PASSENGER TRAIN DISCONTINUANCES

HEARING

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. RES. 284

A RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT RAILROADS AND THE PUBLIC RECEIVE EQUAL RIGHTS OF JUDICIAL APPEAL

AUGUST 3, 1966

Serial No. 89–76

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
69-242 WASHINGTON : 1966

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
A. S. MIKE MONRONEY, Oklahoma
FRANK J. LAUSCHE, Ohio
E. L. BARTLETT, Alaska
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
DANIEL B. BREWSTER, Maryland
MAURINE B. NEUBERGER, Oregon
ROSS BASS, Tennessee
RUSSELL B. LONG, Louisiana

NORRIS COTTON, New Hampshire
THRUSTON B. MORTON, Kentucky
HUGH SCOTT, Pennsylvania
WINSTON L. PROUTY, Vermont
JAMES B. PEARSON, Kansas
PETER H. DOMINICK, Colorado

GERALD B. GRINSTEIN, *Chief Counsel*
EDWARD JARRETT, *Chief Clerk*
JEREMIAH J. KENNEY, Jr., *Assistant Chief Counsel*
RALPH W. HORTON, *Assistant Chief Clerk*
STANTON P. SENDER, *Staff Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

FRANK J. LAUSCHE, Ohio, *Chairman*

VANCE HARTKE, Indiana
HOWARD W. CANNON, Nevada
MAURINE B. NEUBERGER, Oregon
ROSS BASS, Tennessee

THRUSTON B. MORTON, Kentucky
JAMES B. PEARSON, Kansas
PETER H. DOMINICK, Colorado

CONTENTS

ALPHABETICAL LIST OF WITNESSES

STATEMENTS, LETTERS, AND RESOLUTIONS SUBMITTED FOR THE RECORD

INDEX OF ORGANIZATIONS AND GOVERNMENT AGENCIES

PASSENGER TRAIN DISCONTINUANCES

WEDNESDAY, AUGUST 3, 1966

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 9:35 a.m. in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Senator LAUSCHE. The meeting will come to order.

The hearing this morning is on Senate Resolution 284, a resolution proposing to express the intent of the Congress with respect to the right to review decisions of the Interstate Commerce Commission on passenger train discontinuances under section 13(a) of the Interstate Commerce Act.

(S. Res. 284 follows and a letter from the Department of Commerce, dated August 3, 1966.)

[S. Res. 284, 89th Cong., 2d sess.]

RESOLUTION

Whereas in 1958 the Congress enacted section 13(a) of title 49, United States Code giving to the Interstate Commerce Commission power to investigate passenger discontinuance cases;

Whereas certain Federal courts have so interpreted said law so as to give private railroad companies a right of appeal to the district courts when the decision of the Commission is adverse to them but denied the right of appeal to the public protesting such discontinuance when the Commission's decision favors private railroad companies;

Whereas, on April 5, 1966, the Interstate Commerce Commission in Finance Docket numbered 23831 ordered the New York, New Haven and Hartford Railroad Company to continue passenger service provided by the Washingtonian from Springfield, Massachusetts to New York City, and as reason for such decision stated:

> "Three daily morning trains, Nos. 169 (the 'Washingtonian'), 67 (the 'Bankers'), and 69 (the 'Nathan Hale'), provide inbound service during New York's long rush period and we conclude that these trains should be continued. The 'Washingtonian', arriving in New York at 8:10 a.m., has generally light patronage and low passenger train mile earnings, but it does handle a quite high volume of through passengers in through train service from Montreal and Boston & Maine origins, as well as a high volume of passengers moving beyond New York City. The 'Washingtonian', a conveniently scheduled through Montreal-to-Washington, D.C. train, should not be discontinued in the absence of clear evidence that it has no potential for economic viability." Page 214.

The Interstate Commerce Commission further ruled that the Montrealer providing passenger service from New York City to Springfield, Massachusetts should be continued and as reason, therefore, held:

> "Examining the patronage and revenue levels, scheduling, alternative train service and feasibility for use in connecting carrier service of all of these evening through trains, we conclude that the New Haven should be

Staff counsel assigned to this hearing: Stanton P. Sender.

required to continue to operate only trains Nos. 28 (the 'Gilt Edge'), 168 (the 'Montrealer'), 176 (the 'Federal')." Page 210.

Whereas on July 6, 1966, the Interstate Commerce Commission issued an order relative to the proposed discontinuance of passenger service between Springfield, Massachusetts and White River Junction, Vermont, by the Boston and Maine Corporation, Finance Docket numbered 24000, wherein the Commission stated as a conclusion of law that four passenger trains including the Washingtonian and the Montrealer were indeed a burden upon interstate commerce but delayed issuing a report until some time in the future. Said Washingtonian and Montrealer are the very same trains which the Commission ordered the New Haven to continue in April of this year because of through service from Washington and New York to Montreal;

Whereas in certain Federal cases, the public has protested unfair treatment by the Interstate Commerce Commission but certain Federal courts have held that there is no requirement for a right of appeal as far as the public is concerned and that the Federal courts have no jurisdiction to hear such appeals. Thus, in State of New Hampshire against Boston and Maine Corporation, United States of America and Interstate Commerce Commission, civil action numbered 2570, the court held:

"While Congress did not expressly deny judicial review of S13(a)(1) proceedings, we find apart from the terms of S13(a)(1) the difference between subsections (1) and (2) highly persuasive that Congress did, indeed, intend that result.

"The most appealing argument in support of jurisdiction on these facts is one based simply on fairness and equity. Since the railroad would have a right to appeal the Commission's order that seven trains are required by the public convenience and necessity and must, therefore, be continued in service, the public should have a right to judicial review with respect to the discontinued trains as well. But the short answer to this argument is that Congress does not have to be fair." (Pages 11 and 12).

Now, therefore, it is hereby

Resolved, That Congress in enacting section 13(a) of title 49, United States Code, intended to be fair and to give the same right of appeal to the public as to private railroad companies;

Resolved, That Congress in enacting section 13(a) of title 49, United States Code, did not intend and does not intend to give the Interstate Commerce Commission the right of decision without review;

Resolved, That Congress intends the Interstate Commerce Commission to treat members of the public in Vermont with the same degree of fairness as members of the public in any other State;

Resolved, That Congress intends the Interstate Commerce Commission treat private railroad companies, such as the New York, New Haven and Hartford Railroad, with the same degree of fairness as when dealing with the Boston and Maine Corporation;

Resolved, That if the Interstate Commerce Commission cannot, or will not, fairly treat all private railroad companies equally and if said Commission cannot, or will not, treat all members of the public with equal fairness, that Congress will duly consider the necessary steps to restrict the powers of the Commission or to abolish it.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 3, 1966.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. Res. 284. This resolution, in essence, states that Congress, in enacting section 13a of the Interstate Commerce Act did not intend to give the Commission the right of decision without court review and that Congress did intend to give the same right of court appeal from Commission decisions to the public as to private railroad carriers and intended that all members of the public, as well as private railroad companies, be treated fairly by the Commission.

We believe that Congress would have every wish to be as fair as possible in matters such as discontinuance of passenger service. In our opinion, fair and equal treatment clearly warrants equal recourse to judicial review.

We understand, however, that in the particular case which gave rise to the resolution, the discontinuance of certain passenger service between Massachusetts and Vermont, the State of Vermont has not yet exhausted its administrative remedies. We further understand that the Commission and the United States have advised the court that, should the State exhaust its remedies and fail to obtain relief before the ICC, the Commission would recognize the right of the court to review the matter, notwithstanding the limited precedent to the contrary. The question of review therefore appears still open to litigation and the proposed resolution appears premature.

Due to the urgency we have been unable to obtain advice of the Bureau of the Budget as to the relationship of this legislation to the Administration's program.

Sincerely,

MAURICE R. DUNIE,
Acting General Counsel.

Senator LAUSCHE. It is my understanding that a question has arisen concerning the interpretation that should be given to the 1958 act with respect to the right of a contestant to appeal to the courts for relief. The argument is made that the 1958 act only gives authority to the carrier to appeal to the courts and doesn't give it to the public bodies that are allegedly disserviced by a discontinuance of the carrier traffic.

This hearing is intended to review that 1958 act and to give expression finally as to what the intention of the Congress was at that time.

Senator Aiken, are you wanting to present your views in this matter?

Senator AIKEN. My views can be presented very briefly.

STATEMENT OF HON. GEORGE D. AIKEN, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator AIKEN. Let me first say I appreciate your willingness to hold a hearing on this, because I think it is a matter that is more important perhaps than most people believe. I am appearing here in support of Senate Resolution 284, because I believe there is a great need for clarification of the purpose of the Transportation Act of 1958.

The Federal District Court of the State of New Hampshire has found—if I may express it in layman's language—that in enacting this legislation the Congress, by giving the railroads the right to appeal an unfavorable decision of the ICC but denying the same right of appeal to the public, not only was not fair but did not intend to be fair to the people.

This indictment of the Congress is so severe that it should not be permitted to stand unanswered.

I might say in deference to our Member from New Hampshire that is on your committee, I believe this New Hampshire decision was delivered by a Massachusetts judge.

Senator COTTON. Thank you.

Senator AIKEN. It appears that the sponsors of Senate Resolution 284 are not alone in their belief that the law should be clarified or amended, if necessary.

On July 25, 1966, Chairman Bush of the ICC wrote Senator Prouty and myself as follows:

In *New Hampshire* v. *Boston & Maine Corp.*, Civil Action No. 2570, decided by the United States District Court of New Hampshire on December 28, 1965, the Commission did *not* argue that the court has no jurisdiction to review the decision of the Commission permitting discontinuance of certain passenger train operations pursuant to the provisions of Section 13a(1). In fact, the Commission

opposed dismissal of the complaint on that ground, even though the effect of the court's ruling was to uphold the Commission's order.

Following the three-judge district court decision in *New Hampshire* v. *Boston & Maine Corp., supra,* the Commission, on April 25, 1966, authorized its General Counsel to take the position in future court proceedings that Section 13a(1) orders of the Commission *are* subject to judicial review. Thus, the Commission agrees with the view expressed in S. Res. 284 that it is manifestly unfair and contrary to the intent of the Congress to permit carriers to appeal from Section 13a(1) orders while denying to the public any comparable right of appeal. If the decision in *New Hampshire* v. *Boston & Maine Crop., supra,* is followed by other courts, I am confident that the Commission would support an appropriate amendment to Section 13a(1).

On July 29, 1966, Chairman Bush wrote me again, as follows:

I am sending this note just to advise you that the Commission concurs in the comments included in my letter of July 25th addressed to you.

It may be argued that since a three-man court for the district of Vermont did not immediately deny jurisdiction over a case of *State of Vermont* v. *Boston and Maine Corp., et al.,* that there is no need now for action by this committee.

I would not agree with such an assumption since no one can tell when some court somewhere will agree with the position taken by the New Hampshire court.

It seems to me imperative that action be taken now unless the Congress is willing to accept the charge that in enacting the Transportation Act of 1958 it intended to be unfair to the public.

I cannot believe that the Congress—the Senate, this committee, or the members of the House and Senate Committees that handled this legislation in their respective Houses—did intend to be unfair to the American people.

Such an attitude would have been little less than a betrayal of public trust and it is unthinkable that any Member of Congress would have assumed such a position.

For that reason, I ask this committee to do all in its power to refute this indictment of Congress before irreparable harm can be done.

I want the people who would be injured by a discontinuance of passenger service to have a right of appeal equal to that of the railroad.

I further contend that the national security and the national economy should have preference over the desires of any particular faction of such economy.

Certainly, a longrun train service essential to the national interest should not be permitted to be discontinued simply because a segment of the run can show by bookkeeping or other methods that it alone does not make a satisfactory profit.

The only other suggestion I have at this time is this:

No important passenger service should be allowed to discontinue when it is apparent, as in the case of the Boston & Maine, that the manipulators of the road have systematically planned to discourage passenger travel in order to show at least a paper loss.

The strength of our Nation depends to an immeasurable degree upon the adequacy and efficiency of our transportation systems.

I have been greatly disturbed over the direction which railroad transportation is taking.

With the trend toward international crisis accelerating and with the needs of our domestic economy bearing down more heavily on other means of transportation, the rails are a matter of critical importance.

It is not high salaries and dividends upon which we should focus our attention but upon efficient and adequate service.

Thank you, Mr. Chairman.

Senator LAUSCHE. Senator Cotton?

Senator COTTON. I want to congratulate the Senator from Vermont and commend him for taking this matter up and bringing it before this committee and calling it to the attention of the Congress. He and I both know that not only is the national rail situation grave, but we both know that our section of New England is starved for transportation in the air and on the ground. This has presented one of the most serious problems that we have, a problem that I have constantly discussed in this committee and a problem that both Senators from Vermont, one of whom is on our committee, have followed and worked upon.

I would ask this question of Senator Aiken: Your proposed resolution, Senator, certainly brings this matter to the attention of the Congress, calls for action, and very clearly and emphatically calls attention to the fact that the court in my State—and I thank you for mentioning it was a non-New Hampshire judge—practically indicted the Congress by saying that Congress intended to be unfair.

However, while the legislative history of a bill when it is passing through the Congress is of considerable significance and is considered by the courts in many instances as reflecting the intent of the Congress in passing certain measures, I am wondering, after time has elapsed if another Congress, composed of other people, in many cases, can go back and declare what the intent of its predecessors was?

If there is to remain any doubt about the rights of the public, the rights of the people to have the same right of appeal to the ICC as the carriers have, shouldn't we face up to it by amending the act and putting a sharp, clear limitation into it, make it a part of the act and make absolutely without question what our intent is.

Senator AIKEN. I think that is the best way to handle this situation, to make the intent of the Transportation Act of 1958 perfectly clear.

As a matter of fact, no court evidently ruled on it until last December, when the district court of New Hampshire had its decision announced by a Massachusetts judge and we had a hearing in the district court of Vermont last week, I believe, in which two Connecticut judges overruled the Vermont judge.

So I do believe the law should be amended and, as you will note from Chairman Bush's letter, the ICC also believes that if there is any further risk of misinterpretation that they would support such an amendment. It ought to be done. And I am not wedded to the wording of the resolution which I introduced. I simply introduced the resolution with Senator Prouty and Senator Kuchel, who came on at the time of the introduction. We had a feeling that something should be done and done without delay, because there seems to be kind of a scurrying of the railroads—I noticed the New York Central the other day—to get under the wire before you did amend the law.

I am not versed in the legal terms which the railroads use, and they know how to use them, but I think something should be done, that the public should have it made plain, in such manner as this committee feels best, that the public does have at least an equal right with the railroads.

69-242—66——2

Senator COTTON. I am deeply interested in trying to save at least a remnant of our passenger service in New Hampshire and Vermont and northern New England, and I want to do anything that I can to help the Senator from Vermont and work with him on this problem.

Would the Senator prefer actually to have his resolution reported by this committee, or would he prefer to have the committee act upon an amendment of the 1958 act with a committee report setting forth very clearly the whys and wherefores and get it on to the calendar as soon as possible? That might have some effect on the situation.

Senator AIKEN. I think any expression on the part of this committee that the Congress did not intend to be unfair to the public would probably help our cause in arriving at the proper decision. And that was the reason I hurried the resolution in as fast as I could, because if this committee indicates in any way its understanding of the law and its intention to make it unmistakably clear, it seems to me that our courts then would act accordingly.

Senator COTTON. Well, I join the Senator in that hope, and I congratulate you again on moving so expeditiously.

Senator LAUSCHE. Senator Aiken, do I understand correctly that presently there are two decisions in the northeast section of the country dealing with the right of the public body to appeal, (1) the *New Hampshire* case, in which was held that the public body has no right of appeal?

Senator AIKEN. Yes.

Senator LAUSCHE. And the other, the *Vermont* case in which the court has held that the public body does have a right of appeal?

Senator AIKEN. No, I don't think they——

Senator LAUSCHE. Have they decided the issue yet?

Senator AIKEN. I think they simply bypassed it, and set aside the injunction which had been issued by one of the Federal district judges.

Senator LAUSCHE. Now section 1336 of title 28, United States Code, dealing with the jurisdiction of district courts reads:

> Except as otherwise provided by act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

This language is clear to me, that anyone involved in proceedings pending in the Interstate Commerce Commission and finally affected by a judgment of the Commission has a right to appeal to the district court to set aside, to annul, or suspend in whole or in part the ruling of the Interstate Commerce Commission.

Senator AIKEN. Well, I would leave the legal terminology to Mr. Ketcham, who is here representing the State of Vermont. However, this court, which is comprised of two Connecticut judges and one Vermont judge, and they split 2 to 1, set aside the injunction which had been put on the railroad by the Federal district judge for Vermont, another judge who disqualified himself from sitting on the panel.

Senator LAUSCHE. I want to point out specifically and to highlight this phrase in section 1336: "Except as otherwise provided by act of Congress."

Now I don't know where the Congress has otherwise provided that a public body does not have the benefits of the provisions of this bill. I would be interested to hear in the subsequent discussions or to obtain from our staff information concerning where in the 1958 act we said that a public body shall not have the right of appeal.

Senator AIKEN. I think that can be explained by our legal talent. But what gave rise to this in the first place is the fact that the ICC, in approving the merger of the New York Central-New Haven Railroads, did direct that the New Haven Railroad should continue to operate certain trains which run over Boston & Maine tracks, as well as New Haven tracks. And then in the case of the Boston & Maine, they gave the Boston & Maine, on July 6, permission to discontinue those same trains which the New Haven had been directed to continue operating.

And then on July 6, the Boston & Maine Railroad promptly announced that they were going to discontinue those trains on July 11. No time at all for anybody to do anything except the Federal district court judge issued an injunction running until the 18th of July, at which time this panel of one appeals court judge and two district judges, I believe from Connecticut, again dissolved the injunction. But I am not sure of the exact legal procedure which took place, because I am not a railroad lawyer and I don't understand railroad law.

Senator LAUSCHE. From my standpoint, Senator Aiken, I have always been an adherent, deeply, to the principle that there must be equality of justice for all. The right of appeal should not be granted to one and not to another of those who are involved in a legal contest. To grant the right to one and not to the other is a complete violation of the principle that is inscribed over the portals of the Supreme Court, "Equal justice for all."

Senator AIKEN. Yes. This train, the discontinuance of which would eliminate the only rail passenger service between Washington and Montreal and Ottawa. This is what brought the thing to a climax.

Senator LAUSCHE. Yes.

Senator Prouty?

Senator AIKEN. Senator Prouty understands the law better than I do, I am sure, and he is a representative of the State and can tell you everything that happened.

Senator PROUTY. Mr. Chairman, I have a very brief statement, but I do wish to state, at the outset, that I am deeply concerned with the problem which we are considering right now.

Mr. Chairman, I appear this morning in support of Senate Resolution 284, which I cosponsored. The purpose of this resolution is to express the intent of the Senate that Congress, in adding section 13A to the Interstate Commerce Act in 1958, intended to be fair and to give the same right of appeal to the public as to private railroad companies.

Section 1336 of title 28 of the United States Code provides—

> Except as otherwise provided by act of Congress, the District Court shall have jurisdiction of any civil action to enforce, enjoin, set-aside, annul, or suspend in whole or in part, any order of the Interstate Commerce Commission.

I do not believe that the court should lightly read into any amendment of the Interstate Commerce Act the congressional intent to deny aggrieved citizens of the right to their day in court.

Section 13A does not contain language expressly eliminating judicial review. Furthermore, I am not aware of any similar section of the Interstate Commerce Act, where judicial review is not permitted on final orders of the Commission made after an evidentiary hearing.

The Department of Justice and the Interstate Commerce Commission are of the opinion that judicial review is available and the sovereign States and aggrieved citizens may have their day in court to contest final Commission decisions under section 13A.

The court, in the case of *New Hampshire* v. *Boston and Maine, United States of America and Interstate Commerce Commission*, concluded that no review is available apparently based on the theory that Congress did not intend to be fair. I think it is clear that the court has misconstrued the intent of Congress.

I urge the members of this committee to report favorably Senate Resolution 284 to express the intent of Congress that we did intend to be fair and to grant States and their aggrieved citizens a day in court to challenge such ICC decisions.

Another matter not contained in the resolution should, be mentioned: The district court in Vermont has apparently taken the position that it lacks jurisdiction to issue an injunction to preserve the status quo by keeping trains running until a final decision is reached.

As a practical matter, once trains are discontinued, it is next to impossible to regain service. I urge the committee to add to this resolution an expression of the intent of the Congress that the district courts have the power to continue the status quo until final decision. Obviously, the right to effective judicial review should include—the power to maintain the status quo or prevent grave injury, while the review takes place.

Mr. Chairman, I have an amendment which I would like to read for the record, and I hope the committee will give serious consideration to it. This is an amendment to Senate Resolution 284.

On page 4, between lines 9 and 10, insert the following:

Resolved, That Congress, in enacting section 13(a) of title 49, United States Code, never intended to deprive a State or the public of the right to secure equitable relief from the Federal courts when it appears that undue administrative delay has occurred.

Resolved, That Congress, in enacting section 13(a) of title 49, United States Code, never intended to deprive a State or the public of the right to secure equitable relief from the Federal courts when it appears that irreparable harm will result to the State or the public, unless such relief is granted.

Thank you, Mr. Chairman.

Senator LAUSCHE. Senator Cotton?

Senator COTTON. I merely want to commend and express my complete support of my distinguished colleague from Vermont and colleague on this committee in his position here. It is my understanding, Mr. Chairman, that, underneath all of the legal verbiage, the New Hampshire court proceeded on the assumption, or based its decision on the fact, that there had been no order issued saying, in effect, that the railroad could suspend service, unless the ICC ordered them to continue it. And they had acted without any order and that this section, which is in the law, talks about amending, suspending, an order, and there had been no order.

In the interim, between the New Hampshire case and the Vermont case, there had been a finding by the ICC that this service could be suspended without detriment—I am wording this loosely—to the public interest. So they were acting at least—they had a finding to act on, which might be interpreted as an order. That is why it would seem to me that a revision—you and I, Mr. Chairman, were both members of this committee in 1958, when this act was passed, and I

am quite sure that you agree with me that it was never the intention of this committee to give the carriers any rights in court that the representatives of the public did not have.

I think——

Senator LAUSCHE. I do not believe the subject was discussed and my opinion is that an examination of the record will disclose no discussions reflecting what we intended.

I do know positively that, as far as I am concerned, I did not intend to, nor would I have voted for a provision that would give to one individual in litigation the right of appeal without giving a corresponding right to the other.

Senator COTTON. I agree.

Senator PROUTY. Mr. Chairman, may I say I was in the House at the time, and I voted on this same measure, and I couldn't agree more with what the Chairman has just said.

I am sure we didn't intend to deny anybody their proper rights.

Senator LAUSCHE. Yes.

Senator Neuberger?

Senator NEUBERGER. No questions.

Senator LAUSCHE. Do you want to question Senator Prouty, Senator Aiken?

Senator AIKEN. No, Mr. Chairman; except I would say his proposed amendment is a very good amendment.

Senator LAUSCHE. All right. Thank you very much.

Mr. John Bush, Chairman of the Interstate Commerce Commission.

STATEMENT OF JOHN W. BUSH, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY WILLIAM H. TUCKER, VICE CHAIRMAN; FRITZ R. KAHN, CHIEF, SECTION OF LITIGATION; JEROME NELSON, ATTORNEY, GENERAL COUNSEL'S OFFICE

Mr. BUSH. Mr. Chairman, I have invited the Vice Chairman, Mr. Tucker, and Mr. Fritz Kahn, Chief of the Section of Litigation of the Office of the General Counsel, and Mr. Jerome Nelson from the Office of the General Counsel, to sit with me in case there are some questions which you might wish to ask that they might be in a better position to answer. I have a short statement to make

The Interstate Commerce Commission subscribes fully to the sense of the resolution that decisions of the Commission rendered under section 13a(1) of the Interstate Commerce Act, authorizing the discontinuance of interstate trains no longer required by the public convenience and necessity, be subject to judicial review, upon appeal of any aggreived person to an appropriate district court.

Senator LAUSCHE. Does section 13a(1) provide the procedure that must be followed before a carrier can discontinue his service?

Mr. BUSH. Yes. Interstate.

Senator LAUSCHE. Interstate, yes.

Mr. BUSH. Intrastate. Let me see now.

Senator LAUSCHE. Is it intra and inter?

Mr. BUSH. Section 13a(1) is inter, 13a(2) is intra.

Senator LAUSCHE. All right. That is, no carrier engaged in intrastate or interstate service is permitted to discontinue such service

without first obtaining authorization from the Interstate Commerce Commission?

Mr. BUSH. Yes.

Senator LAUSCHE. Is that correct? If any of your men have a view to the contrary, let them speak up. Who is your lawyer?

Mr. KAHN. I, sir. The Chairman is perfectly correct that the railroad proposing to discontinue either an interstate or intrastate train must observe the procedures prescribed by sections 13a(1) and 13a(2) of the act.

Senator COTTON. May I ask you this: was my understanding in any way correct or should it be corrected? I haven't examined thoroughly the case in New Hampshire, but was the decision of the New Hampshire court, as you understand it, based on the assumption that this permission by the Interstate Commerce Commission to a carrier to suspend service is not an order? Was that the basis of the New Hampshire court's decision? Is that how they justified it?

Mr. KAHN. It is my understanding, Senator Cotton, that the New Hampshire court felt it was not a reviewable order of the interstate Commerce Commission. It made a distinction between an order and a reviewable order, I believe.

Senator COTTON. Well, is it the position of the Commission that permission granted by the Interstate Commerce Commission to a carrier for a change or suspension of service is tantamount to an order. In other words, you don't tell them they must suspend service, but you take formal action to permit them to. Now is that an order or isn't it an order, in your opinion?

Mr. KAHN. It most certainly is an order, Senator, and it is a reviewable order as the statement of the Chairman points out.

Mr. TUCKER. Mr. Chairman, I want to add a point that bears on both questions that were brought up, that basically the State has jurisdiction, the particular State involved, over the particular passenger service and that the jurisdiction of the Interstate Commerce is invoked by the filing of the notice by the particular railroad. One problem that enters here, which does raise the legal issue, is really a jurisdictional problem. It is at what point does the Commission assert jurisdiction and at what point does that jurisdiction revert back to the State. So that actually the railroad files a notice and if the Commission chooses to investigate in accordance with the 1950 act, then we have Federal jurisdiction before the Interstate Commerce Commission. But basically it is a jurisdictional question in a legal sense, in that until a railroad files a notice, jurisdiction over the passenger service is with the particular States.

Senator LAUSCHE. All right. I think we will allow the Chairman to proceed and we will get to questioning later.

Mr. BUSH. The Commission never has asserted the nonreviewability of its final reports and orders, entered at the conclusion of its investigations into the railroads' discontinuance proposals; on the contrary, the Commission unequivocally is on record in support of the right of judicial review of such reports and orders.

The matter of reviewability arose during the course of hearings before the Surface Transportation Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 3020, 86th Congress, 2d session, a bill to amend section 13a(1), among other provisions, of the Interstate Commerce Act. Testifying on behalf of the Commis-

sion was Commissioner Kenneth H. Tuggle, accompanied by the Commission's general counsel, Mr. Robert Ginnane. At that time Commissioner Tuggle stated that he believed the Commission's report after investigation and hearings in a train discontinuance case was reviewable by the courts.

During the hearings, Robert W. Ginnane, the general counsel, explained:

> Strictly speaking, the only order the Commission issues, if after a hearing it decides not to vote on the discontinuance, is an order discontinuing the proceeding. Now technically that might not be an order in that it doesn't require anybody to do anything, but there are analogous situations, such as where a commission, after investigating the lawfulness or a rate, finds it lawful—it doesn't affirmatively do anything; it just lets the rate go into effect, and such rate proceedings have long been held reviewable, and that is a fairly close analogy to this type of situation.

In the case referred to by Senator Case, civil action No. 38915, *The People of the State of California, et al.* v. *United States*, the U.S. District Court for the Northern District of California, consistent with the view expressed by Commissioner Tuggle and Mr. Ginnane, assumed jurisdiction to review the report and order of the Commission discontinuing its investigation of the proposed reduction in train service, and, finding no abuse of the Commission's discretion, the court sustained the Commission's actions, by unreported per curiam order, entered April 6, 1961.

A second clear articulation of the Commission's position in favor of the judicial review if its reports and orders, decided upon the investigations authorized by section 13a(1) of the act, may be found in the very case cited in the resolution—civil action No. 2570, *State of New Hampshire* v. *Boston & Maine Corp., et al.*, before the U.S. District Court for the District of New Hampshire. As the resolution correctly notes, the district court in that case determined that it was without jurisdiction to review the report and order of the Commission finding that the public convenience and necessity did not require the continued operation of certain trains sought to be discontinued by the railroad.

The suggestion that the court was without power to review the Commission's actions most certainly did not come from the Commission. The court, in its unreported opinion, filed December 28, 1965, acknowledged that "The Commission argues for jurisdiction in this case." It did so by reasoning by analogy to the judicial review of reports and orders of the Commission finding assailed rates not shown to be unjust and unreasonable, as had been explained by Commissioner Tuggle and Mr. Ginnane before the Senate subcommittee. Moreover, as the court said:

> The Commission has directed our attention to two unreported per curiam decisions affirming Commission orders terminating investigations under section 13((a)(1). *Rhodes, et al.* v. *United States*, civil action No. 63–472, U.S.D.C., W.D. Pa., October 15, 1963; *California* v. *United States*, civil action No. 38915, U.S.D.C., N.D. Cal., April 6, 1961.

Senator LAUSCHE. What type of entry is made in your docket when you conclude that your investigation will be terminated or the proceedings dropped? That is, you do not order a continuance of the service, you do not enter an order allowing a discontinuance of the service, but from what has been said to me it appears that you discontinue your proceedings. Now my question is: what is the formal order that you make or record?

Mr. TUCKER. My recollection, Senator, is that we have an order discontinuing the investigation. We invoke jurisdiction by——

Senator LAUSCHE. Speak into the microphone, please.

Mr. TUCKER. My recollection is, Mr. Chairman, that we have an order or minute of the Commission discontinuing the investigation. The hearings are usually, are always, based on an order of investigation. The proceeding is in the nature of an investigation.

Senator LAUSCHE. That is, initially you order an investigation.

Mr. TUCKER. That is right, Mr. Chairman.

Senator LAUSCHE. Is that put on the docket?

Mr. TUCKER. That is right.

Senator LAUSCHE. Then the investigation is made?

Mr. TUCKER. Correct.

Senator LAUSCHE. It then comes before the Commission based upon the investigation?

Mr. TUCKER. That is correct, sir.

Senator LAUSCHE. Now then, after the Commission has studied the report made pursuant to the investigation, you make an entry?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. If you do not intend to issue an affirmative or negative order, what is the entry that you usually make?

Mr. TUCKER. That would be in the nature of discontinuing the investigation. As I pointed out earlier, Senator, remembering that it is an investigatory proceeding which invokes our jurisdiction, in effect we no longer are accepting jurisdiction or responsibility.

Senator LAUSCHE. Don't you have a regularly formalized entry, such as the investigatory proceedings herein are terminated as of this date? Don't you have formalized language?

Mr. TUCKER. That would be part of the docket of the particular proceedings, sir, that entry.

Senator LAUSCHE. Well, the reason I say that, as a judge I know that I had a stamp which fitted the different types of entries that were to be made and if there was an odd entry, I would have to write it out in longhand. Proceed.

Senator COTTON. Mr. Chairman, I hate to be interrupting the testimony——

Mr. BUSH. That is certainly all right, Senator.

Senator COTTON. The trouble is when we ask question, frequently if we keep our mouth shut in a minute or two you would be answering the question anyway. But I am wondering, Mr. Chairman, if the Interstate Commerce Commission would have any objection—would have any objection if we inserted at this point in the record the 4th paragraph of the chairman's letter—the one I have here is addressed to both Senators Aiken and Prouty—which reads as follows:

As you know, section 13(a)(1) of the Interstate Commerce Act provides that a carrier may discontinue certain passenger train operations—

Are you coming to this in your statement now?

Mr. BUSH. No sir. But I have that letter here.

Senator COTTON (continues reading):

carriers may discontinue certain passenger train operations upon 30 days' notice, but the Commission may institute an investigation of the proposed discontinuance within that 30-day period, and that a carrier may discontinue operations if the Commission grants its application or if the Commission fails to act within 4 months following the order of investigation. It is extremely difficult within a

period of 4 months to schedule hearings at locations convenient to the parties, to hear the evidence presented by the carrier, labor, and the public witnesses, to provide a reasonable time for the filing of briefs, to evaluate the evidence in the light of opposing arguments and to prepare, reproduce and serve a report exchanging the Commission's findings and conclusions.

I think that is very pertinent to the question right now. Would you object if that were inserted at this point, even though it interrupted your presentation?

Mr. BUSH. No, I would be very pleased to have it inserted. Commissioner Tucker and I would be happy to add another comment after our formal testimony on that very subject.

We have been discussing that matter.

Senator COTTON. Would you rather have it inserted at this point or at the close of your formal statement?

Mr. BUSH. Perhaps it would be better if we inserted it at the close and then we add the comment I would like to add.

Senator LAUSCHE. It will be so ordered. I now want to read the entry which was made in the proceedings wherein the Boston & Maine asked for the right to discontinue. Your Commission made the following entry:

It is ordered that in accord with the procedure outlined in the ordering paragraphs of the said order of July 6, the proceeding be and it is hereby, discontinued effective 35 days from the date of service hereof.

Is that the entry?

Mr. BUSH. Yes, sir.

Senator LAUSCHE. All right. Proceed.

Mr. BUSH. Picking up the formal statement, its report and order having been left in effect by the New Hampshire district court, the Commission was in no position to appeal to the Supreme Court from its decision. The State of New Hampshire, however, did give notice of such an appeal, and on March 11, 1966, the Commission, on recommendation of the General Counsel, voted to take the unusual step of supporting the appeal to the Supreme Court by the filing of an appropriate memorandum, urging that the lower court had erred in determining that it was without jurisdiction to review the Commission's section 13a(1) report and order. The Commission was denied the opportunity of filing such a memorandum when the State of New Hampshire subsequently dismissed its appeal. Nevertheless, the Commission, by vote taken April 25, 1966, concluded not to acquiesce in the district court's view and not to assert nonreviewability in subsequent suits seeking to set aside its section 13a(1) reports and orders.

The Commission in no way has deviated from that position, and in the most recent court case—the one which give rise to the resolution—Civil Action No. 4611, *Public Service Board of the State of Vermont* v. *United States*, before the United States District Court for the District of Vermont, the Commission reiterated its view that its final report and order under section 13a(1), discontinuing its investigation of the railroad's train discontinuance proposal, will be reviewable by the district court. In its pleading of July 13, 1966, the Commission stated flatly:

After issuance of a final report and order and ruling upon petition for reconsideration * * * the matter will be ripe for review.

The three-judge court in that case, while denying a preliminary injunction because the State failed to prove irreparable injury, agreed

with us that the Commission's action would be reviewable when it was administratively final.

In all candor, I must state that in that pleading of July 13, 1966, the Commission did urge that the Vermont district court was without jurisdiction to review the particular order of the Commission, division 3, entered July 16, 1966, then before it. That order though declaring that continued operations of the trains would not be required, was not ripe for judicial review (*Eastern Airlines* v. *C.A.B.*, 271 F. 2d 752, 757 (2d Cir. 1959)), because it was unaccompanied by a report announcing the reasons or findings and conclusions for the Commission's actions and it was not yet the subject of petitions for reconsideration, which the Commission's General Rules of Practice allow the parties to file as a matter of right. When the parties' administrative remedies have been exhausted, they most assuredly should be entitled to judicial review of the Commission's action, and the Commission will continue to assert their right to obtain it.

In this regard, then, the Commission is in wholehearted accord with the resolution.

The resolution also addresses itself to the decision of Division 3 that continued operation of the Montrealer and Washingtonian trains of the Boston and Maine was not required by public convenience and necessity and would unduly burden interstate commerce.

Since, as Chairman of the Interstate Commerce Commission, I appear before your committee as spokesman for the Commission as a whole, it would be useful for me to discuss briefly the Commission's processes in deciding a train discontinuance case arising under section 13a(1). In order to meet the severe time limitations imposed in section 13a(1), the Commission as a regular practice omits preparation and service of an initial report by the examiner who has heard the evidence in these interstate train cases. In other words, the initial decision is made by division 3, the Commission's Finance Division, as soon as practicable following the close of the hearing.

The Commission's rules of practice provide in such a situation, that, where the initial decision in a case is made by a division of the Commission rather than by the hearing examiner, that the parties may, as a matter of right, file a petition for reconsideration of that decision. In the usual case, such a petition would be considered by the same division, acting as an appellate body. The Commission's internal organization rules provide, further, than any division may call upon the entire Commission to consider any case before the division, and also that the entire Commission may recall and bring before itself any case assigned to a division.

I would point out therefore that although Division 3 has issued its decision in the B. & M. case the parties do have a right to seek reconsideration of that decision, and there is the possibility—which I do not feel free to discount at this time—that such a petition may be brought before the entire Commission for its consideration. It would be virtually impossible to comment on the last three paragraphs of the resolution without also discussing the merits of the proceeding in Finance Docket No. 24000. In this context, I invite your attention to the case of *Pillsbury Company* v. *F.T.C.*, 354 F. 2d 952 (5th Cir., 1966) which remanded to the Federal Trade Commission a decision adverse to Pillsbury, the court stating:

> Common justice to a litigant requires that we invalidate the order entered by a quasi-judicial tribunal that was importuned by members of the U.S. Senate,

however innocent they intended their conduct to be, to arrive at the ultimate conclusion which they did reach (354 F. 2d, at 963).

See also 25 Federal Bar Journal, 273 (summer 1965) Dixon "Disqualification" of Regulatory Agency Members: The New Challenge to the Administrative Process." For practical purposes, although no petition for reconsideration has been filed to date, the B. & M. proceeding should still be considered as a pending case until the time for filing a petition for reconsideration has expired. I therefore request that the Commission be permitted to withhold its comments on the merits of the B. & M. division decision. It may be necessary for me and other members of the Commission to vote on the merits of any petition for reconsideration.

We hope that our comments have been helpful to the committee.

Senator LAUSCHE. Senator Cotton?

Senator COTTON. Mr. Chairman, in other words, the Commission took the position, as far as the Vermont case was concerned at least, that these proceedings were not properly the subject for court action until you had completed or until the processes before your Commission and the rights of the public and others had been completed, so you had a complete record to go to the court. Is that correct?

Mr. BUSH. I would like to have you restate, if you would, Senator Cotton, the first part of your question. The Commission took the position, and then what?

Senator COTTON. In your statement, where you prefaced a statement with "In all candor I should say," I understood you to tell us that the Commission took the position that at least in the Vermont case, the Vermont court, that is was not a subject for court action because the various proceedings that were open to the interested parties before your Commission had not been resolved or completed and the Commission had not completed the case in such form that the record was ready to be passed upon by a court?

Mr. BUSH. That is correct. We said it was not ripe for the District Court to review it.

Senator COTTON. And that is in accordance with your regular procedure at all times in all cases?

Mr. BUSH. Yes, sir.

Senator COTTON. So it leaves us in this situation, that after 30 days notice, which in this case expired I believe July 11, the rail passenger service ceases and we are up against the situation that the service is discontinued and remains discontinued pending these proceedings, rather than have any way that the public can get the service continued until the proceedings are completed.

Mr. BUSH. I would like to ask Mr. Kahn to comment on our interpretation of the court's action there. Actually there were three phases, I believe.

Mr. KAHN. Senator Cotton, there are essentially two problems. One is the problem of the reviewability of the Commission's actions terminating the investigation on a train discontinuance proposal.

Certainly the position of the Commission is that such action is fully reviewable upon complaint of any party.

The second problem to which you are presently alluding, I believe, Senator, refers to the operation of the trains after the expiration of the 4-month period and before the court has an opportunity to review the actions of the Commission.

There the Commission reads the statute as denying to it the right to order the continued operation of the trains. It is only after we determine that the public convenience and necessity does indeed require the continued operation of the trains that the Commission enjoys the discretion to order the resumption of service.

So, too, we would say that if the court finds error in the action of the Commission and remands the case to the Commission, the Commission subsequently upon a determination that consistent with the lower court's opinion, might find that the continued operations are required, so that the Commission would be empowered to order the resumption of service.

Senator COTTON. Well, I am not—please don't misunderstand me—I am not suggesting any negligence or lack of taking care of the public interest by the Interstate Commerce Commission. I am merely discussing what the law, for which we are responsible up here, and you are not responsible for down there, the position the law puts the Interstate Commerce Commission as well as the parties in.

From the testimony of the chairman and from the paragraph in his letter to the Vermont Senators that I had inserted, I gather that the situation seems to be this: A carrier may give 30 days' notice, the Commission knows that at the end of the 30 days it intends to discontinue certain service. It would be utterly impossible as a practical matter for the Commission to explore the whole situation and go through the whole procedure of determining the justification within the 30-day period.

In fact, this letter says it can't be done completely and adequately in most cases in 4 months. Is that right?

Mr. KAHN. That is correct, sir.

Senator COTTON. So that under the law as it now stands, as it now stands, the carrier can discontinue service at the end of the 30-day period and that service remains discontinued until and unless the Commission goes through the whole procedure which is outlined here of scheduling hearings at locations convenient to the parties, hear the evidence presented by the carrier, labor and public witnesses, provide reasonable time for filing of briefs, time to evaluate the evidence in light of opposing arguments, and prepare and reproduce and serve a report. All of this has to be done under the law as it now stands, and the service is discontinued and remains discontinued unless at the end of a considerable period the Interstate Commerce Commission has completed its procedures and it is in proper form to be reviewable by a court. Is that right?

Mr. KAHN. That we submit, Senator Cotton, is the clear language of the statute.

Senator COTTON. Now to get to the absolute heart of the situation, what, in the opinion of the Commission, if you care to express it, Mr. Chairman, should this committee recommend as action for the Congress to take to correct this statute?

Is it your opinion, Mr. Chairman, that the service should be discontinued and remain discontinued through all of this procedure, or would it be more just and more in the public interest that the law be modified so that the service could be continued until the Commission had found that it was justified and proper to discontinue it?

Mr. BUSH. Basically, Senator Cotton, that would be my opinion.

I am going to ask Vice Chairman Tucker also to supplement what I am going to add there.

When these train-off cases or train discontinuance cases first started it was usually a single train, and it was a rather simple matter, and the 4-month limitation was not the handicap that it might be in say the *New Haven* case, where they asked to discontinue all of their train service, or the *Boston & Maine* case where they asked the same thing, or the coming *New York Central* matter.

So that was what I was suggesting, that we insert that paragraph of the letter here, and then ask Commissioner Tucker, Vice Chairman Tucker, to comment on that.

But basically it is a time problem.

(The letters referred to follow:)

JULY 25, 1966.

Hon. GEORGE D. AIKEN,
U.S. Senate, Washington, D.C.

DEAR SENATOR AIKEN: This will acknowledge the receipt of your letter of July 25, 1966, regarding Senate Resolution 284, introduced by you and co-sponsored by Senator Prouty and Senator Kuchel. As you will note by the enclosed copy of my letter to Senator Prouty, I made the following informal comment on the decision of the three-judge court for the District of New Hampshire in *State of New Hampshire* v. *Boston & Maine Corp.*, Civil Action No. 2570:

"In *New Hampshire* v. *Boston & Maine Corp.*, Civil Action No. 2570, decided by the United States District Court of New Hampshire on December 28, 1965, the Commission did *not* argue that the court had no jurisdiction to review the decision of the Commission permitting discontinuance of certain passenger train operations pursuant to the provisions of Section 13a(1). In fact, the Commission opposed dismissal of the complaint on that ground, even though the effect of the court's ruling was to uphold the Commission's order.

"Following the three-judge district court decision in *New Hampshire* v. *Boston & Maine Corp.*, *supra*, the Commission, on April 25, 1966, authorized its General Counsel to take the position in future court proceedings that Section 13a(1) orders of the Commission *are* subject to judicial review. Thus, the Commission agrees with the view expressed in S. Res. 284 that it is manifestly unfair and contrary to the intent of the Congress to permit carriers to appeal from Section 13a(1) orders while denying to the public any comparable right of appeal. If the decision in *New Hampshire* v. *Boston & Maine Corp.*, *supra*, is followed by other courts, I am confident that the Commission would support an appropriate amendment to Section 13a(1)."

In response to your letter, I will ascertain whether the Commission concurs in views I have expressed above and advise you of the Commission's position on this matter.

Sincerely yours,

JOHN W. BUSH, *Chairman.*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., July 25, 1966.

Hon. WINSTON L. PROUTY,
U.S. Senate, Washington, D.C.

DEAR SENATOR PROUTY: This letter is written in response to your letter of July 20, 1966, concerning the order of Division 3 of the Commission in Finance Docket No. 24000 permitting the Boston and Maine Railroad to discontinue the operation of four passenger trains between Springfield, Massachusetts and White River Junction, Vermont.

Enclosed is a copy of the Division's report which was served today. Accordingly, the State of Vermont and other parties to the proceeding will have an opportunity to review the findings and conclusions of the Division prior to any further action in the pending court proceedings.

First, I would like to explain why the report of Division 3 was not served simultaneously with its order of July 6, 1966. Although your criticism of this action is justified, I would like to mention several extenuating factors and to explain the action I have taken to prevent service of an order permitting discon-

tinuance of passenger train operations without simultaneous service of an explanatory report.

As you know, Section 13a(1) of the Interstate Commerce Act provides that a carrier may discontinue certain passenger train operations upon 30 days' notice, but that the Commission may institute an investigation of the proposed discontinuance within that 30-day period; and that a carrier may discontinue operations if the Commission grants its application, or if the Commission fails to act within four months following its order of investigation. It is extremely difficult, within a period of four months, to schedule hearings at locations convenient to the parties; to hear the evidence presented by carrier, labor, and public witnesses; to provide a resonable time for the filing of briefs; to evaluate the evidence in the light of opposing arguments; and to prepare, reproduce, and serve a report explaining the Commission's findings and conclusions.

Notwithstanding the severe time limitations imposed by Section 13a(1), the Commission, with rare exceptions, has been able to meet the statutory deadline. In Finance Docket No. 24000, however, the examiner who heard the case was unable to draft a report for the consideration of Division 3, except in very rough form, prior to the expiration of the four-month period. However, prior to the issuance of the order of July 6, 1966, the Division reviewed the record in the light of hearing examiner's recommendations.

To prevent any reoccurrence of this situation, I have instructed the Commission's staff to bring to my attention any case under Section 13a(1) in which there is any possibility that the hearing examiner will be unable to submit a draft final report embodying his recommendations and conclusions in sufficient time to permit Division 3 to serve its report simultaneously with its order. Upon receipt of such information, I will either make special arrangements for the preparation of an acceptable report and order or will obtain from the carrier involved a voluntary extension of time for Commission action.

Since it may be necessary for me to vote on petitions for reconsideration, I cannot discuss the report of Division 3 on the merits. As you will note, however, the Division discussed the report of the entire Commission in *New York, N. H. & H. R. Co., Discontinuance of Trains,* 327 I.C.C. 151, and concluded that its action in Finance Docket No. 24000 was not inconsistent with the *New Haven* case.

The Commission will no doubt be asked to comment on S. Res. 284, introduced by Senator Aiken for himself, you, and Senator Kuchel. At this time, I would like to make an informal comment on the problem referred to in the first and second resolving clauses on page 4 of S. Res. 284.

In *New Hampshire* v. *Boston & Maine Corp.*, Civil Action No. 2570, decided by the United States District Court of New Hampshire on December 28, 1965, the Commission did *not* argue that the court had no jurisdiction to review the decision of the Commission permitting discontinuance of certain passenger train operations pursuant to the provisions of Section 13a(1). In fact, the Commission opposed dismissal of the complaint on that ground, even though the effect of the court's ruling was to uphold the Commission's order.

Following the three-judge district court decision in *New Hampshire* v. *Boston & Maine Corp., supra,* the Commission, on April 25, 1966, authorized its General Counsel to take the position in future court proceedings that Section 13a(1) orders of the Commission *are* subject to judicial review. Thus, the Commission agrees with the view expressed in S. Res. 284 that it is manifestly unfair and contrary to the intent of the Congress to permit carriers to appeal from Section 13a(1) orders while denying to the public any comparable right of appeal. If the decision in *New Hampshire* v. *Boston & Maine Corp., supra,* is followed by other courts, I am confident that the Commission would support an appropriate amendment to Section 13a(1).

I have been advised informally that the State of Vermont and the Boston and Maine may be able to reach some agreement respecting continued operation of the day trains involved in Finance Docket No. 24000 until early September and the overnight trains until next April. In any event, if petitions for reconsideration of the report of Division 3 are filed, I assure you that they will be given prompt and careful attention.

Sincerely,

JOHN W. BUSH, *Chairman.*

Mr. TUCKER. As the Chairman says, we have discussed this; that is, the Chairman and I have discussed it, the time limitation. That I would like to make clear. As the Chairman indicated, it is a matter right now of individual discussion and it is not connected with the Commission's consensus.

In that context I simply suggest that it is a matter that the Chairman and I intend to take up with the Commission and get the Commission's viewpoint and concensus on, if any.

So that should be clear on the record.

In regard to anything we say about the limitation, we are not speaking for the Commission.

But I would like to direct the committee's attention to the nature of the type of case we are beginning to get under section 13.

For the most part up until the New Haven problem, Senator, we had single trains, or maybe two trains which division 3 or the Commission could very adequately dispose of in the time limitations laid down by the Congress under the 1958 act.

The *New Haven* case was a most difficult problem by way of time limitation, the 4-month period, in getting a good extensive discussion of the principles involved in a huge railroad discontinuing all or a great portion of its service, rather than one or two trains.

So we are suggesting, Senator, that that could very well be the case in the future. The New York Central has recently announced that it will—and this is not before us, but they have made a public announcement—that it intends to take a look at all of its service, and overhaul it or restructure it. I don't know what the description was. But I do know that if they do that, it would involve a great number of discontinuances, and also a change or restructuring of all of the rail passenger service. We may run into that in several other railroads, possibly as many as five or six others, I don't know. I don't want to suggest or encourage that in any way.

But if we do, we have a serious problem with the 4-month limitation. We are not dealing with the economics of a particular train and the passenger head count. It is a problem.

Now we wouldn't run into that in 13a(2); it would be mostly 13a(1), because of the extensiveness of a single railroad's operation.

I don't know what the railroad industry's feeling or reaction is with regard to this procedure. But I can suggest from my own experience with the *New Haven* case that there are also some evidentiary problems, the question of costs and economic viability, for a large segment of passenger service, or all of it, being brought to the attention of the hearing examiner, or the Commissioner who hears the case.

Public witnesses can be tremendously extensive and all of them are entitled to be heard and the Commission has gone to great lengths to make sure that every segment of the public is heard and understood in these cases.

So that understanding that it is a new type of case we have in the *New Haven* and cases that we may get along those same lines, the Chairman and I have, individually, discussed the question of the time limitation, as well as the nature of the proceedings.

There are other aspects to section 13 that we may discuss too. For example, there is a question of who has the burden of proof in a section 13 proceeding.

Senator LAUSCHE. Let's not get into that at this time.

Senator COTTON. You have said exactly what I was going to ask you, and bring before this committee as forcibly as I could, and Senator Aiken has rendered a distinguished service in formally bringing it before the Congress.

In other words, whereas in the past you were dealing with discontinuing a single train, today in this particular instance the action

taken by the railroads—and I am not commenting on whether it is justified or not justified—virtually cuts off and puts to a final end all of the passenger service for northern New England and more specifically the States of Vermont and New Hampshire, and into Canada, too.

In other words, as you have so well said, this law enacted by the Congress and the justice who happened to be presiding over the New Hampshire court at that time, as Senator Aiken has very well said, attributes great negligence or even wrong intent to the Congress, when Congress considered that, presumably, they were dealing with the oldtime situation where train A or train B or train X was discontinued.

Now, as you said, we are dealing today and will be dealing perhaps in the immediate future with the cutting off of all passenger service for a whole segment of this country.

Now in view of that fact, I understand from your remarks that you are willing to prepare and present to this committee and to the Congress amendments to the law which will deal with this new situation. Is that correct?

Mr. BUSH. Commissioner Tucker and I feel that we should present our thoughts to the Commission and of course the Commission would have to present that. We could not, individually.

Senator COTTON. Yes. But you have that in mind?

Mr. BUSH. Yes. In 13a(2), under which this time limitation applies to train-off cases of interstate trains, we have that problem. In 13a(1) pertaining to intrastate trains, each one becomes a case, and we would have the time necessary to handle it, without a limitation.

Senator COTTON. But in the present instance that we are discussing this morning, the patient is dead, and there is no provision in the law, I gather from you, and that apparently was the basis of the court decision, there is no provision under the present law as interpreted by the courts and by you, to keep the patient breathing until the procedure is gone through to try to restore life or until it is definitely decided it is a hopeless case.

In other words, the passenger service for a whole section is chopped off and under the law in its present form we have got to go through the process. The Congress doesn't have to wait, but I for one would hate to move without the Commission's advice and guidance in revising the statute, a statute that is as far reaching and as important as this in this field. But we are nearing the end of this session of Congress. How much time would it take for you to get the consideration by the whole Commission and present to this committee—some amendments to this law that would remedy this situation?

Now this committee, Mr. Chairman, if we pass a resolution, if we report immediately a resolution such as the distinguished Senator from Vermont gives us, and get it on the docket or get it through the Congress before its adjournment, might have some bearing on the attitude of the courts. It might have some bearing, but it is an unfortunate way to have to proceed, but it seems to me the only way.

How long would it be, before the Interstate Commerce Commission could consider this and could have prepared for this committee some amendment to this law, or redrafting of this law to meet the situation we are now confronting; namely, the discontinuance of service in a whole section of the country?

Mr. KAHN. Senator Cotton, before the Chairman responds to your question specifically, may I comment very briefly with respect to the remedies that appear to be available under the existing legislation.

Certainly in the *Vermont* case we found we were confronted with imminent train discontinuance, and the Public Service Board of the State of Vermont did not hesitate at all to invoke the aid of the U.S. District Court for the District of Vermont, and that court did enter a temporary restraining order requiring the continued operation of the trains.

At the end of the initial 10-day stay period, the court met again, this time convened as a statutory three-judge court, and again, notwithstanding any apparent deficiencies in the existing legislation, the U.S. District Court for the District of Vermont entered an order requiring the continued operation of the trains.

It was only at the third session of the court—again the court constituted as a statutory three-judge court—that a majority of the court found that the State of Vermont had failed to establish immediate irreparable injury such as would be required to have the temporary restraining order ripen into an interlocutory injunction, which interlocutory injunction, Senator Cotton, might well run throughout the period, months, even years if necessary until the actions of the Commission were finally reviewed by the court.

And so it was only upon a finding by the district court, which finding incidentally I understand is being appealed by the public service board of the State of Vermont, that the State of Vermont had failed to make out a requisite showing for an interlocutory injunction, that the court felt the trains could be discontinued as proposed by the railroad.

Now the Chairman, I am sure, will respond to your specific question, Senator.

Senator LAUSCHE. What was the nature of the action in the Vermont court? Was it an action in equity, to enjoin the discontinuance? Or was it an action appealing from an order of the Commission?

Mr. KAHN. Mr. Chairman, it was both. It was an action serving review of the preliminary order of the Division 3 of the Commission and also for interim relief requiring the continued operation of the trains.

Senator LAUSCHE. All right. Proceed.

Mr. BUSH. In other words, I would say that in layman's language, Senator Cotton, the mechanics appeared to have been available to that court to delay the discontinuance of the train if the State of Vermont had made a case of irreparable damage. I think that ties in with your line of questioning.

Senator COTTON. In other words, you are saying that the law in its present form permits remedial and timely action if the evidence seems to justify it?

Mr. BUSH. That was our interpretation of the finding of that three-judge court, yes, sir.

Senator COTTON. Is it your personal opinion, if I may ask you—I understand you are not speaking for the Commission because you haven't presented it to the full Commission—but is it your personal opinion that a revision of this statute, however, is necessary in view

of the new developments and of the widespread discontinuance of service that is now asked for and may be asked for in other cases in contradistinction to the taking off of a train here and there?

Mr. BUSH. I was just asking my counsel about this. My personal view is yes, and I wanted to know if I could say so.

Senator COTTON. Then may I again ask the question—we have wandered away from it—how long approximately do you think it would be, if the Commission should agree with your opinion you just expressed, if they should agree, how long would it take to submit a rather careful revision of this statute to us?

Mr. BUSH. I will ask Mr. Tucker to respond to that.

Mr. TUCKER. Senator, as we pointed out, the Chairman and I have just discussed this very recently——

Senator LAUSCHE. You can answer the question. He asked you how long will it take you to decide whether you will recommend a modification of 13(a)(1)?

Mr. TUCKER. That would be entirely up to the Commission, Mr. Chairman.

Senator COTTON. My point is this: I understand that both the Chairman and Vice Chairman of the Commission are not authorized to express an opinion for the Commission. I am simply saying that if the Commission should concur with the opinion just expressed by the Chairman that a revision of the law is necessary, how long approximately would it take to get the proposed revision up here to us, so we can have something to act upon?

Mr. TUCKER. I would suggest 2 or 3 weeks, Senator Cotton.

Senator COTTON. Well, I am happily surprised.

Senator LAUSCHE. Senator Prouty?

Senator PROUTY. I yield to Senator Aiken.

Senator AIKEN. I just have a clarification. I wanted to point out this case, the Boston & Maine discontinuance, on the part of the State of Vermont, there is only about 25 miles of track in Vermont, and not over 100 miles between Springfield, Mass., and White River Junction, Vt., over which the Montrealer runs, but there are about 700 miles in the whole run from Washington to Montreal.

The point I wanted to make is that just because one road can show that for a short distance it does not make satisfactory profits, is it then advisable to permit the abandonment of the entire run? That is all I had to say.

Senator PROUTY. I would like to follow up Senator Cotton's questioning.

In the *Vermont* case, Division 3 issued the order without a report. Is that correct?

Mr. BUSH. It issued the order and immediately followed up with the report. They had prepared their report, but, due to that 4-month limitation, they did not have it typed in clean form.

In other words, they had the report, but they had it in such rough form that the last day they didn't have it typed.

Senator LAUSCHE. You mean they didn't have the report ready within the 4-month period?

Mr. BUSH. They had the report—yes, that is correct, Senator Lausche. They had the report, but they did not have it ready for circulation.

Senator PROUTY. Well, in effect, this meant, because of the time element, Vermont could not pursue its administrative remedy.

Now I am referring to an appeal for reconsideration to the Commission before the trains were taken off.

Mr. BUSH. That is correct, yes.

Senator PROUTY. That, of course, is the crux of the whole matter. The State of Vermont has not had sufficient time in which to prepare its case.

Mr. BUSH. Sir, I agree this is a most difficult situation. When the Transportation Act of 1958 was passed, as I say, it seemed at that time that 4 months was an adequate time and the Division 3——

I would like to clarify one thing—Division 3 handles all of these train discontinuances, unless there is some very special reason that the whole Commission should ask to take it over, or the Division should ask that the Commission does take it over. I have not seen the record that was prepared for the discontinuance, as far as the Boston & Maine part of the trains is concerned. As I say, the three-judge court found that they could not extend the time limit because the State of Vermont had not shown irreparable damage, and I only know that from their statement.

Senator PROUTY. May I suggest that the State of Vermont has not had sufficient time in which to present its views? I doubt whether this three-man court had sufficient information with respect to this case to render a judgment based on the facts.

Now, certainly the Commission is far more competent to analyze the situation, when an appeal is made for reconsideration, and I assume it has been or will be.

I think the Commission can act then. But we want to keep the trains running.

Mr. BUSH. There have been negotiations between the Governor, as you know, Senator, and the Boston & Maine. They could allow it to continue. And, we, on reconsideration, if Division 3 or the whole Commission, if the Commission takes it over, reverse the decision, then the trains would have to go back on.

Senator PROUTY. How many instances have there been when trains have been taken off and the Commission has ordered the service to be reduced?

Mr. BUSH. There have been very few cases. Of course, there have been very few cases that are comparable to this, where a full Commission decision, such as the *New Haven* decision, appears at least to be in some conflict with the Division's case, but there are two separate records there.

There have been hundreds of train discontinuance cases and, to my knowledge, no court has ever reversed the final decision of the Commission. Usually that decision is Division 3 of the Commission.

Senator PROUTY. I have been advised unofficially that the Boston & Maine would agree to maintain service until April 1, providing the State would agree to take no further action before the Commission.

Mr. BUSH. I have heard that and also that they made the same offer to the State of New Hampshire in the other case, and it was accepted by New Hampshire and not accepted by Vermont.

Senator PROUTY. I hope Vermont is going to be more farsighted. We don't want the trains taken off after April 1 next year, and, if we follow the suggestion of the B. & M., that is exactly what would happen.

Senator LAUSCHE. I think we have two questions involved here, from the standpoint of drafting general law applicable to the whole Nation and applicable to all railroads, and local communities.

One, the question whether, under existing law, all parties to a proceeding pending before your Commission have the right to appeal to the district court?

Two, whether the language of section 13(a), which, according to my reading of your letter, states that, at the end of 4 months, if the Commission has not acted, the railroad or carrier can discontinue its service.

Now, I contemplate taking up those two matters seriatim.

One, I ask your counsel, Is it your opinion that, under the law as now written, every party to an action pending before the Commission has the right to appeal to the district court, after you have entered an order, in conformity with section 1336?

Mr. KAHN. Very definitely, Mr. Chairman.

Senator LAUSCHE. You do not believe that we need to change the law, rewrite the law, so as to insure that every party shall have the right of appeal?

Mr. KAHN. That is my view, Mr. Chairman.

Senator LAUSCHE. Now, getting to the second subject, my associates here have discussed this matter of whether adequate time under the law has been granted to your Commission to efficiently make your investigation and determine whether the service should be discontinued or ordered to be continued.

Now, Mr. Bush, in your letter you say:

As you know—

This is addressed to Senator Prouty—

section 13(a)(1) of the Interstate Commerce Act provides that a carrier may discontinue certain passenger train operations upon 30 days' notice.

Does that mean that a carrier can serve notice to you on one day and 30 days later discontinue the service?

Mr. KAHN. It does not, Mr. Chairman.

Senator LAUSCHE. Reading further:

But that the Commission may institute an investigation of the proposed discontinuance within that 30-day period.

That is, when a carrier serves notice upon you that it intends to discontinue its service, you may immediately proceed to conduct an investigation?

Mr. KAHN. That is correct, Mr. Chairman.

Senator LAUSCHE. Is that usually done?

Mr. KAHN. I believe in most instances an investigation is undertaken, yes, sir.

Senator LAUSCHE. Now we get down to the core of the matter, as I see it.

And that a carrier may discontinue operations if the Commission grants its application.

Now that is obvious. Let's assume that, under this language, you have granted the right to discontinue. Would all of the parties to the action have a right to appeal against the judgment rendered in favor of the carrier?

Mr. KAHN. Most assuredly.

Senator LAUSCHE. Right. Now further—

And that a carrier may discontinue operations if the Commission fails to act with 4 months.

That rule, in effect, says that, unless the Commission acts within 4 months, the carrier is ipso facto invested with the right to discontinue the service. Is that correct?

Mr. KAHN. Yes, sir.

Senator LAUSCHE. Do you think that 4-month period is adequate for the Commission to intelligently investigate and render a decision?

Mr. KAHN. It is my personal judgment, Mr. Chairman, that, in most instances, the 4-month period is adequate.

Senator LAUSCHE. In what instances and under what complications does the 4-month period become inadequate?

Mr. KAHN. Certainly, Mr. Chairman, in those instances described by Vice Chairman Tucker, where the proposal contemplates the discontinuance of a number of trains, the 4-month period would seem to be inadequate there.

Senator LAUSCHE. Would it or would it not be advisable to amend this law, so as to provide that, at the end of the 4-month period and the failure of the Commission to act, the discontinuance may be put into effect, unless the Commission, by majority vote, orders an additional period to enable it to complete its investigation and make its findings?

Mr. KAHN. If you care for my personal view, Mr. Chairman——

Senator LAUSCHE. Yes.

Mr. KAHN. I think that would be a splendid amendment to be adopted.

Senator LAUSCHE. Now, is there any third phase?

I mentioned two of them: (1), the right of appeal, and (2) the need for amending this language we just discussed.

Is there a third aspect of it that you see that is pertinent, that we ought to give attention to?

Mr. KAHN. No, sir, Mr. Chairman. I think that adequately covers it.

Senator LAUSCHE. All right.

Any further questions?

Senator COTTON. The resolution which is before this committee this morning—we have been discussing amending the law and that, in my own mind, is imperative, but, actually, the matter before this committee this morning is the resolution of Senator Aiken. And that resolution is intended to bring about an expression of the Congress that would be obvious and available to the courts, that it was not the intent of the Congress to, when it passed the 1958 act, that action by the Commission which was not technically in the form of an order, but simply dismissed the proceedings and permitted the discontinuance, should not be subject to review.

Would you—again I realize you are speaking as Chairman and not for the Commission—would you object if Congress saw fit to so express itself? As a tide-over until we could do something?

Mr. BUSH. Personally, I agree with the sense of the first part of the resolution, and I think we have adequately covered that in our testimony.

Senator COTTON. Thank you.

Senator LAUSCHE. May I point out—and this requires some explanation from your Commission—On August 25, 1965, a letter was written to Senator Warren G. Magnuson, the chairman of this committee, with respect to S. 1394, and in that letter signed by Charles

A. Webb, Chairman of the Committee on Legislation—is he connected with you?

(The letter follows:)

AUGUST 25, 1965.

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

DEAR CHAIRMAN MAGNUSON: Your letter of March 5, 1965, requests the Commission's views on a bill, S. 1394, introduced by Senator Hartke, "To amend section 13a of the Interstate Commerce Act with respect to the discontinuance or change of certain operations or services of trains and ferries". This matter has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

Section 13a was added to the Interstate Commerce Act by the Transportation Act of 1958 because of the severe financial losses incurred by many railroads in passenger train operations and the difficulties and delays encountered in a number of States in obtaining authority to discontinue little-used services. Section 13a affords the railroads a means of obtaining prompt relief from obligations to operate trains or ferries for which there is no longer sufficient public need to justify the heavy financial losses involved.

At present, section 13a consists of two paragraphs. The first deals with trains or ferries operating across State lines, and the second with trains or ferries operating wholly within the boundaries of a single State. Entirely different procedures are provided under the respective paragraphs.

S. 1394 would amend section 13a by adding two new paragraphs, (1) and (4), and by redesignating present paragraphs (1) and (2) as paragraphs (2) and (3), respectively. No other change would be made in present paragraph (2), and present paragraph (1) would be further changed to the extent of limiting its application to a train or ferry "other than a passenger train or ferry". The provisions of existing paragraph (1) apply to both freight and passenger trains and ferries but no applications have been filed under Section 13a for the discontinuance of trains engaged exclusively in freight operations.

The provisions of proposed new paragraph (1) constitute an approach to discontinuances or changes in interstate passenger train or ferry services quite different from that provided in present paragraph (1). Paragraph (1) now contains the following salient features:

1. It applies only where the railroad's right to discontinue or change the operation of any interstate train or ferry is subject to the constitution or statutes of any State or any regulation or order of any court or administrative or regulatory agency of any State.

2. A railroad may invoke the procedure under paragraph (1) by filling with the Commission (and mailing to the Governors of the States and posting in the stations and other facilities to be affected) a notice of such proposed discontinuance or change at least 30 days in advance of its effective date.

3. In the absence of affirmative action by the Commission, the railroad may effect the proposed discontinuance or change in accordance with the notice, "the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding."

4. During the 30-day notice period, the Commission is authorized "either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change".

5. If it institutes such an investigation, the Commission may also, by order served upon the carrier at least 10 days prior to the effective date of the proposed discontinuance or change, require continuance of the service pending hearing and decision "but not for a longer period than four months", at the end of which time the carrier may effect the discontinuance or change if the investigation has not been concluded.

6. If, after hearing in the investigation, "the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce," it may by order, notwithstanding the expiration of the 4-month period, require the continuance or restoration of operation or service of the train or ferry, in whole or in part, but only for a period of not exceeding 1 year from the date of its order.

7. At the expiration of a Commission order requiring continuance or restoration of an operation or service, the jurisdiction of the State or States concerned is

no longer superseded unless the procedure under the paragraph is again invoked by the carrier or carriers involved.

Thus, the provisions of present paragraph (1) are permissive in nature, giving the Commission jurisdiction over discontinuances of interstate trains or ferries only where the carrier's right to discontinue is subject to State law or regulation and the carrier invokes the Commission's jurisdiction. A carrier may, if it wishes, elect to proceed under applicable State law rather than under the provisions of Section 13a(1). If no State laws are applicable, it is then free, in its discretion, to discontinue or change its train or ferry services without Federal action, unless the discontinuance amounts to complete abandonment of a line of railroad, or of operations thereover, within the purview of Section 1(18) of the act.

In contrast, proposed new paragraph (1) would require a railroad to obtain authority (in the form of a certificate) from this Commission before it could effect a discontinuance or change in the operation or service of any interstate passenger train or ferry, regardless of the existence or absence of applicable State laws or regulations.

It seems clear that this proposed new paragraph would remove from the States all jurisdiction over discontinuances or changes in operation or service of all interstate passenger trains or ferries. In addition, even where no State laws are applicable, it would compel the carriers to obtain Commission approval to effect such discontinuances or changes, whereas they may now take such action without either State or Federal approval. We do not believe that the States should be completely divested of jurisdiction over interstate passenger train or ferry discontinuances or changes, or that the freedom of carriers to decide whether to proceed under Federal or State law should be eliminated. Where no difficulties or delays are anticipated or encountered in obtaining State authority to discontinue little-used services, the carrier may find it advantageous to proceed under State law to obtain relief from deficit operations. In the absence of any compelling reason for completely superseding the jurisdiction of the States in this area, we do not favor this provision in the bill. Since the purpose of enacting section 13a was to afford the carriers a means of obtaining relief from unduly burdensome State requirements, it would be entirely inconsistent with that purpose now to impose upon them a requirement that they must obtain Commission approval to discontinue an interstate passenger train or ferry where no State laws or regulations are applicable. We oppose that requirement in S. 1394.

Instead of the notice procedure now provided in section 13a(1), proposed new proposed new paragraph (1) would require the filing of an application with the Commission for a certificate authorizing the proposed discontinuance or change in interstate passenger train or ferry service. Every application would be made the subject of a hearing. The Commission could authorize the proposed discontinuance or change if, after the hearing, it found "that (a) the present or future public convenience and necessity require such discontinuance or change, in whole or in part, of the operation or service of such passenger train or ferry, and (2) [sic] the continued operation or service of such passenger train or ferry without such discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce."

As indicated, the bill provides that the Commission must find that the present or future public convenience and necessity "require", rather than "permit", a proposed discontinuance or change. The test thus imposed would be more stringent than that presently provided in section 13a(1). Under the present language the Commission may order service to be continued or restored if it determines that such continuance or restoration is required by public convenience and necessity. The statutory test usually provided for passing on proposed abandonments of line or curtailments of service, such as contained in sections 1(18) and 13a(2), is that the present or future public convenience and necessity "permit" the proposed abandonment or curtailment. Accordingly, if S. 1394 is favorably considered by the Committee, we recommend that the word "require" in line 7, page 2, of the bill be changed to "permit". Parenthetically, it also appears that the figure "(2)" in line 9 of the same page should be changed to "(b)" and that "the States" at line 16 should be changed to "each State".

With respect to the rigid requirement that a public hearing be held in every case, the Commission has found, from its experience in abandonment proceedings under section 1(18), that it is desirable for it to have some discretion in determining whether the matter should be set down for hearing. This is particularly true where no protests are filed. If the bill is favorably considered, we recommend it be amended to give the Commission some discretion in this respect. In the

exercise of such discretion the Commission would, of course, continue to consider all objections to proposed discontinuances or changes in service or operations.

In commenting on various bills to amend section 13a, the Commission has recommended (a) that the 30-day effective-date notice provision be extended to 40 days, (b) that the 4-month period during which it may require continuance of service pending investigation and hearing be lengthened to 7 months, and (c) that the burden of proof be placed expressly upon the carrier proposing the discontinuance. In recommending these changes, the Commission recognized the desirability of proceeding with all reasonable dispatch, but at the same time noted that it had found it extremely difficult to meet the very brief time limits now prescribed, and only then by short-cutting procedures normally followed in contested formal proceedings. The necessity of resorting to such abbreviated procedures makes it impracticable, for example, to provide for service of a hearing examiner's recommended decision and for the filing of exceptions thereto. The recommended decision procedure frequently serves a useful purpose in defining and simplifying the issues and in focusing attention upon the important features of a case.

The procedural approach taken in proposed new paragraph (1) is, except for the requirement that State authority first be sought, similar to that now provided in present paragraph (2). It would, in effect, not only implement all of the aforementioned prior recommendations of the Commission, but would go even further by eliminating the burdensome deadlines entirely. If amended as hereinabove suggested, we would favor enactment of proposed new paragraph (1).

The amendment proposed in section 2 of the bill would merely have the effect of limiting the notice procedure now provided in present paragraph (1) to proposed discontinuances or changes in interstate freight train or ferry service,—a service which is not generally subject to State regulation. We have no objection to this change, which, on the basis of the Commission's experience, would have little practical effect since this procedure has never been invoked for proposed discontinuances of trains engaged exclusively in freight operations. However, for the reasons stated above, we recommend that the time limitations be extended and that the burden of proof be placed expressly upon the proposing carrier or carriers.

Proposed new paragraph (4), which would be added by section 3 of the bill, would empower the Commission to authorize or refuse to authorize proposals filed under either new paragraph (1) or redesignated paragraph (3). The Commission would also be authorized to attach to any such authorization, such terms and conditions as in its judgment the public convenience and necessity may require, including terms and conditions for the protection of the interests of employees adversely affected. Upon the receipt of such authority the carriers could effect the proposed discontinuance or change, upon compliance with such terms and conditions as may be prescribed, without securing any other authorization. Violations could be enjoined by any court of competent jurisdiction, and penalties of fine or imprisonment or both would be provided.

In proceedings under section 13a(1) the Commission has stated that the statute is clear and unambiguous as to conditions under which railroads may discontinue trains, and that there is no warrant in the law for imposition of additional conditions or restrictions. *Chicago, R. I. & P. R. Co. Discontinuance of Trains,* 317 I.C.C. 601. It has also stated in this connection that where the evidence does not justify the findings which are prerequisite under the statute to an order requiring continued operation of a train, it is not empowered to impose upon the carrier conditions similar to those required by section 5(2)(f) in connection with unifications or those customarily imposed in connection with abandonment proceedings under section 1(18) to protect railway employees who may be affected adversely by the proposed discontinuance. *Great Northern Railway Company Discontinuance of Service,* 307 I.C.C. 59. In that case the Commission also found, however, that in determining whether or not operation of a train or ferry is required by the public convenience and necessity, consideration should be given to the probable effect which discontinuance of the train will have upon the employees. See also *Chicago, M., St. P. & P. R. Co., Discontinuance of Service,* 317 I.C.C. 691. If proposed new paragraph (4) is enacted, the nature of the conditions that could be imposed, such as a condition requiring a substitute service or a change in service of other trains not directly involved in the proceeding, should be set forth more specifically. Otherwise, interpretations may be urged upon the Commission and the courts that are much broader than those intended to come within its purview. Similarly, the nature of the protection to be afforded adversely affected employees should be stated more explicitly, as it is now in sestion 5(2)(f) of the act.

Furthermore, we believe that the imposition of severe criminal penalties against "any trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits *any* violation of the provisions * * *" is too harsh and would have the effect of throwing cases into complicated criminal proceedings that would impose heavy burdens on the courts and District Attorneys. The injunctive relief provided in proposed new paragraph (4) is a far more suitable remedy than the drastic criminal penalties set forth in the proposed new paragraph. If, however, additional enforcement remedies are deemed necessary, forfeiture provisions such as those provided in section 16(8) of the Act for knowingly disobeying an order made under the provisions of section 3, 13, or 15, would be less objectionable than the criminal penalties specified in proposed new paragraph (4). (Italic supplied.)

For the reasons set forth above, we do not favor enactment of S. 1394 in its present form.

Respectfully submitted.

CHARLES A. WEBB.
COMMITTEE ON LEGISLATION,
CHARLES A. WEBB, *Chairman*,
ABE MCGREGOR GOFF.

Mr. BUSH. Yes, sir, he was last year's chairman of the Commission, and also chairman of the Committee on Legislation.

Senator LAUSCHE. He said, in commenting on various bills to amend section 13(a):

The Commission has recommended that (*a*) the 30-day effective day notice provision be extended to 40 days (*b*) that the 4-month period, during which it may require continuance of service pending investigation and hearing be lengthened to 7 months; and (*c*) the burden of proof be placed expressly upon the carrier proposing the discontinuance.

Now that letter was written by your chairman.

Mr. BUSH. Frankly, Senator Lausche, I had forgotten that.

Senator LAUSCHE. Written on August 25, 1965. I have nothing further.

Senator COTTON. Now Senator Aiken is not a member of the committee, but would it be all right if he asked a question?

Senator LAUSCHE. Yes. Senator Aiken?

Senator AIKEN. I don't want to take time. I simply wanted to submit that the Interstate Commerce Commission issued its order, which the State of Vermont considered adverse, on July 6.

The report was issued on July 15, when it was received by the State officials, I don't know, presumably the following day. And yet, the representative of the State had to appear in court on the 18th.

I would submit that 48 hours, even 72 hours, is hardly sufficient time to read and digest, the report and prepare a case for the State.

Mr. BUSH. I would only comment to the extent, Senator Aiken, that it was Division 3, that issued the order and the report, not the whole Commission.

Senator AIKEN. That is right.

Mr. BUSH. Also, had the order not been issued the day it was, automatically, as I understand it, the trains could have been discontinued, because the 4 months expired.

Senator AIKEN. Do you have any recommendation to make as to how to keep the trains running while the whole Commission is reviewing the matter?

Mr. BUSH. Well, I understand that the Boston & Maine—and this is only from hearsay—that the Boston & Maine has offered to continue the trains until April 1 and September 2, respectively.

Senator AIKEN. In return for the State agreeing to never bother them again.

Mr. BUSH. Yes. All I am leading up to is there must be come middle position there.

For example, I further understand, again from hearsay, that they have voluntarily agreed to continue them on through this week. Maybe they could negotiate it into a longer period than that.

Senator AIKEN. Well, from experience, I wouldn't want to trust any promise made by the Boston & Maine Railroad. It has not been under ordinary management, if I may say so. That is all, Mr. Chairman.

Senator LAUSCHE. Senator Prouty?

Senator PROUTY. Mr. Chairman, the Commission's position seems to be that a State is entitled to review by a Federal court of an Interstate Commerce Commission order. But that it is not entitled to interim injunctive relief. Is that the position you have taken?

Mr. KAHN. Mr. Senator, our position in this regard rests solely upon the present language of the statute, which seems to contemplate that the Commission is powerless to require the continued operation of the trains after the 4-month period.

Consistent with that, we doubted that a court would have jurisdiction to order the continued operation of the trains. The U.S. District Court for the District of Vermont quite obviously disagreed with the Commission and did enter an injunction requiring the continued operation of the trains. At least for two 10-day periods, until it was persuaded that the trains should come off, in the absence of proof of immediate irreparable injury.

Senator PROUTY. It would be very helpful if the statute were amended, would it not?

Mr. KAHN. I am really not competent to answer, except to say that, where a proper case were made out for interim relief, at least we know that, in one court, the Vermont court, it would feel itself empowered to require the continued operation of the trains.

Senator LAUSCHE. I earlier asked you whether the proceedings in Vermont had two chapters, one, an appeal in pursuance to section 1336, and the other, an action in equity seeking injunctive relief.

Is that the fact, or isn't it?

Mr. KAHN. That is the fact, Mr. Chairman.

Senator LAUSCHE. Now, under the action for injunctive relief, you have to establish certain facts before the relief can be granted.

Mr. KAHN. Most assuredly, and included among those would be a showing of immediate irreparable injury.

Senator LAUSCHE. Do we have any statute in the Interstate Commerce Commission that gives the right of equitable relief to the parties under section 1336, or otherwise?

Mr. KAHN. Yes, sir.

Senator LAUSCHE. The court does have——

Mr. KAHN. The courts exercise equitable jurisdiction all of the time.

Senator AIKEN. Mr. Chairman?

Senator COTTON. Pardon me. I was startled and disturbed when the Chairman said it was his understanding, from hearsay, that New Hampshire foreclosed their case and settled for service to April 1. The Chairman has good reason to believe that is the case?

Mr. BUSH. I will ask counsel to respond.

Mr. KAHN. Senator Cotton, rather than rely on our recollection of the circumstances that prompted the withdrawal of the appeal to the Supreme Court, may we subsequently send a letter to the committee?

Senator COTTON. Now, that was a more or less personal question, Mr. Chairman. I am sorry, if that is so. I wish that the authorities in New Hampshire would consult the Senator once in awhile.

Senator LAUSCHE. All right. I think that is all.

We will call the next witness. Thank you very much.

Mr. BUSH. Mr. Chairman, it might be of some help, I think, if I would ask to insert this in the record. It is a summary of all of the train discontinuance proceedings since the Transportation Act of 1958, up to date. It shows how many were approved and how many were denied. and investigated, and so forth.

Senator LAUSCHE. Fine. It will be included in the record.

(The documents referred to above follow:)

Proceedings under sec. 13(a) of the Interstate Commerce Act as of June 30, 1966

	Proceedings	Trains involved
1. Interstate trains:		
a. Notices:		
Pending	1	2
Becoming effective without investigation	[1] 18	51
Dismissed without investigation	1	6
Investigations instituted	148	881
Total	168	940
b. Investigations:		
Discontinuance permitted	88	571
Continuance required	26	143
Proceeding involving both continuance and discontinuance	12	[2]
Dismissed	8	127
Withdrawn	4	15
Pending	10	25
Total	148	881
2. Intrastate trains:		
Petitions pending	3	6
Petitions granted	21	325
Petitions denied	4	37
Petitions granted in part, denied in part	3	[3]
Withdrawn	2	16
Dismissed	11	65
Total	44	449

[1] Includes a ferry discontinuance proceeding in which no train was involved.

[2] 255 continuance, 100 discontinuance. These trains are counted under the designations "Discontinuance permitted" or "Continuance required."

[3] 21 denied, 12 granted. These trains are counted under the designations "Petitions granted" or "Petitions denied."

Status of proceedings under sec. 13a(1) (interstate trains)

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4-month date	Hearing date	Number of trains	Action
20291	New York Central RR.-Weehawken Ferry	Aug. 13, 1958	Sept. 13, 1958	Sept. 2, 1958				Granted Jan. 13, 1960.
20295	Erie, RR. & New York, Susquehanna & Western Hudson River Ferry.	Aug. 14, 1958	Sept. 14, 1958	(1)				Granted Aug. 26, 1958.
20348	Great Northern Ry., Williston, N. Dak. Sidney, Mont., Waterford, N. Dak.-Richey, Mont.	Sept. 19, 1958	Oct. 20, 1958	Oct. 7, 1958	Feb. 20, 1959	Nov. 17–19, 1958	2	Granted Feb. 6, 1959, 307 ICC 59, 74.
20354	Southern Pacific, Los Angeles, Calif.-Tucumcari, N. Mex.	Sept. 25, 1958	Oct. 26, 1958	(1)			2	Service at certain stations (45) discontinued Oct. 24, 1958.
20377	Minneapolis & St. Louis, Minneapolis-Des Moines.	Oct. 14, 1958	Nov. 22, 1958	Nov. 5, 1958	Mar. 22, 1959	Dec. 10–11, 1958	2	Granted Mar. 16, 1959, 307 ICC 79.
20400	Minneapolis, St. Paul & Sault Ste. Marie, Minneapolis-Enderlin, N. Dak.	Nov. 3, 1958	Dec. 8, 1958	Nov. 24, 1958	Apr. 8, 1959	Jan. 26, 1959	2	Granted Apr. 2, 1959, 307 ICC 125.
20407	Minneapolis, St. Paul & Sault Ste. Marie, Thief River Falls-Duluth, Minn. & Superior, Wis.	Nov. 13, 1958	Dec. 29, 1958	Dec. 5, 1958	Apr. 29, 1959	Jan. 21, 1959	2	Granted Apr. 13, 1959.
20414	Northern Pacific, Staples, Minn.-Oakes, N. Dak.	Nov. 24, 1958	Dec. 27, 1958	Dec. 15, 1958	Apr. 27, 1959	Jan. 29, 1959	2	Granted Apr. 13, 1959.
20415	Northern Pacific, Mandan, N. Dak.-Glendive, Mont.	do	Dec. 28, 1958	do	Apr. 28, 1959	Feb. 2, 1959	2	Granted Apr. 14, 1959.
20430	Louisville & Nashville, Ocean Springs, Miss.-New Orleans, La.	Dec. 1, 1958	Jan. 2, 1959	Dec. 18, 1958	May 2, 1959	Jan. 20, 1959	2	Partial continuance required for 1 year Apr. 22, 1959, 307 ICC 173.
20435	New York Central, Pittsfield, Mass.-Albany, N.Y.	Dec. 4, 1958	Jan. 5, 1959	Dec. 19, 1958	May 5, 1959	Jan. 29, 1959	2	Partial continuance required Apr. 13, 1959, 307 ICC 167.
20443	Lehigh Valley, all passenger operations	Dec. 9, 1958	Jan. 12, 1959	Dec. 23, 1958	May 12, 1959	Feb. 2, 5, 10, 1959	10	6 granted, 4 denied (see F.D. 21260) May 1, 1959, 307 ICC 239, 257.
20444	Southern Pacific, San Francisco, Calif.-Portland, Oreg.	do	Jan. 15, 1959	Jan. 4, 1959	May 15, 1959	Feb. 10, 1959	2	Partially granted (seasonal) May 6, 1959, 307 ICC 209.
20461	Texas & Pacific, Texarkana, Ark.-Longview, Tex.	Dec. 19, 1958	Jan. 20, 1959	Jan. 8, 1959	May 20, 1959	Feb. 24, 1959	2	Granted May 12, 1959, 307 ICC 259.
20485	Southern Pacific, El Paso, Tex.-Tucson, Ariz.	Jan. 5, 1959	Feb. 5, 1959	Jan. 20, 1959	June 5, 1959	Feb. 16, 1959	2	Change in service permitted May 26, 1959.
20487	New York Central, Weehawken, N.J.-West Haverstraw, N.Y.	do	Feb. 12, 1959	Jan. 30, 1959	June 12, 1959	Apr. 6, 1959	5	Withdrawn Apr. 2, 1959.
20488	Chicago & North Western, Chicago, Ill.-Minneapolis, Minn.	Jan. 12, 1959	Feb. 15, 1959	Feb. 4, 1959	June 15, 1959	Apr. 7–10, 1959	2	Granted June 1, 1959, 307 ICC 271.
20529	New York, New Haven & Hartford, Boston-Providence, R.I.	Feb. 3, 1959	Mar. 6, 1959	Feb. 19, 1959	July 6, 1959	Apr. 13, 1959	Daily 6 Sat. 8 Sun. 6	18 granted, 2 denied (Saturday trains) July 1, 1959.
20537	Louisville & Nashville, Cincinnati, Ohio-Atlantia, Ga.	Feb. 12, 1959	Mar. 17, 1959	Feb. 20, 1959	July 17, 1959	do	2	Granted June 29, 1959.
20590	Missouri Pacific, Little Rock, Ark.-Alexandria, La.	Mar. 25, 1959	Apr. 27, 1959	Apr. 13, 1959	Aug. 27, 1959	May 26, 1959	2	Granted Aug. 20, 1959.

20595	Louisville & Nashville, Bowling Green, Ky.-Memphis, Tenn.	Mar. 30, 1959	May 4, 1959	Apr. 16, 1959	Sept. 4, 1959	June 15, 1959	2	Continuance required for 1 year September 2, 1959, 307 ICC 392.
20596	Missouri Pacific, Kansas City, Mo.-Omaha, Nebr.	Apr. 1, 1959	do	do	do	June 9, 1959	2	Granted Aug. 26, 1959.
20607	Wabash Railroad Co., Moberly, Mo.-Des Moines, Iowa.	Apr. 15, 1959	June 1, 1959	May 4, 1949	Oct. 1, 1959	June 22, 1959	2	Granted Sept. 18, 1959, 307 ICC 352.
20609	Chicago & North Western, Waukegan, Ill.-Milwaukee, Wis.; Chicago, Ill.-Milwaukee.	Apr. 17, 1959	May 17, 1959	Apr. 29, 1959	Sept. 17, 1959	June 17, 1959	6	Granted Sept. 10, 1959.
20638	Chicago & North Western, Minneapolis, Minn.-Council Bluffs, Iowa.	May 11, 1959	June 11, 1959	May 21, 1959	Oct. 11, 1959	June 25, 1959	2	Granted Oct. 6, 1959, 307 ICC 463.
20639	Texas & New Irleans, Houston, Tex.-New Orleans, La.	do	do	May 20, 1959	do	July 6, 1959	2	Dismissed Aug. 6, 1959.
20658	St. Louis Southwestern Railway, St. Louis, Mo.-Pine Bluff, Ark.	June 1, 1959	July 1, 1959	June 11, 1959	Nov. 1, 1959	Aug. 5, 1959	2	Granted Oct. 14, 1959, 307 ICC 639.
20671	New Jersey & New York, Hoboken, N.J.-Spring Valley, N.Y.	June 12, 1959	July 13, 1959	June 29, 1959	Nov. 13, 1959	Aug. 24, 1959	1	Granted Nov. 10, 1959, 307 ICC 532.
20681	Chicago & North Western, Chicago-Duluth, Minn., Chicago-Minneapolis, Elroy, Wis.-Mankato, Minn., Mankato-Chicago.	June 22, 1959	July 22, 1959	July 6, 1959	Nov. 21, 1959	Aug. 10, 12, 13, 1959	4	1 granted (Chicago-Minn. 3 denied Nov. 19, 1959, 307 ICC 585.
20684	Delaware, Lackawanna & Western, Hoboken, N.J.-Scranton, Pa.	June 26, 1959	July 27, 1959	July 14, 1959	Nov. 26, 1959	Aug. 26, 28, 1959	2	Granted Nov. 24, 1959, 307 ICC 627.
20710	Wabash RR. Co., Fort Wayne, Ind.-Toledo, Ohio.	July 2, 1959	Aug. 10, 1959	July 28, 1959	Dec. 9, 1959	Oct 5, 1959	2	Granted July 24, 1959.
20711	Louisville & Nashville, Montgomery, Ala.-New Orleans, La.	July 6, 1959	Aug. 8, 1959	(1)			2	Do.
20712	New York Central, Weehawken, N.J.-West Haverstraw, N.Y.	July 9, 1959	Aug. 10, 1959	July 29, 1959	Dec. 9, 1959	Sept. 14, 1959	22	Granted Dec. 7, 1959.
20716	St. Louis-San Francisco, Tulsa, Okla.-Dallas, Tex.	July 13, 1959	Aug. 15, 1959	Aug. 3, 1959	Dec. 14, 1959	do	2	Granted Dec. 10, 1959, 307 ICC 477.
20727	Delaware, Lackawanna & Western, Scranton, Pa.-Binghampton, N.Y.	July 17, 1959	Aug. 24, 1959	(1)			1	Granted Aug. 7, 1959.
20730	Chicago, Milwaukee, St Paul & Pacific, Madison, Wis.-Canton, S. Dak.	July 22, 1959	do	Aug. 7, 1959	Dec. 24, 1959	Sept. 28, 30, 1959	2	Granted Dec. 21, 1959, 307 ICC 565.
20743	Chicago, Rock Island & Pacific, Kansas City, Mo.-Fort Worth, Tex.	July 30, 1959	Sept. 1, 1959	Aug. 18, 1959	Dec. 31, 1959	do	2	Continuance required for 1 year Dec. 29, 1959. Affirmed Nov. 28, 1960, 307 ICC 655 and 312 ICC 324.
20779	Texas & New Orleans, Houston, Tex.-New Orleans, La.	Aug. 27, 1959	Oct. 1, 1959	Sept. 15, 1959	Jan. 31, 1960	Nov. 4, 1959	2	Continuance required for 1 year Feb. 4, 1960, 307 ICC 725.
20780	Chicago, Milwaukee, St. Paul & Pacific, Milwaukee, Wis.-Channing, Mich.	Aug. 21, 1959	Sept. 23, 1959	Sept. 8, 1959	Jan. 22, 1960	Oct. 14, 1959		Granted Jan. 21, 1960, 307 ICC 668.
20799	Spokane, Portland & Seattle, Portland, Oreg.-Pasco, Wash.	Aug. 27, 1959	Oct. 1, 1959	(1)			2	Granted Sept. 15, 1959.
20811	Minneapolis, St. Paul & Sault Ste. Marie, Sault Ste. Marie, Mich.-Minneapolis, Minn.	Sept. 1, 1959	Oct. 2, 1959	Sept. 17, 1959	Feb. 1, 1960	Nov. 2, 4, 6, 1959	2	Granted Jan. 27, 1960, 307 ICC 677.

See footnotes at end of table, p. 39.

Status of proceedings under sec. 13a(1) (interstate trains)—Continued

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4-month date	Hearing date	Number of trains	Action
20860	Missouri Pacific, Pleasant Hill, Mo.-Newport, Ark.	Oct. 14, 1959	Nov. 15, 1959	Oct. 30, 1959	Mar. 14, 1960	Dec. 14, 16, 1959	2	Granted Mar. 9, 1960, 307 ICC 787.
20861	Chicago & North Western, Council Bluffs, Iowa-Chicago, Ill.	Oct. 15, 1959	do	do	do	Dec. 21, 1959	2	Granted Mar. 8, 1960, 307 ICC 775.
20874	Missouri Pacific, Kansas City, Mo.-Little Rock, Ark.	Oct. 21, 1959	Nov. 22, 1959	Nov. 6, 1959	Mar. 21, 1960	Jan. 5, 8, 1960	2	Granted Mar. 18, 1960, 312 ICC 31.
20881	Chicago, Milwaukee, St. Paul & Pacific, LaCrosse, Wis.-Austin, Minn.	Oct. 28, 1959	Nov. 30, 1959	Nov. 18, 1959	Mar. 30, 1960	Jan. 12, 1960	2	Granted Mar. 28, 1960, 312 ICC 44.
20925	Atchison, Topeka & Santa Fe and Gulf, Colorado & Santa Fe, Kansas City, Mo.-Houston, Tex.	Dec. 7, 1959	Jan. 7, 1960	Dec. 23, 1959	May 6, 1960	Feb. 8, 11, 1960	2	Granted Apr. 27, 1960, 312 ICC 79.
20934	St. Louis-San Francisco, Tulsa, Okla.-Fort Scott, Kans.	Dec. 15, 1959	Jan. 16, 1960	Dec. 31, 1959	May 15, 1960	Feb. 15, 18, 1960	2	Granted May 6, 1960.
21015	Minneapolis & St. Louis, Minneapolis-Watertown, S. Dak.	Feb. 15, 1960	Mar. 21, 1960	Mar. 8, 1960	July 20, 1960	Apr. 26, 1960	2	Granted June 30, 1960.
21062	St. Louis-San Francisco, St. Louis, Mo.-Memphis, Tenn.	Mar. 25, 1960	Apr. 30, 1960	Apr. 15, 1960	Aug. 29, 1960	June 15, 18, 1960	2	Continuance required for 1 year Aug. 24, 1960, 312 ICC 713.
21105	Western Pacific, Salt Lake City, Utah-Oakland, Calif.	Apr. 25, 1960	June 1, 1960	May 17, 1960	Sept. 30, 1960	July 25, 26, 1960	2	Granted Sept. 21, 1960.
21137	Chicago & North Western, Mankato, Minn.-Rapid City, S. Dak.	May 25, 1960	June 25, 1960	June 13, 1960	Sept. 24, 1960	July 27, 29, 1960	2	Granted Oct. 14, 1960, 312 ICC 313.
21255	Southern Pacific, consolidation of trains 27–28 with 101 & 102.	Aug. 25, 1960	Sept. 25, 1960	Sept. 13, 1960	Jan. 24, 1961	Nov. 7, 11, 1960	2	Denied Mar. 27, 1961, 312 ICC 437.
21260	Lehigh Valley, New York, N.Y.-Suspension Bridge, N.Y., New York, N.Y.-Lehighton, Pa.	Aug. 30, 1960	Oct. 1, 1960	Sept. 19, 1960	Jan. 31, 1961	Nov. 1–3, 7, 1960	4	Granted Jan. 31, 1961, (see also F. D. 20443), 312 ICC 399.
21298	New Jersey & New York, Hoboken, N.J.-Spring Valley, N.Y.	Sep. 29, 1960	Oct. 29, 1960	(1)			4	Granted Oct. 12, 1960.
21353	Chicago & Eastern Illinois, Evansville, Ind.-Chicago, Ill.	Nov. 14, 1960	Dec. 14, 1960	Nov. 29, 1960	Apr. 14, 1961	Jan. 23, 1961	2	Withdrawn Jan. 23, 1960.
21366	Chicago & North Western, Chicago-Duluth, Minn., Elroy, Wis.-Mankato, Minn.	Nov. 17, 1960	Jan. 4, 1961	Dec. 20, 1960	May 4, 1961	Feb. 6, 1961	4	Granted Apr. 25, 1961, 312 ICC 517.
21391	Chicago, Milwaukee, St. Paul, & Pacific, Minneapolis-Tacoma, Wash.	Dec. 6, 1960	Jan. 8, 1961	Dec. 23, 1960	May 8, 1961	Feb. 13–15, 17, 20, 21, 24, 1961.	2	Partial continuance required for 1 year Minneapolis-Butte May 17, 1961, 317 ICC 691.
21394	Chicago & North Western, Green Bay, Wis.-Ishpeming, Mich.	Dec. 14, 1960	Jan. 13, 1961	Jan. 12, 1961	May 12, 1961	Feb. 13–16, 1961	2	Granted July 20, 1961, 312 ICC 621.
21412	Soo Line RR., St. Paul, Minn.-Superior, Wis.-Duluth, Minn.	Jan. 17, 1961	Feb. 22, 1961	Feb. 9, 1961	May 31, 1961	Mar. 21, 23, 1961	2	Granted June 7, 1961, 312 ICC 571.
21417	New York, Susquehanna & Western, Butler, N.J.-New York City.	Dec. 30, 1960	Jan. 30, 1961	(1)	Mar. 29, 1961		6	Dismissed Jan. 18, 1961.

21595	Missouri Pacific, Kansas City, Mo.-Omaha, Nebr.	May 15, 1961	June 19, 1961	June 5, 1961	Oct. 18, 1961	Aug. 1, 3, 29, 1961	2	Continuance required for 1 year Oct. 16, 1961, 312 ICC 765.
21606	Pennsylvania Reading Seashore Lines & Pennsylvania RR. Co., Atlantic City, N.J.-Philadelphia, Pa.	May 19, 1961	July 6, 1961	June 21, 1961	Nov. 5, 1961	Aug. 7-11, 1961	18	Continuance required for 1 year Apr. 4, 1962, 317 ICC 111.
21611	Chicago & North Western, Chicago-Green Bay, Wis.	May 24, 1961	Do.	(1)	Do.		2	Granted June 21, 1961.
21613	Chicago, South Shore & South Bend, Chicago-South Bend, Ind.	May 25, 1961	June 29, 1961	June 19, 1961	Oct. 25, 1961	July 31, 1961	9	Granted Oct. 5, 1961, 312 ICC 655.
21620	Soo Line, St. Paul, Minn.-Portal, N.Dak.	June 1, 1961	July 2, 1961	June 20, 1961	Nov. 1, 1961	Aug. 7, 9, 1961	2	Continuance required for 1 year Oct. 31, 1961, 312 ICC 729.
21695	Texas & Pacific, Fort Worth-Marshall, Tex.	July 20, 1961	Aug. 22, 1961	(1)			2	Granted Aug. 4, 1961.
21733	Louisiana & Arkansas, Hope, Ark.-Shreveport, La.	Aug. 25, 1961	Sept. 30, 1961	Sept. 14, 1961	Jan. 29, 1962	Oct. 30, 1961	2	Granted Jan. 24, 1962, 317 ICC 155.
21786	Boston & Maine, Springfield, Mass.-Windsor, Vt.-Brattleboro, Vt.	Oct. 9, 1961	Nov. 12, 1961	Oct. 30, 1961	Mar. 11, 1962	Dec. 11, 13, 1961	6	Granted Mar. 9, 1962, 317 ICC 165.
21795	Boston & Maine, Lowell, Mass.-White River Junction, Vt.	Oct. 18, 1961	Nov. 20, 1961	(1)			6	Granted Nov. 7, 1961.
21814	Chicago & North Western, Chicago-Minneapolis, Minn., Chicago-Mankato, Minn.	Oct. 31, 1961	Dec. 1, 1961	Nov. 15, 1961	Feb. 25, 1962	Jan. 8, 10, 12, 15, 1962.	4	Continuance required for 1 year Mar. 23, 1962, 317 ICC 21.
21817	Boston & Maine, Wells River-Berlin, N.H.	Nov. 1, 1961	Dec. 3, 1961	(1)			2	Granted Nov. 20, 1961.
21818	Boston & Maine, Conway-Dover, N.H.	do	do	(1)			5	Do.
21844	Chicago Great Western, Kansas City, Mo.-Minneapolis, Minn.	Nov. 15, 1961	Dec. 16, 1961	Dec. 5, 1961	Apr. 15, 1962	Feb. 1, 5, 7, 1962	2	Granted Apr. 3, 1962, 317 ICC 99.
21936	Pennsylvania Railroad, Harrisburg, Pa.-Hagerstown, Md.	Jan. 24, 1962	Feb. 25, 1962	(1)	June 24, 1962		2	Granted Feb. 8, 1962.
21946	Southern Pacific Co., Ogden, Utah-Oakland, Calif.	Feb. 5, 1962	Mar. 8, 1962	Feb. 11, 1962	July 7, 1962	Apr. 16, 19, 20, 1962	2	Continuance required June 14-Labor Day and December 22-January 2 for 1 year—July 6, 1962, 317 ICC 519.
21958	Baltimore & Ohio, Washington, D.C.-Cleveland, Ohio.	Feb. 8, 1962	Mar. 10, 1962	Feb. 26, 1962	July 9, 1962	Apr. 12, 16-18, 1962	2	Granted Oct. 31, 1962, 317 ICC 371, 509.
21986	Pennsylvania Railroad, Buffalo, N.Y.-Harrisburg, Pa.	Mar. 6, 1962	Apr. 15, 1962	Apr. 4, 1962	Aug. 14, 1962	May 15, 18, 21, 1962	5	Continuance required for 1 year July 27, 1962.
22011	Baltimore & Ohio, Washington, D.C.-Baltimore, Md.	Mar. 21, 1962	Apr. 21, 1962	(1)			12	Granted Apr. 9, 1962.
22094	Chesapeake & Ohio, Washington, D.C.-Huntington, W.Va.	May 16, 1962	June 16, 1962	June 5, 1962	Oct. 15, 1962	July 16, 18, 19, 20, 1962.	2	Granted Oct. 11, 1962.
22126	Chicago, Rock Island & Pacific, Wichita, Kans.-Fort Worth, Tex.	June 11, 1962	July 15, 1962	July 3, 1962	Nov. 14, 1962	Aug. 13, 15, 16, 1962	2	Granted Nov. 27, 1962, 317 ICC 601.
22152	New York Central, Albany, N.Y.-Boston, Mass.	June 28, 1962	July 28, 1962	(1)			2	Granted July 17, 1962.
22171	Missouri Pacific & Illinois Central, Houston, Tex.-New Orleans, La.	July 12, 1962	Aug. 15, 1962	Aug. 3, 1962	Dec. 14, 1962	Sept. 17, 20, 1962	4	Withdrawn Aug. 24, 1962.
22201	Baltimore & Ohio, Washington, Baltimore, & Pittsburgh (152 changes).	July 27, 1962	Aug. 29, 1962	Aug. 17, 1962	Dec. 28, 1962	Oct. 1, 4, 5, 1962	3	Granted Jan. 14, 1963, 317 ICC 673.
22268	New York Central, Elkhart, Ind.- Chicago	Sept. 26, 1962	Oct. 28, 1962	(1)	Feb. 27, 1963		1	Granted Oct. 16, 1962.

See footnotes at end of table, p. 39.

Status of proceedings under sec. 13a(1) (interstate trains)—Continued

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4-month date	Hearing date	Number of trains	Action
22341	Missouri Pacific, Kansas City, Mo.-Omaha, Nebr.	Nov. 8, 1962	Jan. 7, 1963	Dec. 19, 1962	May 6, 1963	Jan. 30, Feb. 1, 1963	2	Continuance required for 1 year Apr. 26, 1963, 320 ICC 1.
22366	New York, Chicago & St. Louis Railroad, Buffalo-Chicago.	Dec. 3, 1962	Jan. 7, 1963	do	May 6, 1963	Jan. 24, 1963	2	Granted May 15, 1963, 317 ICC 775.
22418	Pennsylvania Railroad, Pittsburgh-Cleveland.	Jan. 8, 1963	Feb. 10, 1963	Jan. 28, 1963	June 9, 1963	Feb. 27, Mar. 4, 1963	2	Dismissed June 5, 1963.
22425	Chicago & North Western, Chicago-Minneapolis, Chicago-Mankato, Minn.	Jan. 16, 1963	Mar. 24, 1963	Feb. 20, 1963	July 23, 1963	Apr. 2, 4, 5, 8, 10, 12, 1963.	4	Granted July 18, 1963, 320 ICC 85.
22428	Chicago, M., St. P. & P., Aberdeen, S. Dak.-Deer Lodge, Mont.	Jan. 18, 1963	Feb. 22, 1963	Feb. 8, 1963	June 21, 1963	Mar. 18, 21, 25, 1963	2	Dismissed June 18, 1963, 317 ICC 761.
22511	Soo Line, St. Paul, Minn.-Portal, N. Dak.	Mar. 14, 1963	Apr. 15, 1963	Mar. 27, 1963	Aug. 14, 1963	May 20, 22, 23, 1963	2	Granted Nov. 27, 1963, 320 ICC 337.
22551	Erie-Lackwanna Railroad, Elmira, N.Y.-Hoboken, N.J., Danville, N.J.-Scranton, Pa., Scranton-Elmira.	Apr. 5, 1963	May 8, 1963	Apr. 24, 1963	Sept. 6, 1963	June 3, 5, 6, 10, 11, 1963.	3	1 granted, 2 partial continuance Aug. 27, 1963.
22552	Erie-Lackwanna Railroad, Port Jervis, N.Y.-Susquehanna, Pa., Binghamton, N.Y.-Hoboken.	do	do	do	do	June 3, 5, 6, 10, 11, 1963.	2	1 granted, 1 partial continuance Aug. 27, 1963.
22567	Southern Pacific, Houston-New Orleans	Apr. 15, 1963	May 15, 1963	Apr. 29, 1963	Sept. 14, 1963	June 17, 19–21, 1963	2	Granted Sept. 12, 1963, 320 ICC 302.
22656	Union Pacific Railroad Co., Los Angeles-Ogden, Utah.	June 12, 1963	July 15, 1963	June 20, 1963	Nov. 14, 1963		4	Withdrawn July 22, 1963.
22722	Missouri Pacific Railroad Co., Lake Charles-Alexandria, La.	July 29, 1963	Sept. 9, 1963	Aug. 26, 1963	Jan. 8, 1964	Oct. 24, 28, 1963	2	Granted Jan. 6, 1964.
22728	New York Central, Albany, N.Y.-Boston, Mass.	July 31, 1963	Aug. 31, 1963	Aug. 14, 1963	Dec. 30, 1963	Oct. 1, 3, 1963	2	Continuance required for 1 year Dec. 24, 1963, 320 ICC 364.
22757	Chicago, South Shore & South Bend, Chicago-South Bend, Ind., Chicago-Michigan City, Ind., Chicago-Tremont, Ind., Chicago-Gary, Ind.	Aug. 29, 1963	Oct. 1, 1963	Sept. 18, 1963	Jan. 31, 1964	Oct. 28, 1963	47	Granted Jan. 30, 1964.
22758	Chicago, Milwaukee, St. Paul & Pacific, Aberdeen, S. Dak.-Deer Lodge, Mont.	Aug. 30, 1963	do	Sept. 17, 1963	do	Oct. 28, 31, Nov. 4, 1963.	2	Do.
22781	New York, New Haven & Hartford, New London, Conn.-Worcester, Mass.	Sept. 17, 1963	Oct. 21, 1963	Oct. 4, 1963	Feb. 20, 1964	Nov. 18, 19, 1963	5	Denied Feb. 19, 1964, continuance required for 6 months.
22782	New York, New Haven & Hartford, New London, Conn.-Providence, R.I.	do	Nov. 5, 1963	Oct. 18, 1963	Apr. 2, 1964[2]	Jan. 13–17, 1964	3	Granted in part, denied in part Mar. 31, 1964.
22783	New York, New Haven & Hartford, Danbury, Conn.-Pittsfield, Mass.	do	do	Oct. 21, 1963	Mar. 4, 1964	Dec. 3–6, 1963	6	Granted in part, denied in part Mar. 2, 1964.
22828	New York Central, Chicago-Elkhart, Ind.	Oct. 24, 1963	Nov. 25, 1963	Nov. 8, 1963	Mar. 24, 1964	Jan. 7–10, 1964	3	Granted Mar. 19, 1964.
22843	Union Pacific Railroad Co., Los Angeles-Ogden, Utah.	Nov. 1, 1963	Dec. 2, 1963	Nov. 19, 1963	Apr. 1, 1964	Jan. 6–10, 13, 1964	4	Granted Mar. 27, 1964.

22880	Louisville & Nashville, Pass Christian, Miss.-New Orleans.	Dec. 2, 1963	Jan. 7, 1964	Dec. 23, 1963	May 6, 1964	Feb. 5–7, 1964	2	Granted Apr. 29, 1964.
22896	Chicago, Rock Island & Pacific & Southern Pacific, Chicago-Tucumcari, N. Mex.	Dec. 11, 1963	Jan. 11, 1964	Dec. 27, 1963	May 10, 1964		4	Dismissed Feb. 5, 1964.
22905	Southern Pacific, Oakland, Calif.-Portland, Oreg.	Dec. 19, 1963	Jan. 20, 1964	Jan. 6, 1964	May 19, 1964	Feb. 25–28, Mar. 2–5, 10–12, 1964.	2	Granted May 14, 1964.
22939	Chicago & North Western, Chicago-Ashland, Wis., Chicago-Land O'Lakes, Wis., Chicago-Green Bay, Wis.	Jan. 16, 1964	Feb. 18, 1964	Feb. 3, 1964	June 17, 1964	Mar. 18, 19, 23, 1964	5	Granted June 11, 1964.
22959	Baltimore & Ohio, Cincinnati, Ohio-Cumberland, Md.	Jan. 29, 1964	Mar. 3, 1964	Feb. 18, 1964	July 2, 1964	Apr. 7–9, 13, 1964	2	Granted June 26, 1964.
23015	Chicago, Rock Island & Pacific, Memphis, Tenn.-Amarillo, Tex.	Mar. 2, 1964	Apr. 5, 1964	Mar. 24, 1964	Aug. 4, 1964	May 6, 7, 11, 1964	2	Granted June 27, 1964.
23045	Erie-Lackawanna, Scranton, Pa-Hoboken, N.J.	Mar. 25, 1964	Apr. 27, 1964	(1)			1	Granted Apr. 14, 1964.
23095	Atlantic Coast Line, Savannah, Ga.-Florence, S.C.	Apr. 21, 1964	June 1, 1964	(1)			2	Granted May 19, 1964.
23142	Soo Line, Chicago-Superior, Wis., Chicago-St. Paul, Minn.	May 22, 1964	June 22, 1964	June 9, 1964	Jan. 11, 1965 [3]	July 20–24, 1964	4	Granted Jan. 4, 1965.
23175	Boston & Maine, Boston-Concord, N.H., Meredith, N.H., White River Junction, Vt.	June 24, 1964	Aug. 8, 1964	July 17, 1964	Dec. 31, 1964 [4]	Sept. 21, Oct. 5–7, 1964.	14	11 granted, 3 denied Dec. 31, 1964.
23176	Boston & Maine, Boston-Dover, N.H., Portland, Maine.	June 24, 1964	Aug. 8, 1964	July 17, 1964	Dec. 31, 1964 [4]	Sept. 21, Oct. 5–7, 1964.	16	14 granted, 2 denied Dec. 31, 1964.
23177	Boston & Maine, Boston-Portsmouth, N.H.	do	do	do	do [4]	do	10	8 granted, 2 denied Dec. 31, 1964.
23272	Southern Pacific, Los Angeles-Phoenix, Ariz.	Sept. 1, 1964	Oct. 2, 1964	Sept. 17, 1964	Feb. 1, 1965	Oct. 26–29, 1964	2	Denied Jan. 26, 1965.
23277	Reading Co., Philadelphia, Pa.-Bound Brook Junction, N.J.	Sept. 2, 1964	do	Sept. 18, 1964	do	Oct. 26, 29, 1964 (canceled).	8	Dismissed Oct. 29, 1964.
23278	Missouri Pacific & Illinois Central, Houston, Tex.-New Orleans.	Sept. 4, 1964	Oct. 4, 1964	do	Feb. 3, 1965	Nov. 9, 11, 13, 16, 1964.	4	Granted Jan. 28, 1965.
23313	Pennsylvania Railroad, St. Louis, Mo.-New York City.	Sept. 25, 1964	Oct. 25, 1964	Oct. 12, 1964	Feb. 24, 1965	Nov. 16, 19, 23, 24, 1964.	2	Denied Feb. 15, 1965.
23383	Southern Pacific Co., Portland, Oreg.-Oakland, Calif.	Nov. 9, 1964	Dec. 10, 1964	Nov. 25, 1964	Apr. 9, 1965	Jan. 18, 22, 26, 1965	2	Granted Mar. 26, 1965.
23487	Erie-Lackawanna Railroad, Hoboken, N.J.-Chicago, Ill.	Feb. 1, 1965	Mar. 3, 1965	Feb. 17, 1965	July 2, 1965	Apr. 5, 7, 9, 1965	2	Granted June 28, 1965.
23514	New York, New Haven & Hartford Railroad Co., certain trains to and from New York City.	Feb. 18, 1965	Mar. 29, 1965	Mar. 10, 1965	July 28, 1965	Apr. 12–16, 19–23, 26–30, 1965.	105	Dismissed July 7, 1965.
23547	St. Louis & San Francisco Railway, St. Louis, Mo.-Oklahoma City, Okla.	Mar. 15, 1965	Apr. 19, 1965	Mar. 30, 1965	Aug. 18, 1965	May 3–7, 10–14, 17–19, 1965.	2	Denied Aug. 9, 1965 (trains renumbered and rescheduled).
23548	do	do	do	do	do	do	2	Granted Aug. 9, 1965.
23549	St. Louis & San Francisco Railway, Kansas City, Mo.-Birmingham, Ala.	do	do	do	do	do	2	Do.
23550	do	do	do	do	do	do	2	Denied Aug. 9, 1965 (trains renumbered and rescheduled).
23551	St. Louis & San Francisco Railway, Monett, Mo.-Fort Smith, Ark.	do	do	do	do	do	2	Granted Aug. 9, 1965.
23552	St. Louis & San Francisco Railway, St. Louis, Mo.-Memphis, Tenn.	do	do	do	do	do	2	Do.
23554	Pennsylvania RR. Co., Philadelphia, Pa.-Delmar, Del.	Mar. 15, 1965	Apr. 18, 1965	Apr. 5, 1965	do	(5)	2	Dismissed May 13, 1965.

See footnotes at end of table, p. 39.

Status of proceedings under sec. 13a(1) (interstate trains)—Continued

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4-month date	Hearing date	Number of trains	Action
23572	New York Central, Albany, N.Y.-Boston, Mass.	Mar. 26, 1965	Apr. 25, 1965	Apr. 13, 1965	Aug. 24, 1965	June 7, 10, 11, 1965	2	Granted Aug. 17, 1965.
23574	Missouri Pacific RR. Co., Omaha, Nebr.-Kansas City, Mo.	Mar. 29, 1965	May 2, 1965	Apr. 20, 1965	Sept. 1, 1965	June 7, 10, 1965	2	Granted Aug. 26, 1965.
23581	Chicago Great Western Ry., Omaha, Nebr.-Minneapolis, Minn.	Mar. 31, 1965	Apr. 30, 1965	Apr. 15, 1965	Aug. 30, 1965	June 14, 17, 1965	2	Granted Aug. 19, 1965.
23584	Norfolk & Western Ry., Buffalo, N.Y.-Chicago, Ill.	Apr. 2, 1965	May 9, 1965	Apr. 27, 1965	Sept. 8, 1965	June 7, 10, 1965	2	Granted Aug. 30, 1965.
23597	Chicago, Milwaukee, St. Paul & Pacific Ry. Co., Manilla, Iowa-Sioux Falls, S. Dak.	Apr. 16, 1965	May 17, 1965	May 4, 1965	Sept. 16, 1965	June 7, 9, 1965	2	Granted Sept. 10, 1965.
23625	Chicago, Rock Island & Pacific, Kansas City, Mo.-Tucumcari, N. Mex.	Apr. 29, 1965	June 6, 1965	May 12, 1965	Oct. 5, 1965	June 14–16, 18, 21, 1965.	2	Denied Sept. 27, 1965.
23646	Chicago, Milwaukee, St. Paul & Pacific RR. Co., Milwaukee, Wis.-Savanna, Ill.	May 14, 1965	June 15, 1965	June 3, 1965	Oct. 14, 1965	July 22, 1965	2	Granted Sept. 27, 1965.
23657	Missouri-Kansas-Texas RR., Kansas City, Mo.-Dallas, Tex.	May 24, 1965	July 1, 1965	June 30, 1965[6]	Oct. 29, 1965	Aug. 2, 4, 5, 1965	2	Granted Nov. 18, 1965.
23658	do	do	do	do	do	do	2	Do.
23684	Louisville & Nashville RR., Memphis, Tenn.-Bowling Green, Ky.	June 11, 1965	July 15, 1965	July 1, 1965	Nov. 12, 1965	Aug. 9, 12, 1965	2	Granted Nov. 5, 1965.
23720	Erie-Lackawanna RR. Co., Hoboken, N.J.-Scranton, Pa.	July 6, 1965	Aug. 6, 1965	July 21, 1965	Dec. 3, 1965	Sept. 1–3, 1965	3	Granted Nov. 26, 1965.
23756	Southern Pacific Co., Portland, Oreg.-San Francisco, Calif.	July 30, 1965	Sept. 1, 1965	Aug. 18, 1965	Dec. 31, 1965	Oct. 18, 22, 25, 1965	2	Denied May 24, 1966.
23766	Chicago & North Western Ry., Chicago, Ill.-Madison, Wis.	Aug. 5, 1965	Sept. 6, 1965 Sept. 11, 1965	(1)			3	Granted Aug. 26, 1965 (507–10), Aug. 30, 1965 (508), petition denied Sept. 10, 1965.
23770	Chicago & Eastern Illinois RR., Danville, Ill.-Evansville, Ind.	Aug. 23, 1965	Sept. 22, 1965	Sept. 9, 1965	Jan. 21, 1966	Oct. 25, 29, Nov. 1, 1965.	2	Granted Jan. 14, 1966.
23773	do	do	do	do	do	do	2	Do.
23781	Louisville & Nashville RR., Evansville, Ind.-Atlanta, Ga.	Aug. 18, 1965	Sept. 21, 1965	do	Jan. 20, 1966	do	2	Do.
23787	Atlantic Coast Line, Railroad, Waycross, Ga.-Montgomery, Ala.	Aug. 24, 1965	Oct. 1, 1965	Sept. 16, 1965	Jan. 31, 1966	Nov. 1, 3, 5, 8, 1966	2	Dismissed Nov. 22, 1965.
23790	Atlantic Coast Line Railroad, Wilmington, N.C.-Florence, S.C.	do	do	do	do	Nov. 10–11, 1965	2	Granted Jan. 11, 1966.
23800	Southern Pacific Co., Tucumcari, N. Mex.-Phoenix, Ariz.	Sept. 2, 1965	Oct. 6, 1965	Sept. 23, 1965	Feb. 5, 1966	Nov. 3–5, 1965	2	Denied Jan. 24, 1966.
23808	Chicago, Railroad, Missouri-Fort Worth, Tex.	Sept. 15, 1965	Oct. 17, 1965	Oct. 4, 1965	Feb. 16, 1966	Nov. 8, 10–12, 1965	2	Denied Feb. 8, 1966.
23810	Atchison, Topeka & Santa Fe, Missouri-Tulsa, Okla.	Sept. 16, 1965	Oct. 20, 1965	Sept. 30, 1965	Feb. 19, 1966	Nov. 17, 18, 19, 22, 1965.	2	Denied, Feb. 10, 1966.
23820	Northern Pacific Railway Co., Spokane, Wash.-Lewiston, Idaho.	Sept. 27, 1965	Oct. 31, 1965	Oct. 19, 1965	Feb. 28, 1966	Dec. 11, 1965	2	Granted Feb. 18, 1966.

23821	Chicago, Burlington & Quincy Railroad, Alliance, Nebr.-Casper, Wyo.	Sept. 28, 1965	do	do	Feb. 27, 1966	Dec. 7, 1965	2	Granted Feb. 23, 1966.
23831	New Haven Railroad	Oct. 11, 1965	Mar. 1, 1966	Oct. 14, 1965	June 30, 1966	Dec. 1, 1965	274	Apr. 5, 1966, 234 continued, 40 discontinued.
23853	Missouri Pacific Railroad Co., St. Louis, Mo. Pueblo, Colo.	Oct. 25, 1965	Nov. 29, 1965	Nov. 15, 1965	Mar. 26, 1966	Jan. 4, 7, 10, 12, 14, 17, 19, 1966.	2	Granted May 22, 1966.
23959	Boston & Maine Corp., Boston, Mass.-Concord, N.H.	Jan. 3, 1966	Feb. 7, 1966	Jan. 25, 1966	June 3, 1966	Mar. 7, 1966	3	Granted June 2, 1966.
23960	Boston & Maine Corp., Boston, Mass.-Dover, N.H.	do	do	do	do	do	2	Do.
23961	Boston & Maine Corp., Boston and Newburyport, Mass.	do	do	do	do	do	4	Denied June 2, 1966.
23989	Northern Pacific Railway Co., Jamestown and Mandan, N. Dak.	Jan. 24, 1966	Feb. 28, 1966	[1]			2	Feb. 16, 1966. No investment.
24000	Boston & Maine Corp., Springfield, Mass.-White River Junction, Vt.	Feb. 1, 1966	Mar. 7, 1966	Feb. 21, 1966	July 6, 1966	Mar. 7, 1966	4	Granted July 6, 1966.
24061	Missouri Pacific Railroad Co. and Illinois Central Railroad Co.	Mar. 14, 1966	Apr. 15, 1966	Apr. 4, 1966	Aug. 14, 1966 [7]	June 20, 1966	4	
24074	Pennsylvania RR. Co., St. Louis, Mo.-New York, N.Y.	Mar. 21, 1966	Apr. 24, 1966	Apr. 11, 1966	Aug. 23, 1966	May 31, 1966	2	
24078	New York Central RR. Co., Elkhart, Ind.-Chicago, Ill.	Mar. 24, 1966	do	[1]			1	Granted Apr. 12, 1966.
24155	Atlanta & West Point RR. Co., the Western Ry. of Alabama.	May 13, 1966	June 19, 1966	June 6, 1966	Oct. 17, 1966	July 18, 1966	2	
24158	Louisville & Nashville RR., Montgomery, Ala.-New Orleans, La.	do	June 18, 1966	do	do	do	2	
24159	Louisville & Nashville RR., Flomaton, Ala.-Chattahootcha, Fla.	do	do	do	do	do	2	
24160	Louisville & Nashville RR., Flomaton, Ala.-Chattahootcha, Fla.	do	June 19, 1966	do	do	do	1	
24161	Chicago, Rock Island & Pacific RR., Omaha, Nebr.-Denver-Colorado Springs, Colo.	May 16, 1966	June 16, 1966	June 2, 1966	Oct. 15, 1966	do	2	
24175	Seaboard Air Line Ry., Portsmouth, Va.-Raleigh, N.C.	May 27, 1966	July 1, 1966	June 17, 1966	Oct. 31, 1966	Aug. 1, 1966	2	
24205	Erie-Lackawanna RR. Co., Chicago-Hoboken-Binghamton.	June 15, 1966	July 15, 1966	June 30, 1966	Nov. 14, 1966		4	
24218	Soo Line RR. Co., Portal, N. Dak.-Glenwood; Glenwood, Minn.-Enderlin, N. Dak.	June 27, 1966	July 31, 1966	[1]			2	

[1] No investigation ordered.
[2] Extended in record.
[3] Agreement reached at hearing.
[4] Applicant's voluntary extension.
[5] None.
[6] Ordered after expiration of time for requiring continuance of trains pending hearing and decision.
[7] Railroad agreed to continue operating trains pending decision.

Status of proceedings under section 13a(2)

F.D. No.	Railroad and points served	Filed	Hearing	Examiner's report	Decision	Action	Number of trains
20416	Northern Pacific Railway Co., Valley City-McHenry, N. Dak.	Nov. 24, 1958	Mar. 26, 1959	July 13, 1959	Oct. 28, 1960	Dismissed	2.
20417	Northern Pacific Railway Co., Jamestown-Wilton, N. Dak.	do	Mar. 20, 1959	June 24, 1959	Oct. 21, 1960	Dismissed, 312 ICC 309.	2.
20418	Northern Pacific Railway Co., Fargo-Streeter, N. Dak.	do	Mar. 24, 1959	July 13, 1959	Aug. 29, 1960	Granted	2.
20419	Northern Pacific Railway Co., Jamestown-Oakes, N. Dak.	do	Mar. 23, 1959	July 6, 1959	May 10, 1961	Denied, 312 ICC 559.	2.
20420	Northern Pacific Railway Co., Jamestown-Leeds, N. Dak.	do	Mar. 19, 1959	June 24, 1959	Aug. 29, 1960	Granted	2.
20421	Northern Pacific Railway Co., Carrington-Turtle Lake, Esmond-Oberon, Oberon-Leeds, Jamestown-Oberon, N. Dak.	do	Mar. 17, 1959	June 10, 1959	Aug. 1, 1960	Dismissed, 312 ICC 150.	Discontinuance of 4 mixed trains and reduction of 4 freight trains to triweekly service.
20422	Northern Pacific Railway Co., Fargo-Marion, N. Dak.	do	Mar. 25, 1959	July 31, 1959	Oct. 25, 1960	Dismissed	2 mixed trains to discontinue passenger service and reduce freight service to triweekly.
20503	Southern Pacific Co., Oakland-Sacramento, Los Angeles-Sacramento, San Francico-San Jose, Calif.	Jan. 19, 1959	May 18, 1959	Dec. 18, 1959	July 21, 1960	Granted, 312 ICC 631; 320 ICC 59.	6 (reopened for reconsideration on present record on 2 additional trains Nov. 21, 1960.)
20524	New York Central Railroad Co., Utica-Ogdensburg, Syracuse-Massena, N.Y.	Jan. 30, 1959	Apr. 13, 1959	Aug. 5, 1959	Mar. 28, 1960	Denied, 312 ICC 4.	8.
20553	Pennsylvania Railroad Co., Camden-Pemberton, N.J.	Feb. 25, 1959	Apr. 27, 1959	Aug. 24, 1959	June 6, 1960	Granted	2.
20592	Missouri Pacific Railroad Co., Atchison-Downs, Kans.	Mar. 24, 1959	June 11, 1959	Sept. 10 1959	May 25, 1960	Granted, 312 ICC 105.	2.
20606	Pennsylvania Railroad Co., Trenton-Red Bank, N.J.	Apr. 15, 1959	July 30, 31, 1959	Dec. 4, 1959	Dec. 28, 1961	Granted, 317 ICC 5.	2.
20731	Pennsylvania Railroad Co., Camden-Trenton N.J.	July 24, 1959	Nov. 30, 1959	Apr. 8, 1960	Aug. 8, 1960	Granted, 312 ICC 167.	2.
20792	Pennsylvania Railroad Co., Harrisburg-Williamsport, Pa.	Aug. 25, 1959	Dec. 7, 1959	May 10, 1960	Aug. 4, 1960	Granted	2.
20824	Lehigh Valley Railroad Co., Lehighton-Hazleton, Pa.	Sept. 14, 1959	Dec. 3, 1959	Apr. 27, 1960	Jan. 31, 1961	Granted, 312 ICC 411.	4.
20863	Pennsylvania Railroad Co., Trenton-Phillipsburg, N.J.	Oct. 16, 1959	Mar. 28, 1960	May 18, 1960	Sept. 15, 1960	Granted.	2.
20920	New York, Susquehanna & Western Railroad Co.	Dec. 3, 1959				Withdrawn, Jan. 14, 1960.	10.
21030	Southern Pacific Co., Oakland-San Jose, San Francisco-San Jose, California.	Feb. 24, 1960	May 2, 1960			Withdrawn, May 3, 1960.	6.
21039	Pennsylvania-Reading Seashore Lines, Hammonton-Camden, Hammonton-Clementon, N.J.	Mar. 3, 1960	June 20, 1960	Oct. 28, 1960	Feb. 24, 1961	Granted	4.
21063	Great Northern Railway Co., Great Falls-Butte, Mont.	Mar. 28, 1960	Aug. 1, 1960	Dec. 13, 1960	June 28, 1961	Granted, 312 ICC 580.	2.
21275	Reading Co., Philadelphia-Bethlehem, Pa	Sept. 19, 1960	Nov. 28, 1960	Feb. 17, 1961	May 17, 1961	Granted	3.

21563	Southern Railway Co., Greensboro-Goldsboro, N.C.	Apr. 6, 1961	July 11, 1961	Oct. 27, 1961	Aug. 6, 1962	Granted, 317 ICC 255.	2.
21589	Pennsylvania Railroad Co., all trains at Pittsburgh stations.	May 5, 1961	July 10–13, Aug. 22–24, 1961.	Apr. 19, 1962	May 21, 1962	Granted 9, denied 21.	30.
21607	Pennsylvania-Reading Seashore Lines	May 19, 1961	Aug. 7, 1961	Waived	Apr. 4, 1962	Dismissed, 317 ICC 111.	30.
21770	Boston & Maine Railroad, Conway and Berlin branches.	Sept. 25, 1961			Oct. 9, 1961	Dismissed	7.
21840	Pennsylvania Railroad Co., Harrisburg-Philadelphia, Philadelphia-Pittsburgh.	Nov. 13, 1961	Apr. 26, 1962		June 10, 1963	Dismissed, 317 ICC 737; 320 ICC 319.	3.
21972	Denver & Rio Grande Western Railroad Co., Denver-Craig, Colo.	Feb. 19, 1962	May 28, 31, 1962		Mar. 22, 1963	Denied, 317 ICC 722.	2.
22325	New York Central Railroad Co., Boston-Springfield, Mass.	Oct. 24, 1962	Feb. 21–25, 1963	June 24, 1963	Aug. 13, 1963	Partial grant, Worcester-Springfield.	1.
22742	New York Central Railroad Co., Syracuse-Massena, N.Y.	Aug. 20, 1963	Oct. 7, 1963	Dec. 27, 1963	Jan. 27, 1964	Granted	2.
22948	New York Central Railroad Co., Springfield-Boston, Mass.	Jan. 24, 1964	Apr. 13, 1964	June 4, 1964	July 6, 1964	Partial grant, Springfield-Worcester.	2.
23069	Grand Trunk Western Railroad Co., Detroit-Durand, Mich.	Apr. 7, 1964	May 28, 29, 1964	July 20, 1964	Aug. 9, 1965	Granted	2.
23117	Southern Pacific Co., San Jose-Monterey, Calif.	May 11, 1964	Aug. 6–11, 1964	Nov. 5, 1964	Sept. 22, 1965	Denied	2.
22889	New York Central Railroad Co., Hudson-Albany, N.Y.	Dec. 6, 1963	Apr. 14, 1964	Feb. 25, 1965	Apr. 2, 1965	Granted	2.
23170	Boston & Maine Railroad, Boston to all points in Massachusetts.	June 17, 1964	Sept. 21–25, 1963, Oct. 5–7, 26–30, 1964.		Jan. 15, 1965	do	229.
23195	New York, New Haven & Hartford Railroad Co., Boston-Needham Heights, West Medway, Blackstone and Dedham, Mass.	July 6, 1964	Oct. 13–16, 1964, Feb. 24, 1965.	Waived	Nov. 3, 1965	do	37.
23321	Atchison, Topeka & Santa Fe Railway Co., Newton-Kinsley, Kans.	Oct. 5, 1964	Jan. 14, 1965	Apr. 22, 1965	May 24, 1965	do	2.
23395	Erie-Lackawanna Railroad Co., Buffalo-Hornell, N.Y.	Nov. 20, 1964	Jan. 21, 22, 1965	Apr. 14, 1965	Oct. 27, 1965	do	2.
23464	Southern Pacific Co., Los Angeles-Oakland, Calif.	Jan. 18, 1965	Mar. 29, 1965		May 10, 1965	Dismissed	2.
23542	Canadian Pacific Railway Co., Wells River, Vt.-Canadian border.	Mar. 8, 1965			July 30, 1965	do	2.
23573	Atchison, Topeka & Santa Fe Railway Co., Los Angeles–San Diego, Calif.	Mar. 29, 1965			Oct. 12, 1965	Dismissed	5.
23707	Soo Line Railroad Co., St. Paul-Noyes, Minn.	June 22, 1965	Oct. 18, 20, 22, 1965	July 5, 1966			2.
23924	Chesapeake & Ohio Railway Co., Grand Rapids-Traverse City, Mich.	Dec. 14, 1965		May 1, 1966			2.
24007	Atlantic Coast Line Railroad Co., Jacksonville and St. Petersburg, Fla.	Feb. 7, 1966	Apr. 25, 28, 1966				2.
24156	Northern Pacific Railway Co., Mandan and Mott, N. Dak.	May 13, 1966			June 28, 1966	Dismissed	2.

Senator LAUSCHE. The next witness is Mr. Chester S. Ketcham, counsel of the State of Vermont.

STATEMENT OF CHESTER S. KETCHAM, COUNSEL, STATE OF VERMONT, BOSTON & MAINE DISCONTINUANCE CASE

Senator LAUSCHE. Mr. Ketcham, we are glad to have you here. You may proceed with the presentation of your paper.

Mr. KETCHAM. Thank you, Mr. Chairman.

I greatly appreciate the opportunity of being here. I have several comments to make on some of the prior discussion before, but I think it would be more orderly if I read my statement first.

My name is Chester S. Ketcham. I am an attorney representing the Public Service Board of the State of Vermont in regard to the proposed discontinuance of passenger service in Vermont by the Boston & Maine Corp.

In connection with this case, I have become acquainted with 47 U.S.C. 13(a)(1), which is commonly referred to as the Passenger Train Discontinuance Act.

It is my judgment that 13(a)(1) gives the public a right of review in Federal courts from a determination by the Interstate Commerce Commission adverse to the public. Certainly, equity and fairness requires that the public and the carrier have equal rights to appeal from adverse Commission action. Unfortunately, however, four three-judge district courts have indicated that the public has no right of review under this particular section of the statute. (*Sludden* v. *United States*, 211 F. Supp. 150, U.S.D.C.M.D. Pennsylvania 1962; *State of Minnesota et al.* v. *United States et al.*, 238 F. Supp. 107, decided February 15, 1965; *State of New Hampshire* v. *Boston & Maine Corp., United States of America and Interstate Commerce Commission*, 251 F. Supp. 421, decided December 28, 1965; *State of New Jersey et al.* v. *United States et al.*, D.C.N.J., 168 F. Supp. 324, 1959).

These decisions were rendered in spite of the fact that the carrier does have a right of review from an adverse ruling of the Commission. The problem was thoroughly pointed out in the case of the *State of New Hampshire* v. *Boston & Maine Corp. et al.*, where Justice Sweeney held there was no right of review by the Federal courts when the Interstate Commerce Commission decision was favorable to the railroad. He specifically held that Congress did not have to be fair:

> The most appealing argument in support of jurisdiction on these facts is one based simply on fairness and equity. Since the railroad would have a right to appeal the Commission's order that seven trains are required by the public convenience and necessity and must, therefore, be continued in service, the public should have a right to judicial review with respect to the discontinued trains as well. But the short answer to this argument is that Congress does not have to be fair.

On this point, it is my understanding that the Interstate Commerce Commission also maintains the public has a right of review under this section of the act. The adverse decision of the courts on the question of review makes it imperative that Congress adopt the resolution indicating that it is their intention to give everyone equal right of review under 13(a)(1).

The Commission apparently takes the position that the law does not allow the service in question to continue until final action by it

has been completed. At least the Commission appeared in our case in opposition to our court action seeking a restraining order until such time as the Commission issued a report and we were given an opportunity to file a petition for reconsideration.

I firmly believe also that the railroads should not be allowed to remove passenger service until final Commission action has been completed. If such is not the intention of Congress, the rights and powers of the Commission may become disrupted because trains have been removed prior to a possible reversal by the full Commission on petitions for reconsideration. It may be extremely difficult to reinstate train service, as the action of the railroad had become an accomplished fact. Rail passenger service is an urgent problem. It is an urgent problem to the public throughout the country as well as to the people in Vermont.

If some action is not taken by Congress in the immediate future to clarify this statute, I am afraid that many passenger trains will be discontinued which are needed by certain members of the public.

I concede that some persons prefer to move from one area to another by a means of airline service. Others move by automobile. Those which remain are normally poor persons who must travel by means of either trains or buses. Those persons have rights which should not be ignored. Buses are apparently flourishing, but the railroads claim that they are not. It is hard for me to believe that honest, good effort to provide successful rail and bus service will not result in profitable business for both types of carriers.

After adoption of the resolution which would clarify the congressional intent under 13(a)(1), I believe that the public interest would be best protected by amendment of 13(a)(1) in the following manner:

1. Specifically spell out the right of review by the Federal courts when a decision of the Interstate Commerce Commission is adverse to the public.

2. Specifically spell out that the railroads shall have no right to discontinue passenger service until final action by the Commission.

3. The statute should further be amended to place the burden of proof in disputes over passenger service on the carrier. The Commission has continually refrained from holding who has the burden of proof in these cases. There is certainly no good reason why the railroad should not have the burden of proof, as it is the moving party. Certainly, Congress has placed upon the carrier the burden of proof in abandonment cases. I see no difference between the two types of cases in this regard.

4. In the New Haven case the Commission indicated that there should be a reasonable effort to successfully operate passenger service where there is an economic viability. Certainly it is difficult, if not impossible, to determine the question of economic viability until the carrier has used a reasonable effort. Certainly, the question of economic viability cannot be determined if the carrier makes an unreasonable effort or no effort at all in operating a successful service. Therefore, I recommend that 13(a)(1) be amended so as to require a reasonable effort to be made by the carrier in the operation of its service. If the carrier fails to prove such reasonable effort, the Commission should not allow a discontinuance.

5. The Interstate Commerce Commission, in considering passenger discontinuance cases, considers the overall financial position of the

carrier. In other words, if a carrier is in a relatively strong financial position, it may be required to carry on a less lucrative passenger service than as if they were in a less lucrative financial condition. This test becomes a mockery when the Commission considers cases under 13(a)(1) when there is pending before it a proposed merger of the carrier involved in a discontinuance case and another carrier. Obviously, any merger will change the financial position of the carrier and thus change the test in determining public convenience and necessity. Therefore, I would recommend that the Commission be forbidden to rule on a case under 13(a) while there is pending before the Commission a proposed merger of a carrier seeking relief under that section.

In summary, I believe statements and holdings of some district courts relative to the fairness of Congress should be clarified by passage of this resolution. Secondly, I believe that the public will be better protected by amending 49 U.S.C. 13(a)(1). I further believe that amendment of this section will ultimately be for the benefit of the private railroad industry. I say this because if carriers are not required to show reasonable effort and trains and passenger service is discontinued throughout a large portion of this country, the public will have to be protected through Government ownership in one way or another. If the Government is thus required to take over the less lucrative passenger service because of the carriers' failures to meet their responsibilities, there is little reason to keep the more lucrative freight service in the hands of these very same carriers.

I would propose that 13(a)(1) be amended to read as follows.

Senator COTTON (presiding). You are making a very excellent statement, and we appreciate this proposed amendment greatly and I am sure you may depend upon the committee to study it most carefully and compare it with whatever might be suggested by the ICC. But in view of the fact that just reading it would not give us sufficient time to examine it, and we have two more witnesses and we might be called to the floor, would you be willing to let this go into the record at this point, instead of reading it?

Mr. KETCHAM. Certainly, Senator.

(Proposed amendment follows:)

(1) A carrier or carriers subject to this chapter, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency or any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendancy of any proceeding before, any court of State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change (except that an investigation shall be conducted when requested by a Governor of a State in which such train or ferry is operated). Upon the institution of such investigation, the Commission, by orders served upon the carrier or carriers

affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and (final) decision in such investigation. If, after hearing in such investigation the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

Mr. KETCHAM. May I take a moment to answer a couple of points that were raised before?

Senator COTTON. You certainly may. But why don't you complete your prepared statement.

Mr. KETCHAM. All right.

I would further suggest that a new section be added as 13(a)(3) to read as follows:

The carriers and a person objecting to the proposed discontinuance within the provisions of 13(a)(1) or 13(a)(2) shall have full right of review within the provisions of 28 U.S.C. 1336, 1398, 2284 and 2321 to 2325. A carrier seeking discontinuance under the provision of 13(a)(1) or 13(a)(2) shall have the burden of proof before the Commission and shall establish before the Commission the fact that it has used reasonable effort to successfully operate its passenger service. A carrier shall have no right to act within the provisions of 13(a)(1) or 13(a)(2) if it has a proposed merger pending before the Commission.

I think Senator Lausche raised a very important question as to the interrelationship between 49 U.S.C. 13(a)(1) and 28 U.S.C. 1336 in regard to the right of review.

As I understand it, the rationale of the New Hampshire court was first that under 13(a)(1) the Commission does not have to hold a hearing and therefore there is no order from which a right of review is required under 28 U.S.C. 1336. Whereas under 13(a)(2), which is the intrastate section, these must hold a hearing. And the court in distinguishing between the two sections held that it must be the intent of Congress not to require a review under 13(a)(1) as there was no requirement for an order as spelled out in 28 U.S.C. 1336.

I personally disagree with the court's interpretation of those two sections. However, I can see where they arrived at the decision they arrived at, and that is why I feel it is imperative that the 13(a)(1) be amended so as to clarify the congressional intent in that regard.

Secondly, some question was raised as to the failure of the State in our particular case to show enough evidence to allow the continuance of the restraining order. I would like to point out to the committee that the test in determining whether or not an injunction is to be continued is based on a rather severe test of irreparable harm and that test is considerably different than the test of public convenience and necessity.

Unfortunately I think we failed to show by a preponderance of evidence that irreparable harm would result from the immediate discontinuance of the service. Technically I suppose about the only

way you could show irreparable harm was to show a rail service went into an area where there were no roads, no planes, no other means of transportation, which of course we could not show in our Vermont case.

What I am saying, Mr. Chairman, is it may well be that there is a public convenience and necessity for continued passenger service, but it is not so severe as to cause irreparable harm under the court test.

Some mention was made as to the negotiations between the Governor of the State of Vermont and representatives of the Boston & Maine Corp. in an attempt to resolve the difficulties in this case. Initially the Boston & Maine Corp. took the position that they would voluntarily continue the day trains in question—there are four trains, two are day and two are night—the two day trains until September 3, 1966, and the night trains until April 1, 1967.

After further negotiation it appeared that the Boston & Maine Corp. took the position that they would voluntarily continue those trains only if the State of Vermont withdrew any and all action before the Interstate Commerce Commission and the courts.

Now we could not in fairness to the people of the State of Vermont do this, because we would in effect be answering to the president of the Boston & Maine Corp. with no recourse to anyone.

We, in the alternative, asked them to withdraw their notice of discontinuance as to the night trains and we would withdraw our action as to the day trains. They rejected this.

We then offered what we felt was a fair compromise position, whereby a stipulation would be entered into holding the court action in abeyance until April 1, allowing any party at that time to bring forward the case in the court or before the Commission upon 10 days notice. And to protect everyone's rights in the interim and those rights would be the rights of the public as well as the rights of the Boston & Maine Corp. They completely rejected that, and that is why we are proceeding with our legal remedies.

Now as to the New Hampshire case, Senator, I know you mentioned that. It is my understanding that just prior to the proposed discontinuance of the service in this case, which was connected with three other docket numbers pertaining to the State of New Hampshire, the State of New Hampshire did enter into an agreement with the Boston & Maine Corp. whereby the Boston & Maine Corp. voluntarily agreed to extend the service of those three trains through June 1, 1967, and in exchange for that the State of New Hampshire agreed to withdraw all objections to the proposed discontinuance of those trains and to withdraw its appeal from the adverse decision of the New Hampshire court that was then pending in the U.S. Supreme Court.

Senator COTTON. Any other bad news that you have? [Laughter.]

Senator Prouty?

Senator PROUTY. Mr. Ketcham, I wish to commend you for a very able and enlightening statement. I might suggest that I am one of the poor people who like to use train service whenever it is available.

Mr. KETCHAM. I didn't mean to indicate that only poor people used the trains, Senator. What I meant to point out was that many of those would prefer to ride by train and bus if the carriers attempted to run a successful business.

Senator PROUTY. I agree with you, that if the railroads have adequate service, then more and more members of the public are going to use them.

Senator LAUSCHE. Senator Aiken?

Senator AIKEN. Probably I shouldn't tell this, but yesterday a constituent communicated with my office, complaining because they couldn't get a reservation on the Washingtonian at all, couldn't get any at all, completely sold out. And then the ticket agent suggested, "You might contact one of the officials of the railroad, because they always have so many reservations and they might let you have one of them."

And it set me to wondering how many of the officials perhaps have reserved, made reservations which went unused from northern New England to Washington and return.

That has nothing to do with this resolution, not much anyway. But I thought it was interesting.

Senator COTTON. Thank you, Mr. Ketcham. You have given a very excellent presentation.

Senator COTTON. Mr. Don Beattie, Railway Labor Executives' Association.

STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY-TREASURER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Senator COTTON. I don't want to curtail your presentation in any way, but there are certain parts of it, such as the listing of the organization here, your full statement will go into the record. Because of the fact we might be called to the floor at any moment, would you content yourself with giving us the meat of the statement?

Mr. BEATTIE. Yes. Perhaps I could simply summarize a bit.

We are very, very happy that Senators Aiken and Prouty and Kuchel have introduced their resolution to give us this opportunity to call attention to some other problems related to the section 13(a).

The association has participated in every train-off case that has been handled by the Commission under this act. We have an intense interest in it. We have been attempting for the past several years to get a correction in what we think is a very bad law.

Now I think I should like to just read some of the major defects in the law which we have listed in our statement.

It removes from the several States, at the discretion of the railroads, the ability to efficiently regulate the quantity and the quality of passenger train service to be performed for the citizens of such States.

It deprives the public of the right of appeal to the courts in discontinuance cases while preserving such right to the railroads.

Our attorneys advised us of that position.

It permits such unappealable discontinuances to take place without public hearings.

It permits railroads to discontinue interstate passenger train operations without the necessity of justifying such action.

It requires the public to prove that continuation of a particular interstate passenger train will not be an undue financial burden on the railroad although such proof can only be supplied by the railroads.

It permits the automatic discontinuance of interstate trains unless the Commission institutes an investigation, and after its completion

but within 4 months of the proposed discontinuance date, enters an order requiring continuance of the operation of the trains involved.

It grants the Commission only the authority to require such continuance for a period of 1 year from the proposed date of discontinuance, after which year, the railroads can republish the discontinuance, and rely upon substantially similar facts to obtain the authority to discontinue.

I would like to mention at this point that in connection with the testimony of previous witnesses, to call attention to the language of the Interstate Commerce Act, section 13(a)(1). A railroad does not have to file a notice. There have been occasions when a railroad has declined to file a notice, has taken a train off and there was nothing anyone could do about it unless State law provided that the individuals in the State or the State officials had the right to take action.

But the State laws vary, and some States have no law to cover this situation. So where you have an interstate train, regardless of whether there is a good law in a particular State, and other States have no law, the train can come off, because if you take off a segment, or if you simply retain a segment, it is not long before it is so unprofitable a situation that the train would have to come off regardless.

So there have been those occasions. The law does not require them to file a notice. And there have been occasions when the railroads have taken advantage of that.

Now in connection with the testimony about the 4-month period not being too limited a time for the normal case, I would like to point out that in this instance we are talking about a resolution that deals with two trains running from Montreal to Washington which have been the subject of a previous hearing by the Commission, the same trains. They handled that in one case and subsequently came to the second application, or notice—it is not an application, it is a notice to discontinue.

So in effect the Commission had a great deal of information about the trains involved and there wasn't a great deal of additional, new information that was brought into the second case. Yet 4 months wasn't too adequate a period of time.

Now we have advocated these changes in the law since it was enacted, and we have not had much success in convincing the Commission that it should come forth with its own legislation.

Now at the conclusion of my statement today I am suggesting that a bill be enacted which in substance would be the bill offered by Senator Hartke, S. 1394 I believe it is, with one addition, that in view of the fact that this Congress has authorized Federal funds to do something about passenger train service in this country, through the Mass Transportation Act of 1964, and the High Speed Act of 1965, and now under consideration is a proposal to create a new Department of Transportation, that this bill include a moratorium of 18 months on any further discontinuance of passenger trains, and during that period of time we would hope that there would be enacted this legislation to create the new department and it would provide a period of time in which the Department could take a survey of the passenger train situation in this country, the needs of the public, the new technology and research that is known or will be known, and devise a new policy which then could be translated into general legislation to cover a very, very important need. That is the substance of my testimony this morning.

I urge that this committee give consideration immediately to the bill that we offer.

Senator COTTON. I thank you. Your entire presentation will be printed and I appreciate your condensing it and giving it to us in condensed form because of the situation here.

Senator AIKEN. I think it was a very effective presentation. I have no questions.

Senator COTTON. Thank you.

(The statement referred to follows:)

STATEMENT OF DONALD S. BEATTIE EXECUTIVE SECRETARY-TREASURER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is Donald S. Beattie. I am Executive Secretary-Treasurer of the Railway Labor Executives' Association. I appear here today on behalf of that Association, which consists of the chief executive officers of the twenty-two standard, national and international railway labor organizations and the President of the Railway Employes' Department, AFL–CIO, and as spokesman for that Association speak for virtually all of railroad labor. A list of the organizations affiliated with the Association through the membership of their chief executive officers is set forth in my written statement, which, if I may, I would like to file with the reporter:

American Railway Supervisors' Association.
American Train Dispatchers' Association.
Brotherhood of Locomotive Firemen and Enginemen.
Brotherhood of Maintenance of Way Employes.
Brotherhood of Railroad Signalmen.
Brotherhood of Railroad Trainmen.
Brotherhood Railway Carmen of America.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
Brotherhood of Sleeping Car Porters.
Hotel and Restaurant Employees and Bartenders International Union.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen & Oilers.
International Organization Masters, Mates & Pilots of America.
National Marine Engineers' Beneficial Association.
Order of Railway Conductors and Brakemen.
Railroad Yardmasters of America.
Railway Employes' Department, AFL–CIO.
Seafarers' International Union of North America.
Sheet Metal Workers' International Association.
Switchmen's Union of North America.
Transportation-Communication Employees Union.

The Association has participated before the Interstate Commerce Commission in virtually all cases which have arisen under Section 13a of the Interstate Commerce Act which, as you know, was enacted into law as Section 5 of the Transportation Act of 1958. In behalf of this Association, I appear in support of Senator Aiken's Resolution S. Res. 284, a copy of which is attached to my statement, which would express the sense of the Senate that fairness and justice requires that the public be given the right to obtain judicial review of decisions of the Interstate Commerce Commission in passenger train discontinuance cases. I appear further to suggest that expeditious steps be taken to insure that the public and all railroad companies alike be granted the fair and equitable treatment sought for in the Resolution before the Subcommittee.

THE RESOLUTION

On April 27, 1966, as a condition of its approval of the Pennsylvania-New York Central merger, the Interstate Commerce Commission denied the New Haven road's application to discontinue operating certain of its passenger trains including

specifically, the "Montrealer" and "Washingtonian," numbered 168 and 169, respectively.

This denial was based primarily on the trains' value to the public in performing through service between Washington and New York and Montreal.

In a complete turnabout, the Commission on July 25, 1966, found that operation by the Boston and Maine Railroad of the same two trains over its line between Springfield, Massachusetts and Windsor, Vermont was a burden on interstate commerce and that their operation should not be required to be continued.

The Resolution before you, after having recited these facts, refers to a recent United States District Court decision in a Boston and Main case in which the court held that Congress "intended" to deny the public the right to obtain judicial review of Commission orders permitting train discontinuances, while giving such a right to the railroads when the Commission required that train services be continued. It is shown that in reaching its decision the court rejected the argument that "fairness and equity" entitle the public to judicial review declaring: "The short answer to this argument is that Congress does not have to be fair." (251 F. Supp. 421, 425.)

Recognizing the implication of this decision that Congress in amending the Interstate Commerce Act in 1958 was not fair, did not intend to be fair or was not aware of the implication of its acts, the Resolution is described by Senator Aiken as "expressing the sense of the Senate that this Body does intend to be fair and that both the public and the railroads should be accorded fair and equitable recourse to the courts."

The resolution emphasizes that Congress "did not intend and does not intend to give the Interstate Commerce Commission the right of decision without review", and concludes:

"If the Interstate Commerce Commission cannot, or will not, fairly treat all railroads equally, and if it cannot, or will not, treat all members of the public with equal fairness, Congress will duly consider the necessary steps to restrict the powers of the Commission or to abolish it."

In conjunction with our statement in support of the resolution we submit suggestions concerning the steps we believe are necessary to insure that the public interest will be protected in connection with passenger train discontinuances.

THE TRANSPORTATION ACT OF 1958

The passenger train discontinuance provisions of the Transportation Act of 1958 were enacted into law for one specific purpose—to permit the railroads to by-pass some state regulatory agencies which allegedly had treated the railroads in an unfair manner by denying or delaying action upon railroad petitions for approval of the discontinuance of certain unnecessary and uneconomical passenger trains. That was the single avowed purpose of Section 13a. In its report on H.R. 12832 which, with some modification, became the Transportation Act of 1958, the House Committee pointed out that "witnesses have not suggested that all State Commissions have taken obstructive attitudes, but only that it has proved impossible to secure necessary relief in some States".

The purpose of the law, as such, was not an unpraiseworthy one. Experience under the law, however, has demonstrated that it has been permitted to go beyond its original objective of enabling railroad to circumvent "unfair regulatory bodies in some states", and employed as a means for the railroads to discontinue interstate trains as they so desire, whether such discontinuances are justified or not. The first federal court to pass upon Section 13a(1) considered it "an invitation" to the railroads to abandon their passenger service. The Circuit Judge who dissented from the result reached in that case characterized this provision as "this strange, dismaying law * * * (concerning which) one thing is certain, namely, that the public was ignored in (its) formulation". (168 F. Supp. 324, 341).

A review of the provisions of the present law, and its administration over the last eight years shows that it is a statute which:

1. Removes from the several States, at the discretion of the railroads, the ability to efficiently regulate the quantity and quality of passenger train service to be performed for the citizens of such states.

2. It deprives the public of the right of appeal to the courts in discontinuance cases while preserving such right to the railroads.

3. Permits such unappealable discontinuances to take place without public hearings.

4. It permits railroads to discontinue interstate passenger train operations without the necessity of justifying such action.

5. It requires the public to prove that continuation of a particular interstate passenger train will not be an undue financial burden on the railroad although such proof can only be supplied by the railroads.

6. It permits the *automatic* discontinuance of interstate trains unless the Commission institutes an investigation, and after its completion but within *four months* of the proposed discontinuance date, enters an order requiring continuance of the operation of the trains involved.

7. It grants the Commission only the authority to require such continuance for a period of one (1) year from the proposed date of discontinuance, after which year, the railroads can republish the discontinuance, and rely upon substantially similar facts to obtain the authority to discontinue.

I shall deal briefly by way of illustration how the courts and the Commission have accepted the fact that by enactment of Section 13a, Congress has given the railroads the power to eliminate passenger train service without regard for the interests of the public, and without affording those adversely affected by such discontinuance adequate means to protect their interests.

EFFECTS UPON STATE LAW

Many of our states have statutes which require railroads operating within their borders to furnish such reasonable service as will promote the safety, health, comfort and convenience of their patrons, employees, and the public. Section 13a by its terms, and its administration, prohibits meaningful exercise of power by such states to require the performance of such duties.

To illustrate: A particular state may have at any time an investigation in progress regarding the adequacy of service rendered by a particular interstate passenger train. It might reach the conclusion that the service rendered is needed but is being performed on an inconvenient schedule and with inadequate facilities. It may wish to order the railroad to modify the consist of the train so as to include modern and serviceable equipment, and it might require a change in the scheduling of the train. Confronted with such a requirement, the railroad could, under the provisions of Section 13a(1) file with the Commission a notice to discontinue the train within 30 days. Armed with facts that the train involved has been losing passenger volume—which in the opinion of the state agency was attributable to an inconvenient schedule and inadequate facilities—the railroad could reasonably expect to be permitted to drop the train.

It might surprise the Committee to learn that some railroads have deliberately undertaken drastic steps to force non-use of their trains, so as to create a financial situation to justify their discontinuance. In isolated cases, the Commission has required their continuance, but has not undertaken to require that the trains be operated on convenient schedules or with adequate facilities.

The nullification of state regulation of passenger train service effected by the enactment and administration of the present law leaves the public and their state authorities without adequate means to protect their interests and satisfy their needs. Such protection and satisfaction of public needs has not been afforded by the Commission. Created as it was to regulate the railroads so as to serve the public interests, insofar as passenger train service is concerned, the Commission is unable because of the terms of Section 13a, or unwilling, to perform that duty. *If as Senator Aiken has said, the statute is unfair it should be repealed or amended appropriately. If the Commission is derelict in its obligation to the public, then again as the Senator says, necessary steps should be taken to restrict its power or "to abolish it."*

DELEGATION OF AUTHORITY TO THE RAILROADS

There is substantial authority to support the view as stated above that Congress by enactment of Section 13a had created a statutory pattern whereby it is impossible for the Commission as well as the states to properly care for the public needs for passenger train service.

To use the words of an eminent Judge of the Court of Appeals for the Third Circuit (Judge McLaughlin), and not our own, Section 13a has been characterized as a "strange, dismaying law" which can be expected to "write an end" to transportation service necessary "in peace and in war". In his view, "the public was ignored in the formulation" of Section 13a(1), (168 F. Supp. 324, 341). In the view of his colleague, United States District Judge Wortendyke, the statute constitutes a "clear and unambiguous" (p. 334), "invitation" (p. 335) to the railroads to discontinue passenger train service, over which the Commission at best has

but a "temporary veto power" (p. 329). In the opinion of the United States District Court for the District of New Jersey, enactment of the section is a delegation of Congressional authority—not to the Commission but—directly to the railroads, to discontinue passenger train and ferry operations (p. 332).

The United States District Court at Boston, Massachusetts, gave expression to the words used by Senator Aiken to describe the impact on and the fairness to the public of the section, when it stated that "Congress does not have to be fair" in enactment of legislation (251 F. Supp. 421). This Court echoed the views of the New Jersey District Court when it said that "the statute is clear and the cases hold that it self-implementing in that it grants authorization to a carrier without requiring any action by the Commission to effectuate the carrier's announced intention" to discontinue passenger train service (p. 423), and that "since the discontinuance comes not from Commission action but from the statute directly, there is, certainly in the case where the Commission decides not to investigate, no Commission order, within the meaning of section 1336, from which an appeal may be taken" (p. 424).

It would appear evident and necessary that when it is understood, as the Courts have so stated, that Congress had delegated its exclusive power to regulate a segment of interstate commerce to the railroads themselves, all fairness in accomplishing such delegation dictates that the statute contain provisions to insure that the exercise of such power will not be abused in the self interest of those possessing it.

EQUAL RIGHTS FOR RAILROADS AND THE PUBLIC DENIED

The present law is not only an unprecedented grant of substantive authority to the railroads over the conduct of interstate commerce, but as enacted and administered, effectively deprives the public of procedural safeguards and remedies.

The spector of the unconstitutionality of the section was raised by Circuit Judge McLaughlin in his described opinion in the New Jersey Ferry discontinuance proceeding cited above. In expressing his grave misgivings about the "justice" of the section in consideration of the protection afforded states and their subdivisions and citizens by the Fifth Amendment, Judge McLaughlin emphasizes that as shown by the case before him, Section 13a permitted the New York Central "to cut off an important transportation artery" because of the claim that it was no longer profitable "or for no reason and without the semblance of a hearing to the states, their components and the citizens affected". He said that the "deliberate deprivation of the hearing cannot have been motivated by fear, for the railroad protests the rightness of its attitude", that it "could not have been on account of some possible temporary delay arising from a hearing, for the operation is over a half a century old and the Commission could pass upon the issue promptly", but that "apparently it was just that the railroad wanted it that way * * *." (168 F. Supp. at page 341).

Even though we do not in this forum stress the possible unconstitutionality of Section 13a, we do emphatically subscribe to the views expressed by Senator Aiken that some action is required by Congress to remove the stigma of the characterization that it does not have to be fair in its legislative actions. Further, so as to give effect to the purpose of his resolution, we urge that Congress take immediate and salutory action to eliminate and inequality and unfairness inherent in the provisions of Section 13a. His remedy would be to provide for equal recourse to the Courts for the public and the railroads alike for judicial review of the action or inaction of the Commission in granting the railroads the right to discontinue passenger train operations.

It is commonplace for Congress to require when it has delegated to its so-called administrative arms, such as the Commission, the power to administer and regulate certain phases of interstate commerce, that full and fair hearings be conducted and that such decisions may be tested as to their validity by review in the courts. Section 13a singularly lacks all of the procedural safeguards normally required to be provided.

For example, as the above-described decision of the New Jersey District Court clearly found, there is no obligation imposed by the statute on the Commission to hold any hearing with respect to proposed passenger train or ferry discontinuances. Furthermore, the courts have found that the exercise by the Commission of its discretion whether or not to hold hearings cannot be tested by those who would suffer the greatest because of its decisions in such cases.

On the other hand, should the Commission exercise its discretion to institute an investigation concerning a proposed discontinuance, it must announce such an

intention, within 20 days after it and the public were first informed thereof, and complete its investigation and issue its order within a period of some four months thereafter. During this short period, all parties affected by the proposal must prepare, with such resources and knowledge available, their case in opposition, and participate in any scheduled hearings. The section provides that if the Commission fails to act within the prescribed period of four months, the petitioning railroad is free to immediately discontinue its operations.

It is clear that these provisions impose an almost impossible burden upon the public, as well as the Commission, to properly explore and evaluate the merits of a proposal on which the railroads may have spent many months or years in preparation.

Should, after the completion of its "investigation" the Commission reach the conclusion that the railroad should be permitted to discontinue operation of the passenger train involved, no avenue is available to those adversely affected by such action to obtain a judicious and objective appraisal of the merits of such decision. This is because, as we have described above, the courts have found that unless the Commission acts affirmatively to require the services to be continued, the act is self-implementing and the railroad is free to do as it pleases.

Clearly, apart from any consideration of the possible unconstitutionality of the act by reason of its deprivation of basic rights to important segments of the public, the statute cries out for some procedural safeguards to avoid self-evident abuses of the delegation of power to self-interested parties, if not but to avoid the indictment of unfairness which Senator Aiken has found unconscionable when attributed to Congress.

Nor is the voice of Senator Aiken and those of co-sponsors Senators Prouty and Kuchel alone evident in the demand for legislative remedy or corrective Commission action. I have in my possession and I will leave with the staff of this Committee copies of a number of editorials and other newspaper articles evidencing the grave concern of the general public in seeking some means of protection against the unwarranted and deliberate wholesale elimination of the passenger train as a means of transportation throughout the country as a whole. I should like to refer the Committee's attention to the fact that the State of Louisiana and the other states through which Southern Pacific passenger trains are operated have filed petitions with the Commission seeking the institution of an investigation of the persistent actions of that railroad to downgrade its passenger train service and discourage patronage. I feel certain that many of the members of this Committee as as well as their colleagues within this Body have heard of these outcries and desire to respond to the demands of their constituents for remedial action. Whether as Senator Aiken has framed the conclusion, amendment of the statute, or the correction of Commission policy and practices or its abolution is required, some immediate action is necessary. This, in our opinion, is another example that clearly shows that the Commission has failed in its duty except as to railroad management, and supports our previous recommendation that the Commission should be abolished and its duties given to other agencies.

Further it should seem abundantly clear to the Committee that the action which this resolution seeks to accomplish is wholeheartedly in spirit and in accord with the sense and efforts of the present Administration. You gentlemen are aware of your deliberations and actions to further the efforts of the President to improve, with substantial federal financial assistance, the quality and service of the Nation's railroads, as demonstrated by the Urban Mass Transit Act, and the High-Speed Ground Transportation Act. One can conjecture that many millions of taxpayers' dollars could conceivably be spent in the near future for the construction of new lines over which passenger service has been discontinued, or for the restoration of service over remaining lines. These are dollars which need not be expended if the railroads are impeded in their accelerated drive to virtually eliminate all passenger train service.

Our recommendation for a legislative remedy includes the imposition of a moratorium on further passenger train abandonments until those agencies charged with the responsibility for implementation of the above described Acts, and the policy of the Administration, can reasonably act to achieve their objectives. Whereas most of the burden of administration of such policies has been entrusted to federal agencies other than the Commission, we believe it significant to point out that the Commission has been singularly silent as to recommendations for legislation which would enable it to cooperate in achieving the objectives set forth in the Transportation Message of the President.

This Committee is aware also that the President has sought to implement his policy for improvement in the quality and service rendered by the nation's rail-

roads by a recommendation for the establishment of an executive Department of Transportation. You as members of the Senate may be called upon to consider the merits of this proposal, and at that time may well consider what remnants of interstate passenger train service will be available for administration and exploitation, improvement and the like by such a department.

We, however, urge that you give that consideration at this time, rather than at some future time when your effort may be too little and too late.

In the spirit in which this proposed measure is placed before you, that is, as an urgent request for immediate remedial action, we do not wish our presentation to be understood only as a recital of the past injuries inflicted upon the public by this statute.

We, therefore, have prepared and now submit for your earnest consideration a proposal which, in our view, will provide by way of amendment of the existing provisions of Section 13a, some of the basic constitutional procedural safeguards to which the public is entitled. By favorable action on a Joint Resolution or other legislative process, this Committee can remove the stigma of the indictment of unfairness and lack of equality to the public and the railroads alike charged to Congress.

(The following material was subsequently inserted in the record.)

[From the Wall Street Journal, July 5, 1966]

BURLINGTON ROAD MULLS FIGHT IF WESTERN PACIFIC SEEKS TO END ZEPHYR; SOUTHERN PACIFIC LOSES IN EFFORT TO DROP LARK, TRAIN BETWEEN SAN FRANCISCO AND LOS ANGELES

The Chicago, Burlington & Quincy Railroad said in Chicago it is considering waging a stiff fight against any effort by the Western Pacific Railroad to discontinue its portion of the California Zephyr.

And in San Francisco, the Southern Pacific Railroad was told by the California Public Utilities Commission that it couldn't abandon service on its Lark, an overnight passenger train between San Francisco and Los Angeles.

The California Zephyr runs daily between Chicago and Oakland, Calif., on the tracks of three roads, the Burlington, the Denver & Rio Grande Western and the Western Pacific. M. M. Christy, Western Pacific president, said last week the line would apply within 30 days to the Interstate Commerce Commission for permission to drop the passenger train.

Mr. Christy said the Western Pacific's loss on the Zephyr in 1965 was $823,000 before taxes. He said the road has had a loss on the train each year since 1957 and that increased losses in future years are likely. The Burlington said its part of the Zephyr operation is profitable.

L. W. Menk, Burlington president, said his road "is working diligently with the D&RGW to improve the Western Pacific's earnings from the train." He added, "I doubt that all opportunities for profitable operations of the train have been explored."

The Southern Pacific's attempt to discontinue the Lark, a train it advertises as "the bird that can't fly," met with the state agency's admonition to try harder. The railroad sought to drop the train on the ground it couldn't profitably compete with the airlines.

The commission ordered the railroad to continue operations and to "make a sincere effort to merchandise attractively and vigorously" its Lark service.

[From the St. Petersburg Times, July 30, 1966]

OVER THE LONG HAUL

Amidst all the scrambling for alternative transportation during the airlines strike one fact stands out clearly: The railroads are simply not geared to take up the slack.

They have neither the equipment, the routes nor the service to stay afloat when an emergency such as this swamps their ticket offices with demands for space.

Now, in a masterful misunderstanding of this message the New York Central Railroad has announced that it will further reduce its passenger service. Beginning next January all long-haul runs will be eliminated in favor of high-speed

shuttle service between 80 paired cities on the NYC line. Gone also will be such "luxuries" as sleeping and dining cars.

While the concept of fast rail transportation between centers of high population density should be applauded as one way to ease the increasing burden of moving masses of people from place to place, other services should not be curtailed to achieve it.

Once again it's a question of treating the symptoms and not the disease. And in this case, the disease is caused by a planning deficiency. What the country needs is a national transportation policy which would look to the long haul—not just for the railroads but for all forms of transportation.

This recent crisis was costly, irritating and disruptive. But it is nothing compared to the chaos which would come if we found ourselves in a full-scale national emergency. Should we, for any reason, have to move large numbers of troops cross-country they would probably be reduced to riding in open gondolas or boxcars.

As Edwin Lahey pointed out in last Sunday's Times, the railroads had 45,871 passenger cars in service during the World War II period. In 1965 that number had shrunk to 21,364.

The blame for belated action in facing their worsening problems cannot be placed entirely on the railroads. Although their "20th Century Limited" approach is partly responsible for the tremendous decline in passenger traffic, the federal government has been equally shortsighted until rather recently.

But now that some signs of a revolution are appearing along the rails it is particularly important that the gains toward speeding up the short haul aren't wiped out in the absence of a national transportation plan which recognizes the railroads' long-run potential as well.

[From the Washington Post, July 29, 1966]

New York Central Alarum

The New York Central's decision to drop its long-haul passenger service ought to shock Americans into an awareness that their most efficient and convenient means of travel is being steadily curtailed. The proposed abandonment of long-haul travel on one of the Nation's once-great railroads between New York and the Middle West will shock millions of citizens who have ridden the crack trains that once sped along this route.

As Edmund K. Faltermayer pointed out in *Fortune* this month, "things are getting worse instead of better in the journeys that most people take most frequently." He calls attention to deteriorating ground transport, increasingly choked highways and airways "reaching the saturation point." The New York Central, to be sure, intends to start a shuttle service along a 200-mile stretch of its track, but rail users will remember that the total elimination of passenger service north of Boston did not come all at once. *Fortune* has projected the kind of service that the rails could provide to compete with cars and planes. It cites any number of examples of railway successes resulting from higher speeds and lower costs. But it presents as well an enumeration of some of the discriminatory burdens we have heaped on the railroads while we have subsidized highway and air transportation.

The fast train between New York and Washington, planned for late 1967, may demonstrate for the Eastern seaboard what railways can do. But it will take more than this demonstration to restore rail service. Government and industry ought to cooperate to give Americans the high-speed, low-cost, efficient rail service available elsewhere. Citizens must not permit their great passenger system to be nibbled away while vast public sums are spent on more expensive and inefficient highways and airlines. As *Fortune* rightly concludes: "With highways and airports jammed—and worse to come—the U.S. cannot let railroad passenger service fall into disuse."

Penn Railroad Cites Plan's Benefits to Public

To the editor: I am distressed by the editoral "Bad News From the Central" which appeared in your newspaper on July 28 in that it makes incorrect statements about the Pennsylvania Railroad and its attitude toward passenger service.

Your editoral gives the impression that we are not interested in passenger service. I assure you that this is not true. On the contrary our goal is to pro-

duce more convenient, faster, more comfortable and more efficient passenger service which is better suited to the needs of the public than it is today. This will continue to be our objective.

We are not satisfied with the type of passenger service we have now. Our plan envisions a well-integrated service with vastly improved, faster trains. We intend to promote this business aggressively and to provide the equipment and the service which will be attractive to travelers.

We propose to offer every type of service for which there is public need. In carrying out our program we will need the help of local, state, and Federal governments, and we are already receiving great encouragement and cooperation from these governmental bodies.

The initial phases of our program are already under way. The Pennsylvania, jointly with the U.S. Department of Commerce, is now developing high-speed service between New York and Washington that will begin in October 1967. Orders have been placed for the cars and the line is being upgraded.

COMMUTER SERVICE PLAN

The Pennsylvania is working closely with the state of Pennsylvania on improving passenger service between Philadelphia, Harrisburg and Pittsburgh. Our railroad also has well advanced constructive programs with the state of New Jersey and such local entities as SEPTA (Southeastern Pennsylvania Transportation Authority) for the improvement of commuter equipment and service.

Your statement that the Pennsylvania is seeking to abandon service between New Nork and St. Louis is not true. We have applied merely to combine two trains. A sufficient number will remain which will be more than enough to accommodate the traveling public. The $2 million which we will save annually by combining trains will be used to help improve our essential passenger services.

I am strongly in favor of a Cabinet-level Department of Transportation since I believe it can be of great help to the railroad industry in developing the integrated passenger services which are clearly essential as part of the national transportation system.

STUART T. SAUNDERS
Chairman, Pennsylvania Railroad Co.

WHAT IF RAILS DROPPED ALL PASSENGER TRAINS? U.S. HELPLESS, SOLON SAYS

Downgrading of passenger service by many railroads, and by the Southern Pacific in particular, has been blasted in the House by Rep. Henry Gonzalez (D., Tex.).

Citing efforts by the SP to discontinue two passenger trains between Tucumcari, N.M., and Phoenix, Ariz., he said the results of an Interstate Commerce Commission investigation and findings on the proposal were "shocking and scandalous." LABOR carried a story on the case at the time.

Gonzalez said the dismal experience with the SP "raises the issue of what the federal government could do under present law if one day every railroad in the nation decided to stop running passenger trains." The answer, he declared, is "nothing."

The Congressman asserted that conclusions to be drawn from the SP case and others like it "are that not only have passengers been badly neglected, but their rights have been violated as well."

"The railroad claimed," he said, "that demand for the service had declined and that a loss of revenues had resulted. But an analysis of the figures presented to the ICC showed that the company had misrepresented its case. The ICC concluded that the net loss claimed was greatly overstated, and suggested that an accurate and fair evaluation of the figures might even reveal a profit for the two trains involved.

SP DEFIANCE OF PUBLIC

"The record also shows that the railroad, while complaining of a decline in demand for service, was actually doing everything in its power to destroy that demand. The overt acts committed by the railroad against the passengers make up an incredible list and constitute an indictment and a guilty verdict against the Southern Pacific for offenses against the public.

"The ICC did indeed quite properly order the service to continue, but there is an unhappy sequel to the story. After a one-year period expires it will be possible

for the railroad to discontinue the trains without notifying the ICC, and the commission will have absolutely no authority to act, despite the investigation and the findings it has made in the case."

The discontinuance of sleeping and dining cars on the "Sunset Limited" between New Orleans and Los Angeles was further denounced by Gonzalez as a "deliberate move to downgrade and discourage travel by rail."

TRAINS USUALLY FILLED

"No doubt Southern Pacific will try to show at a later time there has been a decline in passengers on these trains, that they are not profitable, and that they will therefore have to be eliminated entirely," he said. "In short, it will try to do exactly what it tried to do in the Tucumcari-Phoenix case.

"An investigation of this case would show that at the present time the trains are usually filled, that prior to their discontinuance the Pullmans were also usually filled, and that there is a tremendous demand for passenger service. This is all the more striking in view of the railroad's general failure to modernize and properly equip passenger trains, and to otherwise discourage travel."

Gonzalez then closed by pointing out that under existing law, the federal government would be helpless to stop the railroads from dropping all passenger trains, if they so chose. On the other hand, if a strike by a union halted the trains there would be a massive outcry and a quick crackdown.

[From the New York Times, May 27, 1966]

CENTRAL IS ORDERED BY P.S.C. TO CLEAN TWO PASSENGER TRAINS

ALBANY, May 26.—The Public Service Commission today ordered the New York Central railroad to clean up two passenger trains that run between New York City and Chatham, N.Y., because they were "below the ordinary levels of human decency."

At the same time, the agency rejected a request by the Central to discontinue two passenger trains on its Harlem division between Millerton and Chatham.

"A railroad which provides coaches whose sanitary condition is so below ordinary levels of human decency as to make use of its facilities uncomfortable, unsanitary, and ultimately impossible, cannot be heard to complain that its service fails to attract patronage," the P.S.C. said in adopting a report by Jacob I. Rothstein, one of its examiners.

A spokesman for the P.S.C. said it was the first time in recent years that a railroad had been ordered to provide clean equipment.

A Central spokesman said that the railroad already had put refurbished coaches in service on its Harlem division. He added that there would be no comment on the order until it had been studied.

The agency said that its inspectors found that the coaches on the trains to Chatham "were dirty, that sanitary facilities were in need of cleaning, that there were broken seats, an improperly operating car door and other deficiencies."

NEW YORK, July 26.—The New York Central announced plans today to drop all its long-haul passenger trains by the first of the year, replacing them with a high-speed shuttle service to compete with short-hop airlines.

The shuttles would link cities along a 200-mile stretch of track. The Central already is experimenting with jet-propelled trains and the announcement said that "as technological developments occur we will adapt our service to the best of them."

The Central's executive vice president, Wayne Hoffman, told a news conference:

"We are dropping all existing passenger trains on the New York Central Railroad. All sleeper and dining car operations are out."

Hoffman said permission for the changeover will be sought from the Interstate Commerce Commission in the fall, and added:

"I think it will be granted. They know our problems."

Among the famous trains doomed by the carrier is the Twentieth Century Limited, which was one of the most famous runs in the heyday of passenger train transportation.

The Twentieth Century Limited was known for its luxury and speed in its runs between New York and Chicago, a run it still makes today, after 64 years on the schedule.

Hoffman said a Federal survey has shown that 77 percent of all passenger trips made in this country are 200 miles in length or less. He declared:

"We're going where the action is. It's in the 77 percent."

The Central now services about 80 cities between the East Coast and Chicago.

[Early reaction by a spokesman for the Pennsy in Philadelphia indicated that Central's announcement had come as a surprise. Later in the day, United Press International reported, Pennsy Board Chairman Stuart T. Saunders issued the following statement:

["We have the problem of long-range passenger trains which no longer serve the public need under study for months and have discussed the problem with the New York Central. The matter is still under study with us."]

Last week, the Central ran tests between Butler, Ind., and Bryan, Ohio, of a jet-propelled train. Officials told newsmen today it reached a top speed of 183.85 m.p.h.

Using existing electrical equipment and high speed diesel locomotives, Hoffman estimated that shuttle speeds in excess of 100 m.p.h. could be maintained.

Top scheduled railroad speeds in the United States now are about 82 m.p.h. Hoffman said the eventual aim would be high-speed transportation similar to that in Japan, where trains have averaged up to 107 m.p.h. on what he called "a billion dollar roadbed."

Hoffman said the Midwest jet tests were intended to give the Central a say in a $90 million Federal research program to develop high-speed rail travel.

Referring to airline schedules between New York and Albany, Hoffman said:

"Wheels up to wheels down, planes can make the trip in 25 minutes. But actually transit time for a passenger is a couple of hours . . . We can beat that kind of schedule between New York and Albany."

He declared that airline passengers spend much time getting to and from airports, while "the railroad can pick them up in the center of town and drop them in the center of town."

RAILWAY LABOR'S 1965 LEGISLATIVE GOALS; FACT SHEET NO. 1 OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION, WASHINGTON, D.C.

NEED FOR AMENDMENT OF THE LAW ON PASSENGER TRAIN DISCONTINUANCES

In 1958 Congress enacted Section 13a(1) of the Interstate Commerce Act which, according to its legislative history, was intended as a means whereby railroads could circumvent state agencies which allegedly had treated them unfairly by denying or refusing to act upon justified passenger train discontinuances. Since its enactment, the railroads have abandoned passenger trains on a wholesale basis, whether justified or not, and prominent, well-patronized and even profitable passenger trains have been discontinued. At present railroads may discontinue interstate passenger trains without justifying their actions and the public is deprived of any right of appeal to the courts. The first federal court which considered this legislation found it to be a direct "invitation" to the railroads to abandon their passenger services.

The Railway Labor Executives' Association, representing 22 Standard Railroad Labor Organizations, asks Congress for legislation to restore safeguards of the public interest. A bill to accomplish this goal (*S. 1394*) has been introduced by Senator Vance Hartke of Indiana. This legislation, which generally follows the statutory provisions of Section 1(18) of the Interstate Commerce Act governing track abandonments and other non-passenger changes in railroad service would—

1. Require carriers seeking to discontinue passenger service to file application with the Interstate Commerce Commission for authorization for abandonment.
2. Require the I.C.C. to hold public hearings, notifying the Governor of the states in which the passenger train is operated at least 30 days in advance.
3. Shift the burden of proof from the public, which does not have access to the financial records and other data it needs to present its case, to the carrier applicants.
4. Require the I.C.C., before passenger train service could be eliminated or reduced, to issue a certificate of findings that public convenience and necessity required the discontinuance or change in service, in whole or in part, and

that continuance would constitute an unjust and undue burden on interstate commerce.

5. Give the Commission authority over the quality of the service provided so that it could not be deliberately downgraded in an effort to drive away passengers.

6. Authorize the Commission to impose such terms and conditions as in its judgment the public convenience and necessity may require, including terms and conditions for the protection of the interests of employees adversely affected which are customarily imposed in railroad line abandonments.

7. Require compliance under penalty of fines or imprisonment.

The RLEA strongly believes that the enactment by Congress of legislation such as *S. 1394* in this session is essential to save passenger train service in this country from willful destruction at the initiative of railroad management.

[From the El Paso Times, Feb. 26, 1966]

SUNSET LIMITED—NO SLEEP IN PULLMAN FOR PASSENGERS

(By Jeff Berry)

Sunset will not mean much to passengers on the once crack Southern Pacific's "Sunset Limited."

Any sleeping they do from now on during their long journey between Los Angeles and New Orleans will be done sitting up.

Friday afternoon the historic train pulled into Union Depot with two Pullman cars. Both left an hour later as the train pulled out for New Orleans, with two Pullman cars. Both left El Paso on the Sunset Limited.

For Pullman porter Thomas Hill who was on the last train, it will mean he won't be coming through El Paso any more, after 20 years on the route.

Hill, who has 31 years with the Pullman Co. said "we used to be an all Pullman train. And even in 1950 we ran about five Pullman cars for each train. I'm very sorry to see the cars coming off the runs," he said.

He estimated for each Pullman car withdrawn from service, about 15 railroad employees would lose jobs.

Passengers appeared surprised and disappointed the service was being discontinued, and members of the train crew were bitter about the change.

ALWAYS BY TRAIN

"We've always gone by train when we take long trips," said passenger Dr. Paul San Felippo of Chicago. He and his wife had been visiting in Tucson and were returning home aboard the Golden State Limited, which is combined as part of the Sunset Limited from Los Angeles to El Paso. In El Paso, the trains divided, one going to Chicago and the other going southeast to New Orleans.

"I'd never ride a train without Pullman service for any distance," Dr. San Felippo said. "Why it's 59 hours to Chicago from Los Angeles and almost as long a time to New Orleans."

The Golden State train will retain its Pullman cars for the time being, railroad officials indicated last month.

Another passenger, Mrs. Jane Hubbard, said "I will just ride the Santa Fe if they take Pullman service away. I have to ride a train because I am scared to fly."

One crew member, with more than 25 years service with Southern Pacific, called the deletion of sleeping cars a "deliberate attempt to drive off customers and eventually eliminate all passenger service."

The official, who would not give his name for fear of company reprisals, said "This is the beginning of the end for the Sunset Limited. In January the company removed diners from the train and replaced them with vending machine cars.

UNHAPPY

"This caused a lot of unhappy passengers. Now it's pullmans they are removing to further discourage business. Next they will cut down on the number of chair cars and at the same time go running to the government wanting to drop the whole train altogether because they are losing money hand over fist."

He said that the Pullmans on the Sunset Limited were usually filled and that on the last train it had been necessary to put another one on. Friday's last train had 32 pullman passengers.

Explaining further, the crew member said "the tragic feature of all this is that there is a certain class of people who are forced to ride pullman cars. These are mostly the sick and elderly and now the service has been discontinued."

"The only thing which can be done to change this situation is to rally public opinion—and possibly bend the ear of a few federal judges," he said.

Southern Pacific officials stated last month they were forced to curtail pullman service on the Sunset Limited as an economy measure. This is also the reason they gave for deleting dining cars.

The Interstate Commerce Commission recently ordered SP to continue operating for at least another year its trains 39 and 40, between Phoenix, Ariz. and Tucumcari, N.M.

ACCUSE RR

The commission accused the railroad of making "drastic attempts" to discourage patronage of the two trains, and deliberately down-grading service to justify discontinuance of the trains.

John Conner, an employe of the Labor Department in Washington, D.C., who was aboard the Sunset Limited, said he had been refused roomette accommodations in Phoenix and had to settle for a pullman bedroom. The next day he had been told a mistake had been made and that no room existed on the train.

"I threatened to complain to the government then," he said, "and suddenly they found space for me." Connor said he has written Gov. Samuel Goddard of Arizona complaining of the shabby treatment of passengers by the railroad.

"I believe the railroad tried deliberately to keep me off the train, even though they had 16 empty spaces on their Pullmans," he said.

Before pulling out of Union Depot at 6 p.m. Friday, passengers queued up to board the "money losing" Sunset Limited. It was full. Several would-be passengers of the Golden State were turned away for lack of seats.

Senator COTTON. Mr. Richard Childs.

STATEMENT OF RICHARD STORRS CHILDS, DEPUTY ADMINISTRATOR OF TRANSPORTATION OF THE CITY OF NEW YORK

Mr. CHILDS. Mr. Chairman, members of the committee, I will be very brief.

Senator COTTON. Your entire statement will appear in the record and we would appreciate your condensing it.

Mr. CHILDS. I will. Most of what I would have covered this morning has been covered already. I am here to support Senate Resolution 284, because the city of New York feels that the clarification of congressional intent is a matter of great concern.

I will simply confine myself now to that part which is of particular concern to the city of New York.

Any discontinuance of commuter service, no matter how temporary a duration, would scatter passenger patterns, inevitably drive them to the highways, into automobiles, and that is one thing the city of New York can afford no more of.

The fate of passenger service on our railroads is of preeminent importance to New York City and to the entire northeastern corner of the country.

First, the eastern district—as the ICC defines it—in 1965 accounted for more than 70 percent of all revenue passengers carried by class I railroads in the United States.

Second, the large railroads serving New York City have presented, are presenting or are threatening, massive discontinuance of passenger service. These include, of course, the New Haven, the Boston & Maine, and the New York Central roads.

Any threat to continued railroad service for New York City is a threat to its very life. The time has come when the great cities of this

country must in a sense ally themselves with the railroads in a common front against inundation by motor vehicles.

Resolution 284 is particularly important at the present time for the city of New York. For the first time the city has established an agency, the Transportation Administration, charged with coordinating policy, operations, and long-term planning for all transportation facilities. Through a Transportation Council established at the same time, city policies and plans are linked with those of State and regional transportation bodies.

Central to the city's needs—and in this respect it is not unique—is to halt the hitherto unchecked automotive invasion and occupation of its streets, supported by massive highway construction—to the point where the private motorist himself is brought to complete frustration and the economics of truck transport vanish in the traffic jam.

Crucial to every responsible remedial program—now for the most part simply on paper or in the earliest stages of consideration—is rehabilitation and improvement of rail facilities, not only rapid transit but commuter, passenger, and freight rail service as well.

Thus at this moment in history the city is most anxious to maintain the right of judicial review contemplated by this resolution.

On behalf of Mayor Lindsay and the people of New York City I wish to express my appreciation of your courtesy in permitting me to appear before you today.

(The statement referred to follows:)

STATEMENT OF RICHARD STORRS CHILDS, DEPUTY ADMINISTRATOR OF TRANSPORTATION OF THE CITY OF NEW YORK

My name is Richard Storrs Childs. I am Deputy Administrator of Transportation of the City of New York. I make this statement in support of Senate Resolution 284 because the City of New York believes that its clarification of Congressional intent is a matter of great concern. As I understand it, the purpose of the Resolution is to ensure a fair hearing to both parties—the railroads and the public—on any decision to abandon or discontinue rail service.

And I can assure you, as a traffic-bound New Yorker, that the opportunity to speak up for continuation of a threatened rail service means a great deal to me—and to the City I am honored to speak for before you today.

The recently announced intention of the New York Central Railroad to discontinue all passenger service except for certain special intercity runs of less than 200 miles makes it dramatically clear that, if sufficient care is not taken, the entire nation-wide network of railroads upon which the expansion of the United States was built and upon which the economic life of New York and many other cities depends will very likely be destroyed, train by train and service by service—with only a few especially lucrative fragments being maintained. Because section 13a of the Interstate Commerce Act empowers the Interstate Commerce Commission to permit service to be discontinued without an investigation having been made or a hearing having been held, it is doubly important that the right of judicial review be rendered wholly free from doubt.

Adequate long distance rail service essential as it is is not the whole problem. Another aspect is commuter service. In testimony before the ICC on January 25, 1966, Mayor John V. Lindsay made this clear:

"* * * New York City, with nearly 8 million residents, is not only the nation's largest city but is also the heart of the New York Metropolitan Region, with 16 million people, or almost 10% of tne entire population of the United States. Its work force of 4½ million men and women produces a greater variety of goods and services for the nation's economy than any other city. It is the nation's leading supplier and best customer. There is practically no occupation under the sun that is foreign to this great metropolis and its 50,000 factories produce almost every kind of manufactured goods. Since most of the large manufacturing,

commercial and financial concerns in the United States maintain offices in New York City, it has been referred to as the nation's 'front office'.

"The entire New York Metropolitan Region is dependent upon the existence of an adequate commuter system. * * *"

I am advised that the history of the legislation dealing with this important question of discontinuing railroad services makes clear that Congress was too much aware of its significance to have dealt with the crucial issue of judicial review by casual implication.

The ICC has long had the power to authorize the abandonment of an entire rail line. Until 1958, however, it lacked the power to sanction a partial abandonment as by a railroad's discontinuing one or more trains on the line, while retaining other service. The states had this lesser, included power, and the Congress concluded that some states had not used the power wisely. As a result, section 13a was enacted to provide the ICC with the power to authorize partial termination of service. Proceedings to abandon an entire line have always been subject to judicial review, and there is not one word in section 13a to show that Congress intended a different result to obtain in this related class of proceedings.

I am further advised that because of the structure of section 13a, any railroad which is unsuccessful before the ICC automatically does get judicial review. It is only the public which can be left with no hearing and no review. This result is so far from traditional American concepts of fairness as to raise most grave doubts that it is a result Congress intended.

It is the public to whom judicial review is, as a practical matter, most important. In the last three years for which published reports are available (1962–1964), the ICC has passed upon applications to discontinue 318 trains. The box score reads as follows:

Discontinuance permitted, 202 trains.
Continuance required in whole or part, 95 trains.
Proceedings dismissed, 21 trains.

Source: ICC Annual Reports for the years indicated.

These figures are not set forth to prove the ICC has been wrong. The figures do, however, suggest that the public has a far greater stake in the availability of judicial review than does the railroad which seeks to discontinue its established service.

The fate of passenger service on our railroads is of preeminent importance to New York City and to the entire northeastern corner of the country.

First, the Eastern District (as the ICC defines it) in 1965 accounted for more than 70% of all revenue passengers carried by Class I Railroads in the United States.

Second, the large railroads serving New York City have presented, are presenting or are threatening, massive discontinuance of passenger service. These include, of course, the New Haven, the Boston & Maine, and the New York Central roads.

Any threat to continued railroad service for New York City is a threat to its very life. The time has come when the great cities of this country must in a sense ally themselves with the railroads in a common front against inundation by motor vehicles.

Resolution 284 is particularly important at the present time for the City of New York. For the first time the City has established an agency, the Transportation Administration, charged with coordinating policy, operations, and long-term planning for all transportation facilities. Through a Transportation Council established at the same time, City policies and plans are linked with those of State and Regional transportation bodies.

Central to the City's needs (and in this respect it is not unique) is to halt the hitherto unchecked automotive invasion and occupation of it streets, supported by massive highway construction—to the point where the private motorist himself is brought to complete frustration and the economics of truck transport vanish in the traffic jam.

Crucial to every responsible remedial program—now for the most part simply on paper or in the earliest stages of consideration—is rehabilitation and improvement of rail facilities, not only rapid transit but commuter, passenger, and freight rail service as well.

Thus at this moment in history the City is most anxious to maintain the right of judicial review contemplated by this Resolution.

On behalf of Mayor Lindsay and the people of New York City I wish to express my appreciation of your courtesy in permitting me to appear before you today.

Senator COTTON. We thank you, Mr. Childs. Your appearance here emphasizes the fact that the matter in which we are interested doesn't just concern the States of New Hampshire and Vermont, but that it affects not only the great city of New York, but it also affects Montreal and the Canadian traffic, and is of far-reaching importance.

Mr. CHILDS. Indeed, sir.

Senator COTTON. We thank you.

Senator Aiken?

Senator AIKEN. No questions. It is a very welcome contribution from the city of New York.

Senator COTTON. Now those are the witnesses who signified their desire to testify.

The chairman of this subcommittee, Senator Lausche, had to go to the floor.

Senator Prouty had to leave just a moment ago because he is on the Labor Committee and has to be on the floor because of the legislation before the Senate.

If there are others who desire to be heard or should there be others who will signify their desire to be heard, they should indicate it to the staff of the committee so that the chairman, Senator Lausche, if he desires, and determines it is necessary, have further hearings.

As far as this hearing is concerned, in view of the hour, I feel constrained to declare it adjourned.

(Whereupon, at 11:52 a.m., the subcommittee was adjourned.)

(The following material was received by the committee for inclusion in the record:)

NATIONAL ASSOCIATION OF
RAILROAD & UTILITIES COMMISSIONERS,
Washington, D.C., August 9, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: Please find enclosed a copy of a Resolution to amend Section 13(a)(2) of the Interstate Commerce Act to Extend Time Within which State Commissions May Act on a Application by a Railroad for Discontinuance. This Resolution was unanimously adopted by the Executive Committee of the National Association of Railroad and Utilities Commissioners on July 21, 1966.

The Association would appreciate it very much if you and the other members of your Committee would give this Resolution prompt consideration.

Furthermore, the Association requests that the Resolution be made a part of the record of the hearings concerning Senate Resolution 284.

The Association was founded in 1889. Within its membership, are the governmental bodies of the *fifty* States and of the District of Columbia, Puerto Rico and the Virgin Islands which regulate carriers and public utilities. The chief objective of the Association is to serve the public interest through the advancement of governmental regulation of the carriers and utilities.

A copy of this letter and of the Resolution are being transmitted to the other members of your Committee.

If you or any other member of your Committee requires additional information concerning our position in this matter, please do not hesitate to call upon me.

Sincerely yours,

PAUL RODGERS,
General Counsel.

RESOLUTION OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS TO AMEND SECTION 13(a)(2) OF THE INTERSTATE COMMERCE ACT TO EXTEND TIME WITHIN WHICH STATE COMMISSIONS MAY ACT ON AN APPLICATION BY A RAILROAD FOR DISCONTINUANCE

Whereas, The Nation's commuter railroads have in recent years experienced large financial deficits; and

Whereas, Applications for discontinuance of commuter service have been made to various state regulatory agencies; and

Whereas, The state regulatory agencies are required to inquire fully by public hearing into both the financial aspects of each application and the public need for the service involved; and

Whereas, Section 13(a)(2) of the Interstate Commerce Act permits application to be made to the Interstate Commerce Commission four months after the presentation of a petition for discontinuance to a state agency; and

Whereas, The proper discharge of the obligation of the state regulatory agencies to render an informed decision is made most difficult by the existing time limitations, both because of the shortness of the allowed period and because the timing of an application rests solely in the discretion of the railroad; and

Now, therefore, be it resolved, By the Executive Committee of the National Association of Railroad and Utilities Commissioners that Section 13(a)(2) of the Interstate Commerce Act be amended to extend the time within which the state regulatory agency must act and to guarantee that the said agency be allowed a time certain in which to act;

Resolved further That the said Section 13(a)(2) of the Interstate Commerce Act be amended by the addition of the following italicized material:

> (2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of only such train or ferry or shall not have acted finally on such application or petition *within sixty days from the completion of hearings thereon,* such carrier or carriers may petition the Commission for authority to effect such discontinuances or change. *Provided, however that in any case, the carrier or carriers may petition the commission for such authority at the expiration of one hundred and eighty days from the filing of a petition or application with the said State authority.*

SEPTEMBER 9, 1966.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LAUSCHE: On August 3, 1966, the Commission testified at your subcommittee hearing on S. Res. 284, a resolution proposing to express the intent of Congress with respect to passenger train discontinuances under Section 13a(1) of the Interstate Commerce Act.

During the course of the hearing, Vice Chairman Tucker and I expressed our personal opinions that Section 13a(1) is in need of revision.

As a result of the discussions during the hearings, the Commission has reviewed its experience with Section 13a(1) cases and has considered again the possible amendments of Section 13a(1) which might be of immediate benefit to the public.

We have again carefully reviewed the mechanics of our procedures for handling Section 13a(1) cases and the Commission is currently making immediate internal improvements to handle these cases more efficiently. However, under existing law, these improvements will not correct a number of Section 13a(1) problems.

The Commission has previously recommended to the Congress that Section 13a(1) be amended: (*a*) to extend the 30-day notice provision to 40 days, (b) to lengthen the period during which the Commission may require continuance of service pending investigation and hearing from 4 months to 7 months, and (*c*) to place the burden of proof in any proceeding upon the carrier proposing the discontinuance.

Amending Section 13a(1) along these lines was suggested in the March 24, 1960, testimony on S. 3020 of former Chairman Kenneth H. Tuggle, before the Senate Subcommittee on Surface Transportation and these same suggestions were made

last year by former Chairman Charles A. Webb in his August 25, 1965, letter to the Senate Committee on Commerce with respect to S. 1394.

The Commission wishes to reaffirm its support of amendments to accomplish these three needed improvements.

The Commission in the past has frequently and consistently taken the position that its decisions under Section 13a(1) are subject to judicial review. There is language in two Federal court decisions to the contrary, however, and, as far as judicial finality is concerned, the review issue is one yet to be resolved. The Commission, therefore, also takes this opportunity to indicate its support of an appropriate 13a(1) amendment—possibly the inclusion of a new Section 13a(3)—to clarify the fact that a legal suit may be brought to obtain judicial review of any Commission action under Section 13a(1) or Section 13a(2).

Sincerely,

JOHN W. BUSH, *Chairman.*

○