelling reason for eliminating bid requirements in the case of mail is just that the transportation of such traffic is not regulated by the Commission. The same reason does not apply to the passenger and express operations of intercity buses. These operations are regulated by the Commission. They produce safe and economical service for the Government.

Subjecting these nonmail operations to negotiations with a use of the overwhelming bargaining power of the Government would result in destructive rate reductions and consequent weakening of the financial condition of the carriers. The Government should not receive lower rates than the public except in times of emergency in our view. It has special rates available to it for special services and chartered operations. These will continue.

Chairman Murphy of the Interstate Commerce Commission outlined the dangers in extending special rates to the Government in his July 10, 1962, testimony on these bills. We are in agreement with the position stated by him.

The forfeitures prescribed by section 6 of H.R. 11584 appear to NAMBO to be unduly severe insofar as safety regulations are concerned. Intercity bus operators have an extraordinarily good safety

record and it is being improved each year. Passenger deaths in bus accidents have averaged 0.25 or less per 100 million passenger-miles each year since 1947. All deaths connected with bus operations have been less than 1.2 per 100 million passenger-miles each year since 1949 and the rate has been declining in most years. The passenger fatality rate for buses is typically about one-twentieth of that for automobiles, and is equal to or less than the rates for railroads and airlines.

The record of bus operator compliance with Commission safety regulations is high—higher than other regulated carriers as demonstrated in the investigation carried out by the Interstate Commerce Commission in Docket No. MC–40, sub. 1, safety regulations, in which hours of service regulations were amended and modified by the Commission. In the light of bus carrier safety achievements there is no need for further enforcement powers for the Commission. On the other hand, there is danger that further enforcement measures would unduly burden complying carriers in areas of the safety regulations which are not entirely clear in their meaning and application.

Inadvertent and minor violations of the safety regulations could occur within intention or knowledge of the carriers. The meaning of "on duty" time logged by drivers under the Commission's regulations is not always clear. The requirements in the Commission's regulations that all accidents be reported raises difficult questions in connection with such minor passenger incidents as jamming a finger in a window, tripping over a piece of luggage, and so forth. Exposing the carrier to forfeitures of $500, plus $250 for continuing violations in areas of uncertainty such as these could be grossly unfair and unnecessary for safety.

The apparent purpose of the legislative proposals we have mentioned is to increase competition and reduce rates. It is our view that under present circumstances this goal cannot be effectuated on the basis of sound economics. In 1961, class I motor bus operators had expenses of 48.6 cents per vehicle-mile.

Mr. ROGERS of Florida. Pardon me, did you say 48.6?

Mr. CORBER. Yes, sir. That is a correction in the prepared text.

Their revenues were only 49.2 cents. They would have operated with a deficit if it had not been for revenues from express, mail and newspapers which together accounted for 8.6 percent of total revenues or over 4 cents per vehicle-mile. In view of this, together with the fact that airlines are at or near a break-even point and the railroads are incurring annual passenger deficits in excess of $400 million, it is difficult to see how increased competition could result in lower fares. Indeed, lower fares under these circumstances would produce seriously uneconomic consequences. We, therefore, urge the committee to reject the provisions of H.R. 11583 and H.R. 11584 we have mentioned.

Mr. ROGERS of Florida. Thank you very much, Mr. Corber. We will make the tables attached to your statement a part of the record at this point.

(The tables referred to are as follow:)

APPENDIX A

Operating revenues and property owned, class I bus carriers

[Thousands of dollars]

Year	Revenues (total)	Property owned [1]	
		Total net value	Percent of revenues
1955	370,457	178,833	48.5
1956	387,243	176,717	45.6
1957	414,805	197,952	52.3
1958	417,112	210,479	50.5
1959	446,887	201,938	45.2
1960	471,345	212,311	45.0
1961	489,800	(n.a.)	(n.a.)

[1] "Net carrier operating property," representing depreciated value of buses, land, buildings, and equipment required for bus operations.
(n.a.) Information not available.

Source: "Bus Facts," 30th ed., National Association of Motor Bus Owners.

APPENDIX B

Operating revenues and net investment in railway property [1]

Year	Net investment in railway property	Operating revenues	Investment as percent of revenues
	Thousands	*Thousands*	
1955	$26,792,223	$10,495,453	255.3
1956	27,234,093	10,963,278	248.4
1957	27,892,363	10,919,930	255.4
1958	27,954,905	9,924,350	281.7
1959	27,917,917	10,206,584	273.5
1960	28,047,859	9,898,858	283.3

[1] Includes data for class I, II, and switching and terminal roads.

Source: "Transport Statistics in the United States, 1960," table 155-A; Interstate Commerce Commission, Bureau of Transport Economics and Statistics.

APPENDIX C

Rail and bus passenger revenue statistics

	1956	1957	1958	1959	1960	1961
Revenue per passenger mile—rail coach: [1]						
Cents	2.56	2.71	2.76	2.77	2.80	2.86
Index	100	106	108	108	109	112
Revenue per passenger mile—bus:						
Cents	2.13	2.29	2.43	2.59	2.70	2.78
Index	100	108	114	122	127	131
Rail passenger car miles: [2]						
Miles (thousands)	889,724	841,429	755,077	717,813	679,197	(n.a.)
Index	100	95	85	81	76	
Rail passenger deficit:						
Million dollars	696.9	723.7	610.4	543.8	485.2	408.2
Index	100	104	88	78	70	59

[1] Excluding commutation.
[2] Coach only, including commutation.
n.a.—Not available.

Sources: "Transport Statistics in the United States," "Transport Economics" and "Statement Q-250 (1961)"; Interstate Commerce Commission, Bureau of Transport Economics and Statistics; "Bus Facts," 30th ed., National Association of Motor Bus Owners.

Mr. ROGERS of Florida. We appreciate your bringing up these points. They are very interesting to the committee.

Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman. I am glad to have the benefit of the testimony of Mr. Corber. You have addressed yourself to some matters that we have not touched on heretofore and I think you have added considerably to the record.

Mr. CORBER. Thank you very much.

Mr. ROGERS of Florida. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Corber, I just want to commend you for a very fine statement.

Mr. CORBER. Thank you.

Mr. KORNEGAY. And certainly this is an aspect of the field that we have not heard from before this time.

You state at the bottom of page 17 that bus companies receive practically no aid from the CAB. Do they receive some aid from the CAB?

Mr. CORBER. Mr. Chairman, we have been turned down in all instances in which we have gone to the Civil Aeronautics Board to seek some relief from what we consider unfair competitive rates published by air carriers. I am referring here particularly to the so-called air-bus fares which were published recently by Eastern Airlines and Allegheny Air Lines who have also published some and we thought that we had demonstrated to the Civil Aeronautics Board that these fares were so greatly below the cost of operation of the service that it was uneconomic for all the carriers to proceed with the service and that it was injurious to the buslines. That it was taking passengers away from the buslines and was not an economic service, but the Board decided that they would like for the air carriers to experiment with the service, so they denied our protest and permitted the carriers to enter upon the experiment with these new fares.

Mr. KORNEGAY. Eastern Airlines is not much competition now, is it?

Mr. CORBER. Not at the moment, no.

Mr. KORNEGAY. That is all, Mr. Chairman.

Mr. ROGERS of Florida. Thank you very much, Mr. Corber. We appreciate your help.

Mr. CORBER. Thank you.

Mr. ROGERS of Florida. I have two statements that without objection will be placed in the record at this point. They are statements of Mr. Harry M. Mack, chairman of the board, Ohio Valley Improvement Association; and William E. Kemp, president of the Mississippi Valley Association.

(The statements referred to follow:)

STATEMENT OF HARRY M. MACK, CHAIRMAN OF THE BOARD, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

Mr. Chairman and gentlemen of the committee: My name is Harry M. Mack. I am a resident of Cincinnati, Ohio. I am chairman of the Board of Trustees of the Ohio Valley Improvement Association, Inc., an organization of industrial, business, civic, transportation, and financial agencies that has promoted the development of the Ohio River Valley since 1895. The association is a corporation, not for profit, organized under the laws of Ohio. It is primarily concerned with the orderly development of navigation facilities, flood control, and water resources of the Ohio Valley. Its affairs and policies are directed by a board

of 21 trustees, elected by the membership, all of whom serve without pay. I am appearing today for that organization. The statement of aims and objectives which follows is quoted from the organization's articles of incorporation:

"* * * to foster and promote the commercial, industrial, and social development of the Ohio River Valley; to advocate the conservation, control, purification, development, and use of the water resources of the Ohio River Valley and of the Nation; to assemble and disseminate information concerning the Ohio River Valley and all other river valleys in the Nation which will tend to influence action for further permanent improvements of navigation; to preserve constructive competition in the field of transportation; to facilitate intelligent discussion of and concerted action upon matters of public concern in these fields; to do and perform all acts and things necessary and proper for carrying out the purpose of the corporation."

The Ohio River Valley is an inland empire comprising a substantial portion of nine States and a small portion of five more States, having a combined valley population of approximately 20 million people, with a land area of 204,000 square miles.

The vast industrial development of this region has been dramatically brought to the attention of the American people through various recent publications of national distribution. I refer to such periodicals as Fortune magazine, Wall Street Journal, Time magazine, U.S. Naval Institute Proceedings and Maritime Reporter. Other publications calling attention to the phenomenal development of the Ohio Valley have included New York Times, Business Week, U.S. News & World Report, and official bulletins of the Federal Reserve bank.

IMPACT OF VALLEY GROWTH

Industrial development in the Ohio Valley has attracted almost $18 billion of new capital investment since 1950. It means thousands of jobs, millions of dollars in wages and dividends, and a great flow of taxes on all these things, going back into the Federal Treasury. It means tons and tons of traffic.

The Ohio Valley is composed of great river basins. The system includes the Green, the Cumberland, the Wabash, the Licking, the Barren, the Muskingum, the Kanawha, the Allegheny, and Monongahela—and many others. The rivers of the Ohio Valley guided its development in the early days. Modern uses of water make it our most precious mineral. Every one of these valleys defines some important complex of our civilization. There are areas of great industry, areas of farming, and areas of recreation.

WHY IS THE VALLEY SO ATTRACTIVE?

It would be difficult to take any one of these great tributaries and forecast its service to humanity during the next 10 years. But we can get some inkling of the future from what happened in recent years along the Ohio. What did the river have to do with this growth? Many factors contributed, but most of them stem from the waterway itself. Low-cost water transportation, that has influenced all forms of transit rates, is first. Second is a growing concentration of low-cost power. Third is an adequate supply of water of improving quality. The fourth factor is low-cost fuel—coal, petroleum, and gas. There are other factors, but these are impressive. Navigation facilities designed for 13 million tons carried 22 million tons in the year of dedication (1929) and 81.6 million tons in 1957. This is more than the tonnage of the Panama Canal and more ton-miles than the Soo, the Suez, and Panama combined.

The statistics indicate that the industrial expansion of the Ohio Valley within the past 12 years has been approximately $18 billion. A fundamental factor in this huge development has been favorable transportation of all kinds, including railways, inland waterways, pipelines highways, and airlines. Other factors, naturally, include available water supplies, natural resources, inland security, sound labor, centers of distribution, and a vigorous economy. As the result of a stabilized economy that has been developing in the Ohio Valley for the past century, the region is now the industrial heart throb of the Nation. Under this well-adjusted economic situation, the valley is carrying a substantial portion of the national tax burden. It is also the very center of national defense.

Actual and announced capital expenditures in the Ohio Valley area 1950–61, are shown in the following summary, by States, followed by categories of industry, used in assembling the study. This data was collected by graduate students of the Harvard School of Business during the summers of 1957, 1959, and 1961. The data is believed to be reasonably accurate.

ACTUAL AND ANNOUNCED CAPITAL EXPENDITURES, OHIO VALLEY SURVEY AREA, 1950–61

Summary by States

State	1960–61 survey	1958–59 survey	1950–57 survey	Total, 1950–61
Alabama	$198,300,000	$212,500,000	$852,600,000	$1,263,400,000
Illinois	20,000,000		212,700,000	232,700,000
Indiana	97,600,000	39,500,000	577,500,000	714,600,000
Kentucky	504,200,000	274,500,000	2,369,700,000	3,148,400,000
Ohio	373,800,000	307,800,000	2,721,500,000	3,403,100,000
Pennsylvania	737,600,000	755,200,000	2,832,000,000	4,324,800,000
Tennessee	348,600,000	280,900,000	1,303,500,000	1,933,000,000
West Virginia	317,400,000	278,500,000	1,481,100,000	2,077,000,000
Survey area	123,600,000	463,600,000		587,200,000
Grand total	2,721,100,000	2,612,500,000	12,350,600,000	17,684,200,000

NOTE.—The survey of this expansion was limited to a belt one county wide on both sides of the river and only to installations larger than $1 million.

Totals by industry

	1960–61 survey	Total, 1950–61
Food and kindred products	$21,700,000	$122,600,000
Communications	129,500,000	736,200,000
Tobacco manufacture		32,300,000
Transportation facilities	35,200,000	478,800,000
Textile and mill products	1,000,000	12,300,000
Apparel and related products	3,600,000	12,400,000
Atomic energy operation	50,300,000	2,320,800,000
Lumber and wood products	4,500,000	11,900,000
Electric generating plants	728,200,000	3,979,800,000
Furniture and fixtures	2,000,000	5,400,000
Pulp, paper, and products	9,500,000	228,600,000
Printing and publishing	6,000,000	34,300,000
Chemicals and products	307,000,000	1,851,400,000
Petroleum products	18,900,000	110,100,000
Coal products	32,500,000	330,700,000
Rubber products	21,500,000	44,000,000
Leather and leather products	2,500,000	21,000,000
Stone, clay, and glass products	139,000,000	262,400,000
Iron and steel manufacture	631,900,000	2,985,600,000
Metal fabricators	12,500,000	355,700,000
Nonferrous metals	59,900,000	704,900,000
Machinery except electrical	9,200,000	70,200,000
Research center	6,100,000	109,000,000
Electrical machinery	18,000,000	39,100,000
Transportation equipment	3,000,000	401,700,000
Instruments and related products	8,500,000	126,100,000
Miscellaneous manufacture including ordnance	51,600,000	451,100,000
Administrative and auxiliary offices and warehouses	5,300,000	33,000,000
Appliances	12,000,000	348,700,000
Gas and electrical utilities	382,600,000	1,410,800,000
Oil and gas pipelines	7,600,000	53,300,000
Total	2,721,100,000	17,684,200,000

Various attempts are being made to tamper with this economy, and several of these relate to its vital transportation services. The industrial expansion of the Ohio Valley has resulted from things as they are, and as they have been, involving basic relationships that have been in effect for a great many years. The proposals contained in H.R. 11583 and H.R. 11584, and S. 3242 and S. 3243, would disturb and readjust some of these basic relationships in the field of public transportation. Proposals of the type embodied in these bills have been considered by the membership of this association. At annual meetings of the association, held in Cincinnati, Ohio, on October 18–20, 1961, the following statement of policy with respect to these matters was unanimously adopted by the membership:

"The availability of low-cost water transportation is a result not only of improved waterways and technical improvements in water carrier operations, but also of a Federal regulatory policy which recognizes the inherent advantages of each mode of transportation and requires that such advantages be protected

against destructive competitive practices. Any radical change in Federal regulatory policy, tending to shift the balance of competitive forces against the water carriers, would deprive the public of the benefits of low-cost water transportation and would, in the long run, result in increased freight costs. The orderly development and economic progress of the Ohio Valley and the Nation will best be served by continuation of the tested and proven principles of transportation policy embodided in existing law."

The fundamental issue raised by the transportation bills, discussed here, were considered in some detail by Dr. Marvin J. Barloon, professor of economics in the School of Business, Western Reserve University, a consultant for this association, of Cleveland, Ohio. Dr. Barloon's statistics lead only to the conclusion that the main railroads of the Ohio Valley have prospered in important respects to a greater degree than those of the country as a whole, sharing with the rest of the community in the benefits of barge transportation on the Ohio River. His conclusions are believed by the association to be pertinent to the questions now before this committee, and we are attaching copy of Dr. Barloon's tabulation as exhibit A to this statement. When the waterways carry the raw materials, other carriers usually move the finished products.

We respectfully ask the Congress to refrain from any adventure in the uncharted waters of uncertainty that would face the Nation in any drastic disturbance of well-seasoned transportation controls. The Interstate Commerce Commission has established an enviable reputation as an arbiter of many knotty problems.

Postwar experience of river valley railroads compared with all other line-haul railroads, United States, 1946–60

OPERATING RATIOS

Year	4 Ohio Valley railroads [1] (1)	All other line-haul railroads, United States [3] (2)	4 Mississippi Valley railroads [2] (3)	All other line-haul railroads, United States [3] (4)	8 Ohio and Mississippi Valley railroads (5)	All other line-haul railroads, United States [3] (6)
1946	81.2	83.6	81.1	83.5	81.2	83.8
1947	77.0	78.4	77.0	78.3	77.0	78.5
1948	76.9	77.2	76.0	77.3	76.6	77.3
1949	80.7	80.2	79.2	80.4	80.2	80.3
1950	74.0	74.5	72.7	74.9	73.5	74.6
1951	74.5	77.7	77.2	77.3	75.5	77.7
1952	74.6	76.2	74.1	76.2	74.5	76.4
1953	74.7	76.4	75.1	76.3	74.9	76.5
1954	77.9	78.8	77.3	78.8	77.7	78.9
1955	73.2	75.8	74.9	75.6	73.8	75.9
1956	73.2	77.3	75.9	76.8	74.2	77.4
1957	74.0	79.0	78.5	78.3	75.6	79.0
1958	74.7	79.4	78.1	78.8	76.0	79.5
1959	75.0	78.8	77.6	78.4	76.0	78.9
1960	76.2	79.9	79.1	79.4	77.3	80.0
INDEXES OF TON-MILES OF REVENUE FREIGHT						
1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	119.4	108.9	114.5	110.3	117.8	108.4
1948	114.2	106.6	113.2	107.3	113.9	105.9
1949	85.9	89.5	94.5	88.5	88.6	89.0
1950	99.1	99.5	107.8	98.8	101.9	98.7
1951	114.3	108.3	116.9	108.6	115.2	107.5
1952	103.3	104.0	114.5	103.0	106.9	103.0
1953	99.2	102.9	111.8	101.6	103.2	102.1
1954	87.9	93.7	103.7	92.0	93.0	92.8
1955	109.1	104.7	113.8	104.7	110.6	103.8
1956	120.9	107.3	125.6	108.2	122.4	105.6
1957	121.3	101.4	119.9	103.3	120.8	99.7
1958	98.5	92.2	112.1	91.7	102.8	90.3
1959	97.9	97.1	119.0	95.5	104.6	95.1
1960	98.5	96.4	116.1	95.2	104.1	94.5

See footnotes at end of table, p. 603.

Postwar experience of river valley railroads compared with all other line-haul railroads, United States, 1946–60—Continued

INDEXES OF FREIGHT REVENUE

Year	4 Ohio Valley railroads [1] (1)	All other line-haul railroads, United States [3] (2)	4 Mississippi Valley railroads [2] (3)	All other line-haul railroads, United States [3] (4)	8 Ohio and Mississippi Valley railroads (5)	All other line-haul railroads, United States [3] (6)
1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	127.7	120.9	126.2	121.4	127.2	120.4
1948	141.2	137.4	143.5	137.5	142.0	136.9
1949	118.7	122.4	127.8	121.5	121.8	121.9
1950	136.2	135.1	145.5	134.5	139.5	134.2
1951	157.4	148.1	159.0	148.6	157.9	147.2
1952	153.0	151.8	166.0	151.0	157.5	150.6
1953	153.9	154.9	166.1	153.9	158.2	153.9
1954	131.5	135.4	147.2	134.0	136.9	134.4
1955	152.6	147.0	156.0	147.1	153.7	146.3
1956	171.1	152.6	176.8	153.3	173.1	150.5
1957	176.2	151.3	173.0	153.2	175.1	149.5
1958	149.0	138.3	163.0	138.0	153.9	136.2
1959	149.1	143.2	158.5	142.1	155.8	141.0
1960	146.3	137.9	161.9	137.3	151.8	135.9

[1] Four Ohio Valley railroads: Baltimore & Ohio; Chesapeake & Ohio; Louisville & Nashville; Norfolk & Western.

[2] Four Mississippi Valley railroads: Gulf, Mobile & Ohio; Illinois Central; Missouri Pacific; St. Louis-San Francisco.

[3] Col. 2: All line-haul railroads, United States, other than 4 Ohio Valley railroads. Col. 4: All line-haul railroads, United States, other than 4 Mississippi Valley railroads. Col. 6: All line-haul railroads, United States, other than 8 railroads of Ohio and Mississippi Valleys.

Source: Interstate Commerce Commission. Data adjusted for mergers.

STATEMENT OF WILLIAM E. KEMP, PRESIDENT, MISSISSIPPI VALLEY ASSOCIATION, KANSAS CITY, MO.

My name is William E. Kemp. I am a practicing attorney, Kansas City, Mo. I am an ex-mayor of that city, having served three terms, and I am appearing before you today as president of the Mississippi Valley Association.

The Mississippi Valley Association was organized in New Orleans in 1919. We, today, have a membership scattered all over the United States, but particularly in that area between the Appalachian and the Rocky Mountains, and between the Canadian border and the Gulf of Mexico.

Our headquarters office is in St. Louis, Mo. We have other offices in Kansas City, Omaha, Chicago, New Orleans, and in Washington, D.C.

While our organization is primarily known as being one promoting the management of our natural resources, particularly soil and water, we have since our organization had in our charter a dedication to a national transportation network fully utilizing all forms of transport.

We have a special committee, known as the traffic advisory committee, within our organization that meets periodically and analyzes transportation problems and then submits those recommendations to an annual meeting of the entire membership. On this committee we believe we have some of the best traffic men in the Nation. Most of them represent shipper interests.

Nearly 2,000 members attended our last annual meeting held in St. Louis, February 5 and 6, 1962. These people came from 33 States in the United States, and we believe that they represent a cross section of the thinking people of the United States.

It is interesting to note here that our membership comprises all industries and professions, and not more than 6 percent of our entire budget is contributed by any one industry. The organization does not take a position for or against any proposition lightly.

I think it is very significant that the position taken by our convention was taken prior to the introduction of these bills and prior to the President's message to Congress regarding these bills. On the recommendation of our traffic advisory committee, which has been studying transportation problems for many years, the delegates to our 43d annual convention without a single dissenting vote put the following in our annual platform:

TRANSPORTATION RATE REGULATION

"We believe that the economic development of the Mississippi Valley requires a healthy transportation system with each different mode encouraged to perform its part of the task of moving persons and property as efficiently as possible, protected against unfair and destructive competitive practices.

"We endorse the objectives of the national transportation policy, paricularly those which require the Interstate Commerce Commission to recognize and preserve the inherent advantages of each mode of transportation and to prevent unfair and destructive competitive practices. We urge that these objectives be implemented by statute to insure their more consistent and effective application to the problems of intermodal competitive rate regulation."

TRANSPORTATION POLICY LEGISLATION

"We advocate full development of the Mississippi Valley inland waterways system for commercial navigation to the fullest extent consistent with economic justification.

"We oppose any legislation that would put the entire authority for transportation matters in the hands of the executive department of the Government by taking the authority for the appointment of certain boards away from Congress. The transportation needs of this country can better be served by existing bodies such as the Interstate Commerce Commission and others."

For many years, we have had another plank in our platform headed "Transportation Act of 1940." It says:

"We urge the Interstate Commerce Commission in its enforcement of section 3(4) of the Transportation Act of 1940, to recognize the importance of barge transportation and require the railroads to give the same consideration in switching charges, proportional rate applications and divisions of joint through rates to ex-barge traffic as is given to ex-rail traffic."

As a vital part of our overall purpose of developing and fully utilizing the natural resources of the Mississippi Valley it is our position that the full development of our inland and intracoastal waterways is essential to the maintenance and growth of the Nation's commerce and defense.

During the 43 years of the existence of the Mississippi Valley Association we have watched with approval as the Congress, guided by this basic principle, has gone forward with single minded purpose to create in the Mississippi Valley and along the gulf coast the finest and most extensive system of inland waterways in the world.

As these thousands of miles of waterways have been developed in the wisdom of the Congress, there has concurrently been developed by the imagination and energy of American private enterprise, an inland waterway transportation industry in the Mississippi Valley without equal in efficiency in shallow draft water transportations.

The benefits accruing to the great midcontinent area from the development of this farflung water transportation network, connecting Pittsburgh, Chicago, Minneapolis, Omaha, Knoxville, Houston, St. Louis, New Orleans, and many other inland cities with low-cost barge transportation have been phenomenal. In the 43 years of our association's existence we have seen waterway commerce in the Mississippi Valley grow from about 45 million tons in 1919 to about 190 million tons in 1961.

Oil and coal, steel and grain, sulfur and chemicals, sand and gravel, sugar and paper—the list is endless of the heavy materials of commerce and industry where the availability of low-cost water transportation over a vast area of the continent has stimulated the economy of the whole Nation.

The benefits to the community of water transportation are well-known—they need not be spelled out any further here.

But water transportation is not the only form of transportation necessary to a healthy economy. In our platform we recognize the need for a transportation network fully utilizing all forms of transport.

Our interest in achieving this general objective is further evidenced by the specific plank in our platform, recommended by our traffic advisory committee under the heading "Transportation Rate Regulation."

On the basis of this policy position we oppose H.R. 11583. Section 1 of this bill would deprive the Interstate Commerce Commission of the authority and power it now has to determine that a freight rate is lower than a reasonable minimum rate. This power is the principal means by which the Commission is able to carry out its congressional mandate "to preserve the inherent advantage of each mode of transportation and to prevent unfair and destructive competitive practices."

We believe that to take away the Commission's minimum rate power would be harmful to the transportation system in the Mississippi Valley and the whole Nation. We agree with Chairman Murphy of the Interstate Commerce Commission in his statement to this committee on July 10, 1962, that—

"The exemption of all bulk traffic from regulation as to minimum rates could foster rate wars on such traffic, and the freight charges thereon could be driven down to rock bottom, perhaps below out-of-pocket costs. This could occur within a short period of time on a large part of the bulk tonnage now moving by rail. Under such circumstances, not only would the proposed exemption from regulation as to minimum rates be harmful to barge traffic, but it would bring about a substantial loss of revenues to rail and motor carriers."

If the committee should feel that the national transportation policy is not being adequately enforced by the Interstate Commerce Commission, then we urge that the objectives of the policy be implemented by statute to insure their more consistent and effective application to the problems of intermodal competitive rate regulation.

The bill proposes to implement the recommendations in the President's message of April 5, 1962, that "predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency" should be covered "by existing laws against monopoly and predatory trade practices."

These laws, which protect industry generally against abuse of economic power and unfair and predatory trade practices, are generally known as the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act. They were not written to cover transportation, because the Interstate Commerce Act, which antedated the antitrust laws, was developed specifically for this purpose.

The bill would not apply to common carrier transportation any of the prohibitions against predatory, discriminatory competitive practices against which the public is protected by the Clayton Act, the Robinson-Patman Act, or the Federal Trade Commission Act.

The bill would make substantive increase in the applicability of the Sherman Act to transportation in only two ways.

It would outlaw rate conference procedures on bulk or agricultural commodities, except as to through routes and joint rates. This would be an unworkable restraint in transportation where rate conferences are a necessary part of the pricing mechanisms of the industry, and where joint rates and single-line rates on bulk and agricultural and nonbulk commodities are discussed and weighed and considered jointly in all their complex interrelationships.

The bill would also have the effect of permitting a person to sue in Federal court for injunctive relief against threatened loss or damage "by violations of the antitrust laws." But the "antitrust laws" as now written, do not cover transportation services except in sections 1 and 2 of the Sherman Act, which forbid combinations in restraint of trade and attempts to monopolize.

We do not believe that this proposal gives adequate assurance of "a healthy transportation system with each different mode encouraged to perform its part of the task of moving persons and property as efficiently as possible, protected against unfair and destructive competitive practices."

We urge that this committee reject this proposal.

Mr. ROGERS of Florida. I believe that is the list of witnesses for the day. The committee will stand adjourned subject to the call of the Chair.

(The following material was submitted for the record:)

STATEMENT OF HON. CLARENCE D. MARTIN, JR., UNDER SECRETARY FOR TRANSPORTATION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, my name is Clarence D. Martin, Jr., and I am Under Secretary for Transportation in the Department of Commerce.

It is a privilege to appear before your committee to discuss further views of the administration and the Department of Commerce on H.R. 11583 and H.R. 11584 and related bills.

The Secretary has already indicated the philosophy of the administration concerning the transportation policy of the United States and how the many specific items in the two bills before you will carry out a basic revision in that policy. He has also stated that certain other policy changes can be made in accordance with the administration's program by the enactment of certain specific bills which are also before your committee.

It is my purpose today to discuss in more detail the features of the two bills presented by the administration, H.R. 11583 and H.R. 11584, and where appropriate the provisions of other bills which also will accomplish the aims of the administration in modernizing our national transportation policy.

The two bills presented by the administration concentrate on the principal needs for transport legislation. These needs could be summarized under two headings: (1) improvements in competitive equality among transport modes, and (2) improvements in the well-being of common carriers. These two needs overlap to a large degree; improvements in one will serve the other need as well.

Because H.R. 11584 deals mainly with the common carrier problem, I shall now discuss its provisions in detail. Why should the common carrier be considered important?

A common carrier is important because of his obligation. He is required to serve all on reasonable terms without discrimination. His obligation is enforceable under common law and in specific Federal statutes. The general public must depend upon the common carrier for many essential services. The vital services of Government and National defense can depend upon the common carrier, both for sustaining and emergency transportation.

Our entire economic philosophy of free competitive opportunity for business has a stake in the future of the common carrier. The control over transportation can be used as a means of increasing economic control and concentration. If the common carrier is in good shape it means that every form of business regardless of its size will have access to national markets through transportation. The common carriers' obligation to serve means access to distant markets by all business and all producers.

Why does the common carrier need special public protections? It may prove relatively costly to maintain a service prescribed by public authority. This cost may be a competitive handicap against persons who do not assume the obligations of a common carrier and who can skim off the cream of the traffic at cut rates. Those who serve the public at all times deserve protection against private interests operating against the law or taking advantages of loopholes in the laws.

Our bill offers some specific steps needed to advance and protect the common carrier.

EXPERIMENTAL RATES AND SERVICES

Section 2 of H.R. 11584 would authorize the three regulatory bodies to allow experimental rates and services. These experiments could be in one mode of transportation or could involve two or more modes. Experiments would be voluntary on the part of either carriers and shippers, and would not affect any of the present powers of the regulatory agencies. These agencies would have the power to control, supervise, and name the conditions under which the experiments would be conducted.

It may be possible under present law to have such experimental rates and services. In order to remove all doubts as to the authority to allow experiments, this section declares it to be public policy that such experiments should be approved where desirable.

If common carrier service is to improve, if transportation is to progress with improving technology and national growth, we must have innovation. The essence of modern science is the experimental method. Transportation must experiment continuously if new service potentials are to be developed.

Examples of experimental concepts might include new services using containers, simplified rates for individual types of movements, new classification patterns, application of modernized data procedures to rates and services, and many others which scientific ingenuity can devise.

The thing we are trying to avoid is the fate suffered by the earliest container movements on some of the eastern railroads during the early 1930's. When this new and progressive service idea got underway, the Commission found it violated its policies on ratings and classifications, suspended the rates on the service, and prescribed new rates which killed the business. Conditions have improved somewhat since that early day, but there is still need for a more explicit recognition that new ideas are welcome in the transportation business.

NONDISCRIMINATORY RATES TO SHIPPERS

Section 3 would require railroads, motor common carriers, and water common carriers subject to the act to accept shipments by any other carrier, whether regulated or not, of loaded or empty containers without discrimination as to service or rates to ship containers by rail at the same rates as private shippers or freight forwarders. Under the present practices of the Interstate Commerce Commission, as set forth in the key decision *Movement of Highway Trailers by Rail* (293 I.C.C. 93 (1954)) and other decisions, substituted service by piggyback of regular motor carriers is handled under different rates and arrangements. It is our aim to encourage common carrier service. Common carriers should be able to use piggyback in their existing territories the most favorable terms available to other shippers.

It is also worth noting that both the Federal Aviation Act and the maritime statutes do not permit such discrimination. The Interstate Commerce Act should be brought into line with these other regulatory statutes.

THROUGH SERVICE; JOINT RATES AND JOINT BOARDS

In section 4 we propose that Congress declare it to be a matter of public policy that through routes and joint rates should be encouraged and promoted by the use of joint boards to act on proposals for intercarrier services. At present only the Federal Aviation Act authorizes the use of joint boards with the ICC to deal with air-surface carrier problems. This provision has never been implemented in the more than 20-year history of the provision. In the present situation many joint rates and through routing arrangements are not even authorized by law. For instance, a through route arrangement by rail and water between the United States and Alaska or Hawaii cannot be made. Any shipper must make separate arrangements for each segment of the trip; one rate filed under the provisions of the ICC and the other under the Federal Maritime Commission. Where there is an internal haul in Alaska, even a third arrangement must be made.

The inconvenience of this can be imagined. If there are five carriers involved in moving goods from origin to destination, five separate contracts are necessary, and five separate rates must be ascertained, often from a large number of tariffs on file with the various agencies and at different locations. In addition, each of the carriers with which such contracts are made is liable for loss and damage that may occur while the freight is being handled by that carrier. Fixing of such liability on a carrier when a number of transportation companies have handled the freight places a great burden on the shipper.

Under our proposal, such through routes and joint rates would not only be authorized but encouraged. Joint Boards of the ICC, the CAB, and FMC would be set up to regulate the terms and conditions of them.

In the case of through service, the duty is placed on the carriers to establish just and reasonable rates and equitable divisions of rates between participating carriers. Complaint as to these matters may be referred to the Joint Board, which will be created to consider each complaint. Joint Boards will consist of members of the ICC, the CAB, and the FMC. This arrangement will supersede the authority for joint boards authorized in the Federal Aviation Act.

ENFORCEMENT OF HIGHWAY TRANSPORTATION PROVISIONS AND CIVIL PENALTIES

In section 5 of our bill we would assist the enforcement of the provisions of part II of the Interstate Commerce Act by authorizing the Commission to enter into cooperative agreements with States. This is part of a comprehensive enforcement and compliance effort that should be authorized. Many of the States have resources to contribute to this effort. During the studies of the Doyle group in the Senate, representatives of the State utility commissions participated, and that study recommended a closer coordination of enforcement with the States.

The measure would be consistent with collateral efforts to develop and adopt uniform State registration laws for motor vehicles. The purpose of these efforts is to eliminate "gray areas" in motor transportation.

A second part of a comprehensive program to improve the common carriers would eliminate so-called gray areas and illegal transportation in section 6 of our bill. This section extends the civil forfeiture provisions of the Interstate Commerce Act to any person who operates a motor vehicle in interstate or foreign commerce without operating authority. At the same time penalties are substantially increased to dissuade violations of the act. Previously, such violations were subject only to the criminal penalty provisions of section 222 of the act. The cumbersome procedure of proving that such persons had "knowingly and willfully" violated the act made enforcement more difficult. Violations by common carriers may result in civil as well as criminal penalties. The use of civil procedures will make enforcement considerably easier.

Some action has been taken in the Senate on a large part of the administration's program for improved safety and enforcement. S. 2560, as amended, was reported out of the Senate Committee on Commerce on June 7, 1962. The Deputy Under Secretary for Transportation appeared before that committee to present the administration's position. The amendments adopted by the committee include the administration's position with respect to joint enforcement agreements with States and increased civil penalties for violations of economic and safety regulations. The administration endorses S. 2560 as reported as fully consistent with the President's transportation message.

In the President's transportation message there are other elements which would assist in strengthening the common carrier through better and more consistent application of the regulatory statutes. The safety provisions applicable to private carriers under the act should, for example, be made consistent with those applicable to common and contract carriers.

H.R. 5598 would amend section 204(a)3 of the Interstate Commerce Act respecting safety regulations of private carriers.

The Interstate Commerce Act regulates the safety of common, contract, and private carriers but the standards applicable to common and contract carriers are slightly different from those applicable to private carriers. This has resulted in ambiguity concerning specific applications as a result of a case decided on August 25, 1960, by the Federal district court for Oregon. This court case is the *United States* v. *the Pacific Powder Company*. The case involved the explosion of a dynamite-laden truck which was left unattended in the towntown area of Roseburg, Oreg. Thirteen people were killed. About 125 others were injured. Some eight or nine blocks were almost completely destroyed. Property damage was estimated at between $10 and $12 million.

The court ruled that the Interstate Commerce Commission had no jurisdiction over the liability of this carrier because the operator was a private carrier and the wording of the statute applying to private carriage had a different implication that the wording applying to contract and common carriers.

Under section 204a (1) and (2), safety regulations applying to common and contract carriers include "reasonable requirements with respect to * * * qualifications and maximum hours of service of employees and the safety of operations and equipment." Under paragraph 3, applicable to private transportation, however, the wording is as follows: "Reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment." The court ruled that the Commission lacked jurisdiction because the matter involved safety of operations, and not standards of equipment. The Justice Department declined to appeal this case to a higher court. In its annual report for the fiscal year 1960, the Interstate Commerce Commission points out that this case will have a very serious impact on the enforcement of safety regulations involving private carriers. For example, regulations concerning safe loading, parking, and fueling

of vehicles, of stopping when involved in an accident, and rules against the transporting of unauthorized persons do not apply to private transportation. This situation calls for immediate correction by legislation and we, therefore, urge the enactment of H.R. 5598.

In this connection I remind the committee of the speedy action of the Congress in amending title 18, United States Code, dealing with the transportation of explosives. Originally this title extended only to common and not to contract and private carriers. On August 26, 1960, the very day after the *Roseburg* decision, the Senate approved a bill already passed by the House to extend regulations to contract and private carriers. This action partially corrected the situation created by the *Pacific Powder* case, but has not gone far enough. There is still a gap in the law with respect to safety operating regulations of private carriers and matters not within the purview of the regulations governing the transportation of explosives and inflammable materials.

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES; TRANSPORTATION OF MAIL BY TRUCK

Section 9 of H.R. 11584 implements the recommendation that legislation be enacted encouraging experimental rates and services by the Federal Government, and the development of systems that will make rate ascertainment and publication less costly and more convenient. The section also implements the recommendation that the Post Office Department be given greater flexibility in arranging for the transportation of mail by motor vehicle common carrier.

Under existing law the authority to procure, without advertising, transportation and necessary accessorial services for the Government is limited to the procurement of transportation services furnished by common carriers. Simplification and automation of the carriers' transportation rates does not appear to be flexible under the present commercial tariff system, which consists largely of special commodity rates and which commercial interests no doubt oppose changing. Furthermore, the commercial tariff system is too complex and subject to too frequent changes to be practical for automatic data processing. Therefore, any changes in this regard in the immediate future would require that such a simplified system for Government traffic be established separate from commercial traffic.

In order to provide a broad base for such a system, the procurement of transportation for the Government is authorized without regard to any law requiring advertising for bids. The Administrator, General Services Administration, and the Secretary of Defense would be authorized to initiate and establish, through progressive research and development, a system of simplified rate structures for Government traffic. The Administrator or the Secretary would be required to determine that the proposed simplified rate structure was in the public interest and would be expected to result in lower overall costs to the Government, or at least in no increase. The initial direction to be taken in research and experimentation, including diminished differentiation among commodities, simplified methods for determination of distances adaptable to automatic data processing, and improved procedures for evaluation of charges is prescribed.

Although the Post Office Department may use the services of rail, air, and water carriers for the transportation of mail on a tariff rather than a contract-bid basis, it has no such authority with respect to the transportation of mail by motor common carrier (decision of Comptroller General, December 30, 1959). Section 9 would, therefore, authorize the procurement of mail transportation services performed by common carriers by motor vehicles when such services can be procured from any common carrier lawfully operating in the territory where the services are to be performed without regard to the provisions of any law requiring advertising for bids.

TRANSFER OF LOAN GUARANTEE AUTHORITY OF CAB AND ICC

Sections 10 through 13 of the administration bill implement the recommendation that the powers and functions vested in the Civil Aeronautics Board and the Interstate Commerce Commission with respect to the guarantee of loans to air carriers and common carriers by railroad, respectively, be transferred to the Department of Commerce.

At the present time part V of the Interstate Commerce Act authorizes a program of loan guarantees to railroads. Loans so guaranteed are to be used for constructive purposes as set forth in the act. A similar program provides loan

guarantees to airlines for capital improvements. Recently the Department of Commerce appeared before this committee and the committee of the other House to advocate the enactment of H.R. 10129 and S. 2815 to extend the aviation loan guarantees.

The President in his transportation message pointed out that the loan guarantee programs are not regulatory in nature and that they are clearly separable from the chief functions of the Interstate Commerce Commission and the Civil Aeronautics Board. He pointed out the need for more program coordination and consistency of policy among promotional activities in the Federal Government. In this connection he expressed the desire that the Department of Commerce become a focal point for such policy coordination, and that the loan guarantee activities be transferred to the Department so that their administration could be accomplished in a manner consistent with other transport promotional activities.

REPARATIONS

Another important objective in the administration's program is to extend civil liability for reparation payments to all regulated carriers. Today only railroads and water carriers are liable for reparations where an unlawful rate has been charged. Motor carriers, freight forwarders, and air carriers are not liable for reparations. H.R. 5596 now before this committee would bring motor carriers and freight forwarders under such liability. The administration's bill, H.R. 11854, would extend it to air carriers.

In the case of motor carriers, the Supreme Court has ruled in the case of *T.I.M.E., Inc.* v. *U.S.* (359 U.S. 464, May 18, 1959) that a shipper by motor carrier subject to part II of the Interstate Commerce Act cannot challenge in postshipment litigation the reasonableness of past charges made in accordance with tariffs filed with the Commission. A shipper, by this ruling, is without remedy for injury arising from the application of an unlawful rate.

H.R. 5596 would make both motor carriers and freight forwarders liable for damages sustained as a result of unlawful charges. Because this bill adequately covers the subject with respect to motor carriers, the administration did not include motor carrier and freight forwarder reparations in its draft bill, but would urge instead the enactment of H.R. 5596 (S. 1283) as in accord with the President's program.

Section 7 of the administration's bill, H.R. 11854, would make air carriers subject to reparations for unlawfully high rates. There is no valid reason why air carriers also should not have such liability. The aviation industry, like the motor carrier industry, has attained stature and stability as one of the chief agencies of public transportation. Shippers, therefore, should have the same rights of recovery as they have against rail and water carriers.

In section 7 air carriers would be made liable for the payment of damages to persons, including the United States as a shipper, injured by them as a result of charging rates in violation of the Federal Aviation Act of 1958. Injured parties would have the choice of pursuing their remedy either before the Civil Aeronautics Board or in any district court of the United States of competent jurisdiction. Periods of limitation are provided with respect to the commencement of such actions or proceedings.

Section 8 of the bill is a technical amendment required to insure that reparation orders of the Board will be subject to review by U.S. district courts rather than by the courts of appeal of the United States, which ordinarily review orders of the Board.

REPEAL OF RAILROAD COMMODITIES CLAUSE

S. 734 would repeal paragraph 8 of section 1 of the Interstate Commerce Act; the so-called commodities clause. The commodities clause applied peculiarly to railroads. It was enacted in 1908 as a corrective to certain abuses that developed in connection with railroad ownership of extensive coal mine properties, particularly in the hard-coal region. The conditions which brought about the necessity for the commodities clause no longer exist. Furthermore, court rulings have weakened the effect of the provision considerably by exempting many operations controlled by subsidiary companies. At the present time, common carriers in water transportation, motor carriers, and airlines conduct numerous nontransportation businesses either directly or through subsidiaries. It would seem appropriate in the interests of greater competitive equality to remove this prohibition aimed solely at railroad companies.

MAKING DOMESTIC TRUNK AIR CARRIERS INELIGIBLE FOR SUBSIDY

H.R. 10813 would amend section 406(b) of the Federal Aviation Act of 1958 to remove domestic trunkline air carriers from eligibility for Federal subsidy insofar as their operations in interstate and intrastate air transportation are concerned (other than transportation to, from, or within Alaska and Hawaii). U.S. trunkline air carriers engaged in foreign air transportation would remain eligible for subsidy arising from such operations, but any profit that any such carrier might receive from mainland U.S. operations, over and above a reasonable return, would be applied as "other revenues" to reduce the subsidy necessary to maintain the foreign and oversea transportation service.

The President in his message on transportation, which was sent to the Congress after H.R. 10813 was introduced, recommended enactment of this legislation as one step toward achieving evenhanded Government promotion of intercity transportation.

The Department feels that the domestic trunklines have reached the stage of their development where they should no longer be eligible for direct Government subsidy in the operation of their domestic mainland routes. Experience has demonstrated that it is no longer necessary or in accord with sound transportation policy to consider that this group of carriers cannot compete effectively with the other modes of transportation. In this connection, I would point out that intercity passenger-miles of these airlines in 1961 were approximately equal to those of the railroads and buses combined.

The administration and the Department, therefore, urge prompt enactment of H.R. 10813 as in the best interest of sound national transportation policy.

EQUALIZED COMPETITIVE OPPORTUNITY AND DIMINISHED REGULATION

The Secretary has discussed in some detail the objectives and features of the administration's second bill, H.R. 11583, which provides for more equal competitive conditions among modes of transport and for diminished regulation. As the Secretary indicated, minimum rate powers would be removed from the regulatory statutes for bulk commodity movements, for agricultural and fisheries products, and for passengers. Bulk commodities are not now subject to any regulation at all on water movements. Similarly, agricultural and fisheries products are exempt in motor transportation. In the field of passenger service we believe that more carrier initiative is desired, and that this can be achieved in part through the elimination of minimum rate regulation on rail, water, and bus transportation.

I hope to augment and amplify the previous discussion of H.R. 11583. I shall go through the bill, section by section, and point out significant detailed features.

Section 1 of the bill extends an exemption from minimum rate regulation to carriers subject to the jurisdiction of the Interstate Commerce Commission in the transportation of bulk commodities, agricultural and fisheries products, and passengers.

Water carriage of bulk commodities is exempted under section 303 of the Interstate Commerce Act. The exemption extends to all liquid bulk commodities carried in tank vessels, and to such dry bulk commodities which were carried in bulk in accordance with the customs of the trade as of June 1, 1939. Dry bulk commodity transportation is defined as the transportation of commodities loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count.

The dry bulk commodities exemption is limited to the carriage of not more than three commodities in one vessel or tow, and there is a prohibition against mixing such exempt commodities with regulated commodities in a vessel or tow.

Under the existing provisions of the Interstate Commerce Act, the transportation of bulk commodities as defined is completely free from regulation. Section 1 of our bill would retain and extend this exemption for water carriers, and would, in the interests of equalized competition remove all minimum rate regulations from other carriers when such commodities were carried.

A similar situation exists in the case of agricultural and fisheries products which are carried in motor vehicles. They are now totally exempt from economic regulation. We would, in the interest of equalized competition, allow other forms of transportation to carry these commodities without being subject to minimum rate regulation.

Section 1 of our bill would also withdraw the power of the Interstate Commerce Commission to regulate minimum passenger fares.

Section 1 goes on to provide that carriers exempted from the provision of minimum rate regulation shall be subject to the provision of section 1 of the Clayton Act of 1914 which applies to the antitrust laws rate agreements. A proviso in H.R. 11583 makes it clear, however, that common actions by carriers in the establishment of through routes and joint rates shall be permissible.

Section 1(b) would amend section 5a of the Interstate Commerce Act so as to make the relief provided therein from antitrust laws inapplicable "to any party to an agreement with respect to any rate, charge, or fare" exempted from minimum rate control by H.R. 11583. Under the provisions of section 5a, the Interstate Commerce Commission is authorized to approve and regulate agreements relating, among other things, to procedures for the joint consideration, initiation, or establishment of rates, fares, and charges. Parties to any agreement approved by the Commission are relieved from the antitrust laws "with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission."

It is recognized that the underlying proposal on minimum rates is not dependent on modification of section 5a procedures. With section 5a left intact the conference method of making rates under agreements approved by the ICC would be continued on agricultural and bulk commodities and in setting passenger fares. Without the conference method of ratemaking under section 5a the normal procedure and channels available to shippers for rate adjustments would be disturbed.

There is a choice of whether to lessen antitrust immunity specifically as provided in section 1(b) of the bill, or leave undisturbed the present arrangements satisfactory to carriers and shippers. I think this is largely a question for Congress to determine.

Section 2 would amend section 303(b) of the Interstate Commerce Act, which is the present dry bulk commodities exemptions, by removing the requirement that no more than three such commodities can be carried in one vessel or tow and by revising the definition of bulk commodities to eliminate the requirement that the commodities must have been treated as bulk commodities in 1939. This has the effect of exempting bulk commodities transported by water carrier from all regulation.

Section 3 would amend section 418 of the Interstate Commerce Act to include all carriers authorized to transport bulk commodities as carriers, the services of which freight forwarders may utilize. The amendment merely takes account of the fact that the bulk commodities exemption has been extended to carriers other than by water.

Section 4 would extend to intercoastal water carriers the same exemption from minimum rate control for the transportation of person or bulk commodities or agricultural or fishery products as is proposed for carrier subject to the Interstate Commerce Act under section 1.

Section 5 would amend the Federal Aviation Act to limit the authority of the Civil Aeronautics Board to the determination and prescription of just and reasonable maximum rates or charges for the transportation of bulk commodities or agricultural or fishery products. As to these items of freight, air carriers would be as free from minimum rate control as carriers subject to the Interstate Commerce Commission or Federal Maritime Commission. Antitrust laws would be applicable in the same way.

Such freedom from minimum rate control has not been extended to the carriage of passengers by air as with the other carriers, in recognition of the present precarious financial condition of many airlines more gradual deregulation of passenger fares in air transportation is called for under present circumstances. The intent of Congress to attain this freedom from minimum rate control is expressed in the last subsection so that business incentives and competition may play a more influential role in the pricing of air tranportation.

Taken together the two administration bills, H.R. 11583 and H.R. 11584, along with several other bills already discussed, provide a fundamentally new direction to national transportation policy. The new direction will bring the economic laws of enterprise and competition into prominence in transportation, as a more effective supplement to regulatory laws and provisions. We retain a good measure of regulation in the public interest, but we also believe that public interest is also served by the basic economic forces which have applied to in-

dustry generally. Law must be used more to achieve equalized competitive opportunity, to protect the public interest in a sound common carrier system, and to bring about improved coordination in the administration of Federal transportation programs.

This aim must be achieved in several fields at the same time; in taxation and user charges, in promotional and investment programs, and in regulation. These fundamentally important actions require legislation. The President's legislative program for transportation is now before you, and we urge its favorable consideration.

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

The National Retail Merchants Association, the trade association for over 10,000 department and specialty stores with members in all 50 States, having 1961 sales of over $19 billion, supports most provisions of this bill which implements some of the recommendations of President Kennedy's recent transportation message. We are opposed to none of the provisions; however, we take no position on section 6 dealing with civil forfeiture penalties, section 9 dealing with simplified Government rates, and sections 10, 11, 12, and 13, which would transfer carrier loan guarantees from the Interstate Commerce Commission to the U.S. Department of Commerce.

May we offer these additional comments:

(1) With respect to section 2, which would enable the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission to authorize controlled experiments in rate, classification and documentation, ICC Chairman Murphy points out that this section should be amended "to make it clear that the agencies would not be required to approve all proposed experiments but would be authorized to reject those which would have a seriously harmful effect upon shippers, the general public or other carriers." Chairman Murphy makes the point that as presently written, the legislation appears to make it mandatory that the agencies, including the Interstate Commerce Commission, approve all experiments.

If, in the judgment of the committee, revisions are needed to eliminate the danger of violations of Interstate Commerce and other regulatory acts, we strongly urge that the final language insure against a too-cautious approach on the part of the regulatory agencies toward experimentations.

(2) Not only are we in support of section 4A, which would make it public policy that through service and joint rates between all types of carriers be encouraged, but we also support H.R. 12362, which is before your committee. This bill would permit the Interstate Commerce Commission, after hearing, to require the establishment of through routes and joint rates between motor carriers of property and between such carriers and common carriers by rail, express and water. We urge adoption of section 4A and H.R. 12362.

(3) We are in thorough agreement with section 7 which provides that air carriers should be subject to a reparation provision when their charges are found to be unlawfully high. There can be no valid argument against the enactment of this provision. May we call to your attention that for a great many years parts 1 and 3 of the Interstate Commerce Act have contained reparation provisions as a protection for the shipping public, including our members. Also, may we remind the committee that parts 2 and 4 are devoid of this much needed protection and shippers and receivers have no recourse against unlawfully high motor carrier and freight forwarder rates. On June 12, 1961, NRMA filed a statement with your committee in support of H.R. 5596, which would establish reparation provisions in parts 2 and 4. In that statement we pointed out:

"It seems like a matter of simple justice that our members be permitted to recover excess transportation charges when motor carriers or freight forwarders impose unreasonable freight rates. We are able to recover such charges from railroad and steamship lines, why shouldn't we have the same right with motor common carriers and freight forwarders. This has always been important but it becomes particularly important in view of the Supreme Court's 5 to 4 decision in No. 68, *Time Inc.* v. *U.S.*, and No. 96, *Davidson Transfer and Storage Company, Inc.* v. *U.S.*, wherein the Court found that 'under the statute the recovery of reparations or damages arising from the application of unreasonable rates on past motor carrier shipments is precluded.' "

We strongly urge that section 7 be revised to include reparation provisions for parts 2 and 4 of the Interstate Commerce Act.

(4) Section 14 provides that the effective date of all provisions of the bill shall be the date of enactment. Because of the far-reaching nature of the changes to be made, particularly in the Interstate Commerce Act, it becomes mandatory, in our opinion, that a minimum of 3 months be allowed carriers and regulatory agencies to bring tariffs, practices and regulations in conformity with the sweeping revisions.

In summary, we repeat that NRMA is in favor of the enactment of most provisions of this bill; we do not oppose any section; we do not take a position on sections 6, 9, 10, 11, 12, and 13.

We respectfully request that that part of our statement dealing with H.R. 12362 be made a part of the transcript when hearings are held on that bill. Also, as a matter of information, NRMA takes no position on H.R. 11583, on which hearings are being simultaneously held.

STATEMENT OF THE BOSTON COUNCIL OF RAILROAD GENERAL AGENTS, BOSTON, MASS., SUBMITTED BY JOHN H. BLAIR, CHAIRMAN

This organization has a total membership of 70, and includes the senior traffic officials of all New England lines and the general agent or top officer in each off-line sales office of the principal railroads throughout the Nation.

The members of this organization desire to be recorded as favoring passage of the proposed legislation—H.R. 11583 and H.R. 11584.

We know the need for a strong and healthy common carrier system if our Nation is to prosper. We do not understand the ease with which our representatives in the Federal Government continue to say "maybe next year" when considering or discussing much needed corrective legislation.

This is especially confusing when one considers that the transportation bill of our Nation makes up one-fifth of our gross national product; also, that affirmative legislation has been suggested or recommended by Presidents Truman, Eisenhower, and Kennedy.

At this same time, our Government is building or assisting in the development of strong common carrier systems in other nations. It seems eager to subsidize a helicopter service or an airline that cannot compete on equal terms with other common carrier systems.

Indications are that our Government is eager and prompt in helping private transportation compete with common carriers. Consider the annual budget to provide free and sometimes inefficient water transportation facilities. Consider the millions spent on research for improved airline freight and passenger transports.

Consider the urgency of the action by TVA recently when Wheeler Lock was damaged. During repairs, we as taxpayers (through TVA) were forced to lease a belt conveyer to handle, free of charge, the tonnage of the firm owning this conveyer. At this same time, a common carrier that had developed special methods of operation was not permitted to handle this same tonnage at more economical overall costs because "it would hurt the barge competition."

Consider the deteriorating passenger commuter situation, especially in New England, and compare the highways planned or already built immediately paralleling the New England railroads. This poor planning has cut off much needed further industrial development and has resulted in the waste of millions of taxpayers' dollars. Regardless, our Government is quick to arrange for the spending of additional billions on highways. Is it considering the matters of congestion, pollution of the air by exhaust fumes, etc.?

Consider the railroad properties unfairly taxed out of existence while similar air, highway, and water facilities are tax-free. Did Congress recently insist that the present administration spend millions of taxpayers' dollars on a jet transport solely for military purposes or was this to help domestic airlines in research they could not afford? How much Federal assistance goes toward railroad research?

Escalators were recently installed in the railroad-owned Cleveland, Ohio, Terminal Tower and the property taxes were immediately increased. At the same time, escalators were installed at Cleveland Hopkins Airport at Government expense. Do you consider, even in a small way, that the railroads were forced through taxation to pay for any part of the facilities of their competitors?

Consider the overtaxation of railroad properties when compared with other

property in the immediate vicinity. What about the city of Boston taxing South Station approximately $1,250,000 per year at a $12 million valuation—when they wanted to buy the property, they made an offer of $1 million.

Specifics could be listed beyond a reasonable demand on this hearing, and some of those present would not consider many of them to come under the jurisdiction of the Federal Government. We believe they are definitely related to the problems involving interstate commerce and are pertinent to the matter at hand.

Consider the financial squeeze and subsidized competition forcing a gradual reduction of railroad employment. We believe fair and equal treatment will permit improved facilities and growth in employment.

We recall Chairman Harris' comment in a letter of June 4 that "it is my plan to hold hearings on these bills just as soon as they can be worked into our busy schedule, which now looks like the latter part of June."

Have enough years gone by? Has the point been proven time and again? Do you recognize the steadily worsening situation?

We believe it is time the transportation problem be placed in first position and other matters worked in the schedule as time permits.

STATEMENT OF MILLERS' NATIONAL FEDERATION ON H.R. 11583—SUBMITTED BY D. H. WILSON, CHAIRMAN, TRANSPORTATION POLICY COMMITTEE

The Millers' National Federation, whose members produce 90 percent of the wheat flour milled in the United States, as well as numerous related products, respectfully urges rejection of those particular sections of H.R. 11583 the effect of which would be to extend the existing so-called bulk and agricultural exemptions to all modes of transportation. It is our understanding that the intended effect of these sections is to deprive the Interstate Commerce Commission of the authority or power to determine that certain rates, fares, or charges on agricultural and bulk movements may be lower than reasonable minimums.

As receivers and shippers of large volumes of raw agricultural commodities and finished food products, we are keenly aware of the inequities imposed on us by the existing bulk and agricultural exemptions. And while we favor all efforts designed to provide the Nation with an efficient, low-cost transportation system, we believe all modes of carriage should be given the opportunity of achieving efficiencies under substantially equal, minimum regulatory restrictions. Our members believe that while a broadening of exemptions from rate regulation appears to provide a degree of equality, it will in fact create a most inequitable and chaotic ratemaking situation. There will be equality only in the sense that all modes will have at their command the authority to establish predatory and discriminatory rates. If minimum rates are not regulated, the field is left open for any and all kinds of undercover arrangements or deals.

Efforts in the past to afford advantages to one mode of carriage over another, because of the nature of the carriage itself or to particular types or classes of commodities over others, have caused substantial economic distortion and damage within the milling industry. Our members rely heavily on rail, water, and truck transportation, both bulk and nonbulk. Their availability to the industry under relatively equal conditions, except for the present exemptions, has contributed to the very broad geographical distribution of the industry and its ability to move its raw supplies and finished products relatively freely throughout the country. We fear that an extension of the bulk and agricultural exemptions would make a number of mill locations uneconomic in a stroke and would tend to sectionalize the distribution of our products, thereby upsetting the very delicate competitive relationships among mills.

We urge, therefore, that instead of compounding the existing inequities contributed by the present exemptions, they be repealed.

STATEMENT OF W. L. THORNTON, JR., GENERAL TRAFFIC MANAGER, KIMBERLY-CLARK CORP.

My name is W. L. Thornton, Jr. I am general traffic manager for Kimberly-Clark Corp. with principal office at Neenah, Wis. I am responsible for all traffic and transportation matters for all Kimberly-Clark mills, including subsidiaries and affiliates, in the United States, Canada, and Mexico. This embraces 42 manufacturing mills located in 14 States and 4 Provinces of Canada.

Kimberly-Clark is a large manufacturer of paper and paper products. We manufacture all types of printing and fine papers, cigarette paper and condenser paper, sanitary products including sanitary pads, facial tissues, towels, napkins, toilet paper, industrial wadding products for a variety of uses, newsprint paper, nonwoven textile products, several chemicals such as chlorine and caustic soda and large quantities of lumber.

We are national distributors of our products and, in the process of manufacturing these products, we draw raw materials from all over the United States and Canada. Our total transportation bill is in excess of $50 million per year and, to some extent, we use every important railroad in the United States and Canada. Additionally, we are large users of motor truck and water transportation. In 1961, our payments to motor carriers, including common and contract carriers, was in excess of $6 million, and our payments for transportation by water was some $81,000, therefore, we have a vital interest in any legislation that affects the welfare of our transportation facilities and, particularly, the railroads which the paper industry relies upon quite extensively in the gathering of our raw materials and the distribution of our manufactured products.

This statement is also being submitted on behalf of the American Paper and Pulp Association which is the overall national association of the paper and pulp industry. This industry operates in 47 States and comprises about 850 mills which are owned and operated by 479 different companies. In the year 1961, the industry consumed over 40 million cords of pulpwood and produced over 34 million tons of paper and paperboard. It is estimated that the transportation bill of the industry approximates $1 billion. I am chairman of the legislative committee of the traffic committee of this organization.

The paper industry is a highly competitive industry and in the nationwide distribution of its products, it is essential that we have the benefit of competitively adjusted transportation charges and that these charges be on the lowest possible basis consistent with the costs and efficient operation of the various modes of transportation. We feel that we are entitled to the benefit of the lowest transportation cost that the railroads, or any other mode is capable of furnishing.

In the gathering of our raw materials, and the distribution of our manufactured products, we are dependent, to a very large extent, upon the mass transportation offered by the railroad industry. The raw materials, as well as the manufactured products, move in large quantities, charges on which must be adjusted in relation to the competitive influences affecting the marketing of these products. Any arbitrary or discriminatory legislation or regulation which would prohibit any method of transportation from full participation in this traffic upon basis of just, reasonable, and competitively adjusted rates, would be fatal to the distribution of these products.

We believe in healthy competition between all modes of transportation and we abhor the thought that any private enterprise should have placed against it some legislatively created artificial handicap to the exercise of sound judgment in meeting any conditions with which they are confronted. We are, therefore, quite vitally concerned with any legislation that adversely affects the ability of any of these transportation agencies to adjust their rates and charges in an atmosphere of free competition in line with the traditional American way of doing business.

I would first like to comment on the provisions of H.R. 11583 concerning the transportation of bulk and certain agricultural commodities. These are described as commodities which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, and the transportation of liquid commodities in bulk, and property consisting of ordinary livestock, fish, or agricultural commodities. The bill provides that the Interstate Commerce Commission shall have no authority, or power, to determine that the rates, fares, or charges on such commodities are lower than reasonable minimum rates, fares, or charges.

We strongly favor this portion of H.R. 11583 as we believe the time has come when the railroads should be given freedom to meet competition when transporting these commodities. We cannot long sustain a transportation system that is half regulated and half free and we believe the railroads should be given the opportunity to meet their competition as they find it and if this competition is completely unregulated, then in all fairness railroads should at least be relieved of the minimum rate regulation.

We are aware of the fact that it has been alleged before this committee, and elsewhere, that the deregulation of bulk and agricultural commodities when moving by rail would be a serious step backward and in some manner or other

would result in rate war; that the small carriers would be placed at disadvantage; that the railroads with superior financial background would be able to put other carriers, not so strongly financed, out of business; that discrimination would result; that certain communities would be prejudiced and others preferred and, in general, that the railroads would not be able to look after themselves and withstand the pressure from large shippers and that the regulation of all railroad rates should be continued as a means of protecting the railroads against themselves. We have the utmost respect for the opinions of those who advance such views but we are closing our eyes to the realities of the situation when we assume that these results would inevitably flow from the deregulation suggested. This would entirely overlook the fact that the bulk of this traffic is now moving without such regulation, and these consequences have not developed and it is not clear just how or why such serious results would come about if the proportion handled by railroads was treated the same as the portion moving by trucks or waterways. It appears to be a rather unusual approach to the matter of discrimination, undue prejudice and preference to ignore the consequences when the traffic moves by unregulated motor carrier or by water and yet presents such a serious problem when the same freedom is extended to the rail carriers.

It is possible, and is undoubtedly the intention, that the deregulation of the rail rates on these commodities will result in more traffic moving by rail than is now the case and that some other carrier is going to be hurt by the loss of the business. We seem to have reached the point where any rate would result in the diversion of the traffic from one mode to another or between the same mode is designated as destructive competition. We want it so that no one will gain and no one will lose and we, therefore, deprive the carriers of any incentive to improve services or reduce costs. The diversion of traffic or business is the result of any competitive market when one gets the business, another loses it. It is possible, and highly probable, that we have more public transportation facilities available to us in the country today than the economy will support, and it would seem to me that if deregulation of the rates on certain articles of commerce would result in more intensified use of these transportation facilities that this would be all to the good.

The original Transportation Act was passed in 1887 at a time when the railroads enjoyed a monopoly of land transportation. The history of this legislation will show that it was designed and enacted at the outset for the purpose of protecting the public interest from a monopolistic enterprise. No one would claim that any mode of transportation has a monopoly today and over the years our concept of regulation seems to have changed more by interpretation perhaps than by actual change in the statutes. We have drifted into a situation, apparently with intention and design, where the regulation of one mode of transportation is accomplished for the benefits of the other. The public interest, even if considered at all, is relegated to a second place. We do not believe it was the intention of the statutes, nor do we believe it is the obligation of Government, to divide up the available traffic between the different modes. Under our free enterprise system this division of traffic should be the prerogative of the owners of the traffic. The public interest would be better served, if these carriers were permitted to operate in a free competitive field, with a minimum of restraints and regulations.

Sections II and III of the act would still remain in effect which quite adequately deals with undue prejudice and preference and the removal of the minimum rate power would not change these sections. While under the proposed statutes the Interstate Commerce Commission would have no minimum rate power, they could still deal with any rates filed by the carriers that would seem to violate any other section of the act. Furthermore, any fear that the carriers would reduce rates on the bulk and agricultural commodities to such an extent that they would have to raise the rates on other traffic to make up the deficit could be controlled by the maximum rate provisions, and other sections.

We do not favor those portions of the bill that would subject the carriers to the antitrust laws in lieu of the section 5a method. There seems to be no necessity for making this change. We have been operating under the present system for several years and it has proven to be valuable to both the shippers and the carriers. In the very nature of things, it is necessary for the transportation companies to confer with one another and with their shippers in fixing the rates on any commodities. The situation here is quite different from general business pricing which was recognized by Congress in the passage of section 5a. Our

present system is a proven and tried method confirming the wisdom of Congress in providing for it and so long as the terms and conditions under which these conferences are held are regulated and controlled by the ICC this would seem to be sufficient. Actually, this method is the only one available where the shipper can discuss his rate and traffic problems with the carriers. Adequate publicity is given to such conferences, as well as to any rate or practice that is proposed and anyone having an interest can appear and thus prevent unreasonably low rates, or undue prejudice and preference without full knowledge of the facts. The elimination of the minimum rate power would be no excuse for changing the rules under which the rates are made.

The only section of 11584 on which we wish to comment is the provision that would encourage the carriers to test new service combinations and to experiment with new methods of providing transportation and of pricing.

There is a great transition taking place in the art of transportation. We are finding new ways and means of moving people and goods. We need rapid and economical transportation if we are to successfully market our products and instead of less freedom there should be granted more freedom to the carriers to exercise their managerial discretion and meeting changed economic conditions. It is no answer to say that for years the carriers have been somewhat allergic to change. Unfortunately, there are instances where this change may have been well founded. However, enlightened railroad management has shown a great degree of individuality; has shown a willingness to try new methods; has spent money in specialized equipment, even to the extent of designing equipment for particular commodities and I can think of no step that would give more impetus toward continuing this philosophy than to give the carriers more freedom in meeting competition and permit experimentation of new methods of transportation and new systems of pricing.

The transportation industry is a dynamic industry. Since World War II the railroads have been confronted with new types of competition and have been prevented from adequately coping with it by restraining legislation and regulation. Any new method, it seems, has to be investigated which frequently takes so long that the need for it may disappear before the investigation is completed. The railroads should be placed in position to take advantage of new techniques in transportation. They should be permitted to take full advantage of their research and development studies and should be permitted to try new methods. The best test of anything new is whether it works and produces the desired results. This cannot always be determined by preliminary investigations. It has recently been found that agreed or contract charges are illegal when published by railroads although it is a daily occurrence for motor carriers to enter into such contracts. If it is legal for one mode, it should then be legal for the other.

There is a place in the transportation field for all modes. We use all of them, at the same time there is considerable overlapping and instances where the most efficient and low-cost carrier is not permitted to participate in the traffic on the basis of competitive rates. Given the full play of competitive forces, the carrier best designed to handle the traffic will be the one that emerges with it. Neither mode either needs or deserves any artificial handicap. The Transportation Association of America in a recent statement said that the Nation's transportation bill is in excess of $100 billion. This is one out of every $5 spent by U.S. citizens. In our industry, about 12 percent of our gross income goes for transportation as a direct cost which does not include any allowance for transportation charges that may be included in the price of the materials we purchase. We are interested in getting the lowest possible cost for our transportation and it is disconcerting when the lowest cost agency is unable to supply the service because of outmoded regulation. We meet competition from all areas and in order to stay competitive we must have economic and efficient transportation facilities. We should bring about the utilization to the fullest possible extent all the facilities available. As far as the railroads are concerned these facilities are not now used much over one-half. No business can operate successfully at 50-percent capacity.

There is perhaps no limit to what private industry can do if given the opportunity. One could not help but be impressed by this fact when witnessing the operation of Telstar a few weeks ago, which was a cooperative enterprise between Government and private business and where the research and development opportunities of a large industry were given full play. There was no attempt here to regulate or to preinvestigate the possible results. The transportation industry cannot develop to its full potential if each innovation that ap-

pears must first get approval before being tried. We feel that the carriers should no longer be treated with a paternalistic and babysitting attitude.

We are not afraid of the possible discrimination and undue prejudice and preference. The railroads are perfectly capable of interpreting the Transportation Act in light of a long line of decisions from the ICC and the courts and it should not be so easily assumed that anything the railroads do in the way of reducing rates, establishing new practices is, per se, unreasonable or illegal. We seem to have an undue number of investigations and suspension proceedings, most of which are instigated by competing modes of transportation and not by the shipper who is paying the bill. I think the record will also show that upward of 85 percent of these proceedings involved reduced rates which were protested by a competing mode. The uncertainty of these proceedings is a handicap to business expansion. There is entirely too much of this interference with carrier management.

We respectfully urge, therefore, that the committee will report favorably on the minimum rate provisions of H.R. 11583; that they will not change the rules for ratemaking and will continue the section 5a arrangement and that the experimental section of H.R. 11584 be approved.

STATEMENT OF CHARLES B. BOWLING, TRANSPORTATION CONSULTANT, THE NATIONAL GRANGE

My name is Charles B. Bowling. I am transportation consultant for the National Grange with headquarters at Washington, D.C. I am addressing myself to H.R. 11583 and H.R. 11584, introduced by the chairman of this committee. In laying a premise I shall try to avoid unnecessary duplication. My foremost objective is to describe what these bills mean to the farmer.

"An efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress." That is the start of President Kennedy's message of April 5, 1962, to Congress. We agree with the President.

Again the President said "* * * Users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the service they desire at the lowest total cost, both public and private." Again, we agree with the President.

Equal and competitive opportunity to all forms of transport is emphasized in the message. Railroads endorse the message.

The Grange holds no brief for any mode of transport. We wish for a continuance of our country's transportation system which includes rail, highway, air and water transport, all serving shippers on a competitive basis.

Transportation charges and services are both of vital importance to the agriculturist and both are involved here. They are pocketbook items to the farmer.

If the transportation service obtained is poor or inadequate, because of the lack of competition, such contributes to spoilage and directly affects the shelf life and the value of perishable products of agriculture. If the charges assessed are inequitable, that too, has a dollar-and-cent meaning to the farmer. An extra dollar paid for transportation charges cancels out that extra dollar, when earned, in the sales price of an agricultural product.

Farmers have both a direct and indirect monetary interest in transportation. The purchaser of the farmer's products takes into consideration the freight charges he must pay from the point of purchase to market when buying from the farmer. Therefore, the farmer is directly affected by the transportation charges all the way from the farm to the consumer, regardless as to who holds title at the successive stages of sales.

It should be recognized that the farmer also bears the freight charges on supplies consumed on his farm. Freight charges are included in the sellers sale price—hence his indirect interest. These are some of the reasons why farmers are concerned with the bills now pending before your committee.

We endorse the prospect of all carriers becoming exempt from minimum rate regulations in the transportation of unmanufactured products of agriculture and bulk commodities. Endorsement of this prospect is tempered by our belief that freedom from minimum rate regulation must not be allowed to permit the application of noncompensatory rates. We have specific reference to H.R. 11583. Primarily, our statement will deal with this bill.

The underlying objective of H.R. 11583 is designed to create a balance of equities as between carriers. No logical argument can be made against this

unifying principle. (We would like to point out that the railroads, should they desire, may presently engage in the transportation of agricultural products by motor vehicle without being subject to economic regulation by the Interstate Commerce Commission. Thus there is no inequality with respect to the right of all persons, including railroads, to engage in the transportation of agricultural commodities by motor vehicles.) It's the keeping of this balance following the enactment of the pending legislation that also concerns us.

The Grange is interested in H.R. 11584 and believes that the shipping public will be benefited by its adoption provided there are proper regulatory safeguards.

The executive committee of the National Grange at a recent special session considered the aforementioned bills at some length. In addition, they conferred with major officials of the Association of American Railroads and the American Trucking Associations in order to afford competitors equal opportunity to indicate what they respectively believe would ultimately be the result by the passage of these pending bills. As a consequence of such considerations, the Grange policy adopted in this matter emphasizes:

(*a*) Support of lower freight rates;

(*b*) Preservation and strengthening of agricultural exemptions;

(*c*) Preservation of competition; and

(*d*) Opposition to unfair trade practices by which one mode of transportation may destroy another through unfair competition.

The railroads indicate that with the adoption of the minimum rate bill, such will permit them a more profitable entry into the field as competitors in transporting farm products. President Kennedy aptly describes it when he states in his message to Congress, "some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates." Such encouraging developments seem to offer the farmer the happy prospect of lower rates and improved service. The lower the freight charges better are the chances for the farmer to obtain value for his product. Agriculture, as an important segment of our national economy, has long been in persistent chronic depression.

Railroads emphasize the claim that if they had a freer hand in ratemaking they would be in better position to learn what technological improvements they could create or support. Such improvements mean larger investments, lower carriage cost per unit, greater profits and lower rates to shippers.

The president of the Southern Railway, in testimony before your committee, has already determined the correctness of this statement in the hauling of grain, the principal agricultural product, in improved equipment. He stated additionally: "Also, it is true that the public is paying higher than necessary prices for the transportation of freight." It seems evident that he attributes this condition in large measure to the growing obsolescence of the railroad plant.

Under present regulations, railroads indicate that they refrain from taking the necessary financial steps to improve plant operations because they have not been able to enlarge their competitive field. Incidentally, gross capital expenditures by class I railroads during 1961 were less than half of what they were in 1957.

The past, present, and the likely future economy of this country will, for some time to come, include the disposal problem of large surpluses of our principal agricultural commodities. Our country's economy will be improved when freight tonnage is shipped by the mode (or combination of modes) of transportation charging the least amount for the service. Such charges, however, should be compensatory.

Today there are huge quantities of surplus products that have moved short distances from farms to storage places awaiting a market. There are literally millions of people urgently requiring these products. We live in a hungry world.

Prices that can be paid by many potential purchasers f.o.b. their countries prevent sales. Both inland and ocean freight charges are recognized determinative factors obstructing such deals. Most of our surplus farm products originate some distance from tidewater.

American farms are actual places for the creation of much more tonnage for all our transportation agencies. With improvements in mechanized farming techniques, plus the increased use of fertilizers, lends much weight to the increases in the potential farm tonnage picture. Remember at present about a half million American farmers are annually leaving the farms for urban locations.

We need technological modernization in transportation in order to reduce costs followed by the lowering of freight rates thereby improving marketing

prospects. Such improvements should be encouraged and not stagnated. The proper incentive must exist before these things can occur. Enactment of the proposed legislation, with proper safeguards, we believe, afford rail carriers the incentive to inaugurate the lowest level of freight rates for the movement of agricultural commodities which are compensatory and compatible with sound managerial discretion.

Secretary of Commerce Hodges in his testimony, stated "our transportation system is equally vital to our ability to compete abroad since it affects the cost of every commodity we consume or export."

Some railroad representatives say that their rates have been kept at unnecessarily high levels to provide an umbrella which other modes of transportation used to extract from the public higher than necessary freight charges. Assuming these representations are correct, the ability of American farm products to compete in foreign markets has been adversely and needlessly affected.

Neither the Interstate Commerce Commission, nor any other agency of the Government, would have any regulatory control over minimum rates unless there be destructive discrimination or violation of so-called antitrust laws. Under the pending bill, the Interstate Commerce Commission will still retain control over rate increases according to testimony presented by railroad officials.

While what has been said heretofore may indicate wholehearted support of H.R. 11583, we must, however, register some apprehension and caution because we stand for transportation equitableness and continuing competition.

It is the future that concerns us particularly. Legislation created to fit the President's request to improve transportation conditions in this country, means, according to our understanding, improvements for both the present and the future.

We desire that any legislation enacted to include, in some definite form, a guarantee or prohibition against rate wars. Rate wars generally do not lead to distribution stability or permanent improvements.

The key opposition to H.R. 11583, as of this date, seems to stem from the possibility as to what rail carriers may attempt to accomplish following the enactment of this legislation. With the inauguration of new minimum rates, published to meet the competition of other common, exempt and private carriers, there are some fears that railroads might elect to proceed a step further by publishing even lower rates (which they could claim as compensatory, but truckers predict would be less than out-of-pocket costs) which would affect the gradual elimination of existing competition unless safeguards are provided. In deference to what railroad witnesses have stated, which in substance deny any intent to create a monopoly or rate war, they should be encouraged to author and offer an amendment to the bill covering the balancing factors that would amputate the present uncertainty and rigid opposition.

Spokesmen for the railroads have emphatically stated that they have no desire to adopt, even if it were possible for them to adopt, the policy indicated by opponents if the pending legislation is enacted. The railroads dispute contentions that they will transport freight at less than compensatory rates in order to sever themselves of competition.

Your attention has already been directed by opponents of H.R. 11583 ascribing infirmatives of the minimum rate regulation in its present form. We must admit that the mechanics of operation under the new arrangements are not entirely clear. Additionally it should be pointed out railroads may be hampered in handling rate adjustments because of restrictions imposed upon the operation of the rate bureaus made legal by the enactment some few years ago of the Reed-Bulwinkle Act. We believe the rate bureaus operated by the different modes of transport serve a useful purpose and often cause the satisfactory adjustment of rates thereby reducing litigation.

Railroads have included in some of their statements what means to us to be the probable use by shippers of the privilege to formally lodge investigation and suspension petitions before its effective date with the ICC against any new tariff that publishes rate changes which appear to include any violation of the Interstate Commerce Act.

Seemingly, in anticipation of the fear of the shipping public that could result from the prospect of rate wars and monopolies, the President in his message to Congress mentions public safeguards and proposed that Congress "make certain that such practices by carriers freed from minimum rate regulations would be covered by existing laws against monopoly and predatory rate practices."

One of the aspects of this entire matter that disturbs us to some extent, and we believe others, because of claims made, is the possible situation that could be created by destructive competition. It is conceivable that before an involved motor carrier could obtain relief through prescribed channels his losses during the interim period could prevent him from continuing in business.

As an illustration of the above, an exempt highway carrier hauling agricultural products could suddenly face a disastrous situation and become a quick casualty by virtue of a drastically lower rate published by a competing railroad. Indeed, the tariff issued by the railroad covering the new rate (even though the statutory period of publication has been observed) could actually become effective before owners of exempt trucks were informed of such formidable developments. The truckers only recourse then, if any at all, as we see it, would be the filing of a formal complaint with the ICC regarding which many small truckers are unfamiliar and/or financially unable to pursue.

The expense involved in such indicated instances could result in an untenable situation that would quite likely discourage the further operation of such truckers. The expense of litigation would be prohibitive to many such operators. It would then be possible, according to some interested parties, that railroads could revise their rate schedules upward taking subtle advantage, possibly in some instances, claiming that they were simply reverting back to the original or "Commission-made or previously approved rates" provided, of course, there is such an historical background. In the entire legislation this appears to be the "main leak that should be plugged" and such "plugging," we believe, would be consistent with the railroads expressed policy.

Railroads appear serious in their desire to avoid monopolies, discriminations, rate wars and antitrust violations. Therefore, it would be consistent for them, as indicated previously, to support an amendment to H.R. 11583 containing the safeguards desired by others.

The antitrust laws in relation to the pending legislation has been prominently mentioned at the hearings conducted by your committee and the Senate Commerce Committee in its consideration of S. 3243, the counterpart of H.R. 11583.

Considerable testimony has already been presented to both committees by witnesses representing shippers, Government agencies, and all types of carriers. There seems to be no clear understanding or agreement of the actual or ultimate effect of the application of the antitrust laws should the pending legislation be enacted. Some committee members themselves appear disturbed because of the prospect of just how the Department of Justice and the Interstate Commerce Commission would play their respective roles.

According to our understanding the Department of Justice's witness when appearing before the Senate committee, insisted that the provisions of the antitrust laws would afford expeditious relief from discrimintaions and effects of destructive competition. He placed his reliance upon the casual fact that persons damaged by violations of certain portions of the antitrust laws may seek injunctive relief, without waiting remedial action by the Government. However, he admitted that to obtain relief, competing carrier must prove, at its own expense, that the rate reduction would "create" a substantial likelihood of monopoly. What seemingly is overlooked is that operators of one truck, of which there are thousands, as indicated before, would take no part in court actions, and a large percentage of them would thus have to run the gamut of quickly going out of business. We think this is a realistic evaluation and certainly one to be considered against the farmer's interest.

The bills do provide that the antitrust laws (presumably the Sherman and Clayton Acts) would be applicable to the "deregulated" traffic. Also that the carriers would no longer be able to get together to agree upon the level of rates under the Reed-Bulwinkle Act in the establishment of rates on single line traffic.

In our opinion there is some doubt that the antitrust laws would furnish effective or timely relief in the case of rate warfare between carriers. Money damages, long after the fact of violation, will neither protect the public nor the carriers from the consequences of a wrecked or seriously weakened competitive transportation system. One thing, so it appears, this bill would do is to take away from ICC the power to determine the reasonableness of rates on a vast volume of freight and replace it with "administration" through and by the courts.

At the time of Senate hearing in connection with S. 3243 Senator Monroney stated, "I think that the key to this whole issue, or one of the biggest, is the

effect of the antitrust laws and where they apply." We very definitely have the same concern.

Unmanufactured products of agriculture have never been subjected to economic regulation by the Interstate Commerce Commission. Indeed, in 1935, when the so-called Motor Carrier Act was enacted, it specifically exempted such items from ICC supervision and we want to keep it that way. Should changes be made in this part of the Interstate Commerce Act the present method of distributing farm produce with its flexibility of operation, will be destroyed to a great extent.

Many large commercial organizations of this country use their own trucks to distribute their tonnage. This trend in transportation is growing. Some members of this group also move their freight by contract carriers. In the final analysis, there is quite a similarity between contract and exempt truckers because they both operate for the direct purpose of transporting tonnage for others under contract or agreed rates.

We would like to emphasize the clear fact that insofar as the needs of agriculture are concerned, transportationwise, nothing is more important for the farmer than exemption from economic regulation by the ICC. Should efforts be made by common carriers or others to cancel section 203(b)(6) of the Interstate Commerce Act, the National Grange, and it is believed all of organized agriculture and others, most definitely will oppose such efforts.

The farmer's product is worth little or nothing unless it can be transported. The net income from the sale of farm products is predicated upon the volume of deductible marketing costs the largest segment of which is the transportation charge.

The farmers' income position, therefore, is senstive to changes in transportation services and charges because these items affect his net returns.

The farmer is directly concerned in the pending legislation because his income is involved in the pending legislation.

In simplified summary, it might be said that our position is to permit all modes of transport to adjust their rates so that they may become and remain competitively active in the movement of agricultural and bulk commodities so long as such rates are not below the compensatory level.

We appreciate having the privilege of presenting our views and request that our statement be included in the committee's printed report made in connection with this legislation.

STATEMENT OF M. T. RICHMOND, PRESIDENT, MERCURY MOTOR EXPRESS, INC., TAMPA, FLA.

My name is M. T. Richmond. I am president of Mercury Motor Express, Inc., Tampa, Fla. Mercury Motor Express is a common carrier of general commodities over irregular routes.

I am appearing today as a spokesman for the American Trucking Associations, Inc., and as a member of the ATA Common Carrier Conference—Irregular Route.

Because the Irregular Route Conference of ATA contains most of the common carriers that haul perishable commodities, I have been asked to appear before you to discuss the agricultural exemption of the Motor Carrier Act. I am accompanied today by three other members of the Irregular Route Conference who are all intimately familiar with the transportation of perishable food products. These gentlemen are: Mr. Sidney Alterman, president of Alterman Transport Lines, Miami, Fla.; Mr. Stoney M. Stubbs, president of Frozen Food Express, Dallas, Tex.; and Mr. Winton Teagle, vice president of Refrigerated Transport Co., Inc., Atlanta, Ga.

Previous witnesses have discussed the specific provisions of the deregulation proposals and the effect which enactment of this legislation would have upon the economy of the United States. My intention is to propose to you an alternative to the pending bill and to set forth for you the thinking of the trucking industry on this exemption.

THE AGRICULTURAL EXEMPTION

Those who favor the pending bill are very prone to say that the existence of the bulk commodities and agricultural commodities exemptions per se discriminate against the railroads. Is this true?

With respect to the bulk commodities exemption, yes, and we believe that this exemption should be repealed and all carriers placed on an equal footing.

The agricultural commodities exemption, on the other hand, presents an entirely different situation. It is an exemption from regulation designed to fit the

peculiarities of motor truck transportation and to help farmers. It was enacted so as to preserve the flexibility of the truck; its ability to go out into the field, everywhere, in all seasons, to move any and all types of agricultural cargo.

Farmers argued that they had special transportation problems which required the utmost in flexibility, a flexibility which only trucks could supply and which could be assured only by the exemption granted in 1935.

They also called attention to wide variations in production from year to year and season to season and by geographical areas. These changes caused major changes in distribution patterns. To accommodate these fluctuations the farmer had to have a great pool of trucks able to move quickly from place to place.

Congress decided that exemption of rate and route regulation would permit the necessary fluidity. Minor rate adjustments would attract trucks from one area to another according to relative need. Route freedom would permit delivery at any point. All this was to benefit the farmer in moving his crops and animals to market.

At no time was it suggested that motor common carriers would benefit by this. Nor have they. In most cases they have passed up the transportation of "agricultural commodities" to avoid the drain on their resources which would occur under the depressed agricultural products rates, or they have learned to live under the exemption for varying percentages of their business.

So let's keep the record straight—it was not and is not an exemption to benefit motor carriers. It was put into the Motor Carrier Act in 1935 as an aid to the farmer and it remains in the act for that purpose only. Railroads do not directly serve farms, ranches, orchards, or thousands of the assembling and processing establishments serving the farmer. Trucks do. So the transport of agricultural products from the point of production to market, as routinely accomplished by modern truck, was exempted from regulation.

Another reason the railroads were not embraced in the agricultural commodities exemption is this: It was never intended—and the legislative history of this subject is clear on the point—that the exemption should follow an agricultural product through all of its raw, semiprocessed, or manufactured route from the point of production to the consumer's table.

The agricultural exemption has been extended beyond all reason. Prior to the Transportation Act of 1958 it had, by court ruling and administrative decisions, gotten completely out of hand. The Congress in 1958 made great strides in correcting some of the abuses by approaching the exemption on a commodity by commodity basis. We strongly supported that approach. But there is still a crying need for further reformation of this exemption. In the name of the farmer a great many nonfarmers of various types are being benefited at the expense of regulated transportation. It is this inequity that ought to be remedied.

The trucking industry does not oppose continuation of a reasonable agricultural exemption but it strongly opposes its extension in any form. We feel, moreover, that it must be revised if we are to continue to have a strong carrier system and if it is at the same time to best serve the needs of the farmer in marketing his production. In other words, the trucking industry feels that a balance can be achieved which will protect the farmer and the carrier, and will not unduly burden either party. Such a balance has been, we believe, your objective and it has been in the public interest.

As this committee well knows, there have been many attempts and suggestions for revision of the exemption. In 1958 this committee took the approach that specific commodities should be designated as either regulated or unregulated. The ICC has for several years (until this year) recommended that the exemption extend only from the farm to the primary market (or, in other suggestions, the point of first sale, the local market, or similar restrictions). Before your committee this year the ICC advocated restricting the exemption to three-axle trucks. Some farm interests and motor carriers feel strongly that there should be rate regulation (but no route regulation) of these agricultural products. All of these proposals are advanced with the same ultimate intent—to achieve a balance in the public interest between the needs of the farmers and the needs of the country for a strong common carrier system.

The decision is yours to make. If it is your wish to retain such a balance, then further restrictions of the exemption will accomplish a better balance than is now present under the law without harming any farm interests.

To remove minimum rate control on rail movements of agricultural commodities is no answer to the problem. It does nothing to achieve the balance.

Such a proposal, in our view, will not aid the common carrier system (including the railroads as a prior witness has already shown), nor will it aid the farmer. This relaxation of controls is offered in the name of equality, and yet it does not achieve the historic goals so long sought in this area in the interest of the entire United States. Assuming, for the purpose of discussion, that equality will be achieved, then is equality what the Congress really wants? Do you desire a legislative solution that will aid neither the common carrier nor the farmer simply in the name of equality? We do not believe that such a decision is in the public interest.

The more senior members of this committee will vividly remember the annual outbreak of bills, resolutions, investigations, and speeches which used to occur every year at harvest time on that old subject to rail car shortages. It was a perennial problem—there were never enough cars to move the crop. Why have you not heard from the farm community in recent years? The answer is simple—trucks have filled the gap. If these trucks, or even a proportion of them, are eliminated from the scene then the old problem of car shortages may well arise again.

As I said a moment ago, a previous witness has developed why this will be of no benefit to the railroads. Let me just touch for a moment here on why it is bad public policy insofar as the farmer is concerned. There is no doubt that the agricultural exemption has created adequate truck service to the small farmer and the small processor of agricultural commodities. The railroads make no bones about the fact that they intend to wipe out the exempt motor carrier. His is the traffic the rails want to capture. This can have only one result for the farmer—there will be less truck transportation available to him. We do not believe that you want to accomplish a reduction of truck service to the farms, orchards, and ranches of this country.

It is interesting to note here that nowhere in their testimony before this Congress have the railroads claimed that freeing them from minimum rate regulation would in anyway improve the service to farmers. Actually, if rail rate cuts forced tonnage from motor carriers to railroads the flexibility now enjoyed would be diminished. Thus the major benefit sought by the agricultural exemption—flexibility—would be endangered and perhaps eventually lost entirely.

Such a loss is no dream. If railroads succeed in their efforts many exempt haulers and certificated carriers hauling "agricultural commodities" will go broke or drift away from producing areas and will no longer be available for special hauls or during peak seasons.

Finally real "success" will permit the railroads under monopolistic or greatly enhanced power gradually to raise rates to levels which will allow them to offset losses suffered during rate wars. Farmers may wind up with poorer service and higher costs.

In addition to this general decline in service to farmers there can be, and probably will be, rates which are discriminatory, rates which help the big fellow and harm the smaller one. Rates on Idaho potatoes or Minnesota eggs or Wisconsin dairy products or Kansas wheat could be so slashed as to give these producers virtual monopoly in certain markets. Unrealistic rates on livestock could build up one market and kill another.

Farmers and farm cooperatives located on railroads—particularly those located on rail sidings and shipping primarily by rail—might benefit directly from reduced rail rates. Benefits possibly also would be given to some commodities in some areas and to some shippers. But those who might be advantaged by such a discriminatory system—some of the giants of farm production—would do so at the expense of the great majority of farmers who do not now have nor will they ever have adequate rail facilities available for the marketing of their production. In addition, shippers and farmers who are led by competitive rate cuts to shift from truck to rail shipment will lose the flexible service and the faster delivery which only a truck can give.

This is the kind of discrimination neither the Nation's agriculture nor the rest of us can afford.

The deregulation approach is also harmful to the regulated motor common carrier. It would directly affect those carriers now handling agricultural commodities. Furthermore, carriers who do not carry these products have a very realistic fear that deregulation of so many commodities is just the beginning and that all commodities would eventually be affected. Today it is grain and watermelons, tomorrow it may be television sets and automobiles.

Further, we have had, and are having, a great deal of trouble with so-called gray area transportation—illegal transportation, if you please. Should the rails be successful in driving even a part of the exempt motor carriers out of intercity agricultural transportation they will turn loose upon a country a large fleet of motor trucks—trucks that are frequently not paid for. (We estimate—there are no exact figures—that there are at least 75,000 intercity trucks hauling exempt commodities today.) If these truck operators cannot move exempt commodities today.) If these truck operators cannot move exempt commodities, then we foresee that they will, in desperation, turn more and more to illegal operations. We say the eventualities we have just described—rate wars, discriminations, decreased service and less flexible service to farmers, elimination of motor carriers and increased illegal hauling—can happen and probably will happen because action under remaining ICC powers or antitrust proceedings would be so slow as to amount, in most cases, to a postmortem decision saying to farmer or trucker "you were robbed" but supplying no resurrection pills to motor carriers driven out of business or farmers badly hurt.

This is a pie-in-the-sky deal.

The bill would give railroads almost unbridled power to cut rates on "agricultural commodities". They say they want equality. They say they need such power in order to take away traffic from exempt haulers and others. This, they claim, will help their profit picture and give farmers lower freight rates. They haven't said for which farmers or on what commodities these rates would be cut. Nor how long the rate cuts would stay that way. Nor assessed the harm to all concerned, including themselves, which a rate war would cause. Nor pointed out that a shift to rail transportation would mean less flexible service thus vitiating the prime objective of the agricultural exemption.

In facing this issue, whether to deregulate the Nation's transportation system, there are several basic questions which we think this committee, the farm organizations, the farmers and their cooperatives might ask: Would the rails discriminate with one or more commodities against other farm production? Would grains, say, have the advantage over fruits and vegetables? Would they favor producers of a particular commodity in one area at the expense of producers of the same commodity elsewhere? Would they cut rates between major markets and hold them at present levels for secondary markets? Would they give lower rates to large shippers? Would they boost rates as soon as competitors were driven out of business?

Let me reemphasize some of the harmful things we are sure will happen if this bill is passed. First we maintain that it would curtail the flexibility of service necessary to agriculture and that its benefits, if any, would apply only to a few—and then only temporarily.

Actually, if it worked the way railroads seem to think it would and they substituted boxcar traffic for that now moving by truck, such traffic would move slower and with less flexibility on an all-rail basis. As motor carriers were driven out of business railroads gradually would again have a monopoly or at least disproportionately great power. At that stage rail rates would be raised so as to recoup losses suffered during the period of rate cutting. Agriculture would be left with poorer and more expensive service and many motor carriers would be bankrupt.

Thus we do not believe that the proposed legislation is the answer to the problem that confronts us all.

As I said earlier, all segments of transportation including the farm community have for years been striving for a balance between helping the farmer at the expense of the carrier or conversely helping the carriers at the expense of the farmer. Many proposals have been made to you gentlemen who must serve as arbiters in this controversy. Always these proposals are made to you in the dramatic atmosphere of the committee room. Always there is the fixed policy statement—"Our board of directors has adopted a policy * * *," "My policy directive is in favor of * * *," etc., etc. There is very little give and take. All too often you are faced with deciding pro or con or possibly of coming up with a compromise of your own making. This is an area where compromise is possible.

Our proposal is that you make an effort outside the confines of a hearing room. We would suggest to you that meetings of all interested parties might be able to come up with an answer. Perhaps a special subcommittee could be appointed to explore the situation. Perhaps your able professional staff could preside at some informal sessions this fall. Possibly you may just wish to express a desire that all the groups get together to see what can be accomplished.

This proposal is not without precedent. When S. 2560 was introduced last fall, Senator Smathers, its author, asked all interested persons to attempt to reconcile their differences before January. Meetings were held and the result is self-evident. S. 2560 has passed the Senate with only minor opposition.

We sincerely mean this to be an offer of cooperation. We sincerely believe that compromise is possible. Perhaps a solution can be arrived at which will be politically feasible and economically sound. As President Kennedy said on another subject in his inaugural address "All of this will not be finished in the first 100 days * * * nor even perhaps in our lifetime on this planet. But let us begin."

STATEMENT OF CLARENCE A. KELLEY, PRESIDENT, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and members of the committee.

My name is Clarence A. Kelley. I am president of Dixie Ohio Express Co., a motor common carrier with headquarters in Akron, Ohio. I am appearing here in my elected capacity as president of American Trucking Associations, Inc. The American Trucking Associations, Inc., with headquarters at 1616 P Street NW., Washington, D.C., is a federation that was established in 1933 as the national trade association of the trucking industry, representing all types of motor carriers of property, for-hire and private. We have affiliated associations in 49 States and the District of Columbia. In addition, we speak for 12 affiliated motor carrier conferences.

I should like to present our views on S. 3243. What I will have to say reflects the policy of the association on regulation and our viewpoint on some transportation problems. I have been assisted in the preparation of this material by members of our staff. As a result, I should like to request the Chair and the committee to permit several of these associates to assist me in answering questions, some of which may have a technical nature or require reference to background or collateral material which could be beyond my knowledge.

I am not without experience in transportation, since I have been actively engaged in motor carrier operation for 27 years and have practiced transportation law for longer than that. It is neither excess of humility, nor lack of confidence, that evokes this request, but rather a clear recognition of the great complexity of this subject—a fact especially well known to members of this committee. I'll do my best to answer your questions myself, or do so with assistance from my associates.

At the outset, I should tell you that the trucking industry finds no difficulty in concurring with the general intent of the Presidential message on transportation. Certainly an efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress, as the President says.

How to insure continuation of this kind of vitality and development is, of course, the basic question. Its solution is difficult. Because of the very importance of transport to our economy, emphasized in the Presidential message, a grave responsibility lies against the Congress to make completely certain that well-meant curative attempts do not disastrously affect the Nation.

We feel that the economic life of the country is so deeply involved with orderly, efficient, economical and available transport that, as in the case of a capital offense, the decision should be devoid of a reasonable doubt.

I use this comparison of a death sentence on an individual because, in our opinion, S. 3243, if enacted, will become a death sentence for regulation of transportation. I am not being dramatic. This is our considered opinion and we are not alone in it.

Even many of those advocating its passage, who dare not openly contend for wiping out all regulation at this time, have expressed the hope that, if minimum rate regulation is abolished for bulk commodities and for agricultural products, however transported, the logical end result will be elimination of similar restraints across the board in transportation.

Replying to a question from a member of the House committee hearing the identical proposal, Daniel P. Loomis, president of the Association of American Railroads, said very frankly:

"I might say we would hope that eventually all minimum rate regulation would be eliminated. But this is a start in that direction with respect to providing equality among carriers and we support it."

Let me hasten to state that it is the trucking industry's vigorous contention that the legislation under consideration, instead of providing for equality among carriers would result in far greater inequality than may exist at the present time. But the important fact here is that Mr. Loomis has admitted that what has been proposed is only the beginning, and he is not alone in believing it is only the beginning. Gov. S. Ernest Vandiver, of Georgia, condemned the proposal to eliminate rate controls in a statement to his fellow Governors. Endorsing an editorial in Traffic World, as stating "clearly and concisely" the objections to the President's minimum rate recommendations, he quoted as follows:

" 'How long would it be practical to continue effective Interstate Commerce Commission rate regulation of any substantial amount of interstate commerce, by any mode of transport?' "

I should like to return to Governor Vandiver's question shortly. I suggest you may wish also to consider the alternative to removal of ICC minimum rate control—to decide whether or not there are any practical restraints on the carriers.

Here again I should like to quote a traffic publication reflecting substantial shipper opinion. From the August issue of Traffic Management, I have excerpted these pointed paragraphs:

"The only curb on the railroads, or any other carrier, in exercising their new privilege would be the Sherman Act, which supplies penalties for collusion or conspiracy to restrain trade and develop monopolies. There is no ban on individual monopoly, such as the Robinson-Patman and Federal Trade Commission acts provide for the rest of American industry. Just why the transportation industry should be exempt from these proscriptions is beyond us. The water carriers and truckers are somewhat alarmed about it.

"The bills would put the Commission in a hopeless position, of course, as it well recognizes. The Interstate Commerce Act requires it 'to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or unfair or destructive competitive practices.' "

"How would it do that?" asks Traffic Management. "Stern letters?"

I think it highly important for the committee to take into consideration some facts about the climate in which this proposal is being considered.

Those favoring this measure have an easy time of it in one respect: Nobody likes regulation. It's easy to whip up sentiment against regulation, because of the kind of people we Americans happen to be. We don't like any individual or collection of individuals telling us what we can do and what we can't do.

We pay homage to the ideal that that government is best which governs least. So, when anyone runs up the flag signalizing a campaign to cut back regulation, there is automatic support—support which has nothing at all to do with the merits of the case.

Then they have another great thing going for them—the Southern grain case which has caught the fancy of editors, thought leaders and the general public. These people don't know all the facts, of course, but that only makes the story more interesting.

What they have heard is that here is a railroad which has come up with a fascinating example of progress—an aluminum body, 100-ton capacity, lightweight freight car. It even has a wonderful name—"Big John"—tied right in with that great country and western song by Jimmy Dean. It can cut the heart out of costs, its owners say.

So this railroad, the public is told, or led to believe, comes up with this fine example of real, good old-fashioned American know-how and what happens? Why a moss-back bureaucracy, created way back in 1887, steps up and says: "Hold on. You can't use 'Big John'." And there the poor railroad sits with this greatly efficient car collecting cobwebs simply because, it is alleged, a gay-nineties collection of bureaucrats won't let them use it. Is this progress? Is this the American dream? Those are the questions railroads ask.

A much better question, of course, would be: Is this the complete truth? Are these all the facts? And like many another good story that collides with the facts, the full truth is much less dramatic and emotion packed.

In the first place the ICC has not said that "Big John" can't work at cut rates. Those rates were protested and the hearings have been highly detailed and complete. Why? Because, according to the record, the owners of "Big John," as well as others involved, want a full record. There is more involved than mere use of a new piece of equipment, but, for all anyone now knows, "Big John" may be turned loose at the end of the full hearings which the railroad wants. Mean-

while, it seems to me, the railroad is attempting to try the case here in Congress, as well as in the press.

Is "Big John" gathering cobwebs now? Not at all. The president of the company which produced "Big John" testified that in intrastate service and in section 22 or Government traffic service, "Big John" had, as of the date of his testimony and in company with others, hauled 1,445 loads of grain at the special rates which "improved methods of operation" made possible.

But these facts never catch up with the more sensational story and as a result the "Big John" story has become the single most dramatic—and most misleading—element in this proposal, as I see it.

For many years, our railroad competitors, in thousands of speeches, advertisements, letters, radio and television programs, personal contacts, booklets—in fact, across the whole spectrum of communications, have promoted certain phraseology—made certain expressions virtually household words. You can do that, if you've got the disposition, the time and the resources, and they have them all. See if these do not ring a bell with you:

"Dead hand of regulation stifling managerial discretion."

"Outmoded, archaic regulations established when rails were a monopoly."

"Umbrella held over competing forms of transportation."

"Railroads are regulated almost to death."

These familiar phrases have been uttered so often that they come into conversations automatically and without any check as to their accuracy. The railroads have been trying to make out a case against regulation intensively for the past 10 or 12 years, relying upon these built-up slogans or phrases to justify their position.

There are two vital questions which, in our opinion, this committee and the Congress must ask, and to which satisfactory answers must be had, before a decisive action such as contemplated in S. 3243 is taken. Let me state them.

Railroads are the urgent advocates of rate deregulation, asserting their present condition is due to excessive and unrealistic regulation. Is this true?

And the second question:

Is deregulation an effective way to attain sound competition in transportation? And as a corollary, are we not better off with sound regulation than without it?

Now as to the first question.

Some of my railroad friends—and I have some—as well as other railroad executives, seem to be hurt because of a recent public appearance in which I said they were a declining form of transport and told why.

I find this difficult to understand—this wounded feeling on their part. All I did was to agree with what virtually every railroad president in the land—and all their other spokesmen—keep saying every time they have a platform. They say their are in trouble—they can't last—they must have help—their share of the traffic has fallen from 74 percent in 1930 to 43 percent today—this last figure offered you at this current hearing by a railroad president.

I agree with them. They are declining in relative importance. The term I used was "decadent." But that isn't my language. That's the term used in a leading economic textbook to describe them. It's the same description applied by economists to local transit and to interurban electric railroads for they too have passed the point of their greatest utility and are in a period of decadence.

In this situation the place where we differ with our railroad friends is in the "why" of their decline. They say it is overregulation. We say it is due entirely to the change in methods of production and consumption and to the relocation of both industry and population. The plain and nondebatable fact is that railroad-type transportation is no longer responsive to a substantial portion of the transportation requirements of agriculture, industry, and commerce in this country.

The reason why they fail to fit the pattern of transportation requirements has nothing at all to do with "the dead hand of regulation." What is involved is the rigidity of railroad service as compared with the flexibility of new forms of transportation or, expressed another way, what our national transportation policy and every economist recognize as certain inherent advantages of the various modes.

Trucks can perform service which railroads can't. They can go anywhere—railroads are tied to their tracks. And, "anywhere" in America becomes increasingly important year after year as manufacturers move out to dispersed sites in fear of bombs and because such sites offer opportunity to spread out on low-cost land in the modern one-story assembly line production plants.

Pipelines now move 17.8 percent of total intercity ton-miles as compared with less than half of this volume moving by pipelines 20 years ago. Why this increase in use of pipelines, as compared to a decrease in the use of rails? Because the vaunted efficiency of the steel wheel on the steel rail pales by comparison with the economic efficiency of liquid moving silently in the pipeline.

We don't have 200,000 miles of pipeline in this country because of the "dead hand of regulation" or the existence of minimum rates or any other factor except the sheer transportation values inherent in pipeline service.

A railroad president, at this current hearing, cited figures showing a total private and for-hire truck revenue-equivalent of $19 billion as against railroad freight revenues of $8 billion to sustain an argument that rails would not constitute a monopoly threat if regulation were removed. There are two interesting things about those figures which he did not mention. The obvious one is that, if the estimated value of truck service is 2½ times that of rail freight service, the dependence of this Nation on trucks is so substantial that the constant and inspired cliche about railroads being "the backbone of transportation in this country" has gone by the boards. Especially when one realizes that rails now haul less than 4 percent of intercity passengers while private automobiles haul about 90 percent.

The other, and important figure, is that the rate-regulated for-hire carriers with $7.4 billion of gross revenue are the carriers involved in the rail monopoly threat—not all trucks. Private motor carriers are relatively immune from destruction by rail rate manipulation but the same cannot be said for for-hire motor carriers. Railroads scoff at the idea that we can again have monopoly in transportation. But we can. To a small producer or business house, whose volume is insufficient to economically justify putting on his own truck, the elimination of independent for-hire truck service to his plant, through a rail rate war destroying the motor carrier—creates a monopoly for him just as surely as it would have created a monopoly in 1886.

I can understand how railroad men can become emotional at the idea of no longer presiding at the throttle of what once was the most useful transportation vehicle in the land.

But I do not believe this committee, the Congress, or the people of this country should buy the purely emotional reason to which they ascribe their decline—namely, overregulation. I am not taking the position that elements of regulation are not a factor in the health of a carrier and I shall go into this situation shortly.

I would like to emphasize, if I can, that the relative position of the railroads in transportation today is the end product of economic forces entirely outside of transportation itself, principally those I mentioned earlier. It is not as they contend, due to regulation.

The reason why it is so imperative to discover the truth about their present status is obvious. If this committee and the Congress functions under the impression that the present standing of the railroads—their loss of preeminence in transport, is due to regulation, it is understandable that Congress would be impelled to attempt to reappraise regulation with restoration of railroads to their former position in mind.

By the same token, if this committee and the Congress are convinced that railroads are inescapably headed toward a still important but lesser role in the Nation's transport picture—then the greatest care must be exercised in order not to harm either competitors or railroads themselves by falsely premised changes in regulation. And we submit that removal of minimum rate power from the ICC is just that—a falsely premised therapy which will do the presumed patient no good but instead will bring down the whole family with serious illness.

Let me ask some rhetorical questions—and answer them.

What is the purpose of removal of minimum rate control from bulk commodities and agricultural products? In theory it is to create a free market for the interaction of competitive forces. Why do the railroads favor it? Because they hope to achieve greater volume through freedom to establish rates at any point, however low, necessary to meet competition. And what good is volume? In the railroad theory (and within limits it is sound) with a fixed plant and high investment expenses in right-of-way, structure and equipment, the greater the volume of traffic which can be secured against which to allocate these fixed expenses, the more economical the service.

But the ultimate objective must be an increase in net income. So, there is one controlling factor which governs the successful operation of this theory

and that is there must be present a substantial foundation of profitable business upon which to erect a cut price structure in the search for volume. It must be obvious that if every element of the service is performed at rates which do no more than cover the actual cost, out-of-pocket, the acquisition of great volume is meaningless. In railroad operation, the short-run or marginal, or out-of-pocket expense of handling a given shipment may be very low indeed. I have seen estimates that it may be less than two-thirds of total expense. Unless every movement bears a portion of the total expense or there is a sufficient volume of highly profitable business to shoulder the total expense, added volume is meaningless. Or worse.

One other factor is of great consequence, but I do not find that proponents of this bill discussing it in specific terms.

The factor is this: There must be available a potential volume of competitive traffic not now hauled by the rate-cutting carrier in order to justify the out-of-pocket or lesser rate established in the effort to get it. In other words, if the railroads, for example, already haul a substantial percentage of a given commodity, any cut below present rates might capture most of the balance of the commodity movement but still leave the railroad with a lower total return than if they had been content with their share at the higher rate. Other witnesses will develop this in detail.

Railroads continually attempt to go this curious route under present regulation. Speaking this April before the spring meeting of the Eastern Industrial Traffic League, Commissioner Clyde E. Herring of the ICC pointed out the irresponsible conduct of carriers in proposing rate cuts to get volume.

"In some instances," he said, and I quote directly, "the carriers would have to increase their participation in the particular traffic by as much as 50 to 80 percent in order to even equal the revenues derived from the movement of the lesser amount at the higher rate."

Obviously, the added traffic theory doesn't work when the additional volume is obtained by the device of cutting rates to a point that will get the business, and when it is obtained, the total revenue is less than that achieved with the lower volume * * * to say nothing of the cost of hauling the added traffic, and, of course, there is cost.

As a matter of fact, this whole theory of added traffic as a solution of the railroad problem is so tenuous that it cannot be reduced to a formula which could be of any use to anyone. There are too many contingencies, and nowhere near enough absolutes for even sound speculation.

The constants, or hard core of traffic already at hand, and the income it produces—the effect of the cut rates established to obtain added volume on traffic already being hauled—the success or failure of the adventure—the impact on related traffic, and, I believe, most of all, the total traffic necessary to achieve an economically happy wedding between work to do and capacity to do it—all these are difficult to determine.

This idea—that if the railroads only had more business everything would be all right—has had the stern test of actually happening, of being part of railroad transportation history and recent history at that. And it hasn't proved out.

Here's the record:

Back in 1929, the American railroads rang up the highest ton-mile performance in their pre-World War II history. That year they achieved 450 billion ton-miles. This service was performed with a work force of just over 1,600,000 employes.

Last year, 1961, they performed 573 billion ton-miles and did it with less than 800,000 workers. That's 27.3 percent greater ton-mile volume—added traffic, if you please—performed with less than half as many employees. And, incidentally, with less mileage and less trackage, or in other words a smaller plant than they had in 1929. And less machinery, still using factory production terms. For in 1929 they had 57,571 locomotives and in 1961 they had 28,795 locomotives. In 1929 they had 2,277,505 freight cars and in 1961 this had dropped to 1,603,500 cars. Still their ton-mile total was 123 billion ton-miles greater.

In fact, every year since the end of the war, and increasingly since 1950 the railroads have complained of going to the wall in the face of more volume than they had in 1929. And, just about every year the added traffic in terms of 1929 has been around 25 percent or better * * * with fewer employees, smaller mileage, less power, and cars.

Now I do not wish to get into the morass of railroad financing and railroad return on investment. And there well may be a variety of reasons, a number of forces which are involved in the situation I am now about to call to your atten-

tion. But, for what it is worth, and on the face of it, this 27.3 percent added traffic handled with half the men, less mileage and trackage, and substantially fewer transportation units, did the railroad no good at all profitwise.

For in 1929 the rate of return on net property investment of the railroads was 5.24 percent. With added traffic and all the other economic advantages I have mentioned as prevailing, the return in 1961 was 1.97 percent or only around 37 percent of the 1929 figure.

I don't say that this is a figure which reflects purely and completely the impact of the added traffic in the years between—but I do say that it can't be of the slightest comfort to those holding that all the rails need is more business.

There are many—and I believe their ranks are increasing—who feel that rather than make frantic and costly efforts to obtain more traffic for the existing railroad plant—the proper course should be a realistic effort to tailor the rail plant to that traffic which can be hauled at a profit.

Responding to a question which in effect sought the answer to how the railroads can survive, Jervis Langdon, Jr., president of the Baltimore & Ohio Railroad, and, incidentally, a witness already heard on the present bill, had some interesting comment in June 1961 at the hearing on S. 1197. Speaking for the Association of American Railroads, he said there are other answers the rails hope to find aside from rates.

"Among others," he said, we want to be able to contract the plant, the overall railroad plant, so that it will be large enough to serve the country and yet not so large as to be beyond capacity of the traffic we can get to support it.

"This is a very important part of the overall tailored problem—to contract the plant, through consolidation and mergers, through abandonment where justified, so that we can come out at the end of 10 years with a railroad plant that can be supported by the traffic that we can move under rates that are compensatory."

Mr. Langdon did not emphasize, but I would like to, the qualifying word "compensatory" associated with the word "rates." His thinking is not singular—there are many who feel the same, including railroad executives, with respect to the overbuilt plant and the impossibility of earning a return on excessive facilities.

The president of the Wabash Railroad, H. H. Pevler, made this statement according to Traffic World of April 14, 1962, in discussing the same situation. He said:

"But the simple fact remains that there is just too much railroad in this country for the volume that is available to them, and mergers and the reduction of plant, we believe, is an absolute requisite to enable the railroads to remain a part of the transportation of this country."

I call your attention to the fact that there is a basic inconsistency inherent in railroad recognition that its plant is overbuilt in terms of what traffic of a compensatory nature is available to them—and their advocacy of S. 3243 whose plain intent is to rate-cut more traffic into this excessive plant. They don't need a crutch—which is what this would be—they need surgery, as these quoted railway executives appear to be agreeing.

Earlier I noted that there were two questions which this committee and the Congress must resolve satisfactorily, in our opinion, before reversing the whole course of transportation regulation and development in effect since 1920. The first of these is to determine whether it is regulation or simply inherent inability to meet modern traffic demands except in part, which is at the base of such trouble as the railroads may be having.

The second question, which also must necessarily be answered with complete satisfaction before drastic action such as S. 3243 contemplates is taken, is briefly this: Is deregulation an effective way to obtain sound competition in transportation?

This question was discussed by the late great Joseph B. Eastman, perhaps the outstanding transportation expert thus far produced in this country. Mr. Eastman was not only a highly qualified student of the history of transportation in this and other countries. He was also thoroughly familiar with all modes of modern transport—rail, air, highway, pipeline, and waterway. His opinions were formed against the background of conditions greatly similar to those involving the transport modes today.

I mention this similarity because I am about to quote his opinion on the virtues of regulation and deregulation and I would like to make the point that principles do not change. On the question of regulation or deregulation, he wrote in his capacity of Federal Coordinator of Transportation, a report on

"Regulation of Transportation Agencies" which became Senate Document 152 of the 2d session of the 73d Congress, 1934. Here is what he said, at a time when either deregulation of rails or regulation of other modes was the question:

"There are some who think the think to do is to let down the bars and allow the competitors to fight it out to the finish. This would, of course, require practical abandonment of railroad regulation, leaving redress of grievances to the courts.

"The eventual result might be a kind of coordinated system of transportation, achieved through survival of the fittest, but the greater competitive strength of the railroads would be likely to distort the results. The fact is that this plan of free-for-all competition has never worked successfully, either here or elsewhere. It has been tried and found wanting."

In connection with that quotation, I remind you of the railroad's ambition for total deregulation as hopefully expressed by Mr. Loomis.

In the same report, Mr. Eastman added this comment:

"Any plan of free and unrestrained competition in transportation would be in the teeth of experience. In the case of the railroads, it was given a prolonged trial and found wanting many years ago. The results were bad for both the railroads and the country.

"The present tendency is to place competition under some measure of restraint in industry generally.

"Uncontrolled competition in transportation would make rates and charges utterly unstable and undependable and would invite much the same abuses as existed in the old railroad 'rebate' days. It would intensify the financial demoralization of all classes of carriers."

It is not necessary to go back to prerailroad regulation days to discover the chaos which existed in the absence of rate regulation. The sorry history of the trucking industry's interstate movement experience prior to 1935, and the vigorous demands of shippers for an end to hit and miss and secret rates is all spread on the record.

Railroadmen testified as to the need for restraints before the House of Representatives in 1932. Mr. Bledsoe, then president of the Santa Fe, testified at that time, 1932, for the Association of Railway Executives, and Mr. Huddleston, as a member of the House committee in that session, asked this question:

"Suppose the Commission should simply say to the carriers today, 'Charge whatever you like.' What percentage could they earn?"

Mr. Bledsoe replied: "You mean to turn every railroad loose to charge what it saw fit? I think it would bring pandemonium."

Mr. Huddleston persisted: "I say, what percentage would they earn?"

And Mr. Bledsoe replied: "That is a speculation that I do not want to engage in, but it would be very much less than they are earning now, in my judgment."

Finally, returning to Mr. Eastman and his celebrated report, we find this comment:

"It is believed that the experience of the past, not only with the railroad but with all industry, and not only in this country but in other parts of the world shows which course to take. We relied, in the early days of railroading, upon free competition as a means of public protection, and the result was bankrupt and unsafe railroads, bad labor conditions, flagrant favoritism in rates with the benefits going to the big shipper and the big community, and an uncertainty and instability which were demoralizing to industry in general. Competition was not universal, for the railroads enjoyed a monopoly as many of the smaller places. But public regulation was imposed quite as much to cure the ills of unrestrained competition as to curb the exactions of monopoly.

"The object of such control is not the protection of the railroads only but the proper protection of every form of transportation. They all have their parts to play, for each form of transportation can do certain things better than any other agency.

"The problem is to find their appropriate functions, protect them in the performance of such functions, prevent wasteful duplication of service without eliminating such competition as is economically sound, and promote a system of stable rates which will reflect the lowest cost of good service but afford the necessary foundation for credit.

"It is too much to expect that all of the present facilities of transportation in each group can survive, for there are too many which are now without economic justification, but out of the present confusion and waste, a sound and well-coordinated national system of transportation can be built."

This comment, generally, is directed to the evil of nonregulation across the board, and it is important to point out again, that total deregulation seems to be what the railroads want. Moreover, as Governor Vandiver and a great many others believe, this would be the inevitable consequence of taking 70 percent of rail traffic and additional rates and highway tonnage out from under effective regulation, which is what S. 3243 would do.

Regardless of whether or not this result ensues, the effect on the economy of removing minimum rate regulation from bulk commodities and agricultural products however moved, would be in the pattern described. It is difficult to foresee any other result.

If removal of minimum rate regulation from bulk and agricultural commodities, constituting the greater share of the traffic handled by water, rail, and highway combined is sound in principle, why stop there? Why doesn't the free interplay of competitive forces bring about sound transportation service in every marketplace rather than in the areas only of bulk and agricultural commodities?

And let's not delude ourselves by saying its experimental here and will be extended to other items and across the board "if it works out" as its advocates suggest. This is too serious a matter and one too deeply touched with the public interest to permit experimentation in any degree.

Enactment of S. 3243 would, in our opinion, produce these conditions among others:

Confusion and delay in determining when rate practices of carriers had violated antitrust provisions as set forth in the bill, and one of our witnesses will develop this—through confusion in regulating other aspects of ratemaking under ICC, especially respecting minimum rates of nonexempt traffic—rate wars between the modes and within the modes of a most vicious sort—monopoly conditions eventually, so far as many shippers are concerned.

These specific effects of the measure will be developed in following testimony and I shall do no more than mention them as I have.

Those in favor of this bill make a persuasive argument when they ask why bulk commodities and agricultural commodities should be exempt with respect to one type of carrier and regulated with respect to others.

We recognize the inconsistency.

We believe it should be solved by adopting the suggestion of President Kennedy that the bulk commodity exemption be repealed and all carriers placed on an equal footing.

A subsequent witness will develop for the committee the thinking of the trucking industry on the agricultural exemption. Basically, our feeling is that the exemption was originally designed (and remains today) to aid the farmer in the marketing of his products. It has never aided the common carrier system and we believe strongly that it should be modified in such a way as to continue to serve the farm community but at the same time not to continue to drag down the common carriers. We believe such a modification is possible both from the economic and political viewpoints.

Much of the problem of violation of ICC regulations, which has created the so-called "gray area" in transport, has arisen from violation of the exempt haul provisions.

I know my railroad friends will not agree with me, considering what they have in mind, but I truly believe there would be far more benefit to the railroads in the weeding out of "gray area" abuses, so-called, than ever there would be in creating a new "black area" of unregulation in bulk and agricultural commodities. And make no mistake about it—it would be so black that no one would ever know what was going on ratewise, except ex post facto and then it would make little or no difference.

In this belief as to where profitable action lies, I find myself in agreement with ICC Chairman Rupert L. Murphy, who last February 9, in a public address, made some observations about the most desirable target for railroad and motor common carrier activity. Said he:

"Instead of devoting their energies to fighting each other over about 30 or 40 percent of the intercity traffic of the country, the common carrier industry, and certainly the Nation as a whole, would be better served by cooperation with each other in a more strenuous effort to regain as much as practicable of the 60 or 70 percent which has been lost to private, exempt or illegal transportation.

"Here is something worth competing for. And, I should add, that shippers also could do a better job in the public interest if they ceased playing one carrier against another to see how close to rock bottom they can squeeze the freight rates on their traffic—stop presenting to common carriers and the Commission

in formal cases, particularly suspension proceedings, dubious claims of savings through private transportation, and bear in mind that common carriers are the backbone of our national transportation system in which all shippers and receivers have an important stake."

Speaking from my personal experience in the trucking industry, I would like to tell you what I believe regulation has meant. And this is the basic question before your committee—are we to have sound regulation of interstate commerce or are we to return to the law of the jungle? Let there be no mistake about this. Effective minimum rate supervision is the basic element in effective regulation. If, as proposed in the legislation before this committee, minimum rate control is denied to the Interstate Commerce Commission the entire framework of Federal regulation of interstate commerce is seriously weakened.

Regulation in my industry, and in my company, has meant being able to serve the public well, with what I believe to be high quality service, and at a reasonable profit. When I came into the business in 1934, service was unheard of—it was largely an unknown factor in transportation. It was simply a matter of the customer taking what was offered and making the best of it.

However, sound regulation in the public interest has given to the public, an adequate number of carriers who are reliable and responsible. We have provided our customers with good service under rates which they know to be fair and reasonable and at which their goods will move.

Regulation, particularly regulation of minimum rates, has meant wise restraints on precipitate and unreasoned carrier action. It has acknowledged that an individual businessman is not always capable of making decisions which will in the long run always be in the public interest, or even in his own interest.

William A. Patterson, president of United Air Lines, speaking last year before a conference on transportation problems conducted at Northwestern University, had this cogent comment to make: "Regulatory agencies are created to control the instinctive selfishness of man so that he doesn't run away either as a result of his selfishness or his uncurbed or unintelligent enthusiasm."

Regulation reflects an acceptance of transportation history and it has worked to overcome inherent shortcomings and frailties. Under regulation the public utility concept of transportation has been fostered. Without this concept the transportation services we have today would not be possible. We have developed the finest transportation system in the world, and it is interesting to note that those who cry out in desperation for radical revisions in our transport policy usually begin their lament with the admission that our transportation system is "the finest anywhere—but * * *."

Much mention has been made of the lower costs which allegedly will accrue to the public if this legislation is enacted. These supposed lower costs which have been promised or implied are an illusion. To a certain extent, some big shippers and some large communities may temporarily achieve lower rates. But this will not be the case for the small shipper and the small community. With removal of the steadying hand of the ICC, the tremendous bargaining power of the big shippers and large communities will be brought to bear. Transportation today, with minimum rate controls, balances large and small movement and rates are determined at which both the small shipper and the large shipper, as well as the large and small communities, can have good transport service at reasonable cost.

Transportation rates must recover the cost of the carriers' providing the service. These rates cannot be depressed on some commodities without rising on others. The total bill must be paid. A mad, suicidal race for added traffic through reduced rates can only result in a rapid deterioration of carrier service, to the detriment of the entire shipping public.

The only basis on which reduced rates should be justified is a better means of carrying the goods. To the extent that improved technology brings lower costs, these should be reflected in reduced rates, after it has been shown that these reductions are in the public interest. And this is the crux of the matter before your committee—whether the judgment of the ICC as to what is in the public interest should be discarded and in its place we should substitute the inherently selfish judgment of individual carrier interests.

And, if I may again quote Chairman Murphy, whose realistic viewpoints on this subject appeal greatly to me, I will end these remarks with his words uttered on the same occasion earlier mentioned:

"Some day," he said, "we may know the perfect way to run a transport system * * * to coordinate efficiently the various modes and means of transportation * * * and how to do all that in the most economical manner so as best to promote the public welfare.

"A worthy aim for all of us is to strive toward that goal * * * not by working both sides against the middle to gain some temporary advantage * * * not by the transport services being more intent on destroying one another than in building and preserving a national system adequate for all our needs * * * but by working shoulder to shoulder with others in a common effort to perfect a system sound and adequate for all the needs of the Nation."

STATEMENT BY C. AUSTIN SUTHERLAND, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. Chairman, members of the committee, my name is C. Austin Sutherland. I am the managing director of the National Tank Truck Carriers, Inc., a Conference of the American Trucking Associations. I am appearing in opposition to that portion of S. 3243 which would deprive the Interstate Commerce Commission of the right to establish minimum rates on commodities transported in bulk. We endorse the position taken by the ICC Chairman, Mr. R. L. Murphy, in his testimony before this committee.

The industry that I represent is engaged entirely in the transportation of commodities in bulk—both liquid and dry. Inasmuch as this is my maiden voyage before this committee, perhaps a quick reference to my background would be appropriate.

I have been associated with the for-hire tank truck industry for 27 years. During World War II, I was assistant director of the Tank Truck Division of the Office of Defense Transportation. Our principal purpose was the converting of hauls under 200 miles from tank car to tank truck in order to free tank cars for the long-haul movement of petroleum from the gulf and midcontinent oil fields to the eastern seaboard. Since 1945, I have been in my present position. I am admitted to practice before the Interstate Commerce Commission, and have appeared in many cases before that body, both as counsel and as witness.

Now, gentlemen, I'm certain that none of you suspect that my appearance today is entirely without self-serving motives. Quite naturally, I'm here because I want to see our industry survive. At the same time, I'm certain that you, also, want to see our industry survive. I sincerely believe, therefore, that I will be serving your committee by pointing out some of the grave dangers that are inherent in this bill.

My purpose is to show you that the enactment of this measure would contribute to rapid deterioration of the tank truck industry, thus causing severe damage to the public interest, and particularly to the many thousands of shippers and small communities that rely upon over-the-road tank truck transportation.

This result will be brought about because the bill would give the green light to any carrier who chose to do so, to establish rates below out-of-pocket or direct cost for the sole purpose of driving out competition. Mr. Heineman, chairman of the Chicago & North Western Railway, in testifying before the Senate Commerce Committee on August 23, suggested (as I read his testimony), that such a predatory rate reduction could somehow be restrained by the Justice Department under the antitrust laws. Even if that is so in theory, in practice the competitor would be out of business before the court machinery could ever function. The plain fact of the matter is, that if rates are not required to be at least high enough to cover out-of-pocket costs, no railroad and no motor carrier could, in practice, be prevented from going as low as it might choose to go.

You may be sure that as soon as any railroad succeeded in killing off and burying its competition, it would not, or, in fact, could not continue to maintain its rates at predatory levels. With competition killed off, any railroad imbued with the profit motive, which Mr. Brosnan says is true of the Southern Railway system, would seek, in the interest of profits, to restore the rates to something near a maximum reasonable level. You may be sure that any such level would be far above that which the railroads would maintain with competition, and regulatory laws as they exist today.

In his statement before the Senate Commerce Committee of August 23, Mr. Brosnan asserts that what I have just stated would be the results if the bill were enacted, would be "ridiculous." He based his statement on the following argument:

"Under this bill, the Interstate Commerce Commission would still retain control over rate increases. It would be economic suicide for any carrier to reduce its rates below cost in order to try to corner the business. The Commission could

and would break such an offender by the simple device of refusing to approve the increased rates. This threat alone is in reality the best and most powerful control."

Mr. Brosnan attributed to the Commission a function and a power which plainly it does not have an agent of the Congress under present statutes. Under the bill, the Commission would have no function or no power with respect to rates on bulk commodities transported by regulated carriers other than to fix the limit of maximum reasonable basis. Certainly, it would have no power to force a carrier to maintain rates on bulk commodities below a maximum reasonable basis so as to punish that carrier for killing off competition at any given point or points.

Mr. Brosnan charges the Commission with ability to threaten regulated carriers with penalties for which there is no provision in the law.

And, I would point out at this time that we are just much concerned with what would happen intramode, among our own carriers, as with what would happen intermode between the tank truck and rail carriers.

I believe that the public stake in tank truck transportation will be made clear if I give you just a few highlights of our operation. Relatively few laymen realize the variety and scope of our services. But, if you'll look at the alphabetical list of commodities included in one of the major tariffs published for eastern tank truck carriers, you'll find well over 700 commodities.

You'll find 34 types of acids, 27 types of alcohols, and 117 types of oils. Tank vehicles carry commodities ranging in temperature from liquid nitrogen at minus 300° F. to molten phthalic anhydride at plus 500° F. We range the gamut from liquid fluorine and oleum to orange juice and milk. We can and do carry carbon black or flour with equal facility. I have attached an appendix—I—listing many of these commodities, not including certain trade names.

The ability to carry this great variety of commodities has resulted from constant diligence to develop new and improved equipment—and the willingness to spend time, effort, and money to do so.

The tank truck industry is a venturesome, aggressive, and curious industry, made up largely, even at this date, of individual businessmen who founded, operate, and control their own companies.

I should like to discuss the staggering blow that would be struck against this industry by the deregulation of minimum rate control on bulk commodities, now exercised by the Interstate Commerce Commission.

On July 12, when the House Interstate and Foreign Commerce Committee heard testimony from Daniel P. Loomis, president of the Association of American Railroads, Representative Schenck asked this question—quotes:

"Mr. Loomis, do you feel that one of the important functions of the ICC is the responsibility to establish rates to protect the financial stability of a given mode of transportation in order to protect the public interest?"

And Mr. Loomis responded:

"No, sir. I do not think that you can say that the establishment of rates to protect a given mode of transportation serves the public interest. The public interest would be better served by letting the different modes of transportation compete, and if one mode is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right and the public will benefit by it."

May I say to this committee that I subscribe to Mr. Loomis' position that, when one mode of transportation can carry commodities more efficiently and cheaply than another, it should be allowed to do so in the public interest.

This does not mean that the public interest is served by allowing a carrier to move commodities at less than his out-of-pocket cost as a means of eliminating competition. And, a carrier cannot be prevented from doing so if there is no minimum rate regulation.

Now, gentlemen, although my appendix I covers several hundred commodities that we transport in bulk, I should emphasize that the movement of petroleum products is—if I may mix a metaphor—our bread-and-butter traffic. In fact, it is on this traffic that we built this industry.

The transportation of chemicals and various exotic commodities that are listed are recent developments, and the volume of this traffic is not sufficient to sustain the tank truck industry as an effective and efficient mode of transportation.

In 1950, the railroads embarked on a program to increase their share of petroleum transportation by seeking a rate umbrella of 1 to 1½ cents per 100 pounds under the prevailing tank truck rate.

Over a period of 7 years, a number of rate proceedings were instituted toward this end; but, rather than take your time with detail, I have listed them in an appendix—II. All of these cases were similar; and, almost without exception, they were decided on the question of the low-cost carrier.

I commend this appendix to you for your analysis in the light of testimony of railroad witnesses to the effect that the Commission has not permitted them to reduce rates where they have been shown to be the low-cost and most efficient mode of transportation.

The tank truck carriers were found to be the low-cost carriers on the shorter hauls, and the rails were denied the right to put their rates below the tank truck carriers' rates on these short hauls, and thereby circumvent the low-cost advantage of tank trucks at these distances.

It is important to note that, not once throughout these proceedings, which involved almost every area of the United States, was any question raised concerning the unregulated transportation of petroleum products in bulk by water carriers. Yet, these cases involved territories served by the Mississippi and Missouri Rivers, their tributaries, the Great Lakes, and the inland waterways. Apparently, from 1950 to 1957, the unregulated transportation of bulk commodities by water carriers was of no concern to the railroads.

In any event, I'm sure that neither the members of this committee nor anyone interested in the preservation of the U.S. transportation system would condone the establishment, by any mode of transportation, of rates below out-of-pocket costs.

As to the matter of efficiency, which Mr. Loomis mentioned in his response to Representative Schenck, I might point out that the average turnaround time of a tank car in the United States today is about two trips a month. In other words, one tank car today in the average rail haul will produce only about 24 trips per year. If the tank truck industry had to live on such an inefficient basis, we wouldn't be up here testifying.

About the only significant development since World War II in railroad equipment for moving bulk liquids has been the king-size tank car, with capacity up to 20,000 and, in some cases, 30,000 gallons. We call these "frameless" tank cars: the support between the two trucks of the car is provided by the shell itself. And ironically, the tank truck industry developed this type of tank trailer equipment back in 1936–37.

It has been the policy of our association not to oppose rates published by the railroads on king-size tank cars, because their unit cost, because of their size—has been so reduced that we consider it an element of progress, just as we consider our own increased capacity an element of progress.

But let's have a look at the results of those long, tedious rate proceedings, on which thousands upon thousands of dollars were spent to determine a principle; namely, that the low-cost and more efficient agency should be able to take advantage of its position in its respective mileage bracket, be it rail or truck.

We start with 1950, and consider the bread-and-butter commodities of the tank truck industry—petroleum products. Taking gasoline, for example, we find from ICC figures that the 1950 revenue derived by the railroads for transporting this product from all U.S. points to all U.S. points ranged from 141 to 157 percent of out-of-pocket costs.

By 1955, the ratio had shrunk considerably; revenue ranged from only 119 to 127 percent of costs.

Now, it was during this period, you'll recall, that the railroads were getting their way as to rates in the areas and mileage brackets in which they established themselves—at least in the minds of the Commission—as the low-cost agency.

So let's move ahead another 5 years—to 1960—and see what has happened. And please bear in mind that there have been no major rate adjustments as to petroleum since the cases to which I referred. There have been some spot adjustments, but none of territorial or widespread scope.

Well, when we refer again to ICC records, we find that the 1960 railroad revenue for hauling gasoline from U.S. points to U.S. points ranged from as low as 90 percent of costs to 98 percent.

In an appendix—III—to this statement, I have set forth in detail the revenues which petroleum products contributed to the out-of-pocket costs for the handling of this traffic. These figures are based on the ICC 1 percent waybill sampling, and I have omitted all movements of less than 100 carloads within or between rail ratemaking territories.

What these figures show is that, even now, when there is minimum rate regulation, the railroads are hauling petroleum products below out-of-pocket cost.

What would happen without regulation in the railroad war against truck transport? As a matter of fact, what is happening now to the principle that the public interest is best served by having commodities moved by the low-cost, efficient agency, a principle to which Mr. Loomis professes to subscribe?

If the ICC were denied its power to regulate minimum rates, it is my firm conviction that the tank truck carrier could stay in business only long enough to cannibalize his equipment. We feel certain that the railroads would act to drive this rival carrier out of the field by naming rates even further below their out-of-pocket costs than some of them are even now. I base this statement on our experience, and I can offer an illustration.

In November of 1959, the railroads proposed reduced rates on gasoline and fuel oil from Watertown, S. Dak., to certain named points in North and South Dakota, and between the twin cities of Minneapolis and St. Paul to certain named points in Wisconsin. They attempted, by these rates, to have the Commission approve a rate umbrella of 1½ cents per hundred pounds under the tank truck rate.

Our association and the members in the affected territories protested to the ICC on two specific grounds: (1) that the proposed rates were below the out-of-pocket costs of the railroads and, (2) they constituted a destructive competitive practice because the higher cost rail transportation was seeking the protection of a rate umbrella in competing with the lower costs of motor transportation. The Commission suspended and assigned the proceeding for handling under modified procedure. Under that procedure the railroads, who were the respondents in the proceeding, filed a written statement of facts which constituted their justification for the reduction. Thirty days later the protestants, i.e. the tank truck carriers, submitted the facts which they relied upon in support of their protest. The railroads in their opening statement, as have the railroads in their appearance before this committee, relied on their right to maintain such rates as within their managerial discretion, deemed necessary to take the traffic away from a competitive mode. On the basis of broad generalities, they represented to the Commission that the rates were above the direct or out-of-pocket cost incurred in the performance of the service.

We employed an independent cost consultant to prepare evidence as to the actual rail costs when developed under ICC's rail form A.

This is a recognized cost formula which has been used by the Commission, shippers, and railroads for many years. It is set forth in Senate Document No. 63 entitled "Rail Freight Service Costs in the Various Rate Territories Throughout the United States."

It is the cost formula which the Commission itself used in the class rate investigation (Docket No. 28300) which lead to the elimination of the high differential in class rates which the railroads years ago imposed on southern shippers and receivers of freight.

As this committee undoubtedly knows, the Supreme Court in *New York* v. *U.S* (331 U.S. 204.67), (1947) approved the Commission's use of this formula in supporting its conclusions that the South should not be subjected to higher class rates than the railroads maintain in northern territory. While Mr. Brosnan referred to rail costs when developed by this cost formula as "mumbo jumbo," that has not been the attitude of either the shippers or carriers generally in cases involving rate-to-cost relations.

We presented our cost evidence in our reply statement. Taking the shortest and longest distant points involved in the case, to illustrate my point, we showed costs and rate relationships as follows (bear in mind that rates and cost are stated in cent per hundredweight):

From Watertown, S. Dak., to Fullerton, N. Dak., a rail distance of 184 miles, the existing rail rate was 24 cents on gasoline and the proposed rail rate was 20 cents. The existing truck rate was 21.5 cents on gasoline and 25 cents on fuel oil. The highway distance was 153 miles for which the tank truck out-of-pocket cost in round figures was 21 cents. For the railroad at the rail distance (184 miles) the out-of-pocket or direct cost was 32.5 cents when based on the cost incurred in the handling of the very lightweight trains on the branch lines on which this destination was located. Even on the basis of higher average weight trains operated on the rail system as a whole, rail form A showed the out-of-pocket cost to be 25.1 cents. Even at this out-of-pocket cost the rails proposed a 20-cent rate.

The longest haul destination involved Pollack, S. Dak., the rail route passing through North Dakota for a total one-way haul of 314 miles. The existing rail rate was 42 cents and they proposed a reduced rate of 28.5 cents. The highway

distance was 216 miles and the truck rate was 29.8 cents on gasoline. The tank truck out-of-pocket cost for the 216-mile distance was 26.2 cents.

The rail cost for this haul at the rail distance was shown as 47.6 cents considering the lightweight trains operated on the branch line service involved. Here again, if we use as the cost basis the system's average weight trains, the rail out-of-pocket cost was shown as 33.6 cents for which they proposed a rate of only 28.5 cents. Thus, in order to achieve as near as possible the 1½-cent umbrella under the tank truck rate the railroad proposed a rate more than 5 cents below their lowest possible cost.

After our reply statement and evidence was submitted, the railroads petitioned the Commission to withdraw the rates and discontinue the proceedings.

We opposed the discontinuance because we wanted to give the Commission an opportunity to find that the existing rail rates were below out-of-pocket costs and should, in order to be lawful, be increased. The Commission authorized the railroads to withdraw the rates on the ground that the only question before it was the lawfulness of the reduction and that the question became moot when they offered to withdraw the reductions.

I have given you this in some detail because it illustrates clearly and in specific terms what the railroad would and could do if not restrained by the Commission's minimum rate power.

If this proposed legislation had been law when these rate proposals were made, the rates would have gone into effect—even though they were below the railroads' out-of-pocket costs, and the tank truck carriers operating in that territory would have been eliminated from this business.

Give the railroads this rate-cutting freedom, and it wouldn't be long before this kind of thing would be undertaken throughout the continental United States on petroleum and other bulk commodities.

And petroleum is not the only thing on which we've had these bulk commodity rate controversies, although our greatest traffic is in petroleum, including petrochemicals. Our second largest customer is the chemical industry, whose products include the exotic fuels used in rockets and missiles. Third is the cement industry. And, fourth is agriculture, including such products as vegetable oils, soybean oil, etc.—but not those commodities covered by the present agricultural exemption.

In the soybean oil field, the railroads have conducted unceasing warfare against us, notwithstanding the Commission's ability at present to control minimum rates.

During the last several years, the railroads took rate increases amounting to more than 86 percent on the transportation of vegetable oils throughout the United States. But, during this same period, they noticed that tank trucks were beginning to edge into this business, mostly in the Southwest.

So, in 1958, when the tank trucks had less than 10 percent of the vegetable-soybean oil business, the railroads started cutting their rates on these commodities by 30 to 40 percent in selected areas where there was competition—even while they were getting higher rates elsewhere. They made no attempt to cut these rates where there was no competition.

What was the result? Between 1957 and 1960, the railroads increased their tonnage on soybean oil by 41 percent—but their revenue by only 3 percent. Actually, their only gain was a partial destruction of tank truck competition.

Even then, they weren't satisfied, and began a campaign to squeeze out the remaining tank truck movement. Since December 1961, rates have been cut on several hundred movements in five rate-cut actions. I have listed the various proceedings in another appendix—IV.

There is no way the rails can recover their losses from this traffic except at the expense of other shippers, other merchandise or other communities. This is borne out by the 86 percent in rate increases that I have mentioned.

Another significant illustration is found in the transportation of bulk cement. This is relative new to the tank truck industry, having developed mainly in the last 3 or 4 years; but its growth has been phenomenal.

As this growth has continued, the railroads, in desperation, have cut their rates all the way to 40 and 50 percent. In most cases, the ICC has allowed these cut rates to go into effect; in others, it has suspended them.

Right now, there is a proceeding before the ICC involving cement transportation in the southern territory, where the rails cut the rates 40 to 50 percent—only after they became aware that they had competition from tank trucks.

The evidence at these hearings—and this, of course, is strictly my own interpretation—indicates that the railroad rate proposals are under their out-of-pocket costs up to 150 miles. This case is still pending before the ICC.

The significant point in connection with this southern cement proceeding is this: for years and years, the railroads had practically all of the cement business, for reasons which I won't go into at this time. And, during these years, they made no move to reduce their rates—to give shippers the benefits of the so-called efficiency and low costs which they want you to believe they can offer. Instead, they took a series of increases between 1928 and 1954.

Not until they had competition from tank trucks did they make any effort to reduce their rates. And, incidentally, even since they started these proceedings, they haven't introduced any testimony to show that exempt water transportation is a competing factor.

Now, my purpose, Gentlemen, in citing these rate-cutting examples in petroleum, soybean oils and cement, is to point out that the railroads don't seem to agree with the principle enunciated by Mr. Loomis when he told you:

"If one mode (of transportation) is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right and the public will benefit by it."

These are noble words, but the railroads have shown—and I have given you examples—that their purpose is to establish whatever rates are necessary to destroy competition. It matters not whether these rates are below cost. When an "umbrella" serves their purpose, they ask for one. When it doesn't, they say umbrellas are evil.

The widely-publicized theory that the railroads are the low-cost and most efficient mode of transportation for all commodities have been repeatedly demonstrated to be fiction.

In case after case before the Interstate Commerce Commission, the tank truck carriers have shown that, in many circumstances, they are the low-cost and most efficient mode of transportation.

This bill would deregulate 70 percent of the railroads' tonnage and 50 percent of their revenue. It would deregulate 100 percent of the traffic in which railroads compete with us. And, Mr. Loomis has made it plain to you that this is just a start—that he hopes that all minimum rates regulations will be eliminated.

This may sound fine to shippers and the public. We are told that many of the regulatory provisions were set up when there was a monopoly in transportation; but, now, there is no longer a monopoly, so we no longer need regulation.

Gentlemen, to me, this kind of reasoning overlooks the fact that we have no monopoly because there is regulation. It's like a man having his store robbed, so he puts in a burglar alarm; and the robberies stop, so he takes out the burglar alarm.

We are accused of trying to avoid competition. The fact is that we want to preserve competition—with some rules of the game, instead of anarchy.

Can anyone have any illusions about what happens when you have unregulated competition? Has anyone forgotten what happened in the late 1880's when John D. Rockefeller was getting concessions from the railroads—not only on the oil they hauled for him but on the oil they hauled for others?

And these kickbacks were just one example of the chaotic conditions that existed in transportation before we had regulation. Everywhere, there was favoritism for the big shipper—discrimination against the little fellow—under-the-table deals—and the devil take the public.

Indeed, as we all know, these were the very conditions that brought about the enactment of the Interstate Commerce Act back in 1887. Now, it is proposed that we turn back the clock 75 years—that this will be in the public interest.

In those earlier years, petroleum transportation was the sorest spot in predatory practices. It also has the greatest potential for evil if rate deregulation is approved.

Remember, gentlemen, that the oil industry deals in tenths of a cent per gallon, and transportation is a prime factor in costs and prices. The price of a suit of clothes—whether you paid $75 or $175—has little relationship to what it cost to move it from where it was made to where it is sold. But the gasoline you burn in your car and the fuel oil you burn in your home are extremely sensitive to transportation rates. Busines is won and lost among oil companies on tenths and even hundredths of a cent per gallon. And, traffic has been shifted from one carrier to another on these same fractional margins.

If you saw the July 23 issue of Oil Daily, which was a petroleum economics issue, you noticed statements by presidents of our leading oil companies and trade associations. The substance of their comments is that production and sales are at record levels, but that the squeeze on profits has resulted in the poorest price structure in years.

Among the basic causes of the profit squeeze are the murderous price wars that have been going on. In a more recent issue of Oil Daily—the one for August 10—an independent oil distributor charges that successive gasoline price cuts have been initiated by the major companies to drive the small distributors out of business. He wants the Justice Department to investigate.

Now, the petroleum industry is one of the biggest bulk shippers of any industry today, with a commodity that is highly sensitive to cost changes. Isn't it clear that deregulation of bulk commodity rates would play havoc with this industry—an industry that deals in tenths and hundredths of a cent—an industry that is basic to our national well-being and our national defense?

Transportation rates will dictate what petroleum will move, who will move it, and what oil company will get the business. During ICC Chairman Murphy's testimony, Representative Hemphill likened rate wars to gasoline price wars (p. 274, transcript of testimony, July 10, 1962). Nothing would contribute more to gasoline price wars than uncontrolled minimum rates on bulk commodities. Gasoline price wars have driven prices way below cost, and the same would be true of transportation rates on bulk commodities—including gasoline.

It might seem, at first glance, that a transportation rate war would help petroleum shippers. But, as you gentlemen know, rate wars are temporary things. And, when carriers, like all other businesses, lose money on one operation, they have to get it back on another.

And, who would benefit from less-than-cost shipping rates? Little shippers and little communities, who don't have large-volume shipments to offer? Of course not. The gains would be reaped by big shippers and big communities.

In our own tank truck industry—forgetting the railroads as competitors for a moment—we are right now under pressure from large shippers to give them what are politely known as "incentive" rates, or volume tender rates. This is based on the principle that the shipper of a large volume between two given points is entitled to a lower rate than the small shipper.

In behalf of the proposal to deregulate bulk commodity rates, it is noted that certain water carriers, hauling three or less bulk commodities, are exempt from minimum rate control. Therefore, it is stated, communities that are not located on rivers or inland waterways are at a disadvantage, compared to those that are so located.

To me, this is somewhat like saying that every town in the United States that is without a pipeline outlet is at a disadvantage compared to those that have such an outlet.

It seems obvious to me, gentlemen, that, if you deregulate bulk commodities hauled by all forms of transportation, the small communities, the small shippers, the small distributors, and the small jobbers will be far more severely injured than they could be by exempt bulk commodity movement by water.

Any benefits that might accrue to them from the ruthless, ruinous rate warfare that this bill would touch off would be of short duration, indeed.

As I have stated before, we subscribe fully to the principle that the carrier which can move commodities most efficiently at the lowest cost is entitled to that business. But we consider it indisputable that, without minimum rate regulation, the more powerful carriers can and will offer rates out-of-pocket cost—only long enough to drive out competition. This, I believe, was clearly illustrated in the *Watertown* case. And, I repeat, we are concerned not only with this kind of practice by the large railroads, but also by members of our own industry.

As to the railroads, alone, without minimum rate regulation, think of the bargaining powers they would have with shippers of both bulk and packaged freight, powers which the tank truck carriers would not have. This, to us, cannot be called equality of treatment.

The public is entitled to the preservation of the low-cost, efficient transportation agency against below cost predatory rate-cutting. This can be prevented only by continuance of ICC control over minimum rates.

We, the tank truck carriers, are not exempt from minimum rate controls. Unlike the railroads, we have never asked for any exemption—we don't want it.

In brief, we do not oppose this bill because it would stimulate competition, but because it would eliminate it.

I know that this committee does not want our industry to collapse, because you know that we are an essential industry. You remember, I'm sure, how the utilization of the limited number of tank trucks available during World War II made it possible to transfer approximately 74,000 tank cars into petroleum

movement to the eastern seaboard—an achievement that enabled us to overcome the grim ravages of German submarines.

Two things made this possible. First, there were more than 20,000 idle tank cars, rusting on railroad sidings in various parts of the country. Second, we converted all possible hauls under 200 miles from rail to tank truck. A report from the Office of Defense Transportation on Civilian War Transport has this to say of the then present tank car situation:

"Although many were rusting on sidings or being used for storage, they were in existence, and there was a surplus. The big question was whether these cars, averaging at least 18 years of age, could stand the strain of long-haul operation. As a test, 20,000 were pressed into service transporting crude oil from producing regions of the southwest to the eastern refineries. In August, 1943, a peak of 74,000 cars was reached."

Today, there is no large surplus of tank cars for two reasons:

(1) An enormous increase in crude oil production and refining with its corresponding increase in transportation requirements and (2) a radical change in the use and distribution of tank cars.

In 1940, just before the outbreak of the war, the average daily crude oil runs to the still was just under 3,610,000 barrels. Today it is around 8,500,000 barrels—a gain of nearly 5 million barrels per day.

In 1943, the first year in which the ICC figures were available, there were 125,143 privately owned tank cars in petroleum service and 10,834 tank cars in other services, such as the transportation of chemicals for a total of 135,977 tank cars.

Present ICC figures for 1960 reveal that notwithstanding the 5 million barrels per day of increase in crude oil runs, there are only 78,055 tank cars in petroleum service and 80,924 in chemical and other service, for a total of 158,979 cars.

This increase of tank cars is in no way in proportion to the tremendous increase in petroleum and chemical production, and transportation requirements.

I'm sure you're aware of the role we are now playing in moving petroleum products for the military establishment, and in transporting the exotic fuels for our missile and rocket program. So, there's no doubt that tank truck transportation is essential to national defense.

We cannot destroy this industry and then say, in case of a national emergency, "put it back on the road," just like turning out some motor vehicles and putting them into operation. We are a highly skilled industry, with highly trained personnel, and advanced techniques and specialized equipment developed through years of research. These things cannot be replaced overnight.

We do not seek a rate umbrella protection against the railroads—such as they sought for themselves. We are willing to compete with them on a cost-versus-cost basis, efficiency-versus-efficiency basis, or value-of-service versus value-of-service basis.

But, gentlemen, I have been associated for years with the development of rate structures on bulk commodities in this country, and, for the life of me, I can't see how the various transportation agencies can remain solvent—or at least within their out-of-pocket costs—unless there is regulation of their minimum rates.

Thank you very much.

(The appendixes and exhibits attached to Mr. Sutherland's statement may be found in the files of the committee.)

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and members of the committee, my name is Peter T. Beardsley and I am general counsel of American Trucking Associations, Inc. I would like to devote my appearance here entirely to a discussion of the antitrust laws which S. 3243 would substitute for the minimum rate powers of the Interstate Commerce Commission which the bill would eliminate. The theory, at least, of the drafters of the bill seems to have been that to the extent that carriers were relieved of regulation by the ICC, they should be made subject to the provisions of the antitrust laws applicable to other businesses. Unfortunately, as we read it, the drafters of this bill missed the target by a very wide margin.

It should be noted, first of all, that Federal regulation of railroads preceded Federal antitrust statutes by a few years. No doubt because regulation of com-

petition in transportation has been historically handled by the ICC, an agency specially created to do just that, Congress has chosen to exclude carriers regulated by that agency from most of the various provisions of the antitrust statutes as they have been amended and broadened down through the years.

Thus, a well-recognized separation of jurisdiction has resulted. In the case of business generally, the general laws such as the antitrust statutes are relied upon to assure fair and proper pricing of goods and services for the purpose of safeguarding against unfair destruction of competition and the monopolistic abuses which inevitably flow from an abnormal concentration of control in any area of the economy.

Application of the principles of the antitrust statutes are no less important in the field of transportation. Congress long since recognized that such safeguards were doubly important in a field such as transportation which touches virtually every aspect of our national life. This is the primary reason for the existence of the Interstate Commerce Act and the Interstate Commerce Commission—a special statute to be enforced by a special arm of Congress, to make especially sure that competition should exist on a fair and sound basis and that never again should a dominant agency of transport subject its competitors and the public to the abuses of monopoly.

In other words, in the field of transportation the Interstate Commerce Act and the Interstate Commerce Commission were very largely substituted for the antitrust laws and the Department of Justice.

Now it is proposed, after more than 40 years of minimum rate regulation by the ICC, to strip it of its minimum rate powers with respect to 70 percent of the railroads' tonnage. At the same time, we are told by proponents of the bill, there need be no fear of predatory rate practices by the railroads because those provisions of the antitrust laws which will be applied to carrier practices will be sufficient to deter them from indulging in any such practices.

RAIL COMPETITORS NEED CONTINUED PROTECTION

We find it ironic that, at the same time Congress is considering proposals to increasingly protect small businesses from predatory pricing practices in the area regulated by the Federal Trade Commission, it is being requested to remove all effective restraints to such practices in a large proportion of the area regulated by the Interstate Commerce Commission.

In May of this year, the Honorable Paul Rand Dixon, Chairman of the Federal Trade Commission, testified before the House Committee on Interstate and Foreign Commerce in favor of H.R. 127 and H.R. 8830. He described H.R. 127 as a bill to amend the Federal Trade Commission Act "so that with certain exceptions it would be unlawful for any person engaged in commerce to sell, contract to sell, or offer to sell, goods in any part of the United States in or affecting commerce, at prices lower than those exacted by him elsewhere in the United States and where such sales would include unreasonably low prices." H.R. 8830 he described as a bill to add to the powers of the FTC by authorizing it to issue temporary cease and desist orders in some cases pendente lite, upon a showing, generally speaking, that the public interest would be irreparably harmed if such action were not taken. Please recall that he asked for these powers despite the fact that the antitrust laws applicable to business generally are presently far broader than those provisions thereof which the bill now before you would apply to carrier practices.

In the course of his remarks, Mr. Dixon told the House committee that "Congress has evidenced concern for small businesses in situations where large predatory interstate sellers come into an area and lower their prices to try to take away business from local concerns." We would remind this committee that the regulated motor carrier industry is, by and large, composed of small businesses and that even our "giants" are, relatively speaking, pygmies compared to the large railroads.

The testimony of the proponents of S. 3243 is to the effect that those portions of the antitrust laws which the bill would apply to carrier practices would be an adequate substitute for the minimum rate power of which the Commission would be shorn. I say "to the effect" because none of them seemed very convinced of their stand, and the rail witnesses clearly indicate that they want to eat their cake and have it too—that is, they want the Commission's minimum rate powers removed, but they don't want really adequate antitrust protection substituted therefor.

TESTIMONY OF GOVERNMENT WITNESSES

After first stating that the bill contains antitrust provisions designed to "prevent the absence of minimum rate regulation * * * from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency," the Secretary of Commerce became much less positive. Further on in his testimony, Mr. Hodges said he did not know whether the bill repealed the Reed-Bulwinkle Act. And the Deputy Undersecretary for Transportation stated that "there are differences of opinion as to how much antitrust immunity should be given." Finally, the Secretary conceded that there is the "possibility" that the bill could lead to a jungle war in rates, but added that "you have the question of injunctive relief under the antitrust laws, if you see something like that developing." The Secretary ultimately demonstrated that his apparent reliance on the antitrust laws to fill the gap left by removal of the ICC's minimum rate powers was based more on hope than solid judgment. In the House hearings, Congressman Rogers of Florida expressed concern about "substituting perhaps the regulation now of an agency set up to go into this on minimum rates, and simply turning it over to the Department of Justice under this antitrust provision." He asked whether "we are not going to subject the entire industry to harassment, and simply turning regulation of minimum rates over to the Department of Justice, rather than as it is now regulated by agencies set up to study this and do this same work." The only answer Secretary Hodges could give was that, if the bill was passed and "the industry doesn't know any better than to bring on itself this kind of thing, then it is just too bad. I would hope very much that we did not get into the antitrust and Justice taking over, because nobody wants that to happen."

Thus, the testimony given by the Secretary of Commerce and his assistants on this phase of the legislation amounts to about this: They have drafted legislation which would deprive a Government agency with 75 years of experience in regulation of transportation of one of its most important powers. They think that some portions of the antitrust laws should be applied to fill the gap, but they are by no means sure as to just which of such laws should apply—they are willing to leave that to the Congress. And finally, they hope that the carriers will be "good boys" and not run afoul of whichever, if any, of the antitrust laws are made applicable to carrier practices.

The Assistant Attorney General, Antitrust Division, seemed at first much more positive than the representatives of the Department of Commerce as to the efficacy of the antitrust laws (or that portion of them which would be applied by the bill) as a substitute for the ICC's minimum rate powers. Mr. Loevinger expressed the thought that section 16 of the Clayton Act (15 U.S.C. 26) would, by the terms of the bill, be made applicable to carriers transporting agricultural and bulk commodities, and that elimination of the ICC's minimum rate powers "will permit a carrier who might be injured by a ratemaking practice violative of the antitrust laws to seek a district court injunction against the practice." This, he said, "will permit prompt recourse to the courts to bar anticompetitive agreements or monopolistic practices."

However, during the question and answer period, Mr. Loevinger seemed much less positive than in his prepared testimony. In response to a question from Mr. Rogers of Texas as to the source of relief for an aggrieved party where the claim was unreasonableness as against a situation involving discrimination, Mr. Loevinger said:

"I suppose that there is an area here of not absolute certainty. It seems to me that if it is claimed that the minimum rates are discriminatory as established there would be such remedies available. On the other hand, the argument against this would be that even though the Commission cannot set the minimum rate on the basis of reasonableness, it still retains the right to control discrimination and therefore when the claim as to discrimination is made it has lost none of its powers and therefore there should not be a specific antitrust remedy. I suppose that this is something that ultimately would have to be determined by the courts. However, my opinion, which I trust will not bind either me or any one else in the Department of Justice in the event of litigation, at this time would be that this act takes the minimum rate establishment out of the area of regulation sufficiently to subject it to all of the remedies of the antitrust laws, having in mind the provisions of 15 United States Code, section 26."

When the indecisiveness and uncertainty of the Government proponents of this bill, both as to the extent of immunity from antitrust laws which should be allowed, and the relief from monopolistic rate practices which would actually be provided, is borne in mind, the smaller, weaker, competitive modes of transport can hardly be blamed for fearing the likelihood that predatory rail rate practices will be the result of enactment of this proposed legislation.

TESTIMONY OF RAIL WITNESSES

I should next like to touch on the testimony of the railroad witnesses with respect to this phase of the legislation. Mr. Loomis of the AAR stated "we think that the authors of the bill have in some respects been overzealous" in substituting certain provisions of the antitrust laws for the Commission's minimum rate powers. In answer to a question put by Congressman Schenck, Mr. Loomis espoused the proposition that "if one mode [of transport] is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right." This is the height of irony—Mr. Loomis apparently forgot, for the moment, that the result of passage of this bill would be to make it impossible for the Commission to determine which is the low-cost carrier in any given case, since it would no longer have such jurisdiction. And nothing in the proposal to substitute certain antitrust provisions for the ICC's present authority will give any other agency or the courts such authority. In short, having "killed the umpire," so to speak, who is to determine what is fair or foul? The same comment I have just made with respect to Mr. Loomis' answer is applicable to Mr. Langdon's statement that "traffic will in certain cases shift in accordance with the economic characteristics of the competing modes, but the shifts will be in the interest of the greatest economy for the Nation as a whole." Admittedly, that is an appealing word picture Mr. Langdon painted, but I would ask just one question: Who is to finally determine what "will be in the interest of the greatest economy for the Nation as a whole?" Is it to be the ICC or the railroads? There should be no illusions on this point—if the bill before you is enacted, it will be the railroads. There is certainly nothing in any of the antitrust laws which reposes such power in the courts, even if they were as familiar with the overall transportation picture as the ICC, which they most certainly are not.

Mr. Brosnan, at several points in his testimony, vigorously emphasized that the railroads will not publish below-cost rates. If this is so, I wonder why neither he nor any of the other rail spokesmen suggested that the bill be amended to specify that such rates would be illegal and subject to court injunction?

RAIL COMPETITORS NOT PROTECTED

Throughout these hearings, the phrase "antitrust laws" has been thrown around so loosely by the proponents of this proposed legislation that anyone not as intimately acquainted with the facts as are the members of this committee might very well form the opinion that the full thrust of the antitrust laws was to be applied to carrier practices, which if engaged in by other businesses, would lead to prosecution by the Government or suit by aggrieved competitors. Yet this is not the case. In order to make this entirely clear, I have appended to my statement a section-by-section rundown of those antitrust provisions which the bill would ostensibly make applicable to carriers. I say "ostensibly" because some of those same sections contain language which specifically excludes carriers from their application (e.g. § 7 of the Clayton Act, 15 U.S.C.A. § 18, prohibiting acquisition of the stock of one corporation by another where the result may be substantially to reduce competition, or to tend to create a monopoly). In addition, other sections are so phrased as to cover only activities involving, for example, "commodities," which term can hardly be stretched to cover a service such as transportation (e.g. § 2 of the Clayton Act, 15 U.S.C.A. § 13, prohibiting discrimination in price between different purchasers of commodities of like grade and quality where the effect thereof may be substantially to lessen competition or tend to create monopoly). Again, some of the antitrust provisions which the bill would make "applicable" to carriers are already applicable (e.g. § 10 of the Clayton Act, 15 U.S.C.A. § 20, requiring common carriers to use competitive bidding for contracts for supplies, construction, and so forth, where they do business of over $50,000 a year with firms having an officer, director, and so forth who occupies a similar status with the carrier). In this connection, the Supreme Court, in *Northern*

Pacific Ry. Co. v. *United States*, 356 U.S. 1, 78 S. Ct. 514 (1958), recently held that so-called preferential routing by the railroad there involved was unlawful as an unreasonable restraint of trade prohibited by section 1 of the Sherman Act, 15 U.S.C.A. § 1. In that case the railroad, in connection with the sale or lease of land, required the grantee or lessee to agree to ship over its lines all commodities produced or manufactured on the land, provided its rates were equal to those of competing carriers.

The bill provides that carriers exempted from minimum rate regulation "who shall engage in any act, practice or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the act of October 15, 1914," and so forth, shall "be subject to the proceedings and penalties specified in such laws," and so forth. Digested, this simply means that carrier practices which are already proscribed by the Sherman and Clayton Acts will continue to be proscribed. The kicker here is that, unless the Clayton Act were amended to remove the present exemptions which it provides for carriers, and to otherwise include transportation within its ambit, its "applicability" to carriers as provided in the bill is a meaningless gesture which affords the railroads' competitors not one iota of real antitrust protection from predatory rail actions. The bill before you would broaden antitrust coverage of carrier practices only to this extent. It would eliminate the antitrust exemption provided by the Reed-Bulwinkle Act for collective ratemaking with respect to local, single-line operations. Carriers would retain their exemption with respect to collective ratemaking in connection with joint through rates.

ANTITRUST PROVISIONS DO NOT MEET PRESIDENT'S RECOMMENDATIONS

The President's message stated that "existing" laws against monopoly and predatory trade practices should be substituted for the ICC's minimum rate powers, which the bill would erase. If the President had merely meant that those provisions of the Sherman and Clayton Acts already applicable to carrier practices are adequate to protect against "predatory, discriminatory trade practices or rate wars" he surely would have used plainer language to convey his thought. Some of the proponents of the bill have somehow overlooked the true significance of this portion of the message. Mr. Heineman, for example, referred to the "appropriate" provisions of the antitrust laws which should apply to carrier practices. We submit that there is a fundamental difference between applying the "existing laws against monopoly and predatory trade practices"—as recommended by the President—and applying only those parts of such laws as are included in the bill, and which already apply to carrier practices to the same extent as the bill would apply them.

Mr. Heineman's testimony shows the railroads' true feelings regarding the antitrust phase of the bill. He stated that only sections 1, 2, and 3 of the Sherman Act, and certain implementing procedural and remedial sections (15 U.S.C. secs. 4, 5, 6, 7, 15, 15(a), 15(b), 16, 22, 23, 24, and 26) should be applied as substitutes for the minimum rate power which would be taken from the ICC. As noted, these provisions already apply to carrier practices to the same extent that the bill would apply them. Mr. Heineman objected to the fact that the bill would make the Reed-Bulwinkle Act inapplicable (except for through routes and rates) to concerted rate action on those commodities which would be removed from the ICC's minimum rate power. He believes that railroads should not only have no ICC supervision over their minimum rates, but that two railroads, serving between the same points, should, at the same time, have the right to determine a common rate for their service. In short, he seeks a situation in which the Commission will be deprived of its power to prevent cutthroat competition, and at the same time—despite protestations to the contrary—rail actions looking toward such competition will be exempted from antitrust restraints.

It is only too clear that the antitrust provisions which the bill would apply to carrier practices do not begin to meet the standard contained in the President's message, and that they will not protect against—to use his words: "predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency."

We don't believe that the full impact of all the antitrust laws, much less those few included in the bill, is an adequate substitute for the ICC's power with respect to minimum rates. And while we strongly oppose enactment of this bill

in any event, should the committee disagree and recommend its enactment, we submit that all of the provisions of the antitrust laws, including the Robinson-Patman Act, should be made applicable to carriers relieved from ICC minimum rate power. And we think that where those laws presently are worded so as not to apply to transportation, they should be amended to specifically include it. It has been argued, of course, by the railroads that the ICC's minimum rate powers are only a part of its total jurisdiction. Literally, this is true. It is also literally true that one's head is only a part of his anatomy. But it's a most important part—and we can think of no more important safeguard in the Interstate Commerce Act than that which gives the ICC the power to regulate minimum rates.

REMAINING ICC AUTHORITY AND INJUNCTIVE RELIEF—IF AVAILABLE—ENTIRELY INADEQUATE

I come now to the claim by the supporters of deregulation that the Commission's authority to control discriminatory ratemaking, and the right of carriers to bring actions for injunctions under the Clayton Act will adequately protect the public interest.

Insofar as discrimination is concerned, the large shipping interests need no protection. They are the ones to whom carriers have traditionally extended "wholesale" rates, and who will continue to receive them whether this bill is passed or not. But, under present law, carriers can and do file formal protests with the ICC on the basis that proposed rates of other carriers are unduly low. Although these protests are filed in the selfish interest of the carriers involved, they very frequently serve incidentally to protect the interest of small shippers who might be disadvantaged by the proposed rate but who, nevertheless, would not go to the trouble and expense of protesting the proposed rate on their own behalf. This bill will remove the right of any carrier to protest the level of a proposed rate with respect to the vast tonnages which would be exempted from minimum rate regulation. And the courts have held that a carrier may not complain of discrimination between shippers or localities as that is "a grievance that is not his" (*Interstate Commerce Commission* v. *Chicago R.I. & P.R. Co.*, 218 U.S. 88, 109, 30 S. Ct. 651, 659 (1910); *El Paso & S.W.R. Co.* v. *Phelps-Dodge Mercantile Co.*, 75 F. 2d 873, 879 (1935)).

Thus, for all practical purposes, the proposed legislation, while not repealing as such the ICC's power to suspend rates, will make that power pretty much a "dead letter." While it is true that the Commission today suspends a very small percentage of rate reductions, by the same token the very fact that it possesses the power to do so acts as a brake on carrier efforts to reduce their rates to unreasonably low levels. Incidentally, I am informed that about 90 percent of the requests for suspension filed with the ICC are based on the claim that the proposed rate is unreasonably low.

Mr. Loevinger's assumption to the contrary, we do not believe that the provisions of section 16 of the Clayton Act (15 U.S.C.A. sec. 26) will enable motor carriers, for example, to seek injunctions against predatory railroad rate practices. The langauge of the proviso in section 16 specifically bars anyone, except the United States, from seeking injunctive relief against carriers "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission." If this bill were enacted, the ICC, as the railroad witnesses have so often pointed out, would still have jurisdiction "other" than its minimum rate power, over rail rates on agricultural and bulk commodities, for example, over their publication and filing. This being so, we submit, it is more reasonable to assume that section 16 of the Clayton Act will not allow the bringing of private suits for injunctive relief than to assume, as Mr. Loevinger appears to do, that the courts will read the "or other jurisdiction" of the ICC out of the proviso of the section.

But, even assuming that Mr. Loevinger is correct and that motor carriers may, if the bill is passed, seek relief in the Federal courts under section 16 of the Clayton Act against railroad rates which they believe are intended to bring about monopoly, what then? Some of the testimony which has been given may have left the impression that it would be an easy matter for an aggrieved motor carrier to obtain court redress against such rail rates. Nothing could be further from the fact.

First off, remember the comparative size and power of the adversaries—rail versus motor—and also that in the court action the burden of proof would rest on the shoulders of the weaker of the two. Next, remember that injunctive

relief is an extraordinary legal remedy and one which the courts very sparingly grant. Section 16 of the Clayton Act underscores the extraordinary nature of the injunctive relief there authorized by establishing "the same conditions and principles" and the same rules as are applied by courts of equity in other cases where injunctive relief is sought, and by specifying that for a preliminary injunction to issue, a showing must be made "that the danger of irreparable loss or damage is immediate."

As the district court expressed it in *Hershel California Fruit Products Co.* v. *Hunt Food* (111 F. Supp. 732, 734 (1953), app. dismissed 221 F. 2d 797):

"The burden cast on plaintiffs on a motion for preliminary injunction in a case of this character is a heavy one and the injunction should not be granted or indulged in except in a case clearly demanding it."

If the damages suffered are measurable and ascertainable in money value (*Hunt Foods*), or if the threatened damage can be adequately compensated for by monetary damages (*Fein* v. *Security Banknote Company*, 157 F. Supp. 146, 148 (1957)), a preliminary injunction will not be issued.

A preliminary injunction under section 16 will be granted only on a showing of irreparable injury during the pendency of the action (*Warner Bros. Pictures* v. *Gittone*, 110 F. 2d 292 (1940)). It will be refused where the plaintiff does not allege and show that it individually has sustained or is threatened with irreparable loss or damage immediately or during the pendency of the action (*Caldwell-Clements, Inc.* v. *McGraw-Hill Pub. Co.*, 12 F.R.D. 403 (1952)). And a preliminary injunction has been denied where a showing of irreparable damage by not obtaining the relief did not appear "too clearly" and a "reasonably early trial on the merits" could be accorded the plantiffs (*Volk* v. *Loew's Inc.*, 94 F. Supp. 162 (1950)).

The whole tenor of injunctive relief, even if available, is in conflict with the purpose of suspension power in the Interstate Commerce Commission. Suspension of a rate pending determination of its lawfulness is not an extraordinary procedure—it is, in fact, of such a "routine" nature that it is delegated by the Commission to an employee board. The difference between transportation and antitrust regulation makes the injunction provisions of the Clayton Act a totally inadequate substitute for the suspension power under the Interstate Commerce Act.

One of the most important types of cases in which the Commission presently exercises its rate supervision and regulation—including suspension power—is that involving competitive rate wars. This is an essential power of the Commission since it permits the check of reckless retaliatory rate reductions which result in debilitation of carriers' financial stability and impairment of their ability to meet their obligations to provide service. Of course, the bill before you would eliminate this "ounce of prevention" insofar as 70 percent of rail tonnage is concerned.

The issuance of injunctions under section 16 would be subject to the very general standards of the antitrust laws and the "conditions and principles" of other injunctive proceedings rather than the more specific ratemaking standards of the Interstate Commerce Act, as they have been implemented and given life by the Interstate Commerce Commission. Businessmen whose activities are subject to antitrust regulation frequently complain that it is impossible to determine in advance whether an action will violate some provisions of the antitrust laws—what one author has described as "the uncertain statutes, the unpredictable interpretations, and the almost unprecedented problems of application, enforcement, and compliance in this field of law" (Van Cise, The Federal Antitrust Laws 66 (1962)).

At least part of this confusion necessarily arises because of the multitude of jurisdictions in which antitrust questions are initially determined. The advantage of having a single forum decide questions of the lawfulness of rates (subject, of course, to review by the courts) would be lost if those questions are removed from the Commission's jurisdiction and transferred to the courts. The Federal district courts speak in many voices, and those voices, unfortunately, do not always harmonize. The not unusual conflicts which arise among the district courts and even among the courts of appeals would be especially disastrous in the field of transportation which Congress has seen fit to regulate in accordance with an overall declared policy.

If the bill were enacted, and carriers could sue to enjoin proposed rates, it is easy to visualize comparable rates enjoined in one court and allowed to remain in effect by other courts. Since many carriers operate in several jurisdictions, it is not outside the realm of probability that the same rate attacked in different

courts simultaneously could be both approved and enjoined. Where disparate interests are involved and the equally compelling convenience of a number of widely separated parties must be considered, multiple proceedings in several courts involving the same rate are quite possible.

And finally, courts are reluctant to make determinations which are prospective in terms. While a court might conceivably find that a given rate was unlawful and should be enjoined, it would not indicate to the parties what level of rate would conform to the antitrust laws.

For example, suppose that a motor carrier could satisfy a court that a railroad, in reducing its rate from $1 to 50 cents, had violated the antitrust laws. No doubt, the court would enjoin the rate. But that is as far as the court would go. It would not, as the Commission often does, determine the level below which the rate could not be set. And it is thus quite possible that a motor carrier, having gone to all the trouble and expense of making his proof and securing an injunction against the 50-cent rate, would find himself faced with, say, a 52-cent rate, placed in effect by his rail competitor as soon as the 50-cent rate was enjoined.

For the reasons I have stated, the private injunctive remedy of section 16 of the Clayton Act—and we do not believe it would be available—is a completely unsatisfactory substitute for the minimum rate powers of the Interstate Commerce Commission. And as for the other provisions of the antitrust laws which the bill would apply to carrier practices, it seems likely that only after a carrier, in a given traffic and a specific route or territory, had achieved a virtual monopoly, could they be successfully invoked. Here again, the ICC's minimum-rate powers can now be used to stop such situations from developing. It is conceivable, for example, that in some situations court relief under the Sherman Act might make an aggrieved carrier whole, but even so, such relief would not protect the public interest in an adequate transportation system.

SUPPORTERS OF THE BILL IGNORE HISTORY

Finally, there is a bit of history which is very pertinent to your consideration of the proposed legislation. The Commission did not acquire its power to regulate the minimum rates of carriers until 1920. The Sherman Act was passed in 1890 and the Clayton Act in 1914. In *Lake Line Applications Under Panama Canal Act* (33 I.C.C. 699, 716 (1915)), the Commission found that the railroads, acting in concert, "were able to and did drive all independent boats from the through lake and rail transportation, [and] thereby destroyed the possibility of competition now held as a shield against possible competition of new independents." These railroad activities took place when the Sherman Act was in full force, and continued for some years after the Clayton Act was passed. In fact, it was not until the ICC was given its power over minimum rates that independent water carriage again came alive. Now we are told that the Commission can be deprived of this same minimum rate power, and that these same two antitrust statutes, which the bill would substitute for that power, and which were of no avail when the railroads drove the independent water carriers out of business, will somehow prevent them doing the same thing again to the motor and water carriers. We prefer to believe the lesson of history.

SECTION-BY-SECTION ANALYSIS OF ANTITRUST LAWS DESIGNATED IN SECTION 1 OF THE ACT OF OCTOBER 15, 1914 (CLAYTON ACT)

THE SHERMAN ACT (15 U.S.C.A., SECS. 1–7)

Section 1: Declares every contract, combination, or conspiracy to restrain trade or commerce among the States or with foreign nations to be illegal. Provides fine or imprisonment, or both, for violations.

Comment.—Applicable to all businesses. Would apply to collective ratemaking by carriers, except for provisions of Reed-Bulwinkle Act (49 U.S.C.A., sec. 5b).

Section 2: Declares that every person who monopolizes, attempts to monopolize, or combines or conspires with others to monopolize trade or commerce, is guilty of a misdemeanor and subject to fine or imprisonment, or both.

Comment.—See section 1.

Section 3: Same provisions as section 1 applied to territories or District of Columbia, or between them and the States.

Section 4: Provides for jurisdiction of courts and duty of U.S. district attorneys to prevent and restrain violations of the Sherman Act.

Section 5: Empowers district courts to bring in additional parties to section 4 proceedings by subpena, whether such parties reside in the district or not.

Section 6: Provides for forfeiture of property moving in commerce owned under any contract or combination or pursuant to any conspiracy subject to section 1.

Comment.—In *U.S.* v. *Addyston Pipe & Steel Co.* (85 F. 271 (1898)), modified, 175 U.S. 211, 20 S. Ct. 96), an injunction proceeding, it was held there could be no forfeiture of goods, except upon jury trial.

Section 7: Defines "person" as used in Sherman Act.

THE WILSON TARIFF ACT OF 1894 (SECS. 73–77, INCLUSIVE) (15 U.S.C.A., SECS. 8–11)

Section 8: Prohibits combinations, conspiracies, or contracts in restraint of import trade.

Section 9: Provides for jurisdiction of courts and duty of U.S. district attorneys.

Section 10: Empowers district courts to bring in additional parties to section 9 proceedings by subpena, whether such parties reside in the district or not.

Section 11: Provides for forfeiture of property moving in commerce owned under any contract or combination or pursuant to any conspiracy subject to section 8.

THE CLAYTON ACT (15 U.S.C.A., SECS. 12–27)

Section 12: Defines "antitrust laws" for purposes of Clayton Act.

Comment.—These include sections 1–27 of title 15, United States Code Annotated. Same definition as used in S. 3243.

Section 13: Prohibits discrimination in price between different purchasers of commodities of like grade and quality, where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

Comment.—Not applicable to carriers, since transportation is not a commodity.

Section 14: Prohibits exclusive-use contracts in connection with the lease or sale of "goods, wares, merchandise, machinery, supplies, or other commodities."

Comment.—In *Fruit Growers Exp., Inc.* v. *F.T.C.* (274 F. 205 (1921)), the Federal Trade Commission was held to be without jurisdiction in a case involving contract requiring railroad party thereto to use Fruit Growers' equipment exclusively in the movement of fruits and vegetables. ICC held to have sole jurisdiction. Dismissed (261 U.S. 629, 43 S.Ct. 518).

Section 15: Authorizes treble damage suits for violation of "antitrust laws" as defined in section 12.

Section 15a: Authorizes suits by United States to recover actual damages and costs when it is injured in its business or property.

Section 15b: Provides 4-year limitation period upon suits brought under section 15 or 15a.

Section 16: Makes final judgment or decree in civil or criminal suit brought by United States (other than consent decrees) prima facie evidence in civil suits brought by private parties (or by Government under sec. 15a). Tolls running of limitations as to private actions during pendency of Government suit and 1 year thereafter.

Section 17: Provides that nothing in the antitrust laws shall be construed to forbid existence and operation of labor (and other) organizations.

Section 18: Prohibits acquisition of stock of one corporation by another where effect thereof may be substantially to lessen competition or tend to create monopoly.

Comment.—Specifically exempts transactions consummated pursuant to authority given by various administrative agencies, including Interstate Commerce Commission.

Section 19: Prohibits interlocking directorates among banks, and any two or more million-dollar competitive corporations.

Comment.—Exempts common carriers by rail, pipeline, and motor subject to ICC jurisdiction.

Section 20: Prohibits purchases of more than $50,000 of securities, supplies, etc., by common carriers from companies having same officers or directors as carriers, except upon a competitive bid basis under rules prescribed by ICC.

Section 21: Vests authority to enforce provisions of sections 13, 14, 18, and 19 in the ICC "where applicable to common carriers subject to the Interstate Commerce Act."

Section 22: Authorizes suits against corporations under antitrust laws in any district where they are found or transact business.

Section 23: Provides that subpenas for witnesses in actions by United States issued in any district many run into any other district.

Section 24: Makes officers and directors liable for acts of corporations, and subjects them, upon conviction, to fine or imprisonment, or both.

Section 25: Provides for jurisdiction of courts and duty of U.S. district attorneys to restrain violations of Clayton Act.

Section 26: Provides for injunctive relief by private parties against threatened loss or damage by violation of the antitrust laws.

Comment.—Bars such relief, except to United States, against common carriers "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

Section 27: Provides that invalidation of "any clause, sentence, paragraph, or part" of Clayton Act shall not invalidate the remainder thereof.

STATEMENT OF JAMES F. PINKNEY ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

My name is James F. Pinkney. I am counsel for the American Trucking Associations, Inc., with offices at 1616 P Street, NW., Washington, 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.

S. 3243

Three points stand out in these hearings so far—equality in regulation, low freight rates, and the economic welfare of common carriers. The principal question posed is whether the Congress should at this time sharply change the course of regulation by doing away with the minimum rate control power of the Interstate Commerce Commission. Ostensibly withdrawal is to be limited, but the railroad witnesses made it celar in their testimony before the House committee that they seek eventual total removal and the thrust of the Commerce Department testimony was in that direction.

In the first part of this statement I propose to discuss this problem.

By way of background, it seems well to examine some basic facts about the deregulation proposal.

First, what was immediately back of the proposal? Apparently the welfare of one bankrupt railroad. Myer Feldman, deputy special counsel to the President, in a speech before the Transportation Association of America Board of Directors on May 23, 1962, said:

"When we took office in January we were immediately faced with a transportation crisis in a particular area of especial concern to the President—the New Haven Railroad difficulies. The difficulties of this railroad highlighted the need for a transportation policy. The President asked me to look into the matter and to organize and coordinate the Government's facilities in the development of a meaningful transportation policy that would assist the industry to develop the way it should.

"We had two objectives in mind: One was to assist the New England economy through assistance to the New Haven Railroad. The other was to develop a transportation policy that would be of assistance to the entire Nation and permit each mode of transportation to develop in its own way in the most efficient manner possible."

May I comment briefly on the situation of the New Haven Railroad. It was not the agricultural or bulk commodity exemption, nor minimum rate controls, nor competition from motor or water carriers, nor ill-advised regulation by the Interstate Commerce Commission, which put the New Haven in bankruptcy. The facts appear clear. It was caused by the New Haven's passenger deficit, bad management, and the decline and change in the nature of New England's industry. In its interim report of March 31, 1961, in docket No. 33332 (313 I.C.C. 411, 415, 421) dealing with the New Haven's plight the Commission said:

"The hearing officers concluded that the immediate and major cause of the railroad's current financial crisis is the huge passenger deficit coupled with the inability in recent years of freight revenues to absorb any substantial part of those losses. While we do not disagree with that conclusion, we do not wish to leave any possible basis for any inference that the primary cause of the current

financial crisis is the precipitous decline in freight revenue or any other cause other than the respondent's chronic and staggering passenger deficit.

"The record shows that in every year from 1950 through 1959 the New Haven derived a profit from freight operations. From 1950 through 1960, total freight net railway operating income was $166,307,494. By contrast, in every year from 1950 through 1960 the passenger deficit, computed by the formula prescribed by the Commission, ranged from a low of $9,367,816 in 1950 to a high of $15,224,559 in 1957. The total passenger deficit for the period involved amounts to $138,325,992. Had the New Haven suffered no losses from passenger service during the period involved, its aggregate net railway operating income would have been $165,850,492."

* * * * * * *

"The recommended report contains a detailed recitation of blunder, extravagance, inefficiency, and errors of omission on the part of various persons who, from 1952 to date, have occupied positions of trust and authority in the New Haven. As pointed out by the hearing officers, however, all of the questionable actions motivated by selfish gain and many of the serious errors in judgment occurred before the present managers of the railroad took office."

Other eastern railroads with passenger deficit problems are the principal railroads having difficulties. Western and southern railroads certainly appear to be in good shape, but they have now joined with their eastern brethren in again shouting the cry of "less regulations or nationalization." They propose, as solutions, steps which will not aid the eastern railroads in the solution of their real problems but steps which will better enable all of them to get at their competition by providing weapons designed to return the railroads to the paramount position in transportation which they once enjoyed but which in America's new economy they can never again achieve except by legislative fiat. Too much of America's economy is today almost entirely reliant upon motor carriers, pipelines, airplanes, and water carriers. Let me cite just one example.

A survey of 1,359 new industrial plants located in America during the years 1955 through 1959 discloses that 73 percent of incoming traffic moved into these plants by truck, and 80.1 percent of their outgoing traffic moved by truck. Attached as appendix A is a chart showing by selected States the percentage of the products both incoming and outgoing from these new plants which move by motor carrier.

Inequities in regulation

Next, let's look at the facts of life about unequal regulation in the exemption area, of which there is a good deal, and some of which may well be termed "inequitable."

Regulated motor carriers as entitles are not exempt from any regulation. Individual trucks, when used exclusively in transporting unmanufactured agricultural commodities (which may be operated by anyone including railroads) are exempt. As will be pointed out in greater detail by another witness, this exemption creates far more of a problem for America's common carriers by motor vehicle than a benefit to them. The inequality here is not as between regulated rail and motor common carriers. If there be inequality, it is between the agricultural community, on the one hand, and the industrial community, on the other. The traffic of the latter, which is dependent upon a sound and adequate public transportation system, is practically all regulated, and necessarily so.

On the dry and liquid bulk commodity side, motor carriers "enjoy" no exemptions. They are in exactly the same position as railroads.

To what does the present bulk commodity exemption apply, and how could it be equalized? It applies only on waterways (which comprise only a small part of America's arteries of commerce) and it actually applies only to barge and shipload quantities (usually 500 to 3,000 tons) of not more than three such commodities in a single vessel or tow. No more. It does not now apply to movements by truck, rail, pipeline, or air carrier.

To make the bulk exemption applicable to trucks and rails will be to extend exemption for the first time to all bulk commodity movements which are handled by truck and rail—all of which are now subject to regulation (except for the single truck movements of bulk agricultural commodities I have just discussed).

Bearing the above facts in mind, it can be seen that if exact equality of regulation in the exemption area is to be secured, all that need be done is—

(*a*) exempt from all regulation except safety and hours of service the movement in truckload or carload lots (in single trucks, cars, or other vehicles) all unmanufactured agricultural commodities;

(*b*) exempt from all regulation the transportation of dry and liquid bulk commodities in shipments of bargeload quantity, when moving in competition with ships or barges.

However, let me hasten to add that we do not advocate even this extension route to qualify. The far better one would be the elimination or sharp curtailment of the exemptions.

Lower freight rates

The next matter I wish to discuss is cheaper freight rates. Mr. Brosnan of the Southern Railroad testified in the Senate hearings that if this proposal goes through, the shippers of this country will save a billion dollars annually. This is very enticing and very interesting. It has great popular appeal. We would like everything to be cheaper. Unfortunately, lower prices, though easy to sell, are hard to bring about in the present state of our economy.

We concede that if you take the floor from under freight rates, they will in fact be lowered. Under big shipper pressure and because of the desperate struggle of the carriers of all modes to hold on to their present traffic, rates will immediately drop between principal cities and principal manufacturing areas and, to some extent—but a far lesser extent—between smaller points and less important areas.

What will this do to public transportation, all of which is now caught in a so-called profit squeeze?

The railroads say it will make them profitable and save them from nationalization. If so, it seems to me it will have to be done with mirrors.

The last study on the subject of the distribution of rail revenue contribution by commodity groups[1] shows that 64.5 percent of rail tonnage was moved at rates not returning full cost. Obviously, the remaining 35.5 percent should have been priced well above full cost if the railroads were to operate at a break-even point. We believe that today's below-full-cost percentage would show little change from the 1960 figure. Despite rail statements, the ICC trend since 1955 has been in the direction of permitting more and more reduced rates to go into effect, most of them on manufactured articles. The sharp reduction in net revenues of the regulated carriers pointed out in Mr. Loomis' testimony is, in our opinion, definitely related to this trend.

The railroads argue that they will make their money because of increased volume. To get this increased volume away from their competitors and from private carriage they obviously will have to reduce freight rates to far lower levels than they are now. By so doing they will immediately reduce their revenues in the hope that in the long run their net revenues will be increased.

When does the longrun increase occur? That will depend upon the reaction and the staying power of their competitors and upon the soundness of their theory that increased volume will increase their net—a theory the soundness of which has been properly challenged down through the years, as Mr. Clarence Kelley has pointed out.

The reaction of the rail competitors can be predicted. It will be in kind. They will not sit idly by and let the railroads take traffic away from them. The competing forms of transportation will have the same unrestricted right to cut rates and they will do so. There will be no referee in the game because of the inability of one carrier to even so much as object to rate reductions by another. The Interstate Commerce Act specifically provides that the sections prohibiting discrimination, preference and prejudice "shall not be construed to apply * * * to the traffic of any other carrier of whatever description" (sec. 3(1) and 216(d)).

The reaction of private carriers is not so easy to foresee. They are growing, and huge fleets of proprietary trucks are now found on our highways. In many cases they are there in intercity service because they can, under the agricultural exemption, obtain some revenue for their back hauls by for-hire return trips. Otherwise, such private carriage would be economically infeasible and the shippers conducting such operations would be using common carriage. Possibly some of the traffic involved would be moved by common carriers if the decreased rate levels were sufficiently attractive, and if the common carriers

[1] ICC statement No. 2–62, "Distribution of the Rail Revenue Contribution by Commodity Groups—1960," table 7.

could provide adequate service. But adequate service would be increasingly difficult to provide during the rate-war period when the rail, motor, and water common carriers were desperately fighting to be the carrier which obtained the increased volume which would, in turn, provide the increased net which, in turn, would enable the carrier to provide safe, efficient, and adequate service.

It is our belief that enactment of this proposal will not stop the trend toward long-haul, intercity private carriage. It is our strong belief that the trend will only be stopped when the exemptions are eliminated or sharply curtailed.

It seems obvious that the profits the rails expect to make through increasing their volume by cheaper rates are far off in the future, assuming they can be obtained at all. In the meantime, what will happen to our common carrier system?

The Southern Railroad president makes much of the grain rate case. If it can be established that the use of a larger rail car made of aluminum plus other unspecified improvement in Southern Railroad operations will justify a 60 percent cut in grain rates and if it can be established that the reduced rates can be put into effect without discrimination, preference or prejudice and consistently with the national transportation policy, they will be upheld—just as were the reduced rail rates on new automobiles made possible by the railroads' better mousetrap, the trilevel car.

The ICC could not with propriety comment on the grain case when its Chairman testified before you as the case is still to come before the Commissioners for final decision. In view of the implications in the railroad testimony you should know what the status of that case is. Hearings before an examiner lasting many months have just been concluded. A U.S. Supreme Court Justice, who apparently had misgivings as did the ICC's Suspension Board, has recently issued an order to prevent the rates from going into effect.

This is not a situation where the Commission has alined itself with railroad competitors to thwart the desires of the Southern Railroad to cut rates on grain. It is a situation in which the ICC, your agency, is undertaking to weigh the overall effect of the proposed new rates not only on the carriers involved, but on the even broader interests of noncarriers in the South and elsewhere. It is interesting to note that the following have appeared in opposition to the proposed rates: The Chicago, Minneapolis, Indianapolis, and Toledo Boards of Trade, the St. Louis Merchants Exchange, and grain, flour, and other interests in other parts of the Midwest as well as in the South.

The conflicting shipper and carrier witnesses are being given their day in court before a fair tribunal—the ICC—and it should not be otherwise. Had the deregulation proposal before you today been the law, the reduced rates would have gone into effect immediately and without regard to the disastrous effects they might have on noncarrier interests in many sections of the country. According to the testimony of a great many witnesses the cheap grain rates which are proposed by the Southern Railroad alone to apply only on its own line would be no bargain. I do not mean to prejudge the issues in this case, for it may well be that the rates will ultimately be found to be just and reasonable, and neither discriminatory nor preferential or prejudicial. I only want to point out that the Interstate Commerce Commission has a far larger responsibility in a matter of this kind than meets the eye at first glance.

In controversies concerning rate relations in given situations, the interests of a particular carrier or carriers do not always coincide with the interests of all of the shippers served by such carriers. The complexities involved in a case like Mr. Brosnan's are well illustrated by a news story appearing in the August 13, 1962, daily issue of a foremost transportation publication, Traffic World. This story is attached as appendix B. In brief, it clearly demonstrates that where a rate reduction is proposed, there is danger that it can result in disrupting present market relationships on the commodities involved within an entire area, to the damage of all except perhaps a few favorably situated shippers or communities.

Effect on rails of rate reductions on bulk and agricultral commodities

The railroads' contention that they can improve their situation by lowering their rates on bulk and agricultural commodities is refuted by the facts.

As you know, rail costs consist of direct, or out-of-pocket, costs and overhead or fixed costs; the total of these two types of costs constitute fully distributed costs. That part of total costs above the out-of-pocket costs on all traffic is known as the transportation burden. All commodities do not meet their fully distrib-

uted cost, of course, while others pay substantially more. In the final analysis, however, the burden must be paid by total traffic.

If the rail argument is correct, then it is obvious that any additional traffic attracted to the rails must result in a larger contribution to the burden than is being made by present traffic. This would be relatively simple if the rails could hold rates on the traffic they now have and only apply reductions to traffic being handled by competitors. This is not the case, however. Rate reductions designed to attract traffic from competitors must apply also to similar traffic now being handled by rail. This will result in a reduction in the margin between out-of-pocket costs and fully distributed costs on the traffic currently being hauled. Thus, if the new traffic is to be helpful to the rails, it must more than make up for the reduction in contribution from present traffic.

To illustrate the effect of rate reductions on competitive traffic, the attached appendix C has been prepared. It is based upon data from the Interstate Commerce Commission and the Corps of Engineers, Department of the Army.

This appendix C shows in detail amounts of agricultural and bulk commodities hauled by the railroads, the water carriers, and the regulated trucking companies.[2] It shows the revenues derived by the railroads from movement of these traffics in 1960, the average revenue per ton, the average out-of-pocket costs per ton, and the contribution to burden made by these commodities as determined by the ICC Bureau of Accounts in its publication "Distribution of the Rail Revenue Contribution by Commodity Group" for the year 1960, previously referred to.

By a most conservative estimate, it is assumed that in order to attract the traffic now being handled by other forms, the rails would have to reduce their rates by 10 percent. These reduced rates are then applied to the total traffic handled by these three classes of carriers on the assumption that the reduced rates would attract all of it to the rails. The rail out-of-pocket cost scales are then applied to the total tonnage, and the costs so derived are subtracted from the increased revenues to find the contribution to burden that this increased traffic would yield.

This appendix shows that if the railroads, through a rate reduction of as little as 10 percent, could attract all of the traffic now being handled by their water competitors and their regulated motor carrier competitors, they would cut the contribution to the transportation burden now being made by these commodities by 87 percent.

According to the ICC's study cited above, the railroads in 1960 handled 871 million tons of agricultural and bulk commodities for which they received $3,664 million in revenues. Their out-of-pocket costs for handling such commodities was $3,055 million, leaving a contribution to burden of $609 million.

Under the assumptions above, the rails would haul 1,563 million tons of agricultural and bulk commodities for which they would receive $6,992 million. Their out-of-pocket costs would increase to $6,911 million, reducing the contribution to burden by these commodities to only $81 million. This would result in shifting more than $500 million of the burden to other classes of traffic. (See appendix D.)

As indicated, these assumptions are extremely conservative as to the amount of reduction that would be required to attract additional traffic and very generous as to the amount of traffic they would be likely to attract. Under these assumptions, the effect of this type of rate cutting on the profitability of the rails is minimized. As a matter of fact there would probably be no contribution to "burden." It would undoubtedly take more than a 10-percent cut to obtain the traffic.

Actually, rate reductions on competitive traffic by one form of transport would be met by similar reductions by its competitors. As I have previously pointed out, this would result in each probably retaining its present share of traffic, but deriving less money for hauling it. In the present financial condition of the various transportation agencies such action could only lead to disaster.

The relative size of the individual railroad companies as well as their financial structure would in nearly all cases assure them victory in any fight of this type. Despite their alleged poverty, the railroads have huge investments in land and other facilities which make them able to withstand long periods of low earnings, as history has shown. This position is bolstered by the relatively slow effect of operating losses on investment.

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[2] Class I intercity only.

The rails' ratio of investment to gross operating revenue is about 3 to 1. This means that their capital is turned over once every 3 years. Trucking companies, on the other hand, have a ratio of investment to revenue of about 1 to 4. This means that their capital is turned over four times a year. Thus, the effect of an operating loss on the investment of a railroad is only one-twelfth that of such a loss on the investment of a trucking company. An operating loss of 10 cents on the dollar for a railroad would have the impact of 3⅓ cents per year while a loss of this size would have the impact of 40 cents per year on the truckline.

Another factor to be considered is the adequacy of the rail plant to handle additional traffic. There is today, on the railroads, no such excess of capacity as existed in previous times. Today, the rail car and locomotive fleets are tailored more nearly to the levels of traffic now being handled. Any substantial increase in traffic would require relatively large additional investment in rail plant. This, of course, would further increase the burden to be borne by higher classes of traffic.

Unfortunately, it has not been possible to include in this estimate the commodities now being carried by exempt motor carriers or the commodities handled by private carriers that might be susceptible to diversion to rail at lower rates. Data for this traffic are not presently available from any source, but it seems to us to be imperative that it be obtained and analyzed before any drastic action, such as here contemplated, be taken.

Summarizing, if the rails were successful in taking away from the water and regulated motor carriers all of the bulk and agricultural traffic handled by them, the rails would find themselves making less money rather than more. In our opinion, the same thing would be true if, through the even more drastic reductions needed, they were to take over the traffic of exempt motor carriers and of private carriers.

Summarizing on the point of lower freight rates allegedly needed to save the railroads from bankruptcy or nationalization:

The railroads will allegedly make their money by increasing volume. To get this volume they must reduce rates. Until they get the volume on which to make money, they will lose revenues they are now getting through their present higher rates. Between the time they start their rate cutting, and the time they get the volume to make more money they will be met, rate cut by rate cut, by their competitors, up to the point their competitors (or the railroads) withdraw from the battle through lack of resources to continue the fight—or through outright bankruptcy. During the interim period, service and equipment will deteriorate—some never to be restored. This looks like the road to nationalization to us. We must have safe, adequate, and efficient transportation, and someone must pay for it.

You are being asked to authorize this grand experiment without any real basis or information being presented to you as to what the effects will be. You have been told that the railroads will be saved and at the same time the shippers will save a billion dollars a year, based on a theory which does not make sense and which does not go near a real solution to the so-called common carrier problem.

The minimum rate power and discrimination, preference, and prejudice

Let's look, for a moment, at the minimum rate power of the Commission and its present power to control discrimination, preference, and prejudice.

What is a reasonable minimum rate? The best definition attempted by the Commission is in New Automobiles in Interstate Commerce 259 ICC 475. That decision was favorably commented upon by the Commerce Committees of both the House and Senate at the time paragraph (3) was added to section 15a of the Interstate Commerce Act in 1958. At page 534 of that decision appears the following:

"What constitutes a minimum reasonable rate is a matter to be determined in the light of the facts of record in each individual case, avoiding arbitrary action and keeping within statutory and constitutional limitations, just as in the case of maximum reasonable rates. Whether a rate is below a reasonable minimum depends on whether it yields a proper return; whether the carrier would be better off from a net-revenue standpoint with it than without it; whether it represents competition that is unduly destructive to a reasonable rate structure and the carriers; and whether it otherwise conforms to the national transportation policy and the rules of ratemaking declared in the act of 1940."

Where rates are found to be below a reasonable minimum level, or where rates are found to be unjustly discriminatory or unduly prejudicial and preferential, the Commission now has the power to remove such unlawfulness by determining and prescribing (I am quoting from section 15(1) of the Interstate Commerce Act) "what will be the just and reasonable individual or joint rate * * * or charge * * * to be thereafter observed, or the maximum or minimum, or maximum and minimum, to be charged." That power was exercised in Class Rate Investigation, 1939, and without that minimum rate power the undue prejudice and preference as between the different regions of the country there found to exist could not have been removed. That power has been exercised by the Commission in many cases, and without it the Commission would be powerless to prevent or remove unjust discrimination or undue prejudice and preference. This is particularly true where such discrimination is between localities and the rates or charges are controlled by different carriers. The Interstate Commerce Commission has so testified and we agree.

In *Skinner & Eddy Corp.* v. *United States*, 249 U.S. 557, 565–566, 39 S. Ct. 375, 378 (1919), decided prior to the Transportation Act of 1920, by which the Commission was given power to fix minimum rates, the court said:

"Congress, however, steadfastly withheld from the Commission power to prevent, by direct action, the charging of unreasonably low rates. The common law did not recognize that the rate of a common carrier might be so low as to constitute a wrong; and Congress has declined to declare such a rule. Despite the original Act to Regulate Commerce and all amendments, railroads still have power to fix rates as low as they choose and to reduce rates when they choose. The Commission's power over them in this respect extends no further than to discourage the making of unduly low rates by applying deterrents * * *. But the main source of the Commission's influence to prevent excessively low rates lies in its power to prevent unjust discrimination. The order prohibiting the unjust discrimination, however, leaves the carrier free to continue the lower rate—the compulsion being that if the low rate is retained, the rate applicable to the locality or article discriminated against must be reduced. That is, the carrier may remove the discrimination either by raising the lower rate to the relative level of the higher, or by lowering the higher to the relative level of the lower, or by equalizing conditions through fixing rates at some intermediate point." (Citations and footnote omitted.)

Continuing on the question of whether the Commission could control preference and prejudice without the minimum rate power, it has been asserted by railroad witnesses that the Commission's power would remain unchanged. The Commission disagrees. We believe the Commission is right.

The Commission would not have full power to remove any undue prejudice or preference found to exist.

In *Moline Consumers Co.* v. *Chicago, B. & Q. R. Co.*, 213 ICC 135, at page 142, the Commission said:

"The principle is well established that where an order is made under section 3 of the act an alternative must ordinarily be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both."

To the same effect are more than 50 other ICC decisions.

In *Texas & Pacific Ry. Co.* v. *United States*, 289 U.S. 627, the Court said: "Where an order is made under section 3, an alternative must be afforded." In connection with that statement of the Court, appears this footnote:

"This is not true of an order pursuant to section 15(1), prescribing maximum or minimum or maximum and minimum rates, but the present orders were not issued under that section."

It should be made clear at this point that section 3(1) of the Interstate Commerce Act prohibits undue prejudice and preference as between shippers, localities, ports, etc. And section 15(1) provides that where the Commission finds such undue prejudice or preference, "the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, * * * or the maximum or minimum, or maximum and minimum, to be charged * * *."

Under the holdings of the Supreme Court, this power under section 15(1) may be exercised, in removing undue prejudice and preference, only where the justness and reasonableness, as well as the unduly prejudicial or preferential character, of the rates under investigation are in issue and there is substantial evidence in support of both allegations. This is made clear in *New York* v.

United States, 331 U.S. 284 (the general class rate investigation, 1939), where at pages 343 and 345, the Court said:

"It may not be said in this case, as it was held in *Texas & Pacific Ry. Co.* v. *United States*, supra, p. 633, that there was no evidence of the unreasonableness of the rates, or that that question was not in issue. The Commission here found that the rates were unjust and unreasonable under section 1 and it proceeded to fix new rates under section 15(1) * * *.

"Once the Commission has found rates to be 'unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial,' it is empowered to prescribe rates which are 'just and reasonable' or 'the maximum or minimum or maximum and minimum,' to be charged * * *."

To the same effect is *Ayrshire Corp.* v. *United States*, 335 U.S. 573.

Plainly, in the *Texas & Pacific* case it would not have been enough simply to state in the decision of the Commission that the order requiring removal of the undue prejudice and preference found was made under section 15(1) and not under section 3(1) of the act. Something more would have been necessary; namely, a finding of unreasonableness under section 1 upon adequate evidence. Such findings were made by the Commission in *York Mfgrs. Asso.* v. *Pennsylvania R. Co.*, 107 I.C.C. 219 (sustained, 266 U.S. 191), and *Coal to Beloit, Wis., and Northern Illinois*, 263 I.C.C. 179 (sustained in the *Ayrshire* case just mentioned), wherein the minimum rate power under section 15(1) was employed.

Thus, the law relating to undue prejudice and preference is that an alternative must be afforded the carriers, except where the public interest, or the achievement of a just and reasonable result, demands that a specific manner of removal be prescribed. In many section 3 cases there is no allegation of unreasonableness, or the record is inadequate to support a finding of unreasonableness. Thus, the finding of undue prejudice and preference must stand alone, and the order of removal must leave the carriers with an alternative.

Moreover, and this is very important, a section 3 order requiring removal of undue prejudice and preference may run only against carriers defendant where they effectively control both the prejudicial rate and the preferential rate. This is made plain in the Court's decision in the *Texas & Pacific* case. Where, as in the general class-rate investigation and many other cases before the Commission, the undue prejudice order is entered under the minimum rate powers in section 15(1), and there is a finding of unreasonableness as well as of undue prejudice and preference, it is not important whether the same carriers effectively control both the prejudicial and preferential rates. This was made clear by the Supreme Court in *New York* v. *United States, supra*. But that can be done only where the rates in issue are found unreasonable as well as unduly prejudicial and preferential; and, as I have stated, a number of complaints before the Commission concern only rate relationships, and the only finding that can be made is one of undue prejudice and preference, not unreasonableness.

The point I wish to emphasize here is that, as pointed out in the Commission's statement, shippers, communities, etc., have no protection whatever under the prohibition against undue prejudice and preference under the act unless the same carrier or carriers effectively participate in and control the rates on both the prejudiced and preferred traffic, which has not been the situation in many important rate proceedings before the Commission.

It is thus plain that, without the minimum rate power, many of the discriminatory rate practices which have been before the Commission over the years could not have been removed, and this will be true of such practices in the future if this proposal becomes law.

The nature of regulation

Another point that I think should be discussed briefly concerns the nature of regulation.

The railroads assert, and there seems to be considerable acceptance elsewhere of the idea, that there has been no basic change in the principles and philosophy that underlay the original act of 1887. It seems to me that such a basic change was made in 1920. At that time the Congress changed the philosophy of regulation from one of protection of the shipper to one that would assure the country of a healthy, adequate, and vigorous national transportation system as well as protect the shipper. The competitive warfare between the rails and water carriers, which had led to the destruction of the latter, and the need for carrier revenues sufficient to enable them to maintain a sound transportation plant caused Congress to add a new dimension to the law—the fostering of carrier

welfare. By carrier welfare I do not mean simply profits but also the preservation of a sound, adequate, and safe transportation plant. The device given by Congress to the ICC in 1920 was the minimum rate power. By it the ICC could not only curb predatory and destructive rate warfare but also insure adequate revenues for the carriers. This concept was strengthened when motor carriers and water carriers were brought under regulation in 1935 and 1940, respectively, and when the national transportation policy was adopted in 1940. To now remove the minimum rate power of the Commission would not be to move ahead constructively but to move backward, destructively, to the days of 1900.

The national transportation policy was adopted in 1940. It provides, among other things, that the ICC shall "promote safe, adequate, economic and efficient service and foster sound economic conditions in transportation and among the several carriers;" and "encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;".

Section 15a(2), a principal section of the rule of ratemaking, directs the Commission in the exercise of its power to prescribe just and reasonable rates, among other things, to give due consideration to the need of revenues sufficient to enable the carriers to provide adequate and efficient service.

It will not be possible for the Commission to carry out the above enumerated responsibility if they lose the minimum rate power.

The Commission will not be able to insure that "reasonable charges for transportation services" will be established and maintained. The word "reasonable" must, of necessity, mean a charge or rate falling between two extremes; i.e., a rate that is too high, on the one hand, or too low, on the other. If the Commission retains control over what is too much but loses control over what is too little, it cannot make a determination as to reasonableness and it cannot make a determination with respect to the adequacy of carrier revenues.

The Commission will not be able effectively to prevent undue preferences and advantages for reasons previously given. Neither, in our opinion, will it be able effectively to prevent unjust discriminations.

The Commission will definitely not be able to deal with unfair or destructively competitive rate practices. To the extent that they are to be controlled under this bill, they eventually are to be remedied by the Department of Justice and the courts—for all practical purposes—no remedy at all.

For the past 50 years we have relied as a nation upon service competition in transportation as the best means of insuring technical advances, innovations, and service improvements. The result of this service competition is reflected in the fact that we have in this country the finest transportation system the world has ever seen. Appreciating the importance of each of the different modes of transportation and their individual and unique contributions to a well-rounded national transportation system, the Interstate Commerce Commission has sought to carry out the national policy by preventing the excesses of unbridled rate competition among carriers. To this end the Commission sought to see to it that carriers compete vigorously with one another, but that none competes as aggressively that its competitors are destroyed.

In contrast, the carriers would, under the proposed legislation, be free to name any rate without regard to cost of performing the service that may be necessary to secure the traffic. Without statutory power as to minimum rates, this can only result in competition that is the most ruthless and destructive sort of economic warfare, in which only the financially strong can possibly hope to survive.

The great purpose of the Interstate Commerce Act was to establish the law of equality by eliminating favoritism and discrimination between persons, places, and commodities. Unbridled competitive rate cutting leads inevitably to discrimination. The history of regulation under the Interstate Commerce Act provides myriad examples of the necessity for governmental control of carrier selfishness in order to prevent preference of the large shipper and discrimination against the small shipper. All of the major rate proceedings have revealed the tendency of uncontrolled carrier management, whether of rail, water, or highway carriers, to respond to the pressure and demand of the big and important shippers or receivers in derogation of the interests of the small shippers and receivers and of the smaller and relatively less important communities or localities. Here again the ICC has sought to carry out the national policy by insuring a stable rate structure and proper rate relationships. It cannot do so without power to control minimum as well as maximum rates.

If transportation history teaches any one thing, it is that while competitive forces generally are effective in keeping prices at a reasonable level, these same competitive forces, if unleased, and not made subject to reasonable restraints, will result in eliminating competition, through unfair and destructive competitive rate cutting to the detriment of the transportation system as a whole and in disrupting reasonable and fair rate relationships as between competing shippers, geographical areas, and territories.

Railroad testimony

The railroad witnesses left unclear the answer to a number of questions which we believe they should be requested to clarify. It is difficult to ascertain from the testimony of their principal witnesses, several of whom spoke only for their own companies on specific points, just where they stand on antitrust coverage to replace the ICC controls which are to be removed. It is also difficult to discover just what their policy is to be on making rate reductions applicable across the board. The Southern Railroad claims that it intends to do so but the other testimony raises doubts as to the intentions of the industry at large. These questions should be answered, clearly and unequivocally.

S. 3242

This omnibus bill, which was introduced with S. 3243, covers other recommendations in the President's transportation message. Some of them are of great importance but they have received very little attention in the hearings because of the paramount importance of the minimum rate deregulation bill just discussed.

In the expectation that before action is taken by this committee further hearings will be held, I shall only summarize our position on those of the recommendations in S. 3242 in which we have an interest. Obviously the pressures attendant upon all in these closing days of this Congress make inadvisable an attempt to go into the lengthy discussion that they deserve.

The bill has 14 sections. Our interest is in sections 2, 3, 4, 5, 6, and 9.

Section 2—Experimental rates

Section 2 of S. 3242 would authorize radically new and different ratemaking procedures. The section calls for rate experimentation through the devices of "simplified documentation, and plans for different or simplified bases and freight classifications."

We endorse and entirely agree with the ICC's comment in which they stated: "We seriously question the wisdom of lending legitimacy to a basically unlawful proposal merely because it is characterized as an 'experiment'."

The Interstate Commerce Act is a flexible law under which much has been accomplished in the area of experimental rates as well as in experimental services, etc., and we see no need specifically to authorize rate experiments which could apparently take place outside of the law.

We oppose section 2 of S. 3242.

Section 3—Piggyback

Section 3 is designed to implement the President's recommendation that legislation be enacted to "assure all carriers the right to ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers." We support this objective.

Section 3 will, in our opinion, need some further safeguards and amendments, and we are at the present time working with other interested groups under the auspices of the Transportation Association of America to try to work out a satisfactory solution on this particular section of the bill.

Section 4—Through service and joint rates

Subsection (a) of section 4 declares it to be in the national interest "that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be encouraged and promoted." We support this principle and have supported it for many years.

Subsection (b) of this section provides for the establishment of joint boards on which the Civil Aeronautics Board, Federal Maritime Commission, and the Interstate Commerce Commission will be represented and which will have jurisdiction over and control of through service and joint rate arrangements of carriers subject to the several agencies' jurisdictions.

While we have no objection to the creation of such a joint board arrangement, it seems to us a rather complex and unwieldy procedure when it is possible at

the moment for almost all of the modes to make joint rate arrangements with other modes under existing provisions of the Interstate Commerce Act. The only gap of significance has been that it was impossible for motor carriers to make through service and joint rate agreements with water carriers subject to Federal Maritime Commission jurisdiction in service to Alaska and Hawaii. This deficiency has been remedied by H.R. 11643 which has passed both Houses and has been signed by the President. It would appear that the purpose of the President's recommendation has been accomplished.

Section 5—ICC cooperation with States

Section 5 would authorize the Commission to make cooperative agreements with States in order to better enforce "the economic and safety laws and regulations of the various States and the United States concerning highway transportation." Similar language to that contained in this section also appears as section 5 of S. 2560 which has passed the Senate this year.

The purpose of this is to enhance further cooperation and exchange of information between the ICC and State regulatory authorities in order to bring about better enforcement of the Motor Carrier Act. This is a subject of great interest to the motor carrier industry and we are wholeheartedly in favor of this proposal.

Section 6—Civil forfeiture

The Interstate Commerce Act presently allows the ICC to bring civil proceedings against motor carriers for certain types of administrative violations of the Interstate Commerce Act. Motor carriers found to be violating these administrative provisions may be fined $100 for each offense and $50 for each day of a continuing violation.

Section 6 of the bill would extend the civil forfeiture provisions of the act to include violations of operating authority and the Commission's safety regulations and, in addition, would increase the penalty to $500 for each offense and $250 per day for continuing violations.

The trucking industry supports extension of the civil forfeiture procedure to cover violations of operating authority, and we support an increase in the fines from their present level up to $200 for a single violation and $100 for a continuing violation.

However, we do not feel that the civil forfeiture procedure should be extended to violations of the ICC's safety regulations. It seems unconscionable to us to require a motor carrier to pay a fine of $500 simply because he has unintentionally violated some obscure and highly technical provision of the ICC's detailed safety regulations.

S. 2560, as passed by the Senate, is in line with our recommendation except to the extent that it applies the civil forfeiture procedure to safety regulations. In your hearings on S. 2560 we stated fully the reasons for our objections to the inclusion of safety regulations.

Section 9—Government procurement, rate simplification, and transportation of mail

Subsection (a)(1) of section 9 relates to Government procurement and the transportation of mail by motor carriers.

The proposal is to amend section 321 of the Transportation Act of 1940. That section, as here applicable, now provides that except as to rates under section 22 the Government shall pay tariff rates for transportation and that the Government need not advertise for bids for transportation service when common carrier service is available.

The revision would place in the hands of any head of a Government agency the authority to create an entirely new system of transportation procurement. in addition to tariff rates and section 22 rates, an agency for the first time would have authority to "negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation."

We oppose placing such authority in the hands of the Government in its capacity as a shipper. This proposal violates the basic ideas of the national transportation policy. The Government, already favored by the free or reduced rate language of section 22, would under section 9 have a further advantage over all other shippers.

Subsection (a)(1) also deals with the transportation of mail by motor carriers. The Post Office Department today is severely curtailed in its use of motor carrier service, as it must today deal with motor carriers largely under the antiquated star route procedures established many, many years ago. The motor carrier industry believes that the best interests of the Post Office Department and of our industry would be best served by enactment of legislation, similar to that contained in the Railway Mail Pay Act, which motor carriers would have an obligation to transport the mail at rates which are established by the ICC.

Legislation to implement this idea was drafted jointly by the industry and the Post Office Department in the 86th Congress and was introduced as H.R. 2752.

We invite the committee's attention to that legislation which was before the Post Office and Civil Service Committee of the House. We feel that an approach of that nature is far superior to the proposal in this bill which would simply allow the Post Office Department to make contracts with motor carriers, at negotiated rates, for the transportation of mail.

Subsection (a)(2) of section 9 of the omnibus bill would authorize the General Services Administration and the Department of Defense to establish simplified rate structures suited to the needs of modern data-processing machines. The language contains a directive to the effect that the prospective simplified rate structure shall be found to be in the public and the Government interest. To our minds this presents two extremely unappealing prospects. One is the idea of tailoring our rates and services to conform to the requirements of machine processing. The other, and much more drastic, is the placing in the hands of a shipper, albeit the Government, the right to decide what is in the shipper's best interest and what is in the public interest. It is difficult to conceive of a traffic manager, even a Government traffic manager, who can make such a dual determination. How can any one man whose main responsibility is arranging for transportation services maintain the detached point of view necessary for a "public interest" finding?

This measure smacks too much of leaving the cat to mind the canary. But, assuming that the Government traffic managers could achieve a complete impartiality of approach, what argues for them as substitutes for the Interstate Commerce Commission in an area where the Commission has spent three generations developing the techniques requisite to such a key judgment? For example, while they are undoubtedly expert in securing transportation for the Government, what do they know about carrier costs?

We join with the ICC in questioning the soundness of such a proposal and we join with the ICC in again recommending to this committee that the Government be treated as all other shippers are treated today. To accomplish this equality, we reiterate our longstanding position in favor of repeal of that portion of section 22 of the Interstate Commerce Act which provides for free or reduced rates for Government.

91497—62——43

APPENDIX A

Percentage of inbound and outbound freight moved by truck by 1,359 newly located plants[1]*—Selected States*

State	Number of plants	Percent by truck of total—	
		Inbound	Outbound
Alabama	38	77.8	77.1
Arkansas	54	76.1	84.6
California	86	67.5	80.6
Colorado	12	77.1	74.6
Connecticut	19	71.9	76.7
Florida	64	72.7	81.1
Illinois	43	66.0	83.2
Indiana	20	63.5	86.8
Kentucky	39	78.5	76.7
Maryland	23	80.8	86.6
Massachusetts	62	80.0	84.9
Michigan	36	78.6	79.2
Minnesota	14	77.5	84.6
Mississippi	43	66.3	73.3
Missouri	26	75.7	80.0
New Hampshire	6	89.0	64.0
New Jersey	27	81.1	86.4
New York	21	75.3	81.2
North Carolina	93	79.8	84.4
Ohio	48	74.2	78.4
Oklahoma	11	71.2	62.5
Pennsylvania	85	81.5	84.3
Rhode Island	7	81.7	83.3
South Carolina	25	78.7	79.8
Texas	75	69.3	80.7
Vermont	8	77.6	87.5
Washington	28	60.9	72.4
West Virginia	10	41.7	71.5
Wisconsin	16	76.1	81.4
Wyoming	2	100.0	100.0
All other	318	68.5	77.2
Grand total	1,359	73.0	80.1

[1] Plants constructed in period July 1955 through 1959.

Source: Special survey by Department of Research and Transport Economics, American Trucking Associations, Inc.

APPENDIX B

[Excerpt from Daily Traffic World, Washington, D.C., Aug. 13, 1962]

PROPOSED RAIL RATE ON CORN IN MULTIPLE-CAR LOTS IS PROTESTED BY SHIPPERS

Many shippers and processors of grain and grain products have petitioned the Commission to suspend a proposed multiple-car rail rate of 48 cents per 100 pounds on corn, in bulk, carload minimum 110,000 pounds per car, in not less than 500-ton lots, applying from origins in portions of Ohio, Pennsylvania, and Michigan to Augusta and Portland, Maine.

The petitions are directed to various items in supplement No. 204 to Central Territory Railroads Tariff Bureau freight tariff No. 245–H, ICC No. 4403, Traffic Executive Association—Eastern Railroads, published to become effective August 20.

In a reply to the petitions, the railroads said the protested rate was published for the purpose of meeting water competition specifically shipments via rail or truck from origins to Toledo, Ohio, thence by barge via Lake Erie, the New York State Barge Canal, the Hudson River, Long Island Sound, and along the Atlantic coast to the Kennebec River and to Farmingdale, Maine, thence by truck to Augusta, Maine. They said the rates were published so as not to apply during the closed season of navigation, and would not apply on export traffic. In connection with the proposal, relief from the long-and-short haul provision of the Interstate Commerce Act was sought in fourth section application No. 37837, the railroads said.

In its protest, the New England Millers & Shippers Association said the proposal could only result in disrupting present market relationships on grain and grain products applicable to and within eastern territory, "which for many years has been based on the single carload unit of sale as developed and incorporated in

the present eastbound domestic grain and grain products rate structure, thus permitting equal opportunity for all to compete for the available business on an equitable basis." The association said any deviation from present methods of rate publications to and within eastern territory could only result in decentralization of the feed milling industry at a tremendous cost to the feed manufacturers. Should the proposed rate basis become effective, the association said numerous requests for similar adjustments to other points in the territory would follow.

TOLEDO BOARD

The Toledo Board of Trade said the rate and minimum proposed discriminated between shippers and receivers who could not purchase such an amount of grain as against those who could, in violation of sections 2 and 3 of the Interstate Commerce Act. It said many of the country elevators in the origin territory did not have the facilities or the train service to take advantage of the rates, while many of their nearby competitors did. The board said the rate would also discriminate against processors at points competitive to Augusta and Portland.

John W. Eshelman & Sons, described as a feed manufacturer at Lancaster, and York, Pa., and Circleville, Ohio, contended that the proposed rate would result in violations of the Interstate Commerce Act.

Beacon Feeds, Beacon Division of Textron, Inc., of Cayuga, N.Y., said that shippers, manufacturers, and receivers in the Northeast asked the railroads about 4 years ago for relief in freight rates to combat competition from southern territory. It asked how the railroads could grant relief to manufacturers at Portland and Augusta without granting relief to all manufacturers including transit operators in trunkline territory.

The Eastern States Farmers' Exchange, Inc., operating facilities at Buffalo, N.Y., and Huron, Ohio, said the fact that the proposed rate had a specific destination restriction preferred feed processors at the two locations; that the proposed rate was restricted as to milling in transit, and therefore prejudiced interests of feed processors with facilities within intermediate territory; that the adjustment would go far toward breaking down the grain and grain products rate structure, and that market relationships would be both financially affected and adversely influenced by the proposal.

CARGILL, INC.

Cargill, Inc., with headquarters at Minneapolis, said the present grain rate structure within the East had been in effect since 1907 and was developed to facilitate the orderly marketing of grain from the territory to eastern destination territory. It said that under the present system, all grain firms and processors in all areas were allowed to compete with one another, but that such competition under the proposed rates would be eliminated. Also, it said the restrictions applying on the proposed rate would lead to confusion.

The Corn Exchange of Buffalo said that if the proposal were permitted to become effective, feed manufacturers at Augusta and Portland would be able to purchase corn in the origin areas at a price based on transportation costs of 9½ to 12½ cents per 100 pounds less than manufacturers at Buffalo. It said that for the rail carrier to single out a specific processor or area for relief was unfair and discriminatory.

The Trunk Line Grain and Grain Products Traffic Council, located at Buffalo, also referred to a request made of the eastern rail carriers for an overall downward adjustment in grain rates applying within official and New England territories. It said it was still patiently awaiting a decision by the carrier. It said the justification set forth by the railroads that the reduced rates were to meet water competition was unrealistic and purely a guise to benefit one destination area. It added that if it were agreed that the protested rate level was reasonable, then it followed that the present rate level in the rest of official and New England territories was unreasonable.

CHICAGO BOARD

The Board of Trade of the City of Chicago said the proposed rate would result in destructive competition defeating established all-rail rates. It said the proposed rate would have the effect of transferring the movement of Illinois corn from rail to truck for a substantial portion of the movement to New England in order for shippers to utilize the proposed rate. The board asserted that the

injury to the Chicago market would be twofold, affecting those engaged in the receiving and forwarding of corn in its natural state, and affecting those engaged in the business of processing or manufacturing corn products for sale in New England. The board also said it had been unable to perceive the existence of water competition referred to by the respondents, and also asserted that the navigation limitation was meaningless.

In its reply, the railroads said the proposed rate was designed to return to rail movement traffic that had been directed to an unregulated water carrier, that it had been set at a level no lower than necessary to meet the water cost, that it would not introduce any new competitive factor into the grain rate structure, and that the rate was fully compensatory.

Comparative traffic of surface common carriers potentially subject to proposed exemption from minimum rate regulation, 1960

APPENDIX C

[Summary in thousands]

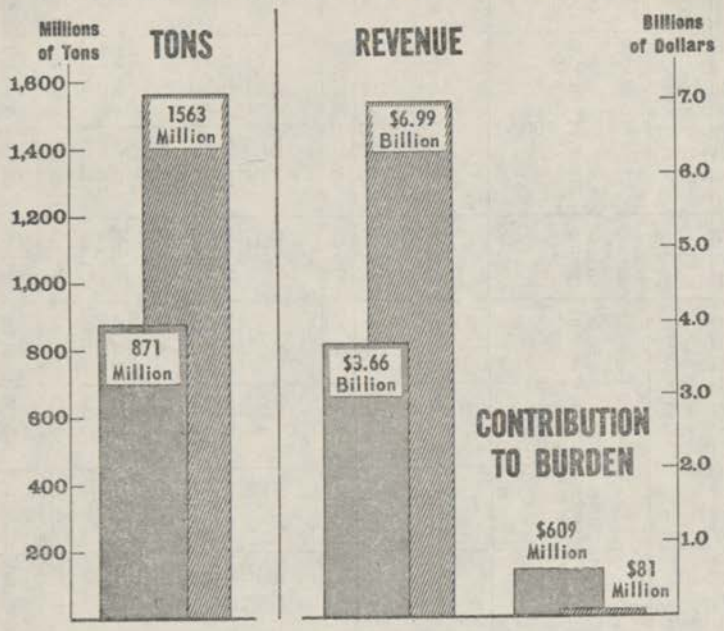
	Class I railroads						Class I intercity motor carriers		Waterborne, tons transported	Potential rail traffic			
	Tons transported	Freight revenue			Contribution to burden	Out-of-pocket cost per ton	Tons transported	Freight revenue		Tons	Freight revenue	Out-of-pocket cost	Contribution to burden [1]
		Aggregate	Per ton										
			100 percent	90 percent									
A. Agricultural commodities which can move in bulk:													
1. Grain	86,040	$480,791	$5.59	$5.03	$190,873	$3.3696	799	$5,518	11,396	98,235	$494,122	$331,013	$163,109
2. Fibers	7,957	88,025	11.06	9.95	23,644	8.0911	831	10,604	31	8,819	87,749	71,355	16,394
B. Other exempt agricultural commodities:													
3. Fruits and vegetables	18,201	284,165	15.61	14.05	[2] 48,139	18.2574	1,973	28,060	2,995	23,169	325,524	423,006	[2] 97,482
Total, agricultural	112,198	852,981			166,378		3,603	44,182	14,422	130,223	907,395	825,374	82,021
C. Other commodities which can be shipped in bulk:													
4. Oils and fats	3,166	39,938	12.61	11.35	4,623	11.1541	612	5,440	512	4,290	48,692	47,851	841
5. Sugar, sirup, and molasses	8,151	76,466	9.38	8.44	24,873	6.3297	1,087	9,077	3,559	12,797	108,007	81,001	27,006
6. Beverages	515	13,855	26.90	24.21	[2] 2,014	30.8155	119	1,745	371	1,005	24,331	30,970	[2] 6,639
7. Rough products of mines	287,785	666,611	2.32	2.09	59,212	2.1106	3,120	14,317	157,920	448,825	938,044	947,290	[2] 9,246
8. Coal and coke	331,732	1,063,016	3.20	2.88	91,015	2.9301	228	439	117,674	449,634	1,294,946	1,317,473	[2] 22,527
9. Petroleum and products	29,475	236,926	8.04	7.24	2,168	7.9646	70,152	212,254	277,990	377,617	2,733,947	3,007,568	[2] 273,621
9A. Gases other than petroleum	3,401	45,991	13.52	12.17	19,647	7.7460	592	4,507		3,993	48,595	30,930	17,665
10. Woodpulp	4,047	43,166	10.67	9.60	16,397	6.6145	29	379	633	4,709	45,206	31,148	14,058
11. Metals	2,362	10,089	4.27	3.84	4,465	2.3810	240	5,159		2,620	9,992	6,195	3,797
12. Chemicals	45,025	453,619	10.07	9.06	181,180	6.0508	10,348	123,277	16,356	71,729	649,865	434,018	215,847
13. Construction materials	31,592	117,617	3.72	3.35	35,158	2.6102	3,494	15,078	6,320	41,406	138,710	108,078	30,632
14. Waste	11,597	43,426	3.74	3.37	5,596	3.2620	292	4,234	1,412	13,301	44,824	43,388	1,436
Total	758,848	2,810,720			442,320		90,313	395,906	582,747	1,432,953	6,085,159	6,085,910	[2] 751
Total bulk and exempt commodities	871,046	3,663,701			608,698		93,916	440,088	597,169	1,563,176	6,992,554	6,911,284	81,270

[1] At rail out-of-pocket cost per ton.
[2] Deficit (amount by which out-of-pocket costs exceed revenues).

Sources: Waterborne Commerce of the United States, "Calendar Year 1960, Areas of Origin and Destination of Principal Commodities," Department of Army Corps of Engineers. "Class I Motor Carriers—Freight Commodity Statistics for the Year 1960," statement No. 6114. "Class I Rail Tons, Revenue and Contribution to Burden from Distribution of the Rail Revenue Contribution by Commodity Groups—1960", ICC Cost Finding Section, statement No. 2-62; out-of-pocket cost per ton computed from last-named statement.

APPENDIX D

DECREASED EARNINGS WITH INCREASED VOLUME



A Comparison of Present Railway Traffic in Exempt Agricultural and Bulk Commodities

With Potential Traffic Under a 10% Reduction in Rates

Analysis based on data available for rail, water, and class I motor carrier commodity statistics.

STATEMENT OF FREDERICK E. BATRUS, ACTING ASSISTANT POSTMASTER GENERAL, BUREAU OF TRANSPORTATION, POST OFFICE DEPARTMENT

Mr. Chairman, my name in Frederick E. Batrus. I am Acting Assistant Postmaster General, Bureau of Transportation, Post Office Department, and am accompanied by Adam G. Wenchel, Associate General Counsel, Post Office Department. I appreciate the opportunity to appear before your committee to discuss one of the provisions of H.R. 11584.

H.R. 11584 is one of the two bills designed to effectuate the recommendation of the President's message on transportation. The bill as a whole, if enacted, should do much to strengthen the national transportation system.

The Post Office Department's primary interest, however, is in section 9(a) which is the provision to which I will direct my comments.

Section 65 of title 49 (sec. 321(a) of the Transportation Act of 1940), dealing with rates on U.S. Government transportation, provides: "That sec-

tion 5 of title 41 shall not after September 18, 1940, be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed." While the literal language of the existing law does not exclude mail transportation, the Comptroller General has held (B–141203, dated Dec. 30, 1959) mail transportation to be excluded from this provision of law. Section 9(a) of H.R. 11584 rearranges the language of the second proviso and adds explicit references to accessorial services. In addition, it would expand the meaning of the word "transportation" by adding the phrase "including mail transportation services performed by common carriers by motor vehicles." The purpose of this latter addition is to give the Postmaster General the same authority to negotiate with highway common carriers for mail transportation that other Government agencies have with respect to transportation of persons and property. This amendment would place the postal service in the same position as other Government agencies in its traffic management insofar as dealings with highway common carriers are concerned.

By way of background, I would like to describe briefly the postal transportation service. As you know, we are a major user of all forms of transportation, both domestic and international. This includes rail, motor, air, and steamship operations. Our payments to all carriers for the transportation of mail in the current fiscal year will approach $600 million.

Every type of transportation service must be used for mail, including local cartage-type operations between postal installations and transportation terminals within cities and metropolitan areas, and short, intermediate, and long-haul services. Predominantly, mail transportation is provided by common carriers. A substantial number of contract or star routes are used, however, in services established exclusively for mail.

The vehicles used include almost every available kind. In motor carrier services, they range from the ordinary passenger automobile to the largest tractor-trailer motor truck and passenger buses. In railroad transportation, local and through passenger trains, fast freight trains, and piggyback operations are used. Mail moves in railway storage cars, as well as in Railway Post Office cars specially equipped to permit the sorting of mail by postal clerks while the train is moving. All types of aircraft are used in transportation of mail, ranging from the helicopter to the largest passenger and cargo aircraft. Small powerboats, freight and passenger steamships of all sizes move mail in water transportation.

The President's transportation message stressed the need for greater flexibility for the Post Office Department in obtaining highway mail transportation services. Section 9(a) of H.R. 11584 would give the Department somewhat broader authority in obtaining the kind of over-the-highway service it needs under certain circumstances. It would enable the Department to take advantage of already existing highway common carrier operations which would be beneficial to the postal service.

Presently, the Department obtains most of its over-the-highway mail transportation by formal term contracts entered into after advertising. It is also permitted to and does make temporary contracts without formal advertising pending the letting of a regular contract. These contracts usually outline rather specifically the service which is expected for the term. Changes in the service during the term are sometimes necessary because of altered postal needs, but the extent of changes which can be made is limited by statute.

However, situations do arise where it is impracticable to advertise for the services desired.

For example, we may find a common carrier operating on a regular and desirable schedule between two points with excess capacity which we could use. Even if we should advertise for this service, we have found in the past that the common carrier often does not wish to bind itself for a substantial period to a particular schedule for mail traffic alone because of a possible shift in the pattern of its commercial business. The obvious solution is an arrangement with the carrier to carry the mail so long as the conditions remain mutually agreeable. Section 9(a) of H.R. 11584 would free the Department from restrictions which preclude our negotiating for such an arrangement.

A recent development is the contracting with buslines in a way which makes their systemwide schedules available for mail transportation. This involves use of a portion of the baggage compartments of buses for transportation of mail between the various points in the system, and is most useful for letter mail where volume does not justify the cost for vehicles dedicated exclusively to mail

transportation. No matter on what terms the Department advertises its requirements, usually only one company would be able to bid, since no two bus companies would have service and comparable schedules between all of the same points. Furthermore, bus companies do not like to freeze their schedules to mail requirements which would normally be the case in using formal advertising procedures.

While the Department has been able to enter into a few contracts of this type where special circumstances have existed, applicable Comptroller General decisions have left our authority to proceed in this field extremely doubtful. As a result we are unable to expand this principle to take care of our needs. This service is not a substitute for basic bulk mail transportation obtained by contract, but is a highly desirable service for transportation of small amounts of letter and other preferential mails.

Another use of this authority arises from the decentralization of some large mailers, who create heavy outbound movements from off-rail plants at irregular intervals to points all over the country. It is sometimes difficult to obtain effective bids through advertising because of the complexities and extensiveness of the movements. For this reason, arrangements through direct negotiations may be in the best interest of the postal service.

Additionally, if the Department is to take advantage of one of the newer techniques in transportation, it needs the type of flexibility this bill would provide. I refer to the combined rail-highway operation with trailers or containers on flat cars for the rail portion of the movement. The Department would like to be able to work jointly with the railroads and motor carriers in development of the use of this service to points not on the railroads. Under present law, the off-rail transportation must be obtained by advertising and competitive bidding. Since specialized and coordinated services, including separations of the mail and use of terminals, are involved, arrangements should be worked out jointly with the specific carriers who are to perform the services. Here is a situation where, with this legislation, the Department, railroad, and carrier could work together to provide effective through service, in line with the public policy proposed in section 4(a) of this bill.

With respect to rail and ocean transportation, the Department is not faced with the same type of limitations as in the case of highway transportation. In the latter instance the Department must follow formal advertising procedures.

I should like to emphasize the point that the Department needs this extra flexibility to supplement the highway service procured in the normal manner through advertising and bidding. There is no intention of using this authority in lieu of normal star route contracting. The Department does not believe that there will be any real effect on the star route contractors. Instead, this legislation is intended to cover the special situations, fairly new to the postal service, where common carriers are best fitted to give the Department efficient and economic service.

It should be pointed out also that in most cases negotiations would be undertaken with several common carriers, thus obtaining the benefits of competition where available.

STATEMENT OF LAWRENCE E. ERNST, GENERAL MANAGER, NATIONAL STAR ROUTE MAIL CARRIERS ASSOCIATION

Mr. Chairman and members of the committee, I am Lawrence E. Ernest, general manager, National Star Route Mail Carriers Association, with headquarters at 301 East Capitol Street, in Washington, D.C. I am accompanied today by Mr. Charles D. Ablard, partner in the law firm of Ablard & Harrison, Washington, D.C., counsel to the association.

First, I wish to thank you for giving me this opportunity to appear before this committee to express the views of the Mail Contractors' Association, with respect to enactment of a new law to be known as—

TRANSPORTATION ACT OF 1962

This proposed legislation was introduced by the chairman under date of May 3, 1962, as H.R. 11584 and proposes to provide for strengthening and improving the national transportation system, and for other purposes.

The testimony of the National Star Route Mail Carriers Association will be restricted to section 9(a) of the bill, headed "Simplification of Government

Transportation Rates and Procurement; Transportation of Mail by Motor Vehicle Common Carrier."

I have been employed in my present position for the past 6½ years, and prior to that was under civil service in the Bureau of Transportation, Post Office Department, for more than 37 years. I served as a clerk, and an official in the Postal Field Service, and prior to my retirement I was Director, Railway Transportation, Post Office Department, here in Washington. I believe that my 43 years of experience in postal transportation qualifies me as an expert in this field of service, and my statements are being made in the interest of all concerned.

Section 9(a) of the bill proposes that the head of an agency or such persons as he may designate may negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, including mail transportation services performed by common carriers by motor vehicle service.

This would, in my opinion, result in discrimination since it affords the Postmaster General, or his duly appointed agents, the right to spend public funds without any control and would modify section 3709 of the revised statutes, as amended (41 U.S.C. 5), which reads:

"All purchases and contracts for supplies or service, in any of the departments of Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be secured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

Congress has determined, beyond a doubt, that the Post Office Department is obligated to provide service to the people of this great country of ours. Such service must be provided in an efficient and economical manner and by whatever means the Postmaster General considers to be in the public interest.

This is being done at the present time under existing star route laws. Officials of the Post Office Department cannot point out a single instance where the individual contractor has not been able to provide the required services, and under conditions outlined by postal officials.

Mail transportation over the highway is now being handled on a fixed schedule set by the Post Office Department. The common carrier controls and sets the schedules of their vehicles. Therefore the Post Office Department would place itself in the position of dispatching mail over an undesirable schedule of the common carrier, or paying a premium for the service on a schedule of their choosing. This could mean the stockpiling of mail to be carried as top loading with shipments of freight, etc. Furthermore there would be need for additional time in the schedule, since the common carrier would need time to exchange his freight, in addition to the mail, and this would result in delay to the mail.

The record will show that during the 85th and 86th Congresses, the Postmaster General supported legislation known as the Motor Vehicle Carrier Mail Act, attempting to get authority to award mail contracts to certificated carriers without advertising for bid. The price for such service to be determined by the Postmaster General. Such authority, in my opinion, could displace some 5,000 of the 10,000 star route contractors, who are now regarded by the Post Office Department as small businessmen.

Furthermore, I do not see how such a law coould be properly administered, without favoritism being shown. There are some 30 to 35 certificated carriers operating between Washington, D.C. and New York City. Which one will be selected to do the mail job, and on what basis will he be chosen? Would this not establish a private system of Government, within the agency, beholden to no one.

It must be pointed out that the Interstate Commerce Commission has disclaimed jurisdiction under the Motor Carrier Act of employees engaged in the transportation of mail under contract with the Post Office Department in vehicles used for that purpose.

Such a ruling has enabled the Postmaster General to route mail without restriction, and in any manner he thought to be in the public interest. This is the way it should be, and the future policy should be as at present—first, service; second, economy; and third, competition.

The volume of mail fluctuates very substantially from day to day, and that differs somewhat from the movement of freight or other traffic. However, if the Post Office Department could guarantee full loads, no doubt the common carrier

would gladly furnish a schedule satisfactory to the Postmaster General. Yet, as I understand it, most of the common carriers have a certificate to operate over certain routes and between certain points. This, in my opinion, further justifies the need of continuing our present system of competitive bidding. Exclusive mail routes may operate over any highway and between any points authorized by the Postmaster General. Many common carriers are now contractors on mail routes, and members of the association, and we are not opposing the motor common carrier, but we do oppose any law that would give them exclusive rights without competitive bidding. This we believe would be discrimination.

Since the motor common carrier, as a rule, has not been able to compete with the private carrier, through competitive bidding, how can it be stated that section 9(a) of bill, H.R. 11584, would give the Post Office Department broader authority in obtaining over-the-highway service it needs under certain circumstances, except by paying a premium price?

All the Post Office Department needs to do to obtain over-the-highway service required is to follow present laws and advertise for bid. There are always several interested and competent parties who will submit a bid to provide the required service, and at a reasonable price.

In order to protect the Post Office Department and guarantee prompt handling of the mail, star route contractors are now required to furnish bond, either a surety bond or personal bondsmen. The proposed law would not require bond, and anytime the common carrier wanted to give up his contract, he could do so, without penalty, forcing the Post Office Department to employ a substitute carrier. This could result in delay to the mail and embarrassment to the Department.

The Post Office Department always publishes the schedule on which mail is to be transported, approximate volume to be handled, and size and type of equipment required to do the job. These requirements are always met, and what further improvement can there be in the handling of mail by the common carrier over the private contractor? Please do not overlook the fact that the private carrier is providing the required service, on a schedule authorized by the Post Office Department, and at a reduced cost to the Department.

It is my opinion there is no instance that the Post Office Department needs to employ the common carrier to do a job that cannot be done by the private contractor, and for less money. The common carrier cannot compete with the private carrier, schedulewise, or costwise, and I believe the record will bear this out.

Some 26,000 of the 36,000 post offices are now solely dependent upon highway transportation, and many of the remaining 10,000 post offices have truck service as well as railroad service. There is an old saying that we cannot mix oil and water, and in my opinion we cannot mix mail, with freight and express, for handling over the highway if the best possible service is desired, and that is as it should be.

I doubt that the Post Office Department can cite a single case in the past where the needs of the service have not been provided by the private carrier, and certainly there can be no doubt but that the private carrier can, and will, meet all the needs of the future. Thep rivate carriers have been called upon many times to take over the handling of mail due to a railroad strike. They have always met the challenge, and in many cases have provided improved mail service to the areas they were called upon to serve, and at less cost.

Again, I want to point out that present laws are adequate to provide any type of mail service the Postmaster General may need over the highways. The motor common carrier, as well as the private operator, is privileged to compete for the business, the way it should be. The motor common carrier does not need a law to establish him in the mail-hauling business over the highway. All he needs to do at the present time is meet the competition of the private operator. Present laws permit the common carrier to bid on mail routes at any time they are advertised for bid.

To single out the motor common carrier, exclusively, to do the job, as this bill apparently intends to do, will be discriminatory in every respect. Our present laws permit the jobs for handling of mail over the highways to be distributed throughout the areas where the service is needed. Furthermore, our present laws permit the Postmaster General to seek the man for the job, rather than building a job for the man.

The proposed legislation would give the Postmaster General, in my opinion, complete control of moving the mail over the highways between all important

points throughout the country, at a price he deems fair and reasonable, and to an operator of his own choosing. The private carrier, would not have an opportunity to transport mail, even though he might do a better job and do the job for less money, unless no certificated carrier was interested.

If this session of Congress deems such a law is needed in the interest of improved postal service, then the association wishes to recommend that consideration be given to granting present star route contractors a certificate of public convenience and necessity from the Interstate Commerce Commission or State regulatory body. This would permit the star route carrier to transport general commodities by motor vehicle on public highways in intrastate, interstate, or foreign commerce for compensation over regular routes, now in effect as authorized by the Post Office Department.

Such action would be in the interest of protecting present contractors now engaged in the transportation of U.S. mail over the highways, and who have been so engaged for many years. They have considerable money invested in equipment for the sole purpose of providing the Post Office Department with required postal service. This would protect all present contractors, and should insure their continued employment.

Furthermore, many of our contractors have reached the age where it would be almost impossible for them to get employment in industry, and to have their contracts discontinued, as no doubt this proposed change would do, would certainly impose a very serious physical and financial hardship on many of them.

This proposed change could destroy the entire star route mail carrier system, which has provided the Post Office Department the means of excellent mail service for many, many years. Procurement through advertising and competitive bidding is the time-honored method employed by the Government and why should the transportation of mail over the highway be the exception.

Rates for transporting mail via railroads and airlines are fixed by a regulatory body, thereby eliminating the competing aspect of the service preformed by these carriers. The Post Office Department will contend that this authority is needed to place it in the same position in highway transportation as it is in other modes of transportation. We submit that the situation prevailing in highway transportation is entirely different and cannot be equitably administered in any way other than by competitive bidding as now required by existing laws.

As a matter of information, I wish to point out that the largest single mail contract operating on the highway today is running between Cleveland, Ohio, and Pittsburgh, Pa., with C. F. Waite, Inc., of Akron, Ohio, as contractor. This contract has been in effect since February 1, 1958, and I understand the annual pay exceeds $330,000. Under the proposed law, this contract could be canceled or permitted to expire, and the services of a certificated carrier employed at any rate the Postmaster General desired to pay. Mr. Waite is providing excellent service, but he is not a common carrier.

Mr. Chairman, I am happy to have been privileged to appear before you and your committee and present the views of the National Star Route Mail Carriers Association, and we are indeed grateful for the many courtesies extended to the association during the past years.

Also, I wish to assure this committee and officials of the Post Office Department, that we want to work with you and that we are always interested in legislation that will improve the position of contractors and benefit the postal service.

We respectfully urge this committee not to report this section of the bill favorably. This section of the bill is discriminatory against star route contractors and is proposed in total disregard of their best interests, and the best interests of the public.

Is not the best policy, after all, one that permits equal rights to all as guaranteed by the Constitution of the United States, which says that no person shall be deprived of life, liberty, or property, without due process of law.

Thank you.

STATEMENT OF FRANK E. AIPLE, PRESIDENT, AIPLE TOWING CO., OF STILLWATER, MINN.

My name is Frank E. Aiple. I am owner and operator of Aiple Towing Co. with home offices in Stillwater, Minn. My business consists of the transportation by barge of bulk commodities exempt from regulation under section 303B

of part III of the Interstate Commerce Act. Measured in terms of equipment owned and operated and tonnage handled, I am one of the three largest carriers whose service is limited to carriage of exempt cargoes for others. In terms of area which I am equipped to serve and do continuously serve, I believe I am the largest. My statement is directed to the pending bills, namely, H.R. 11583 and H.R. 11584.

Since my 20 or more years' experience in the transportation business has been devoted primarily to matters relating to the transportation of exempt cargoes, and since ample testimony has been supplied which covers all phases of each of the bills in general, I will confine my remarks to that portion of H.R. 11583 which would exempt rail carriers from minimum rate regulation in the transportation of bulk commodities.

When the Transportation Act was adopted in 1939, Congress foresaw that exempt carriage of bulk commodities by water would be beneficial, rather than harmful to the American transportation picture. By no means can the thinking which resulted in that exemption be applied now to the exemption requested by the rails. The two modes of transportation differ widely in scope, magnitude, and geographical limitation. Criteria which apply to one, do not apply to the other. As a matter of fact, there is very little similarity between the two modes of transportation. The ratemaking policy of a water carrier (all of whose competitors must use the same thoroughfare) cannot be considered to be a satisfactory ratemaking policy for a railroad, one of whose competitors might move twice the distance to serve the same points. Railroads presently control 75 percent of all the freight traffic within the United States, as compared to the mere 8 percent controlled by water carriers. So that the railroads would be handed a tool which would enable them to exercise full and absolute control over such freight and thereby destroy the water carriers as an effective arm of interstate commerce. The exemptions which have been available to the water carriers have acted only as a leavening influence on the overall transportation rate picture.

I would like to cite two examples that are illustrative of a typical situation in which the railroads control traffic by rate manipulation and thereby keep the bargelines in a position of disadvantage: Granite City Steel Co., of Granite City, Ill., for many years purchased iron ore off the Cayuna range in north central Minnesota for shipment all rail. Since direct distance between the head of navigation of the Mississippi River in the Twin Cities area to the Cayuna range is 150 miles, and the direct distance from the Cayuna range to Granite City, Ill., is something over 600 miles (or four times the distance), I sought to set up a rail-barge movement which would result in lower transportation costs for this one consumer.

One of the railroads serving the Cayuna range is the Great Northern; and one of the railroads serving Stillwater, Minn., where I proposed to put in a transfer facility, is the Northern Pacific. The two railroads use the same roadbed for a major portion of the distance between these two points. At numerous meetings with the officials of both roads (supported by a request for rail-barge service by Granite City Steel Co.) for a rail rate from the Cayuna range to Stillwater, I failed to get either road even to agree to submit a proposed rate to the rate committee.

In another case I investigated the possibility of developing a barge-rail movement of salt cake from Weeks Island and Avery Island, points approximately 150 miles west of New Orleans, La., to Jacksonville, Fla., via Tampa, Fla. This commodity now moves all rail at a rate of $11.50 per net ton. The current rail rate which salt cake would move from Tampa to Jacksonville is $10.20 per net ton. I hold no hope whatsoever that a request by me on the prospective shipper for a more favorable rail rate from Tampa to Jacksonville will meet with any success.

I mention these two cases as being two with which I was closely associated. Every issue of transportation and traffic periodicals mention similar cases. In both cases described the commodity was one which is exempt when handled by water, and regulated when handled by rail. In each case, though operating under regulation, the railroads are able to keep the difference between the long and the short haul so low that it was impossible for me, even though not regulated, to participate in the traffic. If the rails can control traffic to this extent under regulation, it is certain that given the freedom offered under the proposed legislation would guarantee absolute control by them. The outcome would be higher rates in certain areas to cover losses where rates were lowered to force water carriers out of business, with eventual higher rates everywhere after the

water carriers were destroyed, and the benefits of one of our greatest natural resources (the inland waterways) lost.

Much of the testimony given before this committee on these two bills has pointed an accusing finger at the exempt carrier as the one at fault in our present transportation difficulties. I think you are probably aware that there are three types of carriers of exempt goods in water transportation. First, there are the carriers, such as myself, that hold themselves out to the general public as engaging in the transportation, by water, of bulk, exempt commodities and one not permitted by law to handle anything but exempt commodities. Secondly, there is the regulated carrier which is permitted to handle bulk cargoes on an exempt basis when that carrier handles them in the same manner as the true exempt carriers. Third, there is the private carrier that handles bulk commodities on the exempt basis as a byproduct to its main operation, which is the transportation of goods owned by it or an affiliate.

I want to make it very clear at this point that the exempt water carrier, as that word is literally interpreted, individually and as a group have never in the history of American transportation engaged in destructive rate practices. There is a very solid reason for this which is so obvious it needs no supporting proof. In destructive rate wars the exempt water carrier would be the first to fall by the wayside. It has neither the high-rated regulated cargoes, nor the owned and controlled cargoes to subsidize the movement of the low-rated bulk commodities.

I will summarize briefly the thinking which I have presented in this testimony for the consideration of this committee: (1) The regulation suggested for bulk commodities in H.R. 11583 will grant a segment of the industry an absolute control which can only result in destructive and discriminatory rate practices; (2) the present exemption available to water carriers has not been harmful to the transportation industry and should be continued; (3) the true exempt carrier, as distinguished from regulated and private carriers, has not and would not indulge in destructive rate practices.

STATEMENT OF THE NATIONAL COAL ASSOCIATION SUBMITTED BY MYLES E. ROBINSON, DIRECTOR, ECONOMICS AND TRANSPORTATION

This statement is filed in support of H.R. 11583, a bill "To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes."

The National Coal Association is the official trade association of the bituminous coal industry, with offices at 1130 17th Street NW., Washington, D.C. Its members include producers and distributors of two-thirds of the commercially mined coal in the United States.

This statement is concurred in by the Mid-West Coal Producers Institute and the Coal Traffic Bureau of Northern West Virginia, Ohio, and Western Pennsylvania.

The bituminous coal and railroad industries have very strong mutual ties. Coal is the most important commodity handled by the railroads, both as to traffic and revenue generated. In 1960, the latest year for which complete data are available, coal accounted for 24.5 percent of all railroad carload traffic and 12.5 percent of all rail revenues from freight transportation.

Not only is a healthy bituminous coal industry vital to the railroads, but without a strong railroad industry the coal industry would suffer numerous handicaps, some of these insurmountable. In 1961, for example, 75.3 percent of all bituminous coal movements were by rail, with trucks and barges furnishing 13.1 and 11.6 percent, respectively. Also, while a substantial volume of coal moves under conditions where there are other available means of transportation, many coal operations are conducted where the only practicable means of transportation is by rail. Here the two industries are closely interdependent.

We strongly urge that H.R. 11583 be recommended favorably by the committee. Our support of this proposed legislation is based on the long-established policy of the National Coal Association to oppose all measures which will cause erosion in our markets and to lend our backing to those measures which will expand these markets. We believe the proposed legislation is sound and that its enactment will greatly benefit the bituminous coal industry, the railroads' largest shipper, and the railroads, coal's chief means of transporting our product to the market.

We believe this legislation will benefit the railroads, the coal industry, and the general public for these three reasons: (1) It will make it possible for the railroads to reduce rates for coal without the necessity for time-consuming ICC delays in granting the relief applied for; (2) it will expedite rate adjustments generally by removing the large number of minimum rate cases from the jurisdiction of the Commission; and (3) it will permit the railroads to improve their financial position and strengthen their ability to maintain adequate equipment and service to meet coal's transport needs.

Like the Nation's railroads, we are engaged in a struggle for survival. Penetration of our markets by natural gas and residual oil has increased in intensity in the postwar period. Halfway measures are not enough. Interfuel competition is heavily keyed to price. Only by a hard-hitting approach to the real issue of high transportation charges for coal can this competition be met effectively. In 1961, railroad freight charges were 73.1 percent of the average value of bituminous coal at the mine.

Imported residual oil, long a serious problem in coal's marketing along the eastern seaboard, is now moving inland. The chief way to retain coal's competitive position in eastern markets is to give the railroads greater flexibility in pricing freight services.

An ever-growing problem in the marketing of coal, particularly in the Midwest, is that of interruptible gas. Here, again, pricing is the major key to our ability to compete. We believe this proposed legislation is the proper vehicle through which to provide effective competition.

In recent years through increased mechanization and greater efficiency in the use of equipment, the bituminous coal industry has actually succeeded in reducing the price of coal at the mine. During the decade 1952–61, the f.o.b. price for bituminous declined from $4.90 to $4.65 a ton, a decrease of 5.1 percent. While mechanization undoubtedly will continue to be a factor in enabling the coal industry to maintain its mine-price line, high transportation costs could easily result in counteraction.

Rail transportation costs, as we have repeatedly pointed out in numerous ex parte rate cases, must come down or one of two things will happen—coal will be driven to the use of other means of transport than rail, or the coal industry will withdraw from competition with other fuels where transport cost is a major factor in price.

Both the coal and railroad industries, faced with a loss of utility markets, have cooperated in establishing lower rates on coal movements to the east coast. Again, through the initiative of progressive management, major coal-carrying roads are developing the "unit" or "integral" train, a trainload of coal from a very limited number of points of origin to a single destination. This development and that of the coal pipeline are drastic steps to reduce transport costs for coal.

Such steps are in the right direction. But without freedom from minimum rate controls, the railroads will be unable to aid coal in its struggle to meet the competition of imported residual oil and below-cost interruptible gas. Further, both the coal pipeline and unit train are limited to heavy, relatively long-distance hauls from a few origin points to a single destination. Most coal movement takes place under other circumstances. In this larger number of cases the only means of relief is the minimum rate.

Not only will enactment of H.R. 11583 permit the railroads greater flexibility in ratemaking for bulky commodities but, relieved of its time-consuming regulation of minimum rates, the Interstate Commerce Commission will be better able to deal with other rate matters within its jurisdiction.

We are well aware of the Nation's need for a strong and economically healthy railroad industry. Removal of minimum rate controls on items highly sensitive to competitive pricing is essential to preserve the railroads as an important factor in the Nation's transportation complex. Equipment is the likelihood of the railroad industry and for the coal industry. Without adequate hopper cars, for example, our markets would soon be lost to oil and gas.

The railroads are feeling the impacts, as are many other industries, of the postwar trend in the Nation's economy away from service competition to price competition. In many areas profit margins are small and cost savings are carefully investigated. Where transportation costs can be pared, this is done.

This bill also provides for the removal of minimum rate controls for passenger service. We recommend that this provision be left in the bill. The National Coal Association, in frequent ex parte hearings, has contended that coal freight rates are too high because freight traffic generally is subsidizing passenger serv-

ice losses. We are completely in support of anything which will help the railroads regain traffic lost to the private automobile and competing common carriers.

We have certain reservations about some of the provisions of H.R. 11583 as the bill now stands. The first of these refers to the proposed amendment to section 5a of the Interstate Commerce Act which would abolish the right of railroads to make rates through the conference method, rate bureaus, etc. This right to establish rates by agreement and not in a vacuum, is granted by the terms of the Reed-Bulwinkle Act. We are convinced that removal of the legal basis for such activities in the rate establishment field could contribute to delay in rate adjustments and inflexibility in competitive pricing which H.R. 11583 seeks to avoid.

Because of the departure in rate controls incorporated in this bill, it is necessary, in our opinion, that periodic reviews be made of the results of this legislation to all parties, including the general public. These should be reported to the Congress. Such a review would assess the value of this legislation to the railroads, shippers, and impact on the general public. Such a review is advisable because this is the first major change in railroad regulation since 1920.

It is also our recommendation that the committee weigh most carefully the protection of shippers, carriers, and the general public from rate adjustments not based on the need to meet market competition. While the bill does provide for such protection through the Department of Justice, inordinate administrative or judicial delays in taking final action on such rates would well nullify the benefits of eliminating minimum rate regulation from bulk commodities.

The Congress should weigh carefully whether the 30-day waiting requirement may not defeat the desirable end of flexibility. In any event, this factor should certainly be reviewed after experience under a change in the law, if the waiting requirement is not modified.

We are pleased to place these conclusions of the bituminous coal industry in support of H.R. 11583 before the House Interstate and Foreign Commerce Committee and urge that consideration be given to the early enactment of this legislation to grant the railroads the greater flexibility essential to efficient and profitable operations.

[Telegram]

WASHINGTON, D.C., *July 24, 1962.*

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

National Farmers Union is supporting President Kennedy's recommendations in regard to the Nation's transportation policy. Greater competitive freedom would benefit immeasurably farmers, consumers, and would permit the common carrier industry which has been declining, to become a greater dynamic force in the Nation's growth and economy. We support particularly your bill, H.R. 11583, which would in part achieve these goals. Users of common carrier transportation should benefit from modernization and greater efficiency of railroads. The railroads should have power to reduce rates on bulk and agricultural commodities where practicable.

Respectfully request that you read this message into record of hearings.

Sincerely,

JAMES G. PATTON,
President, National Farmers Union.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 1, 1962.

Mr. W. E. WILLIAMSON,
Clerk, Interstate and Foreign Commerce Committee of the House,
New House Office Building, Washington, D.C.

DEAR ED: Mr. Richard M. Boyd, of the Pittsburgh Plate Glass Co., would like very much to have his talk made a part of the record in the hearings on H.R. 11583. I think this is an excellent summary of the transportation problem and would be of value in the hearings.

Cordially yours,

J. ARTHUR YOUNGER,
Member of Congress, Ninth District, California.

Enclosure.

Will There Be a Change in the Regulatory Concept?

An Address by Richard M. Boyd, Director of Traffic and Transportation, Pittsburgh Plate Glass Co., at the Tenth Annual Meeting of the Railroad Public Relations Association, White Sulphur Springs, W. Va., June 14, 1962

The Presidential message on transportation gave indication that less regulation of transportation is a possibility. But even in the Presidential message either/or language is used. In advocating extension to the railroads of the exemption from approval or prescription of minimum rates, the message indicates that "while this would be the preferable way to eliminate the existing inequality" Congress could elect to extend regulation to areas which are exempt for transportation by water and by motor today.

In his message, the President appropriately stated: "A chaotic patchwork of inconsistent and often obsolete legislation and regulation has evolved from a history of specific action addressed to specific problems of specific industries at specific times." A review of transportation regulation offers ample substantiation of this statement in that law has been piled upon law without repeal of any existing statutes.

The original concept of regulation was to control monopoly—it was essential in the public interest to prevent preference and prejudice. There was only one form of public transportation, the railroads, and the flagrant abuses of the public interest which had arisen in the operation of this single form of transportation made regulation necessary. The original Interstate Commerce Act of 1887 was followed by various implementing legislation which strengthened the original act and occasioned more regulation—statutes such as the Hepburn Act, the Elkins Act, and the Mann-Elkins Act.

By the time the motor truck began to become a factor in moving the Nation's commerce, the public had become so accustomed to regulation that it seemed logical to regulate this new form. But even though, because of years of railroad regulation, the way had been paved for enactment of legislation which would provide regulation of the motor truck, there was little demand for such regulation as far as the shipping public was concerned. The demand arose primarily from those in the trucking business who had made sizable investments and felt there should be some protection of such investment and some in railroad management who thought the answer to meeting this new form of competition lay in placing it under regulation. But in railroad quarters there were many who did not consider the motor truck an important threat—they dismissed motor transportation by saying, "Let them have the LCL business—we don't want it anyway."

As the truck became increasingly important, there came the first major change in the regulatory concept. Regulation of motor carriers was not necessary on the grounds of controlling a monopoly; anyone could buy a truck and go into the trucking business. Nor was it necessary on the basis of providing exclusive franchise. Railroads have large fixed or constant expenses so that they must have some assurance of exclusive franchise. On the other hand, fixed expenses of motor carriers constiute a much smaller element of their total cost primarily because they do not build or maintain the highways over which they travel. Furthermore, they contribute to maintenance of such highways only when they use them.

In the absence of justification on the grounds of controlling a monopoly or the need for exclusive franchise, various reasons were advanced for regulation of the motor truck, most of which have not been justified by experience. Among the reasons advanced were:

(1) Regulation of motor carriers is desirable to prevent discrimination: Although section 216 of part II of the Interstate Commerce Act provides that undue preference and discrimination are unlawful, action is rarely brought against a carrier under this section and instances wherein the Commission has sustained a complaint under this section are even more rare.

(2) Regulation is necessary to insure financial responsibility of common carriers by truck: The Interstate Commerce Act and various State laws provide for the establishment of regulations for protection of the public with respect to damage or loss of cargo. However, the shipper must prove the carrier is legally responsible and, in the face of increasing costs of litigation, it is seldom worthwhile to take claims into court for collection. The carriers are well aware of this and many of them use every conceivable excuse for not paying claims or delaying payment as long as possible.

(3) Regulation is necessary to assure dependable service: If our present regulatory system would assure dependable service, shippers would be all for it, but filing a complaint with an office of the Interstate Commerce Commission or a State regulatory body doesn't get the load moved today and if it is not moved today and delivered to the customer tomorrow the sale may be lost.

(4) Regulation is necessary to achieve just and reasonable rates: Within an industry that is not monopolistic by nature, this requirement of the Interstate Commerce Act has become almost meaningless. The competition of other forms of transportation, or the cost of service by private transportation today sets the peg.

(5) Regulation is necessary in order to bring about a coordination of rail and motor transportation: In an obvious attempt to encourage such coordination, the Congress has made coordination of modes permissible under the Interstate Commerce Act but it has had little effect—only a minimum amount of coordination has resulted. Shippers are told that coordination can be achieved only through common ownership, and we are reluctantly beginning to think that this is the only possible means of achieving it. Certainly we have been given no grounds for thinking that it could be forced by legislation which would require separately owned properties to provide coordinated service.

These were the primary reasons advanced for the new concept of regulation embracing the for hire motor carrier industry.

Part II of the Interstate Commerce Act was patterned after part I, but regulation was not on the same basis. There was one big exception: the produce of agriculture was completely exempt from regulation when transported by truck. It was difficult to argue with the right of the farmer to haul his products by truck—after all he had always hauled it to market in a wagon and the motor truck was simply replacing the wagon. This formed the basis for what has proved to be a most important exception being made in enactment of part II.

As water transportation for hire again became important, cries for regulation arose. Rail transportation is regulated; motor transportation is regulated; why not water? And so part III of the Interstate Commerce Act was enacted. But here again the concept changed—bulk commodities were not to be regulated. The exemption from regulation, when transported by water, of all bulk liquids and dry bulk when not more than three commodities are included in the same tow set up another exempt area of major importance.

As the freight forwarder became more important in the transportation picture, a demand for regulation arose. Here again the concept was somewhat different, in that prior to enactment of this section of the Interstate Commerce Act regulation had been set up only for modes of transportation. The freight forwarder did not constitute a mode: he was an entrepreneur, utilizing the various modes for movement of smaller quantities on which he performed the function of consolidating. And here again what has proved to be an important exemption from regulation was inserted into law: shipper cooperatives are not subject to regulation under part IV of the act.

While all this regulation of surface transportation was occurring, air transportation had come into being, and the Congress decided that regulation was necessary and desirable in the public interest. However, a new concept was followed, in that a separate law was enacted to regulate air transportation and a new agency was created to administer such regulation. No provision for coordination or tie-in with surface transportation was provided.

Similarly, in setting up regulation of ocean transportation, the Congress provided a different concept in the form of a separate law and a separate agency, the Federal Maritime Commission, to administer it. Here again no provision for coordinating regulation of maritime transportation with the regulation of other forms of transportation was provided.

Each session of Congress since the war has brought forth a host of transportation bills which essentially would provide for more regulation of the various forms of transportation. Only one of any consequence has been passed—the so-called Transportation Act of 1958, which purportedly provided for greater freedom in ratemaking. It is significant that, in attempting to provide greater freedom, the Congress did not repeal any existing regulatory laws: it added to the existing statute a new section. Section 15a provided opportunities for varying interpretation as to what was meant by Congress and the Interstate Commerce Commission has added to the doubt by a series of decisions in which it is often difficult to find the thread of consistency.

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Some in the transportation business have not been satisfied with the interpretation given by the Interstate Commerce Commission, and this occasioned the introduction of S. 1197. Extensive hearings which served as a sounding board for various transportation interests who were not satisfied with the Commission's interpretation of section 15a were held, but so far the Senate Commerce Committee has not recommended reporting of the bill to the floor. But the narrowness of the vote against reporting, and the vehement pronouncements by some Senators against the manner in which the Transportation Act of 1958 has been interpreted by the Commission, have apparently had a profound effect on recent decisions of the Commission.

In fact, such a different interpretation has been placed on 15a that the courts, in several instances, have overruled the Commission. For example, in the so-called *New Haven* case, a three-judge district court held that the Interstate Commerce Commission requirement of a rate differential to protect the water carriers violates the 1958 amendment. Again in the agricultural implements case, the Federal district court overruled a Commission decision in which it was held that although reduced ratings, of agricultural implements, tractors, and road machinery were compensatory, they were unlawful because they were "destructively competitive."

Other recent cases which have not yet had court review also give indication that the Commission is more influenced by its concept of the national transportation policy than it is by the language of section 15a in its opinions. Notable among such cases are I. & S. 7595, Petroleum Gas, Oklahoma City to Memphis; Docket 33256, Sugar, New Orleans and other gulf and South Atlantic ports to Indiana and Ohio River crossings, and Docket 33366, Pig Iron from Buffalo, Erie, Cleveland, Toledo, to Chicago and Gary, Ind. In the latter case, the Commission specifically provided that rail rates must be 10 percent higher than the total cost of shipping by competing water carriers on the Great Lakes.

So the stage is set for consideration of legislation introduced as a result of the Presidential message. Does this herald a change in the regulatory concept—one in the direction of less regulation? In the legislation introduced so far, the bill to remove minimum rate control is the only one which would make any basic change in the regulatory concept. The only lessening of regulation to be found in the so-called omnibus bill, H.R. 11584, is a provision which would permit experiments by carriers in rates, classication, and documentation systems but this is qualified by a provision:

"(e) For the purposes of this section, each agency referred to in subsection (a) shall have the powers conferred on it in the statute creating such agency, and nothing in this section shall be deemed to diminish the existing regulatory powers of such agencies."

As far as the railroads are concerned the only really important legislation which has been introduced is that embodied in bills H.R. 11583 and S. 3243 which would exempt bulk and agricultural commodities and passenger fares from minimum rate regulation. The balance of the legislation proposed would only indirectly affect the railroads in that it would do such things as place tolls on other forms of transportation, transfer powers vested in the Interstate Commerce Commission with respect to guarantee of loans to the Secretary of Commerce, provide anyone could use various forms of piggyback service, extend liability for reparation awards to forms of transportation other than railroads, etc.

At the behest of the Department of Justice a restriction against the use of the conference method of ratemaking in establishing rates on traffic exempted from minimum rate control was inserted in these bills. This provision would remove the section 5a protection for the conference method of ratemaking originally provided by the Reed-Bulwinkle bill which was passed in 1948 largely because of shipper support for the procedure. Since this is a major exception to the antitrust statutes with respect to pricing, the Department of Justice has been endeavoring to restrict or destroy this provision for conference pricing. It is something which has served both the shipping public and the carriers well and it is desirable that all rates of the railroads be established by this method. The orderly procedure of docketing and advertising of proposals is important in that it gives all concerned an opportunity to comment on proposed changes and negotiate prior to publication in tariff form where the rates have the effect of statutes.

Apparently in an effort to cover situations where it is necessary to utilize more than one carrier in order to accomplish transportation, an exception has been provided to allow carriers to consult and establish jointly the "rates, fares,

classifications, divisions, allowances, or charges applicable solely to such reasonable through routes." If the bill were enacted with this provision, it would create a disparate condition in that single carriers would be prohibited from using the conference method of ratemaking but carriers forming a joint route between the same points would be permitted to meet for consideration of rates; e.g., from Chicago to San Francisco, a single line route, the Santa Fe would have to establish rates independently whereas the joint route Chicago & North Western-Union Pacific-Southern Pacific could make rates through the conference method. This would create not only an unusual but an unfair situation for many shippers. One producer could reach a market by a single line route and there would be no docketing of proposals or provision for public hearing as provided in section 5a procedure while his competitor, able to reach the same market territory only by a combination of routes, would find his proposal given full publicity and consideration through the conference method of ratemaking.

As introduced in the Congress H.R. 11583 and S. 3243, while taking away the power of the Commission to prescribe minimum rates, would presumably make all rates established under the prescribed procedure subject to review under other provisions of the act. This would establish an entirely new concept for regulation of bulk commodities and products of agriculture for rail movement. It would differ substantially from the concept followed with respect to movement of bulk commodities by water and products of agriculture by truck in that they are wholly exempt from regulation when transported by those respective means.

This bill is being opposed by the water carriers and they insist that if passed it must contain a prohibition against section 5a procedure in the making of rates. This seems to be in keeping with the philosophy expressed in S. 1089 which was introduced at the behest of the water carriers. However, one cannot help but ask if the water carriers might not be better off if bulk rates were made by the conference method of ratemaking in that they would be given advance notice of what rates might be established for rail movement in competition with their own rates. If such rates could be made only by independent action, the first notice would be through publication in tariffs.

In summary, it appears that the only real opportunity for change in the regulatory concept is found in the removal of minimum rate control bill and even this change would be accomplished by adding a new section to part I of the act rather than repeal of any existing law. This is entirely in keeping with past history in that law has been piled upon law and regulation upon regulation. Nevertheless, it would constitute an important change in the regulatory concept and all those interested in transportation are concerned with the chances for its enactment.

Although hearings on the bill have been scheduled for the latter part of June, it appears unlikely that with Congress pressing for adjournment there is much chance for enactment into law in this session unless real push is put behind the bill by its advocates. It is unfortunate that it contains a prohibition against use of 5a procedure in making rates since this will make it difficult for the railroads and shipper supporters to give it unqualified support. By experience we note it is difficult to get major legislation passed and at the same time remove portions which are not desirable. Accordingly, if the bill is to be enacted into law in this session of Congress, it will require some real effort.

The membership of the National Industrial Traffic League, reflecting a desire for less regulation, has voted to support H.R. 11583 and S. 3243 provided that orderly rate procedures under section 5a are fully preserved and the carriers are protected against antitrust harassment. A majority of the league membership oppose the new legislation primarily because they are concerned with its possible effect on the price structure for certain commodities and the fact that in some instances commodities in bulk would be exempt from minimum rate prescription while the same commodities when packaged would be subject to minimum rate control by the Commission.

Although an overwhelming majority of shippers favor the idea of less regulation as embodied in the aforementioned bills, the exceptions taken by some because of individual interests which might be adversely affected are important and are a further indication that the issue will not be easily resolved.

In supporting the legislation with the proviso that section 5a procedure be followed in establishment of rates, the league is concerned that the carriers follow the prescribed procedure of docketing and advertising of proposals even though the right of independent action is legally possible.

Under section 5a of the act the right of independent action must be preserved but in the case of about 99 percent of proposals for changes in rates, independent

action has not been taken prior to docketing and following of prescribed procedure. Adherence to public docketing cannot be forced but an overwhelming majority of shippers believe it is desirable and if the exemption from minimum rate control bill becomes law we feel that in the interest of justice the carriers should docket proposals for changes in rates in accordance with the normal procedure which has been observed in establishment of rates fully subject to regulation by the Commission. Most shippers would be adverse to supporting the legislation if they thought that such a change in the law would give rise to widespread independent action without following of prescribed procedure.

This session of Congress or its successor could well provide the answer to whether or not there will be a change in the regulatory concept towards the direction of less regulation. We are at a crossroads—the next few years will determine whether there is to be a relaxation of regulation with a hope for revitalization of the railroads or more regulation and the possibility of socialism. The more regulated industry becomes the closer it approaches Government operation. It would be easy to let the American railroad system drift into Government ownership by default and unfortunately there has been many signs on the horizon in recent years that this is more than a distinct possibility. The path to Government ownership has been followed in all countries of the free world. Only by reversing the trend toward more regulation can it be prevented. Enactment of legislation can be important in reversing the trend but it must be accompanied by a demonstration that the railroads are ready for less regulation. It is a difficult road to follow; the easier course is to take more regulation with accompanying Government paternalism and bureaucracy.

This is the first real opportunity in many years for a change in the regulatory concept. Making it a reality will require substantial and concerted effort on the part of the railroads and those who are interested in establishing this new concept of regulation.

SECURITY BONDED WAREHOUSE, INC.,
Miami, Fla., September 17, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: We are most interested in the successful passage of Senate bills 3452 (H.R. 11583) and 3243 (H.R. 11584). Senate bill 3242 (H.R. 11583) is designed to strengthen and improve the national transportation system and Senate bill 3243 (H.R. 11584) will exempt our rail carriers from minimum rate regulation of the Interstate Commerce Commission in the transportation of various commodities. It is our firm belief that such legislation will be beneficial to the national transportation system and of aid to industry in general.

Inasmuch as rail services and costs are so vital to our industry, we will greatly appreciate your vigorous support of these bills. Rail carriers should be given equal treatment with other carriers.

We further request that this letter be made a part of the record in support of both bills.

Sincerely yours,

CHAS. A. O'BRIEN, *President.*

VIVIANO ENTERPRISES, INC.,
Miami, Fla., September 17, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: We are most interested in the successful passage of Senate bills 3242 (H.R. 11583) and 3243 (H.R. 11584). Senate bill 3242 (H.R. 11583) is designed to strengthen and improve the national transportation system and Senate bill 3243 (H.R. 11584) will exempt our rail carriers from minimum rate regulation of the Interstate Commerce Commission in the transportation of various commodities. It is our firm belief that such legislation will be beneficial to the national transportation system and of aid to industry in general.

Inasmuch as rail services and costs are so vital to our industry, we will greatly appreciate your vigorous support of these bills. Rail carriers should be given equal treatment with other carriers.

We further request that this letter be made a part of the record in support of both bills.

Sincerely yours,

S. T. VIVIANO.

J & L FEED AND SUPPLY,
Dania, Fla., August 8, 1962.

Hon. PAUL G. ROGERS,
House Office Building, Washington, D.C.

DEAR MR. ROGERS: We will greatly appreciate your support of Senate bills 3242 and 3243 and their House bill counterparts 11583 and 11584. It is our firm belief that the passage of such legislation will improve the national transportation system and thus aid industry in general.

We request that this letter be made a part of the record in support of both bills.

Very truly yours,

WALTER B. JOH.

AMERICAN ZINC LEAD & SMELTING CO.,
St. Louis, Mo., July 26, 1962.

Hon. PAUL G. ROGERS,
Committee on Interstate and Foreign Commerce,
Old House Office Building, Washington, D.C.

DEAR SIR: Our company, with operations in a number of the individual States, including Illinois, Texas, Ohio, Washington, Missouri, Utah, Oklahoma, Tennessee, Arkansas, Wisconsin, and New Mexico, generates substantial quantities of raw materials, as well as sundry products. This production is shipped by railroad, truck, and bargelines, in both interstate and intrastate traffic of a national scope. We ship a total of 2½ to 3½ million tons of material in a year.

In consequence we have an acknowledged interest in the legislation now before Congress, and which is identified as S. 3243 and H.R. 11583, commonly known as minimum ratemaking bills, and which are identically worded.

It is our firm conviction that enactment of this legislation will create a substantial improvement of the deplorable condition that exists with the national transportation system, and which in its weakened state endangers not only the welfare of the Nation, but also seriously mitigates against the continued growth, as well as expansion, of the economy.

Accordingly, we respectfully urge that you actively support these bills in committee session and work to their approval in the Congress.

Respectfully yours,

N. S. WORRELL, *Vice President, Traffic.*

VIKING FREIGHT CO.,
New Orleans, La., August 10, 1962.

Hon. HALE BOGGS,
Congressman, House Office Building, Washington, D.C.

DEAR CONGRESSMAN BOGGS: Consideration to bill H.R. 11583 is now being given by the House Interstate and Foreign Commerce Committee. As you know, this bill proposes changes in the transportation regulatory laws, and supports one of President Kennedy's recommendations set out in his April 5, 1962, message to Congress relative to the transportation system of our Nation. Provisions to eliminate regulation of bulk commodities, agricultural, and fishery products from the Interstate Commerce Act, so that all modes of transportation are given equal treatment are provided in H.R. 11583.

I agree with the basic concept that fair and equal treatment should be given all modes of transportation, but strongly disagree with the application in this proposed bill.

This bill defines "in bulk" as "Those commodities which are loaded and carried without wrappers or containers, and received and delivered by the carriers without transportation mark or count." It is conceivable that under this definition for almost all building materials; manufactured parts moving to assembly lines, i.e., automobile parts, tires, radiators, body panels, etc.; most manufactured food products; bulk castings; and hundreds of items loaded in trailers for through movement to receivers to be transported without minimum rate control.

Agricultural and fishery products were exempted by the Motor Carrier Act from minimum rate control by the Interstate Commerce Commission to protect the farmer and fisheries in their farm-to-market function, what has happened over the years? Through court decisions and interpretations of the broad terms of the original act, a long list of products, other than shipped by original producers, is now exempt of minimum rate control.

The national transportation policy is clear in its declaration against destructive competitive practices. The passage of this bill would abandon this policy, in a large part.

The pattern of transportation ratemaking during the past 30 years will clearly indicate the need for minimum rate control to prevent chaotic and destructive rate practices. We must strengthen and support the Interstate Commerce Commission authority rather than destroy its effectiveness. We must establish rate regulation of bulk commodities, agricultural, and fishery products for all modes of transportation rather than expand the many ills now present.

Proponents of this bill state that application of antitrust laws will check flagrant competitive rate abuses. Our antitrust laws and judicial system are just not designed to cope with the massive and technical problem of minimum rate regulation. The Interstate Commerce Commission has proven its experience and effectiveness in this field. The time element alone under the judicial system would put many out of business, even though their case was just.

Your consideration of our position on this important bill is earnestly solicited.

Sincerely,

C. G. HOLLIS.

ALICE-SIDNEY DRYER & SEED CO.,
Jerome, Ark., August 16, 1962.

Re H.R. 11583.

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

DEAR CONGRESSMAN HARRIS: We are writing asking for your support of H.R. 11583 which concerns the agricultural areas of our county to a very large extent. We are vitally interested in the railroads competitive position in comparison to other forms of transportation for agricultural products.

In our particular location, the Mississippi River offers competition that the railroads cannot meet and figuratively speaking, this plant is only a stones throw from the Mississippi River. This plant is located on the main line of the Missouri Pacific Railroad. By virtue of the fact that the railroads not being allowed to be competitive, this plant and every other plant on the railroad is at a competitive disadvantage with the farmer being the final victim of unfair competition.

We sincerely ask for your favorable support of H.R. 11583 and also ask that this letter be made a part of the official record in the proceedings on this bill.

Very truly yours,

T. R. GODSEY, *Manager.*

VEGETABLE OIL PRODUCTS CO., INC.,
Wilmington, Calif., August 13, 1962.

Re H.R. 11583.

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

DEAR MR. YOUNGER: As a substantial shipper of commodities in interstate commerce, we have a definite interest in subject bill. We endorse the principle of competitive equality among the various forms of transportation and favor the right of railroads to continue the conference method of making rates.

If the Nation's railroads are to prosper and ward off the dire possibility of Government ownership, this proposed legislation must be enacted. We suggest your vigorous support of this bill and ask that our wishes be made of record.

Very truly yours,

W. D. WILKE, *Vice President.*

EXCEL PACKING CO., INC.,
Wichita, Kans., August 1, 1962.

HON. GARNER E. SHRIVER,
House of Representatives,
House Office Building,
Washington, D.C.

DEAR GARNER: Please refer to bill H.R. 11583 which is now being considered by the House Committee on Interstate and Foreign Commerce.

Our company is dependent on the railroads and trucklines for the transportation of our commodities to various destinations in the United States, with occasional export shipments through the gulf ports and Pacific ports. While each mode of transportation serves our needs depending on the conditions involved such as service, transportation costs, or equipment, we feel that each carrier should be free to compete to their fullest extent without any restriction from any regulatory body as to the minimum rates they can publish.

We understand this bill will no longer allow the Interstate Commerce Commission to condemn railroad reduced rates. The railroads know what they must do to meet their competition and should not be restricted in their efforts when their competition is not equally restricted.

We sincerely request your favored consideration of bill H.R. 11583 and ask that this letter be made a part of the official record.

Sincerely yours,

S. H. MARCUS, *President.*

PELLA CANNING CO.,
Pella, Iowa, August 10, 1962.

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

DEAR REPRESENTATIVE HARRIS: Our company is a small independent business with no transportation facilities of its own. We are entirely dependent upon common carriers to deliver raw materials to us and to haul finished merchandise to our customers.

We are in agreement with the recommendation made by President Kennedy in his transportation message and request support of House bill, H.R. 11583. We would like to have this letter made part of the official record.

Yours very truly,

EMERY GAARD, *Vice President.*

PORT OF SAN DIEGO AND LINDBERGH FIELD AIR TERMINALS,
San Diego, Calif., July 24, 1962.

HON. BOB WILSON,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR BOB: We were pleased to receive copies of S. 3243 and H.R. 11583, which would exempt certain carriers from minimum rate regulations in the transportation of bulk commodities, and the supporting documentation. The expedited action in forwarding this information is appreciated.

As indicated in my original request we have reviewed these bills and hereby submit our evaluation for your consideration.

The two bills are companion bills and are practically identical in format and intent. Therefore, the comments made on S. 3243 are equally applicable to H.R. 11583.

The Port of San Diego is presently handling such bulk commodities as tallow, mollasses, and petroleum products in liquid bulk, and alfalfa pellets, flaxseed, and potash in dry bulk form. The new major bulk loader, now under construction, will be capable of handling bulk commodities such as iron ore, ore concentrates, potash, borax and borates, coal, wheat, corn and other grains, and various other types of dry bulk commodities. These factors were a major consideration in reviewing the proposed legislation.

Under present law, the motor carriers are exempt from rate regulation on agricultural commodities, livestock, and fish (including shellfish) as provided in section 203(b) of the Interstate Commerce Act. S. 3243 makes no provision for amending section 203(b) to extend the exemption to other types of bulk com-

modities, both dry and liquid. However, section 1(23) (pt. I covering rail carriers); section 303(b) (pt. III covering water carriers in interstate commerce); section 418 (pt. IV covering freight forwarders) of the Interstate Commerce Act extend the much broader exemption to other modes of transportation. Additionally, section 1002 of the Federal Aviation Act of 1958 is to be amended to provide the same exemptions to the air carriers (which also include passengers).

Section 5(a) of the Interstate Commerce Act, section 15 of the Shipping Act of 1916, and section 414 of the Federal Aviation Act of 1958 are all to be amended. These sections are the ones that exempt the carriers from prosecution under the antitrust laws for establishing uniform rates through tariff-publishing agencies. The relief from prosecution is to be rescinded insofar as bulk commodities and passengers are concerned.

There are four basic groups of activity which are to be exempted from minimum rate regulation by the Interstate Commerce Commission. These are set forth as follows:

(1) Commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count.

(2) The transportation of liquid commodities in bulk.

(3) Property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof).

(4) Passengers, by carriers subject to parts I, II, III, and IV of the act.

Should this legislation be enacted it would open "Pandora's box" of chaos and confusion. Discrimination, preference, and prejudice as between commodities, shippers, and localities would be the rule rather than the exception. The following examples will graphically illustrate the conditions which would exist as between competing ports.

A. COMMODITIES IN BULK, DRY

At the present time there are major bulk-loading facilities in existence, under construction, or on the drawing boards of every major Pacific coast port. The port of San Diego is very competitive with the port of Long Beach in developing iron ore, potash, borax, and other similar commodities for export. We now have equal rail rates from Arizona and New Mexico sources and are below the port of Stockton. Should S. 3243 pass the railroads could set lower rates on potash out of Carlsbad, N. Mex., to Long Beach than to San Diego that would divert all of that tonnage to Long Beach. San Diego would be prohibited from petitioning the ICC for suspension, even if it found out about the reduction prior to the effective date. San Diego would be required to go to court under the antitrust laws for relief. By that time the cargo would be lost and the damage done.

B. LIQUID COMMODITIES IN BULK

The same situation would apply on commodities such as tallow, molasses, and petroleum. The same factors and same solutions would pertain.

C. LIVESTOCK, FISH, AND AGRICULTURAL COMMODITIES

We cannot object to other carriers having the same exemptions on these commodities that motor carriers are now enjoying.

D. PASSENGERS

This would remove all restrictions on minimum rates on passengers and would undoubtedly result in a major rate war between railroads, buses, and airlines. The amending of section 1002 of the Federal Aviation Act of 1958 would substantially reduce the minimum rate regulation of the CAB but they would still have control "in the public interest" but no such control would exist with the railroads and buses under the ICC. Fares would be extremely low until the competition was driven out, then the fares would return to a much higher level. This is extremely dangerous as passenger operations are notoriously marginal at best. The losses encountered in passenger operations would have to be offset by higher rates on general commodities.

E. JURISDICTION

Another major factor overlooked in this proposed legislation is the fact that all port traffic is interstate or foreign in nature and therefore subject to the Interstate Commerce Act on beyond movement by land carriers and is not subject to the jurisdiction of the various State public untilities commissions. Should these import/export type of commodities be exempted from minimum rate regulation of the ICC then, the Federal Government has relinquished its jurisdiction and the State then has the right to assume jurisdiction.

Since the State of California, through the California Public Utilities Commission publishes "minimum rate tariffs" it is only natural to assume that the State would immediately assume jurisdiction, relinquished by the Federal Government and place bulk commodities under its "minimum rate tariffs."

The State of California has already assumed jurisdiction over numerous agricultural commodities moving by motor carrier that would otherwise be exempt under section 203(b) of the Interstate Commerce Act.

We would therefore find potash from Carlsbad, N. Mex. free from minimum rate control by the ICC when moving for export, but the public utilities commission publishing minimum rates on potash from Trona for export. This could quite easily result in widespread discrimination to California shippers in the export trade in comparison to their competitors in other States.

F. TRANSFER OF RELIEF FROM ICC TO COURTS

To remove the authority and power of the ICC in determining minimum rates would impose a severe strain on our already overloaded Federal courts. There are hundreds of thousands of rate adjustments made each year, and tens of thousands are challenged as being unreasonably low and discriminatory. This proposed legislation would require these challenges to be made in the Federal courts under antitrust laws. The calendar delay of the courts alone would cause irreparable damage to shippers, carriers, and localities before any corrective action could be undertaken.

Once minimum rate control were removed from the ICC, wholesale rate adjustments would be made by the carriers and in order to protect our interests the port would be required to add at least two attorneys, with substantial transportation background, just to handle rate cases before the courts under the antitrust laws. Nonattorney practitioners are not allowed to handle any case in a court of law; therefore, transportation attorneys would be required.

G. OPPOSITION BY ICC

This proposed legislation was opposed by Chairman Rupert L. Murphy of the Interstate Commerce Commission during his 2-hour, 64-page testimony before the House Interstate and Foreign Commerce Committee. Chairman Murphy emphasized the—

"* * * potential for irreparable injury, together with the overriding necessity for protecting the public interest, strongly indicates the need for the availability of a special procedure that assures relief before, rather than after, injury has occurred."

Chairman Murphy also stated that removal of minimum rate control would bring intensified unfair or destructive carrier competition.

H. PORT COMPETITION

The enactment of this proposed legislation on elimination of minimum rate controls by the ICC would open up a major rate war on bulk commodities originating in the Midwest. Ports on the gulf coast and ports on the Pacific coast would be continually whipsawing the carriers for further reductions on grain and other bulk rates. Losses of revenue to the carriers would necessitate further increases in general commodity rates. Due to the greater distances from Midwest points to the Pacific coast than to the gulf coast the increased cost would be greater on commodities moving to or from the Pacific coast. This could cause a shift in general commodity import/export traffic from Pacific coast ports to gulf coast ports and seriously impede any future growth of the port of San Diego, not only on bulk commodities, but general commodities as well.

SUMMARY

As presently worded these bill would be detrimental to the development of the commerce of the State of California, cause substantial confusion as between Federal and State jurisdictions, place the entire Pacific coast at a disadvantage in its competitive position with the gulf coast on import/export commodities, and be particularly prejudicial to the orderly development of the port of San Diego.

In view of the above analysis and conclusions, the port of San Diego, through your able representation, wishes to enter its most strenuous opposition to S. 3243 and H.R. 11583 in their present form.

We trust the above evaluation, as requested in your letter of July 13, will be of assistance to you in determining your position in this most vital matter. It is certainly hoped that after reviewing the above comments we may count on your support in defeating these bills as they are presently worded.

Best personal regards.

Cordially,

JOHN BATE, *Port Director.*

BARBOUR CHIP CO., INC.,
Eufaula, Ala., July 12, 1962.

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

DEAR CONGRESSMAN HARRIS: Our attention has been called to some very important proposed transportation legislation in the form of S. 3243 and H.R. 11583, commonly referred to as the "minimum rate" bills.

We understand that these bills propose to give all forms of transportation equal opportunity to lower the price for their services on agricultural and bulk commodities. At the same time, the regulatory agency (ICC) will retain control over maximum rates of regulated transportation and provisions of the antitrust laws will prevent monopoly in the transportation industry.

It is important that competition between the various modes of transportation, both regulated and unregulated, fix the lowest level of freight rates to the public rather than regulation prescribing the lowest charge for a regulated carrier while their unregulated counterpart can charge any rates they choose and extend them only to those in the shipping industry of their choice.

We respectfully urge that full support be given this vital transportation legislation in order that the public may receive full benefit of free enterprise competition. Also, it is requested that this communication be made a part of the record of your committee proceedings in connection therewith.

Very truly yours,

WADE B. PERRY, *President.*

SOUTHERN FRUIT DISTRIBUTORS, INC.,
Orlando, Fla., July 12, 1962.

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

DEAR MR. HARRIS: It is a pleasure for me to congratulate you on the introduction of House bills H.R. 11583 and H.R. 11584.

The passage of these bills will enable the railroads, a vital segment of our transportation system, to have a more equal opportunity to compete with other modes of transportation.

The legislation under which the railroads must operate needs to be revised in accordance with changed conditions, so that their services will not be lost to our economy. It is felt that these bills will eliminate some of the inequities of present regulation and I urge you to continue your efforts in this direction.

Yours very truly,

PHILIP P. CARUSO, *Secretary-Treasurer.*

TENNESSEE EGG CO., INC.,
Chattanooga, Tenn., July 12, 1962.

Congressman OREN HARRIS,
Chairman, Committee on Transportation,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: Your committee has House bill 11583 before it, which has to do with railroad rates and giving the railroad authority to change tariffs on certain commodities. Feeling that the railroads have been discriminated against (though not necessarily intentionally) by the bargelines and other means of transportation, I would think that they are entitled to full consideration and that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

With kindest personal regards, I am

Sincerely yours,

HARRY C. CARBAUGH.

ART FURNITURE MANUFACTURING CO., INC.,
Macon, Ga., July 12, 1962.

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

MY DEAR MR. HARRIS: I understand there is before your committee, House bill No. 11583, dealing with the powers of the Interstate Commerce Commission.

The railroads from the earliest days have been an important part of connecting the North with the South and the East with the West. It is important that we strengthen the railroad, and the only way it can be done, in my estimation, is to take away the Interstate Commerce Commission's power to prescribe minimum weights on bulk and agricultural commodities. Trucklines have literally "beat the railroads to death," and the railroads seem to now have a new spark, which if the Congress of the United States sees fit to work with them, will pay off for all concerned.

I would appreciate very much your support of this bill, and put us on record as favoring same.

With kindest regards.

Yours very truly,

LEONARD P. KAPLAN, *President.*

ANAHEIM COLD STORAGE, INC.,
Fullerton, Calif., July 31, 1962.

Hon. J. ARTHUR YOUNGER,
U.S. Representative,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE YOUNGER: To afford greater equality of opportunity among carriers, encourage vigorous competition for traffic, and, thus, benefit users and the public through lower rates for transportation service, I urge you to support H.R. 11583.

This bill is designed to carry out important recommendations contained in the President's transportation message of April 5, 1962. It would extend to all carriers an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities.

Because railroads are today severely handicapped in their competition with other forms of transportation, I feel that if this bill became law it would extend at least a partial remedy to the grossly discriminatory and inequitable regulatory scheme under which they now operate.

It is my request that the views here stated be made a part of the official record.

Yours truly,

FRANCIS L. TAYLOR,
Traffic Manager.

LEPHIEW GIN CO.,
Dermott, Ark., July 23, 1962.

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

DEAR CONGRESSMAN HARRIS: We are interested in the proposed transportation legislation now pending in Congress—Senate bill 3243 and House bill 11583, generally called the minimum rate bills.

As these bills will have an ultimate effect on our business, we feel that a favorable enactment of such will be desirable for agricultural products in our business, as well as the public, through lower rates for transportation services, also a good effect on bulk commodities. Therefore, we sincerely ask that you give these two bills a very serious consideration, with the hope that you will find it desirable to give your support to them.

It is our wish that this letter be made a part of the official record in the proceedings on the bills.

Thank you for your interest and efforts in such matters.

Yours very truly,

R. H. DENNINGTON.

PUGH & CO.,
Portland, Ark., July 26, 1962.

Re H.R. 11583.
Representative OREN HARRIS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR OREN: Your committee should be considering the above House bill shortly, and we, as shippers, feel that your support should be given to its passage.

Your familiarity with operations such as ours, where we receive, by rail, large quantities of fertilizer from various manufacturers, from New Mexico potash mines, and from Lake Charles, where boats tie up, with Chilean nitrate, and we ship our commodities by rail, including cotton, cotton seed, soy beans, rice, and occasionally livestock, naturally make us most interested in the passage of this bill.

I hope that our thinking corresponds with yours in this respect and we do want your support.

May I ask that you make this letter a part of the official record in the proceedings on this bill.

With kindest personal regards and best wishes, I am,

Sincerely yours,

R. B. NEWCOME.

ADCOCK SEED & ELEVATOR CO.,
McGehee, Ark., July 25, 1962.

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

HON. OREN G. HARRIS: As an elevator operator and grain buyer, I write urging your support of House bill H.R. 11583.

Since I ship grain exclusively by rail, I am greatly concerned with better service and reduced freight rates. I therefore object to discriminatory regulations against the railroads and am in favor of any legislation which will relieve existing inequalities with other carriers and allow for more equal competition.

I request that my letter be made a part of the official records in the proceedings on the bills.

Sincerely yours,

ROBERT H. ADCOCK.

HORSE-SHOE MILLS, INC.,
Pine Bluff, Ark., July 27, 1962.

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

HON. CONGRESSMAN: We are among the vast army of interstate shippers that believe the entire Interstate Commerce Act should be revised and brought up to date in keeping with the many changes that have taken place in interstate commerce and our entire transportation system since the original act was initiated. Most of the rules and regulations which, at the time they were put into effect, are about as far separated from today's needs as East is from West.

Transportation is no longer a one-system business. It is and should be competitive as are all other business enterprises.

You have before your committee House bill H.R. 11583, which will amend the Interstate Commerce Act to permit the railroads to meet some of the unfair competition now provided by trucks and water carriers.

It will be appreciated if you will support this bill. We believe it to be a step in the right direction and will be beneficial to users of the railroads.

Please make this letter a part of the official record in the proceedings on this bill.

Yours truly,

H. W. DAVIS, *President.*

PLANTERS COTTON OIL MILL, INC.,
Pine Bluff, Ark., July 26, 1962.

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

DEAR CONGRESSMAN HARRIS: The provisions of House bill 11583 involve some very basic principles that will permit the common carriers to compete where they cannot do so today.

Passage of this bill is important to us and I hope that you will lend your full support to it. Please make this letter part of the official record in the proceedings on H.R. 11583.

Yours very truly,

IRBY W. DUNKLIN, *President.*

HIGGINS INDUSTRIES, INC.,
New Orleans, La., July 25, 1962.

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

DEAR MR. HARRIS: This is to request your help in obtaining passage by the Congress this year of H.R. 11583 which we feel would be distinctly beneficial to our business and which is in the public interest.

In his transportation message of April 5, 1962, the President pointed out the need for modernizing our transportation policy which has not been changed in many respects since the time when railroads had a virtual monopoly.

One of the points made by the President had to do with the inequity of regulating minimum rates on bulk commodities, agricultural and fishery products, and passengers handled by some common carriers while other competing carriers are exempted from such regulation. The bill we have mentioned offers a reasonable remedy for that inequity and we believe the relief should be given promptly.

We are personally interested because of the way this legislation would apply to the operations of our company.

It is requested that this letter be made a part of your hearing record.

Very truly yours,

EDWIN PAUL CROZAT, *Vice President, Sales.*

MIDDLETOWN, OHIO, *July 30, 1962.*

Hon. PAUL F. SCHENCK,
Representative to Congress,
Washington, D.C.

DEAR SIR: We the undersigned have been advised of the contents of House bill H.R. 11583 and are taking this opportunity to write to you to express our feelings toward it.

If this measure is passed, it will greatly affect the livelihood of all of us who are engaged in driving in motor vehicle transportation.

This bill is very detrimental to our interests and we, as your constituents, respectively request your wholehearted support in defeating this measure.

Respectively yours,

Wm. Algan, 216 North Clay Street, New Carlisle, Ohio; H. Baer, 106 Funston, New Carlisle, Ohio; V. Farris, 2213 Pearl Street, Middletown, Ohio; C. Swanson, Route No. 1, Tipp City, Ohio; Robt. Dickerson, Route No. 2, Caledonia, Ohio; Claude Sibert, 2358 Eastridge Drive, Hamilton, Ohio; Leroy Simons, Box 407, Middletown; J. Rose, Post Office Box 72, Excello, Ohio; Ben Forman, 512 Granada Avenue, Middletown, Ohio; Kendall Stomper, 36 East Philadelphia Street, Dayton, Ohio; Linya Cox, 79 Main Street, Miamisburg, Ohio; Ocio Bentley, 5173 Salem Road, Marion, Ohio; Lowell Rudd, Jeffersonville, Ohio.

ADOBE BRICK & SUPPLY CO.,
West Palm Beach, Fla., August 8, 1962.

Hon. PAUL G. ROGERS,
House Office Building,
Washington, D.C.

DEAR MR. ROGERS: We are most interested in the successful passage of Senate bills 3242 and 3243 and their House bill counterparts 11583 and 11584, which will improve the national transportation system as well as exempt our rail carriers from minimum rate regulation of the Interstate Commerce Committee. We believe that such legislation will be beneficial to the national transportation system and of aid to industry in general.

We will greatly appreciate your vigorous support of these bills, inasmuch as rail services and costs are so vital to industry.

We further request that this letter be made a part of the record in support of both bills.

Respectfully yours,

S. A. MAKSIK.

COLONIAL REFRIGERATED TRANSPORTATION, INC.,
Birmingham, Ala., August 22, 1962.

Subject: Proposal to eliminate minimum rate controls on bulk and on agricultural commodities.

Hon. KENNETH A. ROBERTS,
Congressman, U.S. House of Representatives,
Washington, D.C.

DEAR SIR: Bills to implement the recommendations in the President's transportation message to Congress are currently pending before both the House and the Senate (H.R. 11583 and H.R. 11584, and S. 3242 and S. 3243).

I am writing on behalf of the trucking industry, as well as our own company, a member of the American Trucking Association and the Alabama Trucking Association. Two of the bills are a direct threat to the trucking industry, as well as to the general public, and should not be allowed to be passed. These two bills are House bill H.R. 11583 and the identical Senate bill S. 3243.

Bills H.R. 11583 and S. 3243, as proposed, tend to twist the President's suggestion for "equal competitive opportunity." These two bills propose to remove the authority of the Interstate Commerce Commission to regulate minimum rates on commodities in bulk and agricultural and fishery products. Today, commodities in bulk are exempt when shipped by water carriers and agricultural and fishery products are exempt when shipped by motor carrier. Taking into consideration the problems and rate wars as a result of the present exemptions,

to further spread this disease does not cure it or give anyone equality. Further spreading of the exemption will only declare open season for the railroads to cut rates until all of their small competitors, who will not be protected by the antitrust laws as proposed in these bills, are destroyed. If this exemption is spread to the rail carriers they will have won a milestone in the direction to destroy the Interstate Commerce Commission's authority to regulate minimum rates and force many trucking companies, as well as many small industries, out of business because they could not compete with the depressed rates that will be established by the rail carriers. The Interstate Commerce Commission has prevented such unjust discrimination by its present authority and to strip them of their power to regulate rates would not be equality but would be the sorriest kind of inequality.

In the hearings held for these bills only Government witnesses, such as Commerce Department, Justice Department, Agriculture Department, have been heard and they are uniformly in support of the measures. On September 4 or 5 the witnesses for the American Trucking Association will testify before the House Interstate and Foreign Commerce Committee, of which you are a committeeman, and it is respectfully requested that you be present when the ATA witnesses give their testimony.

We are in favor of equality, and to establish equality it is our opinion that the exemption should be repealed rather than spread on to the rail carriers. The exemption of agricultural and fishery products to the motor carriers has by no means placed certificated carriers and so-called exempted carriers on an equal basis. The exempt carriers file no tariffs and when one of the certificated carriers try to compete and establish competitive rates, then, that moment, a new and lower level of exempt rates are established by the exempt carriers. Rate wars on the exempt commodities have depressed the income of common carriers so that it is a very rare occasion to find a certificated, perishable commodity, common carriers with an operating ratio below 95 percent. Our own company for the last 5 years has never operated below this figure and at times has been over 100 percent and is in no condition to reduce its rates any more.

As you can plainly see, if this bill is allowed to be passed and the rail carriers are allowed to throw away the rulebooks and so as they please with as much financial backing as they have, they could ruin the trucking industry and by such a monopoly could, in turn, damage the public by making up for their losses by increasing the rates on regulated items.

We trust that you will be present and listen to our witnesses, see our side of this injustice, go to bat for the people you represent and help stamp out exemption rather than spread it.

Yours very truly,

C. E. McBride, *President.*

Virginia State Poultry Federation, Inc.,
Richmond, Va., August 27, 1962.

Mr. W. E. Williamson,
Clerk, Committee on Interstate and Foreign Commerce,
House Office Building,
Washington, D.C.

Dear Mr. Williamson: Thank you for your letter of August 24.

I am enclosing for the record on H.R. 11583, a copy of an editorial which will appear in our September issue of the Virginia Poultryman, the official publication of the Virginia State Poultry Federation.

This editorial, prepared for us by Mr. L. N. Conyers, states rather clearly our views on this measure.

A resolution passed by the poultry federation regarding this bill also is enclosed and we would appreciate your also placing this in the record.

Since it is now so late in the session and I am advised that there is little chance of getting action on the bill at this session, we will not plan to appear at the hearings this year. We will want to testify when the measure comes up for consideration at the next session, assuming that it will be reintroduced.

Sincerely yours,

J. Paul Williams, *Executive Secretary.*

Enclosures.

GUEST EDITORIAL

(By L. N. Conyers)

EDITOR'S NOTE.—Mr. Conyers, a highly respected transportation consultant with the Virginia Department of Agriculture, kindly consented to prepare this editorial precisely expressing the views of the federation's freight rate committee and board of directors as well as his own considered judgment of the merits of transportation legislation proposed by President Kennedy as embodied in House bill H.R. 11583 and Senate bill S. 3243. We commend these companion bills to Virginia's congressional delegation and to the respective House and Senate committees currently considering them and urge their speedy approval by the Congress.

Transportation, one of the most dynamic segments of the national economy, employing a sixth of our labor force and accounting for one-fifth of the gross national products, has been diagnosed by economic doctors as being on the verge of a nervous collapse. The remedy prescribed has been a complete financial transfusion.

Pending in Congress at the present time is proposed transportation legislation that will afford greater equality of opportunity among carriers, encourage vigorous competition for traffic, and thus benefit users and the public through lower rates for transportation services. It will be especially helpful to Virginia and other agricultural interests. The bills are S. 3243 (in the Senate) and H.R. 11583 (in the House), and are known as minimum rate bills.

These two identical legislative proposals are now the subject of hearings being conducted by the Senate Commerce Committee (Senator Warren G. Magnuson, chairman), and the House Committee on Interstate and Foreign Commerce (Representative Oren Harris, chairman).

Designed to carry out important recommendations contained in the President's transportation message to Congress of April 5, 1962, they would extend to all carriers (including railroads) an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities.

Railroads today are severely handicapped in their competition with other modes of transportation. There are many reasons for this, but one of the principal ones is the existence—under present law—of what is considered a grossly discriminatory and inequitable regulatory situation.

S. 3243 and H.R. 11583 are intended to provide a partial remedy for certain of the more glaring inequalities of existing regulations. The bills are directed, for the most part, to the highly uneven and unfair competition created by the so-called agricultural commodities exemption for motor carriers and the bulk commodity exemptions for water carriers.

Under the present agricultural exemption numerous agricultural, horticultural and seafood commodities, aggregating vast tonnages, are exempt from economic (including rate) regulation when they move by truck, but are not so exempt when they move by rail.

The railroads are similarly prejudiced in competing with water carriers for the movement of coal, iron ore, grain, petroleum and many other commodities that move in bulk free from regulation when waterborne, but are subject to full regulation on the rails.

These exemptions from regulation that apply when the traffic described is transported by other modes of transportation, but not when moved by railroad, create gross discrimination against the railroads, and pose grave competitive difficulties for them. Specifically, for example, the railroads are required on this traffic, as on all traffic, to publish their charges, to observe them strictly and maintain them without change except on statutory notice to the public, and to meet various standards of reasonableness and nondiscrimination.

Their competitors by highway or waterway, as the case may be, operate under no such requirements and are privileged to make whatever rates they choose at any time, without notice to anyone, on whatever basis is necessary to get the business.

For railroads to meet all of the regulatory requirements to which they are subject and at the same time meet competition that is free from such requirements places them at a decided disadvantage.

The pending bills would not equalize rate regulation between the railroads and their highway and waterway competitors, even as to agricultural and bulk

traffic, for they do not propose to extend to the railroads outright exemptions such as those the motor carriers and the water carriers now enjoy—and which they would retain under these legislative proposals.

But the inequality would be eased in one very important respect. Under these bills, the Interstate Commerce Commission would no longer be authorized to condemn a reduced railroad rate on the ground that it is, in the ICC's judgment, lower than it should be (that is, "lower than a reasonable minimum rate").

With the removal of this regulatory restraint that has operated so often in the past to block the railroad's reduced rate proposals there will be increased opportunity for effective competitive effort. The President said in his transportation message to Congress:

"Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for these commodities * * *.

"The combined effect of extending these bulk and agricultural exemptions will be to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service, and lower rates."

It is only with regard to minimum levels that the jurisdiction of the ICC over railroad rates would be altered. Railroads would continue, for example, to be subject to those provisions of the Interstate Commerce Act relating to discrimination, maximum rates, long-and-short hauls, notice, filing and publication of rates. And in the absence of ICC control of minimum rate levels, the public interest would be protected by affirmative application of the provisions of the antitrust laws.

Those interests that oppose the minimum rate provisions of S. 3243 and H.R. 11583 generally advance two principal contentions.

The first is that enactment of the bills would lead to discriminatory rate practices on the part of the railroads. Under the terms of the President's message, and under the provisions of the bills, the presently existing authority of the ICC to control matters of discrimination, preference, prejudice, advantage, etc., under the terms of the Interstate Commerce Act would be preserved and remain intact.

The second argument advanced by the opponents of the bills is that their enactment would lead to unlimited and uncontrolled rate warfare between carriers in the transportation of agricultural and bulk traffic. Supporters of this legislation point out that the bills affirmatively impose the prohibitions and remedies provided by the applicable antitrust laws dealing with monopolistic and predatory trade practices.

Ample protection seems to be assured against such practices which would be available to those injured or threatened with injury. Suits could be brought in the Federal courts for injunctive relief against threatened loss or damage from violations of the antitrust laws. Actions for treble damages could be maintained to recover for injuries suffered by reason of anything forbidden by the antitrust laws. Criminal sanctions for antitrust violations could also be invoked.

With the safeguards mentioned, it is believed that the public interest of shippers and of competing carriers would be fully protected.

Many agricultural organizations in Virginia and throughout the country are urging their Representatives in Congress to support this proposed legislation.

RESOLUTION ON NATIONAL TRANSPORTATION BILLS S. 3243 AND H.R. 11583

Whereas poultry producers and marketing agencies in Virginia are vitally interested in legislation affecting the transportation of agricultural commodities; and

Whereas identical bills have been introduced in the Congress of the United States (S. 3243 and H.R. 11583), known as the minimum rate bills, which would materially affect the movement of agricultural products; and

Whereas the Virginia State Poultry Federation believes that increased competitive freedom along with modernization and improved efficiency by the transportation industry would benefit its members as well as other agricultural interests; and

Whereas hearings are now being conducted by the Senate Commerce Committee and the House Committee on Interstate and Foreign Commerce in the U.S. Congress on these transportation bills: Therefore, be it

Resolved, That the board of directors of the Virginia State Poultry Federation give strong support to these bills and request the Virginia delegation in Congress to support by appropriate means S. 3243 and H.R. 11583 to the extent that they would be applied uniformly, without favoring any single mode of transportation, provide for adequate transportation service and result in savings on transportation costs to the Virginia poultry and livestock industries.

The above resolution unanimously adopted by the board of directors of the Virginia State Poultry Federation in session at Richmond, Va., on July 25, 1962.

ARKANSAS COMMERCE COMMISSION,
Little Rock, Ark., July 17, 1962.

Hon. OREN HARRIS,
Member of Congress,
New House Office Building,
Washington, D.C.

DEAR OREN: Reference is made to S. 2560 by Senator Smathers.

Attached is a copy of a resolution sponsored by members of this commission which was adopted by the Midwest Association of Railroad and Utilities Commissioners at its meeting on July 7, 1962, in Oklahoma City.

It is our opinion that section 1 of the bill will not accomplish the desired results. On the contrary, it is more likely to operate as a deterrent to an effective cooperative enforcement program between State and Federal agencies.

Conscientious efforts are being made by the National Association of Railroad and Utilities Commissioners to bring about simplification and uniformity in regulation of motor carriers by the State agencies of their own volition, and substantial progress is being made.

Regarding that portion of section 1 of S. 2560 dealing with uniformity in filing of evidence of security for the protection of the public with State agencies, I respectfully call your attention to the fact that the filing of such evidence is not a burden upon the carriers for the reason that this service is performed by the insurance companies for which they are adequately compensated.

I will appreciate your opposition to section 1 of S. 2560 as it is presently written; we have no objection to other sections of the bill.

Sincerely,

JOHN H. GREENE, *Commissioner.*

Enclosure.

MIDWEST ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS RESOLUTION OPPOSING SECTION 1 OF S. 2560

Whereas, section 1 of S. 2560 introduced in Congress by Senator Smathers provides that those States which require an interstate motor carrier to register its operating authority issued by the Interstate Commerce Commission with the State regulatory agency, shall do so only under such rules and regulations as the Interstate Commerce Commission shall prescribe; and

Whereas the adoption of section 1 of S. 2560 as presently written represents further encroachment by the Federal establishment upon the rights and prerogatives of the State regulatory agencies without first giving the States adequate opportunity to adopt uniform procedures to accomplish the desired result: Now, therefore, be it

Resolved, That the Midwest Association of Railroad and Utilities Commissioners officially oppose the enactment of section 1 of S. 2560 as it is presently written or any other similar bill which would deprive the State regulatory bodies of their rights without first giving the States adequate opportunity to bring about uniformity in such matters in a majority of the 48 continental United States; and be it further

Resolved, That copies of this resolution be served upon each member of the Senate Committee on Commerce, the House Committee on Interstate and Foreign Commerce, and upon each Senator and Representative in the Congress representing the States which are members of this Association.

Respectfully submitted,

J. ORVILLE CHENEY, *Arkansas.*
KAY L. MATTHEWS, *Arkansas.*
JOHN H. GREENE, *Arkansas.*

ARKANSAS PALLET CO.,
Pine Bluff, Ark., July 26, 1962.

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

DEAR CONGRESSMAN HARRIS: We are vitally concerned over the principles involved by bill H.R. 11583, and urge that you give full support to its passage.

The freedom to fix minimum rates is important to both shipper and consumer.

We would appreciate your making this letter a part of the official record in the proceedings on bill H.R. 11583.

Very truly yours,

D. M. DRAKE, *Sales Manager.*

ALASKA CARRIERS ASSOCIATION, INC.,
Anchorage, Alaska, June 6, 1962.

Subject: Proposal to eliminate minimum rate controls on bulk and on agricultural commodities.

Hon. RALPH J. RIVERS,
Congress of the United States,
U.S. House of Representatives.

DEAR RALPH: From time to time over past years the highly controversial subject of transportation has been before Congress for consideration. On April 5, 1962, the President forwarded to Congress his message on transportation.

Bills to implement the recommendations in that message are currently pending before both the House and the Senate (H.R. 11583 and H.R. 11584 and S. 3242 and S. 3243). Hearings on this legislation may be held within the near future. Again, the transportation industry of the country finds itself embroiled in what will inevitably become a bitter and highly controversial debate over these proposals.

The trucking industry, in whose behalf we are writing you, will support some portions of the pending legislation. However, the purpose of this letter is to express our opposition to one particular proposal. I here refer to the proposal contained in identical bills, H.R. 11583 and S. 3243, to which we must be unalterably opposed in their present form.

This aspect of the legislation would remove from the Interstate Commerce Commission its power to condemn certain rates as being lower than reasonable minimum rates. If enacted, it would open the door for unlimited and uncontrolled rate warfare between carriers on a very substantial portion of the total traffic of the United States.

The commodities involved would include all those which move in bulk, and all agricultural commodities. In other words, this would mean that the movement of petroleum products, chemicals, building materials, and innumerable other products which move in bulk, plus all agricultural commodities, would become involved in uncontrolled rate warfare between and among the great surface carriers of the country. At present, most of this competiiton is kept within reasonable bounds by the Interstate Commerce Commission through the exercise of minimum rate controls.

In our opinion, by far the sounder approach to the problem of the present uneven application of regulation to these products, and to agricultural products, would be to extend minimum rate controls to those now not subject to them (barges in the case of dry and liquid bulk commodities—trucks in the case of agricultural commodities). In the case of bulk commodities, the President recommended this course of action as an acceptable alternative to the deregulation scheme proposed in the bills.

Because of the highly charged nature of transportation legislation and the great number of people who are directly or indirectly affected by it, it would seem to us that the best course to follow is one which would concentrate on the areas of agreement reached by those directly concerned with transportation rather than in developing programs the effect of which is further to divide an already intensely competitive industry.

We hope that when this matter comes to your attention for your consideration you will examine it with particular concern in view of the far-reaching consequences your action could have on the commerce and industry of this country.

Respectfully yours,

EDWARD R. SANDERS, *Managing Director.*

CARNATION CO.,
Los Angeles, Calif., July 25, 1962.

Hon. ARTHUR YOUNGER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN YOUNGER: I am writing you in support of H.R. 11583 and request that this letter be made a part of the committee's record.

Carnation Co. and its affiliate, Albers Milling Co., are vitally concerned with the transportation of agricultural commodities. For years, we have struggled with transportation under the agricultural exemption clause and we know firsthand of the problems created for the railroads, shippers, and receivers because of the unequal regulation now imposed upon rail carriers. I have studied this problem individually and as a member of the various committees over the years and in my opinion, the present bill is a reasonable approach to this very complicated problem.

It is certainly unfair regulation which prevents one mode of transportation from participating in the hauling of substantial quantities of agricultural commodities while permitting competing modes of transportation, namely trucks and barges, to move this traffic without similar regulation. Barges and trucks have the right, and they exercise it, to quote to any shipper whatever freight rate is necessary to get the business. Railroads, on the other hand, must publish their rates which are subject to attack by the very same carriers who are exempt from regulation, and often railroad rates are suspended and prevented from being effective by the regulatory agency. Not only is this unfair but it deprives the shipping public of the inherent advantages of what in many cases is the low-cost carrier.

The present bill, as I read it, will not void the safeguards in the Interstate Commerce Act to prevent discrimination and prejudice and preference. What the bill proposes is simply to permit the railroads to adjust rates on agricultural commodities without observing any minimum rates which the Interstate Commerce Commission might otherwise apply.

The railroads along with other segments of the common carrier industry are in serious financial condition, partly due to overregulation. It seems only prudent judgment on the part of the Congress to permit studied changes in the regulatory statutes which would assist the common carrier industry to regain traffic and thus preserve the railroads as independent and free enterprises.

I believe this bill to be well conceived, in the public interest, and I strongly urge that the Senate act favorably upon it.

Very truly yours,

A. P. DAVIS, Jr., *Assistant Vice President.*

UPPER MISSISSIPPI TOWING CORP.,
Minneapolis, Minn., August 21, 1962.

Hon. VERNON W. THOMSON,
House of Representatives Office Building,
Washington, D.C.

DEAR CONGRESSMAN THOMSON: I am enclosing a comparative statement of barge traffic on the Mississippi River and tributaries for the St. Paul District (which, as you know, extends down to Guttenberg, Iowa) from 1935 through 1961 which, as you will note, I have obtained from the U.S. Army Engineer District, St. Paul, Minn., and I trust this is the information that you requested of me during my testimony before the Interstate and Foreign Commerce Committee on August 10. If there is any further information that you desire, please do not hesitate to get in touch with me.

I sincerely appreciate the courtesies that were extended me on August 10 and certainly hope the H.R. 11583 will be defeated.

Thanking you, I remain,

Yours very truly,

WALTER G. BASKERVILLE, Sr., *President.*

Comparative statement of barge traffic on Mississippi River and tributaries in St. Paul district

ALL PORTS

[Preliminary and subject to revision (in tons)]

Calendar year	Receipts major commodities				Shipments out of district		Receipts and shipments
	Coal	Gasoline	Other petroleum products	All commodities	Grain	All commodities	
1935	54,709	6,513	----------	158,047	----------	30,566	188,613
1936	31,830	21,754	32	107,534	----------	29,383	136,917
1937	44,601	46,052	18,433	202,158	----------	23,099	225,257
1938	135,298	151,804	138,298	508,493	----------	21,932	530,425
1939	200,209	175,326	134,533	615,912	13,631	56,767	672,679
1940	430,209	257,958	223,084	1,032,718	33,999	65,253	1,097,971
1941	571,976	273,233	314,292	1,290,087	31,954	69,490	1,359,577
1942	768,866	154,188	346,135	1,317,383	65,966	90,012	1,407,395
1943	333,794	249,836	393,415	1,008,414	108,892	119,053	1,127,467
1944	526,457	249,492	315,503	1,138,058	111,305	115,806	1,253,864
1945	556,104	281,823	353,186	1,211,206	48,612	52,787	1,263,993
1946	736,445	766,022	496,948	2,047,413	35,471	45,372	2,092,785
1947	615,908	788,048	511,379	1,973,679	16,672	46,724	2,020,403
1948	897,985	787,348	377,941	2,148,366	20,717	52,059	2,200,082
1949	959,427	929,752	484,962	2,452,759	25,009	35,197	2,484,856
1950	1,126,044	864,187	667,479	2,721,050	124,921	135,811	2,856,861
1951	1,048,728	760,869	698,970	2,548,767	180,610	228,995	2,777,762
1952	1,008,383	479,100	705,837	2,424,221	197,885	250,919	2,675,140
1953	1,261,859	910,719	584,443	3,052,144	267,844	334,233	3,386,377
1954	1,433,963	840,303	492,652	3,871,301	427,010	637,379	4,508,680
1955	1,578,229	920,243	580,415	4,281,615	815,900	995,130	5,276,745
1956	2,014,337	817,757	574,282	4,563,290	754,158	1,012,539	5,575,829
1957	1,681,530	753,926	390,855	4,356,974	1,246,468	1,480,604	5,837,578
1958	1,953,092	960,805	337,805	4,812,442	1,717,069	1,929,606	6,742,048
1959	2,276,537	926,914	738,023	5,514,736	1,575,008	1,699,422	7,114,158
1960	2,364,404	1,008,025	905,376	5,987,984	1,406,161	1,665,634	7,653,618
1961	2,493,038	1,084,589	778,206	6,296,412	1,420,134	1,686,875	7,983,287

Source: U.S. Army Engineer District, St. Paul, Minn.

DUMAS, ARK., *July 24, 1962.*

Hon. OREN G. HARRIS,
Chairman, House Commitee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HARRIS: I would like to urge you to support H.R. 11583 bill, generally called the minimum rate bill to give the railroads a break. We ship by rail frequently and think the railroads have had a big part in the development of our business and of our part of the country. I trust that you will do all you can to get this legislation passed. Kindly make this letter a part of the official record in the proceedings on this bill. Thanks.

Yours sincerely,

J. E. ALLMON,
Planter and Public Ginner.

SOUTHEAST CONSTRUCTION CO., INC.,
Pine Bluff, Ark., July 24, 1962.

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

HONORABLE CONGRESSMAN: You have before your committee House bill H.R. 11583 which will amend the Interstate Commerce Act to permit the railroads to meet some of the unfair competition now provided by trucks and water carriers.

It will be appreciated if you will support this bill. We believe it to be a step in the right direction and will be beneficial to users of the railroads.

Please make this letter a part of the official record in the proceedings on this bill.

Yours truly,

SOUTHEAST CONSTRUCTION CO., INC.,
C. WILSON NORTON, *Secretary.*

ASSOCIATED TRUCK LINES, INC.,
Grand Rapids, Mich., July 18, 1962.

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

MY DEAR MR. HARRIS: Enclosed is a statement of our company's position on the matter of House bill 11583 and Senate bill 3243. Because of the volume of work involved, it was necessary that we multilith this statement. We were so concerned about the above-mentioned bills that we decided to circulate this statement not only to the appropriate House and Senate committees but also to all legislators from the States of Michigan, Indiana, and Ohio.

It is our sincere hope that you find time to read this statement and that you oppose these bills for the long-term orderly development of our economy. We know that there will be many statements and much propaganda on this subject. However, we pray you are given wisdom to separate the wheat from the chaff and see through the opportunism of the moment to the long-term implications involved. We thank you most sincerely for the time taken in reading the enclosed statement and also for any expression that you have opportunity to make in opposition to these bills.

Sincerely yours,

J. H. FLES, *President.*

ASSOCIATED TRUCK LINES, INC.,
Grand Rapids, Mich., July 18, 1962.

HONORABLE SIR: On April 5, 1962, the White House sent a transportation message to Congress containing a variety of recommendations. This letter concerns one of these recommendations which is now in bill form, namely, H.R. 11583, and an identical bill, S. 3243, in the Senate. These bills are in the hands of the House Interstate and Foreign Commerce Committee and the Senate Commerce Committee, respectively. These identical bills propose that the Interstate Commerce Commission be stripped of all authority to regulate minimum rates on bulk commoditie s and on agricultural and fishery products. The above items constitute 70 percent of all rail freight, with only 30 percent left under Commission regulation. This legislation contemplates that the "antitrust" laws will apply rather than present ICC regulations.

At the outset let me state that the railroads favor such legislation and that the water carriers and the trucking industry are violently opposed to the removal of minimum rates and the removal of the Interstate Commerce Commission from the regulatory scene. The reasons why the writer, Associated Truck Lines, and the trucking industry oppose the above-mentioned bills are as follows:

(1) Such legislation will promote a devastating and destructive price battle between rails, water carriers, and the trucking industry. If one is opportunistic in his thinking, this may sound good to shippers, chambers of commerce, and various governmental agencies. However, the transportation industry is not making enough money today and, therefore, we wonder how price cuts can solve the transportation problem. We, of course, do not know what the Government and the rails have in mind, but usually a devastating price war ends up with shippers and receivers of the other 30 percent of the freight paying a disproportionate amount for transportation. This usually takes the form of a horizontal price increase when the need becomes critical. On the assumption (which we sincerely believe) that the bulk and agricultural commodities would drop in price, who will pay the difference? A horizontal increase will not make up for the price cuts, and the rest of the freight will have to bear the brunt.

(2) We sincerely believe that the removal of minimum rates on the above-mentioned commodities is a move to destroy waterways and the trucking industry. If one reads his transportation history, this same battle has come up in different form time after time, especially between rails and waterways. After one mode of the industry has been put out of commission, then the one winning the destructive fight is in a most advantageous position to reconstitute rates where he wants them.

(3) One wonders how long the other 30 percent of freight still under regulation will be held there. There is a relationship between products, and the pressure will be tremendous to remove the ICC from all rate regulation. This, in turn, will destroy the trucking industry and will put the railroads in a most favorable position to raise rates at their leisure. One must look at the long-term aspects of legislation of this type, and one must question the motives involved. Frankly, we believe that the bills involved here are a gigantic and

well worked out plan to destroy competition all down the line. I believe it is legitimate to ask here why the trucking industry was placed under Federal regulation in the first place and why the rails were placed under regulation in 1887. It is just because of the fact that the transportation industry will not control itself on price and will tend to discriminate badly between shippers and between commodities so that one company in one area has an advantage over another in the marketplace.

These bills are another example that we have lost our historical perspective that led to regulation in the first place. We have all swallowed the recent theories that regulation was once upon a time necessary because rails had a monopoly on transportation. This is not true. The rails were placed under regulation, and later the trucks, not because of exceptionally high earnings nor because of monopoly conditions, but because of rank discrimination in rates and charges whereby rates were assessed arbitrarily and unevenly against shippers in different localities even though the commodities and distances were the same. There is another popular misconception that the transportation business is not competitive from a rate point of view and that we must remove rate regulation in order to make transportation competitive. This simply is not true. All one has to do is check the files of the Interstate Commerce Commission or the State commissions to discover how many thousands of price changes take place every year. We cannot buy the misconception that regulation means preserving the status quo on rates and charges. Under our present system of price regulation, rates and charges do change competitively—in an orderly manner whereby public interest is considered along with the specialized self-interest of the various transportation agencies. This is as it should be. Surely the long-term interest of the public should not be sacrificed for opportunism and competitive destruction.

We wish to remind you that the White House message carried an alternate solution. The trucking industry, for one, has not been under minimum rate regulation for the transportation of bulk and agricultural commodities. We feel that all transportation agencies should be placed under minimum regulation under the control of the Interstate Commerce Commission. Such a move will preserve some stability of rates and will not make the 30 percent of rail freight pay for price machinations on the 70 percent. Therefore, we ask that you oppose House bill 11583 and Senate bill 3243 for the long-term interest of all shippers and all transportation agencies who are serving our Nation. There has been too much opportunism in America in respect to our economy, and we can't stand much more of it.

We thank you for your consideration in not only reading but studying this letter—not primarily for preserving the status quo of the trucking industry or the waterways, but primarily to protect our business economy from rank discrimination that surely will follow if these bills are passed. Let us instead approach the transportation problem in a statesmanlike manner and have bills introduced that will place all transportation agencies under minimum regulation in respect to bulk commodities and agricultural and fishery products.

Sincerely yours,

J. H. FLES, *President.*

HERRETT TRUCKING CO., INC.,
Sunnyside, Wash., July 10, 1962.

HON. CATHERINE MAY,
House Office Building,
Washington, D.C.

DEAR CATHERINE: One of the assets that makes our Nation great is its flexible and versatile transportation system. In order for this asset to remain strong, we need healthy facilities in all phases of transport, such as air, water, rail, and highway. From our grassroots observation most all of these facilities of transportation are presently unhealthy for one reason or another.

For the past weeks we have been following closely the developments surrounding H.R. 11583. We feel that if this type of legislation were to be enacted, that it would allow the railroads to monopolize huge areas of bulk and agricultural commodity transportation through selective ratecutting; it would be discriminatory and destructive against other modes of transportation, as well as one geographical area against another; it would allow the "big people" to eliminate the "small people," and in the words of the President, we can't believe this legislation could possibly be in the "public interest." If this type of legislation

is to be passed, then it is only reasonable to expect that all types of regulatory bodies should be eliminated in transportation, and that we then degenerate to transport jungle warfare that will, eventually, eliminate one of the greatest assets of this Nation.

To make this crystal clear, we join our State and National trucking associations in opposing H.R. 11583, and trust that you will vote against this type of destructive and descriminatory legislation when given the opportunity to do so.

With best personal regards, we remain,

Respectfully yours,

K. W. ROBINSON, *President.*

SUBURBAN MOTOR FREIGHT, INC.,
Columbus, Ohio, August 24, 1962.

Re House bill 11583.

HON. SAMUEL L. DEVINE,
House of Representatives,
Washington, D.C.

DEAR MR. DEVINE: We have examined the above referred to bill which in effect exempts certain carriers from minimum rate regulation in the transportation of commodities in bulk without wrappers or containers, livestock, fish, and agriculture commodities and passengers. The bill further provides that agreements among carriers with respect to pricing shall be subject to the antitrust laws except that reasonable through rates with other carriers are permitted. The bill further provides to passenger air carriers insofar as the elimination of minimum passenger fares are concerned.

It is our opinion that the intent and purpose of the foregoing bill is to permit and authorize competition to price transportation fares in the above instances. While the short term effect of this legislation might be favorable to a segment of the general public, we believe that if compensatory rates are wholly disregarded in the long run the bill will result in chaos to the transportation industry. Further, while the present bill is limited in scope to certain defined commodities, it can well be the first step in the entire abolition of the minimum rates.

I would like to add further that this type of bill discriminates against small businessmen and if allowed to be broadened in scope would be instrumental in putting him in a position that he could not compete sufficiently to remain in business, or to show any growth whatever. This seems something of a paradox to me inasmuch as we are always trying to help the small businessman, but in this case we would be doing exactly the opposite.

In conclusion, it is our opinion that the value of this legislation is extremely dubious and is a poor substitute for common carrier management in any field of transportation, and positively does not, over a period of time, help the problems that presently exist.

I would strongly urge that you vote against this particular legislation.

With kindest personal regards, I am,

Sincerely yours,

JAMES R. RILEY.

SUBURBAN MOTOR FREIGHT, INC.,
Columbus, Ohio, August 24, 1962.

Re: House bill 11584.

HON. SAMUEL L. DEVINE,
House of Representatives, Washington, D.C.

DEAR MR. DEVINE: We would like to give you our opinions on the above House bill, which is to strengthen and improve the national transportation system.

In substance the bill permits experimentation by and between all modes of common carriers almost without any limitation. Supposedly a joint board will be created to hold hearings and determine a policy, after notice to the public, with respect to such experimentation. The bill prohibits discrimination in the shipping of empty vehicles or containers and further permits the establishment of through services and joint rates by and between all types of carriers.

The bill further permits the Interstate Commerce Commission to make agreements with States for the enforcement of safety laws and regulations of the States and increases penalties for violation. The act establishes the civil liability by air carriers for violation of Federal Aviation Act and provides the procedure

therefore. The act further authorizes direct negotiation with common carriers for transportation of Government property and mail without competitive bidding. The Secretary of Commerce is authorized to guarantee loans made to air carriers and railroads for the purpose of permitting them to acquire, construct, or maintain facilities and equipment, provided the carrier cannot obtain necessary funds or reasonable terms without such guarantee.

Having given you my opinion of what is contained in this proposed legislation, I will comment on those items which affect the trucking industry.

1. The experimentation by and between all modes of common carriers is very broad and I think extremely dangerous and would have the effect of changing the present transportation policy. I see no particular reason for this at this time.

2. I would like to reserve any comments regarding establishment of through service and joint rates with other types of carriers.

3. I see no objection to the features regarding safety laws and regulations and penalties for violation.

4. With respect to civil liability for violations of Federal Aviation Act by air carriers, I have no comments.

5. Further I would be definitely opposed to bringing in Secretary of Commerce into the transportation field in any respect whatever.

6. The provision authorizing negotiations with common carriers for transportation of Government property and mail without competitive bidding would be acceptable providing actual published rates would prevail.

My personal opinion is that neither bill 11583 or 11584 should be approved without drastic changes.

These are my personal opinions and I will be extremely interested to know what happens to these pieces of legislation.

With kindest personal regards, I am

Sincerely yours,

JAMES R. RILEY.

CHIPPEWA PLASTICS CO.,
Chippewa Falls, Wis., July 13, 1962.

Representative LESTER JOHNSON,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE JOHNSON: Chippewa Plastics Co. is a major shipper in this part of Wisconsin. Freight charges are one of our major operating expenses. We, therefore, feel obliged to express an interest in House bill 11583 and Senate bill 3243, both concerning railroad freight rates.

Our position is in favor of passage of these bills, thereby allowing maximum freedom of rate setting on a competitive basis. The carriers will see that the rates are remunerative, the carriers will be able to improve service and facilities if they have enough business. Passage will improve that business.

We strongly urge that you support these and other bills which allow businesses to exercise their full potential under a free enterprise system.

Very truly yours,

BEN M. HAMMOND, *Personnel Manager.*

ST. CROIX STORAGE & TRANSFER CO.,
Hudson, Wis., July 13, 1962.

Representative LESTER JOHNSON,
House Office Building, Washington, D.C.

THE HONORABLE LESTER JOHNSON: We are very much interested in favorable action on Senate bill 3243 and House bill 11583 known as the minimum rates bill.

The passage of the minimum rates bill would be of great benefit to our customers in lowering their costs of doing business. Anything that would limit or curtail the bureaucratic regulatory commissions' decisions would be most productive and the wasted manpower could be used to better advantage in more gainful occupations.

During the past year, we have shipped about 600 cars of freight for manufacturers in our locality. These midwestern manufacturers would be able to

compete more favorably with other sections of the country if their freight rates were lowered.

Will you kindly make this an official record in the committee's recommendations.

Respectfully yours,

GEORGE W. DENNIS.

NOR-LAKE, INC.,
Hudson, Wis., July 13, 1962.

Representative LESTER JOHNSON,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE JOHNSON: We are interested in the passage of the bill which President Kennedy has recommended to Congress with respect to the Nation's transportation policy as incorporated in Senate bill 3243 and House bill 11583, known as the minimum rates bill.

We believe that any legislation that will allow all common carriers to be placed on the same regulations and enable them to grow as free enterprise institutions, is to the benefit of all of us.

We would appreciate it if this letter can be made a part of your official records. Thank you.

Yours very truly,

HARRY J. BLAKEMAN, *President.*

MANUFACTURING CHEMISTS' ASSOCIATION, INC.,
Washington, D.C., July 11, 1962.

Subject: H.R. 11583, to exempt railroads and others from minimum rate regulation of bulk commodities, agricultural and fishery products, etc.

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

DEAR SIR: Thank you for your letter of July 9 concerning public hearings on H.R. 11583.

Subject to the limitations set forth in the following, the Manufacturing Chemists' Association, Inc., favors adoption of the legislation proposed in H.R. 11583, and it is respectfully requested that our views be entered in the permanent record of these proceedings.

The Manufacturing Chemists' Association, Inc., hereinafter referred to as the association, is a nonprofit trade association of chemical manufacturers, organized in 1872. Its members represent over 90 percent of the productive capacity of the chemical industry within the United States. They have more than 1,000 plants located throughout the United States, with representation in almost every State. They have a vital interest in all types of transportation in connection with the assembly of raw materials to be used in manufacturing processes and in the distribution of manufactured products. All forms of transportation are used by them for the shipment of numerous chemicals in interstate and foreign commerce.

In order to permit the railroads and other forms of transportation equal competitive opportunity, the association supports the principles and objectives of H.R. 11583, to exempt railroads and others from minimum rate regulation on bulk commodities and agricultural and fishery products, etc., provided the orderly rate procedures under section 5(a) of the Interstate Commerce Act are fully preserved and the carriers are protected against antitrust actions thereunder.

The antitrust protection afforded under section 5(a) of the act extends only to actions taken under the procedures followed under approved agreements. It does not relieve against carrier actions which are collusive or in restraint of competition, such as conspiracy to destroy competitors.

Subject to the foregoing amendment, the association supports H.R. 11583 in its entirety.

Sincerely yours,

M. F. CRASS, Jr., *Secretary.*

TREESWEET PRODUCTS CO.,
Santa Ana, Calif., July 25, 1962.

HON. ARTHUR YOUNGER,
U.S. Representative,
House Office Building, Washington, D.C.

DEAR SIR: This letter refers to H.R. 11583 on which we urge your firm support. It is our view that subject bill is designed to carry out important recommendations contained in the President's transportation message of April 5, 1962, and would extend to all carriers an exemption from regulatory control of the level of minimum rates on the transportation of agricultural and bulk commodities. We firmly agree that extending to all carriers the exemption from the approval of prescribed minimum rates would permit the forces of competition to replace cumbersome regulations, all carriers would be free to exercise normal managerial initiatives in their operations and that as a result of reduced costs, shippers should be in a position to enjoy a wider choice of improved service and lower rates for transportation.

We further request that our views, as stated herein, be made a part of the official record.

Yours very truly,

R. L. TEMPLETON.

CHATTANOOGA BOILER & TANK CO.,
Chattanooga, Tenn., July 13, 1962.

Congressman OREN HARRIS,
Chairman, Committee on Transportation,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: Your committee has House bill 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads have long deserved this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Yours truly,

N. E. HEROD, *Traffic Manager.*

R. E. WILSON MINING CO.,
Eufaula, Ala., July 11, 1962.

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

DEAR SIR: Our attention has been called to some very important proposed transportation legislation in the form of S. 3243 and H.R. 11583, commonly referred to as the "minimum rate" bills.

We understand that these bills propose to give all forms of transportation equal opportunity to lower the price for their services on agricultural and bulk commodities. At the same time, the regulatory agency (ICC) will retain control over maximum rates of regulated transportation and provisions of the antitrust laws will prevent monopoly in the transportation industry.

It is important that competition between the various modes of transportation, both regulated and unregulated, fix the lowest level of freight rates to the public rather than regulation prescribing the lowest charge for a regulated carrier while their unregulated counterpart can charge any rates they choose and extend them only to those in the shipping industry of their choice.

We respectfully urge that full support be given this vital transportation legislation in order that the public may receive full benefit of free enterprise competition. Also, it is requested that this communication be made a part of the record of your committee proceedings in connection therewith.

Yours very truly,

Mrs. R. E. Wilson.
ANNE C. WILSON

GREEN BAY, WIS., *July 11, 1962.*

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

DEAR CONGRESSMAN HARRIS: May I respectfully call your attention to H.R. 11583 now before the Congress.

In my opinion this bill will bring tremendous benefits to agriculture, commerce, industry, and the consumer by lowering the cost of unnecessarily high freight charges. It will also begin an end to the chaotic patchwork of inconsistent and often obsolete legislation and place greater reliance on the forces of competition and less reliance on the restraints of regulation.

Passage of this legislation will be fully in the public interest and I respectfully urge your support of it. I request that this letter be made part of the official record.

Respectfully yours,

H. J. BRUGENHEMKE.

APPLETON MANUFACTURING CO.,
Appleton, Wis., July 13, 1962.

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

SIR: May I respectfully call your attention to bill H.R. 11583 now before the House.

In my opinion this bill will bring tremendous benefits to agriculture, commerce, industry, and the consumer by lowering the cost of unnecessarily high freight charges. It will also begin an end to the choatic patchwork of inconsistent and often obsolete legislation and place greater reliance on the forces of competition, and less reliance on the restraints of regulation.

Passage of this legislation will be fully in the public interest, and I respectfully urge your support of it. I request that this letter be made part of the official records.

Very truly yours,

CHARLES DE YOUNG, *Vice President.*

MAXWELL BROS., INC.,
Chicago, Ill., July 12, 1962.

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

DEAR CONGRESSMAN HARRIS: I would like to ask for your support to the passage of House bill H.R. 11583, which will tend to eliminate certain regulations from railroads in the establishment of rates on bulk and agricultural products.

Also, I would like to request that this letter be made a part of the record of the proceedings regarding this bill.

Yours truly,

H. W. SCRUGGS, *Manager.*

CALIFORNIA MANUFACTURERS ASSOCIATION,
San Francisco, July 18, 1962.

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

DEAR MR. HARRIS: As part of its policy to promote a sound, efficient, equally regulated national transportation system, California Manufacturers Association supports the basic objective of H.R. 11583 to equalize competitive opportunities between different types of carriers by extending to railroads the exemptions from minimum rate regulation with respect to bulk commodities, ordinary livestock, fish and agricultural commodities that are now applicable to competing modes of transportation under provisions of the Interstate Commerce Act.

We are, however, opposed to the provision on pages 4 and 5 of the bill which would deny to carriers freed from minimum rate regulation on the designated commodities the present section 5a exemption from antitrust laws, as we are of the firm belief that it is in the public interest that the carriers be allowed to continue the present conference method of determining rates, and that denial of that privilege is neither necessary nor desirable.

Therefore, we respectfully urge that the bill be favorably reported with an amendment striking lines 22 to 25, inclusive, on page 3 and lines 1 to 3, inclusive, on page 4 from the bill, and shall appreciate your making our position known to the members of the committee.

Respectfully yours,

LUTHER A. NICHOLS,
Executive Vice President.

GREEN BAY FOOD CO.,
Green Bay, Wis., July 12, 1962.

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

GENTLEMEN: May I call to your attention, bill H.R. 11583 now before the Congress. It is my opinion that this bill will bring great benefits to agriculture, commerce, industry, and the consumer by lowering the presently unnecessarily high freight rates. It will also begin an end to the chaotic patchwork of inconsistent, and often out-dated legislation, and place a far greater reliance on the forces of competition, and a less reliance on the restraints of regulation presently in effect. The passage of these bills, we believe, is fully in the public interest, and I respectfully urge your support of same. We, therefore, request that this letter be part of the official record.

Yours very truly,

JIM WHITE, *Traffic Manager.*

GREEN BAY, WIS.,
July 11, 1962.

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

DEAR CONGRESSMAN HARRIS: May I respectfully call to your attention House bill 11583, a bill to put into effect the more urgent of President Kennedy's recommendations for reforms in our transportation policy.

This bill will bring tremendous benefits to agriculture, commerce, industry, and the consumer, and will go far toward strengthening the national transportation policy.

Passage of this legislation will be fully in the public interest. I earnestly urge your support of this bill, and that you will also urge your fellow Representatives to do likewise.

I request that this letter be made part of the official record.

Respectfully yours,

R. J. MACCARTHY.

GREEN BAY, WIS., *July 12, 1962.*

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

DEAR CONGRESSMAN HARRIS: At last a serious attempt is being made to establish a more practical policy for the transportation facilities of our Nation.

I sincerely hope you will find it consistant to support minimum rate bill H.R. 11583 now before you and your committee for consideration. This bill will correct some of the inequalities now existing between the various forms of transportation.

Please make this a part of the official record.

Respectfully yours,

D. L. MCCAUGHAN.

COHEN BROTHERS FRUIT CO.,
Appleton, Wis., July 13, 1962.

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

DEAR MR. HARRIS: We are in the fruit and vegetable distributing business and using the rails; therefore, may I respectfully call your attention to H.R. 11583, now before the Congress.

In my opinion this bill will bring tremendous benefits to agriculture, commerce, industry, and the consumer by lowering the cost of unnecessarily high freight charges. It will also begin an end to the chaotic patchwork of inconsistent and often obsolete legislation and place greater reliance on the forces of competition and less reliance on the restraints of regulation.

Passage of this legislation will be fully in the public interest, and I respectfully urge your support of it. I request that this letter be made part of the official record.

Your very truly,

FRANK COHEN.

GREEN BAY, WIS., *July 13, 1962.*

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

DEAR CONGRESSMAN HARRIS: House bill 11583, now before you and your committee, embodies President Kennedy's recommendations for reforms in our Nation's transportation policy.

In the interest of our general economy, I urge you to support this legislation, for this country has needed a program like this for many years, and it is certainly a big step toward putting aside special interests and concerns, and putting the public interest in faster, better, and cheaper transportation first.

Please make this a part of the official record.

Respectfully yours,

C. D. AMES.

GREEN BAY, WIS., *July 12, 1962.*

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

DEAR CONGRESSMAN HARRIS: House bill 11583, now before the House Committee on Interstate and Foreign Commerce, embodies President Kennedy's recommendations for changes in our Nation's transportation policy.

This legislation is in the interest of the public. It will be of benefit to agriculture, commerce, industry, and the consumer, and I therefore strongly urge you to support this bill and to prevail upon your constituents to also give it their support.

Please make this letter a part of the official record.

Respectfully yours,

(Mrs.) W. M. POMMIER.

GREEN BAY, WIS., *July 13, 1962.*

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

DEAR CONGRESSMAN HARRIS: Please be referred to H.R. 11583 which is presently before Congress.

I respectfully urge you to support this bill as it is my opinion that agriculture, industry, and even we as individuals will benefit greatly by the passage of this legislation.

I request that this letter be made a part of the official record.

Respectfully yours,

D. A. UNDERWOOD.

GREEN BAY, WIS., *July 12, 1962.*

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

DEAR CONGRESSMAN HARRIS: Passage of H.R. 11583, now before the House Committee on Interstate and Foreign Commerce, will make great strides toward strengthening our national transportation policy.

The enactment of this minimum rate bill will bring tremendous benefits to the public and to our country as a whole—agriculture, commerce, industry, and consumer will all profit.

This legislation is in the interest of the public, and I respectfully request your support of this bill.

Please make this letter a part of the official record.

Respectfully yours,

T. B. RINGSRED.

GREEN BAY, WIS., *July 13, 1962.*

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

DEAR CONGRESSMAN HARRIS: H.R. 11583 now before the House Committee on Interstate and Foreign Commerce is a tremendous step toward the solution of a serious national problem. If enacted it will benefit the entire American economy.

There is a great need for reshaping of our Nation's transportation policies. This bill is fully in the public interest, and with this thought in mind I earnestly urge you to give this legislation your support.

Please make this letter a part of the official record.

Respectfully yours,

E. S. ALLEN.

GREEN BAY, WIS., *July 13, 1962.*

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

DEAR CONGRESSMAN HARRIS: House bill 11583 is now before the House Committee on Interstate and Foreign Commerce.

Passage of this legislation would be fully in the public interest, for our entire American economy would benefit by its enactment.

At long last a real attempt is being made to solve an urgent national problem, and I strongly urge you to give this legislation your support.

Please make this a part of the official record.

Respectfully yours,

(Miss) E. E. HNILICKA.

EUFAULA HARDWARE CO.,
Eufaula, Ala., July 11, 1962.

In re House bill H.R. 11583.

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

DEAR CONGRESSMAN HARRIS: The above is commonly referred to as the "minimum rate" bill which we feel is a good bill and should be passed. We understand that it proposes to give all forms of transportation an equal opportunity to lower freight rates on agricultural products and bulk commodities without changing the existing controls on maximum rates.

We feel that the antitrust laws are adequate to prevent monoply and that competition should be allowed to fix the lowest rates charged by carriers—regulated as well as unregulated. We believe that the unregulated carriers can now charge any rate they choose under the maximum rate and extend

them to whomever they choose. This very definitely discriminates against the regulated carriers, as well as the buying public who, for various reasons, are not always in a position to negotiate for a lower rate with an unregulated carrier.

We urge your support of this legislation and ask that our letter be made a part of your committee's files on this matter.

Very truly yours,

A. C. MITCHELL, Jr., *Partner.*

SISKIN STEEL & SUPPLY CO.,
Chattanooga, Tenn., July 16, 1962.

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

DEAR CONGRESSMAN HARRIS: We have written to Congressman Frazier, of Tennessee, and we would like to use this letter as a means to strongly urge you to vote in favor of House of Representatives bill No. 11583, which was introduced on May 3, 1962. This is a minimum rate bill and covers movement of agricultural products of bulk commodities such as grain, ore, coal, salt, sugar, etc., and of passengers.

Passage of this bill will enable railroads to compete more nearly on equal terms for the vast tonnages of bulk and agricultural commodities which now move mostly in private and unregulated highway trucks and waterway barges. This will give the railroads nothing that other forms of transportation do not already have. In fact, this will not give the railroads as much as other forms of transportation now have. At the same time, it will definitely help railroads compete for this profitable traffic, save American people hundreds of millions of dollars each year in unnecessarily high transportation costs and strengthen the entire common carrier transportation system.

This bill will give all forms of transportation more nearly equal freedom in setting minimum rates on bulk and agricultural commodities, and minimum passenger fares, while retaining in the Interstate Commerce Commission the right to prevent rate increases, and extending the powers of the antitrust laws to prevent monopoly.

For the above reasons we are in favor of bill No. 11583 being passed and we would like for you to make our letter part of the records. Thank you for your cooperation.

Yours very truly,

GARRISON SISKIN.

BURBACH ELEVATOR,
Crofton, Nebr., July 13, 1962.

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

DEAR CONGRESSMAN HARRIS: My name is Jules Burbach and I am a resident of Crofton, Nebr., located in the extreme north-central part of my State. I am the sole owner of the Burbach Elevator and I also own and operate the grain elevator at Fordyce, Nebr., some 10 miles from Crofton and I also operate a grain elevator at the village of Mosher, S. Dak. In addition, I have some farming and livestock interests.

All in all I am what is sometimes described as a small businessman. I have nine employees and I personally conduct my business affairs and direct my own business. To this extent I very often buy and sell grain in my dealings with my farmer customers; I very often help load and unload grain trucks and freight cars; I very often buy and sell feed as well as many other items of farm supplies that we deal in. I tell you this to let you know that I run my own business not only from the "front office" but also down to the "grassroots."

In addition to running my business I am also a member of the Nebraska State Legislature serving as a State senator representing the 14th District of Nebraska.

As I have stated I am a small operator of country grain elevators and in no sense do I operate so-called terminal or large grain elevators.

I am aware of some of the problems faced by the railroads of our country and particularly with the midwestern railroad which serves my elevators and upon whom I must depend for the bulk of the transportation of my inbound and

outbound grain shipments to the large central markets. I also do much of my transportation by truck. I know from my own experience that much grain moves by truck and that generally the rates are below those of the railroad and the trucker sets his own rates at whatever price but that the railroad in following published and fixed prices cannot quickly change the rates in order to compete with the unregulated truck operator. We must have railroad service and the railroads must be given an opportunity to meet competition.

For the above reason I urge that your committee give immediate, careful and favorable consideration leading to the passage of H.R. 11583 as recommended by our national administration. I also ask that this letter be made part of your record of your committee hearings.

Very truly yours,

J. W. BURBACH.

DISTRIBUTORS WAREHOUSE,
Chattanooga, Tenn., July 16, 1962.

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

DEAR CONGRESSMAN HARRIS: It is our understanding that your committee has House bill H.R. 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads deserve this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, it would be greatly appreciated.

Yours truly,

G. W. THOMPSON, *Owner-Manager.*

WISCONSIN WOODWORK MANUFACTURERS' TRAFFIC ASSOCIATION,
Oshkosh, Wis., July 17, 1962.

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

DEAR SIR: We respectfully call your attention to H.R. 11583 now before the Congress.

In our opinion the bill will be of great benefit to agriculture and the consuming public by permitting reduction in freight costs. It will tend to put an end to the chaotic transportation situation and inept obsolete legislation with greater reliance on competitive forces instead of present regulation restraints.

We feel approval of the legislation proposed in this bill will be in the public interest and respectfully urge your support. We also kindly request this letter be made part of the official record.

Yours very truly,

E. J. BALDA, *Traffic Manager.*

MARK K. WILSON CO.,
Chattanooga, Tenn., July 17, 1962.

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

MY DEAR MR. HARRIS: We understand that your committee has House bill H.R. 11583 which will give, if passed, more freedom in ratemaking on most bulk commodities. The railroads deserve this consideration, in our opinion, and we urge you to do everything that you can to have this bill passed.

Will you be kind enough to make this letter a matter of record before your committee?

Sincerely yours,

MARK K. WILSON, Jr.

CHEROKEE WAREHOUSES, INC.,
Chattanooga 1, Tenn., July 18, 1962.

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

DEAR CONGRESSMAN: Your committee has House bill H.R. 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads have long deserved this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Very truly yours,

JIM KENNEDY.

T. Y. WILLIAMS GRAIN CO.,
Shawneetown and Junction, Ill., July 18, 1962.

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

DEAR MR. HARRIS: My business is buying, selling, and shipping grain. The destiny of our transportation system seriously concerns me. You and I know that there are many inequalities and unnecessary restrictions imposed upon our Nation's railroads.

The President's transportation message of April 5, 1962, proposed solutions toward correcting some of these inequities. I am very much interested in H.R. 11583 which would extend to all common carriers the same exemptions from minimum rate regulations on bulk commodities, agricultural and fishery products, and passengers now enjoyed by only some carriers. I believe the public stands to benefit when all carriers can be used at the lower rates. Please give this bill your full support.

It is requested that this letter be made a part of your hearing record.

Yours very truly,

T. Y. WILLIAMS.

OHIO VALLEY SOYBEAN CO-OPERATIVE,
Henderson, Ky., July 19, 1962.

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

DEAR MR. HARRIS: This is to request your help in obtaining passage by the Congress this year of H.R. 11583 which I feel would be distinctly beneficial to our business.

The President pointed out in the transportation message of April 5, 1962, the urgent need for changes in our transportation policy which has not been changed in many respects since the time when railroads had a virtual monopoly.

It is not reasonable that one common carrier should be allowed to fix rates for bulk commodities or for agricultural products or for passengers without regulation as to the minimum charge while other competing carriers are subjected to such regulations. The result is unfair not only to the regulated carrier but also to shippers who may prefer or who have to rely on the carrier which is discriminated against. The bill I have mentioned offers a reasonable remedy for this situation and I hope that you will do all that you can to have action on it completed before Congress adjourns this year.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

A. I. REISZ, *Manager.*

WM. L. GRAY CO.,
Chattanooga, Tenn., July 20, 1962.

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

DEAR CONGRESSMAN HARRIS: Your committee has House bill H.R. 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads have long deserved this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Yours truly,

WILLIAM L. GRAY.

MOORE BROKERAGE CO.,
Chattanooga, Tenn., July 20, 1962.

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

DEAR CONGRESSMAN HARRIS: We understand that your committee has House bill H.R. 11583 for consideration, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads deserve this consideration and we feel that this bill should be passed.

There are many instances in our own community where the railroads are not permitted to meet other carriers, which works a hardship on many receivers.

If you would be kind enough to make this letter a matter of record before your committee, it would be greatly appreciated.

Very truly yours,

I. E. MOORE.

SYLACAUGA CALCIUM PRODUCTS CO.,
Sylacauga, Ala., July 19, 1962.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
U.S. Congress, Washington, D.C.

DEAR CONGRESSMAN HARRIS: The President's transportation message of April 5 advocated certain changes that will assist in modernizing our transportation policy.

It is our feeling, since we are shippers of considerable bulk tonnage, that H.R. 11583 is a step in this direction. It is badly needed to help check the heavy decline in revenues for common carriers which, in turn, will greatly benefit the shipping public.

We wish to go on record in favor of passing this bill and respectfully request that you make this letter a part of your hearing record.

Very truly yours,

J. S. WILKINS.

NATIONAL CANNERS ASSOCIATION,
Washington, D.C., July 17, 1962.

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

DEAR MR. CHAIRMAN: The National Canners Association favors an extension to the railroads of the agricultural and fishery exemption presently available to motor carriers, and recommends the enactment of H.R. 11583 for that purpose.

The National Canners Association is a nonprofit trade association of more than 600 members whose canning plants are located in 44 of the 50 States. Members of the association pack approximately 80 percent of the total U.S. production of canned fruits, vegetables, juices, meats, seafoods, and specialties. Each canner processes at least one of the agricultural and fishery commodities which is an exempt commodity within the meaning of section 203(b)(6) of the Interstate Commerce Act.

Farmers, fishermen, canners, and the public have all benefited over the years from the agricultural and fishery commodities exemption which is presently available to motor carriers. Under this exemption motor carriers are afforded a flexibility of operation, and it has been possible for growers to ship, and for canners to receive, fresh produce of optimum quality for canning.

The National Canners Association believes that the advantages of this exemption should be broadened to include railroads, in order to enable them to compete more effectively for this traffic. Railroads are in a position to provide economical and reliable transportation for raw agricultural and fishery commodities, and this exemption should therefore be extended to them in order to put them on an equitable basis with motor carriers.

Your committee's consideration of our views is respectfully requested and we ask that this letter be made a part of the record of the hearings now underway on H.R. 11583.

Sincerely,

MILAN D. SMITH.

LAKE ELSINORE VALLEY CHAMBER OF COMMERCE,
Elsinore, Calif., July 19, 1962.

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

DEAR SIR: At the regular meeting of the board of directors of the Lake Elsinore Valley Chamber of Commerce on July 16, 1962, the two following resolutions were unanimously adopted:

"Whereas it has been brought to our attention that hearings are to be held on H.R. 11583; and

"Whereas it is our opinion that the American railroads are being injured by present rate restrictions: Now, therefore, be it

"*Resolved*, That the Lake Elsinore Valley Chamber of Commerce go on record urging the passage of minimum rate bill H.R. 11583."

"Whereas it has been brought to our attention that hearings are to be held on H.R. 11584; and

"Whereas it is our opinion that this bill would be of great assistance in helping to solve some of the grave problems of the American railroads: Now, therefore, be it

"*Resolved*, That the Lake Elsinore Valley Chamber of Commerce go on record urging the passage of the Transportation Act of 1962, H.R. 11584."

Sincerely,

ROBERT BENNETT, *President.*

WALTON SEED CO.,
Augusta, Ga., July 17, 1962.

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

DEAR CONGRESSMAN HARRIS: Your committee now has under consideration House bill H.R. 11583, generally referred to as the "minimum rate" bill. We believe the passage of this bill would help to correct some of the disadvantages under which the railroads are now operating, and this would give all forms of transportation more freedom in setting minimum rates on bulk and agricultural commodities.

We respectfully request that you support this bill and will see that this letter is made a part of the proceedings before the committee.

Very truly yours,

D. C. RUSHTON, *Owner.*

OPELIKA SCRAP MATERIAL CO., INC.,
Opelika, Ala., July 18, 1962.

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

MY DEAR CONGRESSMAN HARRIS: Please refer to House bill 11583, introduced on May 3, which is a result of President Kennedy's transportation message.

I understand this will allow equal freedom among the various modes of transportation so far as rates are concerned. This will give all forms of transportation the same chance to reduce their rates to meet competition, whereas some types (for example, the railroads) are not allowed under the present law to reduce their rates even though they desire to do so. In the event this legislation becomes law it should lead to lower transportation costs generally for the shipping public, and lower freight costs are certainly needed.

Your full support and efforts to get this bill passed as quickly as possible will be greatly appreciated and we hope this letter will go on record with your committee.

Yours very truly,

L. N. BAZEMORE.

STRANG GRAIN CO.,
Fort Collins, Colo., July 19, 1962.

HON. OREN HARRIS,
Chairman, Commerce Committee, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HARRIS: My attention has been called to your committee hearings on H.R. 11583 and H.R. 11584, having to do with transportation matters.

The unregulated transportation of farm products over the highways, has greatly reduced our sales and consequently the number of employees in our plants. The people who haul grains, etc., are not merchants, but transportation concerns, depending chiefly on cartage for their income.

This makes it impossible for merchants such as we are, to use the regulated carriers and stay in business. We have large investments in plants and property to conduct our business, while the truckers have no investment in the areas where they market the products they haul.

I trust you can use your efforts to encourage a favorable committee action on this legislation, and their subsequent enactment into law by Congress.

I would appreciate if this letter can be made a part of the official record of the committee.

Yours respectfully,

R. M. STRANG.

HARTMAN WHOLESALE CO.,
Green Bay, Wis., July 17, 1962.

MR. OREN HARRIS,
House Office Building,
Washington, D.C.

DEAR SIR: May I respectfully call your attention to H.R. 11583 now before the Congress.

In my opinion this bill will bring tremendous benefits to agriculture, commerce, industry and the consumer by lowering the cost of unnecessarily high freight charges. It will also begin an end to the chaotic patchwork of inconsistent and often obsolete legislation and place greater reliance on the forces of competition and less reliance on the restraints of regulation.

Passage of this legislation will be fully in the public interest and I respectfully urge your support of it. I request that this letter be made part of the official record.

Very truly yours,

DICK KASPER.

C. C. HUXFORD, JR., FOREST PRODUCTS,
Brewton, Ala., July 18, 1962.

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

DEAR CONGRESSMAN: May I take this opportunity to respectfully urge your support of House bill 11583, proposing to give all transportation carriers, regulated or unregulated, equal freedom to lower their rates on agricultural and bulk commodities.

In the interest of our free enterprise system, I believe competition rather than regulation should determine the level of freight rates.

I sincerely hope you will give this vital piece of transportation legislation your full support, and request that this communication be made a part of the record of your committee proceedings in connection therewith.

Yours very truly,

C. C. HUXFORD, Jr.

BREWTON CHAMBER OF COMMERCE,
Brewton, Ala., July 18, 1962.

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

DEAR CONGRESSMAN: May we take this opportunity to respectfully urge your support of House bill H.R. 11583, proposing to place all transportation carriers, regulated and unregulated, on an equal basis in the matter of lowering their freight rates on agricultural and bulk commodities.

In the interest of our free enterprise system, we believe competition rather than regulation should determine the level of freight rates, and that our Nation's common carrier transportation should be given equal opportunity to compete with unregulated carriers.

We sincerely hope you will give this vital piece of transportation legislation your full support, and request that this communication be made a part of the record of your committee proceedings in this connection.

Yours very truly,

RAY D. SHERBER, *President.*

THE TENNESSEE RUBBLE STONE, INC.,
Dayton, Tenn., July 23, 1962.

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

DEAR CONGRESSMAN: Your committee has House bill 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads deserve this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Yours very truly,

G. C. CRAWLEY, *President.*

M. M. HEDGES MANUFACTURING CO., INC.,
Chattanooga, Tenn., July 20, 1962.

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

DEAR CONGRESSMAN: Your committee has Senate bill 3243 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads have long deserved this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Very truly yours,

THOMAS I. MASTIN,
Executive Vice President.

SAMUEL STAMPING & ENAMELING CO.,
Chattanooga, Tenn., July 23, 1962.

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

DEAR CONGRESSMAN: Your committee has House bill H.R. 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads deserve this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Yours very truly,

REX ZEIGLER,
Assistant to the Vice President.

A. J. WAREHOUSE, INC.,
New Orleans, La., July 23, 1962.

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

DEAR MR. HARRIS: As a shipper I want to urge prompt action by your committee on H.R. 11583, which would equalize competition among common carriers by extending to all of them the same exemptions from minimum rate regulations on bulk commodities, agricultural and fishery products, and passengers which some of them now enjoy.

This is a step in the direction advocated by the President's transportation message of April 5, 1962, and is needed to check the alarming decline in common carrier transportation, and the public would benefit immensely from lower rates which the carriers are willing to offer.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

A. J. PETITFILS, *President.*

BIBB STEEL & SUPPLY CO., INC.,
Macon, Ga., July 20, 1962.

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

DEAR CONGRESSMAN: I understand that House bill, H.R. 11583 is before your committee, which if favorably acted upon, will eliminate the Interstate Commerce Commission's power to prescribe minimum rates on bulk and agricultural commodities, thereby allowing the railroads freedom in reducing such rates.

I do hope that your committee will act favorably in the matter and will appreciate your allowing this letter to become a matter of record in the proceedings.

Very truly yours,

CLINTON M. GORY, *General Manager.*

TURNER CLAY PRODUCTS CO.,
Chattanooga, Tenn., July 24, 1962.

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

DEAR CONGRESSMAN: Your committee has House bill 11583 before it, which is supposed to give the railroads some freedom in ratemaking on certain commodities. It is our opinion that the railroads deserve this consideration and we feel that this bill should be passed.

If you would be kind enough to make this letter a matter of record before your committee, I would greatly appreciate it.

Very truly yours,

DAN O. TURNER,
General Manager and Owner.

WEAVER & CO.,
Macon, Ga., July 12, 1962.

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

DEAR CONGRESSMAN HARRIS: I have written you previously regarding House bill 11583 expressing my desire to see that this bill is passed and would now like for you to make this letter a part of the record of the proceedings.

The passage of this bill would place railroads in a more competitive status and in my opinion would be a great help to the transportation industry.

Yours very truly,

FRED D. WEAVER.

GARTON TOY CO.,
Sheboygan, Wisc., July 20, 1962.

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

DEAR SIR: May I respectfully call your attention to House bill 11583 now before the Congress.

In my opinion this bill will bring tremendous benefits to agriculture, commerce, industry, and the consumer by lowering the cost of unnecessarily high freight charges. It will also begin an end to the chaotic patchwork of inconsistent and often obsolete legislation and place greater reliance on the forces of competition and less reliance on the restraints of regulation.

Passage of this legislation will be fully in the public interest, and I respectfully urge your support of it. I request that this letter be made a part of the official record.

Yours very truly,

H. L. AUGUSTINE, *Traffic Manager.*

LUSK SHIPPING CO., INC.,
New Orleans, July 24, 1962.

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

DEAR REPRESENTATIVE HARRIS: We are writing you to request your assistance in obtaining passage by the Congress, this year, of H.R. 11583 or S. 3243 which, we feel, would be distinctly beneficial to the port of New Orleans and our business, as well as to the public interest.

We recall the President pointed out in his transportation message of April 5, 1962, the need for modernizing our transportation policy which has not been changed in many respects since the time when railroads had a virtual monopoly.

One of the points expressed by the President had to do with the inequity of regulating minimum rates on bulk cargoes, agricultural and fishery products, and passengers handled by some common carriers while other competing carriers are exempted from such regulation. The above-mentioned bills offer a reasonable remedy for that inequity and we believe the relief should be given promptly.

We are personally interested in these bills in view of the fact of our active interest in promoting and shipping export trade through the port of New Orleans and our continued interest to expand American exports in accordance with the President's wishes. The passage of these bills would be a step toward assisting us in our endeavors.

It is therefore requested that this letter be made a part of your hearing record.

Thanking you for your interest, we are,
Very truly yours,

WALTER C. FLOWER, II.

TRINIDAD, COLO., *July 25, 1962.*

Hon. OREN HARRIS,
Member of Congress, Chairman of the House Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HARRIS: I enclose copy of letters I am this day sending to Senators Gordon Allott and John A. Carroll and Representative J. Edgar Chenoweth, from Colorado, concerning the above matter, and would be grateful if such copy could be made part of the official record of the hearings now being conducted.

Thanking you kindly, I am,
Very truly yours,

B. H. SHATTUCK,
Attorney at law.

JULY 25, 1962.

Hon. JOHN A. CARROLL,
U.S. Senate, Washington, D.C.

DEAR SENATOR CARROLL: I am writing you to urge your support for proposed legislation withdrawing the authority of the Interstate Commerce Commission to regulate minimum freight rates chargeable by our railroads on agricultural and bulk commodities as proposed in House bill 11583 and Senate bill 3243.

My reasons are that, under said bills, the railroads will be able to lower their rates for hauling this type of freight and thus compete with trucklines, which are free to set low rates on agricultural products, and with bargelines, which are free to set low rates on the moving of commodities in bulk. I believe that the competition will be beneficial not only to the railroads, which vitally need more business, but to the economy as a whole.

In addition, it seems to me discriminatory that the railroads are denied the right to establish minimum rates, while competing truck and bargelines are permitted to exercise it. All carriers should be treated alike.

Thanking you kindly for your favorable consideration of these measures at this session of Congress and with kindest personal regards, I remain,

Very truly yours,

B. H. SHATTUCK.

SAN ANTONIO, TEX., *July 25, 1962.*

In re H.R. 11583.

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

DEAR CONGRESSMAN: Action should be taken at once to relieve the railroads of the minimum rail rates enforced upon them by the Interstate Commerce Commission in favor of highway and waterway carriers.

There should be no such favoritism in the country's common carrier system. On the contrary, that free and open competition the Government rightly insists upon in other enterprises should prevail in transportation, also, with the full support of the law.

There has been much study of this problem, and all the facts about it are known that ever will be known. Action on H.R. 11583 should be delayed no longer. Let's have a vote, so the country will know where the House stands on this important issue.

I would appreciate it if you will make this letter a part of the proceedings in reference to this legislation.

Yours sincerely,

ROY S. HOLLINGSWORTH.

CENTRAL WOODWORK, INC.,
Jackson, Tenn., July 27, 1962.

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

DEAR REPRESENTATIVE HARRIS: As a shipper, I am particularly interested in prompt action by the Congress on H.R. 11583 and the companion Senate bill, S. 3243.

As was pointed out in the President's transportation message of April 5, 1962, there is urgent need for changes in our transportation policy which will recognize modern developments and equalize competition in the public interest.

It is not reasonable that one common carrier should be allowed to fix rates for bulk commodities or for agricultural and fishery products or for passengers without regulation as to the minimum charge while other competing carriers are subjected to such regulation. The result is unfair not only to the regulated carriers but also to shippers who may prefer or who have to rely on the carrier which is discriminated against.

The bills under discussion are designed to remedy this situation, and I hope you will do all that you can to have action on them completed before Congress adjourns this year.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

J. H. HORN,
Vice President and Branch Manager.

ALABAMA MARBLE CO.,
Gantt's Quarry, Ala., July 23, 1962.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee, U.S. Congress, Washington, D.C.

DEAR CONGRESSMAN HARRIS: We wish to go on record in favor of passing bill H.R. 11583 which we feel is a step in the right direction toward meeting the recommendations of the President's transportation message of April 5. Since my company is a heavy shipper of bulk tonnage, we feel this bill is badly needed to help check the heavy decline in revenue for the common carrier which, of course, would mean the benefits could be passed on to the public.

We respectfully request that you make this letter a part of the hearing record.

Sincerely yours,

W. H. RUNGE, Jr., *Vice-President.*

MADISONVILLE CHAMBER OF COMMERCE,
Madisonville, Ky., July 27, 1962.

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

DEAR MR. HARRIS: I want to urge prompt action by your committee on H.R. 11583, which would equalize competition among common carriers by extending to all of them the same exemptions from minimum rate regulations on bulk commodities, agricultural and fishery products and passengers which some of them now enjoy.

This is a step in the direction advocated by the President's transportation message on April 5, 1962, and is needed to check the alarming decline in common carrier transportation, and the public would benefit immensely from lower rates which the carriers are willing to offer.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

HARPER GATTON,
Executive Vice President.

DES MOINES, IOWA, *July 30, 1962.*

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

DEAR REPRESENTATIVE HARRIS: This is written to request your support on H.R. 11583, which I feel is an important piece of legislation. This will support the recommendations of the President of the United States and will strengthen the common carrier transportation agencies.

We would like to have this made a part of the official record.

Yours very truly,

B. M. SCHWARTZ.

HARRAL FOODS CO.,
San Antonio, Tex., July 28, 1962.

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

DEAR SIR: I urge you and your committee to act promptly and favorably on House bill No. 11583.

As you know, no mode of transportation has a monopoly today. I am certain that you are further acquainted with the fact that each mode of transportation has its place in the economy which makes it impossible for any single mode of transportation to eliminate the other.

I agree that certain kinds and types of legislation regulating all modes of public carriage are necessary in order that the public interest may be protected. However, it is also a fact that some of our regulative statutes no longer serve the public interest as they did in the day of their enactment because of the changing times.

After reviewing House bill No. 11583, I am convinced that its enactment into law will be in the public interest.

I respectfully request that this letter be placed in the record on House bill No. 11583.

Yours very truly,

PHILIP W. HARRAL, *President.*

W. L. RICHESON & SONS, INC.,
New Orleans, La., July 30, 1962.

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

HONORABLE SIR: As a shipper of grain, agricultural or fishery products, I am particularly interested in prompt action by the Congress on H.R. 11583 and the companion Senate bill S. 3243.

As was pointed out in the President's transportation message of April 5, 1962, there is urgent need for changes in our transportation policy which will recognize modern developments and equalize competition in the public interest.

It is not reasonable that one common carrier should be allowed to fix rates for bulk commodities or for agricultural and fishery products or for passengers without regulations as to the minimum charge while other competing carriers are subjected to such regulation. The result is unfair not only to the regulated carriers but also to shippers who may prefer or who have to rely on the carrier which is discriminated against.

The bills under discussion are designed to remedy this situation and I hope you will do all that you can to have action on them completed before Congress adjourns this year.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

EDWARD R. RICHESON, *President.*

CARTHAGE MARBLE CORP.,
Carthage, Mo., August 1, 1962.

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

DEAR SIR: We wish to solicit your support for House bill No. H.R. 11583, which will permit the railroads to compete with other forms of transportation on movement of exempted commodities.

We would like for this letter to be made a part of the official record.

Thanking you for anything you can do, we are,

Very truly yours,

MINFORD E. POTTER,
Secretary-Treasurer.

JOPLIN, MO., *August 1, 1962.*

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

DEAR SIR: With reference to House bill H.R. 11583 now pending in Congress, the railroads need relief from regulatory control of the level of minimum rates to better meet competition with other forms of transportation if they are to continue operation.

I earnestly solicit your support of this bill and in so doing the present conference method of ratemaking as provided in section 5A of the Interstate Commerce Act should be retained.

Sincerely,

A. P. SCHNEIKART.

P.S.—Respectfully request that this letter be made a part of the official record.

GEO. C. CHRISTOPHER & SON, INC.,
Wichita, Kans., August 1, 1962.

Re Senate bill 3243, House bill H.R. 11583, Senate bill 3242 and House bill H.R. 11584.

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

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Washington, D.C.

GENTLEMEN: We would like for you to exert your efforts to see that these bills are placed before the Congress where a vote on their merits could be expressed. Our investigations of these bills convinces us that the passage of these bills would be a great help in our transportation problems.

We feel sure that the passage of these bills will result in lower railroad rates on bulk commodities which would lead to lowering of prices and help to restore equalities amongst the various modes of transportation.

We would like our views to be considered as being in favor of the passage of these bills.

Very truly yours,

H. E. CHRISTOPHER.

CARTHAGE, MO., *August 2, 1962.*

Re H.R. 11583.
Representative OREN HARRIS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR SIR: I am writing to ask your support for H.R. 11583. I sincerely feel that the railroads should be permitted to compete with other transportation facilities. They are now hamstrung by restrictions placed on them.

I would appreciate your making this letter a part of the official record.

Thanking you, I am,

Very truly yours,

THOMAS E. TAYLOR,

MCDOWELL GROCERY CO., INC.,
Madison, Ga., August 3, 1962.

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

DEAR CONGRESSMAN: You are familiar with the plight of the railroads and the necessity for some relief from the burdens of excessive regulations.

House bill H.R. 11583 has to do with freedom of ratemaking by the railroads on bulk commodities and agricultural products which is now enjoyed by the bargelines and highway trucks, but denied the railroads.

It would appear if the railroads are to survive they must be given equal competitive opportunity in the field of ratemaking and we appeal to you for your influence and support of this bill.

We will appreciate it if you will see that this letter is made a part of the record of the proceedings before your committee.

Thanking you very much, we are,

Very truly yours,

M. A. McDOWELL, *President.*

UNIVERSITY AVENUE COAL CO., INC.,
Des Moines, Iowa, August 3, 1962.

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

DEAR MR. HARRIS: As you can imagine, our business, which is retail and wholesale coal throughout the State of Iowa, is very dependent upon good, strong, well-managed railroads and we are very interested in legislation that will help bring this about.

We hope that you will give every consideration to the bills that are designated S. 3243 in the Senate, and H.R. 11583 in the House. We do request and will appreciate your support of this legislation.

We would like to have this letter be made a part of the official record.

Yours sincerely,

VERNE P. SMITH, *President.*

EUGENE LUHR & CO.,
Columbia, Ill., August 1, 1962.

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

DEAR CONGRESSMAN HARRIS: As extensive users of the Missouri Pacific Lines in our section of the country, I am writing you on behalf of our company to urge support for the passing of House bill 11583, generally called the minimum rate bill.

We feel it is the American way to insure free play of competition among common carriers, and up until now the railroads have been prejudiced in competing with water carriers in the movement of bulk goods, as well as in competing with the trucking industry.

We feel that it would be advisable for the Congress to follow the lead of President Kennedy in his recommendations that have led to the introduction of this proposed legislation, and afford the railroads freedom to exercise normal managerial initiative without being hamstrung by the ICC on reduced rate proposals. We feel that eventually the proposals will mean considerable savings in hauling rock for Arkansas River development and improvement.

Your influence and that of members of your committee for favorable action is again asked, and it is requested that this letter be made a part of the proceedings of the committee hearings.

Yours sincerely,

W. H. CARDER, *Vice President.*

BROWN-FORMAN DISTILLERS CORP.,
Louisville, Ky., August 3, 1962.

Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

MY DEAR MR. HARRIS: As a representative of a major shipper and as a person who has been engaged in the profession of transportation for the past 20 years, I am very much concerned about bill H.R. 11583, which is now being heard before your committee.

The purpose of this bill is to put certain carriers on an equal ratemaking level by exempting from minimum rate regulation the transportation of bulk commodities, agricultural and fishery products, and passengers.

I do not believe it to be in the public interest to permit the continuation of the allocation of traffic among the different modes of transportation without respect to the cost of the service performed by the respective carriers.

I do believe that greater freedom should be permitted carrier management to enable them to price their product according to their own cost of performing service and not be compelled to charge in such way as to protect the traffic of another carrier. However, I believe that the only way that it can be done effectively would be through the preservation of orderly rate procedures such as now exist under section 5A of the Interstate Commerce Act, and which have been so necessary and effective in the past.

This bill, in my opinion, will be an additional step in giving all modes of transportation an opportunity to preserve their own inherent advantages. This opportunity must be provided if we are to have the strong common carrier system necessary to the American economy, and four our national defense. This is true now more than ever when the carriers of the United States are unable to adjust their expenses to the diminishing volume of business caused by unregulated carriers who now carry a major portion of the Nation's freight. This is causing a deterioration in the quantity and quality of service that we must have to continue progress.

I hope that your views have some similarity to those expressed by me. I urge that you do all possible to have action completed on this bill before Congress adjourns this year.

I request that this letter be made a part of your hearing record.

Sincerely yours,

W. S. FRANKLIN, *General Traffic Manager.*

BUILDERS SUPPLY CO.,
Waynesboro, Ga., August 3, 1962.

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

DEAR CONGRESSMAN HARRIS: We understand House bill H.R. 11583 has been referred to your committee.

As chairman of this committee, you are in position to know what it would mean to the railroads, and to their shippers and receivers of bulk commodities, to see this passed.

We earnestly request your support. Please make this letter a part of the proceedings before your committee.

Thanks.

Sincerely yours,

J. W. BOROM, *Proprietor.*

POPE & FLEMING, INC.,
Augusta, Ga., July 23, 1962.

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

DEAR CONGRESSMAN HARRIS: I understand the President's recommendations for greater freedom in transportation pricing have been referred to your committee.

Our company has been keenly aware of inequitable transportation policies. We, as cotton factors, are in position to know that the railroads can better serve shippers and receivers, alike, if allowed greater freedom in setting minimum rates on bulk commodities and agricultural products.

This bill, H.R. 11583, which has been referred to your committee, is generally known as the minimum rate bill, and is shaped to give all forms of transportation more nearly equal privileges.

Please support this important legislation, and make this letter a part of the proceedings before the committee.

Very truly yours,

C. H. WRIGHT, *Vice President.*

WAYNESBORO FERTILIZER CO.,
Waynesboro, Ga., August 3, 1962.

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

DEAR CONGRESSMAN HARRIS: We are so glad to learn that House bill, H.R. 11583, the minimum rate bill, has been referred to your committee.

For a long time we have been aware that some parts of the transportation industry are restrained unnecessarily, and are taxed unevenly and inconsistently.

We are particularly interested in seeing that the railroads are allowed greater freedom in setting minimum rates on bulk commodities and agricultural products, and we sincerely solicit your support of bill 11583.

Please make this letter a part of the proceedings before your committee.

Very truly yours,

JOHN W. WALKER, *Secretary-Treasurer.*

SIMKINS SEED CO.,
Augusta, Ga., August 3, 1962.

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

DEAR CONGRESSMAN HARRIS: House bill, H.R. 11583, known as the minimum rate bill, has been referred to your committee. Passage of this legislation is of critical importance to us.

We would like to see the railroads placed on a fairer, more competitive basis, which is the purpose of this bill.

May we count on your support, and will you be good enough to make this letter a part of the proceedings before your committee?

Sincerely yours,

L. H. SIMKINS, *President.*

THE ARKANSAS CITY CHAMBER OF COMMERCE,
Arkansas City, Kans., September 11, 1962.

HON. OREN HARRIS,
Old House Office Building,
Washington, D.C.

DEAR SIR: Please refer to our resolution of July 17, 1962, supporting Senate bills 3242 and 3243. Subsequent to our action the industrial members, our traffic committee, recorded objections to this proposed transportation legislation and requested we rescind our support and to also record our objections thereto.

(1) Object to new paragraph 23 amending section 1 of Interstate Commerce Act to exempt rail carriers from minimum rate regulation for transportation of bulk farm commodities, etc.

(2) Removal of Interstate Commerce Commission's jurisdiction from carriers minimum rate establishments could be ruinous to local grain, flour, and meat-packing industries.

(3) Irreparable damage might be suffered by shippers, carriers, and localities before corrective steps could be taken under antitrust laws.

(4) This legislation is not in the public interest since only a minimum of protection is afforded the shipping public.

(5) To further extend deregulation can only enlarge the area for discriminatory practices.

We request corrective entry be made in Congressional Record withdrawing our support of this proposed transportation legislation, and the reasons therefor.

H. P. GIBSON, *Manager.*

CRYSTAL SPRING WATER COMPANY, INC.,
Miami, Fla., August 23, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: We are most interested in the successful passage of Senate bills 3242 (H.R. 11583) and 3243 (H.R. 11584). Senate bill 3242 (H.R. 11583) is designed to strengthen and improve the national transportation system and Senate bill 3243 (H.R. 11584) will exempt our rail carriers from minimum rate regulation of the Interstate Commerce Commission in the transportation of various commodities. It is our firm belief that such legislation will be beneficial to the national transportation system and of aid to industry in general.

Inasmuch as rail services and costs are so vital to our industry, we will greatly appreciate your vigorous support of these bills. Rail carriers should be given equal treatment with other carriers.

We further request that this letter be made a part of the record in support of both bills.

Sincerely yours,

PETER A. L. BRANCO.

JAYE MANUFACTURING, INC.,
Miami, Fla., August 23, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: We are most interested in the successful passage of Senate bills 3242 (H.R. 11583) and 3243 (H.R. 11584). Senate bill 3242 (H.R. 11583) is designed to strengthen and improve the national transportation system and Senate bill 3243 (H.R. 11584) will exempt our rail carriers from minimum rate regulation of the Interstate Commerce Commission in the transportation of various commodities. It is our firm belief that such legislation will be beneficial to the national transportation system and of aid to industry in general.

Inasmuch as rail services and costs are so vital to our industry, we will greatly appreciate your vigorous support of these bills. Rail carriers should be given equal treatment with other carriers.

We further request that this letter be made a part of the record in support of both bills.

Sincerely yours,

LLOYD JAYE.

CURTIS-KAPLAN, INC.,
Miami, Fla., August 24, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: For the first time in recent history there is now before Congress S. 3243 and H.R. 11583 (minimum rate bill) which bills will be a great step in the right direction to enable the rail industry to compete on a more equal basis for tonnage moving via exempt truckers and waterway operations.

Certainly this legislation will only give the rail industry the right the above people already have to compete for our transportation dollar We think it is only fair and just that they be able to compete without having both hands tied. Passage of this legislation will mean better service and lower rates that will benefit the consumers of our country. We urge you to vote yes for its passage. We also request that this letter be made a part of the record in support of these bills.

Sincerely yours,

HOMER W. CURTIS, *President,*
PHIL KAPLAN, *Vice President.*

GREEN BROS., INC.,
Miami, Fla., August 22, 1962.

Hon. DANTE FASCELL,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FASCELL: For the first time in recent history there is now before Congress S. 3243 and H.R. 11583 (minimum rate bill) which bills will be a great step in the right direction to enable the rail industry to compete on a more equal basis for tonnage moving via exempt truckers and waterway operations.

Certainly this legislation will only give the rail industry the right the above people already have to compete for our transportation dollar. We think it is only fair and just that they be able to compete without having both hands tied. Passage of this legislation will mean better service and lower rates that will benefit the consumers of our country. We urge you to vote yes for its passage. We also request that this letter be made a part of the record in support of these bills.

Sincerely yours,

MORRIS GREEN.

SOUTHWESTERN SHIPPERS ASSOCIATION, INC.,
San Antonio, Tex., August 28, 1962.

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

DEAR SIR: It is my understanding that you are actively engaged with House bill 11583, and that if this bill is passed it will exempt carriers from minimum rates applicable in the transportation of bulk commodities, agricultural and fishery products, as well as to enable the railroads to effectively compete rate-wise with other forms of transportation.

As a shippers association with approximately 250 members, I am heartily in agreement that the railroads should be given an equal opportunity to compete with other forms of transportation who are unregulated, and who now handle much of our country's traffic because of Government regulations that will not permit railroads to lower their rates to meet this competition.

I, therefore, enlist your aid to favor House bill 11583, and to make this letter a part of your official record.

Yours very truly,

CHARLES W. PAULI, *Manager.*

A. C. HIPP PRODUCE CO.,
Brownsville, Tex., August 31, 1962.

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

DEAR MR. HARRIS: We are particularly interested in House bill 11583, which will permit the railroads to make competitive rates to meet water and other forms of competition, particularly by allowing the railroads to reduce rates to meet their competition.

As a carload receiver of fruits and vegetables, doing a wholesale jobbing business, we believe this to be favorable legislation and am hopeful the bill will receive prompt and favorable action in the House of Representatives.

Trusting that you will let this request become a part of the official record, we beg to remain,

Respectfully yours,

A. C. HIPP, *Manager.*

NATIONAL SLAG ASSOCIATION,
Washington, D.C., August 29, 1962.

Re S. 3243 and H.R. 11583.

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

MY DEAR CONGRESSMAN: The National Slag Association is an organization of slag processors who are engaged in the business of processing and selling blast furnace slag as a mineral aggregate. Slag is a byproduct of ironmaking in the blast furnaces, and approximately 30 million tons are now sold each year, providing a value in the neighborhood of $50 million. Over 90 percent of this tonnage is represented by the association through its members.

Among the various objectives and activities of the association, a very important one is to serve its members on matters of transportation. Slag, as is the case with all aggregates such as crushed stone and gravel, is a bulk, low-cost commodity where transportation plays a most significant part in the successful operation for each of our member companies. Freight rates can often make the difference between fiscal success or failure, hence our activity in and concern with matters of all transportation—rail, truck, air, and water.

In this connection, we are currently concerned with provisions of S. 3243 and H. R. 11583, which would eliminate the power and authority of the Interstate Commerce Commission to fix minimum rate levels for the transportation of bulk commodities. For reasons outlined below, we endorse and support the provisions of this proposed legislation.

Under present law (the Interstate Commerce Act) barges and other water carriers are totally exempt from all rate regulation when engaged in the transportation of bulk commodities, but railroads and trucks are not so exempt. This unequal regulatory treatment places railroads and trucks at a disadvantage in their competition with water carriers for bulk traffic.

According to my undertsanding, under the present law as it is now written, water carriers are free to make whatever rates they please, without disclosure, for hauling bulk materials; but the rates of railroads and trucks for hauling such materials are strictly regulated by the Interstate Commerce Commission. They have to be filed and published, and cannot be changed except after time-consuming procedures. Even then rigid restrictions are imposed upon what the level of the rates should be and it is not uncommon for the Commission to substitute its judgment for that of the carriers as to what is a proper rate.

This operates, of course, to restrain competition between the different kinds of carriers—with the result that they are not able to realize the benefits of free competition. Far more important from our point of view, however, those who use transportation are deprived of the benefits of free competition, whereby the most favorable rates to shippers are forthcoming.

While S. 3243 and H.R. 11583 would not put competition between the water carriers on the one hand and the railroads and trucks on the other hand on an equal basis, nor would it provide the free market competition that many shippers would like to see in transportation, it would be a step in both directions; and consequently we favor it.

As drafted and introduced, however, the bill would call for the elimination, in the future, of the rate-bureau method of ratemaking in the case of rates for the transportation of bulk commodities. The rate-bureau method is the procedure now employed under the so-called Bulwinkle Act (sec. 5a of the Interstate Commerce Act). We, as shippers, believe that rate-bureau procedures are essential to the orderly conduct of the transportation business and to an orderly and nondiscriminatory rate structure. We urge, therefore, that the bill be so amended as to preserve the provisions of the Bulwinkle Act in order that the satisfactory present procedures for making rates may be maintained.

In support of the foregoing, I shall appreciate it if you will arrange to have this letter made a part of the record of the hearings now being conducted on S. 3243 and H.R. 11583.

Respectfully yours,

E. W. BAUMAN, *Managing Director.*

IMPERIAL SUGAR CO.,
Sugar Land, Tex., August 27, 1962.

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

DEAR SIR: Your committee is deliberating on H.R. 11583—the so-called minimum rate bill—and through journals of the traffic profession I note you have been given the benefit of the viewpoints of many learned people in the transportation field. It seems needless to point out that there is a wide divergence in some of these viewpoints, caused I suspect by sincere convictions in some cases and selfish interest in other cases.

I have been reasonably close to the transportation of commodities by public carriers for in excess of 30 years. I would like to present my viewpoint on one specific provision of H.R. 11583 and ask that it be made a part of your committee proceedings. The provision to which I refer is paragraph 23 (a) and (b) which is proposed to be added to section 1 of the Interstate Commerce Act (49 U.S.C. 1).

I am not seriously concerned with the provision insofar as it relates to the transportation of passengers. Academically, I believe the commuter problem is local to certain cities or areas and to certain carriers, therefore every avenue of solution through a joint effort of the officials of those cities or areas and the carriers directly affected should be exhausted before the problem is considered from the standpoint of national legislation. In the routine travels of people between cities, for reasons of business or pleasure, I am firmly convinced rail travel at any price will never have popular mass appeal so long as there is a choice between rail travel and the private automobile, over-the-highway buses, or the airlines. From that conviction I deduce that from the standpoint of transporting passengers in their routine travels between cities, passenger trains are unessential and the attitude of the traveling public in general toward them is apathetic except as a matter of convenience on a standby basis. This then would leave for consideration the need of passenger trains from the standpoint of national defense and the requirements of the Post Office Department. I do not have sufficient knowledge of the needs of either of these to express an opinion, however cursory observation would indicate that while a great deal of transportation for the Post Office Department is still being performed on passenger trains, means other than passenger trains are being employed by it in increasing degree.

With respect to the transporting of commodities I am seriously concerned. In 1887 the Congress put some binding on the hands of the railroad giant, at that time the only existing transporter of consequence, to protect the public from harm at his hands. By subsequent legislative steps these binds have been adjusted, sometimes being loosened a little, at other times being tightened a little. Also as other transporters have appeared on the horizon they too have had binding applied, but in varying degrees. To some degree the original purpose of regulatory legislation, that is to protect the public interest, has been subordinated, and the existing legislation used to a large extent amongst the carriers themselves to maintain competitive advantages or disadvantages according to the vantage point from which is viewed.

Bringing this up to the present time, we have a paradox under the American concept of fair play and equal opportunity, in that transportation of commodities falling in the category of the so-called agricultural and fishery exemption has been left completely free of economic regulation by the Interstate Commerce Commission, except when such transportation is performed by a carrier by rail. In addition, all commodities in bulk, when being transported on inland water carriers can be easily removed from economic regulation of the Interstate Commerce Commission as and when it is desirable to do so by the water operator. There exists no such versatility for the choice of managerial discretion for the common-carrier truck operator or the rail carriers.

By association and other means I know there are those who will argue the rail carriers have served their purpose; have become obsolete in modern times and are doomed to go the way of the covered wagons and the stagecoaches. I can't say with certainty these people are wrong; but I can say with all conviction that until such time they are proved right without any trace of equivocation, we cannot afford to risk their being wrong. It would be almost an impossible task to re-create the rail system that we now have once it has been allowed to deteriorate to the critical point.

Also by association and other means I know there are those who think that any economic regulation of public carriers is outdated and unnecessary; that all regulatory legislation should be repealed outright, and the carriers allowed to operate as does the corner grocery. My thought in that respect is that public carriers are managed by ordinary people with the same human traits as most of us. Among them in all probability there will be some who will take advantage of an opportunity to show greed, questionable practices, or sincere erroneous judgment, any one of which could have serious consequence on the established patterns of commerce. Certainly no informed person would want to create the possibility that we might revert to the granger era of the public carriers.

Nevertheless, it has been obvious for some time that something must be done because we are building up to a dilemma in the transportation business. This has been the common conclusion reached in several studies made by independent groups at different times within the past few years, and it is improbable that all of these lack the attributes of being studious, competent, and impartial.

The passage of H.R. 11583 and the incorporation of paragraphs 23 (a) and (b) to section 1 of the Interstate Commerce Act (49 U.S.C. 1) just as it is proposed would amount to the unbinding of several fingers of the transportation giant. The wisdom with which he exercised his newly given freedom would be an invaluable guide for our future actions in granting additional freedom. In the interim the public interest would remain amply protected under other provisions of the Interstate Commerce Act, augmented by the watchful eye of the Justice Department as would be provided in paragraph 23(b).

I sincerely hope my views will assist you and the members of your committee to arrive at a wise and objective report on this bill.

Yours very truly,

E. O. WOOD, *Traffic Manager.*

DAVID WITHERSPOON, INC.,
Knoxville, Tenn., August 9, 1962.

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

DEAR MR. HARRIS: As a shipper, I want to urge prompt action by your committee on H.R. 11583. It will equalize competition among common carriers by extending to all of them the same exemptions from minimum rate regulations on bulk commodities, agricultural and fishery products, and passengers which some of them now enjoy.

This is a step in the direction advocated by the President's transportation message of April 5, 1962. It is needed to check the alarming decline in common carrier transportation. Also, I believe the public would benefit immensely from lower rates which the carriers are willing to offer.

It is requested that this letter be made a part of your hearing record.

Sincerely yours,

DAVID WITHERSPOON.

C. W. MARVIN CO.,
San Antonio, Tex., August 22, 1962.

Hon. OREN HARRIS,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE HARRIS: You are to be commended for your interest in the transportation industry and for your introduction of H.R. 11583, which, in our opinion, will do much to strengthen the transportation industry throughout the United States.

Our prime carriers of agricultural traffic, as you know, are motor and rail carriers. We feel our best interests can be served when both carriers have the same freedom and restrictions in determining proper rates to be paid by us in movement of our products. We, who deepnd on the transportation industry as an integral part of our business, definitely feel we should have a free and competitive system whereby all modes of transportation may competitively participate in the moving of our traffic. This, we feel, will give us better rates, thereby in some cases permitting a saving to be passed on to the ultimate consumer.

We, therefore, sincerely hope that you and your committee will take action on the above-mentioned bill and report it out favorably during this session of Congress.

I will appreciate your making this letter a part of your committe proceedings in order that all concerned might know of the views of some of the agricultural users of various modes of transportation.

Yours very truly,

C. W. MARVIN.

OZAN LUMBER CO.,
Prescott, Ark., August 20, 1962.

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

DEAR OREN: As a substantial user of rail transportation, we would like to go on record as favoring bills S. 3243 and H.R. 11583, which will give all carriers, including the railroads, exemption from regulatory control of minimum rates on agricultural and bulk commodities.

It is our opinion these bills will help eliminate at least one of the many handicaps with which the railroad industry has been saddled for a number of years. While the passage of these bills will not directly benefit Ozan Lumber Co., they will help the railroads in their fight to compete, and greatly strengthen their position as common carriers.

I trust you will find it consistent with your viewpoint to support this legislation.

Sincerely,

J. R. BEMIS.

BROWNWOOD CHAMBER OF COMMERCE,
Brownwood, Tex., August 15, 1962.

Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

MY DEAR REPRESENTATIVE HARRIS: I am pleased to enclose herewith copy of resolution adopted by the Brownwood Chamber of Commerce of the City of Brownwood, Tex., on August 13, 1962, which favors the enactment into law of S. 3243, H.R. 11583, S. 3242, and H.R. 11584.

We should be pleased if you would let the record reflect that our organization is in favor of this legislation and we shall appreciate anything that you might do in behalf of this legislation.

With renewed assurances of our very great esteem and with every best wish, I remain,

Very truly yours,

J. EDWARD JOHNSON, *President.*

RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE BROWNWOOD CHAMBER OF COMMERCE ON AUGUST 13, 1962

It is our understanding that the present laws governing rates in interstate commerce contain limitations that do not permit railroads to compete upon a fair basis with other forms of interstate transportation.

It is our conviction that if a carrier can profitably transport certain items in interstate commerce at a lower rate than some other form of transportation, that said carrier, though a railroad, should be allowed to make such a rate which would be beneficial to the shipper and in turn beneficial to the consumer.

It is also our understanding that S. 3243 and its counterpart H.R. 11583 and S. 3242 and its counterpart H.R. 11584 will remove some inequities now existing that limit the ability of the railroads to compete fairly in interstate commerce.

We believe that these bills should be enacted into law so as to enable all carriers to compete fairly with each other and in such a manner that the shippers and the consumer will best be served: Now, therefore, be it

Resolved, That the Brownwood Chamber of Commerce of the city of Brownwood, Tex., acting by and through its board of directors, on the 13th day of August 1962, does by these presents hereby endorse and favor the enactment of S. 3243, H.R. 11583, S. 3242, and H.R. 11584 into law; and be it further

Resolved, That the president furnish a copy of this resolution to Senators Warren G. Magnuson, John G. Tower, and Ralph W. Yarborough, and Congressmen Oren Harris and O. C. Fisher.

J. EDWARD JOHNSON,
President, Brownwood Chamber of Commerce.

HOLLYWOOD TILE & TERRAZZO CO.,
Hollywood, Fla., August 8, 1962.

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

DEAR MR. HARRIS: We are interested in the successful passage of Senate bills 3242 and 3243 and their House bill counterparts 11583 and 11584 and urge that you give your full support to these bills.

Since these bills, if passed, will improve the national transportation system and exempt our rail carriers from minimum rate regulation of the Interstate Commerce Committee, industry in general will most certainly be benefited.

We also request that this letter be made a part of the record in support of both bills.

Very truly yours,

CAESAR LAVARATO,
President.

THE HANKINS CONTAINER CO.,
DIVISION OF THE FLINTKOTE CO.,
Little Rock, Ark, August 10, 1962.

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

DEAR CONGRESSMAN HARRIS: I would like this letter to serve as a request that you support bill H.R. 11583, and that this letter be made a part of the official record in the proceedings of the bill.

Thank you for your support.

Very truly yours,

A. D. TUCK, *Manager.*

DES MOINES STEEL CO.,
Des Moines, Iowa, August 10, 1962.

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

DEAR SIR: Will you please accept this letter as my endorsement of the vital transportation legislation as embodied in bill, H.R. 11583. It is the most forward-looking legislation that has occurred in the field of transportation in the last 20 years and the basis of the answers to many of our traffic problems of the future.

It is our desire that this endorsement be made a part of the official record of this legislation.

Yours truly,

A. L. SAUER,
Traffic Manager.
ROY C. LAWSON,
Assistant Traffic Manager.

CONSUMERS CONSOLIDATED COAL CO.,
Des Moines, Iowa, August 8, 1962.

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

DEAR REPRESENTATIVE HARRIS: We would like to strongly urge your support of H.R. 11583 which we feel would aid and strengthen the American transportation industry which is a most vital part of our economy.

We are shippers of hundreds of cars of coal a year and this makes us most interested in things benefiting the railroads and thereby benefiting American industry in general.

We would appreciate your making this letter a part of the official record.

Respectfully yours,

R. N. CARNEY, *Vice President.*

J&L FEED & SUPPLY,
Dania, Fla., August 8, 1962.

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

DEAR MR. HARRIS: We are most interested in the successful passage of Senate bills 3242 and 3243 and their House bill counterparts, 11583 and 11584, designed to improve the national transportation system and exempt our rail carriers from minimum rate regulation of the Interstate Commerce Committee.

We respectfully request that you give your full support to these bills, since they will strengthen the national transportation system as well as aid industry in general.

We request that this letter be made a part of the record in support of both bills.

Very truly yours,

WALTER B. JOH.

ALLEN'S, INC.,
Wichita, Kans., August 8, 1962.

Senator WARREN G. MAGNUSON,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

Hon. OREN HARRIS,
Chairman, Senate Committee on Commerce,
Washington, D.C.

GENTLEMEN: We are very much interested in seeing Senate bill S. 3243 and H.R. 11583, railroad minimum rate bill, enacted into law.

We are a shipper of bulk commodities and we do not believe that the Interstate Commerce Commission should have authority to condemn railroads' rates on the grounds that they are, in the ICC's judgment, lower than they should be. This decision should rest with the railroads. We feel that the present conference method of ratemaking, as provided in section 5A of the Interstate Commerce Act should be retained. The railroads will still be required to file their tariffs with 30-day advance notice of rate changes.

The railroads are in need of help and we feel that these bills are a step in the right direction. We urge their approval and ask that this letter be made a part of the official record.

Sincerely,

H. D. RITCHIE, *President.*

THE JOPLIN FOUR STATES SUPPLY CO.,
Joplin, Mo., August 6, 1962.

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

DEAR SIR: This has reference to House bill H.R. 11583 now pending in Congress.

It is our thought that the railroads of today are handicapped in their competition with other forms of transportation and we would appreciate your support of this bill.

Will appreciate you seeing that this letter is made a part of the official record.

Yours truly,

ELDON L. MAPHIES.

CHICKERING CEMENT CO.,
Joplin, Mo., August 7, 1962.

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

DEAR SIR: We would appreciate your support of House bill H.R. 11583 now pending in Congress.

It is our firm belief the railroads today are severely handicapped in their competition with other forms of transportation and your support of this bill will be greatly appreciated.

Yours truly,

CHESTER CHICKERING, *President.*

P.S.—Respectfully request that this letter be made a part of the official record.

GARVEY GRAIN, INC.,
Wichita, Kans., August 7, 1962.

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

DEAR SIR: Referring to Senate bill S. 3243 and House bill H.R. 11583 generally known as the minimum rate bill.

We are very much interested in this legislation as it relates to agricultural products and feel it should be passed in order to give the railroads equal opportunity to compete for this business in a free enterprise system.

We are large handlers of wheat and milo and feel the railroads should be freed from minimum rate regulations on agricultural products.

We will appreciate your making this letter a part of the official record.

Your very truly,

J. H. JOHNTZ.

FUNK MFG. CO.,
Coffeyville, Kans., August 7, 1962.

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

DEAR SIR: We feel railroads should have the opportunity of being competitive and ask your support of the above minimum rate bill to permit railroads to compete for more transportation of movements of exempted commodities.

I would appreciate your making this letter a part of the official record.

Very truly yours,

N. F. HOWARD,
Secretary and Treasurer.

THE WALT KEELER CO., INC.,
Wichita, Kans., August 6, 1962.

Re S. 3242, S. 3243, H.R. 11583, and H.R. 11584.

Hon. OREN HARRIS,
House Office Building,
Washington, D.C.

DEAR MR. HARRIS: We think the above numbered transportation bills merit your favorable consideration.

Our firm uses both rail and truck transportation but we think both should have equality under Federal laws which the railroads presently do not have.

Railroads are essential to the Nation's welfare and should be strong and financially sound and under private ownership so as to best serve the Nation's transportation needs.

We respectfully urge your support of these bills and request this letter be made a part of the record.

Respectfully yours,

WALT KEELER, *President.*

MEREDITH PRINTING,
DIVISION OF MEREDITH PUBLISHING CO.,
Des Moines, Iowa, August 6, 1962.

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

DEAR SIR: On May 3, two identical bills, S. 3243 and H.R. 11583, were submitted to Congress to implement the recommendations set forth in President Kennedy's transportation message to Congress on April 3.

Passage of these minimum rate bills will provide more equal competition in transportation and will be to the benefit of the general public as well. Likewise, the railroads will be given reasonably the same freedom to price certain services competitively that other modes of transportation already have. If we are to enjoy a strong and efficient transportation system, it is imperative that all forms of transportation be given equal and impartial treatment. These measures, to some extent, will assist in accomplishing this.

I strongly urge you to vote favorably for this legislation. Please make this letter a part of the official record.

Yours very truly,

W. E. RITCHIE, *Traffic Manager.*

(Whereupon, at 3:15 p.m., the committee was adjourned, subject to the call of the Chair.)

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