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PASSENGER TRAIN ABANDONMENT

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND AERONAUTICS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 7004, H.R. 260, H.R. 519, H.R. 8939
BILLS TO AMEND SECTION 13a OF THE INTERSTATE
COMMERCE ACT, AND FOR OTHER PURPOSES

APRIL 25, 26; MAY 8, 1967

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PASSENGER TRAIN ABANDONMENT

TUESDAY, APRIL 25, 1967

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

The Subcommittee on Transportation and Aeronautics is opening hearings this morning to consider bills having to do with the jurisdiction of the Interstate Commerce Commission over the abandonment of passenger train service. One of the bills, H.R. 7004, was introduced by Chairman Staggers at the request of the Interstate Commerce Commission to carry out a recommendation it has for changes in this section which was enacted in 1958, and the other two bills, H.R. 260, introduced by Mr. Bingham of New York, and H.R. 519, introduced by Mrs. Dwyer of New Jersey, have to do with the consideration given by the Commission in its proceedings to the financial assistance provided by other public authorities where commuter passenger train operations are involved.

(H.R. 8939, introduced by Mr. Giaimo of Connecticut, was included later.)

The Commission's proposal in H.R. 7004 primarily is designed to give the Commission a little more time in which to conduct its proceedings and would extend from 4 to 7 months the period during which the Commission can require the railroad to maintain the passenger service which it is seeking to abandon.

In addition, the Commission's bill would specifically assign the burden of proof to the carrier and impel the carrier to make a more complete initial presentation rather than leave its case for development after hearings have begun.

(The bills referred to follow:)

[H.R. 7004, 90th Cong., 1st sess.]

A BILL To amend section 13a of the Interstate Commerce Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13a of part I of the Interstate Commerce Act (49 U.S.C. 13a) is amended to read as follows:

"DISCONTINUANCE OR CHANGE OF CERTAIN OPERATIONS OR SERVICES

"Sec. 13a. (1) A carrier or carriers subject to this part, 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 operated in service between a point in one State or a foreign country and a point in any other State or in the District of Columbia, 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 of 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 forty 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 pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said forty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. When an investigation by the Commission is instituted under this section, the carrier or carriers filing such notice shall have the burden of establishing that public convenience and necessity permit the proposed discontinuance or change, in whole or in part and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will unduly burden interstate or foreign commerce. Upon the institution of such investigation, the Commission, by its investigation order served upon the carrier or carriers affected thereby at least ten day 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 decision in such investigation, but not for a longer period than seven months beyond the date when such discontinuance or change would otherwise have become effective: *Provided*, That the Commission may further require such train or ferry to be continued in operation or service, in whole or in part, for a period of no longer than two months beyond the date specified in its investigation order, pending completion of the investigation or the Commission's determination of any petition or petitions for reconsideration of its decision and order in such investigation. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that public convenience and necessity do not permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service in whole or in part, subject to such terms, conditions, and modifications pertaining to operations or service as it shall find to be reasonable and just 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.

"(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, 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 any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority, in whole or in part, subject to such terms, conditions, and modifications pertaining to operations or service as it shall find to be reasonable and just, after full hearing and upon findings by it that (A) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (B) the continued operation or service of such train or ferry without 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. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

"(3) Any State, administrative or regulatory agency of a State, or person, adversely affected or aggrieved by an order of the Commission entered after hearing pursuant to paragraphs (1) or (2) of this section, may bring suit to obtain judicial review thereof under the provisions of sections 1336, 1398, 2284 and 2321 through 2325 of title 28, United States Code."

[H.R. 260, 90th Cong., 1st sess.]

A BILL To amend section 13a of the Interstate Commerce Act, relating to the discontinuance or change of certain operations or services of common carriers by rail, in order to require the Interstate Commerce Commission to give full consideration to all financial assistance available before permitting any such discontinuance or change.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13a(1) of the Interstate Commerce Act (49 U.S.C. 13a(1)) is amended by inserting after "If, after hearing in such investigation," the following: "including full consideration of any financial assistance available pursuant to the Urban Mass Transportation Act of 1964, as amended, or any other law for the purpose of continuing such operation or service and the efforts of such carrier or carriers to obtain such assistance,".

SEC. 2. Section 13a(2) of the Interstate Commerce Act (49 U.S.C. 13a(2)) is amended by inserting after "The Commission may grant such authority only after full hearing" a comma and the following: "including full consideration of any financial assistance available pursuant to the Urban Mass Transportation Act of 1964, as amended, or any other law for the purpose of continuing such operation or service and the efforts of such carrier or carriers to obtain such assistance,".

[H.R. 519, 90th Cong., 1st sess.]

A BILL To amend the Interstate Commerce Act to prevent the discontinuance of certain commuter operations which could benefit from new governmental programs for the improvement of commuter services, or from the merger of the carrier or carriers responsible for such commuter operations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifth sentence of section 13a(1) of the Interstate Commerce Act (49 U.S.C. 13a(1)) is amended by inserting immediately before the period at the end thereof the following: "; or, if the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and (A) that such carrier or carriers could participate in any existing or proposed local, State, regional, or Federal program for the improvement of commuter services which would directly affect the operation or service of such train or ferry and substantially benefit from such participation, or (B) that such carrier or carriers are parties to an application for permission to merge from which merger they could be expected to benefit, the Commission shall by order require the continuance or restoration of operation or service of such train or ferry for a period of at least one year from the date of such order".

SEC. 2. The second sentence of section 13a(2) of the Interstate Commerce Act (49 U.S.C. 13a(2)) is amended by inserting immediately before the period at the end thereof the following: "; except that the Commission may not grant such authority for a period of at least one year if (A) such carrier or carriers could substantially benefit from participation in any existing or proposed local, State, regional, or Federal program for the improvement of commuter services which would directly affect the operation or service of such train or ferry, or (B) such carrier or carriers are parties to an application for permission to merge from which merger they could be expected to benefit".

[H.R. 8939, 90th Cong., 1st sess.]

A BILL To amend the provisions of the Interstate Commerce Act relating to the discontinuance of passenger train operations and to impose an eighteen-month moratorium on the discontinuance of any passenger service by rail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13a of part I of the Interstate Commerce Act (49 U.S.C. 1) is amended to read as follows:

"DISCONTINUANCE OR CHANGE OF CERTAIN OPERATIONS OR SERVICES

"SEC. 13a. (1) Any carrier or carriers subject to this part proposing to discontinue or change, in whole or in part, the operation of service of any passenger train or ferry operating from a point in a State to a point in any other State or in the District of Columbia or from the District of Columbia to a point in any other State shall file with the Commission an application for a certificate authorizing such discontinuance or change. The Commission may issue such certificate only after full hearing and upon findings by it that (1) the present or future public convenience and necessity require discontinuance or change, in whole or in part, of the operation of service of such passenger train or ferry, and (2) the continued operation of service of such passenger train or ferry without 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. Upon receipt of an application filed pursuant to this paragraph, the Commission shall notify the Governor of the States in which such passenger train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph. The Commission is authorized to avail itself of the cooperation, services, record, and facilities of the authority in such States in the performance of its functions under this paragraph.

"(2) In passing upon any proposed discontinuance or change under the provisions of paragraph (1) of this section, the Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, and may attach to the issuance of the certificate 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 by the issuance of said certificate. From and after the issuance of such certificate, and not before, the carrier or carriers may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the discontinuance or change concerned thereby. Any discontinuance or change contrary to the provisions of this paragraph or of paragraph (1) of this section, may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulatory body of the State of States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (1) of this section, shall upon conviction thereof be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both."

SEC. 2. Notwithstanding section 13a of the Interstate Commerce Act, or any other provision of law, no common carrier by railroad subject to part I of the Interstate Commerce Act may discontinue any passenger service by rail, in which it engaged on the date of enactment of this Act, for eighteen months after the date of enactment of this Act.

Mr. FRIEDEL. We will hear first this morning from our colleague, the Honorable John Culver of Iowa. You may proceed Mr. Culver.

STATEMENT OF HON. JOHN C. CULVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. CULVER. Mr. Chairman and members of the committee, I appreciate the opportunity to express my support of H.R. 7004, and to note its significance for the Second District of Iowa.

Less than a month ago, approval was granted to discontinue the last north-south passenger train service through Cedar Rapids, the second largest and fastest growing city in Iowa.

This week, the Interstate Commerce Commission is holding hearings in Iowa on a proposal to abandon the Land of Corn, east-west service between Chicago and Waterloo, Iowa, which provides the only major rail transportation for the residents of the northern counties of the State.

In a matter of days, the railway post offices will be removed from 17 trains which travel across the State of Iowa, and although the demonstrated cost savings and increased efficiency may justify this action on the part of the Post Office Department, the resulting decrease in revenues for the trains may result in a further cutback in passenger service.

The legislation now before your committee is therefore of crucial interest to Iowa and the Midwest. I think that we can expect to see further requests for train discontinuances in the immediate months ahead, and it is therefore important that we give the Interstate Commerce Commission the necessary increased flexibility to deal with them, in the public interest.

By extending the time a railroad is required to continue service unchanged, after a request for discontinuance has been filed, we can better insure ample opportunity for cases to be fully presented, arguments completely heard, and all factors appropriately considered.

Even more important, by permitting decisions on a conditional basis, thus allowing practical temporary solutions, we can hopefully open the way to final answers which will halt the decline in passenger trains.

It is true that patronage of passenger trains has diminished with the increase in air and automobile travel. It is also true that more efficient and economic means of handling the mail have been tried and proven.

But it still remains that many individuals do depend upon rail transportation and are seriously affected by discontinuances. Students, who travel to and from campus particularly at holiday seasons, are restricted as train service is cut back.

Finally, it is important to maintain adequate rail facilities to be enlisted in cases of emergency when other modes of transportation are not available.

The problem of the future of railroads and passenger service, and the question of the appropriate role of the Government, is a complex one which demands the careful attention of both the executive and the Congress.

This legislation before your committee now will not provide the full solution to the problem, and it would be unrealistic to suppose that if passed it would put a halt to further train discontinuances.

However, it would provide the Commission with the added flexibility it needs to deal with these cases in the light of present needs, and I urge the prompt and favorable action of the committee on the bill.

Mr. FRIEDEL. Thank you for your testimony Mr. Culver. If there are no questions we shall hear next from the Honorable William H. Tucker, Chairman of the Interstate Commerce Commission.

Will you please come forward Mr. Tucker, and proceed as you see fit, sir.

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY FRITZ R. KAHN, ASSOCIATE GENERAL COUNSEL; AND THADDEUS W. FORBES, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS, INTER-STATE COMMERCE COMMISSION

Mr. TUCKER. Mr. Chairman, members of the committee, my name is William H. Tucker. I am the Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

Mr. Chairman, on behalf of the Commission, I want to thank you and the members of the subcommittee for this opportunity to express our views on H.R. 7004, which implements a legislative recommendation of the Commission transmitted to Congress on March 2, 1967, and is designed to give the Commission more flexibility in dealing with railroad passenger train discontinuances than is afforded by the present law, and, in addition, on two related bills—H.R. 260 and H.R. 519—both of which would amend section 13(a) in various respects.

The present law, sections 13(a) (1) and (2) of the Interstate Commerce Act, was enacted as a part of the Transportation Act of 1958, which in turn was a comprehensive program designed in part to alleviate the financial problems of the railroads. Prior to the enactment of this legislation, jurisdiction over passenger train operations and service discontinuances was entirely a matter of State law. The difficulties experienced by the railroads in discontinuing financially unprofitable services under such laws in large part prompted the passage of the present section 13(a).

In our consideration of over 200 passenger train discontinuance proposals, since present section 13(a) was enacted in 1958, certain deficiencies in the present law have become evident. This bill, which would eliminate these deficiencies, is proposed as the result of our own experience with the present statute and, in addition, criticism voiced by Members of Congress, State officials, and others concerned with these proceedings.

The rail passenger problems are still with us—the patronage trend, for example, is downward, while operating costs continue their inexorable rise. In fact, the trend has been spurred most recently by the Post Office Department's policy of transferring the mail from rail to highway, thereby depriving many passenger trains of their primary sustenance and converting formerly profitable or marginal operations into clear-cut candidates for discontinuance.

Added to that are the announcements made in the press that various railroads intend to continue the pursuit of section 13(a) relief from certain passenger obligations. Some railroads, such as the New York Central, apparently contemplate major revisions in their passenger systems.

While present procedures are probably adequate for the majority of passenger service discontinuance cases, we feel they would be strained by certain kinds of important or exceptional cases. In such cases, particularly where the train or trains serve an extensive route with

several large cities or where a system of trains is involved, a period of more than 4 months could well be needed in affording the people the full opportunity for hearing to which we believe they are entitled. We believe that, in the more important cases, State agencies and interested members of the public would need more time to prepare for hearing and to analyze the carrier proposals—some of which are both voluminous and complex. More time is needed in the hearings themselves, in analyzing the record, digesting the pleadings, and preparing our decisional report.

Since the basic purpose of H.R. 7004 is to correct a number of these deficiencies, it may be helpful for me to list at this point the basic changes made by this bill in the existing law and to discuss them briefly in the context of our experience with the existing provisions of section 13(a):

First, the provisions of this bill would give the Commission more time in the initial and final investigation of train discontinuance petitions filed by the railroads. The present 4-month limitation would be changed to 7 months beyond the date when the discontinuance or change in passenger service would otherwise have become effective. In addition, the Commission would be authorized to require the continuance of a train for 2 additional months, if such time were required either to complete the investigation or for the Commission to act on any petition for reconsideration of its decision in the investigation.

The present statute, with its limit of 4 months on the period in which the Commission may hold in abeyance a proposed interstate train discontinuance, imposes severe restrictions upon the ICC's flexibility in processing the cases. As the proposals become more complex and the issues more important to the affected public, 4 months becomes less adequate to active a full hearing and evaluation of all the conflicting public interests involved.

Consider, for example, the proposal of the Boston & Maine Railroad in June 1964 to discontinue all interstate train service to and from Boston, to be effective in August of that year. That proposal, embraced in three simultaneous section 13(a)(1) cases, involved a total of 40 trains. It was processed before the Commission contemporaneously with Boston & Maine's proposal to discontinue 229 intrastate trains under section 13(a)(2). A joint hearing on these cases lasted 20 days in September and October. Division 3 of the ICC decided the interstate train case on December 31, 1964, issuing a brief summary order on that date and then a full report some 2 weeks later. These two proceedings are set forth in *Boston & Maine Corp.*, 324 I.C.C. 418 and 705 (1965), respectively.

The New Haven's proposal to end all interstate passenger service, 273 trains' worth, in a single proceeding under section 13(a)(1), also required hearing and decision within a 4-month period. Fortunately there, however, the carrier postdated effectiveness of its proposal to give the Commission an extra 4 months to process the case. This case alone recorded 3,000 pages of hearing transcript over a period of 9 weeks. Had the New Haven sought to make its notice effective without postdating, I doubt that an adequate hearing, deliberation, and decision would have been possible. This proceeding is reported as *New York, N.H. & H.R. Co. Discontinuance of Trains*, 327 I.C.C. 151 (1966).

The reported intention of some railroads to restructure their entire passenger service could conceivably be the subject of a single, massive section 13(a)(1) proceeding to the extent that interstate trains are involved. While I do not, of course, here question whether such a proceeding would fit the jurisdiction of section 13(a). I seriously doubt that this type of major service restructuring was the kind of proceeding contemplated in 1958 when the statutory procedure for train-off cases was enacted.

Another change provided by this bill is that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service, and that the continuation of the service would unduly burden interstate or foreign commerce. Although the carriers presently submit a considerable quantum of evidence either with their initial notice or, if the Commission decides to investigate a proposed discontinuance, at the subsequent oral hearing, this area requires clarification, since, at the present time, section 13a does not specify upon whom the burden of proof rests. Although in no instance have the railroads refused to offer evidence on either of these two points, despite their insistence that the existing law does not place the burden of proof on them, this question is sufficiently in doubt to require a clarifying amendment. Assigning of the burden specifically to the carrier places it squarely on the party possessing most of the material data and will, in addition, impel the carrier to make a more complete initial presentation as part of its notice. This will provide the Commission with a more complete record upon which to base its decision and should shorten the period of time required at the hearing, since less supplementation of the record will be required at this stage. This saving in hearing time can, in turn, be used to good advantage by the Commission in reaching its decision, since even with the extension in time provided for by this bill, we will still need to handle these cases on an expedited basis.

Another portion of the bill would eliminate two jurisdictional problems that have occurred under the present statute: First, in a situation where the train in question operates from a State into a foreign country but not into another State, the statute would be amended to change the jurisdiction of the Commission so as to include service operated from a point in a State to a foreign country; second, it would deal with the problem wherein service itself is provided only in one State but where the train, for operating convenience, operates into another State. For example, in the New Haven Railroad's proposal to discontinue all of its passenger service, certain trains provided service only in New York State; but the New Haven, solely for operating convenience, terminated the trains in the State of Connecticut. As a result, it was argued by certain parties that the carrier could not invoke section 13a(1) to discontinue these trains but rather would first have to seek authority to discontinue from the New York Public Service Commission, as provided under section 13a(2). Since the Commission determined that all of the New Haven's New York City area commuter service should be continued, it was unnecessary to pass on this point. However, to prevent this issue from arising again in a proceeding which, like the New Haven proceeding, is essentially interstate in character, notwithstanding the intrastate nature, of some of its service, we believe that this proposed change is desirable.

The last two major changes which this bill would make in the present law are, in our opinion, extremely important. First, the draft bill includes a new section, titled 13a(3), which will provide for judicial review of any other of the Commission entered after hearing under either 13a (1) or (2) in the U.S. district courts.

This new provision makes it clear that a court appeal will lie as to Commission decisions affecting the outcome of a carrier's discontinuance proposal, whether the discontinuance is permitted or not. Under the present law, judicial review has, in some cases, been held to be available only in those cases in which the Commission requires the continuance of the train or ferry service in question. Although the Commission has consistently taken the position that a decision permitting a railroad to discontinue service should be appealable by a State or any other adversely affected party, certain U.S. district courts have held otherwise. We believe, therefore, that this matter should be clarified by Congress through enactment of our proposed section 13a(3). This new section would permit any adversely affected party, including a State, State regulatory commissions, or other persons, to appeal an administratively final action of this Commission which is determinative of a discontinuance proposal in the same manner now available to the carriers. All decisions of the Commission would be appealable except decisions by the Commission not to investigate a proposed discontinuance.

The bill employs the same sound and adequate substantive tests as those in the present section 13a, and follows generally along the same procedural lines.

Second, to deal better with situations where practical or temporary solutions might lie along lines other than a mere approval or denial of the carrier's proposal, we are requesting authority to render decisions on a conditional basis; that is, contingent upon modifications in factors affecting service or operations. This would open up avenues thus far untried toward arresting the decline of the passenger train. Although under the present section 13a we can and do give weight to such matters as the rescheduling of the remaining passenger service provided by the carrier and, as noted, the level of public support that may be made available, it is not possible under the present law to impose conditions in a section 13a proceeding without the consent of the carrier or other party upon whom the condition would be effective. Given the changing character of passenger service discontinuances, which I alluded to earlier, and the importance of preserving and improving as much of the present rail passenger service network as the public is willing to patronize, we believe that the power to condition a passenger discontinuance proposal is of the utmost importance. With this authority, we will be in a position to adjust or modify flexibility a discontinuance proposal along lines that are fair and reasonable to both the traveling public and the carriers involved, in contrast to all-or-nothing options that exist under the present law. The following example may serve to illustrate the differences between the present 13a and our proposed amendment:

A railroad has two interstate trains operating between the same points—one, operating during the daylight hours; the other, during the evening—both of which it proposes to discontinue. Under the present law, the Commission has only the following options: to permit the discontinuance of one or both trains; or, in the alternative, to require

the continuance of one or both trains—without, however, requiring any alteration in the scheduling of these trains or any other conditions which it might be in the public interest to impose. Such conditions could, however, be imposed under this provision of the bill.

At this point, I would like to comment briefly on each of the other two bills which are scheduled for hearing this morning along with H.R. 7004. The first, H.R. 260, would amend both parts of section 13a to require the Commission to give full consideration to all financial assistance available, including that available under the Urban Mass Transportation Act of 1964, for the purpose of continuing passenger train service, before permitting the discontinuance.

Although the objective of this bill is certainly desirable, this amendment is, in our opinion, unnecessary, since the Commission presently accords all possible recognition and encouragement to such forms of public assistance, including that provided under the Urban Mass Transportation Act of 1964. In this regard, I would like to mention the following language from the Commission's report in the *New Haven* discontinuance proceedings:

It is clear to us that many passenger operations in this country are essential and should be preserved. It is also clear that the public and certain of its governmental units through willingness to underwrite and, in some cases, assume responsibility for the operation of such services, have demonstrated their conviction that an essential rail passenger system is no less required than an essential rail freight system.

That the reasonable level of public support should in fact be construed as that level of financial or other public assistance which will stimulate the carrier to initiate or, if already initiated, continue its own reasonable effort to sustain and improve essential and economically viable passenger services. This, we think, is the kind of creative cooperation which will most productively revitalize and invigorate the operation of America's privately owned rail passenger operations.

Although, as indicated in the above passages from the *New Haven* report, we attempt to give every consideration to public assistance programs designed to preserve and revitalize rail passenger service, neither the present law nor the provisions of H.R. 260 provide for the conditioning of discontinuance in terms of the availability of such support. However, the conditioning power provided by H.R. 7004, which I have discussed previously, would permit the Commission to tie together directly the continuance of passenger service and programs of public assistance designed to support such service.

The second bill, H.R. 519, would also amend the present section 13a by requiring the Commission to order the continuance of service, upon a finding of public need for the service, for 1 year, (1) if the carrier involved could participate in and substantially benefit from a Federal, regional, State, or local program of public assistance, or (2) if the carriers involved in a proposed discontinuance are parties to a merger from which they are expected to benefit. While we are in accord with the objective of preserving essential commuter passenger service, we do not favor the enactment of this bill in its present form. The fact that a carrier could participate in and substantially benefit from a public assistance program is not, in and of itself, a reason to require the continuance of passenger service that results in the sapping of the financial health of the carrier, unless (1) such a program is actually in effect, as has recently been the case with the Erie-Lackawanna's service, or (2) a condition of public support is attached and made part of the discontinuance proceeding itself, as the Commission would be author-

ized to do under H.R. 7004. Such a condition would, of course, be imposed only after a full evidentiary hearing and upon the record made in such a hearing where the evidence relating to proposals for public support was specific and definite enough to support the attaching of an appropriate condition.

We also have serious misgivings about that portion of H.R. 519 which would require the continuation of commuter service for which a public need is indicated, where the carrier involved is a party to a merger from which it could be expected to benefit. Our doubts as to the desirability of this provision are based on three related considerations: First, this provision unfairly discriminates against those carriers who are parties to merger cases now pending before the Commission and, similarly, against the public whose available passenger service is provided by carriers who either have no present plans for merger or whose merger has already been consummated. Second, the relationship between the financial or other benefits flowing from a merger and the ability of a carrier to sustain continuing heavy losses from the operation of passenger services is often tenuous. Because of the essentially fixed pattern of passenger operations, many of the operational efficiencies and economies of a merger, such as the more efficient routing of traffic, cannot be applied to passenger service without affecting the quality or quantity of such service. Although certain economies resulting from the consolidation of terminals and pooling of equipment can be generated without these undesirable side effects, such savings are small in comparison both to the comparable benefits to freight operations and to the directly identifiable losses incurred in providing passenger service. Additionally, although we recognize that mergers often strengthen a carrier financially and therefore are clearly a factor to be given weight in determining whether the operation of a particular service is an undue burden on interstate commerce, this fact alone should not be controlling.

A third consideration, related to the second, is the effect that such a provision might have on certain smaller railroads presently seeking inclusion in one or more of the present or proposed eastern rail systems. At the present time, a number of eastern railroads having substantial commuter passenger operations are parties to one or more merger proceedings before the Commission. Two of these, the New Haven and the Central of New Jersey, are in receivership under section 77 of the Bankruptcy Act; while a third, the Erie-Lackawanna, although currently profitable, has incurred large deficits in the past. The past and present financial difficulties of these carriers are attributable in part to continuing and heavy losses incurred in providing essential commuter service. Although the Commission has required the inclusion of the New Haven in the Penn-Central system, including its passenger operations, the exact quantum of the service to be provided and the financing of such service remains undecided, since our decision in the *New Haven* proceeding was designed to provide only an interim solution, pending a long-range final solution to be worked by the New Haven with the Penn-Central and the States and other public authorities involved. In the case of the Erie-Lackawanna and the Central of New Jersey, a basic issue in the pending merger proceedings to which they are parties is that there be a definitive solution to the financial burden of their present commuter prob-

lems. Since these proceedings are now pending before the Commission, it would be inappropriate for me to discuss this matter in detail. I am, however, heartened to note that the State of New Jersey is already taking steps to assure the continuance of the State's important commuter service.

In conclusion, I would like to point out that we do not regard this bill as a complete and satisfactory solution to the problem of preserving and improving the Nation's essential rail passenger service. It is now clear that traditional regulatory techniques, such as those embraced in section 13a, can serve only a limited purpose and must be joined with forceful and imaginative long-range planning, research, and development by the railroads; authorities in local, regional, State, and Federal governments; and concerned members or groups of the general public. This work must proceed along lines that will not only revitalize the economic and technological advantage of railroad passenger service but will, in turn, integrate such programs into others having as their major goal the enhancement of the Nation's economic and social environment, particularly in and around our major centers of population. On the part of the carriers, there must be a willingness to make the same reasonable effort to improve and sustain passenger service as they accord to their basic freight service. This reasonable effort should be manifested in service improvements, long-range market analysis, rate reformation, capital investment in research and technological achievements applicable to passenger operations, and sound analysis of the real costs of providing passenger services with a rail plant used also for the provision of freight services. This reasonable effort should not, however, be sustained beyond the point at which the carrier can demonstrate an unwillingness on the part of the public either to sustain the services through patronage or by assuming a fair share of the cost of maintaining such services.

In matching the reasonable effort of the railroads to sustain and improve essential rail passenger services, the public must at the same time be willing, through its governmental representatives, to provide a reasonable level of support for those services. This should not be interpreted as requiring a willingness by the public to "pay the bill" as tendered by the carrier or carriers providing such services at a deficit. Yet it must imply something more than a mere willingness to provide only that financial assistance which is necessary to sustain such services, and possibly the financial condition of the carrier offering them, at a point just short of collapse.

As the Commission stated in the *New Haven* case, supra, at page 223:

We believe that the reasonable level of public support should in fact be construed as that level of financial or other public assistance which will stimulate the carrier to initiate or, if already initiated, continue its own reasonable effort to sustain and improve essential and economically viable passenger services. This, we think, is the kind of creative cooperation which will most productively revitalize and invigorate the operation of America's privately owned rail passenger operations.

Such public support should not, of course, be limited solely to the contribution of direct or indirect financial assistance to railroads. Beyond this, it must encompass joint governmental-carrier programs to determine, on the basis of current and projected demand patterns,

what rail passenger services actually are essential to the public, and at what level they should be maintained or modified.

In our judgment, the provisions of H.R. 7004 will provide us with better tools and more flexible procedures needed to carry out these goals in cooperation with the carriers, the public authorities, and others concerned with the solution of this vital problem.

We are asking the Congress to extend the present 4-month time limitation to 7 months and, at the same time, to add another 2-month period in which we could, when necessary, for example, dispose of petitions for reconsideration. In regard to that 2-month period, we have cases where our time expires, and the proposed discontinuance of a train or a group of trains takes effect prior to the time we have actually disposed of petitions for reconsideration duly filed in accordance with our procedural requirements.

We feel that a 7-month period would be much more to the advantage of the public, all facets of the public dealing with this problem.

I might say, Mr. Chairman, that the Commission has no intention of utilizing the full 7-month period; it would not utilize the full 7-month period unless it were necessary. If we have a single isolated train, it only takes a few days' hearings and the Commission would dispose of that case as quickly as possible and take appropriate action.

Related to the desire for a 7-month period on the part of the Commission is the fact that, in important instances, we are faced with different and more complex types of cases rather than proposed discontinuances of individual trains.

In several cases where large groups of trains have been involved, it has been impossible to prepare a decision in the 4-month period explaining our reasons in accordance with the law. We earnestly ask your consideration of the extension of the statutory time limit to 7 months.

Another deficiency in the present statute, which I can't say has given us serious trouble, but still should be corrected, is the fact that the statute does not assign the burden of proof.

Lawyers for railroad and public interests are in wide disagreement as to whom has the burden of proof in these unique cases. My own personal view is the type of procedure we have is an investigatory procedure, and that there is not really a burden of proof—unless it is on the Commission itself.

I would like to say in all cases we have checked, the railroad involved has been willing to take on the first burden of putting in evidence.

Another important aspect of our proposal would be to clarify the matter of judicial review. The Commission has taken the position before the Congress and the courts that an appeal does lie to the courts from a Commission decision allowing a railroad to discontinue trains.

Some of the courts have suggested there is no appeal in such a situation. We have not had an ultimate judicial determination on this so we think the appeal situation should be clearly spelled out, which we proposed in this law.

We think all parties, however they approach the particular proposal, should have the right of appeal.

Another somewhat technical problem I am putting here, are deficiencies as in the matter of the *New Haven* case, that could arise in other cases. I refer to a situation where a train might be scheduled only to pick up and discharge passengers wholly within one State,

although that train actually operates, for the carrier's convenience, into and out of another State.

The question is whether that type of train operation comes under section 13a(1) or 13a(2). It can present a difficult jurisdictional question that need not otherwise arise.

That technical obscurity could have been a serious problem in the *New Haven* case, but it was, in fact, mooted by the ultimate decision. I think 19 trains, or around that figure, operated solely to pick up passengers within the State of New York, but these trains actually physically ran between a point in Connecticut and New York City.

So the proposal we have would tend to correct that jurisdictional obscurity and put it aside so that we would not have to deal with it in the future.

Another important aspect of our proposal is perhaps of a more positive nature than the correction of any deficiencies and that would give the Commission the authority to render decisions on a conditional basis, that is, contingent on modifications affecting service or operations.

That is related to the need for flexibility. As it is right now in the present law, we have a kind of yes or no posture, if I could put it that way, and we can't attach any conditions to our decisions.

We either enter an order discontinuing the proceeding, thereby automatically giving up our jurisdiction, or we enter an order which does just the opposite, requiring the trains to say on in status quo. We don't have any flexibility.

The authority for us to impose conditions in these cases would permit us to study meaningfully such things as prospective levels of operating support from the public; and the interrelationships of the carrier's other trains to those being discontinued.

Given the right factual situation, the new authority might help improve railroad service, and at the same time allow us to take into consideration the needs and problems of the railroad company that filed the proceeding.

Those are the changes we proposed, Mr. Chairman, and again I would say the policy of the Commission in coming before you on this bill is to request more flexibility, not to deal with single illustrated train cases, but to deal with the kinds of situations we have had in the past few years and we expect we could face over the next several years.

While we may not have many railroads coming in and asking for substantial restructuring, so to speak, of their passenger services, we ought to be ready for it. We think that can happen and we ought to expect it.

We have in our statement brief comments on the other two bills that were brought to our attention at the time this testimony was prepared.

The first bill, H.R. 260, would amend section 13a and require the Commission to give full consideration to all financial assistance available.

In regard to that we would say that objective is desirable and we do give that consideration. It is now a matter of the evidence in every case, Mr. Chairman. We don't suggest that the proposed new require-

ment is particularly necessary, and we think that our bill goes further in that regard by giving us the authority to impose conditions.

The second bill, H.R. 519, would require the Commission to order continuance upon finding public need for service for 1 year if carrier involved could participate in and substantially benefit from a Federal, regional, State, or local program of public assistance, or second, if the carriers involved in a proposed discontinuance are parties to a merger from which they are expected to benefit.

We don't feel, Mr. Chairman, that these criteria in H.R. 519 would relate to the need of flexibility that would better protect the interest of all parties, the railroad, the public, a particular local interest, that our bill would, so we don't support H.R. 519.

There was another bill filed, H.R. 8939, and I believe that is before the subcommittee today, too. I have not had a chance to look into this bill—it was just filed within the last few days—so I will reserve comment on that. I would be pleased to submit a written report.

Mr. FRIEDEL. You will submit your views in a report on the new bill?

Mr. TUCKER. Yes, sir; we will.

(The report requested was not available at time of printing.)

Mr. FRIEDEL. Fine.

Mr. TUCKER. That is the general summary of our bill and we are ready to answer any questions you may have.

In that point I discussed regarding whether a train is intrastate and so as to come into section 13a(1) rather than section 13a(2), where we have suggested a change, that change would cover a situation which could arise where the train operated between a State and a foreign country, Canada or Mexico.

Mr. FRIEDEL. I want to thank you, Mr. Tucker, for your very fine statement. Its brevity and the time you have saved is appreciated.

I would like to know what would be the difference in how you handle these problems under the present law and the bill that Mr. Staggers introduced at your request, H.R. 7004?

Mr. TUCKER. Other than procedure, there would not be any change in the substantive standards of the statute. The present statute provides that if after hearing and investigation the Commission finds that the operation of service is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require continuance or restorations.

That criteria, which is the heart of the statute, both section 13a(1) and section 13a(2) would not be changed by our proposal. Our proposal relates to the procedures and the method of handling these cases.

Directing your question to the present procedures, we now have 30 days in which to order an investigation, which means scheduling hearings for the taking of evidence.

We have 4 months in which to hear the case and either enter an order which would permit the discontinuance or an order which would require the continuance.

If we do not reach a decision within the 4-month period, the notice filed by the railroad becomes effective and the trains may be taken off by the railroad.

Mr. WATSON. Mr. Chairman, will you yield?

Mr. FRIEDEL. Yes, just a minute. Under the present law, after you start with the hearings you have 4 months, is that right?

Mr. TUCKER. That is right.

Mr. FRIEDEL. Under this bill you ask for 7 months. Then you mentioned an additional 2 months, I was not clear on that, would that be 9 months?

Mr. TUCKER. That 2 months is a proposal that might be applied whether we had a 4-month or a 7-month suspension period. It would give the Commission the authority to extend the basic suspension period the law applies.

For the basic suspension period, we are suggesting 7 months where we now have 4. But the extra 2 months is for the purpose of considering petitions for reconsideration. For example in the recent *Boston & Maine* case, the 4-month time period expired before the Commission had issued its decisional report. At that time the carrier had a right to stop operating. The initial decision of Division 3 of the Commission allowed the B. & M. to discontinue its trains, and the carrier did so.

There were petitions for reconsideration of that decision, which were filed with the entire Commission. We took some time to determine those petitions and the majority of the Commission still decided that the trains ought to be discontinued. But we were deciding the case on reconsideration after the trains had stopped. The 2-month period would give us—where we had a petition for reconsideration and where the facts warranted a delay in discontinuance—that would give us that extra 2 months to dispose of petitions in cases like the B. & M. situation.

Mr. FRIEDEL. You could be up to 9 months.

Mr. TUCKER. Yes.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. In reference to the discussion about the proposed changes under Mr. Staggers' bill, as I recall, the Chairman stated that the changes are only procedural. As I understand the changes, this goes to the very heart of the matter, the burden of proof shifts entirely to the railroad, is that not correct?

According to this language the railroad has the burden of establishing convenience and permitting the proposed discontinuance.

Mr. TUCKER. What I meant was that there would be no change in the substantive criteria—public convenience and necessity and the undue burden. These tests would be unchanged in our proposed amendment.

The changes regarding burden of proof are substantial in the context of your question.

Mr. WATSON. Second, Mr. Chairman—I don't want to skip over my colleague here—but this last part of the sentence, "via the lawyers" seems confusing and perhaps you could shed a little light on this.

First the carrier files a notice for discontinuance and has the burden of proof; one, the public need and necessity permit the proposed discontinuance or change, in whole or in part, and second, the continued operation or service of such train or ferry without discontinuance or change in whole or in part will unduly burden interstate or foreign commerce.

We lawyers obviously wrote that. I don't understand what you mean by that.

Mr. TUCKER. I would still suggest the essence of evidence or evidentiary approach, what we have utilized in the past would be the

same. The carrier would relate its evidence to the burden of carrying passengers, its operating deficit, its difficulty of operations, or otherwise, and this would constitute evidence of undue burden on interstate commerce. That question of undue burden certainly relates to the carrier's financial posture.

The carrier would have to develop that evidence. The carrier naturally is doing that now even though it technically does not have the burden of proof.

The present law, the way it is worded at the present, presents a rather negative approach. We may order discontinuance if continued operation will not unduly burden interstate commerce.

Mr. WATSON. Actually heretofore the carrier has had to show that the continuance of the operation of the train will prove an undue burden on the carrier, not on interstate commerce.

In other words, the difficulty I have right now is to try to find out how a carrier can intelligently prove that continued operation of it would be an undue burden on interstate and foreign commerce.

It is axiomatic, if you continue the operation you remain status quo. How could you impose a burden to protest on the one who files, to continue status quo is a burden on interstate and foreign commerce.

If you wanted to show it was a burden on the carrier, I could perhaps understand. As it is now I am afraid you have an impossible situation.

Mr. TUCKER. I understand the Congressman's difficulty with the present wording. I don't think I was helping very much.

In answer to that let me say the present law provides that if at the hearing the Commission finds that the operation of the train is required by public convenience and necessity and will not unduly burden interstate and foreign commerce, the Commission may, by order, require continuance of the service. Thus, under the present law the "undue burden" criterion is directed at interstate or foreign commerce.

Going back to the Congressman's reference to the particular railroad's financial situation, that certainly is part of the analysis of what constitutes a burden of interstate or foreign commerce. In present cases, as I say, the railroads are in effect taking on the burden of proof and relating that to the concept of foreign commerce and interstate commerce.

Sometimes the carrier's evidence is related to allegations that they might not be able to survive unless the involved passenger operations are discontinued.

Mr. WATSON. Am I to understand if a carrier goes in and proves public necessity then this would permit the discontinuance or that, second, the continued operation itself would be an undue burden on that carrier? In such a case the Commission would conclude the burden on that carrier would naturally impose a burden on interstate and foreign commerce.

Mr. TUCKER. Let me give two answers to that question. One, the carrier would have to produce sufficient evidence to warrant a finding of that nature on both points, not just the one as it is now.

Mr. WATSON. I thought there were several. The first burden is a matter of proving that the discontinuance would be permissible, and the second is that the continuance would be an undue burden on interstate and foreign commerce.

I think you are placing someone in virtually an impossible situation if you mean that. I want to try to establish for the sake of legislative history that if the carrier comes in and shows the continued operations of this passenger train such would be an undue burden on that carrier.

We must agree that the carrier involved in the proposed discontinuance could be the only one that would be adversely affected by any move by the Commission.

Mr. TUCKER. My answer to that second part would be, yes, the carrier could prove undue burden on interstate commerce by evidence relating to a precarious financial situation of that carrier alone. That could constitute evidence to warrant the finding of undue burden.

That is in the history of the cases under the present law, Mr. Watson.

I wonder if I could let Mr. Kahn relate the substantive criteria of the present law to the proposed law?

Mr. FRIEDEL. May I have his full name?

Mr. KAHN. Fritz R. Kahn, I am Associate General Counsel of the Interstate Commerce Commission.

I believe what the bill proposes to do is state the converse of the present statutory standard. At the present time, at the conclusion of the hearing the Commission empowered to order resumption of the passenger train service upon a finding that the operation or service of such train by the carrier is required by the public convenience and necessity and that the continued operation of such service or ferry will not unduly burden interstate or foreign commerce.

We shift the burden on the applicant, the railroad, and say that upon the applicant's successfully establishing that the public convenience and necessity permit the proposed discontinuance or change, in whole or in part, and conjunctively, that the continued operations of such train or ferry without this continuance or change, in whole or in part, will unduly burden interstate and foreign commerce, then the Commission will authorize the discontinuance of the passenger train service.

It is the same statutory standard conversely stated.

Mr. WATSON. In other words both burdens of proof must be met before the application stands any possibility of being moved?

Mr. KAHN. Correct, sir.

Mr. WATSON. The difficulty I have again, unless I can accept what the chairman said, is that if a carrier shows that the continuance of this route would be an undue burden on him, and such constituted an undue burden on interstate and foreign commerce, then I can see where perhaps that carrier might live with it, but at the same time I can see where the Commission might get in a little deep water.

Just because one carrier might be unduly or adversely affected I don't think interstate and foreign commerce would necessarily be affected.

Mr. KAHN. I submit, Mr. Watson, that if a particular passenger train or trains were operated at such deficits as to impair the ability of a particular railroad to render adequate transportation service, then the continued operation of that passenger train or trains may unduly affect interstate commerce.

Mr. WATSON. We have to show that the entire operation of the railroad would be affected.

Mr. KAHN. That a single train or trains are operated at such a deficit as to impose a burden. The statutory standard as presently applied requires the Commission to view only the operation of this particular train.

Mr. WATSON. Heretofore it has been my understanding, and my knowledge in this field is limited, that at least the carrier realizes they would have to establish the continuance of this particular train and such would be an undue burden on the carrier, not on interstate commerce.

Mr. KAHN. The statutory standard is that there be a burden on interstate or foreign commerce, but it may be established by the operations of a particular carrier.

Mr. WATSON. The continuance would constitute a burden. But, heretofore it has been the discontinuance that would constitute a burden on interstate commerce, is that right?

Mr. KAHN. Heretofore it has been that the Commission could require restoration if the discontinuance imposed a burden.

Mr. WATSON. I am quite sure it follows if the discontinuance initially constituted an undue burden, you would naturally have a burden.

Mr. TUCKER. Going back to your sequential concern about whether the carrier's evidence as to a particular train or the carrier's financial posture in relationship to that train is adequate to show "burden" on commerce, in most if not all of the cases where discontinuance has been authorized, that evidentiary burden has lodged with particular carrier involved. That evidence has embraced its financial position, or the nature of its deficit, financially or otherwise, and how it affects the carrier's financial position.

We don't think our proposed change would get us into any different types of inquiry, or evidence, than what we have had heretofore, principally the carrier's financial problems pertaining to the trains subject to the proposal.

Mr. WATSON. I am in hopes and I believe with the legal talent you have, in addition to your fine ability, Mr. Tucker, that perhaps we could work out a little better language than we have in this second condition.

I am at a total loss as to how a carrier might establish that a continued operation of a line would be an undue burden on interstate and foreign commerce. The only thing I can see is that it would be an undue burden on him. The effect to competitive carriers can be well imagined.

Mr. TUCKER. I would like to say that Mr. Kahn or Mr. Forbes can speak to this. The carrier's financial posture with reference to the particular train or trains in a proceeding under the proposed law would constitute evidence of undue burden on interstate commerce.

Whether that evidence would be sufficient to warrant a finding of "undue burden" is a question that would have to be related to the entire case. I would suspect then in most cases where the carrier made out a case, the train or trains involved severely impair that carrier—its other passenger service, its other freight service, or perhaps, its ability to survive. In such cases we would be warranted to find continuance would be an "undue burden."

Mr. WATSON. I would like to make one further comment. In my opinion it is unbelievable and incredible that a carrier would be able

to establish that the discontinuance or the continuance of one line, even one passenger line of that carrier, would constitute an undue burden on interstate and foreign commerce.

We are talking about the continuance now, not the discontinuance. That is where we have the problem. I think when we look at it a little further we can come up with a little clear understanding of it.

Upon advice of counsel here, could we not accomplish the same objective which you have in mind by changing this proposed new language to read that it will show that it is an undue burden on the carrier rather than the present language as it now reads?

Would that not accomplish your same objective?

Mr. TUCKER. It might but I rather hesitate about reacting to that because the Congress has heretofore established the controlling test to the effect on interstate or foreign commerce.

I am not sure of the ramifications of changing that criteria what that would be at the present time.

Mr. WATSON. Can you give me an example where the continuance of a line would be an undue burden on interstate commerce?

Mr. TUCKER. Generally, I say again, if a carrier comes in and shows it is operating a train or group of trains at a heavy deficit, if that deficit affects the carrier's ability to render adequate service to passengers or freight, it is a burden to continue that operation of a train or trains and it would be an undue burden on interstate commerce.

Mr. WATSON. The establishment of an undue burden on interstate and foreign commerce is a vicarious proposition. The primary showing is that the undue burden is on the carrier, then vicariously it moves to interstate and foreign commerce.

I know we have pride in authorship of language but I don't want to have you inherit a lot of problems.

I like business for lawyers. We lawyers need business. I can see where this would help us, but I would like to simplify it.

Mr. KAHN. I would like to offer an explanation; the phrase "interstate and foreign commerce," as used in sections 13a(1) and 13a(2), is similar to section 13 which empowers the Commission to establish the justness and reasonableness of intrastate rates wherein those rates cast an unreasonable burden on interstate commerce.

It is a constitutional law concept. Traditionally the regulation of the passenger trains has been left to the States, and in this phrasing, which was used by the Congress, the 1958 amendment made perfectly clear that the Federal jurisdiction would be invoked only where, absent such Commission action, there would be an undue burden on interstate or foreign commerce.

Mr. WATSON. That is all.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Chairman Tucker, some of the questions I had have been raised by the gentleman from South Carolina. I want to pursue it just a bit further.

First, to be sure I understand the present procedure and present law, I assume this was the law from 1958, under the present law if a carrier wants to cut back or discontinue any service he would file a notice with the ICC and Governors of the States saying that in 30 days they intend to do this, take this action, and during this period of time

the ICC can petition investigation but 10 days prior to actual discontinuance of that particular service, your Commission could issue an injunction and continue the service up to 4 months?

Mr. TUCKER. On order, yes, sir.

Mr. PICKLE. At that point, from the point that you could extend it for 4 months, is this the law, that the ICC could find that "If it is required by public convenience and necessity and will not burden interstate or foreign commerce," then the ICC could require that the service be continued for up to 1 year?

Mr. TUCKER. Generally, yes.

Mr. PICKLE. Isn't it a fact that the ICC can at that point continue it up to 1 year?

Mr. TUCKER. Yes.

Mr. PICKLE. Actually the ICC has the burden now of determining what is or is not a burden on interstate commerce, is that right?

Mr. TUCKER. In my opinion ICC has the burden of proof if there is one, right now.

Mr. PICKLE. There is some question in my mind why you, the Commission, want to shift the burden to the carrier or the employees.

It seems the Commission ought to be concerned with what is the public interest and you ought to determine the burden of proof after all investigation. If you put the burden of proof on the employees or the unions or on the carrier, this could be an extremely costly and involved, detailed matter that may never really be solved.

Somebody has to take the responsibility. During all this time, if you continue it over a year, how do we know that the Commission is not saying, I just want to pass this on to somebody else?

Mr. TUCKER. The Commission has not done that, Mr. Pickle. What has happened, as a practical matter the railroad companies have taken on the burden of proof. I think we have to look a bit at the nature of the evidence required in relation to my dialog with Mr. Watson.

In a difficult case certain financial studies may be the best evidence, that is evidence that can best be prepared by the railroad carrier, evidence that results from its own examination that it ought to get rid of this train or groups of trains, evidence that shows the effect on the system by dropping a train or group of trains.

For example, carriers have presented avoidable cost studies which show how much out of pocket cost the railroad company can avoid assuming that the train or trains have been discontinued.

That evidence really is evidence that is best prepared by the carrier. The Commission can present evidence taken from the accounting record required by law to be filed, and the Commission could go in and try to work out, or get from the carrier working papers to make up exhibits and I might say in one or two cases we found the need to present our own cost studies in train cases.

To sum it all up, the carrier has been doing this. The thing we are concerned with is that we don't believe the carrier has to take on that burden and we may run into a substantial case where the carrier says no I don't have the burden of proof.

Mr. PICKLE. I would agree under the circumstances now, and under those proposed, that either the carriers or the employees of the union have to submit the best evidence they can to the Commission, to prove the case that is being requested.

I agree that they have to do this but we are talking about burden. I am saying to you as a representative of the public, as an arm of the Government, you the Commission ought to think in terms of public interest rather than whether the burden goes to the carrier or employees.

If you look at the committee print furnished us, in line with what Mr. Watson asked, when you get to the bottom of change which reads:

When an investigation by the Commission is instituted under this section, the carrier or carriers filing such notice shall have the burden of establishing that public convenience and necessity permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change in whole or in part, will unduly burden interstate or foreign commerce.

Why couldn't the next to last line say in general language, in whole or in part will unduly affect the public interest on interstate commerce on service.

That is really jumbling it but I am trying to get back to whose responsibility it is to make this decision? And it seems to me it is the responsibility of the Commission.

Mr. TUCKER. Mr. Kahn points up there is a subsidiary test of the burden of going forward with additional evidence. The Commission would not in my view, Mr. Pickle, under the proposed law, give up its positive responsibility to cause the best evidence to be brought out in any case.

Quite frankly we looked on this change as a rather technical change that would avoid problems in the future. To be perfectly honest we had not thought we were proposing a change of great substance.

The carriers on the whole have done quite well with the assuming of the burden of proof that really does not exist to any great extent in reading the law.

The carriers do go forward with the evidence and steer the proponents anyway. The Commission has—I think the record should contain this, Mr. Chairman—the Commission has entered cases through its Bureau of Enforcement to enlarge on the evidence wherever we could or wherever then it seemed necessary.

What we are proposing here is a rather technical change that fits into the existing picture and it might avoid a problem in the future.

I don't want to belittle this aspect of our proposal but that is how it usually comes about.

Mr. FRIEDEL. As I see it, I think the Commission is asking authority to get more information from the railroads by putting the burden of proof on them. As I understood earlier, you said you could not get all the information you wanted and under the present law you are prohibited from requiring the railroads to give such information. I think you are asking permission to get more information before making your findings and decisions.

Mr. TUCKER. No, I certainly did not want to convey that impression. I think I should convey in all fairness that the railroad companies have not given us any real problem at all in going forward with this burden of proof in presenting evidence in these cases.

I know of no case and will ask Mr. Forbes if he knows of any case, he can supplement this. I know of no case, I am sure Mr. Forbes knows of no case, where we have had trouble with the railroads.

Mr. FORBES. We have had cases in the early days where the railroad challenged the Commission and said it was not their burden to move forward with the evidence and they did not have the burden of proof.

However, the Commission held, in some of the early reports found, that it was the carrier's proposal and it was the carrier's duty to move forward to present its evidence.

It is merely a technical question, the Commission has required the carriers move forward with the burden of the evidence and they have been doing it all along.

Mr. TUCKER. I would like to add one illustration, I heard both of the recent New Haven train discontinuance cases. Counsel for the New Haven trustees at the beginning of both cases pointed out the carrier was going forward and presenting evidence, the financial picture, passengers, and so forth, but he wanted it clearly understood by the Commission he was not legally assuming the burden of proof and under the law that was not required.

If we have had any problem it might come in a sense where we think the carrier might present a little bit or little different type evidence. In that kind of thing we are apt to ask our bureau of enforcement to present the different kinds of evidence we want, for example, the presentation of exact losses, or unavoidable cost. The decision in the case may be predicated solely on exact cost and if it is a big enough case we might like to see evidence on the actual losses that can be proved and can be brought out by exhibit.

Again, summing up, we have not had any trouble at all with the carriers in going forward and putting in evidence, Mr. Pickle.

Mr. PICKLE. Let me just conclude by saying that in my opinion on the bottom of the first page of that print, the language is a double negative, almost.

You almost meet yourself coming and to say the least, it is cumbersome language, in my opinion. Surely, we could affect better language. I don't know which would be best so far as burden of proof is concerned but it seems to me when you say all you want is a procedural change, yet you go to shift the burden of proof, that is a horse of a different color. I am sure that was the intent of the Commission.

It does go to the very heart of the proposed change. I think if you make the carrier have the burden of proof you are going to require a costly thing.

If you make the employees or the user or a city have the burden of the case, you put a burden on him. In either case each side has to put in the best case they can, and on that point it seems to me the burden should go to you on behalf of the public interest.

Mr. TUCKER. Our statement is to the procedural intent. Secondly, speaking as Chairman of the Commission, I think we have a duty to reexamine the language in light of the dialog here this morning to see if we can't improve or make it clear.

I want to say again we were proposing something technical and if it presents this difficulty to the committee, we have a duty to work it over and see if we can't work out something clearer and more in line with the job to be done. We would be glad to do that.

Mr. FRIEDEL. It would be very helpful as there is no question there is a little ambiguity and the members are confused as to whether you are trying to shift your responsibility. That is something that should be clarified.

Mr. TUCKER. We will go to work right away on that.

Mr. FRIEDEL. Thank you. Mr. Pickle?

Mr. PICKLE. That is all.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Thank you, gentlemen. The meeting will stand adjourned until tomorrow morning.

(Whereupon, at 11:15 a.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, April 26, 1967.)

PASSENGER TRAIN ABANDONMENT

WEDNESDAY, APRIL 26, 1967

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting will now come to order.

We are continuing hearings on H.R. 7004, H.R. 260, H.R. 519, and H.R. 8939.

We shall hear first this morning from our colleague, the Honorable Robert Giaimo, who has introduced H.R. 8939. You may proceed Mr. Giaimo.

STATEMENT OF HON. ROBERT N. GIAIMO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. GIAIMO. Mr. Chairman, I am happy to have this opportunity to testify in support of H.R. 8939, legislation which I introduced to amend section 13a of the Interstate Commerce Act and to require an 18-month moratorium on the discontinuance of any passenger service by rail.

Prior to 1958, the power to control changes or discontinuances of passenger train service was reserved to the particular States in which the service was performed. Attempting to better the railroads' competitive position and to alleviate a depressed financial condition, the Congress enacted section 13a as part of the Transportation Act of 1958, which offers the railroads an alternative to the State proceedings and eases the way to the discontinuance of service.

In establishing criteria for section 13a, the Congress—acting in the hope that the privately owned railroads would in good faith meet their obligations to provide service to all segments of the public—provided two guidelines to be considered in curtailment petitions. These guidelines, which are applied by the Interstate Commerce Commission, call for weighing of “public convenience and necessity” along with factors threatening to burden interstate or foreign commerce.

I fear the 1958 legislation has been abused by carrier services that interpret section 13a as an open invitation to discontinue passenger services and inconvenience the general public. It has been far easier, experience shows, for the railroads to provide information to support their contentions of financial burden than it has been for the public to

establish a public necessity for services. The record proves the disadvantage at which the public interest has been placed. I call attention to the fact that since the enactment of section 13a the railroads have discontinued 786 passenger trains, including 61 trains which were discontinued without a hearing or investigation by the Interstate Commerce Commission. I submit for this committee's examination the following:

Select passenger service operating statistics, class I line haul railroads, 1956-66

Year ending Dec. 31	Average miles of road operated	Passengers carried (in thousands)	Total passenger-miles (in millions)	Passenger train-miles (in thousands)
1956	115,907	428,510	28,185	280,866
1957	112,500	411,172	25,885	274,789
1958	100,439	380,340	23,299	246,402
1959	99,989	352,326	22,047	225,045
1960	94,117	325,872	21,258	209,367
1961	89,515	317,024	20,283	198,443
1962	86,038	311,738	19,902	193,211
1963	84,928	309,603	18,497	189,360
1964	81,795	313,016	18,248	183,557
1965	76,993	298,877	17,389	172,344
January to June 1966 ¹	73,928	148,916	7,808	81,667

¹ Figures not adjusted to reclassification of class I railroad.

Source: Interstate Commerce Commission, 80th Annual Report, 1966, table 24, "Transportation Statistics," p. 165.

I have introduced H.R. 8939 because I fear that the increasing number of passenger-service discontinuances threatens to undermine an important segment of our national transportation system. My legislation will remedy this situation. It provides that petitions to discontinue or alter passenger service will be granted only after the Interstate Commerce Commission conducts a panel hearing at which the railroad must establish that its discontinuance action will not constitute an undue burden upon interstate commerce or adversely affect the public's interest. In effect, my proposal shifts the burden of proof from the shoulders of the public to the railroads which are required to show cause for discontinuance.

My legislation also provides for an 18-month moratorium on all actions for discontinuance of rail passenger services following the enactment of my bill. This was underscored by the following remarks of the Interstate Commerce Commission in the New Haven Railroad matter:

More important from a travel standpoint, it has become increasingly apparent in recent years that standing alone, even a comprehensive national network of highways and secondary roads, such as that in existence or under construction in this country, cannot accommodate all the public's foreseeable surface travel demands. Moreover, it cannot adequately accommodate even the existing demands. One clear lesson to be learned from the national experience of the past decade is that an over-reliance upon the highways and the private automobiles, particularly for the regular peaks which occur in commutation travel to and from our major cities, can be disastrous. The results—chronic and costly traffic congestion, a contribution to the contamination of the air we breathe, and a tragically high death and injury rate from road accidents—can stimulate public policy either toward the additional construction of bigger and even less manageable highway problems, or towards the restudying of all of the nation's existing passenger travel facilities in the context of the nation's needs today and tomorrow.

America is now at this juncture. It is faced with the question whether to multiply its highway facilities and its highway problems to the exclusion of other available resources for surface passenger movement, or to restudy and improve the entire pattern of all such resources, including highway and rail.¹

The moratorium I have proposed will allow time for the newly established Department of Transportation to thoroughly examine the existing transportation resources of our Nation and to make its recommendations to the Congress. In his testimony before this committee several weeks ago, Chairman William Tucker of the Interstate Commerce Commission emphasized that:

It is now clear that traditional regulatory techniques, such as those embraced in section 13a, can serve only a limited purpose and must be joined with forceful and imaginative long-range planning research, and development by the railroads; authorities in local, regional, state and Federal governments; and concerned members or groups of the general public.

I am in complete agreement with Chairman Tucker regarding the limited purpose of regulatory provisions and the need for master-planning for the future. But, we cannot initiate imaginative programs and develop long-range planning if one of the major components; namely, passenger rail service, is destroyed, train by train, through continuing and increasing discontinuance proceedings. Therefore, my legislation offers to the Congress, the Department of Transportation and the American public time for action before our passenger rail network is decimated beyond hope.

Mr. FRIEDEL. Thank you for your presentation Mr. Giaimo.

Mr. GIAIMO. Thank you for the opportunity, Mr. Chairman.

Mr. FRIEDEL. If there are no questions, our next witness will be Mr. Paul Rodgers, of the National Association of Railroad & Utilities Commissioners. Mr. Paul Rodgers.

STATEMENT OF PAUL RODGERS, GENERAL COUNSEL, NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. RODGERS. Mr. Chairman and members of the committee, my name is Paul Rodgers. I am the general counsel for the National Association of Railroad & Utilities Commissioners (NARUC).

The NARUC was founded in 1889. Within its membership are the governmental bodies of the 50 States and of the District of Columbia, Puerto Rico, and the Virgin Islands which regulate carriers and public utilities. The chief objective of the NARUC is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

The members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on H.R. 7004, which proposes an amendment to section 13a of the Interstate Commerce Act relative to passenger train discontinuance procedures.

We of the NARUC are vitally concerned with the development of a sound and adequate rail passenger service which will be responsive to the needs of a growing America.

We believe that the decline in the use of rail passenger service is merely a temporary episode in the Nation's transportation history.

¹ Financial Docket No. 23831, New York, New Haven & Hartford Railroad Co., Trustees, Discontinuance of All Interstate Passenger Trains, Apr. 5, 1966, pp. 159-160.

The crowded airways and clogged highways of America will not be equal to tomorrow's transportation tasks. Man has never developed a more efficient and economical means of mass transportation than the railroads.

We are impressed by statistics which show that even at the present low railroad speeds, one set of tracks can do the job of up to 20 lanes of highway and that in some areas, construction costs for highways can be as much as 16 times as high as those for railroad modernization that would provide the same service.

It seems to us quite important to make a determined effort to preserve rail transportation, which already holds exclusive rights-of-way through the heart of every major metropolitan center. Especially in urban areas where highway and airport costs reflect premium real estate values, it would be the worst kind of folly to allow our railroads to fall into disuse as passenger-carrying facilities.

Although highway transportation is a vital force in our system, it cannot adequately handle the mass transit burden. Not only are highway rights-of-way costs soaring in urban areas, but their continued acquisition will diminish substantially the property tax base on which local governments rely for support.

The most striking example of the automobile's usurpation of urban space is Los Angeles, where 30 percent of the downtown ground area is taken up by streets and expressways and 32.8 percent by parking lots, leaving only 37.2 percent for the business activity that is the life of the city.

Furthermore, the construction of more expressways simply generates more traffic which in turn renders the expressways outmoded before they are completed. I understand that auto proliferation has recently exceeded the national birth rate. Is it any wonder that the problem of air pollution grows more serious?

Air carriers are another valuable link in our transportation system. However, they, too, face severe limitations in the field of mass transit.

Commercial and private aircraft are filling our skies at an alarming rate. Commuting time between downtown and airport continues to lengthen across the Nation. And, of course, bad weather plays havoc with air schedules.

Obviously, air carriers cannot solve our growing transportation problems.

Our trend of rapid urbanization and population growth unmistakably foretell that America will have to return to the use of widespread rail passenger service.

Japan's Tokaido Line and the European railroads prove the feasibility and desirability of modern rail passenger systems. The development of such modern systems in this Nation will of course demand the best efforts of government and industry.

A simple amendment to section 13a of the Interstate Commerce Act will of course not solve our rail passenger problem. However, the proper amendment of section 13a will be an important tool in conserving a nucleus of rail passenger service to provide the foundation for expanding to meet tomorrow's transportation needs. If stations are closed, ticket selling and sales organizations disbanded, and extra tracks ripped up, it will be that much more difficult and expensive to revive train service later on.

We believe that H.R. 7004 as presently drawn will correct several deficiencies which now exist in section 13a procedures.

In particular, we support those features of H.R. 7004 which will:

(1) Authorize the Interstate Commerce Commission to require the continuance or restoration of operation of service subject to just and reasonable terms and conditions:

(2) Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;

(3) Provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service and that the continuation of the service would unduly burden interstate or foreign commerce; and

(4) Provide for judicial review of any ICC order entered after hearing under section 13a in the Federal district courts.

We believe that these features of H.R. 7004 are fair and will advance the public interest.

In addition, we recommend that section 13a be further amended in three respects.

First, we believe that the first paragraph of section 13a, which concerns trains crossing State borders, should be amended to provide that applications filed thereunder would be first heard and determined by a joint board of State commissioners when the proposed discontinuance involves not more than nine States. Such a joint board would be constituted in a manner similar to the joint boards which are now provided for in part II of the Interstate Commerce Act—49 U.S.C. 305.

The joint board procedure has worked successfully in motor carrier regulation and has significantly strengthened Federal-State relations. We believe it should be extended to section 13a.

Under our proposal, the section 13a joint board would apply the same legal standards for deciding railroad petitions as are now applied by the ICC. On appeal, the ICC could reverse or modify the decision of the joint board if it determined that the board failed to apply the proper legal standards on the basis of the findings of fact made by the board.

We believe that such an amendment would be a sound application of the concept of creative federalism, and would provide a salutary balance between regional and national needs regarding passenger train service. It would be consistent with President Johnson's goal of achieving a "total working partnership" between the Federal and State Governments as announced in this year's state of the Union message.

You may recall that section 13a was enacted in 1958 because some believed that some State commissions were too reluctant in permitting railroads to discontinue unprofitable passenger train services. However, it appears to us that the pendulum has now swung too far in the opposite direction.

The ICC, acting under section 13a, has permitted hundreds of trains to be discontinued in the past several years with the result that railroad passenger service is at best sparse throughout the country and in some areas has ceased to exist. During the past 5 years rail travel has decreased 16 percent and is now but one-fifth of the alltime peak set in the World War II year of 1944.

We believe that a joint board composed of State commissioners applying national standards will give a proper balance to regional and national needs in passenger train discontinuance cases. If the joint board errs in its decision, then of course the ICC would be free on appeal to correct any misapplication of national standards.

Second, we believe that section 13a should be amended to provide that a railroad shall not discontinue or change passenger train service unless it first gives notice to the public and to the Interstate Commerce Commission. Under the present law, a railroad is free to discontinue or change passenger train service without notice if the State for some reason does not require continuation of such service. We believe that such a loophole is inimical to the public welfare.

Third, we recommend that hearings under section 13a be made mandatory when requested by an aggrieved party. The discontinuance of passenger train service is much too important a matter to be permitted without a hearing when one is requested.

Summarizing, we believe that H.R. 7004 should be enacted into law with the three amendments which I have just described.

In closing, I wish to invite the members of this committee to call upon me or the other members of the Washington staff of the NARUC whenever you need information concerning State regulation.

Thank you for your attention.

Mr. FRIEDEL. Thank you very much, Mr. Rodgers, for a very clear, precise statement.

Mr. Dingell, are there any questions?

Mr. DINGELL. No questions, Mr. Chairman. Thank you.

Mr. FRIEDEL. Mr. Devine, have you any questions?

Mr. DEVINE. The only thing I would bring up, Mr. Rodgers, is as to page 4 of your statement, paragraph No. 3. We got into a little colloquy yesterday with the Chairman of the Interstate Commerce Commission about the burden of proof. Do you have any preconceived notions about whether the burden of proof should rest on the carrier as a burden on interstate commerce?

Mr. RODGERS. I think throughout our entire system of jurisprudence in this country the burden of proof traditionally falls on the petitioner or mover. I think this is particularly true in this case because the railroad has the statistics to show the financial effect of operation.

Mr. DEVINE. Could you give me an example of how continuation of service would unduly burden interstate commerce? It is not discontinuance. It is continuation of the service would unduly burden interstate commerce. I would like to have an example of that if you could suggest one.

Mr. RODGERS. I am sure that your thinking on examples would be as good or better than mine. I would think that any service which is grossly unprofitable would probably be a burden on interstate commerce. I don't think that is the only thing you would look at. You would have to weigh several other considerations.

Mr. DEVINE. I would think that that would be a burden on the carrier more than on interstate commerce as such.

Mr. RODGERS. I think the standings would be pretty much the same.

Mr. DEVINE. Thank you.

Mr. FRIEDEL. Thank you, Mr. Rodgers.

Mr. RODGERS. Thank you.

Mr. DINGELL. Mr. Chairman, before Mr. Rodgers leaves here. You made some suggestions on amendments at the bottom of page 4 and top of page 5 of your statement. You suggest that where trains cross State borders there should be amendment to provide that applications filed there would be first heard and filed before a joint board of State commissioners when proposed discontinuance involves not more than nine States.

You said the joint board would be constituted in a manner similar to joint boards which are now provided for in part II of the Interstate Commerce Act.

Is there any provision in law for establishment of joint boards by the several States to do the work of the Interstate Commerce Commission?

Mr. RODGERS. No, the joint board proceeding would have to be established by Congress.

Mr. DINGELL. This is a novel suggestion. There is no precedent in the law for this, is there?

Mr. RODGERS. Yes, sir. There is a precedent in part II of the Interstate Commerce Act. Joint boards are used in motor carrier regulation by the ICC.

Mr. DINGELL. But what you are going to do by this is impose on railroads the responsibility of going through not one board but two boards, first the joint board, and then go through the ICC; am I correct?

Mr. RODGERS. I don't think it would actually make it that procedure. It would give the State commissions who are familiar with the regional needs in the area a chance to present their needs first. There would then be appeal to the ICC. In handling these the proposal has two layers of procedure as well.

Also, I think by this groundwork being done by the State commissions, it would relieve the ICC of some of the burden of this task by permitting it to sit in an appellate capacity.

Mr. DINGELL. Is your purpose here just to have the views of the States before the ICC?

Mr. RODGERS. Yes; and to render the initial decision.

Mr. DINGELL. How does this joint board procedure work in motor carrier regulation?

Mr. RODGERS. Well, a representative for each of the States involved. As I recall, I think it is up to four States or maybe it is more, but on request for motor carrier authority or for abandonment of lines, and so forth, the ICC can refer these matters to a joint board.

Mr. DINGELL. You say it may?

Mr. RODGERS. Yes.

Mr. DINGELL. Is there a mandatory requirement?

Mr. RODGERS. I think where there is a minimum of three it is mandatory. I don't have the statute before me, but the statute is section 305 of volume 49 of the United States Code. The citation is given at the top of page 5.

Mr. DINGELL. What is the reason for this magic number of nine States, when the proposed discontinuance involves not more than nine States? What is the significance of nine States? Why would it be desirable in seven, eight, or nine States, but not in 10 States?

Mr. RODGERS. You have to weigh, one, if the number gets too large, the procedure becomes too bulky. We think nine is reasonable because the ICC itself is composed of 11 members. So I assume that 11 is not too cumbersome.

It is our opinion that that would cover about every passenger discontinuance case that would arise in the country.

Mr. DINGELL. Effectively, what you are doing is covering every passenger discontinuance rather than fix some figure which would be arbitrary in number but which would be fixed on convenience; am I correct in this?

Mr. RODGERS. I don't follow the question. What we are trying to do by the nine is to cover all the passenger train discontinuance cases or substantially all of them.

As I mentioned with the analogy with the ICC membership, we do not think that nine in a nine-member joint board would be unduly cumbersome.

Mr. DINGELL. You say, "Under our proposal, the section 13a joint board would apply the same legal standards for deciding railroad petitions as are now applied by the ICC."

I am trying to see how this would particularly change the result that the ICC would arrive at. Do you have any reason to believe that the joint board composed of nine different State commissioners representing different States would arrive at a different conclusion than would the ICC on the basis of the same set of facts in the same case?

Mr. RODGERS. I would think that there would be a possibility of that occurring. As you know, prior to 1958, the State commissions handled this job completely. It was turned over to the ICC because many of the State commissions or some of them were too reluctant.

Now, by organizing this joint board of State commissioners, it would throw this matter back for initial decision to the grassroots. You would then have a body of State commissioners, and the expertise accompanying them, that would be very much aware of the regional needs of the economy and how much this passenger service means to that particular area of the country, and we think that that would be a favorable forum to try these matters in because I think the State commissioners would be better in touch with the local situation and could balance this better.

Now, if the State commissioners went too far, if they misapplied the national standards, and of course they would apply the same standards as the ICC, the ICC could correct that on appeal; but we think that this grassroots approach initially would be beneficial to the administration of 13a procedures.

Mr. DINGELL. So that our positions are relatively clear, I would like to remind you that I opposed the provision for discontinuance in 1958 on the ground that it was a very bad thing. I don't think we ought to terminate passenger service so lightly. I am troubled here that what you are doing is, rather than setting in motion an expedited procedure to arrive at a decision, just putting more procedural roadblocks, rather than attacking the fundamental problem.

If there is reason to think that the ICC is not doing the job with regard to discontinuance, perhaps, maybe this committee ought to

take a look at the actions by the ICC in terms of termination of rail service.

Now, do you make any allegation that rail service has been too lightly terminated in the passenger sector by the ICC?

Mr. RODGERS. Well, I am not here to criticize the ICC.

Mr. DINGELL. If you have a criticism, I believe it is the place of this committee to ascertain it. If you feel they are not doing the job, I would like to hear from you on this because if they are not, we will find out why not.

Mr. RODGERS. Of course, we think that the ICC in some cases, and I don't have any particular in mind, but there have been a lot of trains taken off since the ICC has taken the responsibility.

Mr. DINGELL. I don't like this any better than you do, but if you feel that they are not applying proper standards, perhaps we ought to change the standards rather than put in more procedural impediments.

Railroads are very happy to change a train they don't like through more procedure. If the ICC is not doing the job in terms of reviewing these discontinuances, or is allowing discontinuance of passenger trains that should be continued, then this committee has a responsibility to go into it; but as far as imposing additional procedural restrictions on the ICC, this doesn't strike me as being a good way.

I think you will agree that it would be much more important for this committee to go into this on the basis of substance rather than procedure; am I correct?

Mr. RODGERS. I think this would affect substance.

Mr. DINGELL. Mr. Chairman, I know you are busy, and I don't want to get into this, but I think this is an important point, and we ought to have a clear understanding of what we are doing.

Mr. Rodgers, the chairman has indicated that I should discontinue my questions.

Mr. RODGERS. I think one response: As to the procedural problem about extending the length of time, I think that could be dealt with by writing time locks into the standard by saying that this joint board must be organized and must act in so many days. We are not here to launch any extreme attacks against the ICC. I think the ICC is dedicated and doing a good job. We think, though, that there should be a balancing of these regional national needs.

We think that if the State commissions get the first crack at this and render the initial decision, it would add more balance to the solution of this problem.

Mr. DINGELL. Thank you very much.

Mr. FRIEDEL. Mr. Pickle, any questions?

Mr. PICKLE. Mr. Chairman, I have just now come to the meeting and have not had a chance to read the gentleman's remarks. I have no questions at this time.

Mr. FRIEDEL. All right. Thank you very much.

Mr. RODGERS. Thank you.

Mr. FRIEDEL. I received a telegram from the Iowa State Commerce Commission signed by Dick A. Witt, chairman; Bernard J. Martin, commissioner; Frank B. Means, commissioner.

I would like to have this inserted in the record at this point.

(The telegram referred to follows:)

[Telegram]

DES MOINES, IOWA,
April 21, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics, House of Representatives, Washington, D.C.:

This telegram is being submitted in connection with the forthcoming public hearing on H.R. 7004 relative to changes in section 13a of the Interstate Commerce Act. The Iowa State Commerce Commission wholeheartedly endorses the NARUC railroad problems, committee's support of the recommendations of the ICC and the committee's advocacy of establishment of the joint board of procedure in passenger train discontinuance cases. It is respectfully requested that the contents of this telegram be brought to the attention of your committee at the public hearing and inserted in the record.

DICK A. WITT, *Chairman.*
BERNARD J. MARTIN, *Commissioner.*
FRANK B. MEANS, *Commissioner.*

Mr. FRIEDEL. Our next witness will be Mr. Milton J. Shapp, Philadelphia, Pa.

Mr. Shapp, you may proceed in whatever way you want. If you want to summarize your statement or read the whole statement, it is satisfactory. If you want to summarize, the whole statement will be included in the record.

STATEMENT OF MILTON J. SHAPP, PHILADELPHIA, PA.; ACCOMPANIED BY GORDON P. MacDOUGALL, COUNSEL

Mr. SHAPP. I greatly appreciate this opportunity, Mr. Chairman, of appearing before your committee to state my views on the proposed bills.

First I would like to introduce my attorney, Mr. Gordon MacDougall, who is my legal counsel. He, too, will be available to answer any questions that may pertain to the legal points.

I am Milton J. Shapp with offices at 1424 Walnut Street, Philadelphia, Pa., 19102. I appear here today with some suggestions relative to H.R. 7004 and companion bills. I welcome the opportunity you have extended me to express my views on the railroad passenger train situation. I am accompanied by Attorney General Gordon P. MacDougall of Washington, D.C., who has assisted me in certain legal portions of this statement and who has acted as my counsel in various transportation matters.

In most modern nations of the world, transportation leaders are busy planning new ways to improve and to expand service to the public. It is ironic that in the most advanced nation of all—the United States of America—railroad leaders are bent upon curtailing service to the public.

I am in accord with most of the provisions embraced in these bills, but I urge caution as to some of them.

H.R. 7004, introduced by Chairman Staggers with the endorsement of the Interstate Commerce Commission would (1) increase from 4 to 7 months the period within which the Commission could suspend a discontinuance notice pending investigation, (2) permit the Commission to issue "conditional" decisions, and (3) clarify the right to judicial review.

H.R. 260, introduced by Representative Bingham of New York, would specifically require the Commission to consider financial assistance available pursuant to the Urban Mass Transportation Act of 1964 or any other law for the purpose of continuing passenger operations and the effort of the railroad to avail itself of such assistance.

H.R. 519, introduced by Representative Dwyer of New Jersey, would supplement the present provisions so as to require the continuance of trains where required by the public convenience and necessity that involve railroads eligible for proposed local, State, regional or Federal programs which would directly affect the operation or service of the train and substantially benefit therefrom. And here is a very important point of Representative Dwyer's bill—or that involve railroads that are parties to a proposed merger from which they could be expected to benefit.

My present view on these bills is to favor H.R. 7004 except for the added "conditional" power which would be given the Interstate Commerce Commission; I am in complete accord with H.R. 260; I am in accord with H.R. 519 except for the provision therein which would relate railroad merger proceedings to passenger train discontinuance proceedings. The next two pages take up the efforts I have made in the past 2 years in various railroad matters.

INVOLVEMENT WITH PASSENGER TRAINS

I am vitally concerned with railroads and passenger trains as a citizen of Pennsylvania, as a stockholder of the Pennsylvania Railroad Co. (PRR), and as a patron of both commuter and intercity railroad passenger service.

I have become familiar with the workings of section 13a of the Interstate Commerce Act as a witness and as a party to several ICC proceedings.

I testified on February 17, 1967, at Williamsport, Pa., in finance docket No. 24398, Pennsylvania Railroad Co. discontinuance of trains Nos. 570 and 571 between Buffalo, N.Y., and Baltimore, Md. This proceeding involves the last remaining daylight PRR train service between Baltimore, Md., and Buffalo, N.Y., serving Pennsylvania cities such as York, Harrisburg, Sunbury, Williamsport, Lock Haven, Emporium, Renovo, and Port Allegany, among others. If discontinuance is permitted, there will remain only overnight passenger train service.

I filed a brief with the ICC urging the continued operation of these trains as did the State regulatory commissions of Maryland, Pennsylvania, and New York.

I testified and am a full participant in finance docket No. 21510, popularly termed the "inclusion" case whereby Erie-Lackawanna Railroad Co. (E-L), the Delaware & Hudson Railroad Co. (D. & H.) and Boston & Maine Railroad (B. & M.) defensively seek to be absorbed by the Norfolk & Western Railway Co. (N. & W.) so as to reduce the injury facing them when and if the Penn-Central merger should ever come to fruition.

This "inclusion" case is intimately related to the discontinuance of the Erie-Lackawanna's Phoebe Snow passenger train which was authorized by former Commissioner Webb by order served November 9,

1966, in finance docket No. 24205. The Phoebe Snow operated between New York and Chicago, serving the Pennsylvania communities of East Stroudsburg, Cresco, Pocono Summit, Scranton, Corry, and Meadville.

The *Phoebe Snow* case has been pending reconsideration since December 9, 1966, and the "inclusion" case to which it is related was orally argued before the Commission on April 13, 1967.

Although Phoebe Snow, a daylight train, ran at a profit in recent years and received the enthusiastic support of its patrons, Commissioner Webb found in his report served November 9, 1966, that discontinuance might save E-L about \$1.4 million annually because much of the Phoebe Snow nonpassenger business could be handled on other trains. This alleged saving played an important role in his recommended report served December 22, 1966, in the "inclusion" case, since it made E-L a more attractive partner for acquisition by N. & W.

I testified and am a full participant in finance docket No. 21989, the proposed Penn-Central merger which the U.S. Supreme Court, on March 27, 1967, remanded back to the ICC for further proceedings. This proposed merger is intimately tied to New Haven Railroad (NH) passenger train service.

Although the hearing examiners in the *Penn-Central* case strongly opposed inclusion of NY passenger operations in the proposed merger as "a persistent and substantial burden," the Commission found that the Penn-Central merger did not have enough in its favor without the benefit of including NH passenger operations.

Accordingly, it found that the Penn-Central merger would not be consistent with the public interest without inclusion of NH passenger service. (327 ICC 475, 524.)

The Commission issued its report in the New Haven passenger discontinuance proceeding (finance doc. No. 23831) simultaneously on April 27, 1966, with its decision in the *Penn-Central* merger case. In point of fact, the ICC found very little else in favor of the Penn-Central merger. This is a far cry from the original justification for the merger as advanced by PRR and NYC.

I am a party to finance docket No. 23832, the proposed merger of the Norfolk & Western and Chesapeake & Ohio railroads. This merger is advanced as defensive in face of the Penn-Central merger and the N. & W.-C. & O. merger is equal in size to the proposed Penn-Central merger.

Practically on the eve of the opening of hearings, the Central Railroad Co. of New Jersey went into reorganization. I can foresee that passenger operations of the Jersey Central might be a vehicle for approval of the N. & W.-C. & O. merger, and the Jersey Central has petitioned for inclusion in the N. & W.-C. & O. merger. This would be the New Haven story all over again.

POSITION ON PASSENGER TRAIN SERVICE

I support the basic premise of the 1958 legislation enacting the present section 13a of the Interstate Commerce Act. Shippers of freight should not be obligated to unduly subsidize passenger operations which are an undue drain upon interstate commerce and which are not required by the public convenience and necessity.

Freight rates and service are crucially important to the commerce of a State or a region. Truly burdensome passenger service which is nevertheless essential should be underwritten by the local, State, or regional governmental organizations in cooperation and perhaps joint participation with the executive agencies of the Federal Government.

The 1958 amendment was passed upon a record showing a far different financial picture for the eastern railroads than exists today. For example, consolidated Pennsylvania Railroad Co. net income was \$11.8 million in 1958 and further dropped to \$1.1 million in 1960. However, net income has risen dramatically in each subsequent year and reached \$90.3 million for the year 1966. Therefore, what constitutes an "undue" burden today should be significantly different from the years 1958-60. Of course, it is obvious that this changes from year to year.

On the other hand, I strongly support railroad passenger service and prefer to ride trains when my schedule permits and when the trains are clean. I urge many of the modifications for section 13a proposed in the legislation under consideration by your committee.

I point out here, by the way, with regard to clean trains, that the railroad industry in America is the only industry with which I am familiar, and I have been a businessman for many, many years, that when it faces more competition it reduces service and raises the prices for that service, and then wonders why it continues to lose business. If any other industry ran itself in the same way, it would go broke.

FAILING OF THE INTERSTATE COMMERCE COMMISSION UNDER PRESENT POLICY

Before getting into my comments for strengthening the true purpose of section 13a, I wish to state my view that the ICC is not administering the passenger train policy established by Congress in 1958.

I direct your attention specifically to railroad mergers, where the Commission is using passenger service as the principal justification for a series of railroad mergers. H.R. 519 would merely bring this fact more into the open and make case law into statutory policy. Furthermore, and even apart from mergers, I detect a possible new policy from the speech of Commissioner Tucker given April 17, 1967, which might spell the end of long-haul daylight passenger train runs.

Railroad mergers: Since it is my understanding that it is the declared policy of Congress not to require freight shippers to subsidize unduly burdensome passenger service, it follows that the Commission should not circumvent that policy by resort to a railroad unification proceeding arising under section 5(2) of the Interstate Commerce Act.

If the Penn-Central merger is bad, why does it become consistent with the public interest by a takeover of New Haven passenger operations? This is not only a subsidization of passenger service by shippers of freight, but requires that southern New England and the affluent Fairfield County, Conn., commuters be bailed out by Pennsylvania, West Virginia, Kentucky, Tennessee, and other States in the Appalachian region. The States of Connecticut, Massachusetts, and Rhode Island complained about their payments to the New Haven Railroad in their joint brief to the U.S. Supreme Court in the *Penn-Central* merger case filed December 30, 1966:

These states, as already pointed out in the discussion of their interest, *supra*, are spending vast sums of money to support the New Haven, a privately owned

utility in which they have no proprietary interest. This money must be diverted from equally pressing needs in the areas of education, health, welfare, urban renewal, cultural enrichment and the myriad other services which the states help support.

This is true for the States of Maryland, West Virginia, Pennsylvania, and others. And why should we in these States be called upon to subsidize the operations of the New Haven Railroad serving just the States in New England?

The longer merger is delayed, the longer these payments must continue, so that what was begun as interim emergency assistance becomes an unending burden.

The threat of a Penn-Central merger has caused the Erie-Lackawanna to seek protection by inclusion in the N. & W. system. In this situation, discontinuance of the Phoebe Snow facilitates inclusion.

Representative Dwyer's bill, H.R. 519, frankly puts the issue of railroad mergers and passenger service squarely before you. I urge the merger provision of H.R. 519 not be adopted and, further, that this committee in its report declare a firm policy against the use of railroad mergers to either bail out or kill passenger service.

The problem of mixing railroad mergers and passenger discontinuance proceedings does not appear to have arisen prior to the year 1958 because the State regulatory agencies had jurisdiction over passenger train service and the ICC had jurisdiction over railroad unifications.

Section 13a has placed the two types of cases in the hands of the same Federal agency. I think a good argument might be made for either returning the passenger train power to the States or else terminating the power of the ICC to grant antitrust immunity in railroad unification matters.

The present practice of the Commission operates unfairly against rural areas, mining areas, and those cities which have taken steps toward a solution of their passenger train problems. The Penn-Central merger would adversely affect Pennsylvania because traffic moving between Youngstown and Columbus, Ohio, on the west, and Linden, N.J., on the east, would be diverted from the Pennsylvania Railroad main line across Pennsylvania in favor of the New York Central route across New York State running between Buffalo and Albany, N.Y.

This proposed merger has triggered the "inclusion" case which will be adverse to Pennsylvania apart from the Phoebe Snow discontinuance. The same Penn-Central merger has triggered C. & O.-B. & O. to control the Western Maryland Railway, which unification would tear up much of the Western Maryland track, running through Maryland and parts of Pennsylvania, in favor of the B. & O. route and have a substantial adverse impact upon Elkins, W. Va., and Hagerstown, Md., in particular.

And now comes another proposal—that of N. & W.-C. & O. to defend themselves against the Penn-Central merger. The New Haven transported about 5 billion ton-miles in 1966, whereas Penn-Central carried over 92 billion ton-miles. The 5 billion is the tail wagging the dog, not only of the 92 billion of Penn-Central but the entire railroad system in the eastern district.

Should all of these railroad consolidations, with the resulting loss of competition, tearing up of tracks, reduction in facilities, and so forth, take place under section 5(2) of the act on the alleged ground

of preserving New Haven passenger service, despite the policy expressed in section 13a?

Daylight trains: Commissioner Tucker, in his April 17, 1967, speech to the Western Railway Club at Chicago, Ill., called for a tough policy with respect to the future of passenger trains in the years ahead:

In implementing the concept of an integrated national rail passenger system, passenger trains should not be continued in operation merely because they are a convenience to the traveling public. A tougher and more realistic standard is needed. Under any standard, the Nation will need, by the 1970's at least, a strong network of high-speed, medium-range passenger trains—of the Tokaido line genre—supplemented by a small but viable core of long-haul overnight services between emerging megalopolitan communities, and to and from primary sites of national historic interest.

Commissioner Tucker is overlooking the fact that continuation of passenger trains is absolutely essential if America is to grow in the future. We cannot carry the full transportation load on highways and through the air.

In terms of planning for tomorrow, we need have no hesitancy in terminating those interstate or intrastate passenger trains which are not demonstrably needed in either the short or long term.

I am disturbed by what the above may mean for present long-haul daylight passenger train service. Will the Commission use the increased power of H.R. 7004 to "condition" discontinuance petitions that will hamstring protestants to a daylight passenger train discontinuance proceeding?

Throughout the rest of the world, in Europe and even in parts of Latin America, they are building more railroad service rather than trying to terminate it.

We had a very interesting situation develop recently in a train discontinuance case, that of the Pennsylvania trying to eliminate the daylight trains between Buffalo and Baltimore. Hearings were held in Harrisburg, Williamsport, Olean, and Buffalo, and some 40 or 50 or 60 witnesses appeared at these hearings.

The Pennsylvania Railroad presented evidence showing that they were losing money on the entire run between Baltimore and Buffalo. Witnesses in opposition to the discontinuance submitted evidence to show that the figures for the Pennsylvania Railroad were not correct, and the Pennsy admitted that they were in fact making a profit on the entire run.

Then at the very end of the hearings, in fact during rebuttal, they asked permission of the Commission to put in a new case and to discontinue the train service between Harrisburg and Buffalo instead.

None of the witnesses who had testified against the proposed action were even aware that they were going to make this change. This necessitated going back into the record and digging out the financial information to show that that portion of the service from Harrisburg to Buffalo was still operating at a profit.

At the close of the scheduled hearings during rebuttal evidence, PRR introduced a new revenue-and-cost study covering only the Harrisburg-Buffalo segment of the run. Its counsel stated that the Commission had the power to grant a partial discontinuance of the daylight trains over the 312-mile segment between Harrisburg and Buffalo, while retaining the 83-mile run between Baltimore and Har-

risburg. The hearing examiner expressed doubt on the matter, but the Commission on March 3, 1967, upheld the right of PRR to introduce this evidence, which completely changed the "rules of the game." A new round of hearings commenced which lasted for a longer period than PRR's initial case. However, since these further hearings were held in Washington, D.C., it was impossible to recall the local witnesses who had testified in Harrisburg, Williamsport, Olean, and Buffalo so as to adduce testimony attacking the new proposal. In essence, the umpires were permitting one team to play football on their home field whereas everyone else had come prepared to play baseball as originally announced. I think this was an error but the witnesses if they were going to testify against it now would all have to come to Washington and it made it more difficult for us to oppose the discontinuance of this train.

I think that that was really an error on the part of the ICC but that will have to be determined, of course, in the future.

This March 3 date also has some significance because only the day before the Commission released its justification in support of H.R. 7004 and companion bill, S. 1175. The Commission stated in its March 2 press release:

One section of the bill would authorize the continuance or restoration of operation of service, subject to terms and conditions that might be found just and reasonable. Under the current statute, the Commission has only the option to permit the discontinuance to go into effect or to require the service to be continued. The Commission at present has no power to impose any changes or other conditions under which the service should be continued.

Senator Magnuson stated in introducing S. 1175 on March 3, 1967:

Mr. MAGNUSON. Mr. President, I think the real importance of the bill is that the Interstate Commerce Commission heretofore had to say yes or no on an application. They will now be able to say that the service cannot be discontinued for a certain period of time or that the service can be curtailed or that there can be a consolidation of service.

The bill would provide flexibility and would be in the public interest. (Congressional Record, p. S3027.)

In view of the fact that the Commission has yet to present any examples of passenger train cases which might be decided differently, had it the power to "condition" its decisions, I question whether it is advisable to give the Commission such additional powers. I have an open mind but cannot, in the absence of information from the Commission, support its request for additional power.

MOST OF THE PROVISIONS OF THESE BILLS ARE DESIRABLE

As already pointed out herein, the added power requested by the Commission to "condition" a discontinuance order does not appear to have been justified, and I believe the Commission is circumventing the policy of section 13a in its railroad merger decisions. However, most of the other provisions of H.R. 7004 seem desirable. These are (1) an extension of the 4-month investigation period to 7 months, and (2) clarifying the right to judicial review.

In connection with judicial review, uncertainty has arisen as to whether a protestant must first petition the Commission for reconsideration of an order authorizing discontinuance and have a determination thereof prior to the commencement of judicial review. The Commission, on August 3, 1966, took the position before the Senate

Commerce Committee in hearings on Senate Resolution 284 that judicial review may not be invoked prior to a ruling by the agency on petitions for reconsideration. (This was also the Commission's position in *Public Service Board of the State of Vermont v. United States* (C.A. 4611, U.S.D.C.-D. Vt., 1966). I understand that the Commission has since adopted a neutral policy on the question whether a court, relying upon its inherent equity power, can issue an injunction to preserve the status quo, pendente lite, even though a "final" order has not been issued by the Commission. (*State of Vermont v. Boston & Maine*, C.A. 4799, U.S.D.C.-D. Vt., pending.)

It might be possible for the Commission to remove this uncertainty (*Public Service Board of State of Vermont v. United States*, 87 S. Ct. 3 (1966)), now by amending section 1.101 (a) (2) of its General Rules of Practice, so as to make orders under section 13a administratively final when initially rendered by division 3 of the Commission. This might clarify the right of effective judicial review at a stage where it could be possible to obtain an interlocutory injunction so as to keep a given passenger train in operation pending judicial review. Most passenger discontinuance cases are decided by division 3 of the Commission, and orders of division 3 are ordinarily ripe for judicial review except where an examiner's report has been omitted.

The situation facing protestants in a discontinuance cases is that the order of division 3 is released only a day or two prior to the expiration of the 4-month statutory period and has not been the subject of a prior examiner's report. If discontinuance is authorized, a protestant should have a clear right to institute judicial review procedures at once. The difficulty is that since an examiner's report is omitted in a section 13a case the initial decision of division 3 is not final for review purposes by section 1.101 of the Commission's rules. An amendment of section 1.101 might clarify the right of a protestant to seek judicial review, obtain an interlocutory injunction, and yet not deprive the Commission of the opportunity to revise its order upon reconsideration. It is, of course, difficult to restore a passenger train and expect the former level of patronage if the train has been discontinued for a substantial period of time. The additional 2-month period of H.R. 7004 beyond the statutory 7 months might provide the answer if the Commission would positively act within such period.

As mentioned elsewhere in my statement, I am in accord with the purposes of H.R. 260 and H.R. 519, except for the merger provisions of the latter.

CERTAIN ADDITIONAL MATTERS MIGHT PROPERLY BE CONSIDERED BY THIS COMMITTEE

On March 27, 1967 the U.S. Supreme Court denied certiorari in No. 1066, *The Pennsylvania Public Utility Commission et al. v. The Pennsylvania Railroad Company*. The background of this proceeding is that the Pennsylvania Public Utility Commission had denied a request of the PRR to discontinue the Pennsylvania portion of its Harrisburg, Pa.-Hagerstown, Md., passenger train. Thereafter PRR filed a petition with the ICC under section 13a(1) to discontinue the entire interstate operation. The ICC failed to institute an investigation with the opportunity for hearings, so that the discontinuance became effective without suspension. This case brings to light the issue of permitting

discontinuance of trains without the opportunity for a hearing, which is the situation today if the ICC fails to suspend the discontinuance notice. In view of the fact that section 13a has been on the books for almost nine years, I think railroads should have long since taken steps to terminate any really flagrantly burdensome trains. Accordingly, I support whatever legislation may be proposed to require a hearing in all future discontinuance proceedings.

There is, I believe, a technical ambiguity in H.R. 7004 with respect to the burden of proof in a discontinuance case. Although the railroad would have the burden of establishing that public convenience and necessity permit the discontinuance and that the service would unduly burden interstate commerce, the findings required by H.R. 7004 would be in a negative form.

The railway labor organizations have repeatedly urged that certain forms of protection be provided employees displaced upon the discontinuance of passenger trains. I think that your committee should give careful consideration to the labor protective problem in its deliberations.

I wish to sincerely thank this committee for the opportunity afforded me to present this statement on the problem of railroad passenger train service.

Mr. FRIEDEL. I want to thank you, Mr. Shapp, for your statement. Although I don't agree with everything you said I want to compliment you for your service as a public-spirited citizen.

Mr. Dingell.

Mr. DINGELL. I have no questions, Mr. Chairman, except to thank Mr. Shapp.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Shapp. Are you appearing as a member of the public or a stockholder or not representing any organization?

Mr. SHAPP. I am representing myself, sir, and have been for some 5 years in my battle against the merger of the Pennsylvania Central and some of these other mergers.

Mr. DEVINE. You made one statement where you said that the railroad industry is the only one that when competition gets tough they reduce service. What was your statement?

Mr. SHAPP. They reduce service and increase prices and then wonder why they continue to lose more business. In fact, they are in a better position than that if they want to discontinue a train because, as they did in 1961, as they did in the train between Buffalo and Baltimore, and show that they are losing money, show how their trend is going down and in that case it was denied but then by reducing the service, operating dirty cars, using railroad stations that have been unpainted since I guess the Civil War, no plumbing that works in these stations and so on and so forth, they do everything they possibly can to discourage the public from riding the trains and come back a few years later and say, "See, we told you that the number of riders would decrease." They have the power to look into the future and by adopting negative policies and service more or less make their crystal ball observations come true if they want to.

Mr. DEVINE. Thank you.

Mr. SHAPP. Thank you, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. Shapp.

Mr. SHAPP. Thank you very much.

Mr. FRIEDEL. Our next witness is Mr. Anthony Haswell, attorney from Chicago, Ill.

Mr. Haswell, you may proceed.

STATEMENT OF ANTHONY HASWELL, ATTORNEY, CHICAGO, ILL.

Mr. HASWELL. My name is Anthony Haswell. I am an attorney at law with offices at 77 West Washington Street, Chicago, Ill. I appear here today in support of H.R. 7004. My interest is that of a railroad passenger.

I make periodic use of passenger trains in my own travels. This service is useful and convenient to me. As a citizen, I have a further interest in its preservation as a valuable national asset, which fulfills a substantial demand for transportation in peacetime and is a vital need in war or national emergency. I believe that enactment of H.R. 7004 will be of material assistance in preserving and improving passenger service.

Unless action is taken now to strengthen controls over train discontinuances, much of present rail passenger service will be up for abandonment in the next few years. The president of the Chesapeake & Ohio has stated that his company would get out of the passenger business as fast as possible if the regulatory authorities would agree. The Southern Pacific has made clear that it would do likewise. The Southern Pacific, the Chicago & North Western, and perhaps others have alleged that railroads no longer have a public utility obligation to run intercity passenger trains. While the ICC refused to permit the discontinuance of the California Zephyr, another attempt to do so could be made within the next 12 months. Last year's proposal of the New York Central to discontinue its through passenger service between the East and the Midwest, including the famed 20th Century Limited, could be revived at any time.

Before discussing the specifics of H.R. 7004, I will try to define the kinds of railroad passenger service which I believe are worth keeping and improving.

1. *Commuter service.*—Anyone who has fought rush-hour traffic on the expressways of big cities knows how vital rail commuter service is. Indeed, were it to be discontinued, a number of cities would become virtual "ghost towns." Nevertheless, there have been several attempts or threatened attempts by railroads to discontinue commuter service.

2. *High-speed intercity service.*—In a very short time, high-speed train service between big cities will be as essential as commuter service. Commonsense tells us that the institution of such service will be facilitated if in the meanwhile the present trains are retained. If stations are closed, ticket selling and sales organizations disbanded, and extra tracks ripped up, it will be that much more difficult and expensive to revive train service later on. Yet in a number of instances, passenger service either has been discontinued or is proposed to be discontinued between points which might well need high-speed service in the future.

3. *Other kinds of useful passenger service.*—Aside from commuter service and high-speed service in densely populated areas, I believe that there is and will continue to be a useful and valuable place for rail passenger service in a number of other markets, even though it may not be an essential need:

(a) Long-distance service for tourists: The steamship lines used to promote business by proclaiming that "getting there is half the fun." Such roads as the Santa Fe, Union Pacific, Great Northern, Northern Pacific, Burlington, Illinois Central, and Coast Line offer service that makes this claim true for rail travel as well, and as a result are continuing to fill their long-distance trains. As vacation time is increased for more and more people, there is less incentive for them to get where they are going by the fastest possible means. The picture windows and domes of a good train offer an ideal way to see our country in comfort. The train is faster, more relaxing, and safer than automobile, and of course much closer to the scenery than the airplane. These types of trains which complete their runs overnight are still attractive to businessmen as an alternative to air travel.

(b) Second is short to medium distance day service (100 to 500 miles): Even apart from future potential for high-speed service in some areas, trains as they exist now, continue to offer sufficient advantages over other modes to justify their continuation and improvement. The train is roomier, more comfortable, and generally faster than the bus; cheaper and more relaxing than the airplane; and more relaxing, safer and often faster than automobile.

(c) Group movements, specials, and excursions: The larger the group, the more efficient and economical the passenger train becomes in comparison to other forms of transportation. Additional cars can be added at very little increased direct expense. Ski trains to the north and "show" trains to New York are only two of the many types of popular excursions operated each year. Special trains are an appealing alternative to fighting the crowds on the highway that inevitably appear whenever there is a big sports event or other affair attracting large numbers of people to one location. Such trains benefit not only those who use them, but also the others who have no choice but to be on the highway. The capability of economical movement of train-loads of people is why trains are so suited for handling seasonal and holiday travel peaks, and why they would be so valuable in time of war or national emergency.

The specific changes that will be made in the present law by H.R. 7004 have already been discussed by previous witnesses. In my opinion, these changes will enable the Commission to more adequately appraise and evaluate the public interest factor in passing on individual cases coming before it. The proposed provision relating to reasonable terms and conditions should be particularly helpful. The ICC would have some flexibility in issuing its orders, instead of being limited to saying either yes or no at present. For instance, the Commission could allow discontinuance of some trains over a given route provided that those which remained were speeded up or otherwise improved. Or it could permit discontinuance of part of a train on condition that through service or a direct connection be established with the portion that remained, either with other trains of the same railroad or by coordination with other railroads.

But beyond its beneficial effect in specific cases, I believe that this legislation will in two respects bring about an improvement in the total picture of rail passenger service. First, passage of this bill will be a clear message from the Congress to the railroad industry that useful passenger service must be continued and improved. Once this

message sinks in, I am confident that there will be a much more positive approach to passenger business on the part of the industry than there is now. Were the railroads to become convinced that they cannot go out of the passenger business, service would improve substantially, because it would then be in their best interest to attract more patronage. Continued poor service would only increase losses and tarnish the companies' public image. I point out that the Canadian National Railway was pursuing a policy of withdrawal from the passenger business until its management became convinced that this would not be permitted. Passenger policy was reevaluated and reversed completely, with the result that today the Canadian National Service is the envy of many people in this country.

Some time ago Chairman Ben W. Heineman, of the Chicago & North Western was asked why his company had spent so much money and effort to improve its commuter service. He replied:

"We did not think we could get out of the business—politically, it was impossible, and it would have caused too much ill will. Since we were going to stay in the business, we concluded we should run it as well as possible."

I believe that the same result will follow as to intercity passenger service once management reaches the same conclusions.

A second beneficial effect of the proposed legislation will be, by slowing down the pace of discontinuances, to allow sufficient time for the development of positive governmental programs to alleviate the economic problems which beset much of present rail passenger service. One possibility is a national passenger car corporation, which could acquire, rebuild, repair and maintain much of the present passenger rolling stock, and eventually provide new equipment, operate joint passenger terminals, and so forth. But such things cannot be done overnight, and if many more trains are discontinued, the question will be academic. I might add that passage of H.R. 7004 would also signify the concern of the Congress to the new Department of Transportation, and thus encourage the Department to provide for train service in its planning for an overall transportation policy.

I repeat that I support the bill as presently drafted, as an improvement over the existing law. However, I submit the following additional suggestions to this committee for strengthening the law further:

(1) The existing language of the statute giving the Commission power to order continuance of the service upon showing of public convenience and necessity, and so forth, would appear inconsistent with the language in the bill placing the burden of proof on the railroads. I suggest that the legislation be reworded to give the power to the ICC to authorize discontinuances upon a showing that public convenience and necessity, and so forth, do not require the service. This would make clear that the railroad, not the public, had the duty of seeking affirmative relief.

(2) As the law now stands, the railroads can come back to the Commission again for discontinuance authority after 1 year has elapsed from the date of an order requiring continuance of service. I believe that the Commission should have discretion to set this period between 1 and 5 years. In cases where there is a clear potential for the service, a longer period would be appropriate. If the railroad knew it could not apply again for discontinuance authority for several years,

it would have incentive to make a sincere effort to improve the service, rather than promptly begin to prepare for the next attempt at discontinuance.

(3) The law should be amended to provide that no interstate train service may be discontinued or changed, in whole or in part, unless authority is obtained from either all the States through which it runs, or from the Commission under section 13a. As things are now, an interstate train can be discontinued piecemeal by discontinuing the segment through one of the States through which it operates. Thus, the interest of one State in maintaining through train service can be undermined by the indifference of its neighbor.

(4) Finally, in my opinion, the proposal of the National Association of Railroad and Utilities Commissioners for a joint board procedure is imaginative and constructive, and I would support it as an alternative to H.R. 7004. Another approach which this committee might consider is a simple repeal of section 13a(1), leaving section 13a(2) as an avenue of relief for the railroads from arbitrary refusal of State commissions to grant discontinuance in proper circumstances. If this is done, section 13a(2) could be amended to insure prompt disposition of cases thereunder by the ICC, as is now required under section 13a(1).

I appreciate the opportunity to state my views before this committee.

I would also like to commend Chairman Tucker and the Interstate Commerce Commission for the leadership they are taking with regard to rail passenger service problems.

Mr. FRIEDEL. I want to thank you, Mr. Haswell, for a very fine statement. You have some very good suggestions there. The committee will consider them.

Mr. Devine, did you have any questions?

Mr. DEVINE. I appreciate having the benefit of your views as a private attorney and a private citizen.

Mr. HASWELL. Thank you.

Mr. FRIEDEL. We will recess for 5 minutes and try to finish up today so that we won't have to meet tomorrow.

(Whereupon, a short recess was taken.)

Mr. FRIEDEL. Before we proceed with the next witness, the committee wants to welcome this fine group of men, and I understand that they are with the Education Center of Fort Myer, and have three teachers with them. I understand that you are studying government.

We are now discussing an amendment to the law concerning when railroads can discontinue passenger service. They present their reasons before the ICC, and the ICC has the final say whether they can discontinue or whether they must still provide service on a given route.

We welcome this fine group.

Mr. DEVINE. I would like to join our chairman, Mr. Friedel, from the State of Maryland, in welcoming you. This is a subcommittee. The two of us aren't all of us. There are other members of the subcommittee that are otherwise occupied. I am Congressman Devine from Ohio. Are any of you men from Ohio? Welcome, Sergeant.

Mr. FRIEDEL. We had two witnesses scheduled for tomorrow, Mr. Donald Beattie, executive secretary-treasurer, Railway Labor Exe-

cutive Association, and Mr. Frank A. Smith, vice president, Research, Transportation Association of America.

As we have time available this morning, we will have Mr. Beattie's statement given by Mr. William G. Mahoney, general counsel of RLEA, and Mr. Smith will appear on May 8.

**STATEMENT OF WILLIAM G. MAHONEY, GENERAL COUNSEL,
RAILWAY LABOR EXECUTIVES' ASSOCIATION**

MR. MAHONEY. Thank you, Mr. Chairman.

My name is William G. Mahoney. I am a partner in the law firm of Mulholland, Hickey, and Lyman, general counsel for the RLEA.

Because of Mr. Beattie's unavoidable absence, he has asked that I seek permission to summarize his statement before the committee this morning.

MR. FRIEDEL. The full statement will be included in the record. You may summarize it.

(Mr. Beattie's statement 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 to testify in regard to H.R. 7004, which was introduced by Representative Staggers at the request of the Interstate Commerce Commission. This bill would amend the present provisions of the Interstate Commerce Act dealing with the discontinuance of interstate and intrastate passenger trains.

The Railway Labor Executives' Association is an organization of the chief executives of national and international railway labor unions which represent virtually all employees in the railroad industry. The chief executives of the following rail unions are affiliated with our Association:

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

In 1958 the Congress enacted the Transportation Act of 1958, the purpose of which was to provide the railroads of this country with emergency assistance. Section 5 of the Transportation Act of 1958 amended the Interstate Commerce Act by adding a new section 13a to that Act. The immediate purpose of Section 13a was to permit the railroads to circumvent certain state regulatory agencies

which, according to the railroads, had blocked the discontinuance of passenger trains which were losing large sums of money and which the traveling public was not utilizing. Our Association opposed the enactment of Section 13a as we feared it would be used by the railroads to destroy passenger service. Our fears proved well founded.

Within two years following the enactment of Section 13a, the trains which the railroads could not discontinue because of allegedly obstinate state agencies had been discontinued. But after Section 13a had accomplished its purpose it did not expire; it remained in effect providing the railroads an easy means of ridding themselves of a service which could never be as profitable as their freight service. In the first two years of its existence Section 13a saw the discontinuance of 157 trains. However, primarily because of the basic deficiencies in Section 13a which amounted to an invitation to the railroad industry to discontinue its passenger service, the railroads, beginning in 1961 and continuing through December 31, 1966, had discontinued an additional 629 trains. Since the enactment of Section 13a the railroads have discontinued 786 passenger trains. This number includes 61 trains which were discontinued without hearing or investigation by the Commission.

It is now clear that the passenger train "emergency" which impelled the passage of Section 13a in 1958 has shifted from the railroads to the public. This nation now needs emergency legislation which will halt, or at least substantially curtail, the extinction of rail passenger service.

The loss to this nation of almost 800 passenger trains in the past 8 years has been due in great part to the substantive and procedural defects inherent in the present law. These defects have been described by the courts as "an invitation" to the railroads to abandon their passenger service and "this strange, dismaying law [concerning which] one thing is certain, namely, that the public was ignored in [its] formulation." In testimony previously presented to this Committee and to the Senate Committee on Commerce in other years the present law has been accurately described:

1. Completely removes from the several States, at railroad discretion, all right and authority over the regulation of passenger train service;

2. Deprives the public of the right of appeal to the courts while preserving such right to the railroads;

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

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

5. 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 be supplied only by the railroads*;

6. Permits the railroads to withhold from many interested parties all material needed to prove claimed "undue financial burden" *until the day of the hearing*, if one is held, thereby preventing effective opposition (The ICC requests that some of this material be submitted to it in Washington, D.C., when the railroad files its notice of discontinuance but compliance with such a request does not make the material available to parties situated miles away);

7. Places a further restriction on the public and the ICC by authorizing *automatic* discontinuance of interstate trains unless the ICC renders a final order within *four months* of the original discontinuance date and even where the ICC requires continuation of service the railroad can post a notice at the end of a year and start the process over again without alleging any change in conditions. This severe, arbitrary and clearly unreasonable time limitation finds no support for existence in the legislative history of the present law, deprives the public of adequate time to prepare its opposition in every case, and deprives the ICC of an adequate opportunity to consider major cases.

The Interstate Commerce Commission has requested the introduction of the bill, H.R. 7004, which the Commission believes would permit it a bit more flexibility in dealing with passenger trains discontinuance proceedings. Our Association is eager to support any legislation which would tend to preserve the passenger carrying capabilities of the rail network of our nation. We enthusiastically support legislation which would remove any of the procedural and substantive inequities in the present law. However, we must be candid in our appraisal of the legislation before you. It does nothing to meet the emergency situation confront-

ing us. It merely would delay by three to five months, in individual train abandonments, the inevitable extinction of rail passenger service. It does no more than that.

H.R. 7004 would lengthen the time limitation from the present four months to seven or nine months and would permit the Commission to subject a discontinuance to "such terms, conditions, and modifications pertaining to operation or services as it shall find to be reasonable and just!" The bill also attempts to shift the burden of proof from the public, where it now rests, to the railroads. However, since the findings which must be made by the Commission remain the same, the provision shifting the burden of proof is ineffective.

The present law authorizes the automatic discontinuance of a passenger train within four months unless the Commission makes findings based upon sufficient evidence that the continued operation of the train is required by the public convenience and necessity. Under this law it is obvious the public must prove that the train is required in order for the Commission to make the necessary findings to order its continued operation. H.R. 7004, despite its attempt to shift the burden of proof to the railroad, does not change this situation. H.R. 7004 would authorize the automatic discontinuance of a passenger train within seven to nine months unless the Commission makes findings based upon sufficient evidence that its continued operation is required by the public convenience and necessity. Should a railroad refuse to submit evidence the train will be discontinued because without evidence the Commission cannot make the findings necessary to order its continued operation. If such evidence is forthcoming at all, it will be received from the public. Therefore, the burden of proving that the train should continue to operate rests with the public under H.R. 7004 as it does under Section 13a(1). This situation will remain unchanged until the basic approach to the problem is changed.

If the burden of proof is to be shifted to the railroads, where the Commission admits it belongs, the law must be written so as to provide that the train will continue until the railroad proves and the Commission finds on the basis of that proof that it should be discontinued. This is the form of Section 13a(2), involving intrastate trains and Section 1(18), involving abandonments of lines of railroad. No cogent reason has been advanced for not applying this form of statutory requirement to the abandonment, or discontinuance if you will, of interstate trains.

H.R. 7004 is a step in a direction which should have been taken at least seven years ago. It is a very short step however, since the basic deficiencies in the present law are not changed by H.R. 7004. If H.R. 7004 were enacted, the public would continue to be deprived of the right of appeal to the courts where the Commission declines to institute an investigation thereby permitting a train to be discontinued through the expiration of the time limits. H.R. 7004, if enacted, would permit discontinuances to take place without public hearing and, since the Commission must find that the public convenience and necessity requires a train's continued operation and that such operation will not be an undue burden on the railroad, the burden of proof, realistically considered, remains upon the public and upon the Commission.

For reasons of which we are not aware, the Commission apparently does not wish employees affected by train discontinuances to be protected from the immediate effects of loss of employment. The Commission requests limited authority to impose terms and conditions upon any grant of train discontinuance authority. In Section 1 of the Interstate Commerce Act, the Commission may approve the abandonment of a line of railroad "subject to such terms and conditions as in its judgment the public convenience and necessity may require." The use of such language in Section 13a would have given the Commission authority to require a certain level of quality in service and operation and would also have given the Commission the discretionary authority to protect the employees who are adversely affected by the discontinuance of the train, as they are now protected by the abandonment of a line of railroad under Section 1. However, for reasons known to itself, the Commission would limit its power to impose conditions to those involving operations or service. It apparently does not wish the affected employees to be protected.

The Commission's reasons for excluding from protection the employees affected by train abandonments are not stated. We do not know why the Commission has taken this position. In previous testimony before this Committee and the Senate Subcommittee on Surface Transportation, no one interested in legislation to amend Section 13a has ever argued that the effects upon employees in train discontinuance cases are any different from the effects upon employees in line

abandonments arising under Section 1(18) of the Interstate Commerce Act. Indeed, the Interstate Commerce Commission has imposed employee protective conditions in line abandonment cases since 1943. The imposition of such conditions has in no way deterred the railroads' utilization of Section 1. As a matter of fact, the number of line abandonment proceedings has increased steadily through the years. The railroads themselves readily agree in many abandonment cases to the imposition of such conditions by the Commission and frequently express such agreement in their original application to the Commission. The obvious purpose of employee protective conditions is to permit the employees of the railroads to share to some extent at least, the savings to the railroad realized directly at their expense. This result has not only been recognized by the Congress and the Courts as just and equitable, but also as tending to maintain a stable work force in this vital industry.

To our knowledge there has been no instance in which a serious, considered objection has been offered by any railroad or railroad official to the reasonableness of the protective conditions imposed by the Commission in line abandonment cases. Many years ago the Commission took it upon itself to impose employee protective conditions even when in doubt of its power to do so. The Commission now has determined to depart from that policy and to refrain from seeking protection for those who bear the brunt of the savings realized by a railroad when it discontinues its passenger train services.

As I mentioned a moment ago, the Railway Labor Executives' Association is eager to support a bill which would *effectively* improve the state of the law from the point of view of the public. H.R. 7004, however, would partially improve but one aspect of the present law and that is the time limitations. Extending the time limitations from four to seven or nine months serves little public purpose. For example, almost a year ago the Interstate Commerce Commission on the petition of the states of California, New Mexico, Arizona, Texas, and Louisiana instituted an investigation into the adequacy of Southern Pacific passenger service between California and Louisiana. The written testimony of witnesses for those states and others who were challenging the adequacy of Southern Pacific passenger service were filed with the Commission on February 27, 1967. On March 19, 1967, the Southern Pacific issued a notice to discontinue a pair of trains between Tucumcari, New Mexico, and Los Angeles, California. On April 6, 1967, the California Public Utilities Commission requested that the discontinuance of this pair of trains be consolidated with the Commission's investigation of the adequacy of Southern Pacific passenger service. On April 20, 1967, the Commission issued an order denying the California petition because the "adequacy" investigation "will require extensive proceedings and a consolidation of" the train discontinuance case with that case would preclude a final determination of the train discontinuance within the four-month statutory period. In short, because of the time limitations in the present law—and indeed, those present in H.R. 7004—the investigation of the Commission into the adequacy of Southern Pacific passenger service could be rendered moot long before the "adequacy" case could come to hearing merely by the Southern Pacific's posting of notices to discontinue its train service in the states involved.

As I mentioned a moment ago, the Transportation Act of 1958 was enacted against a background of depressed railroad earnings and inability to secure the discontinuance of certain uneconomic and unused passenger trains. The railroads presented their case as an emergency situation requiring emergency measures. In the past 9 years the pendulum has swung to the opposite extreme. We now find the railroads showing net income in 1966 of \$902,000,000. The travelling public now has 800 fewer trains at its service and the number of existing trains is being reduced day by day.

H.R. 7004 does not meet the present emergency. A temporary delay may prolong the ultimate death throes of rail passenger service; it does nothing to avoid them. A long range solution is needed. The resolution introduced by Representative Moss, H.J. Res. 427, would permit such a solution to be found and effectuated. This is also true of the bill introduced by Representative Giaino, H.R. 8939. This nation cannot sit by as its rail passenger network is destroyed, train by train by train. Many possible solutions to the rail passenger service emergency have been proposed but all will be rendered academic exercises unless given a chance to be effected.

If this Committee cannot recommend the effective cessation of train discontinuances pending resolution of the passenger train crisis confronting us, we respectfully urge the amendment of H.R. 7004 so as to require railroads to file applica-

tions to abandon passenger train service, as they must now to abandon freight service; require the Commission to hold hearings in all cases; realistically impose the burden of proof upon the railroads; eliminate the unjustified time limitations; and, protect the employees who furnish the savings to the, now quite affluent, railroads.

Our association will strongly support such legislation.

Mr. MAHONEY. Thank you, sir.

The Transportation Act of 1958, which contains section 5, which became 13a of the Interstate Commerce Act, was passed to aid the railroads. It was passed in a time of economic recession, in a time of very low income for the railroads, and it was passed at a time when certain State agencies allegedly were refusing to permit the discontinuance of uneconomic and unused trains.

Just before this law was passed, the *Weehawken* case came down from the courts. The ICC had heard for over a year testimony regarding the need to discontinue the Weehawken Ferry. The New York Central Railroad which was then running in the red overall on net income was losing a million dollars a year on this ferry. The Interstate Commerce Commission held hearings under section 1(18) of the Interstate Commerce Act treating the abandonment of this ferry as the abandonment of a line of railroad.

After these hearings were held, the Commission granted this abandonment, said it wasn't required by the public convenience and necessity, the railroad had proved its case and it should come off.

Some of the protestants—I might say it was not the association—appealed to the courts and challenged this ruling, and their challenge was based upon a theory that this was not a line of railroad and therefore the ICC had no authority to permit its abandonment.

The courts upheld this theory. Therefore, the New York Central was stuck with this ferry and couldn't even give it away, and because of the Central's terrible financial situation and because of the overall economic situation confronting most railroads at that time, the bill containing section 13a was placed before the Congress, and the Congress passed this bill to relieve what was then a very desperate situation.

Now a train abandonment essentially is no different with regard to the public, the Commission or the employees than a line abandonment because in 99 percent of the cases abandonment of a line of railroad really means the discontinuance of the last freight train.

It is the same from the point of view of the public with regard to use made of the service or the effect loss of that service. It is the same with regard to the Commission insofar as the type of evidence introduced concerning use and costs. It is the same with regard to employees in terms of the effect upon them of the loss of their jobs.

But the discontinuance of train operations was not placed in the abandonment section of the act. It was placed in the pricing section of the act, the tariff, the rate section of the act, and it was written in conformity with that section.

The problem which has always been inherent in section 13a is that it just doesn't fit in that section of the act. If a railroad wishes to raise or lower prices under section 13 and the Commission doesn't act, that price change goes into effect automatically, and if the Commission acts later, the railroads can easily put the prices back where they were. That is no great problem, but this cannot be done in a train discontinuance proceeding because when a train comes off because the Commission

doesn't act, it cannot be put back on with the simplicity with which one can change the price of the service that he is performing.

When the train is gone, it is gone forever, and all of the difficulties with section 13a stem from the fact that it is in the wrong section of the Interstate Commerce Act.

As a lawyer representing the association, I tried the first case that was held under section 13a. I have participated to some extent in every case that has ever been tried or held or processed under section 13a. The rail emergency in 1958 and 1960 is long over. In 1966 the railroad net income overall was \$902 million, and all of the trains that the railroads had claimed back in 1958 that they couldn't get off and should take off were taken off years and years ago.

We are now faced with another emergency. It is the extinction of rail passenger service. Since this act was passed, 786 trains have been discontinued, and 61 were discontinued without any investigation or hearing.

These statistics, I might say, I take from the Commission's own records as of December 31, 1966. Ten of those 61 trains which were discontinued without investigation were discontinued in 1966.

So while we create new departments to develop our transportation complex in the most fruitful manner, like the Department of Transportation, and while we are passing legislation to develop high-speed intercity rail service, our rail passenger system is disappearing because of the existence of section 13a, and unless halted, all of this legislative and new departmental activity will be rendered academic.

H.R. 7004 would effect six changes in the present law. First of all, it would add 3 to 5 months to the time within which the ICC must act to prevent an interstate train discontinuance. There are no time limitations under section 13a(2) involving intrastate train discontinuances, and there never have been.

This adding of 3 to 5 months doesn't make any substantive change in the law. It merely postpones the inevitable for a few more months. The ICC procedure before the Commission in processing these cases would remain shortcircuited. There would continue to be no examiner's report and no opportunity for protestants to file exceptions to the examiner's report, and the order, as it does today, undoubtedly would come out the day before the trains were due to come off automatically due to the expiration of the time limits, and this would render ineffective any attempted filing of a petition for reconsideration before the Commission. So that the change, while it does add a little time, does little else.

The second change would be a so-called shift in the burden of proof in interstate train cases. In intrastate train cases the burden has always been on the rail carrier. Now, this proposed bill 7004 would require a railroad to prove that the public convenience and necessity permits the discontinuance.

It would also require the railroad to prove that the continued operation would be an undue burden on interstate foreign commerce.

Now I respectfully submit that this amendment is meaningless because the findings that the Commission has to make are unchanged by the bill. Regardless of the evidence which the railroads might put in or refuse to put in, the trains will come off automatically at the end of 7 to 9 months unless the ICC finds that their continued operation will not unduly burden interstate commerce or foreign commerce, and

that the public convenience and necessity doesn't permit this discontinue.

In order to make that finding, the Commission has to look to proof, and where will they find that proof? They won't get it from the railroad. They will find it in evidence submitted by the public. That is just where they find it today, so unless the findings are changed, this so-called shift in the burden of proof is rendered meaningless.

There is no change from the present law. The railroads today come forward, as was pointed out yesterday by Chairman Tucker, at the request of the Commission and put in great statistical summaries of the effects of the continued operation of the train and so forth, but unless the findings are changed, unless the law is so written so that the train will continue until the railroad proves that it should come off, you are going to have the same situation under H.R. 7004 as you now have under 13a(1).

Now, H.R. 7004 would also change the designation of what constitutes an interstate train and what constitutes an intrastate train. The effect of this would be to place more trains in the interstate category which would render them easier to take off. It is harder to discontinue an intrastate train under the present law because there must be a hearing, there are no time limits, the railroad must carry the burden of proof, and unless the Commission finds that the train should come off, the train will continue on. So that it is more difficult to discontinue an intrastate train than an interstate train.

Mr. FRIEDEL. Do they go before the ICC for intrastate or before the public service commission of the various States?

Mr. MAHONEY. Under the wording of section 13a(2) for intrastate trains they must first go before the public service commission of the State. If the State doesn't act within 120 days of the filing of that application by the railroad or if it denies the railroad's request to take off the train, the railroad may then come to the Interstate Commerce Commission, but then the Commission must have a full hearing and go through the regular procedures that they would ordinarily go through under a line abandonment.

This has not deterred, I might add, the railroads from taking off intrastate trains because in the past 10 years they have removed 327 intrastate trains and have been denied the removal of only 37 intrastate trains by the Commission, so that it hasn't deterred them in any manner, but at least under section 13a(2) they must make a case. They need not under 13a(1) and wouldn't under H.R. 7004.

Now there would also be a change in the judicial review characteristics of the statute. There has been some question as to whether a party has a right to appeal an order of the Commission or a decision of the Commission which permits the discontinuance of a train and H.R. 7004 would clear that up.

It would permit a party to appeal such a decision. However, it would not correct the deficiency in the present law which permits no appeal where the Commission allows a train to discontinue automatically without a hearing, without any decision, and that has happened, as I pointed out, in 61 cases, 10 of which occurred in the past year. The public still has no right of appeal where the Commission just sits back and lets the time limits expire.

Now, the Commission has requested authority to condition discontinuances, and according to the statement of Chairman Tucker, as I

read on page 12 of his statement, the primary objective of this is to permit the railroad to require a different scheduling of one of the trains that is left. It is his example that the railroad would have a day train and a night train it wishes to abandon. The Commission says, "You can take one off but have to run the other," but for the other to be really feasible economically and servicewise they would have to change the schedule, and he says they have no power to do that now and that is the power they want.

The Commission did something in drafting the language authorizing conditions that I don't understand. Had they taken the language as it is now found in section 1, paragraph 20, they would have gotten the type of authority that they request. Section 1, paragraph 20, says that when the Commission grants the abandonment of a line of railroad, it may do so on such terms and conditions as it finds to be just and reasonable.

Now, had they just adopted that language and put it in this proposal, they would have secured what they were after, but they didn't do that. They added language which restricted their authority. They said they wished to impose terms and conditions pertaining to operations and service. The only effect of adding that language is to exclude from protection all of the employees of the railroad. I don't know why they did it.

Employees are now protected under section 1, paragraph 20. The Commission has been protecting them since 1943. The effects of a train discontinuance are no different on the employees than that of a line abandonment, but for some reason they added language to exclude authority to protect employees.

Insofar as the need for conditional authority is concerned, the Commission back in 1959 conditioned a train discontinuance, and they could have done it ever since, it seems to me, if they had wanted to.

In 1959 in one of the early cases, the Lehigh Valley wanted to take off all of its train service.

Mr. FRIEDEL. All train service or all passenger train service?

Mr. MAHONEY. All passenger train service.

The Commission permitted it to discontinue most of its trains. However, it required, I think, two or three pairs of trains, one of which was trains Nos. 7 and 8. None of these trains served Ithaca, N.Y., Cornell University, and a great hue and cry went up because the Commission was depriving Cornell of service.

So the Commission put out a second order appearing in volume 307 of the reports of the ICC, at page 257, in which they required the Lehigh Valley to reschedule trains 7 and 8 so as to serve Ithaca, N.Y., which appears to me to be exactly the same thing as Chairman Tucker now says he needs specific statutory authority to do. They did it in that case.

I don't know that they have done it in other cases, but it seems to me that the precedent for doing so was created immediately after the passage of this law. This decision was dated May 18, 1959.

I agree that there should be authority to condition these things pertaining to quality of service, scheduling and so forth, but there also should be authority to protect the employees who, after all, are the people who directly grant to the railroads these savings out of their own pockets. They lose their jobs when these trains come off.

This is what the Congress has done in all statutes that I know of with regard to rail labor since the Emergency Transportation Act of 1933.

For some reason it wasn't done here, and for some reason the Commission appears not to want it done.

Now, it seems to me and my clients that what is needed is a long-range solution to this problem. A solution must be found to meet what is now an existing crisis in the rail passenger industry. H.R. 7004 doesn't meet that crisis. However, bills have been introduced recently which would at least permit some time to allow the Department of Transportation, the Commission, and the Congress to find a solution to the rail passenger crisis which we now face.

I think Mr. Haswell made a completely valid point when he said that if the railroads know that they won't be able to get out of this business, they will do something about it and make it a good business, but as long as this law exists which the courts have characterized as amounting to an invitation to get out of the business, they will do so. They will use the law. That is only a human reaction to the situation.

Now, if this subcommittee should recommend that section 13a be amended, we respectfully urge that any such amendment to the law provide for an application proceeding under 13a(1) as it is now provided under 13a(2) so that interstate trains would be treated in the same fashion as intrastate train discontinuances are now treated; in other words, the train would stay on until the railroad proves and the Commission finds that it should come off.

Also, we would recommend the elimination of any time limitations because time restrictions are there for one reason and can only be used for one reason. At the expiration of the time limitation the train comes off automatically. That has no place in an application proceeding and is not now found in the intrastate discontinuance provisions.

We would also request and urge that there be inserted in 13a(1) as there is now in 13a(2) requirements that hearings be held in these cases and that, as Congress has done in line abandonment cases, in merger cases, in cases of trackage rights, that the employees who supply the savings to the railroads be protected from the immediate effects of the loss of their jobs which are abolished for the benefit of the rail carriers.

Such a bill my clients would strongly urge and strongly support.

I thank you for the opportunity of speaking to you this morning.

Mr. FRIEDEL. I want to thank you, Mr. Mahoney. There is no question in my mind that you are well versed on this subject.

Mr. MAHONEY. Thank you.

Mr. FRIEDEL. Your statement was very informative. Let me ask you one question. When they abandon a passenger service do the railroads fire the employees or are they worked out by attrition?

Mr. MAHONEY. When a train is discontinued, it depends upon the number of trains involved, of course, but let's say a pair of trains is taken off, the first people who are hit by this are the crews. The crews have their rights on what are called seniority rosters. Men, when their jobs are abolished, go to that roster and in order of their seniority bid on other jobs.

Now, it may be that the men on that train are very senior men. They may just move to another train, bid on another train job, but the men

they bump, bump other men until we reach the bottom of the roster where the people are furloughed. There is no job for them and they are furloughed and they just remain out of service, unemployed until such time as a job opens up and they can come back. This spreads to nonoperating employees when it is either the last pair of trains, where you start hitting the clerks and ticket sellers and other people whose seniority may be restricted to that station. They may have no other rights and they are out completely. If they want to start again although they have 30 or 35 years' service they have to go on the bottom of some other roster on that railroad and start as a new man. The same is true of maintenance people who maintain the equipment where if they are going to get rid of all the passenger service or most of it they would close down or at least severely curtail the work done in the shops on this passenger equipment. These people generally have seniority rights only in that shop so that they would be out of work and probably would not come back because of this effect. The protective conditions which the Commission has always imposed in line abandonment cases, which essentially is the discontinuance of the last freight train on that line, is a temporary allowance arrangement whereby these people affected, for a period of time, receive monthly allowances to assist them in this transition period.

The senior men, the very senior men, if their seniority area is broad enough are able to get other jobs but many men are not and this allowance arrangement aids them during this transition period.

Mr. FRIEDEL. I was under the impression that they don't fire anybody. I understand about the seniority rights but they have been working out some agreement that they could get a lump sum settlement or they would stay on.

I am not too familiar with the agreement but I did not think anybody was fired.

Mr. MAHONEY. Those agreements don't apply to train discontinuance cases. We have those agreements in the industry and have reached those agreements in merger cases. There is an agreement known as the Washington Agreement which has been in effect in the industry generally since 1936 which provides that type of protection with severance pay when railroad facilities are coordinated, where two railroads decide to build a joint yard, this sort of thing and the men are protected in that fashion under the Washington Agreement but none of that has any application to train discontinuances and in the 761 train discontinuances not one man to my knowledge has been protected.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. Yes, Mr. Chairman, I am interested in having your thinking. Mr. Mahoney, if you please, as to whether or not the ICC is adequately using what limited power it has to prevent discontinuance of passenger trains.

Mr. MAHONEY. That is a difficult question to answer because I believe that the Commission is doing what it feels Congress has asked it to do. As a matter of fact, in the early days of this law I spoke with some people at the Commission about it and I was told that the Commission felt, rightly or wrongly, that the Congress wanted to help the railroads by letting them get rid of the passenger trains that they wanted to get rid of and that if that was the view of the Congress the Commission was an arm of the Congress and the way this statute was written it

was quite clear that the Congress wanted to assist the railroads in eliminating those trains that the railroads wished to eliminate. So I do not think that the Commission has made any great effort to keep passenger service on. I think it has probably gone along with what it feels to be the will of the Congress in enacting 13a which was to ease the elimination of passenger trains.

Mr. DINGELL. As I read your comments on this it would appear to me that you are stating that this is but a limited step forward, am I correct, in terms of preserving passenger service?

Mr. MAHONEY. Limited only to that 3 to 5 months.

Mr. DINGELL. And in a sense at the conclusion of 3 to 5 months we are still going to find ourselves in the position where passenger service is going to be discontinued.

Mr. MAHONEY. I don't think that this bill makes any substantive change at all including the burden of proof provision.

Mr. DINGELL. Do you have suggestion as to substantive changes that can be made?

Mr. MAHONEY. Yes, sir; I have some.

Mr. DINGELL. I think the committee would appreciate hearing them.

Mr. MAHONEY. At the conclusion of Mr. Beattie's statement there are listed, I believe, the type of changes which should be made in the law to strengthen it from the point of view of the public and these aren't novel changes or unusual changes. Basically they would merely require the railroads to do the same thing in interstate train discontinuance proceedings as they are now required to do when they want to abandon a line of railroad.

Mr. DINGELL. You say these are in your statement.

Mr. MAHONEY. Page 11.

Mr. DINGELL. Again these are procedural. You say "Require the railroads to file applications to abandon passenger train service, as they must now to abandon freight service." That is procedural.

Mr. MAHONEY. That is, I believe a substantive change.

Mr. DINGELL. You say "substantive."

Mr. MAHONEY. Yes, sir; because under that type of provision the train would remain on unless the railroad would prove and the Commission would find on the basis of that proof that it should come off. As it stands now the train will come off if the Commission does nothing or if the public fails to prove that it should stay on.

Mr. DINGELL. Later on you say "realistically impose the burden of proof on railroads." Again that is a procedural change, is it not?

Mr. MAHONEY. I think that it affects the substance of it because it makes the trains more difficult to take off.

Mr. DINGELL. It makes it more difficult but it does not change the substance of the law.

Are you an attorney?

Mr. MAHONEY. Yes, sir.

Mr. DINGELL. Then you are well aware of the difference between procedure and substance?

Mr. MAHONEY. Yes, sir. I am.

Mr. DINGELL. So, going right down your list of recommendations here, "Require the railroads to file applications," that is procedural; as they must now abandon passenger train service. "Require the Commis-

sion to hold hearings in all cases," again procedural. "Realistically impose the burden of proof upon the railroads," again procedural. I will concede that these are important procedural changes. "Eliminate the unjustified time limitations," again procedural. "Protect the employees." That I can conceive could probably be substantive depending on the language. I think it would be helpful for us to have the language, but my question is, what is your suggestion as to substantive language changes, substantive changes in the law. I am not satisfied with it. I think we are widening up in a situation where pretty soon we are not going to have passenger service at all and perhaps 5 or 20 years hence we are going to be subsidizing the railroads to go into the passenger service. They will have to be built on abandoned rights of way or knocking down houses or God knows what else.

Mr. MAHONEY. I agree with what you say with regard to what we are faced with in the future on rail passenger service but I believe that where the change is made, even though you feel they are all procedural I think the first one is a substantive change but regardless of that if these changes were made the railroads would then be put on notice as would the Commission that they now have the burden of proving their case and that this burden will now be more difficult to carry than it was before and if they do take a train off they are going to have to protect the employees so that the immediate savings that they will realize will not be as great. All of these things will be deterrents and they will limit, I believe, the railroads to taking off only those trains which really should come off which are uneconomical to operate and unused by the public.

Mr. DINGELL. Will you submit the language to implement the suggestion on page 11 of your comments?

Mr. MAHONEY. I would be happy to.

Mr. DINGELL. Thank you, Mr. Chairman.

(The material requested follows:)

PROPOSED LANGUAGE TO AMEND SECTION 13a, SUBMITTED BY THE RAILWAY LABOR EXECUTIVES' ASSOCIATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13a of Part I of the Interstate Commerce Act (49 U.S. Code 13a) is amended to read as follows:

13a (1) No carrier or carriers subject to this part, shall discontinue or change in whole or in part, the operation or service of any train or ferry operating between a point in one State or a foreign country and a point in any other State or in the District of Columbia, unless and until there shall first have been obtained from the Commission a certificate that the present and future public convenience and necessity permit such discontinuance or change and that the continued operation or service without discontinuance or change will unduly burden interstate or foreign commerce. Upon filing an application for such certificate the carrier or carriers 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 a notice of such filing. The carrier or carriers filing said application shall have the burden of establishing that the present and future public convenience and necessity permit the proposed discontinuance or change, and that the continued operation or service without discontinuance or change will unduly burden interstate or foreign commerce. Should protests to the proposed discontinuance or change be filed with the Commission within thirty days of the filing of the application, the Commission shall set a date for hearing on the application beginning within ninety days of the date of the filing of the application. If after hearing the Commission finds that the public convenience and necessity permits the proposed discontinuance or change and that the continued operation or service of such train or ferry without discontinuance or change would constitute an

unjust and undue burden upon the interstate operation of such carrier or carriers or upon interstate commerce, it shall issue an order authorizing such discontinuance or change, subject to such terms and conditions as in its judgment the public convenience and necessity may require. On and after the effective date of such order, and not before, the carrier or carriers may, without securing authority other than contained in said order, comply with the terms and conditions therein and proceed with the discontinuance or change.

13a(2) Where a carrier or carriers subject to this part desire to discontinue or change, in whole or in part, the operation or service of any train or ferry operated wholly within the boundaries of a single State, such carrier or carriers shall petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority, in whole or in part, subject to such terms and conditions as in its judgment the public convenience and necessity may require, only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without 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. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph. 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 an application as provided in this paragraph is filed with the Commission.

13a(3) Any State, administrative or regulatory agency of a State, or person, adversely affected or aggrieved by an order of the Commission entered pursuant to paragraphs (1) or (2) of this section, may bring suit to obtain judicial review thereof under the provisions of sections 1336, 1398, 2284, and 2321 through 2325 of the Judicial Code, 28 U.S.C. §§ 1336, 1398, 2284 and 2321-2325.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Mr. Mahoney, I take it that you would agree with some of the previous witnesses that were here yesterday and today that in your opinion some railroads are doing everything they possibly can to discourage passenger traffic.

Mr. MAHONEY. There is no question about that and one of the great problems is the effect upon the railroads that are not discouraging it. For example the Santa Fe runs excellent passenger service.

Mr. DEVINE. I said some railroads.

Mr. MAHONEY. But the Santa Fe is faced with a very difficult problem because most of its passengers are on connections from and to the east at Chicago. The eastern trains are coming off. They are losing their passengers at Chicago. They will eventually have to take off this good service which they would like to keep on. This is the domino effect.

Mr. DEVINE. Do you find that traffic other than that particular facet has held up well in the West?

Mr. MAHONEY. Yes, it has. My recollection of the statistics is that it has.

Mr. DEVINE. As contrasted with the East?

Mr. MAHONEY. Yes.

Mr. DEVINE. Thank you.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Mahoney, yesterday I asked Chairman Tucker if under the present procedure after due notice had been served that

the ICC would find that the continued operation of a train or a service is required by public convenience and necessity and would not burden interstate commerce that they could continue on for 1 more year. He said that is correct. At the end of that year's time under the present procedure automatically then without further hearing the trains would be discontinued.

Mr. MAHONEY. No, sir. Under the present law, and I think under H.R. 7004 at the end of that year jurisdiction reverts to the State and the railroad is back in the same position that it was before it first went to the Commission so that in order to take the train off at the end of the year they have to either go to the State or come back to the Commission but the problem is, and this has happened in our experience over and over, that during that year the railroads make sure that the next time they go before the Commission the evidence will show that they ought to take that train off because it may have had four cars, two pullmans, a diner, and coach. They take off the diner. That drives the people away. They take off a pullman and another and only have a coach and it is an overnight train and the next time they come back to the Commission nobody is riding it.

Mr. PICKLE. Yesterday we had considerable discussion on the burden of proof. According to your statement apparently the burden of proof in your opinion would be meaningless. I don't quite understand your reasoning except maybe you are just trying to put a difference on the discontinuance as compared to the continuance of service.

Mr. MAHONEY. I feel that the burden of proof is a very important factor in this situation. Whereas H.R. 7004 claims or attempts to shift the burden, the burden isn't really shifted as long as Commission findings have to be the same under the proposed law as they are under the present law. In other words, the railroad is supposed to prove that the train should come off. On the basis that the train would stay on unless that proof justified its discontinuance and the Commission found that it should come off, that would be fine but regardless of what the railroad proved, H.R. 7004 says the train will come off unless somebody proves it should stay on. Regardless of whether the railroads put in any evidence, the train is coming off unless the public comes forward with proof that it should stay on and the Commission finds that it should stay on.

Mr. PICKLE. You state that it is obvious that the public prove that the train is required. That is going to be rather difficult for "the public" to prove.

Mr. MAHONEY. It is virtually impossible.

Mr. PICKLE. What should be the test as to whether a train would be continued or not?

Mr. MAHONEY. Well, it depends, it seems to me, upon the length of the train's operation and the service it performs generally. The railroads have taken off trains which carry literally thousands of people over a year's time because it was losing money and it seems to me that over the years the single important factor which the Commission has focused upon is whether the train is losing money and then they would look at the net income picture of the railroad and if that is marginal they will let them take it off. That has been the primary focus, I think, of the decisions of the Commission even though there may be hundreds and hundreds of people riding the train. It is difficult to determine what

public convenience and necessity is. This is a statutory term which isn't defined in the statute and its definition has been arrived at over the years by Commission decisions which can go in one direction or in the other. As it turns out, except in the case of commuter trains where you have people marching up and down with signs outside the hearing room because their livelihood virtually depends upon their being able to get to work on those trains, you will find that the Commission is not prone to feel that the trains are required by the public as long as there are highways and buses available and airplanes available.

Mr. PICKLE. I assume what you are saying is that the Commission uses primarily and almost solely the question of the train making money or not. If you represented the railroad and the train was losing money would you recommend that it be discontinued?

Mr. MAHONEY. Well, as a representative of the stockholders of a railroad I suppose I would.

Mr. PICKLE. I think so. I think, correspondingly, if you represented the workers you would want to keep it on. Somebody has to decide what is in the public interest.

Mr. MAHONEY. Precisely.

Mr. PICKLE. I told Chairman Tucker yesterday that it seems to me that we ought to have either side, either the plaintiff or the person that filed the application to continue, whether the public or the shipper, and then the burden of proof ought to come from the carrier, or the union, and it seems to me then that the Commission ought to make that decision on the evidence and if we have not given them that power it seems to me that is what we ought to do. Somebody has to make the decision of what is in the public interest.

Mr. MAHONEY. I agree, Congressman, but I think the problem is that when the railroads come forward with the material that they put into evidence in these cases it is extreme in its complexity and its technical nature in terms of statistical summaries of above-the-rail costs and this sort of thing which "the public"—and I use that in quotes—isn't competent to analyze or cross-examine on or does not have the competency or the finances to challenge.

Mr. PICKLE. But the Commission does.

Mr. MAHONEY. But they don't do it.

Mr. PICKLE. I am saying that they ought to. That is my feeling.

Mr. MAHONEY. I agree that the Commission should.

Mr. PICKLE. They ought to hear both sides and in the interest of the general public make the decision.

Mr. MAHONEY. As the Civil Aeronautics Board does. They have a bureau which goes into each case and challenges. Sometimes the Bureau sides with the carriers and sometimes disagrees with them, but the record is ventilated. The public has someone there looking out for them. What the Commission has confronting it, and it is not the Commission's fault, when it finally gets to the decisionmaking process is this mass of statistics on one side and virtually nothing on the other side.

Mr. FRIEDEL. Thank you.

Mr. MAHONEY. Thank you, sir.

Mr. FRIEDEL. The committee will adjourn until Monday morning, May 8, at 10 o'clock, at which time we will hear the Association of American Railroads and the Transportation Association of America.

(Whereupon, at 11:50 a.m. the subcommittee adjourned, to reconvene 10 a.m., Monday, May 8, 1967.)

The Association of American Engineers is a national organization of engineers and architects. It was organized in 1905 and has since that time been working for the advancement of the engineering profession and the public interest. The Association is composed of members from all parts of the United States and is one of the largest and most influential organizations in the engineering field.

The Association's primary purpose is to promote the highest standards of professional conduct and to advance the interests of the engineering profession. It does this through a variety of means, including the publication of technical papers, the holding of annual meetings, and the maintenance of a high standard of ethics among its members.

The Association also works to improve the public's understanding of the engineering profession and to promote the use of engineering in the service of the community. It does this through the publication of popular articles and the holding of public lectures and exhibitions.

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PASSENGER TRAIN ABANDONMENT

MONDAY, MAY 8, 1967

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The committee will now come to order for a continuation of hearings on H.R. 7004, H.R. 260, H.R. 519, and H.R. 8939, to amend section 13a of the Interstate Commerce Act.

Our first witness will be Mr. William Moloney, general solicitor, Association of American Railroads. Mr. Moloney.

STATEMENT OF WILLIAM M. MOLONEY, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

Mr. MOLONEY. Thank you Mr. Chairman.

We appreciate very much the opportunity to express our views on these bills. I have filed with the committee a written statement and would ask that that statement be incorporated in the record and with your permission I can either read portions of it, all of it, or simply talk about it.

Mr. FRIEDEL. With no objection, the full statement will be included in the record and you may summarize it now.

(The statement referred to follows:)

STATEMENT OF WILLIAM MOLONEY, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

My name is William M. Moloney. I am general solicitor of the Association of American Railroads, an unincorporated, voluntary association of railroads whose members operate 96 percent of the railroad mileage in the United States, whose revenues amount to 96 percent of railroad revenues in the United States, and whose employees constitute 95 percent of the total number of railroad workers in the United States.

I appear here on behalf of that Association in regard to H.R. 7004, H.R. 260, H.R. 519 and H.R. 8939, pending bills which would amend Section 13a of the Interstate Commerce Act.

Before discussing the particular bills which are the subject matter of this hearing, I think a few general observations are appropriate.

Section 13a of the Interstate Commerce Act was enacted as a part of the Transportation Act of 1958. At that time Congress was concerned with the declining position of the railroad industry and with the fact that substantial segments thereof appeared to be headed toward financial crisis. A large contributing factor was the annual passenger train service deficit incurred by the railroad industry.

Your Committee, in its Report on H.R. 12832 (85th Congress, 2d Session—House Report No. 1922) stated that—

"Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations." (p. 11)

This statement by the Committee is true today.

In 1957, the year before passage of the Transportation Act of 1958, the passenger train service deficit was \$723.7 million and consumed 44 percent of the net railway operating income from freight service. The passenger train service deficit for the year 1966 is estimated at \$400 million and consumed 27.7 percent of the net railway operating income from freight service. Certainly, when almost 30 percent of the net railway operating income from freight service is today being consumed by the passenger train service deficit, there is no room for complacency, nor for any attitude that the passenger train deficit problem has been largely solved and that it now should be made more difficult and costly to discontinue unneeded and losing passenger train service.

Since 1946 the passenger train service deficit has totaled the staggering sum of ten billion, nine hundred million dollars. The shippers and receivers of railroad freight and the stockholders of the railroads have, in effect, for the last 20 years subsidized passenger train service operations to the tune of a half billion dollars a year.

During the last eight years, while Section 13a has been on the statute books and its remedies available, the passenger train service deficit totaled three billion, five hundred million dollars and consumed 35.7 percent of the total net railway operating income from freight service during those years.

In its report, to which I have referred, your Committee pointed out that if losing commutation service must be preserved then the losses incurred would have to be met in some way by the communities requiring the service. Referring to passenger service other than commuter service, your Committee said:

"Where this passenger service—and passenger service means more than merely transportation of passengers, and involves 'head-end' service, such as baggage, mail, and express—cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for." (pp. 11-12)

Notwithstanding these very sound statements by your Committee, we find many people today urging that the status quo be maintained with respect to the level of passenger train service, awaiting solution of the passenger train service deficit problem by some unforeseen means and at some unforeseen time. The burden of a \$400 million annual deficit, and the consumption by that deficit of almost 30 percent of annual net railway operating income from freight service, seems not to enter into such thinking.

If the status quo had been maintained for the last nine years with respect to the level of passenger train service operations, catastrophe would have overtaken our industry. Let me give you an illustration. The 1957 level of passenger train service, priced at 1967 costs, would result in a passenger train service deficit for 1967 of one billion, six hundred million dollars and would exceed by two hundred million dollars the entire net railway operating income anticipated from freight service during the year 1967.

The wisdom of Congress in enacting Section 13a of the Interstate Commerce Act is apparent as is the fact that such statute and the remedies thereby afforded the railroad industry in dealing with the passenger train service deficit may well have been the salvation of our industry.

There are those today who loosely accuse the railroads of having deliberately set about to destroy passenger train service. These persons claim that the railroads have purposely made rail passenger travel as unattractive as possible and that all the industry needs to do is to provide more and better service and that such will attract a level of patronage that would make passenger train service a profitable business. In other words, soup up the service and we will have passenger business running out of our ears.

This same indictment was leveled against the railroad industry with respect to its passenger train service operations prior to the enactment of the Transportation Act of 1958. It was leveled against the industry in the exhaustive investigation conducted by the Interstate Commerce Commission into and concerning the passenger train service deficit, its causes and what might be done to correct the matter. That investigation, and the hearings therein, extended over a period of more than three years, from March 19, 1956, to May 18, 1959. As a result of such investigation, and based upon the voluminous evidence and testimony sub-

mitted therein, the Interstate Commerce Commission, in its report (306 ICC 417), May 18, 1959, had the following to say:

"Having increased their net investment in passenger-train cars and passenger locomotives between 1946 and 1957 by about half a billion dollars, during periods when patronage was dropping steadily, the respondents can hardly be charged with undue conservatism in modernizing their passenger facilities. (p. 448)

"The evidence supports the general conclusion that many railroads by upgrading and replacing equipment, by experimenting with new types of equipment, and by other means have conscientiously endeavored to improve their standards of service. It is also fair to conclude that railroads generally have not discontinued trains without serious efforts—sometimes prolonged—to make them pay and only after sympathetic consideration of public convenience." (p. 481)

The Commission summarized the situation then confronting the railroads as follows:

"Though many people still prefer to travel by rail for one reason or another, they clearly constitute a minority—a minority that grows smaller with each passing year. Figures for 1958 show that for the first time in the 70 years of recorded history of the American railroads, their passengers numbered less than 400 million. This decline has occurred against a background of an expanding population with more time, means, and the desire for travel. In terms of inter-city passenger-miles, the "travel market" increased almost 60 percent from 1949 through 1957. Though the total "for-hire" share rose by slightly less than 9 percent, railroad passenger-miles declined 27 percent." (p. 479)

Equally significant is the statement of the New York Public Service Commission in its report of January 26, 1959, in which it recounted the experience of the New York Central Railroad in its efforts to solve its passenger service deficit:

"In our own State, the practices of the New York Central are illustrative. Immediately following World War II the Central concluded exhaustive studies of the desires of the traveling public in the way of service and equipment. Prompted thereby, it invested \$168 million in new passenger service equipment, revised its schedules and added more passenger trains. Nevertheless, passenger traffic fell off heavily and costs mounted. New equipment purchases and services were then curtailed to minimize losses. In 1955, the Central changed tactics, launched itself upon an extensive promotional advertising endeavor and simultaneously effected service improvements, seeking to solicit greater patronage thereby. *The resulting retardation of the decline of passenger service revenues in 1956—the first since 1952—was accomplished at the expense of a further increase in operating costs of some \$9 million. The deficit continued to mount.* The Central then reverted to its former policy of reducing service as, in its conception, the only effective means of minimizing losses." (Report of Investigation by The Public Service Commission [N.Y.] of The Financial Condition of The Railroads Operating in The State of New York, January 26, 1959, p. 22) (italic supplied)

During the years 1946 through 1965, while the passenger business was rapidly declining and the passenger train service deficit totaled in excess of ten billion dollars, the Class I railroads and the Pullman Company made capital expenditures for additions and betterments to the passenger train car fleet totaling one billion, eight hundred million dollars, a rather large expenditure for the betterment and improvement of equipment operated in losing service.

From 1958, the year of passage of Section 13a of the Interstate Commerce Act, through 1965 the Class I railroads and the Pullman Company made capital expenditures well in excess of two hundred million dollars for additions and betterments to passenger train cars, while during the same period of time the passenger train service deficit totaled well in excess of three billion dollars. In the year 1965 capital expenditures for such purposes totaled forty-six million, eight hundred thousand dollars, while the passenger train service deficit for 1965 was four hundred and twenty million, six hundred thousand dollars.

This record over the years of capital expenditures for the betterment and improvement of passenger train equipment, notwithstanding the losing nature of such operations, scarcely paints a picture of disinterested and willfully destructive management.

Perhaps time, even though the short period of ten years, has dulled our collective memories. Do the names Aerotrains, Talgo train, "Train X" and "Xplorer" call anything to mind? They should, because these were the names of new and unique types of passenger trains built and operated on an experimental basis

in the middle and late 1950's in an effort to make passenger service more efficient and economical. While we hear much today of the projected high-speed ground transportation in the Eastern Corridor, it is significant that the Interstate Commerce Commission, in its Report of May 18, 1959, stated that:

"The Pennsylvania is now investigating a train of new design, projected as capable of high-speed operation between New York City and Washington, D.C., on a schedule 40 percent faster than that of the present fastest train with reduced operating costs which would permit a substantial reduction in fares." (p. 447.)

The Pennsylvania Railroad has persevered in its investigation and today that railroad and the United States Government are jointly undertaking such an operation, with the Pennsylvania Railroad paying the larger portion of the cost of this multi-million dollar project.

The New York Central is experimenting with jet propelled trains and is considering revision of its entire passenger train service so as to afford more frequent, swifter and more economical service over reasonably short-range distances.

There has recently been announced the expected operation in 1968 of passenger trains between New York and Florida transporting both automobiles and passengers by the use of newly designed equipment.

It is for all of the foregoing reasons that we in the railroad industry have little patience with those who accuse the industry of having deliberately set about over the past years to destroy passenger train service. On the contrary, it is the preference of the traveling public for the private automobile and the airplane and of the Post Office Department for trucks and airplanes that is delivering the knock-out blow to large segments of passenger train service.

In further answer to those who say that improved, first-class service will attract large patronage to passenger trains and make them more profitable, let me give examples of the fallacy of such a generalization.

During the 1962-63 season the Atlantic Coast Line Railroad reinaugurated what might be termed super service on the Florida Special. This train was assigned the best and most modern passenger equipment; was staffed with hostesses; provided with a recreation car and innovations such as bingo games, movies, reserved dining hours, fashion shows and other passenger entertainment; free champagne, cigars and other favors. The result has been a steady decrease in the patronage of the train and a reduction in net revenue per train mile, from \$2.40 in 1962-63 to \$1.69 in 1965-66, and to 48¢ through February 1967. The Atlantic Coast Line's total passenger train service deficit increased from nine million, nine hundred thousand dollars in 1962 to fourteen million, nine hundred thousand dollars in 1966.

Turning to another area of the country and the over-night run from New York to Chicago, the experience of the Pennsylvania Railroad with its Broadway Limited should be mentioned. The Broadway Limited had long been an outstanding train in the New York-Chicago service. In the latter part of 1965 the Pennsylvania embarked upon an all-out effort to recapture and hold patronage on the Broadway. The most modern equipment was assigned to the train; intensive cleaning and maintenance programs were instituted; train crew members were especially encouraged in public relations, courteous service and neat appearance; dining car service was stepped up with new and attractive menus provided and with dinner wine, cigarets and fruit after dinner served to passengers without charge. A widespread and imaginative advertising campaign was conducted at a cost of \$75,000, with advertisements placed in major newspapers in New York, Philadelphia, Chicago, Minneapolis and St. Paul. Advertisements appeared in the New Yorker, Time, Life and Good Housekeeping magazines. The result of all this effort and expense was a continued decline in the patronage of the train from an average daily load of 70 passengers in each direction in November 1965 to an average daily load of 48 passengers in each direction during April 1967. The stand-by nature of the service performed by the Broadway Limited was evidenced during the airline strike last summer, when traffic on the train jumped to an average daily load of 138 passengers per day and, after the strike, immediately reverted to the lower and declining levels mentioned.

Similar illustrations can be made with respect to such fine named trains as the Illinois Central's Panama Limited, between Chicago and New Orleans, and fine trains operating on certain western railroads in transcontinental service.

Even in those instances where the railroad may have been successful in holding patronage of a particular train at pre-existing levels or even increasing patronage, the effect of rapidly increasing costs has taken its toll. The cost of

passenger train operations is the next subject to which I shall address my comments.

While railroad labor complains bitterly of the reductions in passenger train operations that have taken place and attempts to play the role of protector of the public interest, it has done little, if anything, to ease the cost burden of passenger train operations. Generally speaking, today's passenger train operations are conducted under work rules and agreements arrived at in 1919, and with respect to which the processes of collective bargaining have since afforded little or no relief. Management's efforts, including those of 1962-63, through the processes of collective bargaining to bring about modernization of these work rules and thereby a reduction in the cost of passenger train operations, have been wholly unsuccessful. This is largely because of labor's adherence to and insistence upon those outmoded, and indeed archaic, work rules and agreements.

The Interstate Commerce Commission devoted a substantial portion of its report in the Passenger Train Deficit Investigation to the matter of operating expenses and the nature of the work rules and agreements under which passenger train service is performed. The Commission reached the following conclusion:

"If the railroads are to maintain a substantial position in the transportation of passengers, we are persuaded that no avenue for reduction in expenses should be left unexplored. Irrespective of denials by certain representatives of labor organizations, the circumstances in this proceeding emphatically point to the conclusion that a comprehensive review and revision of the working rules for the railroad employees should be made. (p. 452)

* * * * *

"The high proportion of labor costs makes it obvious, however, that their reduction is a major target in any attempt at substantial lowering of operating costs. Though this record does not reveal their full import, nor permit us to draw detailed conclusions, there is confirmation of the belief that the railroad wage structure, including work rules and certain full-crew laws, may unjustifiably involve uneconomic use of labor." (p. 480)

In support of these conclusions, the Commission pointed to the basic-day rule for engine crews, providing that "100 miles or less (straight-away or turn-around) five hours or less, shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rate provided, according to class of engine." It referred to the fact that payments for overtime are on a speed basis of 20 miles per hour computed continuously from the time required to report for duty until released at the end of the last run. It pointed out that for conductors and trainmen the rule is that 150 miles or less shall constitute a day's work and that miles in excess of 150 will be paid for at the mileage rate provided.

The Commission further emphasized that these rules have been in effect without change since 1919 and that as the average speed of passenger trains increased the number of hours which engine and train employees must work to earn a day's pay had greatly decreased. It said, for example, that the average number of hours actually worked by passenger train firemen on straight time and overtime per basic day of 100 miles was 3.3 hours in 1957. The comparable average hours worked per basic day in 1965 is even less.

The Commission's reports sets out examples of the effect of the basic-day rules and of the interdivisional point rules. A fireman whose run was 109 miles and involved 2 hours and 11 minutes in the cab received compensation in excess of a full day's pay; a passenger conductor running 346 miles and on duty for 6 hours on the run received approximately 2½ days' pay; the Denver Zephyr, operating between Chicago, Illinois, and Denver, Colorado, running 1034 miles in 16.5 hours, required the services of 8 engine crews whose members received a total of 10½ basic-days' pay.

The Florida Special, to which I have previously referred, runs for 1057 miles. The schedule time for the run is 18 hours. Seven engine crews are required to make the run and they receive a total minimum of 10½ basic-days' pay. The Broadway Limited, to which I have also referred, runs 907 miles in 16 hours, between New York and Chicago, requires a total of 6 engine crews to make the run and they receive a total minimum of 9 basic-days' pay. The Panama Limited, running between Chicago, Illinois, and New Orleans, Louisiana, covering a distance of 921 miles in 16.5 hours, requires 7 engine crews to make the run and they receive a total minimum of 9.2 basic-days' pay.

In its report referred to, the Commission pointed out that the average compensation received by engine and train employees in passenger service per hour of straight time and overtime actually worked increased 107 percent from 1947

to 1958. It also stated that the number of hours actually worked by those employees in 1958 was 57 percent of the number of hours for which they were paid at straight time and overtime rates and that this percentage had dropped from a level of 64 percent in 1947. Today this percentage—hours worked to hours paid for—has further dropped to 55.8 percent.

The passenger service rules of 1919 are still in effect today and the only changes that have taken place since the Commission considered these matters in its report are that the rates of pay have, of course, increased and the number of hours actually worked as compared to the number of hours paid for has further declined.

Until railroad labor accepts modern day realism in its bargaining with respect to the work rules and agreements covering passenger train service we feel it is ill qualified to carry the banner of public interest and to demand a curtailment or halt in the elimination of unneeded passenger train service losing hundreds of millions of dollars per year and consuming a substantial percentage of the net railway operating income from freight service.

If the elimination of such service is to be made more difficult and costly, curtailed or halted, or indefinitely delayed, then a modernization of the applicable work rules becomes of even greater significance. If legislation is to be enacted that would have the foregoing effects, then there should also be enacted legislation providing that when the processes of collective bargaining have reached an impasse the matter of modernization of the work rules applicable to passenger train service must be submitted to a board whose decisions with respect to those work rules would be final and binding upon the parties.

There is another aspect of the railroad passenger train problem that deserves comment, namely, the policy of the Post Office Department with respect to the transportation of mail. As a result of evidence submitted in the Passenger Train Deficit Investigation the Interstate Commerce Commission recommended:

"That the executive departments of the Federal Government consider the implications of the national transportation policy in connection with the procurement of passenger-train services by the Post Office Department, Department of Defense, and other agencies of the Government." (p. 483)

If anything, the policies of the Post Office Department since the date of the Commission's Report have been even more detrimental to the maintenance of passenger train service. The Chairman of the Interstate Commerce Commission, in his testimony before this Committee the other day, stated that:

"The rail passenger problems are still with us—the patronage trend, for example, is downward, while operating costs continue their inexorable rise. In fact, the trend has been spurred most recently by the Post Office Department's policy of transferring the mail from rail to highway, thereby depriving many passenger trains of their primary sustenance and converting formerly profitable or marginal operations into clear-cut candidates for discontinuance."

In view of these statements by the Commission and its Chairman, there appears little I could add regarding the policies of the Post Office Department in the transportation of mail. Perhaps, however, a single illustration of the type of instance referred to by Chairman Tucker would be helpful.

Atlantic Coast Line Railroad passenger trains No. 37 and No. 38, running between Jacksonville and St. Petersburg, Florida, operated during the year 1964 at a contribution of \$48,560 over and above direct expenses. In 1965 the Post Office Department took the mail off trains No. 37 and No. 38, depriving those trains of mail revenue amounting to \$328,478. Rather than operating at a contribution above direct expenses, those trains immediately began operating at an annual loss of \$262,625. On that same railroad, passenger trains No. 75 and No. 76 were operating between Jacksonville and Tampa, Florida, at a contribution of \$30,381 above direct expenses until the mail was removed, with a revenue loss of \$368,302, after which these two trains operated at an annual loss of \$448,000 on direct expense basis. These cases, or illustrations, with respect to the effect of removal of mail from passenger trains, could be multiplied many times if all passenger trains throughout the United States were taken into consideration.

A recent article in the WASHINGTON POST of April 19, 1967, referred to the removal of a large amount of railway mail from certain trains operating in the midwest. The article stated that while trains would continue to carry mail between many midwestern mail centers, increasing emphasis would be placed on airlifting first-class mail on a space-available basis. According to the news article, part of the justification for the removal of the mail from the trains was that the train schedules did not meet the needs of the Post Office Department and that the trains were just late too often, with such delay causing additional

expense to the Post Office Department. An interesting question might be raised as to why mail would be removed from a train because it was late and then that same mail would be offered to the airlines upon a space-available basis, in other words, for the airlines to move it or to leave it.

While the foregoing part of my statement has not dealt directly with the provisions of the bills upon which your Committee is now conducting hearing, we are of the firm opinion that such background of the general passenger train service problem is both desirable and necessary. I shall now address myself to the particular bills.

H.R. 7004 was introduced at the request of the Interstate Commerce Commission to implement a special recommendation made by it to the Congress. You have before you a Committee Print, showing the changes in existing law that would be made by H.R. 7004 as introduced. I shall address my remarks to those changes as they appear, in order, in the Committee Print.

Present Section 13a(1) applies to the discontinuance of a train 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. The first amendment proposed would confine the application of Section 13a(1) to a train "operated in service between a point in one state or foreign country and a point in any other state or in the District of Columbia." This amendment may appear simple and innocuous but would actually relegate to a realm of limbo certain passenger trains insofar as jurisdiction of the Interstate Commerce Commission is concerned. There are passenger trains, and the Commission has had such cases before it, where the train performs service only in a single state but, for operating convenience, such as cleaning, maintenance, refueling, turn-around, etc., the train terminates its run in another state. Such a train performing service only in a single state but operating in more than one state, would be removed from the purview of Section 13a(1). However, H.R. 7004 makes no corresponding amendment of Section 13a(2), so as to place ultimate jurisdiction in the Interstate Commerce Commission. Section 13a(2) applies only to a train operated wholly within the boundaries of a single state. While we are opposed to this particular amendment of the provisions of Section 13a(1), we deem it essential, if any such amendment is made, that the provisions of Section 13a(2) also be amended so as to place those trains which I have described within the purview of the latter section.

The next amendment made by H.R. 7004 would be to extend the notice period under Section 13a(1) from the present 30 days to 40 days in advance of the proposed discontinuance. No sound reason has been advanced for the additional 10-days' notice and it simply means further delay in the disposition of a train discontinuance case.

The next amendment made by H.R. 7004 would place upon the carrier the burden of proof that public convenience and necessity permit the proposed train discontinuance and that continued operation of such train would unduly burden interstate or foreign commerce. The Interstate Commerce Commission, in its reports in numerous train discontinuance cases, and through the testimony of its Chairman the other day before this Committee, has stated that the matter of burden of proof has presented no real problem in the Commission's administration of the present law. Accepting this fact, there appears to be no valid reason for changing the present law insofar as burden of proof is concerned. Imposition of such burden upon the carrier would represent a radical departure from the regulatory scheme adopted by the Congress in the present provisions of Section 13a(1) of the Interstate Commerce Act. By the terms of that section, Congress confirmed the right of management to make initial decision that a particular passenger train should be discontinued. The equivalent of a veto power, however, was placed in the hands of the Commission, so that after investigation and upon proper finding, the Commission can direct management to continue to operate the train for a period of one year. After the expiration of that year the jurisdiction of the state commissions again attaches to any discontinuance of the train, subject only to preemption by again following the provisions of Section 13a(1). The present regulatory scheme enacted by the Congress has worked well and no justification exists for the radical departure from that scheme that would be made by the H.R. 7004.

The next amendment of importance would extend the period of time in which the Commission may dispose of the matter, and during which the continued operation of the train would be required, from the present 4 months to 7 months beyond the date on which such discontinuance would otherwise have become effective. Further, the Commission could add an additional 2 months pending

completion of its investigation or disposition of any petition or petitions for reconsideration. The time-wise effect of the amendments so far discussed would be to require the continued operation of the train for a period of 5 months and 10 days beyond the 4-month period required by present law. In his testimony before this Committee the Chairman of the Interstate Commerce Commission admitted that present time requirements are entirely adequate for the normal case handled by the Commission. However, he referred to some possible situation with which the Commission might be confronted at some future time as the justification for these particular amendments. No real justification was offered for a general extension of time, as would be provided by H.R. 7004. The Chairman did say that the Commission, of course, would not necessarily take the entire extended period of time to dispose of the normal case but the general experience of the railroads has been that the time available is the time that will be used. In any event, if the extension of time is to be granted, it should be confined entirely to the unusual, and seemingly as yet unexperienced, case which might at some time confront the Commission.

The next amendment is one authorizing the Commission to require the continued operation of the train if it finds that public convenience and necessity do not permit the proposed discontinuance and that the continued operation will not unduly burden interstate or foreign commerce. Under present law, the Commission may exercise its veto power over the decision of management upon a finding that public convenience and necessity require the continued operation of the train and that its continued operation will not unduly burden interstate or foreign commerce. This amendment, coupled with that imposing the burden of proof upon the carrier, might be construed so as to change the entire present scheme of regulation of passenger train discontinuances. It might be argued that the carrier must obtain authority from the Commission before it could discontinue an unneeded and losing service and thus substitute burden of proof upon the carrier and authority from the Commission for the present veto power exercised by the Commission.

An immediately following amendment would authorize the Commission, in requiring the continued operation of the train, to attach such terms, conditions and modifications pertaining to operations or service as the Commission shall find to be just and reasonable. Here is a clear invasion of the responsibilities of management and the Commission could tell management how it must run the train, the service to be performed by the train and, possibly, even the nature of the equipment in the train consist. Moreover, it is not at all clear that the terms, conditions and modifications pertaining to operations and service would be confined to the operations or service performed by that particular train. If such is not the case, then the invasion of the responsibilities of management is even more far reaching and might encompass the entire passenger train service performed by the railroad. The only justification offered by the Interstate Commerce Commission for this particular change in the law is a plea for "flexibility", whatever that term may mean. Such a plea, with the ill-defined or wholly undefined meaning of the term "flexibility", certainly affords no sound basis upon which to so amend the present statute. Indeed, upon the conclusion of an investigation by the Commission, a railroad might be even worse off by having sought relief. Many well intentioned people, and I do not exclude members of the Interstate Commerce Commission, believe they know better than does management how a railroad should run its passenger train operations . . . but such seems highly questionable. No case has been presented for the grant of such broad authority to the Interstate Commerce Commission and, indeed, such should not be done.

Moving to the next amendment made by H.R. 7004, we find that the Commission, in permitting discontinuance of an intrastate train pursuant to Section 13a(2), would be authorized to attach to the discontinuance of that train such terms, conditions and modifications pertaining to operations or service as it might find to be reasonable and just. Here, again, we find a clear invasion of the responsibilities of management. The terms, conditions and modifications here referred to seemingly are not those pertaining to the operations or service of a train that is discontinued. Once again the plea for "flexibility" affords little or no support for the proposed amendment. The invasion of the responsibilities of management, no matter how well intentioned, with respect to its passenger train operations and service is wholly unjustified.

H.R. 7004 would add a new Section 13a(3), providing that any person adversely affected or aggrieved by an order of the Commission entered after hearing pursuant to subparagraphs (1) or (2) of that Section might bring suit to obtain

judicial review. Under such a provision it can be safely assumed that in every instance where a train would be discontinued under this section of the Interstate Commerce Act, and notwithstanding the unneeded and losing nature of the particular service being performed, the matter will be taken to court and it is most likely that the train will continue to operate indefinitely while the judicial processes are exhausted. Such an amendment is not designed, as is the present statute, to exert pressures upon public authorities to find solutions for the problem posed by a service allegedly needed by the public but which cannot be made to pay its way. Indeed, I have the feeling that public authorities, knowing they could through judicial processes keep the train in operation for an indefinite period of time, would be much less likely to exert themselves in an effort to find the needed solution.

Summarizing with respect to H.R. 7004, no substantial case has been submitted to your Committee justifying the amendments that bill would make to the present law. The end result of the bill would be to make it more difficult and costly to eliminate unneeded and losing service and certainly prolong for an indefinite period of time the continuation of such services. In the meantime, the financial burden would continue and probably mount.

The bill has been characterized by its proponents as one designed to afford the Commission more time in which to dispose of passenger train discontinuance cases and to provide the Commission with "flexibility", whatever that term may mean. The matter of time cannot be considered in the abstract. Thirty days may seem like a short period of time, but not to the man sitting in jail. Nine months and 10 days may appear not unreasonable, unless related to the situation in which the time requirement is to apply. In the case of a passenger train losing hundreds or even thousands of dollars a day, 9 months and 10 days adds up to a considerable loss. When the indefinite time that would be required by judicial processes is further imposed, and we may be speaking of years instead of months, the burden becomes almost intolerable.

Turning to H.R. 260, that bill would provide for consideration by the Interstate Commerce Commission, in disposing of any passenger train discontinuance case under Section 13a(1), of any financial assistance available pursuant to the Urban Mass Transportation Act of 1964 or any other law for the purpose of continuing such operation or service and the efforts of such carrier or carriers to obtain such assistance. Further, this bill would require the same consideration by the Interstate Commerce Commission in acting under Section 13a(2) of the Interstate Commerce Act. Generally speaking, we believe the major intent of H.R. 260 is already encompassed within the provisions of existing law.

To the extent that the Interstate Commerce Commission may consider such information to be of relevance, it could probably require that such information be submitted by the carrier at the time of posting of notices of the proposed discontinuance of a particular train. The Commission has today prescribed rules and regulations requiring the carrier to furnish information and we assume such requirement could include the matters dealt with in H.R. 260.

On the other hand, the availability of financial assistance pursuant to the Urban Mass Transportation Act of 1964 is considerably limited in scope and the imposition of this statutory provision might place a cloud on passenger train discontinuance cases generally. Believing that H.R. 260 would add nothing to the present power and authority of the Interstate Commerce Commission, but, equally, believing that its adoption might confuse interpretation of present law, we are opposed to enactment of H.R. 260.

Considering next the provisions of H.R. 519, we have no particular objection to consideration by the Interstate Commerce Commission of the fact that the carrier could participate in an existing local, State, regional or Federal program for the improvement of commuter services. But we do, however, believe that enactment of this bill might lead to undue emphasis being placed upon such fact. Insofar as this bill would require the Commission to consider the fact that a carrier could participate in a "proposed" local, State, regional, or Federal program, we think its provisions wholly unrealistic. The idea that the Interstate Commerce Commission would make a determination respecting a particular passenger train then operating in the light of a "proposed" program is entirely unrealistic. The Commission would have no possible way of determining, at the time the matter was before it, whether the "proposed" program would become an actuality or not. In other words, the mere fact that a community, State, region or Federal government had under consideration a proposed program would have to be taken into consideration by the Interstate Commerce Commission, with no way of determining the likelihood of fruition of such program, nor of the time

such fruition might be realized, nor as to how that program might affect the particular operation then under consideration by the Commission.

Further, H.R. 519 would provide that the Interstate Commerce Commission must also take into consideration the fact that a railroad was a party to an application for permission to merge, from which merger it could be expected to benefit. This provision would inextricably mix railroad merger cases with passenger train discontinuance cases, and without the requisite guidelines to control the determinations in either case. It would be pointless for the Commission, in a case dealing with the discontinuance of a single passenger train, to consider whether the railroad seeking to discontinue that train happens to be a railroad party to a merger application from which merger that railroad could be expected to benefit if the merger happened to be approved by the Commission. I think my last sentence is sufficient description of the chaos and confusion that would result from this provision of H.R. 519.

The railroad industry is opposed, for the reasons stated, to enactment of H.R. 519.

While not covered by the Committee's Notice of Hearing, it is my understanding that comment should be made on the provisions of H.R. 8939.

Reading the statement submitted by Mr. Donald S. Beattie, Executive Secretary-Treasurer of the Railway Labor Executives Association, as well as listening to the oral presentation by Mr. William G. Mahoney, Attorney for the Railway Labor Executives' Association, it is apparent that H.R. 8939 is a bill that would carry out, in toto, the suggestions of railroad labor. This bill would, in substance, make a line abandonment case out of every passenger train discontinuance case. There is no sound analogy between the discontinuance of a passenger train operation over a line of railroad and the entire abandonment of that line of railroad.

Placing service adjustments under the same standards, measurements and procedures applicable to total abandonment of a line of railroad is wholly unsound and contrary to any realistic concept of regulation. The curtailment consolidation or other change in the service in an effort to meet changed conditions and to deal realistically with unprofitable, deficit producing operations is quite different from the total abandonment and dismantling of a line of railroad. Inability to do the former might lead, and in some instances has led, to the latter more drastic step. On the other hand, ability to do the former may avoid and has avoided the latter more drastic step. Present Section 13a of the Interstate Commerce Act affords recognition of the principle stated without placing in the hands of management unrestricted right to curtail, consolidate or otherwise adjust services at will. The provision of H.R. 8939 violate these principles by subjecting adjustments in service to substantially the same standards, tests and procedures applicable to a total withdrawal from all public service.

The intercity transportation of passengers is a highly competitive field. Travelers have available their private automobiles, buses, airlines, and railroads. To say that in adjusting its service to meet the public demand or market for such service a railroad must protect and make whole for four years any employee thereby affected represents a wholly unsound approach to regulation. It represents extension of regulation into the field of internal adjustment of the operations of a single company. It is difficult for me to see any difference between the adjustment and tailoring of railroad services to meet the market therefor and the tailoring of production and output by a manufacturing company. I have even more difficulty in determining just where one would draw the line within the railroad industry. If an employee affected by the discontinuance or change in the service of a single passenger train must be protected and made whole for a period of four years, what about the employee affected by the rescheduling of a freight train? Or the employee affected by the closing of a station agency? Or the employee affected by a forced reduction in maintenance program? If employees under our private enterprise system are to be protected and guaranteed in their jobs, when competitive forces alone dictate a reduction in operations, then we will have indeed taken a truly significant socialistic step. The Railroad Unemployment Act extends all the protection intended or necessary where economic considerations lead a given railroad to reduce its operations.

Let me point out to you that the provisions of Section 1, dealing with the construction of or abandonment of lines of railroad, were enacted as a part of the Transportation Act of 1920. It was processed through the Congress in the latter part of 1919 and the early part of 1920. It is needless to point out that we did not have at that time our great system of highways, nor our great system of airways and air carriers. A review of the legislative history of these provisions of the

Transportation Act of 1920 reveals that the principal emphasis was placed on the construction of new railroads or the extension of existing railroads. It was believed that the unrestricted right of railroads to be built whenever and wherever their projectors thought fit had led to a wholly undesirable result. The desire was to prevent the construction of unnecessary or parallel lines or the construction of railroads merely for the sake of making money on the construction. In the matter of abandonment of railroads, it was believed that since communities, cities and villages had been built up along railroads and were wholly dependent upon such railroads for public transportation, the Interstate Commerce Commission should be given control over the matter of abandonments.

The situation today, of course, is entirely different. New railroads are not being constructed and it is not likely that they will be. Few if any communities, cities, or villages are entirely dependent upon railroad transportation. On the contrary, most of them have, in effect, transportation running out of their ears. Indeed, it is the very existence of these alternative forms of transportation that has been one of the principal factors in creating the tremendous passenger problem. Instead of the chief instrumentality relied upon for passenger travel, the passenger train has become to a large extent the outmoded form of transportation.

Section 13a presently affords the public users of a passenger train and the communities through which such train operates all protection reasonably required in the public interest. Upon the filing of notice the Interstate Commerce Commission may institute, and has instituted, investigations and conducted public hearings. If the evidence shows that continued operation of the train, in whole or in part, is required by public convenience and necessity and will not constitute an undue burden on interstate commerce, the Commission is fully empowered to require, and has required, continued operation. Nothing would be gained by a single member of the traveling public in placing the matter of adjustments in passenger train service under the abandonment of line procedures of the Interstate Commerce Act.

In my opinion it is important to keep in mind that the conditions which have made much passenger train service unneeded and unprofitable have not been brought about by railroad management. To the extent that the service of a particular train has been outmoded and is no longer needed as a result of highway and air transportation, such has been the result of governmental promotional policies and expenditure of tremendous sums of public money at Federal, State and local levels. If the result of such policies has been to make it necessary or desirable in the public interest to discontinue the operation of a passenger train, surely the railroad company involved should not be required to protect an employee who may be placed in a worse position as a result of those very governmental policies.

H.R. 8939 would repeal Section 13a(2) of the Interstate Commerce Act and leave the matter of discontinuance of a passenger train operating entirely within the confines of a single State to the regulatory authority of the State Commission. Intrastate passenger trains would be discontinued pursuant to authority from the State Commissions and no labor protective conditions would be attached. Thus, there would be different treatment of employees affected by the discontinuance of a passenger train depending upon the nature of the operations of the train and the source of authority for the discontinuance.

This bill, H.R. 8939, is subject to all of the criticisms that I have made concerning H.R. 7004. No time limit whatsoever would be imposed for the handling of passenger train discontinuance cases and the unneeded and losing services would continue for an indeterminate period of time. The Commission, through the attaching of conditions to the discontinuance of a passenger train, would be authorized to invade the field of management responsibilities and could very likely dictate the nature and scope of passenger train operations and services to be conducted by a railroad. Those who plead the essentiality of a service in a highly competitive area would be freed of any burden to show that the service is indeed essential.

The whole intent and purpose of H.R. 8939 is to make it more difficult and costly to eliminate unneeded, unpatronized and losing passenger train service or to prolong such operations for an indefinite period of time.

The provision of the bill that no passenger train service could be discontinued for a period of 18 months from enactment of the bill is a forthright avowal that delay is one of its principal objectives.

The bill would strip the State regulatory commissions of any authority over the discontinuance of a passenger train operating between two or more states

and would require that the railroad seeking to discontinue such a train do so by filing a petition for authority with the Interstate Commerce Commission. Here, again, we find a complete departure from the carefully considered action of the Congress in enacting the present provisions of Section 13a of the Interstate Commerce Act. In enacting that section, the Congress was very careful to provide that a railroad might continue to invoke, and that when invoked a State regulatory commission might continue to exercise, existing jurisdiction over the discontinuance of any passenger train operating in that State. Since enactment of Section 13a by the Congress with this reservation of State regulatory authority, many railroads have seen fit to pursue the State procedures in seeking to eliminate unneeded and losing interstate passenger train service. Under the provisions of this bill the State regulatory authority would have no jurisdiction over the matter if the train operated beyond the boundaries of a single State.

Enactment of H.R. 8939 would impose upon passenger train service adjustments a scheme of things that could spread as does a cancer to any decision of management varying the level of output of the railroad industry and the efforts of management to apply realistic controls to the costs of railroad operations.

Summarizing, the railroad industry is opposed to enactment of any of the bills to which I have referred and we urge that your Committee take no action thereon.

Mr. MOLONEY. All right, sir.

We feel that in the consideration of these bills it is essential that this committee and that the Congress itself not lose sight of the background in which the legislation that these bills would amend was adopted.

As you know, section 13a of the Interstate Commerce Act was passed as a part of the Transportation Act of 1958. At that time Congress was very much concerned, as were most of us in the Nation, with the difficult situation that then confronted the railroad industry and a large segment or large segments of the industry appeared to be headed for financial crisis.

One of the major contributing factors to the financial crisis that then confronted the industry was the passenger service deficit under which the industry was then operating. Your committee, in its report on that legislation, referred to and commented upon the fact that the passenger train service operation was not making money; that, as a matter of fact, it was imposing a burden upon the freight service; and that it was consuming a large part of the net railway operating income from freight service.

At that time the passenger service deficit for the year 1957 was in the neighborhood of \$723 million and it was consuming 44 percent of the net railway operating income from freight service.

The statement made by your committee, as I pointed out in my written statement, is still true today. The passenger service deficit for the year 1966 is estimated at \$400 million and it will consume about 28 percent of the net railway operating income from freight service. We feel with the picture that confronts us today of a \$400 million deficit on passenger service operations and the consumption of approximately 30 percent of what we are able to make in the way of net railway operating income from freight service, that such does not paint an atmosphere of complacency nor should it give rise to any idea that we have solved the passenger train service deficit problem.

The magnitude of that deficit, of course, on a cumulative basis is rather staggering. Since World War II, since 1946, the railroad industry's passenger train service deficit has totaled \$10.9 billion. Since 1957, when section 13a was placed on the statute books, that same pas-

senger service deficit has totaled about \$3½ billion. We feel that with that tremendous burden you certainly should go carefully and cautiously toward any change in the statute that Congress saw fit to place on the books in 1958.

Your committee, in its report at the time that legislation was pending, also commented on the fact that, if passenger train service cannot be made to pay its own way because of lack of patronage either by traveling public or by the Government in its procurement of transportation for military personnel and other Government personnel or in the transportation of mail, that if you couldn't make the service pay that then abandonment of that particular train seemed to be called for.

We think that statement by your committee at that time is also true today. Yet we do have people urging and we do have before your committee today legislation that in substance would make it much more difficult, much more costly, and unduly delay the removal of unneeded and losing service. We find that some people say that we must maintain the status quo, that we have reached a level of passenger train service that does not permit a further decrease.

Now, all of these arguments were made at the time the Transportation Act of 1958 was passed. As a matter of fact, they were made in the passenger train service investigation by the Interstate Commerce Commission just prior to the passage of the Transportation Act of 1958. There was much hue and cry for the maintenance of the status quo and I have attempted at one point in my written statement that there is dynamite in a status quo argument and in order to illustrate that dynamite I have pointed to the fact that if we today were operating the same level of passenger service that we operated in 1957 but were today operating that service at today's costs, then for this year 1967 our industry would incur a passenger train service deficit of \$1.6 billion and that such passenger service deficit that would be incurred had we maintained that level of service would exceed by \$200 million our entire net railway operating income from freight anticipated for 1967.

We feel that this portion of the background painted in my statement shows the wisdom of the Congress in placing section 13a on the books. Had we not had section 13a, had we not been able to materially reduce the level of passenger train service, were we paying for that service at today's prices, I think we could safely say that the majority of our industry would be bankrupt.

Now, there are people, for instance, and you have heard from testimony the other day on these very bills that there are people who accuse, and I think loosely so, the railroad industry of having set about to destroy passenger train service. This same accusation was made by the opponents to this part of the Transportation Act of 1958, to wit, section 13a. This same criticism was made by witnesses and by testimony before the Interstate Commerce Commission in the passenger service deficit investigation but that the Commission, after considering the evidence, and it was voluminous in that proceeding—I was chief counsel for the industry in the investigation. The investigation itself extended over 3 years. There were thousands of pages of testimony and thousands of pages of exhibits.

Mr. FRIEDEL. Mr. Moloney, you said they used the words loosely?

Mr. MOLONEY. No, I said I considered the accusation that the industry had set about to destroy passenger train service, I considered that accusation to be loosely made, and I mean unjustifiedly so.

Mr. FRIEDEL. Did you read the testimony last week when it was stated that where the ICC did not curtail the service, the railroad first cut off a diner and then cut off another sleeping car and another car and then at the end of the year said, "Look, we told you. It is not a paying run. We lose money."

Do you encourage the railroad, that particular line, to lose money and to fit into a pattern to curtail the service?

Mr. MOLONEY. No. We do not encourage that. I did hear the statement made that such was done and that then when they came back to the Interstate Commerce Commission to get that train off they were then in a position to show that the train had lost even more money, but at the same time I did not hear a single witness point to such a case and give your committee an illustration of when the railroad came back to get that particular train off a year later, what the picture was.

As a matter of fact, I have not checked this out carefully but my own opinion is that if you took every case before the Interstate Commerce Commission you would be hard put to find where a railroad had lost and then come back to the Commission. Those cases would be very, very rare. I heard the accusation. Not being familiar with the day-to-day operations of each railroad, I am not in a position to say that it did not happen.

As I said, I heard no illustration of it given. It is simply a broad, unsupported statement.

Mr. FRIEDEL. I notice that it was a general statement. They did not name any particular run or any railroad but they did make the general statement that they tried to discourage the passenger from riding the passenger trains with dirty trains and things of that sort. They did not specifically mention the run.

Mr. MOLONEY. I think, Mr. Chairman, that before I have completed my statement I will have given you illustrations where, rather than downgrading the service the railroads have upgraded it and, as a matter of fact, have made it rather glamorous and, if I may use the term, added "sex appeal," and with the end result of greater expenses and larger losses.

I was at this moment addressing myself to the fact that I think the accusation that you have described is a loose one and as I said it is not a new one. It was one that the Commission was not impressed with in its investigation and I have in my written statement quotations from the Commission's report where, for instance, the Commission said that—

Having increased their net investment in passenger-train cars and passenger locomotives between 1946 and 1957 by about \$½ million, during periods when patronage was dropping steadily, the respondents can hardly be charged with undue conservatism in modernizing their passenger facilities.

The Commission further said that the evidence in that proceeding supported the general conclusion that—

Many railroads by upgrading and replacing equipment, by experimenting with new types of equipment, and by other means have conscientiously endeavored to improve their standards of service. It is also fair to conclude that

railroads generally have not discontinued trains without serious efforts—sometimes prolonged—to make them pay and only after sympathetic consideration of public convenience.

That is what the Commission found with respect to the point we are discussing now, as a result of all of the evidence in that investigation and that really is not changed today. It is going along pretty much the same way. They do not discontinue the trains until they have made sincere efforts to make them pay.

During the years 1946 through 1965, while the passenger train service was incurring this \$10 billion deficit, the class I railroads and the Pullman Co. made capital expenditures, and this doesn't include maintenance and expenses, and so on, but simply capital expenditures, for additions and betterments to the passenger train car fleet of \$1.8 billion and that certainly is a rather large capital expenditure to be made for equipment that is going to operate in a generally losing service.

Since the passage of the Transportation Act of 1958 and while we were incurring a total deficit of some \$3½ billion in passenger train service, the class I railroads and the Pullman Co. have made capital expenditures well in excess of \$200 million for additions and betterments to passenger train cars. In 1965, the last year I have the figures available, a total of \$46.8 million was spent for that very purpose and during that year the passenger train service deficit was \$420.6 million. We feel, for instance, that this record of capital expenditures, \$1.8 billion since World War II, \$200 million-some-odd since section 13a was put on the statute books, certainly does not paint a management or describe a management that is disinterested and is willfully destroying passenger service.

It might be interesting, for instance, for me to ask whether the names Aerotrain and Talgo Train and Train X and Xplorer, whether they call anything to the minds of the people present. They should because those were the new and experimental trains that were developed and placed in operation during the middle and late 1950's in an effort by the railroad industry to improve passenger service and to reduce the expenses of that service. Those trains were generally not successful but the fact that they were developed, that the money was spent, that they were tested and they were tried in operation, certainly cannot be disputed.

The Interstate Commerce Commission in its report in the passenger deficit investigation also commented on this fact about the Pennsylvania Railroad. This investigation, as I said, extended for 3 years from March 1956 to May 1959 so that at that time the Pennsylvania Railroad was investigating a new type of train design projected as capable of high speed operation between New York City and Washington, D.C., on a schedule 40 percent faster than that of the present fastest train with reduced operating costs which would permit substantial reductions in fares.

You hear a lot today about the high speed experiment that is going on in the eastern corridor. Here I am pointing out that the Pennsylvania Railroad in a hearing in 1956 was found by the Interstate Commerce Commission to be at that time investigating the very thing that is taking place today. The Pennsylvania Railroad has persevered in its investigation and today we find the Pennsylvania Railroad and the

U.S. Government jointly carrying out an operation that is almost as was described in 1956.

You also find that the Pennsylvania Railroad is picking up or paying the larger part of the tab for the line rebuilding, for the equipment and for what is being spent on that high-speed project.

I think this was mentioned in the testimony before your committee the other day. The New York Central is experimenting with jet-propelled trains. It is considering a complete revision of its entire passenger train operations so as to afford more frequent, swifter, and more economical service on medium and short-range runs, feeling that in that area possibly the competitive situation might permit the New York Central passenger train service to survive in competition, let us say, with airlines and private automobiles.

You have also heard recently or read recently that within a year there will be in operation between New York and Florida an entirely new concept of passenger trains using newly designed equipment that will permit you to go down and put your automobile on the train. You get on the train yourself, you will be accommodated, your automobile will be accommodated and you will both arrive in Miami at the same time.

Now, for all of these reasons, this history of capital expenditure, the experimentations that went on in the 1950's, the experimentations that are going on today that I have described, it is for all these reasons that we feel that the people who accuse our industry of willfully destroying passenger train service certainly use or make that allegation in a very loose sense of the word.

I would like to mention two illustrations of complete upgrading of service because I think they are significant. We were told that, "All you need to do is clean up your trains. Let us not have them dirty. Put on more and better service and you will have passenger business running out of your ears. People will flock to you."

Well, during the season 1962-63 the Atlantic Coast Line Railroad reinaugurated a very famous train service. Years ago there used to be the Florida Special and it was one of the finest trains in the country. It got caught in the competitive hassle with the private automobile and the airplane. So that in the 1962-63 season the Coast Line reinaugurated what might be termed a plush train and they put in the consist of that train the finest equipment that they had. They staffed the train with hostesses. They provided a recreation car with innovations such as bingo games and movies. They set up reserve dining hours so that you would no longer stand in line waiting to get into the diner. They had fashion shows and other passenger entertainment. They gave free champagne and cigars and other favors.

The result was that since they inaugurated this in 1962-63, there has been a steady decrease in the use of the train and a reduction in net revenue per train mile from \$2.40 in 1962-63 to \$1.69 in 1965-66 and to 48 cents through February of this year. The total Atlantic Coast Line passenger train service deficit increased from \$9.9 million in 1962 to \$14.9 million in 1966.

I call your attention to the fact that this train I have described and this plush service—and it is plush—operates between two parts of our country where tourist travel is very heavy. You would think that if there was any one part of the United States that you have a poten-

tial market and that you could develop that market by putting on improved service and better service than the operation from New York to Florida would be made to order, but I have given you the story of what has happened to the effort to do that.

I felt then that it might be wise to turn to, let us say, a less attractive tourist run, the run from New York to Chicago, but very definitely a very heavy run as far as business travel is concerned. So that, I have in my written statement the experience of the Pennsylvania Railroad with the Broadway Limited. That train had been an outstanding train for quite some time in the New York to Chicago service but it too got caught in the competitive battle and in the latter part of 1965 the Pennsylvania Railroad set out on an all-out effort to really upgrade and attract traffic to the Broadway.

They, too, put in the most modern equipment that we have. They initiated intensive cleaning and maintenance programs. They especially encouraged the train crew in public relations and courtesy and neatness of appearance, and so on. They stepped up the dining car service and provided attractive and somewhat unusual menus. They provided free dinner wine, cigarettes, free fruit after dinner. They even engaged in a widespread advertising campaign directed at that train alone and they published advertisements in the newspapers in New York, Philadelphia, Chicago, Minneapolis, and St. Paul. They published advertisements in the *New Yorker*, *Time*, *Life*, and *Good Housekeeping* magazines, and the result of all of this effort has been a decline in the patronage of the train from a daily average load of 70 passengers in each direction in November 1965 to 48 passengers in each direction during April 1967.

The standby nature of that train I point to because when the airlines were on strike last summer the traffic on that train jumped to a daily load of 138 passengers a day and when the strike was over it went right straight back down again to the low level, as I said, of 48 passengers in each direction on one of the finest trains operating in the Eastern part of the country.

Now, I could give you illustrations, moving around the country, of the Panama Limited between Chicago and New Orleans, and some of your fine transcontinental trains. The picture is pretty much the same. Even in those instances where the railroads have been able to hold a level of passenger patronage of a train, let us say, or where they have not lost, they maybe have even increased the patronage a little, the costs of operating that train, however, have constantly mounted so that with the same level of patronage, while you have been able to hold that, your costs have caught up with you; and in my written statement I go into in some detail about the costs of operating passenger train service.

Now, railroad labor has complained bitterly, as you gentlemen know, of the reduction that has been made in passenger train service and it has attempted to play the role of public protector or protector of the public interest in that respect. But in my opinion it has done little if anything to diminish or reduce the cost of providing the passenger train service which they so vigorously maintain should be continued and generally speaking our passenger train service operations are today conducted under work rules and agreements that were established in 1919 and that have had no overhaul or revision since that date.

Our own efforts to obtain a modernization and a revision of these 1919 work rules as they particularly apply in the passenger service, our own efforts including the efforts as recent as the 1962-63 negotiations with which you gentlemen are familiar, those efforts have been wholly unsuccessful. We feel that such is the case largely, not entirely but largely, due to railroad labor's insistence on adherence to the 1919 work rules.

Now, in the investigation by the Commission that I have referred to there was voluminous evidence presented showing the impact of these 1919 work rules on the costs, the then costs of performing passenger train service and the Commission reached two significant conclusions as a result of that evidence. They said:

If the railroads are to maintain a substantial position in the transportation of passengers, we are persuaded that no avenue for reduction in expenses should be left unexplored. Irrespective of denials by certain representatives of labor organization, the circumstance in this proceeding emphatically point to the conclusion that a comprehensive review and revision of the working rules for the railroad employees should be made.

The Commission further pointed out that the high proportion of labor costs make those costs the major target in any attempt to lower the expenses of passenger train operations and they said that, while the record before them did not reveal the full import nor permit the Commission to draw detailed conclusions, the record did confirm the belief that the railroad wage structure including work rules and full crew laws may unjustifiably involve uneconomic use of labor.

These 1919 rules, for instance, provide as far as engine crews are concerned that 100 miles or less shall constitute a basic day and that miles in excess of 100 will be paid for at the mileage rate provided according to class of engine. The same 1919 rules provide that payments for overtime are on a speed basis of 20 miles per hour computed continuously from the time required to report for duty until released at the end of the last run.

Now, the Commission pointed this out in its report and it also pointed out the fact that the work rules for the conductors and trainmen provide for a 150-mile day and that miles in excess of 150 would be paid for at the mileage rates provided. The Commission emphasized the fact that these rules had been in effect since 1919 without change, and they are still in effect today, and that as the average speed of passenger trains had increased the hours which the engine and train employees must work to earn a day's pay have reduced and it pointed out in its report that the evidence it had before it showed that the average number of hours actually worked by a passenger train fireman on straight time and overtime per basic day of 100 miles was 3.3 hours in 1957. The comparable average today is even less.

The Commission set out in its report examples of the effect these rules and the interdivisional point rules had and they used illustrations of this kind which they found in the evidence before them, namely, that a fireman whose run was 109 miles and involved 2 hours and 11 minutes in the cab, received compensation in excess of a full day's pay; that a passenger conductor running 346 miles was on duty for 6 hours and received $2\frac{1}{2}$ days' pay; that the Denver Zephyr operating between Chicago, Illinois, and Denver, Colo., ran the 1,034 miles in $16\frac{1}{2}$ hours but that the services of eight engine crews were required to run the $16\frac{1}{2}$ hours and the members of those eight engine crews received a total of $10\frac{1}{3}$ basic days' pay.

Now, I have mentioned the Florida Special and the upgrading of that train recently and the declining patronage and the declining net revenue per train mile. The Florida Special runs on the Atlantic Coast Line for 1,057 miles. Its scheduled time is 18 hours and seven engine crews are required to make the run and they receive a total minimum of 10½ days basic pay. I mentioned the Broadway Limited between New York and Chicago. That runs 907 miles in 16 hours, requires a total of six engine crews to make the run, and they receive a total minimum of 9 basic days' pay.

The Panama Limited between Chicago and New Orleans covers a distance of 921 miles in 16½ hours. It requires seven engine crews to make the run and they receive a total minimum of 9.2 basic days' pay.

I may say these figures that I have given to you, these engine crew requirements under the rules that we operate under today have not changed. They are the same today as they were when the Commission considered the evidence in its investigation and when the Commission made the statements that I referred to.

I think this significant. The Commission further pointed out that the average compensation received by engine and train employees in passenger service per hour of straight time and overtime actually worked had increased 107 percent from 1947 to 1958. It also stated that the number of hours actually worked by those employees in 1958 was 57 percent of the number of hours for which they were paid. And that that percentage had dropped from 64 percent in 1947 to 57 percent in 1958.

Today this percentage, that is percentage of hours worked to hours paid for, has further dropped to 55.8 percent. Until railroad labor accepts a modern-day realism in its bargaining with respect to these 1919 work rules we feel that it is somewhat ill equipped or ill qualified to carry the banner of public interest and to demand or to contend that there should be a curtailment or halt in the elimination of unneeded passenger train service losing hundreds of millions of dollars a year and consuming a substantial portion of the net railway operating income from freight service.

If any such action is going to be taken by this Congress and if elimination of this unneeded and losing service is going to be made more difficult, more costly, is going to be unduly delayed or temporarily halted, we feel then that this Congress should also enact legislation that in substance would say that, when the processes of collective bargaining to bring about a modernization and revision of these 1919 work rules, when that process of collective bargaining has reached an impasse, then an independent body or board would determine how those rules should be revised, how they should be modernized and that that decision should be binding on the parties.

Now, there is another aspect of this passenger train deficit problem, because this is really what you are talking about when we talk about legislation to amend section 13a.

In his testimony before this committee the Chairman of the Interstate Commerce Commission made a rather significant statement and I would like to call it to your attention. He said:

The rail passenger problems are still with us—the patronage trend, for example, is downward, while operating costs continue their inexorable rise. In fact, the trend has been spurred most recently by the Post Office Department's policy of transferring the mail from rail to highway, thereby depriving many passenger

trains of their primary sustenance and converting formerly profitable or marginal operations into clearcut candidates for discontinuance.

Significantly the Interstate Commerce Commission, in its investigation that I referred to, reached the same conclusion and they urged in their report that the executive department of the Federal Government consider the implications on the national transportation policy and of that policy in connection with the Government's procurement of passenger train services by the Post Office Department and by the Department of Defense and other agencies in the Government.

There is very little I could add to what the Chairman of the Interstate Commerce Commission and the Commission itself have said about the policies of the Post Office Department with respect to taking mail off of passenger trains, but I thought perhaps that the record before your committee should contain at least an illustration of that impact.

I would like to point to the Atlantic Coast Line passenger trains Numbers 37 and 38 that ran between Jacksonville and St. Petersburg, Fla. During the year 1964, those two trains operated at a contribution over and above direct expenses of \$48,560. In 1965 the Post Office Department took the mail off those trains and deprived those trains of mail revenue amounting to \$328,478.

Immediately, rather than operating at a contribution above direct expenses, those trains began operating at an annual loss of \$262,000 on a direct cost basis. On the same railroad there were two trains operating between Jacksonville and Tampa, Fla. They were operating at a contribution of over \$30,000 a year over and above direct expenses until the mail was removed with the revenue loss of \$368,000 and those two trains immediately were converted into a \$448,000 annual losing operation on a direct expense basis.

There was a recent article in the Washington Post about the removal of mail from certain passenger trains in the Midwest and then there was a subsequent article covering the statement of the president of one of the railroads affected in which he stated that they would be compelled to further reduce their passenger train service.

Now, the article in the Washington Post stated that while trains would continue to carry mail between many Midwestern mail centers that increasing emphasis would be placed on airlifting first-class mail on a space-available basis.

The same article, without naming the Post Office official, said that an official had stated that part of the justification for removal of the mail from the trains was that the train schedules did not meet the needs of the Post Office Department and that the trains were just late too often and that such delay was causing additional cost to the Post Office Department.

When I read that article it occurred to me that it would be a very interesting question as to why mail would be removed from a train because the train ran late and would be offered to the airline to move it on a space-available basis; in other words, fly it or leave it.

I am sure there must be some reasonable or logical answer to it but I thought the question rather interesting.

MR. FRIEDEL. Mr. Moloney, just make a note where you left off. I am going to call a 5-minute recess. We will continue at 11 o'clock. (A short recess was taken.)

Mr. FRIEDEL. The meeting will now come to order.

Mr. Moloney, you may proceed.

Mr. MOLONEY. Mr. Chairman, I have, shall I say, at long last reached the point in my statement where I will discuss the bills that are pending before this committee but before discussing those bills I had felt it essential, as I stated, that this committee, and I hope the Congress has not lost sight of the background that I have given you with respect to the passenger train service deficit problem because that is exactly what the legislation pending before you deals with.

H.R. 7004 was introduced at the request of the Interstate Commerce Commission and was designed to implement a legislative recommendation that the Commission made to the Congress, and you have before you, I think, a committee print of that bill that shows the amendments that would be made by the bill.

I will try to address my remarks to those amendments as they, let us say, appear in order in your committee print. I am sorry, Mr. Chairman. At the previous hearing there was such a print.

Mr. FRIEDEL. All we have is the original bill.

Mr. MOLONEY. I think my statement will describe the amendments in sufficient detail so that you can follow it.

Mr. FRIEDEL. Are you speaking of H.R. 7004?

Mr. MOLONEY. Yes.

Mr. WATSON. We did have one at first.

Mr. MOLONEY. The present section 13a(1) as you know applies to the discontinuance of a train operating from a point in one State to a point in any other State or in the District of Columbia or let us say in the reverse direction or order.

The first amendment that would be made by H.R. 7004 would be to change the present language of the statute so that it would not refer to a train operating from a point to a point but would provide that section 13a(1) would apply to a train "operated in service between a point in one State or foreign country and a point in any other State or District of Columbia."

Now, this amendment may appear on its face to be rather simple and innocuous. However, the effect of the amendment would be to relegate to limbo certain passenger train operations insofar as the jurisdiction of the Interstate Commerce Commission is concerned.

There are passenger trains, and the Commission has had such cases before it, where the train performs service, that is, picks up and discharges passengers only in a single State but for operating convenience such as cleaning, refueling the train, maintenance, crew changes, things of that nature, turn-around, the train crosses a State line and terminates, let us say, in another State but the service is performed only in the first State.

Such a train would be removed from the purview or coverage of section 13a(1). However, H.R. 7004 does not provide for any amendment to section 13a(2) so as to place that train under the purview or provisions of section 13a(2) so that such a train would go out from under 13a(1) but would not be picked up by the present 13a(2).

While we are opposed to the amendment itself, we think that if any such amendment is to be made that an amendment also should be made to place such a train under the provisions of section 13a(2).

The next amendment that H.R. 7004 would make is that it would extend the present notice period from 30 to 40 days.

Today the railroad must post a notice saying that the train is going to be discontinued 30 days hence and the amendment would make that 40 days.

I think if you review the testimony that has been given the committee to date you will find that there are no sound reasons advanced for the extension of the notice period and that in effect is just an additional 10 days delay that will take place in the disposition of that notice by the Interstate Commerce Commission.

The next amendment that H.R. 7004 would make would be to place upon the carrier the burden of proof that the public convenience and necessity permit the proposed train discontinuance and that continued operation of such train would unduly burden interstate or foreign commerce.

Now, the Interstate Commerce Commission in its official reports in numerous train discontinuance cases and in the testimony given by its Chairman before this committee last week—I think it was last week—has stated that the matter of the burden of proof has presented no real problems to the Commission in its administration of the present law, and accepting this fact that the matter of burden of proof has not presented no real problem to the Commission in its administration of the law, then we say there appears then to be no valid reason for changing the present law insofar as the burden of proof is concerned. We say further that imposition of this burden of proof on the carrier would, in effect, represent a radical departure from the regulatory scheme that the Congress enacted when it put section 13a(1) on the statute books.

By the terms of that section Congress confirmed the right of management to make the decision, the initial decision, as to whether the train would come off. However, Congress did not of course leave it entirely in the hands of management. Congress said, "You, management, may make that decision," but they placed in the hands of the Interstate Commerce Commission the equivalent of a veto power over that decision of management, and the Commission, after investigation and upon proper findings, could tell management, "The train will not come off, but you must continue to operate the train for a period of at least 1 year, no more than 1 year," and at the end of that year the jurisdiction of the State commissions then attaches to the train and if management wishes to again try to take the train off, it must initiate anew the procedures under section 13a(1), again subject to the Commission's veto power to say that the train cannot come off.

Now, this is the scheme that Congress saw fit to adopt in dealing with this passenger train deficit problem, and the burden of proof amendment contained in H.R. 7004 would constitute a radical departure from that regulatory scheme.

Mr. WATSON. Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. At this point perhaps it might be well for the record to show that apparently Mr. Tucker, the Chairman of the ICC, agrees with the statement just made by the witness, for we have before us a letter dated today from him stating that he would have no objection to the deletion of the language on pages 2 and 3.

Mr. FRIEDEL. If the committee so decided.

Mr. WATSON. But at least I think the position of the Commission should be put in the record at this point.

Mr. FRIEDEL. The whole letter will be included in the record. I don't think Mr. Moloney knows about the letter we received from the ICC. (The letter referred to follows:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 8, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on
Interstate and Foreign Commerce, House of Representatives, Washing-
ton, D.C.

DEAR CHAIRMAN FRIEDEL: In the course of my testimony before the subcommittee on H.R. 7004 and related bills, a number of questions were directed to the provision of this bill imposing on the railroads the burden of establishing that the public convenience and necessity permit the discontinuance of the service involved and that continued operation would unduly burden interstate or foreign commerce. The Commission has therefore reviewed its position on this matter.

We believe that this proposed amendment to the Interstate Commerce Act would be valuable in clarifying the uncertainty which presently exists in this area. As I indicated in my prepared statement and in my oral testimony, we have had no serious problems to date in compiling an adequate record in section 13a(1) cases. The parties, primarily the railroads, have submitted sufficient evidence on both the statutory issues—whether the trains in question are required by the public convenience and necessity and whether their continuance would constitute an undue burden on interstate or foreign commerce. Protestants repeatedly insist, however, that the railroads have a burden of proof imposed by section 13a in conjunction with section 7(c) of the Administrative Procedure Act; and the railroads, equally insistent, deny it. Since the Commission has no power to assign a burden of proof where none is imposed by law, we feel that the proposed change would provide a desirable clarification and insure against the future possibility that the carriers in some important cases would not adhere to their present practices, with the result that the Commission would lack an adequate record upon which to base a decision.

We have taken into consideration the misgivings about this provision expressed by certain members of the Subcommittee. Because of the critical need for this legislation as a whole and in view of the fact that the Commission has established a working practice with the railroads in the area of the provision in question, we feel that this provision could be deleted without seriously impairing our ability to administer the statute effectively. Therefore, if the Subcommittee is of the opinion that this section is a detriment to the legislation as a whole, we would not object to deleting this requirement by striking out lines 20 to 25, beginning with "When . . ." on line 20 of page 2, H.R. 7004, and ending with line 2 on page 3.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman.

Mr. MOLONEY. The next amendment that would be made by H.R. 7004 would extend the period of time in which the Commission must dispose of the notice of discontinuance and during which period of time the continued operation of the train would be required, and it would extend that period of time from the present 4 months to 7 months. Further it would provide that the Commission could impose an additional 2 months if necessary or in the discretion of the Commission in disposing of any petitions for reconsideration.

So that your extension would be from 4 to 7 months with an additional 2 months added, or from 4 to 9 months. That would be coupled with the additional 10 days that would be required by the extension of the notice period so that we would be talking about a total period of 9 months and 10 days under H.R. 7004.

Mr. FRIEDEL. Mr. Moloney, let me get this clear. Are you opposed to extending it from 4 to 7 months?

Mr. MOLONEY. Yes, sir. We very definitely are. The Chairman of the Interstate Commerce Commission in his testimony before you said, not once, but several times, that the present 4 months' period was adequate for the normal case that came before the Commission.

Mr. FRIEDEL. For the normal case, but there have been many other cases where he thought that the extension of time would be beneficial to all.

Mr. MOLONEY. He referred principally, Mr. Chairman, to some possible situation which might confront the Commission at some future time.

Mr. FRIEDEL. But his hands are tied now with the present law.

Mr. MOLONEY. His hands are tied, but they are tied in a way that permits the Commission adequate time to handle any normal case that comes before the Commission so that, while you may say your hands are tied, it is certainly not an undue tying. If you have the time to handle the normal case, you certainly, in my opinion, make a pretty weak plea for further time when you say, "I want a general extension of time to take care of a situation that I can envision might confront the Commission at some future time."

So that we are opposed to any extension of time because we think when it's adequate for the majority of the cases, the norm of the cases, that is the way the time ought to be set, and we feel that, if there is going to be any extension of time to take care of the unusual case which might confront the Commission at some future time, you should go no further than giving additional time in that kind of a peculiar situation; but a general extension of time applicable to all cases is not justified.

Now, of course, the Chairman of the Commission did say, "Of course, we will not take all of this 9 months and so on in the normal case because the 4 months we have today is adequate, so that we won't take the 9 months." But our experience has been, and I don't think it unusual with, let's say, any regulatory body, our experience leads us to conclude that whatever time is available is the time that is going to be used.

So, to answer your question, we are opposed to any extension of time. We think the most you could even consider would be an extension of time carefully tailored so as to meet these unusual situations and so that it would not apply in the normal case where you have an admission from the Commission that the present 4 months is entirely adequate.

The next amendment that would be made by H.R. 7004 is one that would authorize the Commission to require the continued operation of the train if it finds that public convenience and necessity do not permit the proposed discontinuance and that the continued operation will not unduly burden interstate or foreign commerce.

Now, under the present law the Commission exercises its veto power upon a finding that public convenience and necessity require that train to continue to operate and that its continued operation will not be an undue burden on interstate commerce.

When the Commission has made such findings, and it has in case after case after case made such a finding, the train stays on at the direction of the Interstate Commerce Commission. I have the feeling, for instance, that this amendment that I am now discussing was in its inception and conception tied into the burden-of-proof amendment that

we have just discussed and which the Commission says, if the committee feels that it ought to come out or that it creates problems and so on, the Commission then has no objection to it coming out.

As I said, I think this is a companion amendment and that the two are tied in very closely together because each one of them represents a drastic or radical departure from the regulatory scheme that is presently set up by section 13a(1).

We feel that this amendment is equally objectionable, and I also feel that, in view of the action of the Commission now, that it would be quite proper, for instance, for the committee to, let's say, drop both of these amendments, that is, the burden of proof and the amendment that I have just referred to.

Another amendment that would be made is that the Commission in requiring the continued operation of a train could attach such terms, conditions, and modifications pertaining to operations and services as the Commission might find just and reasonable.

Now, here we have a clear invasion of the responsibilities of management, and the Commission, under this concept of things, could tell management how it must run the train, the service that must be performed by the train, the consist that must be in the train, the cars, as I said, consist that must be in, all of the terms and conditions of the entire operation. Now, moreover, if you examine the language of the bill, you will find that it is not clear at all that the terms, conditions, and modifications pertaining to operations and service would be necessarily confined to terms, conditions, and modifications pertaining to the operations and services of that particular train.

On the contrary, the language of the bill might be construed so that, "while I am directing you to continue to operate train A, I am going to also tell you a few things about your operations and services generally with respect to passenger trains." We feel that this invasion of the responsibilities of management is not justified even confined to the operation of a single train, but if the language of the bill is broad enough to be construed as I have described it, then we certainly are even more emphatically, if possible, opposed to this amendment because we do not feel that any such authority should be given the Interstate Commerce Commission.

Listening to the testimony given by the Commission and reading the Chairman's statement, the basis for offering this amendment and for authorizing the Commission to attach terms and conditions is a plea for flexibility. Now, I don't know what flexibility means in the context that it would be set in in this bill. The word flexibility, of course, doesn't appear in the bill. The justification for asking for this authority is because the Commission needs flexibility, whatever that means.

Indeed, if the bill would do what I have described, a railroad might be much worse off by having filed a notice to discontinue a passenger train and subjected itself to the jurisdiction of the Commission because it could be then told, "You cannot discontinue this passenger train and we are going to tell you how to run your operations and services generally and we will certainly tell you how to run it with respect to this particular train."

That way costs may go up. They may well follow the idea of these critics that I mentioned earlier in my testimony about "soup up your service and you will have business running out of your ears."

No matter how well intentioned the invasion of the responsibilities of management may be, the invasion should not be permitted. There are many well-intentioned people in this country, and I do not exclude members of the Interstate Commerce Commission, who feel that they know better how to run passenger-train operations and how to perform passenger-train service, that they know better how to do it than does railroad management, but I seriously doubt that.

Summarizing on this condition idea, we feel very strongly that there has been no case other than this vague plea for flexibility, that there has been no case presented to support such an amendment.

The next amendment is one very similar to the last one I mentioned, but it is an amendment to 13a(2), and here you will see the difficulties of interpretation that exist in the bill because the bill would amend section 13a(2) so as to say that when the Commissioner permits a train to come off, it can attach terms, conditions, and modifications pertaining to operations or services as it might find just and reasonable.

Now, here, of course, if they are going to permit the train to come off, they are certainly not talking about terms, conditions, and modifications pertaining to the operation of that train because that train is coming off under section 13a(2) and under the Commission's order it is coming off.

So what are these terms and conditions that they are talking about? This is one reason I say that you might construe the bill in its entirety as turning over to the Commission the full power of telling you how to run your passenger-train service because it seems to me that here, if the train is coming off, they would say, "Well, soup up your service over here. Keep these trains on over here. Revise your whole scheme of operations. This is the condition of this train coming off."

Those would be the only kinds of conditions that would make any sense with respect to a train that was coming off.

H.R. 7004 would add a new section 13a(3) and that section would provide that any person adversely affected or aggrieved by an order of the Commission in and after hearing pursuant to paragraphs 1 and 2 of section 13a might bring a suit to obtain judicial review. We feel from our experience and our background in areas of this kind that under any such provision you must assume, and I think you could safely assume, that in every instance, every instance where a train would be discontinued under this section of the Interstate Commerce Act and notwithstanding the unneeded and losing nature of the service of that train, the matter would be taken to court and the train would most likely continue to operate until the judicial processes had been exhausted.

Now, that kind of an amendment or that kind of legislation was not what the Congress had in mind when it passed section 13a(1) or when it passed section 13a. The purpose there was to deal with a critical problem—and I have tried to show you that the problem has not disappeared, it is still with us today—by putting pressures on State and local authorities, on the public if you please, putting pressures on them to find the solution to the problem presented by an allegedly needed service but one which cannot be made to pay for itself. So the pressures built up, and that is exactly what happened.

You had more activity at the local level and at the State level and any other level you want to mention after Congress enacted section 13a

than you had ever had before. When you change section 13a, regardless of how you amend it, when you change it to make it more difficult, to prolong, to delay, to make expensive the discontinuance of a train, you are taking the pressures off of the area that Congress intended the pressure should rest. I have little doubt that intelligent public authorities knowing that they could, through the exhaustion of judicial processes, force the continued operation of the train for an indefinite period of time, would certainly sit back and relax and the pressures would be removed. We think that, of course, is a substantial departure from the scheme of things and from the purpose that Congress had in mind.

Now I have completed my comments on H.R. 7004, and we feel that no substantial case has been submitted to your committee justifying the amendments that that bill would make, and that the end result of the bill would be to make it more costly and difficult to eliminate unneeded and losing service, and that it would prolong for an indefinite period of time the continuation of such services and that in the meantime this financial burden that I have referred to today, the \$400 million of loss, would remain there and would continue to mount.

The bill has been characterized by its proponents as, let's say, one to give the Commission more time and to give them flexibility, and I say again, whatever that means.

Now, this matter of time is not something that in my opinion can be considered in the abstract, and we all have often heard the old illustration of: "What's another 30 days?" It isn't too much except to the man that is sitting in jail. Nine months and 10 days may not appear to be unreasonable in the abstract, but, when you relate that to the operations of a train that is losing hundreds or thousands of dollars a day, 9 months and 10 days becomes a long time, and the financial burden becomes very heavy and it is money that you are never going to recover; and then, when you add to that period of time the indefinite delay to exhaust the judicial processes in every case, the burden would be almost intolerable.

The next bill that your committee has before you is H.R. 260. That bill would require the Commission in disposing of any passenger train discontinuance case to consider the availability of any financial assistance pursuant to the Urban Mass Transportation Act of 1964, or any other law, for the purpose of continuing such operation or services and the effort of such carrier or carriers to obtain such assistance.

Further, the bill would require the same consideration by the Commission under section 13a(2).

Generally speaking, we think the major intent of this bill is probably already encompassed in existing law. I think the Chairman of the Commission so expressed himself. To the extent that the Commission might consider this kind of information to be relevant in any given case, we feel that it could require under its regulations that this information be furnished to the Commission and, indeed, be made a part of the material that has to be filed with the Commission when the notice of proposed discontinuance is posted.

On the other hand, we do recognize that the availability of financial assistance pursuant to the Urban Mass Transit Act of 1964 is considerably limited in scope while section 13a deals with passenger trains that in no way resemble mass transportation but are intercity passenger

trains running over long distances, and we feel that the imposition of this statutory provision might place a cloud on passenger-train discontinuance cases generally, might unduly emphasize a matter that really doesn't exist in many of the train-off cases before the Commission.

Believing then that really nothing would be added to the Commission's power but that this undue emphasis and so on might create the cloud that I have referred, we are opposed to enactment of H.R. 260.

You have H.R. 519 before you. We have no particular objection to the Interstate Commerce Commission considering the fact that the carrier could participate in an existing local, State, regional, or Federal program. It is very much like the previous bill that I referred to, H.R. 260. But here again we also feel that enactment of this bill might lead to undue emphasis being placed on that fact.

But, further, this bill would also require the Commission to consider the fact that a carrier could participate in a proposed local, State, regional, or Federal program, and we think in this respect its provisions are wholly unrealistic.

The idea that the Commission in determining a case today must take into consideration the fact that I could participate in a program, a proposed program without ever knowing whether the program is coming into fruition or what its final terms might be and so on is wholly unrealistic and for these reasons we are opposed to the enactment of this last-mentioned bill.

H.R. 519 would also say that the Commission must take into consideration the facts that a railroad was a party to an application for permission to merge from which merger it could be expected to benefit.

Now, this provision would mix up together in a way that would just create chaos the handling of passenger-train discontinuance cases and merger cases, and God knows what the outcome would be. It would provide no requisite guidelines to control the procedure in either of the cases where they had been mixed up, and it would be pointless for the Commission in dealing with the discontinuance of a single passenger train to consider whether the railroad seeking to discontinue that particular train happens to be a railroad that is a party to a merger application from which that railroad might benefit if, when, and as the merger application was favorably disposed of.

As I said, there would be no direct relationship between the public need for that particular train, the service performed by that particular train, or the revenue picture of that particular train and the broad problems presented in the merger case.

Now, Mr. Chairman, there was not listed for hearing in the notice H.R. 8939. At the previous session of this hearing, however, you did ask the Chairman of the Interstate Commerce Commission, I believe, a question about the bill, and I believe he stated that he had not had time to examine it and so on. I am not sure of the posture of that bill. If you would care to hear me on that bill for 3 or 4 minutes, I would be delighted to give you our views. I do have them in my written statement, and we are very strongly opposed to the enactment of that bill.

Mr. FRIEDEL. Mr. Moloney, I want to thank you for your very fine statement. There is no question in my mind that you are very well versed on the subject and have covered it in detail.

While I do not agree with some of your statements, I think you have covered it very, very well. I was requested to ask this question. The Atlantic Coastline was running the Florida Special and had free champagne and free movies. Is this covered by the antitrust agreement approved by the ICC under section 5a? Do you know that they claimed that on airplanes free movies are subject to agreements?

Mr. MOLONEY. I do not know the answer to that question. I would assume that it was not covered, and I would also assume as a quick curbstone opinion, sitting here in a somewhat minor legal capacity, that there would probably be no necessity to get the clearance, but I cannot answer your question definitely.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. First, Mr. Chairman, I came in late. I am having a little trouble of knowing whether I am talking to Mr. Mahoney or Mr. Moloney.

Mr. MOLONEY. Mr. Moloney. One gentleman mistook me to be Mr. Mahoney's father. Mr. Mahoney got quite a bang out of that because I think he looks quite a bit older than I.

Mr. PICKLE. I raised a question with the Chairman of the ICC relative to this matter, as I think did other members of the committee. It was mentioned a few minutes ago that the chairman received a letter from the Chairman of the ICC, Mr. Tucker.

For your information, so that you would understand clearly, the Chairman has said that if it met with the approval of the committee, that the ICC would be willing to delete that portion of H.R. 7004 on page 2, beginning line 20 and continuing through page 3, line 2 on page 3.

The net effect of it is just to lift out that portion with respect to the burden of proof. Now, how would you feel about that?

Mr. MOLONEY. In my statement I said that the imposition of the burden of proof, as this bill would do, constituted a radical departure from the present scheme of things that Congress had set up and that we were opposed to that provision of the bill. We also, of course, are opposed to the bill.

Mr. PICKLE. Mr. Moloney, my question is: What would be your position on the bill if this were deleted?

Mr. MOLONEY. With this deletion we would still be opposed to the bill. In my statement I have taken up each amendment that is made by H.R. 7004 and have stated the reasons why we are opposed to each of those amendments so that in substance we are opposed to the entire bill.

Mr. PICKLE. Let me ask you a question in layman's language. Aside from the legal technicalities involved with respect to the submission of evidence wherever the burden of proof lies, it has been my feeling that perhaps the burden of proof ought to rest with the ICC and not with you nor with the railroad. Whether we enact this legislation or not, we do reach a point in these applications where we either keep the trains going or take them off.

I asked one of the gentlemen last week representing the Railroad Association, "If you were losing money, what would you do?", and he said, "I would be for keeping it off."

I said, "If you represented the employees and wanted to keep the trains running, what would you do?", and he said, "I would be for continuing."

A sufficient amount of evidence ought to be submitted in each case, but at that point it seems to me that the Commission ought to have the burden of proof to make that determination. He said, "Well, it's entirely a matter of the public interest. Where the public interest is involved I couldn't agree more, but it is difficult for the public to actually submit evidence."

How can the public actually prove that except through the expression of the ICC, which is supposed to represent the public? I would think that after the evidence is submitted, that it ought to fall back on the ICC, but we have a difficulty of a case having been proven. How would you feel if it was required, after evidence had been submitted, that there would be public hearings by the ICC and that the railroads would have to then submit certain information as requested by the ICC?

I am talking about profits, costs, and other factors that would prove or disprove whether they were losing money and whether it would be an imposition on interstate commerce.

Mr. MOLONEY. Congressman Pickle, in the procedures today when a railroad posts a notice under section 13a(1), the interstate train, the railroad is required by Commission order to file with the Commission simultaneously with the posting of the notice a voluminous amount of information and material dealing with the history of the train, the patronage of the train, the expenses of the train, the revenues of the train, the alternate modes of transportation available to the public, bus, airline and so on, even the schedules of the alternate modes available.

In other words, after Congress passed section 13a(1) the Commission then in its broad powers under the Interstate Commerce Act issued a general order prescribing the form and the information that must be submitted by the railroad at the outset. This is before they ever even decide whether they are going to have an investigation or not.

Mr. PICKLE. May I interrupt you at that point? At that point or at a subsequent time, does the ICC have authority to say to you, the railroad association, "You submit us the additional following information"? Can they command the submission of additional evidence? Do they do it?

Mr. MOLONEY. I would say this: That you are referring now to, let us say, during the course of the investigation and the railroad, let us say, has given everything that they have but the Commission says, "We want something more than you have put in now"?

Mr. PICKLE. Yes, sir.

Mr. MOLONEY. I do not think the Commission would have the unquestioned power and authority to tell the railroad in substance how to try its case but I think the railroad that was going to submit its case to the decision of that Commission and did not submit the information if it had it or could get it would be playing roulette with its case.

Mr. PICKLE. Well, I have to rely, Mr. Moloney, on questioning. I don't have any background but my question was, does the ICC ask you specifically for additional information that would probably have a bearing on what was the public interest?

Mr. MOLONEY. Yes, sir. The Commission does ask. I misunderstood. I thought your question was do they have the power to require you and direct you to come forward with it.

Mr. PICKLE. Let us go then to that question. You do not think they have the power?

Mr. MOLONEY. No, sir.

Mr. PICKLE. Do you think that it would be improper for them to have the authority to ask you to submit additional evidence that would have a bearing on the case?

Mr. MOLONEY. At what stage of the game? This is what bothers me. I have described the fact that the Commission has full authority today and has exercised it to tell the railroad, "Any time you are going to propose to take off a passenger train we want all of this information and we want it the day you post your notice."

Now, this is the same kind of evidence that if the Commission institutes an investigation after all the service performed by the train, the patronage, the load factor, the expenses, the revenues, the alternate modes of transportation that are available, buses, airlines, and so on, all of this information is submitted in the beginning and now if the case goes to trial, for instance, for an investigation, and the Commission says, "I want something"—I am trying to think what it would be that had not already been submitted, but said, "We want something more in here." Then I would have to say I do not think the Commission or anybody has the right to tell you that you must submit that particular information.

Mr. PICKLE. Mr. Chairman, I yield.

Mr. FRIEDEL. Mr. Tucker testified that wherever he asked for additional information the railroads have been very cooperative and have submitted it.

Mr. MOLONEY. He said they have had no problem in obtaining from the railroads what they needed and in each report the Commission has gone out of its way to comment frequently in its reports to say that the procedures adopted developed a wholly adequate record for the disposition of the proceedings.

Mr. FRIEDEL. All right.

Mr. PICKLE. Mr. Chairman, I yield to the other committee members. I am not satisfied with this particular point but because my time is consumed I yield back.

Mr. FRIEDEL. Mr. Cunningham, do you have questions?

Mr. CUNNINGHAM. Mr. Chairman, in Mr. Moloney's statement he mentioned the problem of the Post Office Department continually taking off these RPO cars and I have been battling this now for going on 11 years and we get nowhere. So many of these lines have a very small margin of profit and when the Post Office Department takes off the RPO cars, that puts the railroads in a hole and they have no alternative but to ask for a discontinuance.

It seems to me that either this Subcommittee on Transportation or the Subcommittee on Investigations ought to get into this matter because we have had two Presidents, President Kennedy and President Johnson, who have both urged upon us and sent messages that we have a broad study to improve all forms of transportation and modernize it to the best of our ability.

You will recall that about 3 or 4 years ago we did pass such a bill. It got to the Rules Committee and one of the members of the Rules Committee, one or two, perhaps, were able to block it because there was something involving barge traffic that affected their districts and there it sat.

So we have never done what either the late President Kennedy or the present President have suggested that we do and here we have a ridiculous situation of two Presidents suggesting or urging upon us legislation to modernize and bring into a more competitive position all forms of transportation and then we have an agency of the Government, in the instant case the Post Office Department, who are actually ruining the railroad passenger business in this country.

I think we are working on this problem piecemeal. We have this bill before us and have spent some time on it, but there is this overall picture that has to be looked at. I don't know why we don't go into that again and particularly I don't know why we don't urge and get the executive branch to work in harmony and not have the President say one thing and a major agency of the Government do just the opposite.

I make that observation because I think it is a very serious problem to the railroads and everybody knows we can't do without the railroads. I would think that we ought to get into that.

Now, on the matter of the airlift, I am also on the Post Office Committee and that is why I have been in this fuss for many years. Years ago the Post Office and Civil Service Committees of the two bodies passed legislation to give the Post Office Department very limited authority to experiment on the matter of taking surface mail at surface mail rates and flying it on a space-available basis. However, there was no oversight committee looking after this nor looking after the Department when it was given this authority and it has expanded far beyond anything that the Congress ever had in mind or the two committees ever had in mind when they gave this restricted experimental plan for the airlift of surface mail on a space-available basis.

This was leaked to me by members of the RPO Union when Mr. Summerfield in the Eisenhower administration was gradually, without our knowledge, increasing this. I finally received a confidential document from the Post Office Department in which they had it all planned that they would airlift surface mail on a space-available basis, almost on a nationwide unrestricted basis.

We had hearings in our committee and I authorized a bill to stop him and I took it to the floor of the House and it passed overwhelmingly, saying, "You can't do this." And we stopped Mr. Summerfield from going hog wild on this thing but since that time we have not given close attention to it.

It has been gradually expanded, as everybody in the industry knows, and as I say, it has gone far beyond what the Post Office Committee and this Congress ever intended. I do think that there is a committee of this Congress and I should think it would be this subcommittee, a committee of the Post Office Committee, or the Committee on Investigations who ought to sit down and say, "You don't have this authority. You are going far beyond the authority that was given to you." And something has to give because we have had nothing but trouble with this problem.

In my district they have just announced—and we have had hearings out there just a few weeks ago—that they are taking more and more of these RPO's off and it is going to cause more and more discontinuance of passenger trains and I think it is a very, very serious problem and something that surely we ought to give attention to.

There are other things I would like to take up, but the time is limited. I do want to emphasize that this is a very serious matter. It is actually losing money for the Post Office Department because the people have become so accustomed through knowledge of what is happening that they will put a 5-cent stamp on their mail and in the majority of instances it will go by air anyway, so that the Post Office Department is losing a lot of revenue because the people are getting airmail service without paying for it. It is a very serious subject, Mr. Chairman.

I have no question of Mr. Moloney because of the limitation of time. I am glad he touched upon that problem. It is very serious.

Mr. FRIEDEL. Mr. Moloney, can you be back at 2:30 this afternoon? We are going to try to finish up today by 3:30.

Mr. MOLONEY. Yes, sir. I will be here at 2:30.

Mr. FRIEDEL. Mr. Adams, do you want to finish before the witness leaves?

Mr. ADAMS. Mr. Moloney, I appreciate your testimony. With regard particularly to your first amendment that you referred to in your statement on page 15 regarding the jurisdiction between 13a(1) and 13a(2) I don't understand your point in referring to the bill H.R. 7004.

Looking at lines 9 through 11 it seems to me that the jurisdiction under 13a(1) is extended to cover any train which not only is in service within the State but may also be serviced without the State; in other words, any train that physically moves across a State line or across the District of Columbia line whereas, on page 4, 13a(2) refers to a train operated wholly within the boundaries of a State which would mean one that did not physically cross the line. Isn't that what is intended?

Mr. MOLONEY. Congressman, I am not sure that is what is intended because, if so, there would be no need to make the amendment. In other words, 13a(1) today covers the train operating across State lines regardless of whether it renders service so that it seems to us that is the obvious purpose of this amendment and I think it originated as a result of the *New Haven* case where the train performed only service in the State of New York, but terminated its run for operating purposes and so on, convenience, in the State of Connecticut.

Mr. ADAMS. There would be no question in your mind that that train would now qualify under 13a(1) as opposed to 13a(2)?

Mr. MOLONEY. That is right.

Mr. ADAMS. Don't you think that is a legitimate basis of clarification?

Mr. MOLONEY. As I said, I think it would qualify under section 13a(1). It would not qualify under the provisions of H.R. 7004 because it performs service only in one State.

Mr. ADAMS. But this says, "Have operation or service of any train operated and serviced between a point in one State or a foreign country and a point in another State."

In other words, what this does is to expand this from operation, to "operation or service" of the train. Don't you think that clarifies it?

Mr. MOLONEY. The present law, Congressman, says the "operations or service." The present law has that language in it. The change that is made by H.R. 7004 is to change the word "operated" to "operated in service" and I think it was intended that if the train operates in service only in the State of New York but actually runs over into the State of Connecticut for servicing purposes, or in other words, termi-

nates its run in Connecticut, that it would not be subject to notice under section 13a(1).

Mr. ADAMS. Tell me this: As I understand this legislation basically its purpose is to allow the railroads to avoid restrictive State legislation preventing discontinuance of runs. There are two statutory schemes, one of which is 13a(1) which provides for the so-called interstate train and the other is 13a(2) which is really a local train but comes under the act because it may affect interstate commerce.

The first one, in effect, allows the company to move out from under the State jurisdiction and if the ICC allows it they are out and if they don't, why then they go back under State jurisdiction after a year.

Now, the second portion as I understand it allows the company to appeal State jurisdiction, if the State denies or refuses to head a discontinuance case without automatically going back to the State even though it is a local operation; is that correct?

Mr. MOLONEY. The second part of the present statute in effect gives the Interstate Commerce Commission what might be termed an appellate jurisdiction over a State proceeding.

Mr. ADAMS. When they either refuse to hear the matter or have come down against it you can go up and ask help from the ICC. All right. Now, therefore, on this jurisdictional point of which one is are you objecting to would it technically or in substance limit 13a(1)?

Mr. MOLONEY. We are objecting to it in substance and pointing to the technical necessity for amending section 13a(2) if you do not follow the objections to 13a(1).

Mr. ADAMS. In effect, you are saying that you would rather have as a substantive matter the trains that cross the State line, and you mentioned the *New Haven* case, under 13a(2) rather than 13a(1), or is it just the reverse?

Mr. MOLONEY. Just the reverse, under 13a(1) as it is today.

Mr. ADAMS. All right. Now, with regard to merger, what is occurring—and I am sure you are well aware—is that on many of the major western lines the merger application will change the whole configuration of rail service over a major portion of several States. Then if we have service into particular areas being changed by the process of filing for a discontinuance of service and the ICC does not take this into account in the pending merger. Then isn't it true that you wipe out passenger service over perhaps an entire area without either body having made a final determination?

Mr. MOLONEY. If I understood you correctly, you are offering a situation where, let us say, two railroads—

Mr. ADAMS. Yes. You have three major trunk carriers and two of them are right now attempting to merge over the long haul for reasons of convenience. Now if they file for discontinuance of passenger service in particular areas, don't you think that the merger factor should be taken into account as to whether or not discontinuance would be allowed?

Mr. MOLONEY. If the two were filing to discontinue service from and to the same points so that in substance this is going to abolish all service there, then it probably is something that should be taken into account, but I cannot conceivably imagine how you can handle it in a merger case.

Mr. ADAMS. Our point is that, if you are not handling it in the merger case and you have got the discontinuance actions pending by both

lines over their entire route structure, don't you believe that the effect of the merger should be taken into account on the discontinuance actions, which is basically what this bill proposes to do?

Mr. MOLONEY. If you know when the train discontinuance cases are being tried, what is going to be the outcome of the merger case and the readjustment of the entire service as you have described it as a result of the merger and so on, if you know these things, then I think the Commission can take that into consideration today. If they don't know it, I don't know how they can consider it.

Mr. FRIEDEL. We are going to recess until 2:30. I want to know if Mr. Frank Smith is here.

Can you return at 2:30?

Mr. SMITH. Yes, sir.

Mr. FRIEDEL. The meeting is now recessed until 2:30.

(Whereupon, at 12:05 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Mr. FRIEDEL. The committee will come to order.

I will call on Mr. Watson for questioning.

Mr. WATSON. Thank you very much, Mr. Chairman.

I want to commend the gentleman for what I thought was a very thoughtful, rational, and informative statement which I think goes to the heart of some of the problems that we have in reference to H.R. 7004.

Am I correct in the assumption that basically you believe that passage of this legislation would aggravate the difficulties that you presently encounter in reference to making any proposed changes in passenger service—

STATEMENT OF WILLIAM M. MOLONEY, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS—Resumed

Mr. MOLONEY. That is correct.

Mr. WATSON. You made one statement, and it wasn't amplified too much, but I thought it was an interesting statement, on page 9 you say:

In those instances where the railroads may have been successful in holding patronage of a particular train at preexisting levels or even increasing patronage, the effect of rapidly increasing costs has taken its toll.

My emphasis is directed toward the areas where they have been able to increase passengers. I was rather surprised, frankly, to read that statement.

Mr. MOLONEY. When you talk about increasing, and the reason I worded it the way I did, I think, Congressman, it depends on the period of time that you start with, to measure and determine whether you had an increase or decrease.

For instance, if we move back not too many years, there will be a decrease on every one. At the same time, I have in mind a train, for instance, like the California Zephyr, operating between Chicago and San Francisco, the patronage of the train, the revenue passengers carried has held up reasonably well, but the operating expenses of the train have increased substantially, and there you have a situation where you might say that the load factor revenue passenger has not

been too adversely affected over the more recent past, but where the costs have increased tremendously.

Mr. WATSON. We will get to the costs in just a moment. To what do you attribute the stable condition that exists so far as passengers are concerned? Is it because of innovations that this particular line has made to attract the additional passengers, or is it just the normal thing that they are looking for this particular service, and it would come whether you had the innovations or improvements or added comforts to the trains?

Mr. MOLONEY. It is because when this train—and this California Zephyr is a relatively new passenger train. By that I mean it has been in operation a number of years, but it was started by the Western Pacific Railroad to compete in passenger business with the overland route, which is the route through Omaha, Cheyenne, Laramie, Wyoming, Ogden, and on in. It was a considerably longer route by mileage.

They went all out, and they made the train a beautiful train, as far as the equipment and as far as service is concerned, everything that could possibly be done to make the service attractive was done.

However, the principal drawing card is the fact that that train travels through some of the most beautiful parts of the United States, and it is one of the few transcontinental trains that offers unlimited and magnificent scenery. From Denver you climb up the mountain to Moffet Tunnel. Moffet Tunnel is about 9,700 feet above sea level. It is a beautiful climb up to the tunnel. The tunnel is 7 miles long through the Continental Divide, and you come out on the western slope, in one of the most beautiful valleys that you can image, with snow-capped mountains all around you.

Then shortly thereafter, you pick up the Colorado River, and you follow the Colorado River for about 250 miles through Bayers Canyon, Gores Canyon, Red Canyon, and so on. Then, when you are reaching the flats of Utah, it is nighttime.

The next day you have the magnificent trip through the Feather River Canyon, through the Sierra Nevada. So the reason the people in substance make that trip is first, the service is good, but second, the scenery is unsurpassed.

Mr. KUYKENDALL. You are sure you don't belong to public relations.

Mr. WATSON. I agree with my colleagues. You have almost convinced me to buy a ticket. But all of this seems to point up the fact that it isn't because of its strictly commercial value, but its scenic value.

Mr. MOLONEY. That is right.

Mr. WATSON. You mean that the passenger rate has held up.

Mr. MOLONEY. That is correct, and I think the Interstate Commerce Commission in a recent report in substance said as much.

Mr. WATSON. Now so far as keeping down the cost of these trains, you say even when the traffic has increased, you still have a problem with the antiquated wage scales and other work rules which I believe were passed back in 1919.

In that regard, has anyone taken the initiative to try to update some of these work rules?

Mr. MOLONEY. Yes, sir, railroad management has. We have from time to time attempted to negotiate what we term "modernization and revision" of those work rules, and one of the most recent instances I

suppose was in the 1962-63, for want of a better term shall I say "hassle," between labor and management, part of which led to the passage of legislation by the Congress dealing with the firemen situation, appointing a board and making the decision of that board final and binding for a period of time.

As a part of that, we had what was known as our "working rules controversy" and the working rules controversy was pretty broad. We were attempting to negotiate a liberalization, but in the urgencies of the matter and the handling of this kind of a situation, they in substance got lost in the shuffle.

There is a statement by an Emergency Board, Presidential Board, appointed a number of years ago, I think in a conductor's case, and that Board in its report pointed to the need for revision and modernization of these work rules, but in substance said you cannot go into the whole matter of work rules, this board cannot, because we, the board, has to function in times of crisis, in times of emergency and under a time deadline. So, while we cannot go into it now, we as a part of our report do recommend that a thorough study looking toward modernization and revision be undertaken.

Mr. WATSON. You say that management has initiated steps in that direction. Then am I to assume that the labor organizations have not been too responsive in trying to update these particular work rules?

Mr. MOLONEY. Yes, sir.

Mr. WATSON. Is that because of the fact that some party or parties might be awaiting action by this committee on the so-called "hours of service" bill? Does that have any relation to this particular problem?

Mr. MOLONEY. No, sir. I see no direct relationship.

Mr. WATSON. I believe you described section 13a(3) of H.R. 7004 as a rather dramatic change to existing law. Is it your opinion that the appellate court would be empowered by either injunctive or mandatory procedure to extend the time beyond the period which is set forth in this legislation?

Mr. MOLONEY. Yes; it would, because the statutes under which the bill provide for court review are the statutes that pertain today to other matters handled by the Interstate Commerce Commission, and those procedures permit the obtaining of restraining orders, temporary injunctions, pending the outcome of—

Mr. WATSON. Of the litigation.

Mr. MOLONEY. Of the litigation.

Mr. WATSON. I had not read these various sections listed on page 6, but this is your interpretation, that a court would be able to extend the time during which the carrier would have to operate this particular line, until final adjudication of the matter.

Mr. MOLONEY. Yes, sir.

Mr. WATSON. I believe that is all the questions we have, Mr. Chairman. I wasn't trying to filibuster in order to allow Mr. Brockton to get back here.

I might make one statement in view of the adverse effect that has taken place as a result of the apparent change of handling of the mail from rails to airlines. I really can't understand this. We seem to be speeding up the means of travel all along such as sending mail by aircraft, but apparently it is taking a longer time for the mail to get there. It takes about 4 days to get from Washington over to Arling-

ton. I know it takes longer now to get from here down to my district in South Carolina. I am just wondering whether we might reemploy the Pony Express. At least it would give more people employment, and we would have dramatized delivery of the mail a little bit.

Mr. MOLONEY. I think the question you raised is similar to the one I raised about why take the mail off the train because it is running late and put it over on the airlines on a space-available basis. Apparently the situation has been reached where even though it does fly the long distance, that the handling at either end apparently consumed the time.

I might say in connection with the mail, I do not want to be a travel agent again for the California Zephyr, but one of the big problems with respect to the California Zephyr is that the Western Pacific Railroad, which operates the train between Salt Lake and San Francisco or Oakland has been unable, over the years, to obtain any mail on the movement of that train. Understandably, the Post Office says the schedule of the train doesn't fit the need of the Post Office, but equally understandable, if you change the schedule of that train, neither would it suit the people who wish to see the scenery, because they would be sleeping all the time they were going through that part of the trip, except the desert.

Mr. WATSON. I can certainly see that. Sometimes we attach so much significance to airmail letters that a letter which comes to us by airmail, even though it is 3 days later than if you had received it by pedestrian delivery, seems to be more important when it has that airmail stamp on it.

Thank you, Mr. Chairman. Certainly, I am not criticizing airmail.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. I want to also compliment you on your very thorough and comprehensive observations of the situation. You spoke of the amendment—I don't know the exact number of the amendment—to this proposed legislation, which would supposedly open a sort of Pandora's box in allowing the Interstate Commerce Commission to get into the actual operation of the railroad, if you went through the formality of filing for a discontinuance.

Does this mean that the Interstate Commerce Commission, when investigating your claim or your petition for discontinuance, that they could delve into the other parts of the operation of the railroad and propose methods of possibly making this run profitable before you would be out of this—

Mr. MOLONEY. With respect to this particular train and particular run then before the Commission, I think the answer very definitely is "Yes." This I think, and here I am surmising, however, I think that that is at least a part of this flexibility, undefined flexibility that the Commission wants the power to exercise. As to whether the bill very definitely would put in the hands of the Commission the power to, at the same time, tell you what you must do with passenger train operations that are not involved directly in the discontinuance case, I think the language of the bill is such that that question might be decided adversely to the railroads.

Mr. KUYKENDALL. Let's stick to the one specific case of a request for discontinuance. Does this mean that if the ICC decided that your cars were not of modern enough structure to be as appealing as they should

be to people who may very well be passengers on this route, that they could recommend that you modernize and update your equipment, and that you must do so, before you could discontinue the service?

Mr. MOLONEY. That is a question that I possibly could not answer yes or no. All I could tell you is that this bill says that in requiring you to continue to operate a train under section 13a(1), that the Commission can attach whatever terms, conditions, and modifications respecting operations and service that they deem reasonable.

Mr. KUYKENDALL. This is a rather serious—I won't accuse you of making an accusation, but it was a rather serious—observation, if there is long-range significance or long-range substance to it, that you made this morning. Is it possible under this ruling in your opinion, and I am asking you to speak only for yourself, in your opinion is it possible that the Interstate Commerce Commission could increase the loss over a period of time, in order to prove a point, before you could discontinue this road?

Mr. MOLONEY. Yes, sir.

Mr. FRIEDEL. Will you yield? Can they make you continue it under the present law?

Mr. MOLONEY. Yes, sir; but they cannot tell me how to run that train. They cannot say—and Congressman, it goes even further. You can envision any number of conditions that might be attached.

The Commission might say "You haven't devoted enough advertising and publicity to this train and this service, so we are going to tell you to run it another year and step up your advertising program, step up this, step up that"—just the way I have described on the Florida Special and the Broadway, and so on, with the end result that even though we did it in those cases, our business went down and our revenues went down. But that is entirely possible.

Mr. KUYKENDALL. All right; my next question. One thing that disturbs me, and this is a broad question, and let me just make an observation instead of asking a question.

One of our previous agencies that testified here discussed our investments in trains in the future, and as you mentioned, we have tests going on in a couple of different spots of the possible trains of the future.

I would hate to see you abdicate so much of your capability in the whole passenger area that when the time came to have the train, you would have no capability left. I think you run the risk of this when you let us get so involved in the total passenger area. If you end up at zero, at just about the time we end up with a capability, there is a danger here of inheriting the situation that I know you abhor, and that is the Government possibly running the passenger end of the railroad business as a Government service.

I don't like that and I know you don't like it. So holding on to the capability I know you treasure, please consider that in all your future actions.

Now one last question. I have two other questions. What is a day's pay, a basic day's pay?

Mr. MOLONEY. You mean in dollars?

Mr. KUYKENDALL. In dollars, for a trainman let's say.

Mr. MOLONEY. May I have just a moment?

Mr. KUYKENDALL. Yes.

Mr. MOLONEY. I could give you these examples.

Mr. KUYKENDALL. We are talking about for the 150 miles.

Mr. MOLONEY. Yes. I will use, for instance, the Florida Special which I mentioned.

Mr. KUYKENDALL. Fine.

Mr. MOLONEY. One of the engineers on that run makes the run from Auburndale to Miami. He runs 4 hours 40 minutes, and his pay is \$48.79. The time of the engineers in running this train over the Coast Line, the time of the engineers varies from 2 hours 10 minutes running time to 4 hours 40 minutes running time.

Mr. KUYKENDALL. Will the gentleman yield here?

Mr. MOLONEY. Yes, sir.

Mr. KUYKENDALL. You spoke of the \$48 figure. Let me just keep that one in my mind. Does that mean that for the 150 miles that you pay this man \$48?

Mr. MOLONEY. No, sir. What it means is that his basic pay, basic day is 100 miles.

Mr. KUYKENDALL. Yes.

Mr. MOLONEY. For any mileage in excess of 100 miles, he gets additional pay.

Mr. KUYKENDALL. What do you pay him for the basic 100 miles?

Mr. MOLONEY. May I furnish that figure for the record?

Mr. KUYKENDALL. Yes.

Mr. MOLONEY. I do not have it.

Mr. KUYKENDALL. Here is something that I am suggesting here. I gather, and I don't know at all, but I gather from the use of this term that probably somewhere between the maximum figure and what you back in 1919 called the "basic day" what I have gathered here, the man couldn't live on just the hundred miles, if that is all it is, so that to call that a basic day is a misnomer because it is not a basic day's work in any sense of the term at all we can agree here.

It would seem to me in our long range thinking that we would somehow want to redefine a "day," and that would be one of the first things that we should do.

Mr. MOLONEY. I think that is quite possible. And that definition of a "day," even taking the mileage basis, which is in the present rules, the hundred miles, that basic day could possibly, although I am not particularly knowledgeable in railroad labor matters, that basic day could be redefined so as to take into consideration the speed, the average speed of the trains today, passenger trains, which we are talking about now, and the mileage that might be expected to run before you, in substance, get paid beyond the basic day's pay.

Your basic day's pay under the rule as I read you, you will find a definition of it, and it is from the work rules, on page 10 of my written statement. This is the present definition of basic day rules for engine crews "100 miles or less (straightaway or turnaround) 5 hours or less, shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rate provided, according to class of engine."

Mr. KUYKENDALL. Here is what I was trying to do. Let's say down in Oak Ridge, in my home State of Tennessee, where we have fine qualified engineers, I am not talking about Ph. D.'s or M.S. engineers, I am talking about qualified operating engineers that are no more, no less qualified than this man. I think that all of us possibly would like to

see somebody talk in terms of, well, just how much does a man get paid for doing a day's work?

This man is a qualified engineer. Maybe he deserves to make \$9,000 a year. Well, is he getting paid \$9,000 a year more or less? This is something that, as you have told us, under these old work rules, we can sit here on this committee for a week and really never find out how much money the guy makes. You say it is too much, he says it is too little, and we really don't know. This is the reason for a guy going out and doing a reasonable day's work, how much does he get paid? I would like to have you furnish those figures.

Mr. MOLONEY. We will endeavor to do that, sir.

(For information requested see letter dated May 11, 1967, *infra*.)

Mr. KUYKENDALL. One more question. Do the railroads get a chance to negotiate on these mail discontinuances? Do you get a chance to go into the Post Office Department and talk about rates? Do you get a chance possibly to cut your rate a little bit to get competitive?

Mr. MOLONEY. In some instances, yes. In other instances, the first word you get is the notice that the mail is coming off the train.

Mr. KUYKENDALL. That is all, Mr. Chairman.

Mr. WATSON. Will the gentleman yield at this point?

Mr. Chairman, having served briefly on the Post Office Committee I seem to recall that they say it is their policy, even if the letter does not have an airmail stamp on it, that if space is available, they will send the letter by airmail. I could stand corrected, but that is my interpretation of the position of the Post Office Department.

Mr. MOLONEY. That is known as flying first-class mail as distinguished from the flying of airmail.

Mr. WATSON. That is right.

Mr. MOLONEY. And when the Post Office Department set about to do that, we, as you know, filed a suit to enjoin the Postmaster General. We lost the lawsuit.

The principal basis for the court's decision was that it was on an experimental basis, and the like, and as was pointed out this morning, the experiment has become the rule in substance.

Mr. FRIEDEL. Mr. Moloney, on page 10 you refer to the traincrew pay rules being the same today as in 1919, while the average-passenger-train speed has increased. Do the Broadway or Century trains run any faster today than they ran before World War I?

Mr. MOLONEY. I couldn't answer that question definitely. I do not have the timetables nor do I know what the schedule of the time was on the run.

Mr. FRIEDEL. I would like to have that just for the record.

(The information requested is contained in the following letter:)

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., May 11, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: During the course of my testimony before your subcommittee on May 8, 1967, dealing with H.R. 7004, H.R. 260 and H.R. 519, Congressman Kuykendall requested additional information concerning rates of pay of engineers in passenger service. The following information is submitted:

The standard basic day rule for locomotive engineers in through passenger service provides that "100 miles or less, 5 hours or less, shall constitute a day's work." This is known as the basic day.

Thus, if an engineer is assigned to a run of less than 100 miles (e.g. 85 miles) he nevertheless is paid for 100 miles—the basic day. If he runs exactly 100 miles, he will be paid the basic day also. On the other hand, if an engineer is assigned to run more than 100 miles, he will be paid the basic day for the first 100 miles, and he will, in addition, be paid at the agreed upon mileage rate for each mile in excess of 100.

The amount of money payable to engineers for the basic day varies depending upon the weight of the locomotive—the heavier the weight of the locomotive on drivers, the higher the rate. The average basic daily rate of engineers in all passenger service (including commutation service) is currently running at about \$22.59.

However, the so-called basic daily rate is only a unit of payment and does not represent the total earnings of the engineer on a particular day. Most engineers work on runs which exceed 100 miles, and their daily earnings are increased above the basic day accordingly. The average run for a passenger engineer is approximately 141 miles. Because of the high speed nature of the service, many runs are substantially in excess of 141 miles. The average speed of all passenger trains today is 41.3 miles per hour. The average speed of through passenger trains is higher. Thus, an engineer may earn 100 miles pay in two hours and a half, or less. In addition, many engineers make more than one trip in a calendar day, each trip being regarded as a separate run (new day) and paid for separately. In such cases, engineers earn several basic days' pay in a single calendar day. The average earnings per trip for passenger engineers are approximately \$33.26. Engineers making more than one trip in a day have their earnings correspondingly increased.

It should be kept in mind that engineers in through passenger service work relatively few hours. It is estimated that the hours worked per week by such men average 26. Engineers assigned to the long runs commonly work every other day or every third day, so that their average hours worked generally are no more than the hours worked by the men on the shorter runs. The average pay per hour actually worked by passenger engineers is \$7.83, and their average annual earnings in 1965 were \$12,322.00.

The foregoing earnings figures represent averages which include the earnings of the men in commutation service where speed and miles are not significant factors. Those engineers who are assigned to long, high speed passenger runs earn substantially in excess of the averages state above.

With particular reference to the question concerning the passenger train engineer running on the Carolina Special through Oak Ridge, Tennessee, a check reveals that such engineer averages \$872.41 per month, which, translated into an annual basis, amounts to \$10,614.00 a year.

Mr. Chairman, you inquired as to the scheduled time of the Broadway Limited between New York and Chicago and the following information is submitted:

In 1919 the Broadway Limited left New York at 2:55 p.m., EST, and arrived in Chicago at 9:55 a.m., CST, the following morning, making its run from New York to Chicago in 20 hours. Today the Broadway Limited leaves New York at 6:00 p.m., EST, and arrives in Chicago at 9:00 a.m., CST, the following morning making its run in 16 hours.

The story is almost identical with respect to the New York Central's Twentieth Century Limited. In 1919 the Century left New York at 2:45 p.m., EST, and arrived in Chicago at 9:45 a.m., CST, making its run in 20 hours. Today the Century leaves New York at 6:00 p.m., EST, and arrives in Chicago at 9:00 a.m., CST, making its run in 16 hours.

Very truly yours,

WILLIAM M. MOLONEY, *General Solicitor.*

Mr. FRIEDEL. What was the time between New York and Chicago and the time inclusive of engine changes which are now not made? Doesn't the Empire State Express back in 1893 or the Century in 1911 still hold the same speed records?

Mr. MOLONEY. We had instances back prior to 1900 where locomotives ran 130 miles an hour, but they didn't run it very long over a very long segment of track, and they were steam engines and they just couldn't sustain such speeds.

Mr. FRIEDEL. The thing that worries me, at least one thing, Mr. Moloney, is that I have heard your amendments that you suggested,

and I gather that you are very much alarmed about certain words, and I am going to refer to your statement on page 18, the second paragraph:

An immediate following amendment would authorize the Commission, in requiring the continued operation of the train, to attach such terms, conditions and modifications pertaining to operations or service as the Commission shall find to be just and reasonable.

That seems to worry you, what the terms would be and what the conditions would be.

Mr. MOLONEY. Yes, sir.

Mr. FRIEDEL. The only testimony that we received is that it would give the Commission a little more flexibility.

Mr. MOLONEY. That is all I have heard.

Mr. FRIEDEL. They feel that they can work out some agreement. Now under the present law today, can the Commission require you to put on a diner?

Mr. MOLONEY. No, sir.

Mr. FRIEDEL. Can they tell you to put on an extra sleeping car?

Mr. MOLONEY. No, sir.

Mr. FRIEDEL. Or take it off? Can they do that?

Mr. MOLONEY. They can since the present law says that when you file the notice to discontinue in whole or in part, and then that the Commission can require the continued operation of the train in whole or in part, I assume the Commission has some leeway today.

Mr. FRIEDEL. Then why would you be worried about this? I thought the Chairman of the ICC made a good case where he wanted a little more flexibility, that he thought he could work out agreements with the railroads for public service, that there would be a better agreement if he had a little more time, but now he must do this in 4 months and he has to hand his decision down then and he feels they could do a much better job if it was extended a little longer.

Mr. MOLONEY. I frankly do not know, and I could not sit here and tell you what condition the Commission would attach.

Mr. FRIEDEL. In other words, you are stating it could be made very extreme but you don't know that they would do that.

Mr. MOLONEY. No, I do not know what they would attach.

Mr. FRIEDEL. Have they done it in the past?

Mr. MOLONEY. They do not have the authority today to attach the terms, conditions, and modifications to the discontinuance of a passenger train under section 13a (1), nor under section 13a (2), and I should say today other than the authority to require the continued operation in whole or in part, they have no authority today to attach terms, conditions, or modifications to an order directing you to continue to operate the train.

Mr. FRIEDEL. Do you have any suggestion as far as the proper amendment that would relieve your anxiety and still give them a little more time, as they said, giving them a little more flexibility?

Mr. MOLONEY. I have only one suggestion. That if the only conditions we were talking about here were conditions that would say to the public "Use it or lose it"—that kind of a condition would not be objectionable to us.

Mr. FRIEDEL. Maybe they have that in mind.

Mr. MOLONEY. I think that is something they have in mind, but I think the language of the bill as I have pointed out is susceptible of

interpretation that goes so far beyond any such concepts as that that it frightens us.

Mr. FRIEDEL. That is all the questions I have.

Mr. PICKLE, do you have any more?

Mr. PICKLE. Mr. Chairman, do we have other witnesses?

Mr. FRIEDEL. Yes, we have one more, Mr. Smith, who will testify.

Mr. PICKLE. I will withhold my questions.

Mr. FRIEDEL. Any more questions?

Mr. WATSON. None other than to say, Mr. Chairman, I think you have made a very valid observation. It would appear that it might be in order for the Commission to come along here and say something like this: These people are complaining about the prospective loss of this passenger service. We will force its continuance for a period not to exceed 1 year" under the language of this bill, and as you say, "you either use it or you lose it" and then maybe we would require some of these people to put their money where their mouth is.

I am in favor of rapid transit. I just can't believe that you, with all of your ability, and that of your cohorts, are going to be able to move passengers along the ground as fast as you can move them up in the air.

Mr. MOLONEY. I don't think you can, Mr. Congressman. I might make this last observation on this last point. I have tried train off cases when I was representing individual railroads. As we all know, at a hearing it was shall I say a favorite trick, I hate to use that word, of the lawyer for the railroad trying the train off case, because here the hearing room would have 75 or 100 people in the hearing room, all protesting the discontinuance of the train. Their community pride was at stake. One single question: "Will all those in the hearing room who came to this hearing by rail and who live outside of this town stand up, please." And I'll tell you, there was very seldom that anyone stood up.

Mr. FRIEDEL. I know of one instance where they curtailed service on a certain line and I must have received 100 letters complaining about it. I got the figures showing that they had an average of eight passengers a day, so that is what you mean.

Mr. MOLONEY. Yes, sir. We actually run trains where the train crews outnumber the passengers.

Mr. FRIEDEL. One more question and I am through. On the judicial review, you are opposed to that, too?

Mr. MOLONEY. Yes, sir. We are opposed to that, and I attempted to point out that we think it is in the reverse direction of what Congress intended when they put the law on the books the way it is today. The way the law is today, the pressures that are put on the localities and States and the public authorities to find a way to keep allegedly needed service operating, when that service cannot be made to pay its way—this is a tremendously helpful purpose that the present law serves. I think that purpose and that help would be very much weakened by the adoption of that amendment.

Mr. FRIEDEL. Under the present law do you have a right to have judicial review where the ICC makes you continue service?

Mr. MOLONEY. As a technical matter, yes. We do have the right where the Interstate Commerce Commission enters an order under section 13(a)(1), directing the continued operation of the train for 1 year, we do have the right to go to court. I have had a lawyer in my shop research every case that has gone to court, and I have yet to find where a railroad went to court to review such an order.

Maybe one reason they don't do it is that since the order requires them to continue the train for 1 year, possibly it would take a year to dispose of the court procedure, and you are going to have to run the train anyway under that setup, so I have not found any cases where the railroad went to court, where they were directed to continue the operation of the train under section 13(a) (1); under section 13(a) (2), both parties go to court.

Mr. FRIEDEL. Would you be opposed to an amendment providing that the ICC would allow a certain railroad to discontinue a certain train, and have the amendment drawn so that the courts could not issue an injunction, and make them continue service until the hearing was over? Would you be opposed to that sort of amendment?

Mr. MOLONEY. That is a very hard question to answer, Mr. Chairman. That is assuming that I would be relieved of that burden while the court processes are being carried out.

Mr. FRIEDEL. You felt that everybody would flood the courts with protests, and the courts would make you continue service until they handed down the decision.

Mr. MOLONEY. I would say this, Mr. Chairman. If there is going to be court review of every case under section 13(a) (1), then the suggestion that you have made would be tremendously helpful.

Mr. FRIEDEL. That is all. Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Moloney, don't you agree with regard to court review that it will probably already exist under the Administrative Procedures Act and we are simply codifying it here?

Mr. MOLONEY. In hearings before the Senate committee, I think in the last Congress, the counsel for the Interstate Commerce Commission took the position that under the present law, the losing party, be it the railroad or the public so to speak, has the right to go to court. However, there are court decisions that say that is not the case.

Mr. ADAMS. Isn't it generally true throughout the administrative agencies, particularly where the Administrative Procedures Act applies, that there will be court review whether express or if not express it will be implied?

Mr. MOLONEY. As far as the Administrative Procedures Act, where the action is not left to the discretion of the regulatory agency, that statement is true. There is a rather broad area as you know, under the Administrative Procedures Act, where the matter being left to the discretion of the regulatory agency or the Government agency, that exercise of discretion is not reviewable.

Mr. ADAMS. No, no, it is agreed the exercise of discretion is not reviewable unless it is "arbitrary or capricious" I believe is the term, but you can get a court review in almost any case, can you not, except of the discretion where there is a judicial function that has been delegated to the agency. But whether or not it has been properly exercised is always reviewable, isn't it?

Mr. MOLONEY. Whether the action of the agency, for instance, lies within the power, the jurisdiction of the agency.

Mr. ADAMS. Or if it has been appropriately—in other words, its discretion has been appropriately—exercised with the proper procedures. In other words, that is basically what your title 28 review is, is that correct?

Mr. MOLONEY. If you are raising the question of the abuse of discretion—

Mr. ADAMS. Yes.

Mr. MOLONEY. Then you are invoking the equity jurisdiction, and I think that would probably exist, but you would have to show the abuse of the discretion.

Mr. ADAMS. So what basically title 3 as I understand it is, it codifies or attempts to make clear what would be an implied jurisdictional ability to review in any event.

Mr. MOLONEY. Yes.

Mr. ADAMS. Now the other point, and I am sorry that I wasn't here when Mr. Pickle went into the burden of proof situation, but one thing that bothers me is in these hearings as I understand it, since what really is occurring is that the railroad that wishes to discontinue has had a turn-down or this has been refused by the State commission or maybe under a differing State power, and since they want to come in and have a line discontinued, why do you object in that sort of situation to the burden of proof being upon the railroad that is requesting this, because this is really to in effect overturn an established State decision is it not?

Mr. MOLONEY. Under section 13a(2), where you have gone to the State commission, and the State commission has not acted within 120 days or has turned down your petition, and then you come to the Interstate Commerce Commission, the burden of proof, since you are reviewing in effect an action by a State commission or inaction by a State commission, then the burden of proof is on the railroad.

Mr. ADAMS. All right. Now in 13a(1), it is not the review of inaction or determination of a State commission, but is a situation where you are prohibited from doing this by some type of State action, and you are therefore using the ICC as a method of avoiding this, isn't that correct?

Mr. MOLONEY. Yes, sir. We have felt, however, and the Congress apparently felt that in those instances, the showing that the railroad would have to make to the Interstate Commerce Commission, in which the Interstate Commerce Commission can and does require that the railroad make, in posting its notice, as I said earlier this morning, the railroad must file—

Mr. ADAMS. I understand that you have a very voluminous presentation—you do act as the moving side, what would be similar in effect to the plaintiff in civil litigation, you are actually moving forward with this presentation.

Mr. MOLONEY. That is correct.

Mr. ADAMS. Ordinarily, the burden of proof would therefore rest with that party, and what I am asking you, is why you object to this being the procedure in this case too. I think you probably carry it in an implied fashion anyway, do you not?

Mr. MOLONEY. Correct. We feel that placing the burden of proof on the railroads under section 13a(1) first represents this drastic departure from the present regulatory scheme.

Second, we feel that those who say that "This service is essential to us" are in the better position to prove the essential need for the service. It is rather difficult for me, Congressman, to prove that you

do not need my service. It is much easier for you to prove that you do need my service.

Mr. ADAMS. All right. Now who is the public party in these hearings generally?

Mr. MOLONEY. Generally in these hearings, the public party, and I would say in practically every case before the Commission, you have the protestants in who are the State regulatory commission, the town councils, municipalities, chambers of commerce.

Mr. ADAMS. You see, that is what I anticipated would be the situation. In other words, you have in the usual hearing one party that has an interest in carrying the matter forward, which will in this case be the railroad, just as in any civil litigation with the plaintiff, where he will be prepared and will be able to make a presentation, whereas—and again I don't pretend that I have attended any of this kind of hearings, but generally in a hearing of this other type, you do not have an organized group that is prepared in the general course of many hearings to come forward with a case and make a presentation and carry the burden of proof unless it would be the regulatory agencies of each State. Only these agencies would have comparable resources to meet the railroad case.

Mr. MOLONEY. And they are frequently there.

Mr. ADAMS. Where they are there, then I might be very willing to say that in that case you have a different burden, but we have seen this in different airline certificates of convenience and necessity. Where you try to organize a city or town and have them come and make a presentation and carry a burden of proof, they are just what you say. They are usually protestants, which is kind of a defendants' position. So I am really asking you to tell us how the burden should operate in these cases.

Mr. MOLONEY. First, Congressman, I think rather than let's say being the defendants, that when I say that something is essential to me, a service is essential to me, that I have let's say become somewhat of a plaintiff too, that I am not defending against something. I am demanding that something continue for my benefit, and in that respect, I don't think you quite fit into the defendant's category.

Mr. PICKLE. Will the gentleman yield?

Mr. ADAMS. Yes, I will yield.

Mr. PICKLE. Pardon. Were you through, sir?

Mr. MOLONEY. I was just going to add one comment. Perhaps another basic objection is that doing this would then in substance set up a machinery where affirmative authority, permission and so on under section 13a (1) would be required, and must be obtained from the Interstate Commerce Commission. Someone, for instance, is going to have to make the finding that you carried the burden of proof, that you have proved your case.

The minute we get into that situation where you have the authority running from the Interstate Commerce Commission under section 13a (1), and also under section 13a (2), then you open the door to the move to attach all manner of conditions to the grant of authority. Today there is no authority required. Consequently, there is nothing to attach conditions to.

Mr. WATSON. Will the gentleman yield?

Mr. ADAMS. I have already yielded to Mr. Pickle.

Mr. PICKLE. I thank you for yielding.

When you testified this morning, I believe you said that once a case is in effect appealed to the ICC, you objected to having to show the burden of proof.

Mr. MOLONEY. Having to carry the burden of proof.

Mr. PICKLE. To carry it.

Mr. MOLONEY. Not to going forward with the proof.

Mr. PICKLE. And you have just said now that in your opinion the party who should carry the burden of proof is the one who is asking for the services, to prove that it was actually needed. In other words, you want either the town or the employees or the union to show the need. As a matter of practice though actually when it reaches the ICC, you in effect must present the best facts that you have to show why the service should be discontinued.

Mr. MOLONEY. To show why the service is not needed, yes.

Mr. PICKLE. That is right. Now you also said this morning that you wanted to present your own case in your own way, that you didn't want to try the ICC's suit for them. In other words, I took it to mean that what you were saying, you are going to show A, B, and C, and other points that would be favorable to the case you are trying to present. You certainly weren't going to trot out any kind of fact that would be against your own suit.

Now the reason I make this review is that that is a very normal sort of situation. So then who would present facts in behalf of the public? And that is what I am trying to get at. I dare say that a community is not very well qualified to do it except to say "We don't want our services stopped or the town passed," and so forth. So my question which it seems to me goes to the heart of it, is at that point, why is it that the Commission, the ICC, could not ask of you to submit any kind of evidence or information that they thought was pertinent to the case? Now if I understood you, you said this morning that if they did, you would comply.

Mr. MOLONEY. Yes, sir, and I think you heard the Chairman of the Interstate Commerce Commission say that whatever lay within the power of the railroads to produce and the Commission had asked them to produce it, they had no difficulty with the railroads going forward with it.

I think this, Congressman. It sounds to me like we have the idea here, or at least some of us do, that the public is at the complete mercy of the railroads, that they can never, that it isn't practical for the public, to show that public convenience and necessity require the trains to continue to operate.

Well, if you examine the cases before the Interstate Commerce Commission and the number of trains that the Interstate Commerce Commission has required to operate, after investigation, they have required almost as many to continue to operate as they have let come off.

Now who carried the burden of proof in that 50 percent of the cases say where the Commission said "You continue to operate that train"?

Mr. PICKLE. Mr. Moloney, I don't take the position that the public is helpless in these kinds of cases. I do say it is a rather difficult thing for them to prove their case, and as the law is stated now, apparently the authority of the ICC is a hazy or questionable authority, because I can assume that the question of the information they ask is of a procedural nature and does not go to the substance, and that is why they are asking for a strong law so it would go to the substance, and

yet the Chairman of the Commission testified the very first day that he was asking merely for a procedural change.

Mr. MOLONEY. Yes, sir.

Mr. PICKLE. I don't quite understand that. That is all, Mr. Chairman.

Mr. ADAMS. I haven't any more questions, but I yield to Mr. Watson.

Mr. WATSON. Are you conceding that the railroad has no public interest involved in the petition for discontinuance of a railroad?

Mr. MOLONEY. No, sir. Of a passenger train?

Mr. WATSON. Of a passenger train.

Mr. MOLONEY. No, sir, I am not. I am not so contending.

Mr. WATSON. I should think that you were going pretty far, and I think it has been wise that the Congress had had this language, because they realize that all of the parties have had the public interest in mind.

Mr. MOLONEY. That is correct.

Mr. WATSON. And that is why this has been the case. This is a quasi-judicial proceeding and not strictly a judicial proceeding before the ICC. I should certainly think that you would have the public in mind if you have lost in the last 8 years \$3,500,000, 35.7 percent of your total net railway operating income from your freight services to subsidize your passenger services. I should think that if you could cut out some of this deadwood, that you would be able to give employees increased wages, you would be able to improve your services, and you might be able to give the customers a little reduction in schedules, or at least cost of rail traffic. Is that a fair statement?

Mr. MOLONEY. I think that is a fair statement, to this extent—

Mr. WATSON. And you have had no trouble procedurally in moving forward in this particular area of burden of proof, have you?

Mr. MOLONEY. No, sir, we have not had any trouble. Neither has the Commission had any trouble, and that is one of the reasons we say there is no reason to change the law. It seems to be working very well.

Mr. WATSON. Fine. Maybe your situation is somewhat akin to Shakespeare, "Much Ado About Nothing" that is, you have been getting along OK, so let's not disturb the situation.

Thank you, Mr. Chairman.

Mr. FRIEDEL. I want to thank you very much, Mr. Moloney.

Mr. MOLONEY. It is always a pleasure.

Mr. FRIEDEL. Our next witness is Mr. Frank A. Smith, vice president of research of the Transportation Association of America.

Mr. Smith, your whole statement will be included in the record and you can briefly summarize it if you wish to proceed that way.

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT, RESEARCH, TRANSPORTATION ASSOCIATION OF AMERICA

Mr. SMITH. Yes, sir, I think that will be the best way since I will try to avoid to the extent possible any repetition of a number of points that have been covered, I think, at quite some length.

(The prepared statement of Mr. Smith follows:)

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT (RESEARCH), TRANSPORTATION ASSOCIATION OF AMERICA

My name is Frank A. Smith. I am Vice President, Research, of the Transportation Association of America, a national transportation policy organization with

headquarters in Washington, D.C. I am appearing today on behalf of the Board of Directors of TAA in opposition to the four bills now before your Subcommittee: namely, H.R. 519, H.R. 260, H.R. 7004, and H.R. 8939. All four of these bills would amend Section 13a of the Interstate Commerce Act, which was enacted, with strong TAA support, in 1958 as a fair and expeditious means by which the railroads could seek relief from the severe burden of unprofitable passenger trains.

For the benefit of Subcommittee members not familiar with TAA, it is an organization made up of users, investors, and carriers of all modes who work together to develop national policy positions designed to maintain the strongest possible transport system in this country under private enterprise principles.

The Association's policy positions are formally adopted by a 115-man Board of Directors of top agricultural, general business, and transport industry executives, which acts after receiving individual views of eight permanent advisory Panels made up of representatives from transport users and investors, as well as air, freight forwarder, highway, pipeline, railroad, and water carriers. Following this procedure, the TAA Board has gone on record, in several instances, in opposition to the requiring of carriers to continue services that are unprofitable and an undue burden of interstate commerce. The Board has also adopted a policy position that calls for expeditious handling of railroad passenger-train discontinuance proceedings.

As stated above, TAA supported the enactment of the legislation that added Section 13a to the Interstate Commerce Act. The need for such legislation was clearly substantiated at that time, although repeated attempts were made following its passage into law to either repeal it or nullify its effect. With specific TAA Board endorsement, the Association also expressed opposition to these attempts, which to date have been unsuccessful.

In favoring both the enactment and retention of Section 13a, TAA has cited, in brief, the following reasons:

The railroads should not be forced to continue operating services that are so unprofitable as to impose an undue burden on interstate commerce.

The users of rail freight services should not have to subsidize rail passenger services, nor should investors in railroads be asked to do so.

The underlying reason for the decline in rail passenger service has been, and still is, the sharp competition from the private automobile and the commercial airlines and not apathy on part of the railroads.

Procedures under which the railroads can seek relief at the state level—without the appeal feature of Section 13a—are too slow.

The "do nothing" attitude that had been adopted at the local level with respect to heavy deficit rail commutation service can be overcome, in part, by legislation such as now in the statutes under Section 13a.

We believe that Section 13a has proved to be, and still is, very constructive and in the over-all public interest. It has undoubtedly caused hardships for some of the interests directly affected by the resulting discontinuances, but we believe these disadvantages have been far offset by the benefits to shippers, investors, carriers, and the general public.

At the time of passage of Section 13a, the railroads were experiencing what could be called a state of severe depression. The situation was so bad that the Congress held extensive hearings on the railroad problem, the findings of which played an important part in passage of The Transportation Act of 1958, which included Section 13a.

Today we find the railroads, compared to 1958, in a far better position, with a generally optimistic rather than pessimistic outlook. We believe this improvement has been brought about, in large part, by their ability to rid themselves of many hopelessly unprofitable passenger trains. While the current annual passenger deficit of approximately \$400 million is still very substantial, it is far better than the \$610 million passenger deficit in 1958.

In 1966, the railroads earned an estimated 3.9 percent rate of return on investment, which likewise is much better than the 2.8 percent earned in 1958. Yet, according to figures reported by the First National City Bank of New York, the railroad industry last year was second from the bottom of a list of 65 industrial groups on the basis of the percentage of return on net worth. The days of railroad financial problems are obviously still not over.

While it is true that many passenger trains have been discontinued during the eight years of Section 13a, it is interesting to note that in the commutation field, where most of the complaints about rail passenger service are voiced, the total number of rail commuters has held practically stable since 1960, when 203 million

commutation passengers were carried compared to an estimated 195 million in 1966. This illustrates, in our opinion, another benefit of Section 13a, which is the effect it has had on stimulating local and state action to assist in maintaining rail commuter service—at least on the high-density routes.

In the intercity travel area, we believe the impact of Section 13a has likewise been beneficial. The actual, and threatened, loss of intercity rail service has stimulated—with a definite boost from the Government's three-year \$90-million high-speed ground transport program—innovation and renewed interest.

Another benefit of Section 13a has been its influence on the other side of railroad operations, the freight service, and in helping carriers keep rate levels down despite continuously rising costs. There is no doubt in our mind that the easing of a sizeable portion of the heavy passenger-train deficit has played an important role in this area. In 1958, when Section 13a was passed into law, the railroads reported an average revenue of 1.46 cents per ton-mile, the third straight year that they showed an increase. It is significant to note that in every year since 1958 this index of the over-all cost to shippers of rail freight service has gone down, reaching an estimated 1.26 cents in 1966, the lowest since 1948. Lower rail freight costs have unquestionably been of great benefit to the general public in helping to hold down consumer prices.

Before stating our specific views on each of the bills before your Subcommittee, we should emphasize that our primary concern is that changes in Section 13a will be made that will nullify its proven effectiveness. This could be done by permitting discontinuance proceedings to be unreasonably delayed, or by imposing obligations on the carriers that will discourage their use of this means of long-needed relief.

H.R. 519

The bill would impose two additional standards for the ICC to follow in the handling of passenger-train discontinuance cases, both of which, in our opinion, are too restrictive and thus undesirable. One standard would prevent the discontinuance if the carrier "could participate in any existing or proposed local, state, regional, or Federal program for the improvement of commuter services" and "substantially benefit" therefrom. Based on past practices, the various local, state, and Federal programs to assist rail commutation service are far too tenuous to justify such a standard. One of the major benefits of the present Section 13a has been the stimulation of such assistance. We are fearful that such a standard would result in its being used as a means of delaying discontinuance proceedings, pending "possible" relief. The relief itself may be delayed because the threat of discontinuance has been temporarily blocked.

The other new standard proposed in this bill would prevent a discontinuance if the carrier "could be expected to benefit" from a pending merger. Since it is obvious that carrier expects to benefit from a merger in which it is a party, this standard would, in effect, by an outright restriction on such a carrier from seeking relief from deficit passenger services. It would block such financially weak railroads as the Central of New Jersey, Erie-Lackawanna, and New Haven from use of Section 13a until long drawn-out merger cases are finally cleared through the ICC and the courts. In the meantime, the passenger deficits of such carriers represent a major roadblock in the willingness of other more profitable roads to react favorably to a consolidation.

While perhaps not as major a change as the above two, the fact that H.R. 519 would permit the ICC, in applying these new standards, to require continuance of the service for "at least one year" opens the door to an indefinite rejection of the carrier's petition. The present Section 13a limits the required continuation period to not more than one year, which gives the carrier another opportunity to seek relief in a relatively reasonable period of time.

For these reasons, we strongly object to this bill and urge that the Subcommittee not approve it.

H.R. 260

This bill would add another statutory standard for the ICC to consider in discontinuance proceedings. It would require the Commission to give "full consideration" to any financial assistance that might be available to the carrier under the Urban Mass Transportation Act of 1964 and to "the efforts of such carrier or carriers to obtain such assistance."

While it appears to us that this is a factor that obviously should be taken into consideration by the Commission in a discontinuance proceeding, we question the need to highlight it in such a way. Could not this be done by the ICC

under the present statute as one of the requirements to be met in the carriers' supporting evidence?

H.R. 7004

This ICC-sponsored bill is designed, in the Commission's words, to eliminate "deficiencies" that it has found in Section 13a. The proposed changes would give the Commission more time to consider "important or exceptional cases", place the burden of proof on the carrier, give the Commission broad authority to set operating conditions for passenger trains included in discontinuance proceedings, and give adversely affected parties the right to appeal a discontinuance ruling in the courts.

It is difficult to quarrel with the Commission with its stated objectives in proposing such changes in Section 13a, yet careful consideration of these changes, especially on an over-all basis, brings us to the conclusion that the end result will be a considerable delay in all such proceedings, and an indefinite delay in any major discontinuance proceeding. Passage of this bill could also, in our opinion, discourage its use by carriers because of such delays and the possibility of being required to comply with unreasonable conditions before being permitted to discontinue an unprofitable passenger train, or even in continuing one under the amended Section 13a (1).

According to an ICC tabulation of proceedings under Section 13a through December 31, 1966, a total of 227 were instituted. In 126 of these, or approximately 55 percent, discontinuance was granted. Even though the Commission had to take affirmative action to disallow the discontinuance, it was obviously able to do so in nearly half the proceedings.

From the standpoint of actual trains, carriers sought to discontinue 1,426 during this period, and were permitted to drop 1,031, or 72 percent. This latter figure, however, includes 281 trains of the Boston and Maine Railroad in a single proceedings, which, if deducted from the total, would show the discontinuance rate at just slightly over 50 percent.

While these figures fail to give proper weight to individual proceedings and trains, they at least indicate that the Commission is not indiscriminately permitting discontinuances, nor that it is unable to obtain sufficient information to support an affirmative rejection of such proposals.

As to the proposed amendments in H.R. 7004 that would extend the various time periods in Section 13a, we believe the effect will be to delay all such proceedings that are investigated, even though the Commission admits that "present procedures are substantially adequate for most discontinuance cases." If it is concerned about the lack of time to handle "certain kinds of important or exceptional cases," it is not prevented from asking the railroad for more time, as it now does in certain instances in rate cases. Our concern is that in order to give more time for a few exceptional cases, the time that will be taken to handle the routine cases will, in all probability, be more than doubled.

To illustrate this point, we have tabulated the time periods that the Commission took to handle proceedings under Section 13a(2), where no time limits are imposed. It showed that the average time, on both an average mean and median basis, was 14 months, although this has been reduced somewhat to about 10 months since 1965. Yet, since this is a repeal provision following state rejection of a discontinuance or failure to act within four months, the railroads had already been forced to wait a considerable period before even going to the ICC for relief. Even then, the Commission's rejection rate was approximately 50 percent, since it approved only 23 of a total of 45 proceedings under this provision.

As to the proposed change in the burden of proof, we fail to see the purpose from the standpoint of obtaining adequate information on which the Commission can justify its final decision in such proceedings. Certainly the carriers must furnish sufficient data to justify any discontinuances, and the Commission doesn't lack the authority to insist on getting it. As to proof of the public convenience and necessity for the service, it would appear to us that this should best be assumed by the parties that oppose the discontinuances, such as labor unions, local chambers of commerce, municipalities, and rail passengers themselves.

As to the granting of broad authority to the Commission to establish "conditions and modifications pertaining to operations or service," we can see many potential dangers. As we interpret the amended Section 13a(1), the Commission would be given very broad authority to set "terms, conditions and modifications pertaining to operations or service" on passenger trains that it requires to remain in operation for another year. In other words, if the carrier seeking relief

is successful, he has won a gamble, for if it loses it must face the possibility of being required to modify its services on that particular train, or trains, as the Commission thinks "reasonable and just." The carrier may be required to experiment with costly innovations or other "conditions" that could prove to be even more costly than prior to its institution of the discontinuance proceeding.

Under Section 13a(2), this power takes a somewhat different form, in that it is granted to the Commission in connection with the trains that can be discontinued. In other words, the Commission can impose "conditions" that must be met by the carrier before it can discontinue the train. In this instance, the carrier may lose even if it can justify discontinuance of the passenger train, especially if the Commission decides to use this power to require labor protective provisions as a condition for discontinuance.

Our final point is the added Section 13a(3), which gives all adversely affected parties the opportunity to appeal an ICC discontinuance ruling in the courts. As we understand the present situation, this power already exists in Section 13a(2), and a U.S. district court in eastern Michigan has just recently remanded an ICC discontinuance ruling for failure to make an adequate record.

While we cannot interpret our policy positions in this area as specifically covering this proposed change, with respect to Section 13a(1), we can express our concern about its probable impact if enacted into law. Many authorized discontinuances, including all of the major ones, will end up in drawn-out court proceedings.

In summary, we believe the over-all result of passage of H.R. 7004 will be to nullify the effectiveness of Section 13a and to discourage its use. We recommend, therefore, that the Subcommittee not give it favorable consideration.

H.R. 8939

This bill would require that the railroads make formal application to the ICC to discontinue any passenger trains that are now subject to Section 13a(1), and that the Commission hold a hearing on each application. It would also give the Commission broad power to attach conditions, including labor protective provisions, to any discontinuance it permits, with stiff penalties for noncompliance; and it would impose an 18-month moratorium on any passenger-train discontinuances. Finally, it would delete entirely the present Section 13a(2), which provides a means of relief for those railroads that are unsuccessful at the state level.

The requirement to hold a formal hearing on each application would eliminate all time limits on such proceedings and thus result in an undue delay in their handling. The grant of power to the Commission to attach conditions for discontinuance, along with the penalty provision, would discourage carriers from seeking needed relief. The 18-month moratorium completely ignores the fact that the passenger-train deficit problem is still with us and that it is not fair to continue to require railroads, their shipper users, and their investors to shoulder this heavy financial burden. The decision of the present Section 13a(2) raises the question of what steps, if any, can an interstate railroad take if it fails to obtain needed relief at the state level.

Repeal of Section 13a(2) would encourage states to delay, or reject, intrastate passenger-train discontinuance proceedings.

For the above stated reasons, we very strongly oppose H.R. 8939.

CONCLUSION

While we are fully aware of the concern of persons directly affected by the discontinuances of passenger trains, we have attempted to show some of the direct benefits of Section 13a and why we believe its retention is in the public interest. Even though many passenger trains have been discontinued as a result of Section 13a, we should stress the point that the Commission gives heavy consideration to the availability of adequate substitute service in such proceedings. Furthermore, the discontinuance of a passenger-train along a line that still moves freight—as is the case in these proceedings—certainly doesn't prevent the introduction of new passenger-train innovations and the re-entry of such service under more favorable operating conditions in the future.

Mr. SMITH. I am appearing today on behalf of the board of directors of the Transportation Association of America.

We are in opposition to the four bills, I have included H.R. 8939, all of which deal with amending section 13a. I don't need to describe that section. It has been covered at great length.

I think I should take a minute or two to explain briefly what TAA is to some of the members who may not be too familiar with it. We are a national transportation policy organization. We are made up of users, investors, and carriers of all modes. We attempt to get these various groups together and agree on basis policy positions that we feel will further transportation under private enterprise concepts.

Our board of directors takes official action for TAA. We have about 115 members. But it does this after hearing individual views of eight panels that represent these various interests that I mentioned before, and this process has been gone through on this particular legislation. In other words, we basically feel that a railroad that has an unprofitable passenger service should have recourse to relief, from the ICC, if it can be shown that it is an undue burden on interstate commerce.

We also believe that there should be reasonably expeditious handling of such cases. Specifically, we mentioned at one time that 120 days at the State level was, we felt, quite ample time.

On page 2 we mention briefly some of the what we call major reasons why we supported section 13a, and why we still believe that its retention is in the public interest. First, as I mentioned, we do not feel the railroads should be forced to continue operating services that are so unprofitable as to impose an undue burden on interstate commerce.

We also feel that neither the users, the shippers using rail freight services, nor the investors in the railroads should be asked to subsidize railroad passenger service. I should add a comment here.

In 1957, when we first expressed considerable interest in this type of legislation, the impetus in TAA was not from the railroads. The impetus came from our users, their shippers, and also our investors, who felt that there was a definite time to push for some kind of remedy in this area.

We felt all along that the underlying reason for the decline in rail passenger service has been and still is the competition from the private automobile and the commercial airline.

We felt that procedures the railroads had to go through at the State level prior to 13a were completely inadequate and too slow, so therefore, we felt the need of such legislation.

And perhaps one of the major reasons was what we can call the do nothing attitude at the local level. It was very difficult—I won't say impossible since quite a few trains were discontinued prior to section 13a—to get relief at the local level because there was strong pressure to maintain the status quo. We felt 13a has stimulated what we call healthy action at the local and State levels.

Therefore, we believe section 13a has proved to be, and still is, constructive and in the overall public interest. We naturally have to recognize there have been disadvantages, but we do feel that they have been offset by the advantages.

Not to repeat too much what the railroad witness has said, but I should stress the point that in 1957, when this legislation, not this specific legislation but the overall railroad problem, was being considered by Congress, major attention was given to the railroad pas-

senger deficit. The railroads, of course, at that time, even in the freight area, were expressing what you might call a rather pessimistic outlook.

The passenger deficit, it has been pointed out, in 1958, was around \$610 million. While not completely, but to a large extent because of 13a, it has reduced a little over \$200 million. I should point out in 1958, the railroads' rate of return was in the neighborhood of 2.8 percent. While last year it was around 3.9 percent, and that is certainly considerably better, I should stress that according to comparable figures put out on return on net worth, by the First National City Bank of New York, the railroad industry is still the second from the bottom of the list of 65 industrial groups. So the railroad financial problems, even though their freight picture is considerably better, are still far from being over.

One point that was interesting to me is that, despite the number of trains that have been taken off, and probably the most vociferous complaints are in the commutation area, the level of commutation traffic from the standpoint of passenger count is approximately the same as it was in 1960.

In the intercity travel area, we felt another advantage of 13a has been the stimulant that it has brought about in helping to increase interest in innovation and high-speed trains. Certainly this was part of the consideration, I am certain, that the Congress gave when it passed the Government's 3-year, \$90 million high-speed ground transport program.

I would like to comment briefly on the other side of the railroad situation. That is the freight service. As I mentioned before, the railroads in 1957-58 were in a depressed state not only in the passenger area but in freight also. I certainly can't say that 13a has been the only reason railroad freight traffic is a lot better. There is no doubt in my mind, however, that it has been a major influence in this area. It has certainly given shippers a better attitude. It has given investors in railroads a better attitude, knowing that there is a chance for the railroads to relieve themselves in this one heavy-deficit area.

In 1958, when this law was passed, the railroads reported an average revenue of 1.46 cents per ton-mile, which was the third straight year they reported an increase. Now it appears to me significant to note that in every year since 1958 this index of overall cost to shippers of rail freight service has gone down. Mind you, this is in a period of basically inflationary trends. This index has reached an estimated 1.26 cents in 1966, which is the lowest since 1948. To the extent that section 13a has helped in this area, we certainly think this is in the definite public interest in helping to keep consumer prices down.

Before stating specific views on these bills, I should say that we are a broad policy group, so in getting into specifics it is a little difficult to apply our exact policy position. However, we are primarily concerned about what you might say is legislation that will nullify what we feel to be the beneficial effect of section 13a. This could be done either through unreasonably delaying the use of this section or imposing certain types of obligations, whether they are known or potential obligations, that will actually discourage the carriers from going forth in seeking such relief.

Now taking H.R. 519, I won't describe it, but it has two additional standards. One of them would block or prevent a discontinuance if

the carrier could participate in a local or some type of governmental assistance. Obviously, the opportunities of getting this type of aid are rather tenuous and I think an illustration is the Central of New Jersey, which has had extreme difficulty, you might say, in getting another contractual arrangement for local help. I don't know if it has actually done so, but it is threatening to go into bankruptcy. In fact, if you actually block a discontinuance when a carrier has this possibility, it may actually discourage the local people from taking expeditious action.

Also a new standard in this section of this H.R. 519 would be to prevent a discontinuance if a carrier could expect to benefit from a pending merger. Now I feel pretty certain that almost any carrier who is a party to a merger would expect to benefit from it, and so we read this as a straight prohibition against carriers, such as to mention again the Central of New Jersey, Erie-Lackawanna, and the New Haven, from even seeking relief in this area.

Another point, it may not be major, but this bill would permit the ICC, in applying these new standards, to require continuance of the service for at least 1 year. This raises a question in our minds, since the law presently says no more than 1 year. Does this indicate that this could be an indefinite ruling and that the carrier could not come back and seek relief? For these reasons, we object to this particular bill.

Now on H.R. 260, this has a single additional statutory standard that would require the Commission to give full consideration to Government financial assistance. It says "full" consideration. Basically we feel that this is already covered by the Commission. It certainly could be set forth in what you might say are the requirements of the information that the carriers must present in such cases, so we just don't see any need for such legislation.

By having such legislation, we think you are simply emphasizing this particular standard over some other standards.

Going to the major bill under consideration, H.R. 7004, it is difficult to quarrel with the Commission in its stated objectives for this legislation, but certainly collectively these various suggested amendments, in our opinion, would end up in a considerable delay in all proceedings, and probably an indefinite delay in almost any major discontinuance proceeding. And also because of the "conditions" features that have been talked about, it could well discourage the carriers from going ahead and seeking such relief.

I wanted to point out as far as the ICC action—you have to be a little careful with statistics in this area—I have mentioned on page 6 that from the Commission's own record, through 1966 a total of 227 proceedings were processed, and in 126 of these cases or approximately 55 percent, discontinuance was granted. In other words, almost half of the cases, despite you might say what some people claim to be an inadequate time to get a record, the Commission has obviously been able to develop a record sufficient to disallow the discontinuance.

Now from the standpoint of actual trains—and a train of course is a nebulous term, since it could be one car, a rail diesel car, or it could be a long transcontinental train—at least the way the Commission listed the term "train", it can be shown that in this same period, they dropped a little over 1,000, or about 72 percent, which seems like a higher percentage. However, in one case, this included 281 trains of

the Boston and Maine. So if you remove that one, you will find that the record on the Commission has shown that the discontinuance rate is just slightly over 50 percent.

As I mentioned, these figures don't give proper weight to the individual differences in proceedings or trains. It does indicate to us that the Commission is not indiscriminately permitting discontinuances, nor that it is unable to obtain sufficient information to support an affirmative rejection of such proposals.

In H.R. 7004, as to the proposals to extend various time periods, this has been covered by previous witnesses. Our general feeling is that the railroads should be required to provide adequate information to justify the discontinuance, and we think, based on what the Commission has said and what Mr. Moloney pointed out, this information has been given. So we see no need for such a change.

What we are concerned about is that if you give the Commission 9 months—7 months within the statute, and they could ask for another 2 months—the Commission in all probability will use this time as the general rule rather than for the exceptional case.

In section 13a(2), where there is no time limit, we made a quick check and found that the average time the Commission took was 14 months to handle such cases, although it has done a little better in the last year. But I should point out that these are appellate cases where the railroad has already gone to the State, which has taken at least 4 months, and the carrier has developed a case, as have the opposing parties, since they undoubtedly had acted at the State level and had already had ample notice and time and had already developed a very strong case to present to the Commission. Despite this, you can see that the Commission has taken quite a long time.

Now on this burden of proof, it has been covered quite well. Our main concern is that this could be used just as a means of making it extremely difficult to actually discontinue such train. The same way on the conditions and modifications.

As we interpret it, under 13a(1), that is the interstate portion, if a carrier was seeking relief, he would actually be gambling. If he wins, he could obtain the discontinuance right, but if he loses, he faces the possibility of being required to modify his services on that particular train, as pointed out. This may be very costly or it may not, but that certainly at the moment would be a risk he would have to take.

Under 13a(2), which is the intrastate section, it takes a somewhat different form. This is the way I have been reading this, and I am not a lawyer. I am an economist, so I am trying to interpret this in a broad sense. As I read section 13a(2) as amended by H.R. 7004, the Commission would impose conditions that must be met by the carrier before discontinuance of a train.

Here is a case where the carrier is either turned down, or even if it wins its case, it is liable to be subjected to conditions that it may feel it wouldn't want to comply with, or it wouldn't have gone through with the case if it had realized that it may be confronted with some rather costly obligations.

Our broad policy would not directly apply to the question of appellate right in the courts. Our main concern is that under the present law, we feel that the end results have been good, and we would hate to see some of these cases being held up in long drawn out court cases.

As to H.R. 8939, nobody has gone into this in any detail. I would just state that we are opposed to this bill. This is an even more stringent bill than any of the others by far. We certainly do not feel that all these proceedings should have formal hearings with no time limit. Also, the grant of power to the Commission to attach conditions is even stronger than the other bill, and it attaches very strong penalty provisions. Then the 18-month moratorium competely, in our opinion, ignores the fact that the passenger train deficit problem is still with us. Also this bill would delete 13a(2), and I am not certain where that would lead us to as to what relief that would be available to a railroad for an intrastate passenger train discontinuance.

My final comment is that on the question of substitute service, the Commission in these cases does stress the availability of adequate substitute service. Also, these are service discontinuance cases, and as such, the railroads would still be operating service, freight service, along these lines. It appears that this doesn't automatically preclude in the future restoration of passenger train service if some new type of innovation comes about, or if the conditions for reentry are more favorable. Basically, that is our view.

Mr. FRIEDEL. Have you concluded, Mr. Smith?

Mr. SMITH. Yes.

Mr. FRIEDEL. I have no questions, but I want to thank you for being patient. Your full statement will be included in the record.

Mr. SMITH. Thank you very much.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. For my information, Mr. Smith, tell me something about your organization. You say it is made up of users, investors, and carriers. Whom do you represent?

Mr. SMITH. I am representing our board of directors. We have approximately 1,000 corporate members. Of these, roughly 50 percent fall in the category of users and suppliers of transportation—chemical companies, oil companies, steel companies, automobile manufacturers, railroad equipment people of all sorts, and so forth.

Mr. PICKLE. You do not represent the railroad association?

Mr. SMITH. No, sir. I would say our membership contains about 75 railroads. In the neighborhood of 7½ percent of our members would be railroads.

Mr. PICKLE. Seven percent.

Mr. SMITH. In that general neighborhood.

Mr. PICKLE. Basically, you represent manufacturers who ship items by rail.

Mr. SMITH. Well, I would say we represent transportation interests. I wouldn't say the transportation industry. I consider that as the carriers only.

Mr. PICKLE. A chemical company or an automobile company is not particularly interested in passenger service per se, would they be?

Mr. SMITH. Well, not directly, although they would spend in their company, I would assume, quite a bit of money in passenger service. I would say offhand they would be more concerned with railroad freight service.

Mr. PICKLE. I would think so.

Mr. SMITH. Than railroad passengers.

Mr. PICKLE. These bills that are before us pertain to passengers almost totally.

Mr. SMITH. Yes.

Mr. PICKLE. When we talk about operational service, I can't quite understand why you are concerned about passenger service. Are you just sympathetic to the carriers? Is that it?

Mr. SMITH. No, sir. We have, as I say, shippers, and they basically represent this majority or 50 percent roughly of our membership. They are paying for rail freight service. They feel that if the passenger service is a heavy losing proposition, somebody is going to have to absorb that. We are not having the Federal Government come in and pick that up, thank goodness.

Mr. PICKLE. It seems to me like the interests of your people would be that they get their products shipped quickly and efficiently to the market.

Mr. SMITH. Yes, sir.

Mr. PICKLE. And it ought to be as I see it an indirect interest whether the passenger service continues or does not continue. I can't help but feel that you are just sympathetic and that is about the main reason why you are here.

Mr. SMITH. No.

Mr. PICKLE. There is nothing wrong with that but I think we ought to understand ourselves.

Mr. SMITH. No, sir. We have all the other carriers, the airlines, the trucking industry, the pipeline industry.

Mr. PICKLE. Their interest in whether the passenger service is continued or not is very minor.

Mr. SMITH. There is a principle involved as to what extent should an interstate carrier be required to perform an unprofitable service that is a heavy drain on them.

Mr. PICKLE. I am sure you understand I don't wish to argue a point.

Mr. SMITH. Yes, sir.

Mr. PICKLE. I think on the face of it it is my opinion you just don't have a very strong justifiable interest in appearing before the committee in behalf of the discontinuation of a carrier service. There is a related interest but I would think very minor. If you only represent 7 percent of your interests it seems to me that is minor.

You talk in terms of delay and that you are afraid that the action if it changes would nullify its effectiveness and all this may or may not be true, but it doesn't seem to me like it goes to the point of whom you are representing.

Now let me go to another point here just as a matter of logic. The second point you made "the users of rail freight service should not have to subsidize rail passenger service." The freight service makes a profit and the passenger does not, and this is beyond argument. Now we have cases throughout the transportation industry—airlines, railroads, or any other form—where either the Government or someone, in effect, had to subsidize some of these services. Let's take an air carrier, where we are talking in terms of a local carrier.

The Government itself will step in and help sometimes, when an airline is not making a profit. There are many instances throughout the United States whether you talk about rail, bus, or airline or any

other form of transportation, where a large number of communities are entitled to service, to passenger service, even though they aren't strictly making a profit. Now are you telling me that if any mode of transportation is not making a profit that it ought to be discontinued?

Mr. SMITH. No, sir. I am saying if it is an undue burden on interstate commerce.

Mr. PICKLE. Who would determine that?

Mr. SMITH. That would be determined by the Commission. I think the carriers would have to come in and show that it is an undue burden on interstate commerce.

Mr. PICKLE. The Commission then is saying that we ought to extend the hearings, so to speak, you would say this is undue delay but the Commission is trying to ask for more information and to stretch out and see if any exceptional cases should be granted and yet you object as I understand it. You just figure that the exception might be the general rule. Now why would you feel that?

Mr. SMITH. I would say that because of the way the proposal is worded, because it applies in general to all the cases. As such, we think the cases would take the full time.

Mr. PICKLE. The question is, is it working well or is it not?

Mr. SMITH. I think so.

Mr. PICKLE. It is working well but here is the Commission saying that they recommend that they be given some additional authority. In other words, they want to be able to determine that there would be some exceptional cases.

Mr. SMITH. In exceptional cases.

Mr. PICKLE. And yet you say they are doing a good job and when they want to try to improve you object to their doing it.

Mr. SMITH. If this were worded in such a way as to apply to exceptional cases, the large cases, that would be something else, but they don't word it in that sense.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

I would also like to thank the gentleman for his most worthwhile contribution to this legislation. As I understood you to say, your association represents the carriers and they are naturally interested in all phases of transportation. You also have investors and users, and I assume that some of your members, although they are primarily interested in freight travel, also would be interested in passenger travel so far as rail is concerned.

Mr. SMITH. Yes, sir. Of course, we have airlines and bus companies as members. They are certainly interested in passengers, and then as a competitor they are certainly interested in the railroad passenger.

Mr. WATSON. As a lawyer I hate to admit this, but I think you made a pretty good analysis of this bill. I notice from your figures the decisions have been about 50-50, some favorable and some unfavorable, so it looks as if both sides have been pleased part of the time. As my dear friend from Texas said a moment ago, everything is working well and you have confidence in the Commission, so why do you object to their coming in and asking for this extension of time. This appealed to me at first thought, but then I came back to the proposition that if it is working so well today, then why would you be upset.

I am inclined to agree with you. Unless it is nailed down to these exceptional cases, I have found that we as individuals, and especially the Government, if given the additional time, it is going to be taken. I think there is the natural inclination on the part of the parties involved to realize that they don't have to get it in until 2 months later now or 40 days later, and so as a consequence, we see one of the frailties of man, that is he is going to consume the maximum time.

Mr. SMITH. I should point out that there is nothing that stops the Commission from asking for more time. It is done under rate cases, and I understand, and if I have read Chairman Tucker's statement correctly, I think in the New Haven case he asked for more time and the railroad granted it. I would hate to see it being done as a general practice, but for the unusual cases they could certainly do that.

Mr. WATSON. Thank you Mr. Chairman.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. The users panel as referred to Mr. Pickle, these are freight users as opposed to—

Mr. SMITH. Basically yes, although they may have responsibilities in the passenger field too, although it would probably be a small share of their companies' total expenses.

Mr. ADAMS. Do you have any panels on there that represent either labor or the public generally?

Mr. SMITH. No, sir. Ours is a management organization.

Mr. ADAMS. It is a management organization. All right, in this has there been any case—I asked you about this panel being of freight shippers—has there been any case where there has been a discontinuance of passenger trains, where the savings have been passed on to your freight users?

Mr. SMITH. I would assume, as I tried to show in my—

Mr. ADAMS. I mean do you know of any case where a line has been discontinued that these savings have been shifted over to your people, your freight users.

Mr. SMITH. I don't think the railroad rate structure is set up that way. When they make changes in rates, it could be for various reasons. I would say I don't know of any case that could be specifically tied down to that type of relationship, but I am convinced that these reductions have permitted either holding the line or reductions in freight service on an overall basis.

Mr. ADAMS. But you don't know of any reductions in freight service charge.

Mr. SMITH. Oh, yes, but you said tied in to individual—

Mr. ADAMS. I said comes as a result of this.

Mr. SMITH. In the unit train concept, for example, of course this is a new concept.

Mr. ADAMS. We are going to assume there is going to be some improvement in railroads and freight carriers.

Mr. SMITH. Oh, yes.

Mr. ADAMS. But I mean you don't know of any that has come from this directly that you can trace from your panel study.

Mr. SMITH. I will certainly be glad to look into that and see if I can trace a specific correlation between one and the other. I am not sure it can be done.

Mr. ADAMS. I would appreciate that.

(For information requested, see letter dated May 12, 1967, *infra*.)

Mr. PICKLE. Will the gentleman yield?

Mr. ADAMS. Yes.

Mr. PICKLE. For the record, Mr. Smith, would you submit to the committee those organizations who are members of the Transportation Association of America?

Mr. SMITH. We can give you a basic list; yes, sir.

Mr. PICKLE. Not basic, full. Is that acknowledged?

Mr. SMITH. Yes, sir; that is acknowledged.

Mr. PICKLE. I would appreciate it if you would do that.

(The list referred to, having been supplied, is in the committee files.)

Mr. PICKLE. Now I want to ask you this. You made a statement a minute ago to my distinguished friend from South Carolina that some of the bus companies object. What bus companies have objected to this bill, by name?

Mr. SMITH. Greyhound is a member of our board.

Mr. PICKLE. And Greyhound objected to it?

Mr. SMITH. Well, you see we are a broad group. We would act through our board of directors.

Mr. PICKLE. Are you saying that—

Mr. SMITH. They would be represented on the board. Whether they were there that particular day that the board endorsed us to take action in this area, I would have to check on that.

Mr. PICKLE. I wish you would check. I would like to know if Greyhound did object to this bill as proposed, or if any of your bus companies specifically have objected, and I would like to know the names of them.

Mr. SMITH. All right.

Mr. PICKLE. So you will submit that to the committee also and I would appreciate it.

Mr. SMITH. Yes, sir.

(The information requested is contained in the following letter:)

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., May 12, 1967.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: During my testimony before your Subcommittee on May 8 on bills relating to Section 13a of the Interstate Commerce Act, I was asked by members of the Subcommittee to furnish additional information, which is herewith submitted.

As to the specific position of the Greyhound Corporation on this legislation, we have checked with them and are advised that they have taken no position nor plan to do so. We have checked our Board minutes and can advise that while Greyhound was represented on the Board when the question of repeal or modification of Section 13a was discussed and voted on, their representative was not present at the time such action was taken.

In response to another request during the hearing, I am enclosing the only publication that we have which details our membership. It includes the identification of our 115-man Board of Directors, as well as the persons and organizations which actively participate in our policymaking activities. The latter include the members of the eight Panels referred to in my testimony.

A third request was for additional information, if I could develop it, that would illustrate more clearly the direct benefits that shippers on a particular railroad have received in the form of lower rates as a result of passenger-train discontinuances.

Enclosed is a tabulation that shows, for four major railroads, for the period 1958 through 1966, their respective passenger deficits and revenues per ton-mile,

the latter representing the average unit cost to the shippers on each road for freight service. The four carriers all were able to reduce their passenger deficits during this period, and at the same time all of them reported steady declines in revenue per ton-mile. While the latter is not necessarily the direct result of the reduced passenger deficit, we believe it was made possible in part by this factor.

For a more specific current example of the relationship of the passenger-train deficit to a carrier's shippers, I am enclosing a photo copy of an article that appeared in the May 6, 1967, issue of "Traffic World." This article points out the serious impact of heavy passenger-train losses on one railroad's ability to provide adequate freight service. As pointed out by Mr. Shoemaker of the Central Railroad of New Jersey: "Credit for supplies and materials has been wiped out, normal freight movement has been disrupted as a result of other railroads putting CNJ on a cash-on-the-barrelhead basis, and industrial development in CNJ territory has been immobilized."

If you or your Subcommittee members have any questions about this supplemental data, I shall be happy to try to answer them.

Sincerely,

FRANK A. SMITH,
Vice President, Research.

Passenger deficit and revenue per ton-mile, selected class I railroads, 1958-66

Year and item	Chicago, Milwaukee, St. Paul & Pacific	Great Northern	Union Pacific	New York Central
1958:				
Passenger deficit.....	\$23,540,001	\$23,808,560	\$43,953,807	\$32,560,775
Revenue per ton-mile (cents).....	1.480	1.461	1.391	1.626
1959:				
Passenger deficit.....	\$20,144,961	\$20,845,359	\$42,779,012	\$24,837,794
Revenue per ton-mile (cents).....	1.428	1.440	1.366	1.626
1960:				
Passenger deficit.....	\$17,492,642	\$19,128,161	\$34,780,933	\$17,756,172
Revenue per ton-mile (cents).....	1.395	1.374	1.358	1.566
1961:				
Passenger deficit.....	\$13,895,198	\$15,372,644	\$26,633,535	\$15,590,685
Revenue per ton-mile (cents).....	1.388	1.351	1.335	1.496
1962:				
Passenger deficit.....	\$12,648,219	\$12,763,940	\$25,810,115	\$15,103,856
Revenue per ton-mile (cents).....	1.339	1.291	1.333	1.505
1963:				
Passenger deficit.....	\$12,726,284	\$14,107,468	\$26,773,564	\$14,264,592
Revenue per ton-mile (cents).....	1.314	1.279	1.290	1.465
1964:				
Passenger deficit.....	\$11,826,569	\$14,737,432	\$28,815,049	\$14,064,489
Revenue per ton-mile (cents).....	1.291	1.293	1.251	1.463
1965:				
Passenger deficit.....	\$10,877,541	\$16,802,227	\$27,159,215	\$16,176,207
Revenue per ton-mile (cents).....	1.270	1.286	1.241	1.387
1966:				
Passenger deficit.....	\$11,665,581	\$14,143,972	\$27,741,898	\$16,023,304
Revenue per ton-mile (cents).....	1.313	1.302	1.250	1.367

Source: Reports to the Interstate Commerce Commission.

[From Traffic World, May 6, 1967]

**CNJ CHARGES STATE FORCED ACTION TO SEEK HALT
OF ALL PASSENGER OPERATIONS**

The chief executive of the Central Railroad of New Jersey charged May 4 that the state of New Jersey has forced the railroad to initiate proceedings for the complete discontinuance of passenger service.

P. M. Shoemaker, trustee and chief executive officer of the CNJ, said that trustees of the railroad requested authority May 2 from the U.S. district court at Newark to apply for the discontinuance of all passenger operations. He declared that the action followed a refusal of the state to recommend immediate reimbursement of the railroad's 1966 passenger loss of \$7.1 million, toward which no payment has been made.

Mr. Shoemaker placed blame on the state for the action in a speech at the annual conference of the New Jersey Society of Professional Engineers held May 4 in Atlantic City.

MONTHLY LOSS: \$600,000

In addition to reimbursement of the 1966 passenger loss, Mr. Shoemaker said the trustees have asked the state to reimburse the railroad quarterly during 1967 and 1968, for continuing passenger losses in those years. He said that such losses are currently running at a rate approaching \$600,000 a month.

"We see no way to continue passenger service unless these actions are taken," he said.

In addressing the engineering society, Mr. Shoemaker asserted:

"Faced with the destruction of the railroad's credit and rapid deterioration of cash since March 22, when the railroad had no alternative but to file a petition for reorganization, the trustees found themselves with a choice of three courses of action:

"1. Reduce expenditures by curtailing freight operations. This was rejected as being self-defeating.

"2. Issue trustee certificates to pay past bills and restore working capital. Although the trustees are vigorously exploring this potentiality, it appears questionable that approval of either the court or the Interstate Commerce Commission would be granted unless it can be shown that reimbursement of passenger losses of the past 16 months, amounting to almost \$10 million, is in prospect, and that the drain of continuing passenger losses has been eliminated.

"3. Place the passenger problem directly in focus by initiating action to discontinue all passenger service. The trustees continue to feel that mass transportation by rail is essential to the economy of our state.

"If, however, there must be a choice between maintaining essential freight service to New Jersey industry—involving employment of more than 100,000 people—and continuing passenger service to the point of destroying both passenger and freight operations, the choice must be to sacrifice passenger service.

"But this choice was not ours. The state of New Jersey made the decision which forced the trustees to move for the elimination of passenger service. And the state has the power to reverse its position, if it has the political courage and responsibility to do so."

Mr. Shoemaker said that precisely what he predicted would happen if the company were forced into insolvency has happened. Said he:

"Credit for supplies and material has been wiped out, normal freight movement has been disrupted as a result of other railroads putting CNJ on a cash-on-the-barrelhead basis, and industrial development in CNJ territory has been immobilized.

"While the cash required to maintain the solvency of the railroad could have been provided by full reimbursement of CNJ passenger losses, I pointed out time and time again that failure to do so would result in a state of insolvency requiring a far greater amount.

"We are now seeing the full measure of repercussions to New Jersey stemming directly from lack of responsible leadership at Trenton. It is to be hoped that the current experience of the Central Railroad of New Jersey can be a public lesson in how not to handle a major public problem."

Mr. FRIEDEL. The meeting is now adjourned and the record will be open for 5 days.

(Representative Harley O. Staggers, chairman of the Committee on Interstate and Foreign Commerce, submitted the following correspondence re train discontinuances in Finance Docket Nos. 24395, 24399, and 24424:)

BROTHERHOOD OF RAILROAD TRAINMEN,
Washington, D.C., January 31, 1967.

HON. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to bring to the attention of your Committee the usurpation of authority practiced by Division 3 of the Interstate Commerce Commission in ignoring protests in train discontinuance cases, and disregarding requests for hearings to afford protestants an opportunity to present their side of the case.

In December 1966, the Northern Pacific Railway filed a notice with the Interstate Commerce Commission of its intension to discontinue the operation of passenger Trains Nos. 65 and 66 between Minneapolis and Duluth, Minnesota, via Superior, Wisconsin, effective January 5, 1967. This notice was continued in Finance Docket 24395. Not only did the Brotherhood of Railroad Trainmen, and the Railway Labor Executives' Association file protests with the Commission, requesting that an investigation be conducted in accordance with Section 13a(1) of the Interstate Commerce Act and hearings be held, but similar requests were registered by city, state and federal officials, including Members of the Minnesota Delegation in Congress.

Despite the array of protests and requests for investigations and hearings, the Commission decided as early as December 21, 1966, fifteen days before the date set for the proposed discontinuance, not to even investigate the proposal. This position is set forth in the Commission's Order served December 23.

Our organization was shocked by this arbitrary decision of the Commission, and appealed this decision in strong language on December 29, 1966. I am aware of the permissive nature of Section 13a(1) of the Interstate Commerce Act, but pointed out to the Commission that action such as it had taken in this case to not even investigate the proposal was warranted only when little or no opposition was registered. It was my contention that the Commission's action represented a flouting of the law.

I was advised by the Commisision on January 9, 1967, that it had affirmed its decision of December 21, 1966, not to enter upon an investigation in this case.

A check of the docket in this case reveals that more than fifty protests were filed with the Commission, all of which have been ignored by the Interstate Commerce Commission in deciding not to hold an investigation and conduct hearings.

Mr. Chairman, the presence of Section 13a on the statute books since 1958 has been the instrument which has permitted the railroad industry to strip the nation of its passenger service, but in many of these discontinuance cases the railroad labor organizations, the interested state and national officials, businessmen, and others were permitted to have their day in court through the conduct of public hearings. I respectfully submit for your consideration that the action of the Interstate Commerce Commission in this case represents an usurpation of the authority granted when Section 13a was written, and destroys the legislative intent of the law.

I have available for the use of your Committee a complete file in this docket, along with a list of those persons who protested the train discontinuance proposal and requested that hearings be conducted. It would be my pleasure to supply your Committee with this information, if it is deemed desirable.

I might briefly direct your attention to an almost identical case which occurred on the Southern Railway governing the proposed discontinuance of passenger Trains Nos. 7 and 8 between Birmingham, Alabama, and Brunswick, Georgia, effective January 9, 1967, covered by Finance Docket 24399. Numerous protests were also filed in this case and hearings requested, but again the Commission arbitrarily decided to close the case without even investigating it by its decision on December 23, 1966, not to enter upon an investigation of the proposed discontinuance. I have a complete file on this case also, along with a list of the persons protesting the discontinuance, if your Committee would like such information.

Since appealing the above two cases to the Commission and being turned down both times, I have received another decision from the Commission, this one dated January 19, in which the Interstate Commerce Commission announces it will not investigate another proposal by the Southern Railway, this one to discontinue the operation of passenger Trains Nos. 35 and 36 between Chattanooga and Memphis, Tennessee, via Huntsville, Alabama, Finance Docket 24424. This decision has not yet been appealed to the Commission, although, of course, we registered our protest at the time the notice was filed and requested that the case be investigated and hearings held.

The recent actions of the Interstate Commerce Commission constitute a condition which cries out for correction. I hope your Committee, which passed upon this legislation in 1958, will initiate a substantive inquiry into these actions. As stated, I will be glad to cooperate and to supply additional information, if desired.

Kindest personal regards.

Respectfully,

AL H. CHESSEY,
National Legislative Representative.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 7, 1967.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Raybourn House Office Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: Reference is made to your letter of February 9, 1967, transmitting a copy of a letter sent you by Mr. Al H. Chesser, National Legislative Representative of the Brotherhood of Railroad Trainmen, concerning several instances in which this Commission has permitted railroads to discontinue passenger trains without instituting an investigation.

Mr. Chesser is correct in his identification of the proceedings in which the Commission permitted the discontinuance of two passenger trains by the Northern Pacific Railway in Finance Docket No. 24395 and four passenger trains by the Southern Railway in Finance Dockets Nos. 24399 and 24424 without instituting an investigation. Division 3 reviewed all the documents and papers submitted by the advocates and opponents in these proceedings before deciding that the material of record did not warrant instituting an investigation of the proceedings. Under the law, section 13a(1) of the Interstate Commerce Act, the trains could then be discontinued as proposed.

Mr. Chesser refers to the number of protests filed in these proceedings. This, of course, is not a determining factor in deciding whether the trains are required by the public convenience and necessity and their continuance would constitute an undue burden upon interstate commerce, a finding necessary for the Commission to require continuance of the trains. It is clear from the action of Division 3 in the mentioned proceedings that it considered the facts therein precluded findings necessary to require continued operations of the trains and that the holding of hearings was not warranted. If you are interested in receiving copies of the notices filed by the railroads proposing discontinuance of the trains, or any other information, I will be glad to furnish it upon request.

Sincerely yours,

PAUL J. TIERNEY, Acting Chairman.

(The following information was submitted for the record:)

CALIFORNIA PUBLIC UTILITIES COMMISSION,
San Francisco, Calif., May 8, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics, Raybourn Building, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: The California Public Utilities Commission representing the People of the State of California respectfully requests that the following statement of its position concerning H.R. 7004, a bill to amend § 13a of the Interstate Commerce Act, be made a part of the official record of the hearings before your committee. This request and the comments are submitted within five days of the May 8, hearing, pursuant to your letter of April 20, 1967.

The California Public Utilities Commission (California) is well acquainted with § 13a of the Interstate Commerce Act having conducted numerous proceedings of its own pursuant to § 13a(2) and having participated in many discontinuance cases before the Interstate Commerce Commission pursuant to § 13a(1).

California does not desire at this time to recommend a substitute bill to the committee. Portions of the proposed bill, however, do not in our mind get at the heart of the problems presented, and your committee is respectfully requested to consider the following suggestions.

California's presentation is in two parts. Part I is an analysis of the changes in existing law which the proposed bill would effect, and part II will discuss California's suggestions for revisions.

I.

1. The bill would require the railroad to give 40 days notice to governors of states affected before the effective date of a proposed discontinuance. The present act requires 30 days.

Analysis: This provision would be a positive improvement but in the opinion of California, a 60 or a 90 day period would be more reasonable. The railroad involved obviously knows of its intention to make a discontinuance or change long before it files. In addition, the states involved have serious administrative difficulties in dealing with matters of this magnitude in 30 or 40 days.

2. The bill would add a section which states that the railroad shall have the burden of proof.

Analysis: This proposal by itself will not in the view of California accomplish what the bill intends. The Commission has heretofore interpreted the present act so that the railroad does not have the burden of proof. This provision would ostensibly change that.

The problem, however, arises from the fact that the bill would create an inconsistency between the section stating the required findings and the section assigning the burden of proof to the carrier.

Under the present 13a(1) the Commission must find that the operation of the train is required by public convenience and necessity and will not burden interstate commerce or it must dismiss the investigation.

The result of the present 13a(1) is that the only way the train will be ordered continued is if there is evidence to sustain a finding that the operation of the train is still needed. Only the public will supply that evidence; thus the burden of proof is really on the public, since no one else would come forward.

Under the proposed bill, the finding required would be that "public convenience and necessity do not permit the discontinuance". This requirement is simply the reverse side of the same coin. Thus there must be evidence to prove a negative—that is that the public convenience and necessity do not permit the discontinuance. We have found it both expensive and extremely difficult to prove this negative.

This finding requirement effectively destroys the burden of proof requirement stated above.

What is needed, in our view, is that the Commission be required to find that there is evidence to support the discontinuance, and then the burden of proof would be on the carrier in clear terms.

In summary on this part then, it is suggested that the proposed bill creates an inconsistency between the section purporting to put the burden of proof upon the carrier and the section setting forth the requirements of the Commission's findings.

3. The bill would give the Commission an extra three months to decide the matter of investigations under 13a(1). The present act provides that if the Commission chooses to investigate a railroad's proposed discontinuance, it may order the discontinuance held up for four months. The amendment would attain a seven month maximum.

Analysis: The addition of three months by the proposed bill does not give the Commission adequate time to properly adjudicate the matter. It is suggested therefore that the committee consider a one year period under this section, but failing that the seven month period is certainly preferable to the present four month period.

4. The bill adds a paragraph authorizing the Commission to extend the seven month period referred to above for an additional two months "pending completion of the investigation or the Commission's determination of any petition . . . for reconsideration. . . ."

Analysis: This provision apparently adds two months to the seven month period with which we agree, but both of the delay provisions are discretionary with the Commission so the separation of the provisions is curious. It would be more straightforward to simply say that the Commission may have nine months to finally decide and that would include any petitions for reconsideration.

5. The proposed bill would specifically authorize the Commission to attach conditions to an order requiring continuance of service after a 13a(1) investigation.

Analysis: Clearly the attaching of conditions to the Commission's final order is sorely needed. California very recently protested a carrier's proposal discontinuance of a train between California and Oregon. The Examiner's report in that decision, which was adopted by the Interstate Commerce Commission, found numerous abuses and deliberate downgrading of the carrier's level of service and discouragement of passengers.

Constrained by the present act, the Commission was of the view that it could only order continuance of the train for one year, and that it could not order the carrier to correct the various abuses that were found. Therefore, the authority to condition a Commission order is the most meaningful provision that could be added to this act.

The attaching of conditions to the statutory finding proposed would not be meaningful. California recommends that the Commission be given an alternative of possible findings at the conclusion of hearings on a discontinuance. The first; that the applicant has not proven that public convenience requires discontinuance

and thus deny the application. If the carrier proves that the public convenience and necessity permit the proposed discontinuance, the Commission should be able to authorize discontinuance on prior performance of whatever terms and conditions will serve public convenience and necessity and not unduly burden the interstate operations of the carrier.

Section II

Section II of the bill would amend Section 13a of the act dealing with intrastate discontinuances.

The only change concerning intrastate discontinuances would be to authorize the Commission to attach conditions to orders requiring continuances. California's comments as to the provisions pertaining to interstate discontinuances apply here also.

Section III

The proposed bill would establish a new section III to 13a providing for judicial review of any order entered by the Commission pursuant to one or two above.

Analysis: This section does not address itself to a major problem in the present act. The present act does not require the Commission to issue an order if it decides not to hold a hearing on a proposed discontinuance. There is therefore no appeal from such a decision.

California will suggest in part II of this statement that the Commission be required to issue an order if it decides not to hold hearings on a proposed discontinuance.

II.

California makes the following suggestions after much experience dealing with the present section 13a.

1. The present section 13a(1) apparently creates an ambiguity as to whether a carrier must seek Commission authority before discontinuing under 13a(1). This section is interpreted by some as follows: A state commission can reject a carrier's proposed discontinuance of the intrastate portion of an interstate train; if the carrier then ignores the state it can simply discontinue the interstate train without notice to or authority from the ICC.

Any amendment must make clear that a carrier must receive ICC authority to discontinue an interstate train.

2. It is further recommended that the carrier be required to apply to the Commission for authority to discontinue or change rather than file notice of its intention to change or discontinue a train.

The burden of proof should clearly be upon a carrier who wishes to change an existing condition. The carrier should be required to show that the public convenience and necessity permit the proposed discontinuance or change and further, that to continue the operations without discontinuance or change would unduly burden the interstate operations of that carrier.

If the Commission determines not to hold a hearing, it should be required to issue an order to that effect which would be an appealable order.

The Commission should be required to find that the public convenience and necessity permit the proposed discontinuance or change and that the continued operation or service of such train without discontinuance or change would constitute an unjust and undue burden upon the interstate operations of such carrier. In addition any bill should allow the Commission to issue such an order authorizing the discontinuance or change subject to any conditions or terms as the Commission may feel warranted.

The Commission should also be authorized to deny the application and issue an affirmative order based upon the evidence adduced at the hearing. Phrasing the statutory findings in this way has the dual advantage of keeping the burden of proof on the carrier and allowing the Commission to authorize a change upon condition that the railroad give some service improvement to the public.

13a(2). The proposed bill is satisfactory to California as it would amend 13a(2) except for the fact that the 120 day period given to a state commission to finally adjudicate a matter of this great magnitude is so unreasonable as to be a prohibition to meaningful state action. It is recommended therefore that this provision be consistent with the time Interstate Commerce Commission is given under section 13a(1), whether seven months as proposed in H.R. 7004 or one year as proposed by California.

PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA.
By PETER E. MITCHELL, *President*.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., May 15, 1967.

Re H.R. 260, 519, 7004 and 8939.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics, House Committee
on Interstate and Foreign Commerce, Rayburn Building, Washington, D.C.*

DEAR MR. FRIEDEL: A substantial agricultural interest is involved in the various proposals in the above numbered bills to amend Section 13a of the Interstate Commerce Act.

The present provisions of Section 13a of the Act were approved as part of the Transportation Act of 1958. The enactment of this legislation was the culmination of a three year study by the House and Senate Commerce Committees. An important aspect of the study was the chronic and increasing size of railroad losses from passenger service.

The revision of Section 13a included in the Transportation Act of 1958 was designed to expedite the procedure for the termination of unprofitable passenger service.

The revised procedures have been partially successful in reducing the passenger deficit. In the years prior to the enactment of the revised procedure the passenger deficit was exceeding \$700 million. In 1966 the passenger deficit will be about \$400 million. There appears to be little question that if the revised procedure in Section 13a had not been in effect during the 1959-66 period that the passenger deficit currently would be substantially in excess of \$700 million a year.

If the railroads are required to continue unprofitable passenger services, the losses sustained must inevitably be borne partially or entirely by shippers. We need not review the importance of rail rates on prices received by farmers and the reflection on net farm incomes.

In recognition of this relationship, at the last annual meeting of the American Farm Bureau Federation, the voting delegates of the member State Farm Bureaus recommended that the "continuation of unprofitable services (by railroads) should not be required."

It would be impossible for us to assess the increased passenger deficit that might result from the enactment of any of the bills under consideration by the Committee. However, the various proposals for amending Section 13a of the Interstate Commerce Act would operate to prolong in greater or lesser degree the period during which railroads must continue to provide passenger service on which losses are being sustained—thus resulting in higher rates for shippers than would otherwise be the case.

It appears to us that the present provisions of Section 13a of the Act represent a reasonable compromise between the interests of shippers on the one hand, and on the other the interests of communities that are concerned about the termination or reduction of passenger service.

It will be appreciated if you will include this letter in the record of the hearing on these bills.

Sincerely yours,

JOHN C. LYNN,
Legislative Director.

NATIONAL COAL ASSOCIATION,
Washington, D.C., May 17, 1967.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics,
House Committee on Interstate and Foreign Commerce,
Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: On behalf of the National Coal Association, which represents producers of two-thirds of the Nation's commercial bituminous coal production, we urge rejection of the proposals embodied in S. 1175 and H.R. 7004. These bills would make it more difficult for the railroads to abandon passenger service which causes a severe deficit that in turn imposes an additional burden upon freight services.

The interdependence of the coal and railroad industries is so well established that it does not require documentation. Our coal must move to market, and the primary method for getting it to market is the railroad system of the country. Coal freight is important to railroads—and the cost of transporting coal by rail is important to coal. This interdependence has been heightened in recent years by

the Government's successful effort, through expenditures running into the hundreds of millions of dollars each year, to create a new competitor for coal in the form of atomic power.

Coal—and other freight—should pay its own way in the rail system. But we should not have to subsidize passenger deficits, particularly when the Government is subsidizing a competitor which is practically freight-free.

Times change; modes of travel change, but the basic principles of economics do not change. If the public interest requires that certain loss operations in passenger service should be continued, then the cost of such services should not be imposed upon commodities such as coal which have to compete with fuels not subject to the same high freight costs. The communities which feel that loss operations should be continued should bear the cost of such operations, rather than imposing such cost on coal and other freight with accompanying competitive disadvantages.

We have examined carefully the testimony of William M. Moloney, General Solicitor of the Association of American Railroads, presented to your Subcommittee on May 8, 1967. That statement documents the situation so completely and correctly that anything we could add would be superfluous.

We strongly urge that the proposals embodied in S. 1175 and H.R. 7004 be rejected, and that this letter be made a part of the record before your Committees.

Sincerely,

STEPHEN F. DUNN,
President.

PHOENIX, ARIZ.,
April 25, 1967.

Re: H.R. 7004.

WALTER R. McDONALD,
*Chairman, NARUC Railroad Problems Committee,
House Hearing Room,
Washington, D.C.*

The State of Arizona endorses in its entirety the committee's recommendations of the ICC and the advocacy of establishment of joint board procedure in passenger train discontinuance cases. Due to my absence from the state the latter part of last week did not receive your communication until today which precludes my attendance in Washington.

E. T. "Eddie" WILLIAMS, JR.,
Chairman, Arizona Corporation Commission.

(Whereupon, at 4 p.m., the subcommittee adjourned.)

