REGULATION OF FREIGHT FORWARDERS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 3509

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

AUGUST 27, 1962

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REGULATION OF FREIGHT FORWARDERS

MONDAY, AUGUST 27, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 2:35 p.m., in room 5110, New Senate Office Building, Hon. Hugh Scott presiding.

Senator SCOTT. In our hearing this afternoon we will take up S. 3509, a bill introduced by Chairman Magnuson at the request of the Interstate Commerce Commission and designed to clarify provisions in part IV of the Interstate Commerce Act.

This measure would amend, in particular, those sections relating to ownership, control, and operation of freight forwarders in common with carriers of other modes.

Hearings on this bill have been concluded on the House side, and the measure has been reported by the House Interstate and Foreign Commerce Committee.

(S. 3509 follows:)

[S. 3509, 87th Cong., 2d sess.]

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

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

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

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

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

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

Staff counsel assigned to this hearing: Gerald B. Grinstein.

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

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

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

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

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

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

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

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

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

Senator SCOTT. The first witness will be the Chairman of the Interstate Commerce Commission, Mr. Rupert L. Murphy. Would you go right ahead and proceed, Mr. Murphy. We have your statement.

STATEMENT OF RUPERT L. MURPHY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY COMMISSIONER ABE McGREGOR GOFF; LEE NOWELL, DIRECTOR, BUREAU OF WATER CARRIERS AND FREIGHT FORWARDERS; IRVING J. RALEY, ASSISTANT DIRECTOR, BUREAU OF FINANCE; AND DALE W. HARDIN, CONGRESSIONAL LIAISON OFFICER

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Rupert L. Murphy. I am the present Chairman of the Interstate Commerce Commission and have served in that capacity since January 1 of this year. I am appearing today to testify on the Commission's behalf on S. 3509, which was introduced at our request to give effect to legislative recommendation No. 5 in our 75th annual report.

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

S. 3509 proposes to clarify certain provisions of part IV, and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

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

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

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

A recent proceeding aptly illustrates the difficulty, if not the impossibility, of reconciling and giving meaning to the language in the various sections in part IV respecting common control of common carriers and freight forwarders. In MC–F–7096, *Calore Express Co., Inc. (R. I. Corp.)—Control and Merger—Calore Express Co., Inc. (Mass. Corp.)* (decided May 29, 1961), a person controlling a motor carrier later acquired control of a freight forwarder through ownership of its stock. Subsequently, the motor carrier acquired control of another motor carrier and an application for authority to merge the two motor carriers was filed under section 5 of the act. Since section 411(g) states that nothing in the act shall be construed to make it unlawful for any motor carrier subject to part II, or any person controlling such a common carrier, to acquire control of a freight forwarder, the person's acquisition of the freight forwarder was lawful. However, when the first motor carrier acquired control of the second motor carrier, a question arose as to what provision in part IV should be controlling: (1) The prohibition in section 411(a) against a freight forwarder or any person controlling a freight forwarder acquiring control of a motor carrier, (2) the exception in section 411(a) permitting a motor carrier subject to part II to acquire control

of another motor carrier subject to part II, (3) or the provision in section 411(g) that I have just mentioned.

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

S. 3509 would remove uncertainty and confusion about the meaning of the language in question by amending section 5 so as to place thereunder all acquisitions of control, mergers, consolidations, or unifications involving freight forwarders. I wish to point out, in this connection, that approval under section 5 is not now required for a common carrier subject to parts I, II, or III, or any person controlling such a common carrier, to acquire control of a freight forwarder. The number of freight forwarders is so small that the increase in section 5 proceedings would be insignificant compared to the benefits to be derived from clarification.

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

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

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

Subsection (g) of section 410 would be changed by the addition of the following phrase at the beginning of that subsection: "Except as provided in section 5 of this act,". This language would preserve the existing law respecting transfers of freight forwarder permits in transactions which will not be subject to the provisions of amended

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

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

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

The Commission believes that S. 3509 would accomplish a much needed clarification of part IV of the Interstate Commerce Act and recommends its enactment.

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

Senator SCOTT. Mr. Chairman, as I understand it, S. 3509 simply applies the same regulatory controls to acquisitions involving freight forwarders as already apply in the case of other regulated carriers.

Mr. MURPHY. That is correct.

Senator SCOTT. Is the Commission unanimously in favor of this bill?

Mr. MURPHY. Yes, sir. I might say that one was absent. The other 10 are in favor of it.

Senator SCOTT. Is it your opinion that the bill has adequate safeguards so that the Commission could properly and adequately protect the public interest and the interest of the various carriers in its administration?

Mr. MURPHY. Yes, sir; we feel so.

Senator SCOTT. Would this bill change in any way the present law as it applies to acquisitions as between other carriers? In other words, would it make it easier for a railroad to acquire a motor carrier?

Mr. MURPHY. No, sir; I would not construe it as relinquishing any of the requirements that you would have to observe at the present time.

Senator SCOTT. Thank you.

Mr. GRINSTEIN. Mr. Chairman, the Department of Justice has written a letter to Senator Magnuson, dated August 27, today, opposing this bill. Have you had an opportunity to see it? I believe it is identical to a letter that was submitted to the House Interstate and Foreign Commerce Committee.

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Mr. MURPHY. I had an opportunity to look at the letter this morning just before the chairman adjourned. I think I can answer any questions that you might have in connection with it.

(The letter above referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 27, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill (S. 3509) to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

Section 5 of the Interstate Commerce Act, as amended (49 U.S.C. 5), provides for unifications and mergers of common carriers or the acquisition of control by one carrier of another carrier, subject to the approval and authorization of the Interstate Commerce Commission. However, section 5 does not include freight forwarders within its scope. Also, section 411 of the act (49 U.S.C. 1011) prohibits a freight forwarder from acquiring control of a carrier.

The bill would amend the act by deleting the prohibition in section 411 with respect to acquisitions of carriers by freight forwarders and by amending section 5 to provide for such acquisitions on approval and authorization of the Commission.

In its justification accompanying the submission of this legislation to the Congress, the Interstate Commerce Commission points out that the act now prohibits a freight forwarder from acquiring control of a common carrier but does not prohibit a common carrier from acquiring control of a freight forwarder. Nor does the act prohibit a common carrier from acquiring control of another common carrier even though the acquiring carrier may control a freight forwarder. The Commission states that the bill would remove the uncertainty and confusion now existing and place under section 5 all acquisitions of control, mergers, consolidations, or unifications involving freight forwarders. The Commission indicates that the "opportunity to engage in objectionable practices * * * is a product of the common control of a carrier and a forwarder."

At the present time the lawfulness of transactions involving unifications or acquisitions of control of freight forwarders is governed by the standards applicable under the antitrust laws, particularly section 7 of the Clayton Act. Under such standards business managements enjoy freedom to make decisions and to carry them out subject only to challenge in the event they substantially lessen competition or tend to create a monopoly. The effect of the bill would be to bring acquisitions and mergers involving freight forwarders within the regulatory supervision of the Interstate Commerce Commission. It is our view that this would be contrary to the policy enunciated by the President in his transportation message of April 5, 1962, in which he called for "greater reliance on the forces of competition and less reliance on the restraints of regulation."

There is one provision of the bill which is deemed particularly objectionable. Paragraph (3) of section 1 would provide that "Any such transaction or control or management in a common interest involving a freight forwarder * * * which was lawfully accomplished or effectuated prior to the effective date of the amendment * * * shall not be deemed a violation of the provisions of this paragraph." Although the bill makes no reference to antitrust aspects of existing common control relationships involving freight forwarders, it could be contended that, since the measure would transfer jurisdiction over such relationships to the Commission, it would be anomalous to test consummated acquisitions or mergers under a statutory scheme which the Congress has rejected in favor of regulation by the Commission. To avoid the possibility of such a contention, it is believed that the bill should make clear that it is not intended to render existing control relationships immune from investigation concerning possible anticompetitive aspects.

It is the view of this Department that if any further legislation concerning the relationships between freight forwarders and carriers is to be enacted, it should be legislation which would prohibit control of one by the other so as to

insure arm's-length dealing between firms in the respective categories. This would tend to insure that freight forwarders would commit shipments which they control to carriers on the competitive basis of rates and service rather than on the basis of corporate ties or control relationships.

In the light of the foregoing considerations, the Department of Justice is oppposed to the enactment of the bill.

In view of the urgency of submitting a report on this bill within the time available, it has not been possible to obtain the advice of the Bureau of the Budget as to whether there would be any objection to the submission of this report.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Senator SCOTT. Perhaps you could submit written comments on these letters, the first letter from the Department of Justice to the chairman of the House committee and the subsequent letter to the chairman of this committee. We will be glad to have you submit written comments, but we would appreciate your comments now if you are prepared to make references to these letters, or either of them.

Mr. MURPHY. Mr. Chairman, perhaps it might be better for the record if I submitted a written response. Thereby the entire Commission could pass on the response, whereas I would have to give my personal opinion, which I am willing to do here, but I think for the record perhaps it would be better if we responded in writing.

Senator SCOTT. Whatever way you wish to proceed, Mr. Chairman.

Mr. MURPHY. It is entirely up to you.

Senator SCOTT. We will take your suggestion and be glad to have your comments in writing. There may be some other questions, however, from counsel.

(Mr. Murphy subsequently furnished the following letter for the record:)

INTERSTATE COMMERCE COMMISSION,
Washington, September 10, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: This is in response to the request by Senator Scott during the recent hearings on S. 3509 that the Commission comment on the letter of the Department of Justice in opposition to S. 3509. The Department of Justice letter of August 27 has been considered by the Commission and I am authorized to submit the following comments in its behalf:

In his letter of August 27, 1962, Deputy Attorney General Nicholas deB. Katzenbach stated the opposition of the Department of Justice to enactment of S. 3509, a bill to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

From the proposal to place such transactions under section 5, the Department has apparently drawn erroneous conclusions; viz, that no such transactions are now subject to the jurisdiction of the Commission, and that the standards under the antiturst laws, particularly section 7 of the Clayton Act, govern.

On the contrary, mergers of or with freight forwarders are regulated under section 410(g) of the act and are exempt from the Clayton Act by the last paragraph of section 7. Only certain transactions are to be placed under section 5. Others would continue under section 410(g). Acquisitions of control of forwarders by persons other than those subject to section 5 would remain outside the regulatory supervision of the Commission.

The Department also expresses concern that a contention might be made that control relationships existing prior to enactment of the bill are immune from investigation concerning possible anticompetitive aspects. Section 5 has been broadened several times without such contention being made. However, while

we do not consider it necessary, we have no objection to the existing pertinent legislation (49 U.S.C. 5a) being updated as follows (new matter in italic):

"The provisions of this chapter and of all other applicable Federal statutes, as in force prior to June 16, 1933, *or the date of enactment of amendatory section 5 with respect to freight forwarders*, shall remain in force, as though sections 5, 15a, 15b, and 19a of this title had not been enacted, with respect to the acquisition by any carrier, prior to June 16, 1933, *or the date of enactment of amendatory section 5 with respect to freight forwarders*, of the control of any other carrier or carriers."

Regarding the Department's conclusion that if any legislation is to be enacted it should be legislation prohibiting common control of carriers and forwarders, so as to "insure arm's length dealing" and "tend to insure that freight forwarders would commit shipments which they control to carriers on the competitive basis of rates and service rather than on the basis of corporate ties or control relationships."

Part IV contains safeguards, particularly section 404(c), to insure against possible abuses or discriminations as between carrier-controlled forwarders, on the one hand, and, on the other, forwarders not so controlled. As to discriminations by forwarders, and prejudice and disadvantage to the traffic of carriers not controlled by forwarders (if forwarder control of carriers be permitted), no carrier can raise issues against forwarders under section 404(b), or against other carriers, under section 3(1), 216(d), or 305(c).

Incidentally, in its "justification" accompanying the submission of this legislation to the Congress, the Commission did not indicate, as implied by the Department, that objectionable practices exist as result of carrier control of forwarders. The sentence quoted in part by the Department read in its entirety: "If opportunity to engage in objectionable practices exists, it seems clear that it is a product of the common control of a carrier and a forwarder rather than the form whereby such common control is accomplished."

Sincerely,

(S) Rupert L. Murphy,
RUPERT L. MURPHY, *Chairman.*

Mr. GRINSTEIN. Mr. Chairman, would this bill allow a freight forwarder to acquire control of another mode of transportation?

Mr. MURPHY. Yes, if they made application under section 5 of the act.

Mr. GRINSTEIN. Concern was expressed to this committee that this would be a start on the road to common ownership, a fear of certain modes of transportation. Would you have any comment on that? Would this be in your judgment a step toward common ownership?

Mr. MURPHY. No, sir, I do not agree with that thought, other than any more so than you have today in proceedings for ownership unification under section 5.

Mr. GRINSTEIN. Well, for example, there is a prohibition in the act against a railroad acquiring a water carrier—the Panama Canal Act. Would this bill authorize a railroad to acquire a freight forwarder who would in turn acquire a water carrier?

Mr. MURPHY. No, sir. I think section 5(14) of the act would control it, and that would not be true.

Mr. GRINSTEIN. Would anything in this bill deny the right of one freight forwarder to acquire another freight forwarder?

Mr. MURPHY. No, sir.

Mr. GRINSTEIN. So that freight forwarders could acquire forwarders?

Mr. MURPHY. It would be subject to Commission approval.

Mr. GRINSTEIN. Then this would be a change. Previously it was not necessary to have Commission approval.

Mr. MURPHY. That is correct.

Mr. GRINSTEIN. Now they would require Commission approval for one freight forwarder to acquire another one?

Mr. MURPHY. It would require Commission approval. In my opinion that would be in the public interest.

Mr. GRINSTEIN. And all acquisitions involving a freight forwarder, either a freight forwarder acquiring another mode of transportation or another mode of transportation acquiring a freight forwarder, would have to be subject to the Commission's approval?

Mr. MURPHY. That is correct; yes, sir. You would have there an equality of treatment across the board as to acquisition, merger, and consolidation.

Mr. GRINSTEIN. Mr. Chairman, we have a telegram and letter in opposition to S. 3509. The letter is from the Railway Labor Executives' Association. In it they state, and I am reading from the letter:

> To permit freight forwarders to acquire control of other common carriers would open the door to destructive practices with respect to routing, rates, and charges and would encourage discriminatory practices which would be contrary to the public interest.

Would you have any comment to make on that?

Mr. MURPHY. Mr. Grinstein, without being able to pinpoint the response, my answer would be that in such an application the Commission would have authority and I think would have a duty to approve the application, subject to certain conditions and requirements, which could very easily include such provisions as would prohibit or eliminate the possibility of such practices being developed; that is, to the point where they could be considered detrimental to the public interest.

Mr. GRINSTEIN. In other words, prior to approving them you would seek to determine whether such practices would be encouraged by the acquisition or merger?

Mr. MURPHY. That would be one of the things to consider; yes, sir.

(The letter and telegram above referred to follow:)

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., August 27, 1962.

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

MY DEAR MR. MAGNUSON: The Railway Labor Executives' Association desires to be recorded as being vigorously opposed to S. 3509, a bill to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

We submit that enactment of this proposed legislation would produce unsound transportation policy in that it would permit the control of common carriers by shippers (freight forwarders are shippers) and would lead to further concentrations of financial power to the detriment of the general public.

To permit freight forwarders to acquire control of other common carriers would open the door to destructive practices with respect to routing, rates, and charges and would encourage discriminatory practices which would be contrary to the public interest.

We respectfully request that the chairman of the hearing being held today read our letter into the record.

Very truly yours,

DONALD S. BEATTIE,
Executive Secretary.

NEW YORK, N.Y., *August 24, 1962.*

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.:

The Inland Waterways Common Carriers Association, leading barge lines operating on the Mississippi-Ohio River system and tributary waterways, is strongly opposed to S. 3509, a bill to permit freight forwarders to own, operate, and acquire water carriers. The regulated barge lines strongly oppose any attempt to weaken the historical safeguards concerning common ownership. Will you please make this communication a part of the printed transcript on this bill?

J. W. HERSHEY,
President, Inland Waterways Common Carriers Association.

Mr. GRINSTEIN. A freight forwarder is regulated, is he not?

Mr. MURPHY. Yes, sir.

Mr. GRINSTEIN. So that possibly through regulation you would be able to control some of it?

Mr. MURPHY. If you made it a condition of the merger or what other type of change the application called for, you could make it subject to certain conditions, and then you would have supervision over each activity, to guard against developments of that type.

Mr. GRINSTEIN. Could one of the conditions be one calling for a period of supervision by the Interstate Commerce Commission?

Mr. MURPHY. Well, I would say there is continuous supervision as it is. It would be just a matter of checking and seeing that the conditions prescribed would be observed by the applicant.

Mr. GRINSTEIN. Is it possible for the Commission to conditionally allow a control agreement or consolidation and subsequently order divestiture if it should prove that it was injurious to transportation?

Mr. MURPHY. I think the Commission would have to continue the proceeding, hold it open for that purpose.

Mr. Grinstein, I mentioned the possibility of holding the proceedings open. That would not be the practical way to get at the situation, but the Commission could on its own motion or on complaint reopen the proceedings to determine if the conditions had been violated, and from that could take the necessary action to correct the situation.

Mr. GRINSTEIN. I was advised that in 1956 the Commission opposed similar legislation. What would be the circumstances of the change of view?

Mr. MURPHY. The proposal at that time was not complete. It was just a partial correction of the situation with which we are confronted. I am familiar with that, and it just did not cover the entire subject matter and would not, had it been enacted, given us the necessary relief that we are seeking in this bill. That accounts for our having opposed that, whereas today we are not. It was an entirely different bill.

Senator SCOTT. Commissioner, we have no further questions unless you have something to comment on.

Mr. MURPHY. I have no further comment, Mr. Chairman.

Senator SCOTT. Thank you very much.

Mr. Giles Morrow. Mr. Morrow, would you identify yourself and name your association.

STATEMENT OF GILES MORROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE

Mr. MORROW. Mr. Chairman, I have a prepared statement, and I think it will probably save time if I just read the statement.

Senator SCOTT. You are Mr. Giles Morrow?

Mr. MORROW. Yes, sir.

Senator SCOTT. General Counsel for the Freight Forwarders Institute?

Mr. MORROW. Yes, sir.

Senator SCOTT. You just proceed then.

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

The freight-forwarding industry, as represented by the Institute, unanimously endorses bill S. 3509, which comes before your committee under the sponsorship of the Interstate Commerce Commission. The bill was drafted by the Commission to carry into effect its Legislative Recommendation No. 5, contained in the 75th Annual Report of the Commission to Congress.

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

For completeness of the record, perhaps I should point out that freight forwarders are common carriers regulated under part IV of the Interstate Commerce Act, which was enacted in 1942. Part I of the act governs railroads, express companies, and certain other carriers; part II governs motor carriers, and part III governs water carriers. Freight forwarders may, and in many cases do, own and operate their own trucks for the pickup, transfer, and delivery of freight within the terminal areas of cities. They consolidate miscellaneous lots of freight for movement between key points and, like the express agency, employ the services of other carriers for the physical movement of the freight between such points. At the terminal cities the freight is deconsolidated and distributed to the consignees of the individual shipments.

The forwarding industry is relatively small, compared with the other modes. About 80 freight forwarders hold permits from the ICC to operate. In the year 1960 the combined revenues of forwarders reporting to the Commission amounted to approximately $437 million. This may be contrasted with gross revenues of $7.2 billion reported by motor carriers and $9.9 billion by railroads. There should be no fear that, if accorded equal treatment in the matter of acquisitions, freight forwarders may monopolize any form

of transportation, even if the regulatory agency should abdicate its duty.

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

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

Section 5 of the act, which the bill would make applicable to forwarders, was adopted in its present form in 1940. It already applies to rail, motor, water, express, and sleeping-car companies. One of the cardinal requirements of the section is that in approving any transaction proposed under its terms the Commission must consider the effect upon adequate transportation service to the public. If section 5 represents wise public policy as applied to other carriers, it is only just and reasonable that the section be applied to acquisitions which involve freight forwarders.

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

Paragraph (a) of section 411 makes it unlawful for a freight forwarder, or any person controlling, controlled by, or under common control with, a forwarder, to acquire a part I, II, or III carrier. Paragraph (g) of the same section makes it lawful, without ICC approval, for a part I, II, or III carrier, or any person controlling such a carrier, to have or acquire control of a forwarder. The Commission is given no authority in either circumstance.

Thus, the present law does not condemn the ownership in a common interest of freight forwarders and other carriers; it is directed solely to the form by which common ownership is brought about. This not only unjustly discriminates against freight forwarders—it leads to results that are utterly ridiculous.

For example, an individual may acquire both a freight forwarder and a motor carrier, if he buys the motor carrier first. If he buys the forwarder first, then he may not thereafter acquire a motor carrier, even if the forwarder operates between New York and Chicago and the motor carrier he wishes to buy is in the Southwest. The result would be precisely the same, but the right to buy both properties would depend upon which contract was signed first.

In the illustration given, let us suppose that the individual involved did lawfully acquire both the motor carrier and the freight forwarder, by reason of having signed the contract to purchase the motor carrier first. He then wishes to purchase another motor carrier to round out his operations. Section 411(a) says that he may and section 411(g) says that he may not buy the second carrier. The Commission is left

on the horns of a dilemma to know which of the directly conflicting sections to apply.

At all events, it is perfectly lawful for the person used in the foregoing illustrations to maintain 100 percent control over and to operate both the forwarder and the motor carrier, if he acquired the latter first. But under the terms of section 411(c) he could not serve as a director, officer, employee, or agent of his wholly owned motor carrier.

Illustrations of the absurd, irrational, and inequitable results which flow from the existing law could be multiplied without end. Clarification is needed not only in the interest of good administration and rational law but in the interest of simple justice and fairplay.

The simple and only logical means of eliminating the confusion and inconsistency which characterize the existing situation is to add freight forwarders to the list of carriers already subject to the terms of section 5 of the act. Prior to 1940, section 5 applied only to railroads. In 1940 its coverage was expanded to embrace express companies, motor carriers, and water carriers. In 1949 sleeping-car companies were added to the list. This bill simply adds freight forwarders, and makes them subject to the rules, standards, and requirements that already are applicable to the other regulated carriers.

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

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

No one who favors regulation can logically oppose fair and equal regulation. If anyone should come before your committee and oppose this bill, I imagine you will want to find out whether he opposes the rules of the game which it establishes, or the anticipated application of the rules. If he opposes the anticipated application of the rules, then his forum is the Interstate Commerce Commission, which would have the responsibility of applying the rules equally to all carriers.

During the hearings on companion bill H.R. 12201 before the House Committee on Interstate and Foreign Commerce, certain objections to the bill were voiced and may be repeated here. The objections stemmed, basically, from the long discredited and congressionally rejected theory that a freight forwarder is a shipper. There is no point in laboring that question because it has been urged before this committee on many occasions in the past and has on each occasion been completely and emphatically rejected.

Freight forwarders pay the published tariff rates of railroads and, in some instances, of motor carriers, for the movement of consolidated lots of freight between their terminals. For that limited purpose they assume the legal status of a shipper. In the absence of a stautory authorization for some other arrangement—such as a division or a contract charge—any carrier sending freight over the lines of another carrier would assume the role of a shipper.

The trucking industry does, in fact, deal with freight forwarders largely on a contractual and not a published rate basis. Contracts between forwarders and motor carriers are authorized by section 409 of the act. When legislation authorizing these contractual arrangements was before Congress in 1950, it was opposed on the same grounds advanced in opposition to the pending bill, namely, that the forwarder is a shipper. This committee rejected that argument, stating, in report No. 1285, 81st Congress, dated February 24, 1950:

> But those who oppose the bill maintain that forwarders are shippers in relation to the carriers which they use, and should not, by statute, be given any different status. There is no basis for this contention. It is true that forwarders, as to some of their operations, pay the tariff rates of the carriers they use (primarily railroads). Unless authorized or required by statute to do otherwise any common carrier must use the services of another on that basis.

Of course even those who oppose the bill cannot, and do not, attempt to justify the present law which authorizes common control of forwarders and other carriers but grants the right of acquisition only to others and denies it to forwarders. But they do not come forward with suggested alternative legislation to cure the situation. And even though they may say to your committee that there should be a complete prohibition against acquisition where forwarders are involved, they will not agree that there should be a divestment by those carriers who now own forwarders.

Another argument advanced by motor carriers against the companion House bill was that they fear the railroads might, through subsidiary forwarders, acquire control of motor carriers. Any lawyer reading the statute will immediately see that this argument is completely without merit. Section 5(2)(b) which is not altered by this bill, contains a proviso reading as follows:

> *Provided,* That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

The foregoing imposes, and will continue to impose, the same restrictions on the subsidiaries of railroads as on the railroads themselves.

I might add at this point, Mr. Chairman, that Mr. Grinstein asked a question, I believe, as to whether this might alter the situation that exists with regard to railroads acquiring water carriers operating through the canal. What I have just said would be equally true in the case of water carriers. It would not change the situation. As a matter of fact, section 514 of the act, which is the basic part of the Panama Canal Act, is much stricter in its prohibitions against persons affiliated with railroads acquiring such water carriers than sec-

tion 5(2)(b) which I have just read. I will not take your time to read that section. This bill does not affect the existing situation regarding carrier acquisitions in any respect whatsoever other than to make acquisitions of forwarders or by forwarders subject to the requirements of section 5 of the act.

Two final things of note about S. 3509 should allay any fears regarding its probable effect and conclusively rebut any opposition arguments. One is that this is not a bill to authorize mergers, and the other is that it provides effective machinery to prevent preference, prejudice, or advantage resulting from the common control of farwarders and other carriers.

There could be no mergers of freight forwarder operations with those of other carriers because the first paragraph of the first section of the bill would make transactions involving freight forwarders subject to section 410 of the act. Section 410 flatly prohibits carriers subject to parts I, II, or III from conducting forwarder operations, and bars freight forwarders from conducting rail, motor, or water operations under their ICC permits. Thus, if a forwarder should be authorized to purchase a motor carrier, for example, the trucker would continue as a part II carrier, subject to all of the requirements of that part.

Section 2 of the bill is designed to prevent any possible discrimination or favoritism based on corporate ties as between forwarders and other carriers. It amends section 404(c) of the act to read as follows. I would like to especially emphasize this particular provision of the bill because I understand that some shipper interests who will appear here object to the bill on the grounds that it might permit favoritism and discrimination between forwarders and affiliated carriers. Now, this section I think will effectively prevent that. Reading from the law:

> It shall be unlawful for any common carrier subject to part I, II, or III of this Act to make, give, or cause any undue or unreasonable preference or advantage to any freight forwarder, whether or not such freight forwarder controls, is controlled by, or is under common control with such carrier, in any respect whatsoever; or to subject any freight forwarder whether or not such freight forwarder controls, is controlled by, or is under common control with such carrier, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

I might say, to interpolate again, that this would apply equally to the contracts which forwarders are authorized to make with motor carriers under section 409. It would prohibit any discrimination or favoritism based on corporate ties.

The Commission undoubtedly wrote these safeguards into the bill so that it will have unquestioned powers to prevent any possible abuses arising from the common ownership of forwarders and other carriers. They provide double insurance that if any transactions should ever be approved under the terms of this proposed law the public interest and the interest of the affected parties would be fully protected.

The House committee, in reporting H.R. 12201, adopted one amendment proposed by the institute, and we urge your committee also to accept the amendment. Section 3(1) of the bill proposes to delete certain language from section 410(c) of the act. Section 410(c) establishes the standards for granting permits. The second sentence

of that section reads as follows, the italic portion indicating matter which the bill would strike out:

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

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

We therefore suggest that subparagraph (1) of section 3 of the bill be eliminated, and that subparagraphs (2) and (3) be renumbered accordingly. As stated, this amendment already has been adopted by the House committee.

With the slight change I have suggested, we urge your committee to act promptly and favorably on this legislation. The bill is recommended by the Interstate Commerce Commission in the interest of clarification and sound administration. It would be an injustice to label this a bill to give freight forwarders the right to buy other carriers, even though it might have that effect. It also is a bill to give the ICC control over the purchase of forwarders by other carriers. It is a bill to equalize opportunity under the law. Its compelling necessity is the integrity of regulation.

That concludes my statement, Mr. Chairman. I thank you for the opportunity of presenting it.

Senator SCOTT. Thank you, Mr. Morrow.

How would service to the public be affected by these proposed amendments to existing law?

Mr. MORROW. It would be improved, in my estimation, because the Interstate Commerce Commission undoubtedly would not authorize any acquisitions if this law were in effect that it had not determined by careful inquiry would result in improved service to the public.

Senator SCOTT. The Department of Justice in a letter dated August 16, 1962, raised certain objections to the House committee, and in a letter I think dated August 27, 1962, raises what I believe are substantially similar objections before this committee. I do not know whether you have before you the second letter of August 27, 1962.

Mr. MORROW. I have before me the letter which the Department of Justice wrote to the House committee.

Senator SCOTT. Then if you would comment on the letter written to the House committeee, which I believe is substantially similar, will you tell us what you think of the objections raised by the Department of Justice?

Mr. MORROW. Well, in general, Mr. Chairman, I think the Department of Justice objects to mergers per se. I think their opposition to this bill is not in opposition so much to this particular piece of legis-

lation, which simply makes the rules governing acquisitions uniform. I think the whole tone of the letter indicates that the opposition of the Department of Justice is to mergers, per se. They do not suggest, however, that you reexamine section 5 in its application to other carriers.

I gave you the relative sizes of the industries involved. It seems to me rather difficult to sustain a position that it is going to have some bad effect to put mergers involving freight forwarders under the Interstate Commerce Act and at the same time not to urge that the vast mass of the transportation industry be relieved of that same opportunity.

Some of the specific provisions of the Justice Department's opposition are inconsistent and I think are inaccurate.

The Department of Justice says, for example, in the fourth paragraph of its letter, and I am quoting:

> The Commission indicates that the "opportunity to engage in objectionable practices is a product of the common control of a carrier and a forwarder.

That leaves the clear impression that the Commission thinks that there are opportunities for bad practices. The Commission did not say that at all. The full quote, which has been sort of misconstrued here by quoting out of context, is this. This is what the Commission actually said before the House and I think repeated here today:

> If opportunity to engage in objectionable practices exists, it seems clear that it is a product of the common control of a carrier and a forwarder rather than the form whereby such control is accomplished.

That is an entirely different story. The Commission did not say there would be bad practices. As a matter of fact, it said this was a bill to equalize opportunity and clarify the law and remove inequities.

I think the gist of what the Department says in opposition to this bill, however, is contained in the fifth paragraph, in which it says first that at the present time the lawfulness of transactions is governed by the antitrust laws. Well, of course, what the Department omits to say is that the acquisitions now work only one way. It is true they have some jurisdiction. They have jurisdiction over the acquisition of a forwarder by a motor carrier but a forwarder cannot buy a motor carrier at all, so they have only stated a half-truth there.

Then the Department goes on to say—and I would like to read this:

> Under such standards business managements enjoy freedom to make decisions and to carry them out subject only to challenge in the event they substantially lessen competition or tend to create a monopoly. The effect of the bill would be to bring acquisitions and mergers involving freight forwarders within the regulatory supervision of the Interstate Commerce Commission. It is our view that this would be contrary to the policy enunciated by the President in his transportation message of April 5, 1962, in which he called for greater reliance on the forces of competition and less reliance on the restraints of regulation.

I find it right difficult to square that with the Department's position that we ought to maintain status quo whereby forwarders are absolutely prohibited from buying any other carriers. I do not see how there is any freedom for business management to make decisions and carry them out when there is an absolute prohibition. There is just a complete inconsistency here. This says, as I read it, freedom of business management to make decisions and carry them out is a fine

thing if you wear a railway hat or motor carrier hat but not if you carry a freight forwarder hat. They do not explain why it is not good for forwarders.

In the sixth paragraph they make the highly technical, legalistic argument that this bill might in some way whitewash antitrust violations that have occurred prior to the passage of the law. Well, that would be in criminal law an ex post facto law. It certainly is not a valid point. Anything the Department of Justice has jurisdiction over up to the point when this law should be passed they would continue to have jurisdiction over.

The final point made by the Department of Justice is that if the Congress is going to take any further action in this area at all it ought to absolutely prohibit acquisitions either way, either carriers acquiring forwarders or the reverse, and it says:

> This would tend to insure that freight forwarders would commit shipments which they control to carriers on the competitive basis of rates and service rather than on the basis of corporate ties or control relationships.

There are several things wrong with that conclusion. The first one is a very practical thing. Freight forwarders are highly competitive among themselves. Any forwarder who would use a high-rated poor-service motor carrier, for example, because of some corporate ties, would not be in the picture very long. His competitors would take care of that. He would be eliminated by the laws of competition. He has got to find the cheapest and best way.

The second thing wrong with it is, as I pointed out in the course of my testimony, that any motor carrier that was related to a forwarder in a corporate way would have to deal with that forwarder under the antidiscrimination provision of this bill in exactly the same way he dealt with all other forwarders and all other parties. The forwarder would either use the published rates of that motor carrier which would be applicable to all shippers or he would use a contract rate, which under section 409 would have to be made available on the same terms to all other forwarders. So the premise is wrong, and this of course contradicts the first part of the statement which comes out in favor of freedom of business management to make decisions. This would close the door completely, as far as forwarders are concerned, on the flimsy excuse that there might be some tendency of the forwarder to use motor carriers or other carriers on the basis of corporate relationships rather than on the basis of economics and competition. So I think the objection is without substance.

Senator SCOTT. Mr. Morrow, if you wish we will include in the record if submitted any commentary you want to make on the second letter of August 27 as well, since I gather that letter has been received so recently that your comments seem to me to bear on the letter of August 16. If you wish to add further comment, it will be included in the record.

Counsel, do you have any questions?

Mr. GRINSTEIN. In the Justice Department's letter in paragraph 6, which you referred to, covering antitrust, the Department suggests that—

> to avoid the possibility of such a contention it is believed that the bill should make it clear that it is not intended to render existing controlled relationships immune from investigation concerning possible anticompetitive aspects.

Would the Freight Forwarders Institute have any objection to including such a provision?

Mr. MORROW. No; we do not have any objection to including what I think is so clearly already in the law. I would hope, Mr. Grinstein, that we do not get in this very much needed measure—that we do not lose it by getting bogged down in technicalities. But we would certainly be perfectly agreeable to any insurance being written into the law. That I think is already there.

Mr. GRINSTEIN. How would the freight forwarders be advantaged by having the ability to acquire a carrier subject to part I, part II, or part III of the act?

Mr. MORROW. Well, it is very difficult to say how they would be advantaged by an opportunity that we never have had. I assume that it would improve service.

The only area in which I could foresee an immediate practical beneficial effect might be in connection with service to areas surrounding cities outside of the terminal areas. We are permitted to perform our own pickup and delivery service with our own trucks, and we do to a substantial degree, but when we go beyond the corporate limits of a city or terminal area of a city we are required to use the services of a common carrier.

There is a great merger movement on in the trucking industry, as everyone knows. It is common knowledge, and many of the short-haul motor carriers who serve areas in the immediate vicinity of trade centers are being acquired and merged into the long-haul operations, and we find it quite difficult at times to render proper service to areas up to maybe 250, 300 miles from the cities because it is difficult to find a common carrier who is interested in handling our traffic at a reasonable charge.

I do not say that this is the only or even the immediate advantage that might flow from it, but certainly it is one as an illustration.

You can speculate endlessly about it. You could point out that the Express Agency has always had this right to own motor carriers and owns hundreds of them, and perhaps would not be able to render the kind of service it does without that right.

I think now is the time to remove the discrimination and let us see what practical benefits we are going to get out of this, with the Commission carefully supervising the thing and taking a look at all transactions.

Mr. GRINSTEIN. Even with the contract authority in section 409, you have not been able to get satisfactory service to those areas beyond the terminal area which you would like to serve.

Mr. MORROW. In many cases we have not. A common carrier coming from Richmond going to New York might not be interested under any circumstances in stopping at Alexandria to pick up a shipment. His truck might be full; he might not want to send the equipment for it or many other reasons.

Mr. GRINSTEIN. Do you think a freight forwarder might be able to acquire a motor carrier, for example, and then get those rates which would enable it to serve an area beyond the terminal areas?

Mr. MORROW. I think the common carrier the forwarded acquired would be acquired after careful consideratiton on both sides of the ability of that carrier to handle this area of traffic, not simply for the

acquiring forwarder, but for any other forwarders because, as I said, he could not discriminate in favor of his owner, but he certainly could adjust his operations to this type of business, and I would suppose that he would.

Mr. GRINSTEIN. Well, I understand that he would have to hold whatever rate arrangements he were to make open to all forwarders. But do you think he would be able to get more favorable rates for those areas?

Mr. MORROW. Favorable rates? I do not know about that.

Mr. GRINSTEIN. For all forwarders generally?

Mr. MORROW. I certainly do not want the impression to be left on this record that a forwarder would buy motor carriers simply for the purpose of using them as fighting ships or for the purpose of gaining some improper advantage over some other forwarder or carrier by the use of his own controlled subsidiaries. But I think it would probably work out that the rate situation and the service situation would be improved in the short-haul territory.

Mr. GRINSTEIN. Let me ask this question with a little different slant on it. How is the freight forwarder handicapped by not being allowed to control a motor carrier while, on the other hand, a motor carrier can acquire control of a freight forwarder?

Mr. MORROW. This is a rather difficult question to speculate about. I said I did not know of any bad practices that have resulted from the common ownership of forwarders and motor carriers where the motor carrier has been the acquiring carrier. I think you have to view this thing in the larger aspect that the motor carrier industry can certainly buy up the forwarder industry. If the trend continues, it might do so. The motor carriers have a terrible fear which they have spread before the Congress on many, many occasions that the railroad industry with its vast resources and assets will gobble up the motor carrier industry. I am not here crying wolf, but certainly if that is a valid fear in the case of the motor carriers, it is a valid fear in our case.

And I think any injustice in the law is a handicap. I think it ought to be the urgent business of everybody to want to get rid of it. If it is not a good thing at all, we ought to reexamine section 5 and perhaps take it off the book. But we are handicapped by being subjected to complete regulation on an unequal basis.

That, I think, is the best answer I can give you.

Mr. GRINSTEIN. Just referring briefly to page 11 of your statement, the amendment to section 404(c) denies any undue or unreasonable preference or prejudice as between forwarders and a carrier controlled by that forwarder. Would this language cover a hypothetical situation in which the forwarder is the dominant shipper over the motor carrier and the motor carrier proposed a tariff which was tailored to meet specifically the amount in terms of minimum weights or sizes for that forwarder.

Mr. MORROW. Let me see if I understand that question. Of course, tariff rules and regulations, this tariff if proposed by a motor carrier would have to meet the standards and requirements of part II of the act, not part IV. If there was anything wrong with it, it would first run the gamut of motor carrier and shipper and probably railroad and all other types of objections. But if it got by all

of those hurdles and it still appeared to the Commission that it discriminated unjustly in favor of the forwarder owner, this section would definitely make it the duty of the Commission to condemn that tariff.

Senator SCOTT. Thank you, Mr. Morrow. That is all.

Mr. MORROW. Thank you, Mr. Chairman.

Senator SCOTT. Mr. James F. Fort.

Mr. Fort, you are counsel, public affairs, American Trucking Associations, Inc., and you have a written statement?

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

Mr. FORT. I have sir. I think perhaps it would be most expeditious if I simply delivered it as it is set forth here.

Senator SCOTT. All right, whatever you would like to do. Go right ahead.

Mr. FORT. My name is James F. Fort. I am counsel, public affairs, of the American Trucking Associations, Inc., with offices at 1616 P Street NW., Washington, 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.

The American Trucking Associations, Inc., opposes S. 3509.

Our opposition to the pending bill goes solely to the point that under this legislation for the first time freight forwarders would have the right to gain control of motor carriers, railroads, or water carriers. Under S. 3509 freight forwarders would have this right both as competing carriers and as shippers. We are strongly opposed to the bill on both fronts.

Your hearing today is by no means a hearing on a simple procedural change to clear up inconsistencies which presently exist in part IV of the Interstate Commerce Act relating to freight forwarders. It involves instead, the old, violently controversial subject of common ownership of the various agencies of transportation. Additionally, it more immediately involves a fundamental question of the propriety of permitting an agency which is in a sense a super shipper to control basic underlying transportation modes.

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

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

In order to place our opposition in the proper perspective it seems necessary to delve briefly into the historical background of this subject. This committee has held many hearings on the subject of common ownership over the years. It is not my intention today to belabor this record with a full, comprehensive historical treatise of congressional action prohibiting ownership of modes of transportation by other modes. I invite the committee's attention to the long history of hearings before your committee.

Suffice it to say that since 1912, when the Congress instituted legislation to limit the operations of water carriers by railroads, the posi-

tion of the Congress has been consistent over the years in prohibiting one mode of transportation from invading the field of another. There is language prohibiting this in the Interstate Commerce Act as to rail operation of motor carriers and as to water carrier operation by railroads, and in the Civil Aeronautics Act of 1938 prohibiting air carrier operation by any surface mode.

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

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

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

The final version, however, did not adopt the ICC's proposal that carriers be prohibited from owning forwarders. Instead they adopted 411(g) specifically authorizing this and at the same time, somewhat inconsistently, adopted 411(c) prohibiting any director, officer, et cetera, of a common carrier from any pecuniary interest in a freight forwarder. Many attempts have been made to modify section 411(c), but the trucking industry has never favored these attempts because this section has acted somewhat as a break on ownership of forwarders by carriers.

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

The motor carrier industry has no objection to the ICC's recommendation that motor carrier acquisition of freight forwarders be brought under the Commission's jurisdiction. We do not object to bringing these acquisitions under section 5 provided, of course, that existing control of freight forwarders by motor carriers is adequately protected. This is accomplished by S. 3509.

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

Initially, let me say that we do not understand the pressing necessity for this legislation.

The ICC says, in effect, that it is needed to clear up existing inconsistencies relating to freight forwarder control. They cite one case to substantiate that. This is no reason for the passage of legislation of such far-reaching proportions—legislation designed to reverse a congressional policy going back to 1912 and specifically reiterated in the subject sections of the Interstate Commerce Act when freight forwarders were federally regulated in 1942. We suggest to you that it

may well be possible to clear up these inconsistencies without such a drastic and basic change in policy.

It is appropriate here to mention that the ICC in its presentation to the House, and reiterated here today, offered virtually no testimony on the public need for such a reversal in its own and congressional policy.

Similarly the freight forwarder industry did not offer any reason other than "equality of treatment" as a justification for the passage of the bill. As I will show in a moment, this bill would perhaps create equality but it is an apples and oranges type of equality. There should not be equality where shippers and carriers are concerned and this is exactly the situation with which you are faced.

Thus we are at a loss to see the necessity for this bill except as it may go to clearing up inconsistencies and we agree that they should be cleared up.

Perhaps the underlying issue is rates. Could it be that the freight forwarders wish to take advantage of certain piggyback arrangements available only to motor common carriers? If this is the real reason for this legislation then the proper formum is the ICC, not the Congress of the United States.

Possibly their desire is to be able to purchase motor carriers in order to offer better service in metropolitan areas. But this could not be the compelling reason because, as Mr. Morrow stated a few minutes ago, they already have the right to operate their own trucks in terminal areas under part II of the Interstate Commerce Act. If it is their purpose to gain control of carriers for some other purpose, then let them come forward and tell what the real reasons are.

I might add, Mr. Chairman, right here, Mr. Morrow stated that the principal desire of the freight forwarders was for improved service. He stated that they would like to be able to go outside the terminal areas where they may already operate their trucks. He said they would like to be able to go 250 or 300 miles and that they had had difficulty in obtaining reasonable service at reasonable rates in this area. I might suggest to the committee that if this is their desire, the bill goes far beyond it. The bill would allow them to purchase transcontinental railroad lines, motor lines, water carriers, or what have you.

If it is only their desire to go 250 or 300 miles, then I suggest to the committee that perhaps they bring in a bill tailored to those dimensions, and we will be glad to take a look at it.

I might also say that Mr. Morrow spoke of not being able to get service at reasonable rates. We think Mr. Morrow has a very good point. He probably cannot get service at what he considers to be reasonable rates, but they are rates available, and they are rates which the motor carrier industry certainly feels to be reasonable. We feel that the passage of the bill would allow freight forwarders to put on their own trucks or to purchase their own motor carriers and make their own rates in that area.

Continuing with the testimony at the top of page 5, regardless of what the statute may say, a freight forwarder, in his relationship to a motor carrier is a motor carrier just as Mr. Morrow stated a few moments ago. While he may by law be a common carrier in some other respects, he nevertheless stands as a shipper when he comes to

a motor carrier to move consolidated shipments over the line of the motor carrier from point A to point B. The Interstate Commerce Act's philosophy is based upon a separation of shipper and carrier. The carrier must hold himself out to serve all shippers. The shipper, on the other hand, has available all common carriers who may serve his needs. There is no connection between shipper and carrier, and proper regulation of interstate commerce requires, and indeed demands, this separation.

We see no ultimate good which is to come from allowing, even with ICC approval, a shipper, in this instance a freight forwarder, to control a motor carrier. We agree with the Department of Justice that it is better public policy—

> to insure that freight forwarders would commit shipments which they control to carriers on the competitive basis of rates and service rather than on the basis of corporate ties or control relationships.

We can illustrate this very simply: If a forwarder gains control of, let us say, a motor carrier operating between New York and Chicago, the forwarder will be able to drive down the rates of all motor carriers of freight forwarder traffic between those two points by the simple device of lowering the rates on its own subsidiary carrier.

Mention was made a moment ago, Mr. Chairman, of the section 404 (c) which prohibits discriminations or prejudices and preferences in behalf of a forwarder by its own carrier. I might say that this is prohibited under the law today. A carrier may not discriminate in the use of a forwarder, et cetera. We do not think that this would not be changed under the bill. We see no necessity for the enactment of it, however.

It may well be argued then that if a forwarder can whipsaw carriers in this manner, cannot carriers also use the same devices when they own forwarders under the law today? Probably the answer to this is "yes" and that is why the trucking industry has long favored total separation of all modes.

In summary, the trucking industry feels that S. 3509 is far more than a technical amendment to clear up inconsistent provisions of the law relating to the control of freight forwarders. It is a proposal to radically reverse a major congressional policy in the transportation field which has brought progress, competition, and continually better service to the shippers of this country.

Further, the possibilities of discriminations and improper practices would be vastly increased. It seems inevitable that passage of S. 3509 would lead only to a deterioration of the motor carrier industry.

We strongly urge that S. 3509 not be enacted. Instead we urge that you further strengthen the traditional policy by flatly prohibiting future acquisitions of all modes by other modes. We believe that such a policy will bring us to an ever-increasing sound transportation system.

Senator SCOTT. Thank you, Mr. Fort.

Is your basic objection a feeling that if forwarders are permitted to buy motor carriers, then the railroads acting through the forwarders may acquire motor carriers in circumvention of the act?

Mr. FORT. No, sir, I did not mention that particular aspect in the testimony here. I did mention it in the House testimony. It is some

which we are apprehensive about. We think, as Mr. Morrow pointed out in his testimony, that the existence of section 5 of the restrictions and safeguards in section 5 would, in all probability, prevent any railroad from purchasing a motor carrier through a freight forwarder. We are apprehensive about it, yes.

Senator SCOTT. But you are not contending that this bill changes section 5(2)(b) of the act, are you?

Mr. FORT. Not at all, sir. It makes no change in that at all.

Senator SCOTT. That section in the act applies not only to railroads but any person controlled by or affiliated with the railroads, as I understand it.

Mr. FORT. That is correct.

Senator SCOTT. If a forwarder that was controlled by a railroad sought to buy a motor carrier, if this bill passed, then the Commission would act under section 5(2)(b) about the way it would act today. There would be no change in that.

Mr. FORT. That would be correct, yes, sir.

Senator SCOTT. Counsel, do you have any questions?

Mr. GRINSTEIN. Mr. Fort, on page 5 of your statement, you illustrate in a hypothetical case how a forwarder might have an advantage if he controlled a motor carrier. Is this type of example primarily the thing that the motor carrier industry is troubled about? In other words, the use of a motor carrier as a fighting ship in order to drive down rates and give the forwarder a preferred position?

Mr. FORT. In specifics, yes. The general tenor of the legislation we are concerned about as to specific application of it, I believe that probably is our greatest fear. The breaking down of the present safeguards against common ownership of the various modes is another considerable fear. It is freight forwarders this year; next year it may be railroads; next year it may be airlines, et cetera.

Mr. GRINSTEIN. Since motor carriers presently can own or control freight forwarders, have the motor carriers operated those freight forwarders in such a way as would put them at an advantage over other freight forwarders?

Mr. FORT. As Mr. Morrow said a moment ago, and I will agree with him, I know of no instances or of any charges which have been made that motor carriers have operated improperly through the device of their own controlled freight forwarders.

Senator SCOTT. Do you have any further comments, Mr. Fort?

Mr. FORT. Not at this time, sir.

Senator SCOTT. Would you care to make any comment on the Attorney General's letters of the 16th and 27th? That is, would you care to submit any comments in writing on that?

Mr. FORT. Perhaps so, sir. I have not seen the second letter to which the chairman referred.

Senator SCOTT. Well, I think that is all, then. Thank you, Mr. Fort.

Mr. FORT. Thank you, sir.

(Mr. Fort subsequently submitted the following letter for the record:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., September 14, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the hearing before your committee on S. 3509, Senator Scott, who was presiding, offered to the American Trucking Associations, Inc., an opportunity to comment upon a letter which had been filed by the Department of Justice on S. 3509. This letter is in response to that offer.

The Justice Department opposes enactment of S. 3509 as does the trucking industry. We are particularly impressed by the language in the Department of Justice letter in which they state that it is better for freight forwarders to commit shipments "on the competitive bases of rates and service rather than on the basis of corporate ties or control relationships." As we stated in our testimony on this bill, the entire philosophy of the Interstate Commerce Act is, and has been, a separation of carrier and shipper.

We feel that the Justice Department letter speaks for itself and we would simply add that we are in agreement with the Department that enactment of S. 3509 would not be in the public interest.

Respectfully submitted.

JAMES F. FORT,
Counsel, Public Affairs.

Senator SCOTT. Mr. Charles A. Washer.

Mr. Washer, I see that you are counsel for the transportation division of the American Retail Federation. Is that right?

STATEMENT OF CHARLES A. WASHER, COUNSEL, TRANSPORTATION DIVISION, AMERICAN RETAIL FEDERATION

Mr. WASHER. Yes, sir.

Senator SCOTT. And you have a written statement?

Mr. WASHER. Yes, I do.

Senator SCOTT. Would you care to read that statement, or if you wish, simply to comment; it is entirely up to you, sir.

Mr. WASHER. If it is all right with the chairman, I would prefer to read it. I think there is one place in which I would wish to make a comment.

Senator SCOTT. You just go right ahead any way you wish.

Mr. WASHER. I will skip the introductory paragraph.

The Transportation Committee has adopted policies which include specific opposition to the ownership or control by freight forwarders of underlying modes of transportation and, for this reason, opposes the provisions of S. 3509. Objection was previously expressed to your committee in April 1956 in the consideration of S. 3367 by the 84th Congress. In fact your committee considered and rejected a similar proposal in S. 2189 during the 86th Congress, to which reference should be made.

The Interstate Commerce Commission recommended against the adoption of S. 3367 as contrary to the public interest on April 6, 1956. That was the 84th Congress, 2d session, April 9, 10, 1956, and I make a reference to the citation stating:

> To permit forwarders to acquire control of carriers subject to the act would, in our opinion, open the way to opportunities for discrimination not only with respect to rates and charges, but also in respect of practices which would be difficult to control.

It is rather difficult to comprehend why the current Commission now takes the opposite view and recommends this bill as a "clarification" measure with no explanation as to the reasons for the changed

view or the dissolution of opportunities for discriminatory practices. In 1956 it was the Commission view that section 409 of the Interstate Commerce Act should be amended in several ways because of defects which permitted violations of contracts between forwarders and motor carriers with impunity. And I refer to the 69th annual report.

Adoption of S. 3509 would permit forwarder control of a motor carrier through which the forwarder could contract for services at compensation not controlled by the Commission. The rates charged the public by both the forwarder and the motor carrier are otherwise subject to regulation by the Commission, but in this case the forwarder, in his relationship with the motor carrier as a shipper, would be permitted to enter into a contract with a controlled company on terms not subject to any regulatory control. No change should be made in section 411 without corresponding changes in section 409 recommended by the Commission for so many years.

I might at this point add that Mr. Morrow emphasizes that amended section 404(c) is apparently designed to control in that no motor carrier would be allowed to exercise or show any preferential treatment to any forwarder. But I am not certain that this would prevent this under section 409 because of the absence of any strict control by the Commission in 409 contracts.

The Freight Forwarder Institute has stated that the provisions of this bill would make the ICC responsible to apply the rules equally to all carriers. This would not be possible because the resulting rules would be different under section 5. The Commission must approve the control of a motor carrier by a freight forwarder if it is consistent with the public interest. However, a railroad, in order to control a motor carrier, must establish that the proposed transaction is consistent with the public interest and will enable the carrier to use the motor service to public advantage and will not unduly restrain competition.

Further, a freight forwarder, under S. 3509, could control a water carrier if consistent with the public interest but the efforts of a railroad for similar control under the present section 5(16) must show in addition the advantage to the convenience and commerce of the people and that it will not exclude, prevent, or reduce competition. Thus, in contradiction to according freight forwarders equal treatment, S. 3509 would be giving them greater latitude in control than other carriers, and I should say "other carriers" refers to railroads.

Inequity for the freight forwarder under the law is certainly inadequate justification for the enactment of S. 3509. First, there is no inequality of treatment unless the forwarder is considered in the same light as the basic common carrier and equal in his relationship to rail, motor, or water carriers. This concept has consistently been rejected by the shippers, the Commission, and the courts. Secondly, as pointed out heretofore, there is no uniformity or equality in the provisions for control of and by the basic common cariers subject to regulation under part I, II, or III of the Interstate Commerce Act, or for that matter, as to air carriers. The various sections dealing with control vary in the required tests from simply in the public interest, through the different effects on competition, to absolute prohibitions. Thus,

far from placing part IV freight forwarders on an equal basis with part I, II, or III carriers, the provisions of S. 3509 would add a further complication to the already complex statutory limitations pertaining to control of various modes of transportation.

Analysis of the National transportation policy for your committee was conducted pursuant to Senate Resolution 29. This is the so-called Doyle report, and I would like to make reference here to pages 138 to 144 which deals with interagency ownership.

In support, the Commission has cited one example of a troublesome case involving the control of motor carrier by a joint motor carrier-forwarder organization. And I give the citation again. Upon the adoption of S. 3509 consider the confusion which might result if a forwarder controlled by a railroad sought to control a motor carrier.

I think my next sentence is wrong in view of what Mr. Morrow stated. In other words, if a forwarder acquired a motor carrier and later a railroad attempted to do that, it would not change the present requirement. But it would result in an inequity as compared to one forwarder as distinguished from the joint forwarder-motor operation. And judging either of those two, the Commission would use a different test if a railroad attempted to acquire ownership.

Throughout the previous hearings on comparable bills, there is a conspicuous lack of any testimony as to what specific use would be made of the provisions upon enactment. The justification has largely been premised on the academic question of equitable treatment. It would be perhaps more understandable if more specific information were given your committee as to the probable economic results which would ensue and which are now prohibited by the existing statutes. Senator Smathers inquired as to whether there would be any economic unfairness or disadvantage to any company if comparable bill S. 3367 were not passed, and the answer was none, only that it is unfair and discriminatory to permit motor carriers to buy forwarders and not the reverse. And I give a citation for that. Thus the provisions of S. 3509 cannot be judged on the practical effect, only on a theory of equity.

Further, if equality of treatment is the desirable objective perhaps consideration should be given to a prohibition of control of one mode of transportation by another whether it be land, sea, air or, as the adjunct of all, the freight forwarder. Conversely, equality of treatment could be accorded by permitting any to control another upon an approval by the Commission that it is shown to be in the public interest. Equality will not result from S. 3509.

For the above reasons, the American Retail Federation urges your committee to reject S. 3509. In view of the controversial nature of the proposal, as evidenced in hearings on past bills, it should not be considered alone but only in connection with all other control provisions of various enactments. To do otherwise would be confusion worse confounded and, as well, add an opportunity for uncontrollable discrimination.

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

Senator SCOTT. Thank you very much, Mr. Washer.

Now, the freight forwarders, as I understand it, do not own or operate over-the-road equipment as a rule do they?

Mr. WASHER. No, the only equipment they own and operate is within the commercial zone.

Senator SCOTT. What I am trying to get at is: Are you opposing applying the same common ownership rules to freight forwarders as already applied to other carriers? You are against that?

Mr. WASHER. No. Actually, we have found from our standpoint there has been no particular confusion as to the act as it now reads.

Senator SCOTT. As presently applied, the railroads now own the express companies, I think. So far, forwarders are owned by railroads and some by motor carriers and some by water carriers. Do you see any fundamental difference between an express company and a freight forwarder? Both of them have, in my mind, similar characteristics to perform the physical movement of goods.

Mr. WASHER. Well, in actual rates and practices, there are a number of differences, but I suppose fundamentally they are comparable.

Senator SCOTT. I was getting to whether or not the express company owning these motor line carriers has had the effect of materially lessening competition or has there has been any change in competition? I am getting at the question of service to the public. Has the public service suffered from the ownership by express lines of short-line motor carriers?

Mr. WASHER. Well, I do not know that they own short-line motor carriers. They conduct some of their own operations with motor carriers, and I think it is fair to state that as a result, that has improved their service.

Senator SCOTT. Do you have any questions?

Mr. GRINSTEIN. The statement on page 2 is that the forwarded would be permitted to enter into a contract with the controlled company on terms not subject to any regulatory control. Section 409(b) requires any of the contracts to be filed with the Commission and approved. I am wondering, is this the contract you were referring to?

Mr. WASHER. Yes, that is right, but those are filed with the Commission. The Commission does not approve those. Those are not published rates. The Commission, as I referred you to in their 69th annual report, suggested that that be changed because they have no effective control over those rates.

Mr. GRINSTEIN. They have no effective control over the contractual rates between a forwarder and a motor carrier?

Mr. WASHER. Right. The Commission merely publishes the rules and regulations under which those contracts shall be filed.

Senator SCOTT. I think that is all, then, Mr. Washer. Thank you.

(Subsequent to the hearing, Mr. Washer submitted the following letter for the record:)

AMERICAN RETAIL FEDERATION,
Washington, D.C., August 31, 1962.

Re S. 3509 (freight forwarder control bill).

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

DEAR SENATOR MAGNUSON: During the course of the hearings on the above bill on August 27, 1962, some questions were directed to me by staff counsel as to the basis for my statement that the compensation in contracts executed between motor carriers and freight forwarders under authority of section 409 of the Interstate Commerce Act is "not controlled by the Commission" and "not subject to any regulatory control." The point is an important one since it is the premise on which we believe that changes in section 411, as provided by S. 3509,

without a simultaneous change in section 409, would permit uncontrollable discriminations. For this reason, I would like to clarify the hearing record on this issue.

Following adoption of the existing section 409 on December 20, 1950 (64 Stat. 1114), the Commission prescribed rules and regulations for the filing of such contracts. Thereafter, on May 7, 1952, the Commission, upon its own initiative, ordered an investigation under section 409 concerning the reasonableness and lawfulness otherwise of the rates and charges, and rules, regulations, and practices affecting the rates and charges, of a number of such contracts on file in docket No. MC–C–1394. Freight forwarders in a motion to vacate this order, in other pleadings, and at a prehearing conference held May 21, 1953, maintained, inter alia, that such contracts must be considered individually; only as to justness or reasonableness as between the parties to the contract (or other freight forwarders); and not upon a basis of comparison with any other rates or charges. The freight forwarders and motor carriers party to the contracts declined to voluntarily go forward with evidence or testimony in their capacity as respondents. As a result of the prehearing conference, the scheduled Commission hearing was canceled.

To my knowledge, this is the only attempt made by the Commission to test its authority to regulate or control the levels and terms of compensation contained in contracts filed under section 409 during the 12 years of its existence. Since no report was issued in this proceeding (the investigation having later been ordered discontinued on March 18, 1957), the power of the Commission may be considered to be undetermined. However, in the absence of any public information as to communications or deliberations within the Commission, it seems significant that subsequently a major legislative change in section 409 was suggested by the ICC.

In the 69th annual report of the Commission for the year 1955, legislative recommendation No. 30 (pp. 137, 138) urged that the burden of proof be placed on the parties to such contracts when called into question; that compensation lower than motor tariff rates be in all cases not to exceed 450 miles; and that penalty provisions be added. These recommendations were carried forward in the 70th and 71st annual reports for the years 1956 and 1957. In 1958 they were dropped, apparently under the general limitation of recommendations considered advisable because of the new Transportation Act of 1958. The Commission explanation was that in attempting to subject such contracts to investigation, experience "disclosed some major defects in the law, the most important of which is the failure to place the burden of proof on the makers thereof * * *." The penalty provisions were to prevent violations of the contracts with impunity "since there appears to be some question as to whether the enforcement provisions of parts II and IV of the act cover the situation."

Additionally, on April 23, 1956, in a letter to the chairman of the House committee on H.R. 9548 (see hearings on "Transport Policy," House of Representatives, Committee on Interstate and Foreign Commerce, pt. I, Apr. 24, 25, 26, May 2, 3, 4, and 8, 1956, pp. 289–291), the Commission, on the similar question of contract rates between freight forwarders and railroads, recommended comparable safeguards "* * * since it is doubtful whether provisions of section 404(c) of the act, relating to prohibitions against undue preference or advantage by any common carrier subject to part I, II, or III of the act to any freight forwarder would apply to the terms, conditions, or compensation set forth in contracts * * *."

For the above reasons, the inescapable conclusion is that the Commission, in making a solitary effort to regulate section 409 contract compensation, found the existing statutory provisions inadequate to exercise the power of control granted by section 409(b), because of the first proviso of section 409(a) basing the test of reasonableness only as between the contract participants or other forwarders, therefore requiring legislative amendment. This inadequacy of regulatory control as to contract terms between freight forwarders and motor carriers would permit otherwise discriminatory practices in the event two such carriers were under the common ownership permissible by the terms of S. 3509 and, as indicated in the statement to your committee, is a major factor in our objection to the bill.

Sincerely,

CHARLES A. WASHER,
Counsel, Transportation Division.

Mr. James K. Knudson.

Mr. Knudson, I believe you are appearing for the American Waterways Operators, Inc.

STATEMENT OF JAMES K. KNUDSON, AMERICAN WATERWAYS OPERATORS, INC.

Mr. KNUDSON. Yes, Your Honor, I am. And I have no prepared statement. I am here to plead a technical point and to make one general point. I shall try to be brief, and I would like the privilege of addressing myself with some notes to the committee, if I may.

Senator SCOTT. Yes; you go right ahead, Mr. Knudson. I am sorry we have been so long, but I believe you noticed that there was some delay in the previous hearing on another bill.

Mr. KNUDSON. It has been my privilege to listen, I got great enlightenment from listening to the proposals, Mr. Chairman.

American Waterways Operators, for which I appear, is a nationwide voluntary and nonprofit educational trade association representing about 181 shallow draft water carriers who provide transportation services in the operation of barges, towboats, tugboats, and self-propelled freighting vessels over about 25,000 miles of commercially navigable inland waterways, including rivers, canals, intercoastal waterways, bays, harbors, and sounds of the United States. Most of these water carriers are family organizations that have grown, some of them, into sizable adjuncts of the transportation community.

Traditionally, these water carriers as a community have opposed common ownership, venturing the suggestion that is in their own interest to do so. And by "common ownership" I mean one type of transportation facility owning or controlling other types of transportation facilities.

Now, Mr. Fort of ATA has made a persuasive statement. I am not going to go into everything that he has said. The major points that he made with respect to common ownership are endorsed by the group for which I speak, the American Waterways Operators, Inc. That will suffice as to our general appearance.

Now, your honor, if I may, I would like to take a little issue respectively with Chairman Murphy and with my distinguished colleague, Giles Morrow, on the possible interpretation of section 5 of the act to the extent that it embraces the 1912 act known as the Panama Canal Act. I have before me the Interstate Commerce Act with other acts that are related revised to October 1, 1958. And I note, and I ask you specifically to note, in considering this legislation that section 5 has basically two major parts—that up to subsection 12 which deals with the Commission's authority given to them by Congress to approve mergers, consolidations, acquisitions of one carrier by another, and so forth. And then subsection 13, which reads as follows, and I should like to read this—it is very short—into the record.

As used in paragraphs (2) to (12), inclusive, the term "carrier" means a carrier by railroad and an express company and a sleeping car company, subject to this part; and a motor carrier subject to part II; and a water carrier subject to part III.

Now, it is to be noted that in that paragraph, all types of carriers subject to the jurisdiction of the Interstate Commerce Commission are specifically mentioned. However, in the next subsection, subsection 14, it states as follows:

> Notwithstanding the provisions of paragraph (2), from and after the first day of July 1914, it shall be unlawful for any carrier, as defined in section 1(3)—

and so forth.

And if you turn back to section 1(3), it does specifically enumerate in that section railroads, sleeping car companies, express companies, et cetera.

Now, what my interests are fearful of, Your Honor, is that if by any chance a railroad were to acquire a freight forwarder under the provisions of this pending act, should it be enacted, that railroad could if it chose to do so use the freight forwarder as a means of acquiring a water carrier without conforming fully to the provisions of law as they are set forth in subparagraphs (14), (15), and (16) of section 5. I understand full well the point that Mr. Morrow made that there is language that would indicate the opposite, but you must understand, if you will, sir, that in making legislation, you also make legislative history.

The legislative history that lies behind subsections (14), (15), and (16), was made way back in 1912 when there was no such thing as a freight forwarder. They were implemented in 1940, and the 1940 act was before freight forwarders were put under regulation. And it would be our fear that some lawyer, and Mr. Morrow has referred to us as "clever lawyers," might take advantage of this legislative history in some journal review of the act if this present bill is enacted and that some court may hold that a water carrier—can or cannot may be ambiguous—be acquired by a freight forwarder owned by a railroad. We think this is of suffiicent importance that it warrants your honorable attention and that you should make an attempt to clear it up if this act passes either by a statement of legislative history in the committee report or by some slight change in the law itself.

That, Your Honor, makes up my statement. The technical point, I made, the general point I have made, and I appreciate the time that you have given me for doing so.

Senator SCOTT. Mr. Knudson, we would be glad to have you prepare any suggestion you have in mind. Of course, it is possible—I am only one member of the committee here—the question you raised could be taken care of by putting appropriate language into the committee report should the committee see fit to report the bill favorably. I think the committee has no position on it, either one way or the other, and that might cover the problem.

The section you were reading from seems to be fairly clear to me in restricting a common carrier, otherwise referred to as a railroad, from having any right to own, lease, or operate a water carrier. And then the phrase, "Directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner." Is that not broad enough to exclude the situation here, or is it your fear by phrasing an act like this, it might be held by implication to have superseded the original language because it is a later act?

Mr. KNUDSON. Would the chairman kindly tell me to which part of section 5 you are referring? I think I can more intelligently answer your question.

Senator SCOTT. Section 5, subsection (14).

Mr. KNUDSON. Yes.

Well, Your Honor, subsections (15) and (16), particularly subsection (16), has entirely different standards to apply relating to the water route that is traveled by the carrier and so forth. And when the Commission invokes section (16), it has no necessary relationship to the first 12 subsections of section 5.

As a matter of fact, the Commission recently decided a case in which two railroads attempted to acquire a water carrier—I refer to ICC finance docket No. 20940, *John I. Hay* case, and the Commission turned that proposed acquisition down under the standards of the Panama Canal Act in sections 15 and 16.

Now, we think it ought to be made abundantly clear by legislative history if not specifically that if a railroad acquires a freight forwarder, it should, the freight forwarder should, be under the same legislative prohibitions or legislative directives in acquiring a water carrier that a railroad should be.

Senator SCOTT. Well, I appreciate that. I am sure the committee will, and if you wish to suggest language——

Mr. KNUDSON. Thank you, sir.

Senator SCOTT (continuing). It could be made part of this hearing and included in the record.

Mr. KNUDSON. We will take that under advisement.

Senator SCOTT. Thank you very much, Mr. Knudson.

Counsel would like to recall Mr. Morrow for a question.

Mr. GRINSTEIN. Mr. Morrow, in the testimony of Mr. Washer, he indicated that the Commission did not have adequate control over contracts between freight forwarders and motor carriers. He also suggested that amendatory language should be included if the bill were to be favorably reported, which would take care of this situation.

Would you care to comment on that point?

Mr. MORROW. Yes, Mr. Grinstein. It is true that the Commission at one time did recommend certain changes in section 409 to give it better administrative, or what is considered to be better administrative control over contracts. But I believe you have section 409(b) before you, and I direct attention to the part of it which is significant. Mr. Washer admitted that these contracts are filed. He implied that that is as far as it goes.

But the second sentence of section 409(b) reads this way, and I would like to read it into the record:

> Wherever after hearing, upon complaint or upon its own initiative, the Commission is of opinion that any such contractor, or its terms, conditions or compensation is or will be inconsistent with the provisions and standards set forth in subsection (a) of this section, the Commission shall by order prescribe the terms, conditions, and compensation of such contracts which are consistent therewith.

Now, this certainly gives the Commission control over these contracts, their terms or conditions and their compensation, gives it authority to investigate them upon its own motion or upon complaint of any person. In the 12 years that this section has been in effect,

there have been no formal complaints to my knowledge. There was one brief investigation in which the respondents were forwarders and motor carriers. They came before the Commission and said, "We, the parties to these contracts, are satisfied that the terms and conditions and compensation are just and reasonable," and that ended the matter.

So that I think his point is not well taken. The Commission does have control.

Mr. GRINSTEIN. Would the Freight Forwarders Institute have any objection if language were included in 409(a) where it says:

> The parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder—

would there be any objection to including there "any other motor carrier?"

Mr. MORROW. Well, yes. This section has a long and very complete legislative history. It superseded a section which authorized joint rates and divisions between forwarders and motor carriers under the standards applicable to divisions between any other type of carrier. The objection was that the forwarder as an indirect carrier did not make a division with a motor carrier in the traditional sense of a division of revenue; that it was more in the nature of compensation. But the legislative history of section 409 is amply clear that it was to regulate these arrangements in all respects as though they were divisions, simply calling them contracts.

Now, if you have a division between two motor carriers, that simply divides up the revenue which they get for a joint haul. It would be nonsensical to say that the amount which motor carrier A gets may not prejudice some railroad or some water carrier or some forwarder or somebody else. It must not prejudice any other motor carrier which wants to make divisions with that same motor carrier for a joint haul.

But you see, this section cannot be read as a rate section. It is, in effect, a division section. Divisions have been in effect since long before motor carriers were regulated. And from 1942 to 1950, they were authorized by statute and this change was made simply to cover some technical objections that the arrangements were not in the standard or long-accepted sense divisions. But this is a division section. It goes on and provides in 409(b) that the Commission has control over these divisions, but the prejudice that they might set up—certainly they cannot prejudice some other motor carrier or railroad or water carrier or someone else.

Senator SCOTT. Thank you very much.

Mr. MORROW. Thank you, Mr. Chairman.

Senator SCOTT. This hearing is recessed, subject to the call of the Chair. Thank you.

(Whereupon, at 4:27 p.m., the hearing was recessed, subject to the call of the Chair.)

(The following agency comments were received:)

THE SECRETARY OF COMMERCE,
Washington, D.C., August 30, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 3509, a bill to clarify certain provisions of part IV of the Interstate Commerce Act and to place transactions involving unifications or acquisitions of control of freight forwarders under the provisions of section 5 of the act.

Section 5 presently contains the provisions of the statutes governing combinations and consolidations of common carriers subject to parts I, II, and III of the Interstate Commerce Act. Provisions applicable to the relationships between freight forwarders and other classes of common carriers are presently contained in part IV of the act. S. 3509 would amend section 5 of the act to embrace freight forwarders and thereby provide that future transactions involving consolidation or acquisition of control of all types of common carriers would be considered under the same provisions of the act.

S. 3509 would also provide for the deletion of section 411(a) which prohibits freight forwarders from acquiring control of other classes of common carriers and section 411(g) which permits common carriers now subject to parts I, II, and III of the act to acquire control of freight forwarders. The redesignated section 411(b) would be amended to provide that after 6 months from the enactment of this provision it shall be unlawful for any person affiliated with any carrier subject to part I, II, and III within the meaning of section 5(6) of part I to hold the position of officer or director in any freight forwarder or hold any stock in a freight forwarder unless the Commission has found that neither public nor private interests will be adversely affected, and has authorized the person to hold the office or directorship or hold the stock.

From an administrative and regulatory standpoint, advantages would accrue from the placement of all provisions covering consolidations and mergers under section 5 of part I of the act and also from the proposed clarifying language. We note, however, that the bill (sec. 1(3)) might possibly be construed to exempt from regulation by the Commission, and from attack under the antitrust laws, transactions, or control or management in a common interest lawfully entered into before the effective date of the bill. We believe that such is not the intention of the section and we recommend that the bill be modified to make clear that such prior arrangements are not being given blanket sanction. If so modified, we would not object to enactment of S. 3509.

Due to the urgency of this matter, we have been unable to secure the advice of the Bureau of the Budget as to the relationship of this matter to the program of the President.

Sincerely yours,

(S) EDWARD GUDEMAN
(For Luther H. Hodges, Secretary of Commerce).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 6, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We refer again to your letter of July 10, 1962, requesting our comments on S. 3509.

S. 3509, which you introduced at the request of the Interstate Commerce Commission to implement its legislative recommendation No. 5 (75th Annual Report of the Interstate Commerce Commission, p. 187), proposes to clarify certain provisions of part IV of the Interstate Commerce Act relating to the unification and control of freight forwarders and to subject such unifications and acquisitions of control to section 5 of the act.

This proposal is not one which would affect the functions and operations of our office. It would seem, however, to be in the public interest to remove existing inconsistencies and to ease the regulatory burden with regard to ownership and control of freight forwarders. We have, therefore, no objection to favorable consideration of S. 3509 by your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 14, 1962.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: I am submitting herewith for your consideration 40 copies of a draft bill, together with a statement of justification therefor, which would give effect to legislative recommendation No. 5 in the Commission's 75th annual report.

Your assistance in having this bill introduced and scheduling a hearing thereon would be very much appreciated.

Sincerely,

RUPERT L. MURPHY, *Chairman.*

RECOMMENDATION NO. 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUSTIFICATION

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

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

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

common carrier controlled by such person can acquire control of another common carrier.

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

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

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

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

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

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

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

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

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

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

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