FEDERAL RECORDATION OF WATER EQUIPMENT LIENS
JUDICIAL REVIEW OF ICC ORDERS
EXTEND AIRCRAFT LOAN GUARANTEES

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 7151, S. 913

BILLS TO AMEND PART III OF THE INTERSTATE COMMERCE ACT TO PROVIDE FOR THE RECORDING OF TRUST AGREEMENTS AND OTHER EVIDENCES OF EQUIPMENT INDEBTEDNESS OF WATER CARRIERS, AND FOR OTHER PURPOSES

H.R. 13927, S. 2687

BILLS TO AMEND SECTION 17 OF THE INTERSTATE COMMERCE ACT TO PROVIDE FOR JUDICIAL REVIEW OF ORDERS OF THE INTERSTATE COMMERCE COMMISSION, AND FOR OTHER PURPOSES

H.R. 13141, H.R. 13047, S. 2499

BILLS TO EXTEND THE ACT OF SEPTEMBER 7, 1957, RELATING TO AIRCRAFT LOAN GUARANTEES

SEPTEMBER 17, 1968

Serial No. 90–48

for the use of the Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1968

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
HORACE R. KORNEGAY, North Carolina
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
DANIEL J. RONAN, Illinois
BROCK ADAMS, Washington
RICHARD L. OTTINGER, New York
RAY BLANTON, Tennessee
W. S. (BILL) STUCKEY, JR., Georgia
PETER N. KYROS, Maine

WILLIAM L. SPRINGER, Illinois
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky
G. ROBERT WATKINS, Pennsylvania
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, JR., Ohio
DAN KUYKENDALL, Tennessee
JOE SKUBITZ, Kansas

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
JAMES M. MENGER, Jr.
WILLIAM J. DIXON
ROBERT F. GUTHRIE

CONTENTS

FEDERAL RECORDATION OF WATER EQUIPMENT LIENS

JUDICIAL REVIEW OF ICC ORDERS

AIRCRAFT LOAN GUARANTEES

TUESDAY, SEPTEMBER 17, 1968

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

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The Committee on Interstate and Foreign Commerce is conducting hearings this morning on three Senate bills, S. 913, S. 2687, and S. 2499.

It is my understanding that there is no controversy about the merits of the three bills, two of which have been supported by the Interstate Commerce Commission, and the third is simply an extension of the present act. However, it is our desire this morning to make a record on the three measures.

The first, S. 913, would amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water-carrier vessels with the Interstate Commerce Commission, and to amend the Bankruptcy Act to provide that chapter 10 shall not affect the right of the owner of the equipment to take possession if the terms of the lease so recorded so provide.

The second, S. 2687, amends the Interstate Commerce Act to provide for the judicial review of Commission orders by the U.S. courts of appeals instead of the present review of such orders by a special three-judge district court.

S. 2499 extends for 5 years, that is until September 7, 1972, the aircraft loan guarantee program.

The text of the bills under consideration this morning, and agency reports thereon, will be inserted at this point in the record.

(H.R. 7151, S. 913, and departmental reports thereon follow:)

[H.R. 7151, 90th Cong., first sess.]

A BILL To amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part III of the Interstate Commerce Act, relating to water carriers (49 U.S.C. 901 et seq.), is amended by—

(1) redesignating section 323 (49 U.S.C. 923) as section 324;

(2) inserting therein, immediately after section 322 (49 U.S.C. 922), the following new section:

"RECORDING OF EVIDENCES OF EQUIPMENT INDEBTEDNESS

"SEC. 323. Any mortgage (except mortgages under the Ship Mortgage Act, 1920, as amended), lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels, used or intended for use by a carrier subject to this part in interstate commerce or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge, or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement, or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee, or bailee of the equipment covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered, or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district, or possession thereof, respecting the filing, deposit, registration, or recordation of such instruments or documents: *Provided, however*, That nothing contained in this section shall, in any way, be construed to alter or amend the Ship Mortgage Act, 1920, as amended. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge, or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions."; and

(3) striking out in the section analysis of that part the item relating to section 323, and inserting in lieu thereof the following:

"Sec. 323. Recording of evidences of equipment indebtedness.
"Sec. 324. Separability of provisions."

SEC. 2. Section 116, chapter 10, of the Bankruptcy Act (11 U.S.C. 516) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to vessels (as the term is defined in the Ship Mortgage Act, 1920, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any water carrier which holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any right of such owner or of any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide."

[S. 913, 90th Cong., second sess.]

AN ACT To amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part III of the Interstate Commerce Act, relating to water carriers (49 U.S.C. 901 et seq.), is amended by—

(1) redesignating section 323 (49 U.S.C. 923) as section 324;

(2) inserting therein, immediately after section 322 (49 U.S.C. 922), the following new section:

"RECORDING OF EVIDENCES OF EQUIPMENT INDEBTEDNESS

"SEC. 323. Any mortgage (except mortgages under the Ship Mortgage Act, 1920, as amended), lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels, used or intended for use in interstate commerce by a carrier, whether or not subject to this part, or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge, or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement, or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee, or bailee of the vessel or vessels covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered, or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district, or possession thereof, respecting the filing, deposit, registration, or recordation of such instruments or documents: *Provided, however*, That nothing contained in this section shall, in any way, be construed to alter or amend the Ship Mortgage Act, 1920, as amended. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge, or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions."; and

(3) striking out in the section analysis of that part the item relating to section 323, and inserting in lieu thereof the following:

"Sec. 323. Recording of evidences of equipment indebetdness.
"Sec. 324. Separability of provisions."

SEC. 2. Section 116, chapter 10, of the Bankruptcy Act (11 U.S.C. 516) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to a vessel or vessels of the United States (as the term is defined in the Ship Mortgage Act, 1920, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any water carrier whether or not subject to part III of the Interstate Commerce Act, and any right of such owner or of any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide, and if such lease or conditional sale is recorded under section 323 of the Interstate Commerce Act."

Passed the Senate April 25, 1968.

FRANCIS R. VALEO,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 11, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 7151, a bill "To amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes."

This legislation would extend to water carriers subject to part III of the Interstate Commerce Act financial advantages now available to both railroads and airlines.

The Treasury Department, in a separate report on this bill states its understanding that the bill would not affect the current procedure for filing of Federal tax liens against the property of a delinquent taxpayer. Subject to this understanding, the Bureau of the Budget has no objection to enactment of H.R. 7151.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., August 25, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the comments of this Department on H.R. 7151, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes.

This bill would redesignate section 323 of the Act as section 324 and add a new section 323 which would provide a method for recording at the Interstate Commerce Commission various financial papers of indebtedness of water carriers subject to part III. Such matters as mortgages (except mortgages under the Ship Mortgage Act, 1920, as amended), leases, equipment trust agreements, conditional sale agreements, and other related forms of indebtedness may, when properly executed, be filed with the Commisison, under such rules as it might prescribe, and serve as valid notice against subsequent creditors. Once so recorded, such a document need not be recorded elsewhere under other provisions of law. The Commission would also be required to establish and maintain an appropriate system of recordation of such matters.

In addition, the bill would amend section 116, chapter 10, of the Bankruptcy Act (11 U.S.C. 516) by adding a new paragraph at the end thereof which would provide that, notwithstanding the provisions of chapter 10, the title of any owner, trustee or otherwise, to a vessel (as defined in the Ship Mortgage Act, 1920) leased, subleased, or conditionally sold to a water carrier holding a part III certificate of public convenience and necessity or a permit, and any right of such owner or any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sales contract shall not be affected by chapter 10 provisions if the terms of such lease or conditional sale so provide.

With regard to the proposed amendments to part III, they present a needed method of putting all parties on notice of such obligations. Such action would permit a great degree of financing flexibility on the part of this industry, and eliminate the need for multistate filing. To this end, the Department would support the bill. We would also note that this provision would apply only to water transportation by water carriers subject to part III. The Committee may wish to inquire into the need for the extension of this legislation to persons transporting their own property by water or by a water carrier operating under an exemption.

The proposed amendment to section 116, chapter 10, of the Bankruptcy Act would accord a status to water carriers similar in concept to that available to railroads and airlines. It represents an effort to permit water carriers to attract better financing at lower interest rates by affording creditors a preferred status as to particular equipment. We would also support this aspect of the bill.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 18, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: This responds to your letter of March 17, 1967, requesting a report on H.R. 7151, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes introduced by Congressman Cabell. This matter has been referred to our Committee on Legislation and I am authorized to submit the following comments on its behalf.

In general, we support the objectives of this amendment to part II of the Interstate Commerce Act. We believe that enactment of the proposed legislation would greatly assist the inland and coastwise water carrier industry in the modernization of its floating equipment and would place such water carriers on a par with both railroads and airlines in attracting capital for fleet improvements. Moreover, the amendment would prove of benefit to both large and small water carriers since it should reduce the cost of financing the purchasing of new floating equipment.

In addition, enactment of this legislation would be beneficial to the public since it would be necessary to check only the Commission's records to determine whether water carrier equipment is subject to a lien. Since the Commission is now processing similar evidences of indebtedness for the railroads, there would be no difficulty in carrying out the same function for the water carriers. With some minor modifications, the Commission's existing regulations applicable to railroad recordings could be made applicable to the carriers covered by this bill.

For these reasons, we support the enactment of H.R. 7151.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman, Committee on Legislation.
PAUL J. TIERNEY.
LAURENCE K. WALRATH.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 18, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau on S. 913, an act "To amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidence of equipment indebtedness of water carriers, and for other purposes."

This act provides a method for recording at the Interstate Commerce Commission various financial papers of indebtedness of water carriers.

The Bureau of the Budget has no objection to enactment of S. 913.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

99-843—68——2

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., July 9, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the comments of this Department on S. 913, an act to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes.

This bill would redesignate section 323 of the Act as section 324 and add a new section 323 which would provide a method for recording at the Interstate Commerce Commission various financial papers of indebtedness of water carriers. Such matters as mortgages (except mortgages under the Ship Mortgage Act, 1920, as amended), leases, equipment trust agreements, conditional sale agreements, and other related forms of indebtedness may, when properly executed, be filed with the Commission, under such rules as it might prescribe, and serve as valid notice against subsequent creditors. Once so recorded, such a document need not be recorded elsewhere under other provisions of law. The Commission would also be required to establish and maintain an appropriate system of recordation of such matters.

In addition, the bill would amend section 116, chapter 10, of the Bankruptcy Act (11 U.S.C. 516) by adding a new paragraph at the end thereof which would provide that, notwithstanding the provisions of chapter 10, the title of any owner, trustee or otherwise, to a vessel (as defined in the Ship Mortgage Act, 1920) leased, subleased, or conditionally sold to a water carrier, and any right of such owner or any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sales contract shall not be affected by chapter 10 provisions if the terms of such lease or conditional sale so provide.

With regard to the proposed amendments to part III, they present a needed method of putting all parties on notice of such obligations. Such action would permit a greater degree of financing flexibility on the part of this industry, and eliminate the need for multistate filing. To this end, the Department would support the bill.

The proposed amendment to section 116, chapter 10, of the Bankruptcy Act would accord a status to water carriers similar in concept to that available to railroads and airlines. It represents an effort to permit water carriers to attract better financing at lower interest rates by affording creditors a preferred status as to particular equipment. We would also support this aspect of the bill.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 9, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This responds to your letter of May 2, 1968, requesting a report on S. 913, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes, passed by the Senate on April 25, 1968. On behalf of the Commission, I am authorized to submit the following comments.

S. 913 amends part III of the Interstate Commerce Act to provide for the recording with the Commission of trust agreements and other evidence of indebtedness of water carriers subject to part III of the Act, except for mortgages subject to the Ship Mortgage Act of 1920. Section 1 of this bill is substantially identical to section 20c of the Act which provides for the filing and recording of equipment trust agreements and other evidences of indebtedness

of the railroads. Section 2 amends section 116 of Chapter 10 of the Bankruptcy Act, 11 U.S.C. § 516, to provide that the provisions of Chapter 10 shall not affect the right of the owner of water carrier equipment which is leased, subleased or conditionally sold to any water carrier subject to part III of the Act to take possession of this equipment if the terms of the lease or conditional sale so provide.

In testifying in support of this bill, as originally introduced, before the Senate Surface Transportation Committee on August 9, 1967, the Commission stated that:

"We believe that enactment of S. 913 would greatly assist the inland and coastwise water carrier industry in the modernization of its floating equipment and would place such water carriers on a par with both railroads and airlines in attracting capital for fleet improvements. Moreover, the amendment should prove of benefit to both large and small water carriers since it should reduce the cost of financing the purchasing of new floating equipment."

As amended and passed by the Senate, S. 913 would be applicable to evidences of indebtedness of all water carrier vessels (unless subject to the Ship Mortgage Act of 1920) owned or operated by any water carrier whether subject to the jurisdiction of the Commission under part III of the Act or not, thus bringing within its scope vessels owned or operated by either private carriers and common carriers exempt from the Commission's jurisdiction.

In general, we support the objectives of this bill. We believe that enactment of the proposed legislation would greatly assist the inland and coastwise water carrier industry in the modernization of its floating equipment and would place such water carriers on a par with both railroads and airlines in attracting capital for fleet improvements. Moreover, the amendments would prove of benefit to both large and small water carriers since it should reduce the cost of financing the purchasing of new floating equipment.

In addition, enactment of this legislation would be beneficial to the public since it would be necessary to check only the Commission's records to determine whether water carrier equipment is subject to a lien. Since the Commission is now processing similar evidences of indebtedness for the railroads, there would be no difficulty in carrying out the same function for the water carriers. With some minor modifications, the Commission's existing regulations, including the imposition of the fee schedule for the filing of these documents called for on page 6 of the Senate Committee's report, applicable to railroad recordings could be made applicable to the carriers covered by this bill.

For these reasons, we support the enactment of S. 913.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

(H.R. 13927, S. 2687, and departmental reports thereon follow:)

[H.R. 13927, 90th Cong., first sess.]

A BILL To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, 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 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended—

(1) by redesignating subsections (10) through (12) as subsections (11) through (13), respectively; and

(2) by inserting immediately after subsection (9) the following new subsection:

"(10) (a) The United States courts of appeals shall have exclusive jurisdiction to enjoin, set aside, annul, or suspend, in whole or in part, all final orders of the Interstate Commerce Commission made reviewable in accordance with the provisions of subsection (9) of this section: *Provided,* That orders of the Commission involving only the payment of money shall be subject to judicial review only in the district courts of the United States pursuant to sections 1336(a) and 1398(a) of title 28, United States Code, and orders of the Commission made pursuant to the referral of a question or issue by a district court or by the Court of Claims shall be subject to judicial review only in accordance with sections 1336 (b) and (c) and 1398 (b) of title 28, United States Code. Such jurisdiction shall be invoked by the filing of a petition as provided in this subsection.

"(b) The venue of any proceeding under this section shall be in the judicial circuit in which the residence or principal office of any of the parties filing the petition for review is located.

"(c)(i) Any party aggrieved by a final order reviewable under this subsection may, within sixty days from the date of service, file in the court of appeals, in which the venue prescribed by paragraph (b) lies, a petition to review such order. The petition shall contain a concise statement of (A) the nature of the proceedings as to which review is sought, (B) the facts upon which venue is based, (C) the grounds on which relief is sought, and (D) the relief requested. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the Commission. The clerk of the court of appeals shall serve, by registered or certified mail, a true copy of the petition upon the Commission and the Attorney General of the United States.

"(ii) Unless the proceeding has been terminated following grant of a motion to dismiss the petition, the Commission shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code. Until such record has been filed by the Commission, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any order, report, or decision made or issued by it and which is attached in a petition for review. Upon the filing of such record with it, the jurisdiction of the court of appeals to enjoin, set aside, annul or suspend orders of the Commission shall be exclusive.

"(d) Petitions to review orders reviewable under this section, unless determined on a motion to dismiss the petition, shall be heard in the court of appeals upon the record of the pleadings, evidence adduced, and proceedings before the Commission. If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the Commission, such court may order such additional evidence and any evidence the opposite party desires to offer to be taken by the Commission. The Commission may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its orders and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside aside the original order.

"(e) The Commission may be represented by its own counsel, and the United States, through the Attorney General, shall be entitled to intervene in any proceeding. Any party or parties in interests will be affected if an order of the Commission is or is not enjoined, set aside, or suspended, may appear as parties of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals whose interests are affected by the Commission's order may intervene in any proceeding to review such order.

"(f) The filing of the petition to review shall not of itself stay or suspend the operation of the order of the Commission, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this section, at least five days' notice of the hearing thereon shall be given to the Commission and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after reasonable notice to the Commission and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the Commission for not more than sixty days from the date of such order pending the hearing on the application for such interlocutory injunction in which case such order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of such damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, upon a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application. The hearing upon such an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the

application provided for above. Upon the final hearing of any proceeding to review any order under the provisions of this subsection the same requirements as to precedence and expedition shall apply.

"(g) An order granting or denying an interlocutory injunction under paragraph (f) of this subsection and a final judgment of the court of appeals shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in section 1254(1) of title 28, United States Code: *Provided*, That application therefor be duly made within forty-five days after the entry of such order and within ninety days after entry of the judgment, as the case may be. The United States, the Commission, or an aggrieved party may file such petition for a writ of certiorari. The provisions of sections 1254(3) and 2101(e) of title 28, United States Code, shall also apply to proceedings under this subsection.

"(h) The orders, writs, and process of the courts of appeals arising under this subsection and, of the district courts in cases arising under sections 20, 23, and 43 of this Act may run, be served, and be returnable anywhere in the United States."

SEC. 2. Chapter 157 of title 28, United States Code, and any other provision of law inconsistent with this Act are hereby repealed: *Provided*, That any proceeding or case pending before a district court under such chapter on the effective date of this Act shall remain under the jurisdiction of such court until a final order, judgment, decree, or decision is rendered by such court: *Provided further*, That any such cases or proceedings referred to in the fist proviso may be appealed to the Supreme Court as provided by section 1253 of title 28, United States Code, and if remanded, such case may be referred back to the court from which the appeal was taken or to the court of appeals for further proceedings as the Supreme Court may direct.

SEC. 3. This Act shall take effect on the sixtieth day after the date of the enactment of this Act.

[S. 2687, 90th Cong., second sess.]

AN ACT To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, 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 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended—

(1) by redesignating subsections (10) through (12) as subsections (11) through (13), respectively; and

(2) by inserting immediately after subsection (9) the following new subsection:

"(10) (a) The United States courts of appeals shall have exclusive jurisdiction to enjoin, set aside, annul, or suspend, in whole or in part, all final orders of the Interstate Commerce Commission made reviewable in accordance with the provisions of subsection (9) of this section: *Provided*, That orders of the Commission involving only the payment of money shall be subject to judicial review only in the district courts of the United States pursuant to sections 1336(a) and 1398(a) of title 28, United States Code, and orders of the Commission made pursuant to the referral of a question or issue by a district court or by the Court of Claims shall be subject to judicial review only in accordance with sections 1336 (b) and (c) and 1398(b) of title 28, United States Code, such jurisdiction shall be invoked by the filing of a petition as provided in this subsection.

"(b) The venue of any proceeding under this section shall be in the judicial circuit in which the residence or principal office of any of the parties filing the petition for review is located.

"(c) (i) Any party aggrieved by a final order reviewable under this subsection may, within sixty days from the date of service, file in the court of appeals, in which the venue prescribed by pargaraph (b) lies, a petition to review such order: *Provided*, That, upon the filing of a petition within sixty days of the date of service of the order complained of, the court, for good cause shown, may extend the time for filing a petition to review such order for an additional period not exceeding sixty days. The petition shall contain a concise statement of (A) the nature of the proceedings as to which review is sought, (B) the facts upon which venue is based, (C) the grounds on which relief is sought, and (D) the relief requested. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the Commission. The clerk of the court of

appeals shall serve, by registered or certified mail, a true copy of the petition upon the Commission and the Attorney General of the United States.

"(ii) Unless the proceeding has been terminated following grant of a motion to dismiss the petition, the Commission shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code. Until such record has been filed by the Commission, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any order, report, or decision made or issued by it and which is attached in a petition for review. Upon the filing of such record with it, the jurisdiction of the court of appeals to enjoin, set aside, annul, or suspend orders of the Commission shall be exclusive.

"(d) Petitions to review orders reviewable under this section, unless determined on a motion to dismiss the petition, shall be heard in the court of appeals upon the record of the pleadings, evidence adduced, and proceedings before the Commission. If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the Commission, such court may order such additional evidence and any evidence the opposite party desires to offer to be taken by the Commission. The Commission may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its orders and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order.

"(e) The Commission may be represented by its own counsel, and the United States, through the Attorney General, shall be entitled to intervene in any proceeding. Any party or parties in interest in the proceeding before the Commission whose interests will be affected if an order of the Commission is or is not enjoined, set aside, or suspended, may appear as parties of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals whose interests are affected by the Commission's order may intervene in any proceeding to review such order.

"(f) The filing of the petition to review shall not of itself stay or suspend the operations of the order of the Commission, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this section, at least five days' notice of the hearing thereon shall be given to the Commission and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after reasonable notice to the Commission and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the Commission for not more than sixty days from the date of such order pending the hearing on the application for such interlocutory injunction, in which case such order of the court of appeals shall contain a specific findings, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of such damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, upon a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application. The hearing upon such an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the application provided for above. Upon the final hearing of any proceeding to review any order under the provisions of this subsection the same requirements as to precedence and expedition shall apply.

"(g) An order granting or denying an interlocutory injunction under paragraph (f) of this subsection and a final judgment of the court of appeals shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in section 1254(1) of title 28, United States Code: *Provided*, That application therefor be duly made within forty-five days after the entry of such order and within ninety days after entry of the judgment, as the case may

be. The United States, the Commission, or an aggrieved party may file such petition for a writ of certiorari. The provisions of sections 1254(3) and 2101(e) of title 28, United States Code, shall also apply to proceedings under this subsecton.

"(h) The orders, writs, and process of the courts of appeals arising under this subsection and, of the district courts in cases arising under sections 20, 23, of this Act and section 3 of the Act of February 19, 1903 (49 U.S.C. 43) may run, be served, and be returnable anywhere in the United States."

SEC. 2. Chapter 157 of title 28, United States Code, and any other provision of law inconsistent with this Act are hereby repealed: *Provided*, That any proceeding or case pending before a district court under such chapter on the effective date of this Act shall remain under the jurisdiction of such court until a final order, judgment, decree, or decision is rendered by such court: *Provided further*, That any such cases or proceedings referred to in the first proviso may be appealed to the Supreme Court as provided by section 1253 of title 28, United States Code, and, if remanded, such case may be referred back to the court from which the appeal was taken or to the court of appeals for further proceedings as the Supreme Court may direct.

SEC. 3. This Act shall take effect on the sixtieth day after the date of the enactment of this Act.

Passed the Senate September 5, 1968.

Attest:

FRANCIS R. VALEO,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 18, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 13927, a bill "To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, and for other purposes."

This bill would change the responsibility for judicial review of Interstate Commerce Commission orders to bring it into conformity with the procedure applicable to other Federal administrative agencies. This should result in an efficiency of appellate process as well as uniformity of practice.

The Bureau of the Budget therefore supports favorable consideration of H.R. 13927.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF JUSTICE,
OFFICE OF DEPUTY ATTORNEY GENERAL,
Washington, D.C. May 15, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 13927, a bill "To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, and for other purposes."

Under existing law, suits to set aside orders of the Interstate Commerce Commission, other than those involving only the payment of money or made pursuant to a referral by a district court or the Court of Claims, are filed in the district court in the district in which any of the plaintiffs has his residence or principal office. Such a suit is heard by a three-judge court, with direct appeal to the Supreme Court, and the Attorney General represents the government. The Commission and any other party in interest may intervene and be represented by their own counsel. Any party to the suit may continue to prosecute or defend it regardless of any action or nonaction of the Attorney General. (28 U.S.C. 1253, 1336, 1398, 2284, 2321–2325).

H.R. 13927 would change existing law in several respects. It would substitute the courts of appeals for three-judge district courts; review the court's decision would be sought on petition for certiorari rather than appeal to the Supreme Court; and the proceeding would be against the Interstate Commerce Commission represented by its own counsel, rather than against the United States represented by the Attorney General. However, the United States could intervene through the Attorney General. The bill also provides a 60-day limitation of filing petitions with the courts of appeals for review of Commission orders; at present there is no express time limitation. The court in which the record is filed would have exclusive jurisdiction; if petitions are filed in more than one court, under section 2112 of title 28, United States Code, the court which received the first petition would have jurisdiction. Under existing law it is possible for more than one district court to review the same order when different parties file independent actions to set it aside, and this multiplicity has occasionally created problems.

Section 2 of the bill repeals chapter 157 of title 28, United States Code, in toto instead of only to the extent that its provisions conflict with those of H.R. 13927. Chapter 157 applies not only to civil actions to set aside orders of the Commission but to those brought to enforce such orders or to collect fines, penalties and forfeitures. H.R. 13927 does not appear to seek to modify existing law with respect to enforcement of Commission orders or collection of fines, penalties and forfeitures.

The Department of Justice favors the underlying purposes of the proposed legislation—substitution of the courts of appeals for three-judge district courts in the review of Commission orders and elimination of appeals as a matter of right to the Supreme Court. Such provisions would eliminate the heavy strain on our trial court resources imposed by the convening of three-judge district courts and lighten the docket of the Supreme Court provided under existing law.

However, the legislation is objectionable insofar as it would remove the United States as the statutory defendant and repeal the Attorney General's responsibility for primary control of this class of litigation. Such dispersion of responsibility for the conduct of litigation involving the government conflicts with prior efforts of the Executive Department and the Congress to centralize control of the government's litigation in the Attorney General.

Instead of enactment of H.R. 13927, the Department of Justice recommends that since the principal objectives of this legislation may be accomplished by amending chapter 158 of title 28, United States Code, which relates to the review of orders of certain designated federal agencies, relevant references to the Interstate Commerce Commission and its orders be incorporated in that chapter.

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

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., March 22, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to express the views of this Department on H.R. 13927, a bill "To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, and for other purposes."

The bill would amend section 17 of the Interstate Commerce Act by adding a new subsection which provides that orders of the Interstate Commerce Commission would be subject to review in the United States courts of appeals, with any further review by the Supreme Court pursuant to writ of certiorari.

The provisions of Title 28, United States Code, which now govern Commission orders prescribe review in a district court of three judges, at least one of whom is a circuit judge. Supreme Court review of such decisions is by appeal, rather than by certiorari. The proposed new subsection would repeal existing jurisdictional statutes and add provisions which deal with jurisdiction, venue, and various administrative requirements which would be applicable to review of Commission actions in the courts of appeals. The bill would not alter present

practices in reparations cases, which would still be reviewable in a single-judge district court, or as to cases involving referral of a question by the Court of Claims or a district court, which would be reviewable only in the Court which referred the question.

In past decades, statutes provided that certain administrative actions would be reviewed by special three-judge courts. However, legislation over the years has made review in the courts of appeals the usual and preferred method of review. Today orders of the Interstate Commerce Commission are the only orders of an administrative agency which are reviewed by a three-judge court.

The Department of Transportation believes that the judicial reform which the bill would produce is most desirable and long overdue. The Department, therefore, strongly recommends enactment of H.R. 13927.

This change has been recommended by the Administrative Conference of the United States. It would assign the responsibility for review of Commission orders to a forum which is regularly engaged in the review of the actions of Federal agencies. Further, the change would place this responsibility in courts which have rules applicable to judicial review proceedings, rather than permitting a continuation of *ad hoc* proceedings before the three-judge courts. Supreme Court review of Commission orders by certiorari, rather than by appeal as-of-right, would properly reflect that those matters are not inherently of greater importance than cases involving other subject matter; it would conform I.C.C. practice in this respect to that of other Federal administrative agencies.

The bill would, in the judgment of this Department, lead to an efficiency of appellate process and uniformity of practice respecting I.C.C. actions which argues for prompt enactment.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

(H.R. 13141, H.R. 13047, S. 2499, and departmental reports thereon follow:)

[H.R. 13141, 90th Cong., first sess.]

A BILL To extend the Act of September 7, 1957, relating to aircraft loan guarantees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Act of September 7, 1957 (49 U.S.C. 1324 note), is amended by striking out "ten years" and inserting in lieu thereof "fifteen years".

[H.R. 13047, 90th Cong., first sess.]

A BILL To extend the Act of September 7, 1957, relating to aircraft loan guarantees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of September 7, 1957 (49 U.S.C. 1324 note), is amended by striking the word "ten" and inserting in lieu thereof the word "fifteen" in section 8.

[S. 2499, 90th Cong., second sess.]

AN ACT To extend the Act of September 7, 1957, relating to aircraft loan guarantees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of September 7, 1957 (49 U.S.C. 1324 note) is amended by striking the word "ten" and inserting in lieu thereof the word "fifteen" in section 8.

Passed the Senate June 19, 1968.

Attest:

FRANCIS R. VALEO,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., November 30, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Bureau of the Budget on H.R. 13047 and H.R. 13141, bills "To extend the Act of September 7, 1957, relating to aircraft loan guarantees." Both bills are identical in substance to draft legislation transmitted to the Congress by the Secretary of Transportation on September 18, 1967.

The Bureau of the Budget would have no objection to the enactment of either of these bills.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

CIVIL AERONAUTICS BOARD,
Washington, D.C., November 6, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letters of September 25 and October 2, 1967, requesting reports by the Board on H.R. 13047 and H.R. 13141, respectively, bills "To extend the Act of September 7, 1957, relating to aircraft loan guarantees." Both bills are identical in substance to draft legislation transmitted to the Congress by the Secretary of Transportation on September 18, 1967.

The Act would be extended for an additional five years from September 7, 1967. The Board agrees with the Secretary of Transportation that the need for extension of the loan guarantee program is not as great as the need for the program initially, or in 1962 when it was last extended. However, the Board also recognizes that some carriers may continue to need the assistance of the program, and believes that the availability of loan guarantees may prove to be useful to the local service carriers. The Board favors, therefore, the enactment of H.R. 13047 or H.R. 13141.

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

Sincerely yours,

CHARLES S. MURPHY, *Chairman.*

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., October 9, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: You requested the views of the Department of Transportation on H.R. 13141, a bill "to extend the Act of September 7, 1957, relating to aircraft loan guarantees."

This bill is legislation which was drafted by the Department and transmitted to the Honorable John W. McCormack by Secretary Boyd. It has a high priority in the Department's legislative program. We support the bill and enclose copies of our transmittal letter to Mr. McCormack.

We stand ready to testify on the bill and to provide the Committee and its staff with answers to any questions you might have.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 15, 1967.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I submit herewith, for the consideration of the Congress, a bill "to extend the Act of September 7, 1957, relating to aircraft loan guarantees."

The Aircraft Loan Guarantee Program was established by the enactment of Public Law 85–307, September 7, 1957. It provided for guarantee by the Federal Government of up to 90 percent of private loans to local service, helicopter, Alaskan, Hawaiian and certain Caribbean carriers for the purchase of aircraft. The program was inaugurated because of a desire to assist these carriers in securing financing for replacement of obsolete piston aircraft with new modern equipment. It made it possible for these carriers to finance the acquisition of the new aircraft at the lowest possible cost. The object of the program, from the Federal government's view, was to assist these carriers in providing improved service at lower costs and thus reducing subsidy paid by the government.

The program was first authorized for a 5-year period. During that period, through September 7, 1962, twelve carriers received guarantees under the program for loans totalling $42 million. These loans covered the purchase of 33 F–27's, 2 DC–6's, 14 Convair 240's and 340's, a Boeing 720, 3 Martin 404's and 13 helicopters.

In 1962, the program was extended for an additional 5 years, to September 7, 1967. During that period new loans totalling $13.3 million were guaranteed for 4 carriers covering the purchase of 3 DC–9's, 4 DC–6's, 2 Hercules 382B's and 4 PC–6A's.

The need for the extension of the program at this time is not as great as the need was for the program initially, or in 1962 when it was last extended, in terms of the number of carriers that will require the assistance of the program or in the number of aircraft loans that are expected to be made in the next 5 years. However, some carriers continue to need the assistance of the program and it is still in the interest of the government to provide the guarantee to those carriers. The fact that the loan guarantee is no longer needed in the degree of 10 years ago attests to the success of the program in aiding the classes of carriers involved toward a sounder financial position and demonstrates the wisdom of keeping the program in force until it has served its purpose completely by providing assistance to those carriers still in need of it.

We have been advised by the Bureau of the Budget that there is no objection to the enactment of this legislation from the standpoint of the President's program.

Sincerely yours,

ALAN S. BOYD.

A BILL To extend the Act of September 7, 1957, relating to aircraft loan guarantees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of September 7, 1957 (49 U.S.C. 1324 note) is amended by striking the word "ten" and inserting in lieu thereof the word "fifteen" in section 8.

The CHAIRMAN. We shall hear first this morning from our colleague, the Honorable Earle Cabell, who is author of H.R. 7151, which is identical to S. 913 as originally introduced.

Please proceed as you wish, Mr. Cabell.

STATEMENT OF HON. EARLE CABELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. CABELL. Mr. Chairman and members of the committee, during the first session of this Congress I introduced H.R. 7151, a bill to

amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers.

Similar legislation, S. 913, was introduced in the Senate with five cosponsors last year. Hearings were held in the Senate and the bill was amended to cover domestic water carriers exempt from the Interstate Commerce Commission economic regulation.

It is my understanding that, in its amended form, no group or organization opposes S. 913. I therefore would suggested, Mr. Chairman, either that your committee favorably report S. 913, as amended, or amend my bill H.R. 7151 to conform with S. 913.

I also understand that no Government agencies oppose S. 913, as amended, and its enactment will not be costly to the Federal Government.

As amended, S. 913 is supported by the Water Transport Association, the American Waterway Operators, Inc., and the Transportation Association of America. Additionally, numerous domestic water carriers, groups and associations, as well as labor and regional development organizations support this legislation.

As I have mentioned on other occasions, Dallas does not intend to remain an inland city for too many more years. After years of research and millions of dollars of non-Federal money having been expended in engineering and construction, the Comprehensive Development of the Trinity River Basin was authorized in the Public Works Act of 1965. One of the projects in this development will be the canalization of the river for barge traffic. Therefore, I am interested in efforts that will assist this industry.

I therefore urge early enactment of this legislation so that this industry may have the same opportunities as are afforded to airline and railway trust recordations.

Thank you.

The CHAIRMAN. Thank you for your concise statement Mr. Cabell.

Our next witness this morning is the Honorable Paul J. Tierney, Chairman of the Interstate Commerce Commission.

Mr. Tierney, we are very glad to have you with us. We will have you testify on the two bills while you are there at the table. You can designate the first one you are interested in and then proceed to the next one.

STATEMENT OF HON. PAUL J. TIERNEY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ROBERT W. GINNANE, GENERAL COUNSEL

Mr. TIERNEY. I will testify first on S. 913. I have a very short statement.

Mr. Chairman and members of the committee, my name is Paul J. Tierney. I am Chairman of the Interstate Commerce Commission and have served in that capacity since January 1968.

On behalf of the Commission, I appreciate the opportunity to testify in support of S. 913, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of indebtedness of water carriers, and for other purposes.

As originally introduced, this bill is identical to H.R. 7151.

S. 913, as originally introduced, and H.R. 7151, amend part III of the Interstate Commerce Act to provide for the recording with the Commission of trust agreements and other evidence of the indebtedness of water carriers except for mortgages subject to the Ship Mortgage Act of 1920.

Section 1 of this bill is substantially identical to section 20(c) of the act which provides for the filing and recording of equipment trust agreements and other evidences of indebtedness of the railroads.

Section 2 amends section 116 of chapter 66 of the Bankruptcy Act, 11 United States Code.

Section 516, to provide that the provisions of chapter 10 shall not affect the right of the owner of water carrier equipment which is leased, subleased, or conditionally sold to any water carrier subject to part III of the act to take possession of this equipment if the terms of the lease or conditional sale so provide.

S. 913 as amended and passed by the Senate on April 25, 1968, would be applicable to evidences of indebtedness of all water carrier vessels—unless subject to the Ship Mortgage Act of 1920—owned or operated by a water carrier whether or not subject to the jurisdiction of the Commission under part III of the act, thus bringing within its scope vessels owned or operated by private carriers and common carriers exempt from the Commission's jurisdiction.

The Commission has no objection to this amendment.

We believe enactment of S. 913, as amended and passed by the Senate, would greatly assist the inland and coastwise water carrier industry in the modernization of its floating equipment and would place such water carriers on a par with both the railroads and airlines in attracting capital for fleet improvements.

Moreover, this amendment would prove beneficial to both large and small water carriers since it should reduce the cost of financing the purchasing of new floating equipment.

In addition, enactment of this legislation would be beneficial to the public since it would be necessary to check only the Commission's records to determine whether water carrier equipment is subject to a lien.

Since the Commission is now processing similar evidences of indebtedness for the railroads, there would be no difficulty in carrying out the same function for the water carriers.

With some minor modifications, the Commission's existing regulations, including the imposition of the fee schedule for the filing of these documents called for in the Senate committee's report, applicable to the railroad recordings could be made applicable to the carriers covered by this bill.

For these reasons, we support enactment of S. 913, as passed and amended by the Senate.

This concludes my prepared statement, Mr. Chairman.

The CHAIRMAN. This covers the one bill?

Mr. TIERNEY. That is correct.

The CHAIRMAN. You may go right ahead to the next one, Mr. Tierney.

Mr. TIERNEY. On behalf of the Commission I wish to express my gratitude to the committee for this opportunity to present our views on S. 2687, as passed and amended by the Senate.

The basic purpose of this bill is to modernize and make more efficient the statutory provisions governing judicial review of the Commission's orders.

Before describing the specific provisions of S. 2687, and the changes it would make in existing law, it may be useful to first generally describe the present procedures for judicial review of our orders to place the provisions of this bill in perspective.

Because of the technical nature of both existing law and the changes made in it by S. 2687, we have provided the committee with a chart, labeled as appendix B (p. 25), which shows the existing law and the provisions of S. 2687 on a comparative basis by major subject matter categories.

Judicial review of the Commission's orders is now governed by various sections of title 28 of the United States Code which are summarized in appendix A (p. 24).

Such review is in a U.S. district court of three judges, at least one of whom must be a circuit judge. The decisions of such courts are reviewable by the Supreme Court by appeal, rather than by the discretionary write of certiorari.

These provisions were initially enacted as part of the Urgent Deficiencies Act of 1913, and with minor changes have remained unchanged since that time.

The following year, in the Federal Trade Commission Act, the Congress designated the then circuit courts of appeals to review orders of that agency.

As new regulatory agencies were created, Congress usually provided for judicial review of their orders in the courts of appeals.

While certain orders of the Federal Communications Commission, the Federal Maritime Commission, and the Department of Agriculture were originally made reviewable under the Urgent Deficiencies Act procedure, the so-called Hobbs Act or Judicial Review Act of 1950 (28 U.S.C. § 2341–52 (Supp. II, 1967)) transferred review of the orders of these agencies to the courts of appeals, thus leaving only orders of the Interstate Commerce Commission reviewable in the three-judge district courts.

In recent years, this procedure has been criticized by members of the Federal judiciary in the course of reviewing orders of the Commission as being "cumbersome" and "inefficient." (*Freight-Forwarders Institute* v. *United States* 236 F. Supp. 460, 462 (S.D. N.Y. 1967) (Feinberg J.).)

In an opinion dealing with a phase of the complex litigation arising out of the Commission's order approving the Penn-Central merger, the Court observed that counsel for all the parties participating in that litigation:

> * * * have demonstrated that the long outmoded machinery for review of orders of the Interstate Commerce Commission by a suit before a three-judge court can be made to work although with creaks and strains that ought to be eliminated. (*Erie-Lackawanna R. Co.* v. *United States*, 279 F. Supp. 316, 324 (S.D. N.Y. 1967 (Friendly J.).)

In commenting on a provision requiring review by a three-judge court, the Supreme Court has stated that this mode of review:

> * * * particularly in regions where, despite modern facilities, distance still plays an important part in the effective administration of justice * * * [d]islocates the normal operations of the system of lower Federal courts. (*Phillips* v. *United States*, 312 U.S. 246, 250–251 (1941).)

The Administrative Conference of the United States has also criticized existing procedures, and in its report to Congress in 1962 recommended legislation similar to that proposed in S. 2687. (Administrative Conference, final report, S. Doc. 24, 88th Cong., first sess. (1963), VII, pp. 10–11. (Recommendations 3, 4, and 5.))

Legislation of this type was also recommended in 1962 by the Special Advisory Committee on Interstate Commerce Commission Practice and Procedure, an advisory committee of practitioners established by the Commission, and by several sessions of the Judicial Conference of the United States.

In this regard, we are pleased to note that the Judicial Conference has, this year, specifically endorsed S. 2687.

The basic change in existing law made by S. 2687 would be to shift judicial review of the great majority of the Commission's cases from the district courts to the U.S. courts of appeals.

In place of existing law, which permits direct appeals from the district courts to the Supreme Court, review by that Court would be by the discretionary writ of certiorari.

In so doing, the draft bill would make orders of the Interstate Commerce Commission reviewable in the same general manner as the orders of all other major Federal regulatory agencies, such as FPC, CAB, FCC, SEC, FMC, FTC, and NLRB.

There are a number of advantages in providing for judicial review in the courts of appeals. Those courts are regularly engaged in the review of orders of various other Federal agencies, while most district judges rarely do so.

The courts of appeals have rules governing judicial review proceedings.

Before long, they will be applying uniform rules for all the courts of appeals, promulgated by the Supreme Court under the authority granted by Congress (28 U.S.C. 2072, Supp. II, 1967).

In contrast, there are no court rules governing judicial review proceedings in the three-judge courts, with the result that their procedures are on an ad hoc basis.

S. 2687 has been cast as an amendment to section 17 of the Interstate Commerce Act, designated as section 17(10), so that the statutory provisions for the review of the Commission's orders will appear in the same statute which gives the Commission authority to make such orders, thus following the general pattern with respect to many other statutes creating administrative agencies and providing for judicial review of their orders.

I would now like to turn to a brief description of the major features of S. 2687, as amended, and passed by the Senate. The Senate amended the proposal in two aspects, both of which will be discussed later in my statement.

As I will be comparing the provisions of this bill with existing judicial review provisions, the committee may find it helpful to refer to the comparative analysis set forth in the chart at the conclusion of my prepared remarks.

All of the changes made by S. 2687 are detailed in the chart; therefore, my remarks will be confined to a discussion of the more important ones.

The major change made by S. 2687 is the shifting of judicial review of the Commission's orders from district courts of three judges to the several courts of appeals.

This change, summarized as item 1 on the chart, is set forth as paragraph (a). With certain specified exceptions, S. 2687 covers judicial review of all final orders of the Commission issued under any of the four parts of the Interstate Commerce Act.

Specifically exempted from this paragraph are:

1. Final orders involving reparations or other orders for the payment of money.

2. Final orders made pursuant to a referral from a district court or the Court of Claims.

The purpose of these two specific exemptions is to preserve existing practices wherein cases in these two categories are initially heard in either single-judge district courts or the Court of Claims, as the case may be. Because claims for reparations and other actions for money damages are essentially private actions and analogous to other types of civil damage actions, it seems desirable to retain jurisdiction in the district courts for these cases.

In addition, I should also point out that nothing in S. 2687 changes the present jurisdiction of the district courts over criminal or civil cases involving only fines, penalties, or civil forfeitures for violations of the Interstate Commerce Act.

The jurisdiction of a court of appeals would be invoked by the filing of a petition for review.

The venue for filing a petition is set forth in paragraph (b) of S. 2687, summarized as item 2 of the chart. This provision is derived from existing law and provides that venue for a petition shall be in the judicial circuit wherein the party filing the petition for review either resides or has his principal office (28 U.S.C. 1398(a)).

Paragraphs (c) and (d) summarized in item 3 of the chart make a number of important changes in existing law and practice. Together, these two provisions specify the initial and subsequent procedural steps to be followed in a proceeding involving a Commission order.

First, any party aggrieved by an order of the Commission will be required to file a petition for judicial review with the appropriate court of appeals within 60 days of the service of the order complained. This cures an omission in the existing law which, except for the uncertain and rarely applied doctrine of laches, imposes no statute of limitations for judicial review of the Commission's orders.

The 60-day limitation is found in most modern judicial review provisions. While still providing a reasonable opportunity for an appeal to be taken, such a provision is both desirable and useful in protecting the security of transactions authorized by the Commission and providing assurance to parties affected by a Commission order that it will not be challenged by a belated appeal.

The first of the amendments to S. 2687 as passed by the Senate would apply here. The amendment would authorize the courts of appeals, for good cause shown, to extend the time for filing a review petition for an additional period not to exceed 60 days.

This amendment to page 2, line 23, would strike the period after the word "order" and insert in lieu thereof the following:

"*Provided*, That upon the filing of a petition within 60 days of

the date of service of the order complained of, the court, for good cause shown, may extend the time for filing a petition to review such order for an additional period not exceeding 60 days."

The Commission has no objection to this amendment.

Second, S. 2687 attempts to deal with the problem of appeals being taken in different courts over a single Commission order. As I have previously indicated, the venue provisions of S. 2687, like existing law, permit an appeal to be taken in any court wherein any of the parties resides or has his principal office.

Pursuant to this provision, any aggrieved party may select any court meeting these requirements. Although this poses no problem in the majority of cases, in large and complex proceedings, such as a large railroad merger, this freedom in choosing a forum can, and has, created serious problems because of the bringing of suits in different courts over a single Commission order.

For example, in the recently concluded litigation arising out of the Penn-Central merger, the Commission was faced with challenges to its order in three different courts. (*Penn-Central Merger Cases*, 389 U.S. 486 (1968) affirming *Erie-Lackawanna R. Co.* v. *U.S. et al*, 279 F. Supp. 964 (S.D. N.Y.) 1967.) In addition to the District Court for the Southern District of New York, appeals were docketed in the Eastern District of Virginia, and the Middle District of Pennsylvania. Similarly, in the so-called Northern Lines merger, challenges were brought in the district courts in Washington, New York, and the District of Columbia.

While the Commission has usually been successful in consolidating multiple proceedings in one court by persuading the other courts to stay their proceedings, the process involved is wasteful and time-consuming for all concerned.

Providing for judicial review in the courts of appeals would largely put an end to this problem. Upon the filing of a petition, any subsequent suits would, by virtue of 28 U.S.C. 2112, which governs the procedure in the court of appeals in appeals from administrative agencies, be consolidated in the court in which the first suit is filed. This change in the present law is clearly desirable.

This bill also changes existing case law with regard to the submission of the complete record of the proceeding before the Commission to a reviewing court. Under existing practice, the person seeking review has the burden of filing a certified copy of the record with the reviewing court. Under S. 2687 the Commission would be required to file the record with the clerk of the court of appeals in which the proceeding is pending.

Upon the commencement of a review proceeding, the Commission would be required to file with the court the original or a certified copy of the record of the proceedings before the Commission, except that the court may permit the filing of a certified list of the contents of the record in lieu of the record itself, a practice now widely followed and expected to be made uniform.

Under our present review procedure, the plaintiff bears the burden of filing with the three-judge court a certified copy of the record before the Commission. Although this change may impose some additional burden on the Commission, it will bring its practice into line with present procedures for the review of all other Federal agency orders.

While placing upon the Commission the burden of supplying the record could encourage court challenges to Commission orders, any such tendency will be offset by the requirements of the courts of appeals for the parties to reproduce, by printing or otherwise, the portions of the Commission records on which they are relying.

Under the present three-judge court procedure, reproduction of the record is not required. In the experience of other agencies, most of this reproduction cost falls upon the private appellants.

S. 2687 makes a further important change in existing law in the elimination of the United States as a statutory defendant, shown in item 4 of the chart, thus eliminating the present requirement whereby all court challenges to an order of the Commission are formally brought against the United States rather than the Commission itself. (28 U.S.C. 2322.)

The elimination of the United States as a named respondent means that any petition for judicial review could be brought automatically against the Commission as the named respondent.

This change brings the Commission into conformity with the present practice of such agencies as SEC, NLRB, FPC, CAB, and FCC, which are named as the respondents in suits seeking judicial review of their orders.

It reflects the fact that the Commission's attorneys today assume the primary and principal responsibility for the defense of its orders in the courts.

This feature of S. 2687, among others, is opposed by the Department of Justice.

In a letter to the committee, dated May 15, 1968, from Deputy Attorney General Warren Christopher, the Department states:

> However, the legislation (S. 2687) is objectionable insofar as it would remove the United States as the statutory defendant and repeal the Attorney General's responsibility for primary control of this class of litigation.
>
> Such dispersion of responsibility for the conduct of litigation involving the Government conflicts with prior efforts of the executive department and the Congress to centralize control of the Government's litigation in the Attorney General.

In the alternative, the Department suggests that the Commission be brought under the Hobbs Act, after which S. 2687 is modeled. (Ch. 158, 28 U.S.C.; 28 U.S.C. 2341–2351.)

With all respect, Mr. Chairman, we are opposed to the suggestion of the Department. Aside from reflecting the fact that the Commission's attorneys are largely responsible for defense of the Commission's orders even though conducted formally in the name of the United States, more compelling considerations require this change to be made.

Generally, the Department of Justice and the Commission have worked together in the defense of the Commission's orders. However, from time to time, there have been differences of opinion between the Commission and the Department as to questions of policy and statutory construction with the result that the Department has declined to defend the Commission's order in court.

There have been a number of such cases. Because Commission orders are generally immune from direct attack under the antitrust laws, many of these differences in recent years have involved the issue of competition and its evaluation by the Commission in such complex areas as intermodal rate competition and railroad mergers.

Although the Supreme Court has held that in such a case the duty of the Commission to administer and enforce the act carries with it right to defend its orders in its own name when the Department declines to do so, it is nevertheless embarrassing and inefficient to continue the present practice.

From this standpoint as to give a reviewing court the most assistance, we believe that the defense of our orders should be placed directly with the Commission.

As shown in items 3(b) and 4 of the chart, this bill fully protects the rights of the United States by requiring that a copy of the petition for review be served on the Attorney General as well as the Commission and by permitting the Attorney General to intervene in a Commission case as a matter of right.

The balance of this bill, Mr. Chairman, deals with review of decisions by the courts of appeals in the Supreme Court and certain miscellaneous provisions.

Under the present law a decision of a three-judge district court is subject to a right of direct appeal to the Supreme Court (28 U.S.C. sec. 1253). This is a so-called appeal as of right, in the sense that the Supreme Court does not purport to exercise a discretion as to whether or not to review the case on its merits.

Paragraph (b) of S. 2687, summarized as item 6 of the chart, would provide for Supreme Court review by certiorari, rather than by appeal. This conforms to the method of seeking Supreme Court review which is applicable to all other Federal agencies. This paragraph would also preserve the Commission's present right to seek review in the Supreme Court with or without the concurrence of the Department of Justice by stating that, "The United States or the Commission or an aggrieved party may file such petition for a writ of certiorari."

Paragraph (h) of S. 2687, shown in item 7 of the chart, preserves a portion of the existing law, the balance of which is repealed by section 2 of this bill (28 U.S.C. sec. 2321).

This paragraph provides for nationwide service of process, orders, and writs issued by the courts of appeals in cases arising under final orders of the Commission covered by this bill and proceedings arising in the district courts under sections 20 and 23 of the act and section 3 of the Elkins Act, all of which deal with the enforcement of various accounting, reporting, and tariff requirements of the act and, the rights of the shippers to nondiscriminatory treatment by the carriers.

This provision is an exception to the general rule that a court's process does not run outside the State in which it is located, in the case of the district courts, or the circuit, in the case of the courts of appeals.

Its retention is believed desirable because of the widespread operations of the Nation's carriers. In connection with this paragraph, I should like to call the committee's attention to the second amendment made by the Senate which involves a minor stylistic error on line 25 of page 6.

That line was amended to read as follows:

". . . in cases arising under sections 20, 23, of this Act and section 3 of the Act of February 19, 1903 (49 U.S.C. 43)".

This change was requested by the Commission in its testimony before the Senate Subcommittee on Surface Transportation and is required to reflect the fact that the last cited section, section 3 of the Elkins Act, is not part of the Interstate Commerce Act although its provisions are enforced by the Commission.

As shown in item 8, section 2 of S. 2687 repeals those parts of existing law which contain the present procedure for review of the Commission's order in three-judge district courts.

All of these provisions are superseded by the provisions of section 1 of this bill and thus would be rendered obsolete unless repealed.

No change is made in other sections of existing law which also deal with the review and enforcement of the Commission's orders since they will still be applicable to cases involving reparations, fines, penalties, and forfeitures which are not transferred to the courts of appeals by this bill.

In order to insure an orderly transition from the present mode of review in the district courts to the courts of appeals, this bill provides for a 60-day transitional period and that cases pending in the district courts on the effective date of this act will be processed to conclusion in such courts with the right of direct appeal to the Supreme Court as under the present law.

This concludes my prepared comments, Mr. Chairman.

I would be delighted to attempt to answer any questions you may have.

The CHAIRMAN. At this point in our record, we will place appendixes A and B to Mr. Tierney's statement.

(The documents referred to follow:)

APPENDIX A.—GENERAL SUMMARY OF EXISTING LAW AND S. 2687 DEALING WITH JUDICIAL REVIEW AND ENFORCEMENT OF MATTERS ARISING UNDER THE INTERSTATE COMMERCE ACT AND RELATED STATUTES

I. SINGLE-JUDGE UNITED STATES DISTRICT COURTS

1. All cases arising under the Interstate Commerce Act involving fines, penalties or civil forfeitures not arising out of an order of the Commission and cases involving reparations or other final orders for the payment of money, 28 U.S.C. § 1336, 1398. Appeals in these cases are heard by the United States courts of appeal whose decisions are reviewable in the Supreme Court by a writ of certiorari. 28 U.S.C. § 1254(1).

II. THREE-JUDGE UNITED STATES DISTRICT COURTS

1. Appeals from all final judgments and orders of the Commission arising under section 17(9) of the Interstate Commerce Act. Appeals in these cases go directly to the Supreme Court, 28 U.S.C. § 2284, § 2321–25.

NOTE.—This procedure would be changed upon the enactment S. 2687, since, as shown in Appendix B, it would repeal the present provisions for review by a three-judge court and substitute in lieu thereof review by the courts of appeal with appeal to the Supreme Court by a writ of certiorari. (Section 1 of S. 2687.)

III. COURT OF CLAIMS

1. Suits by carriers against the United States for reparations or other matters involving damages under the Interstate Commerce Act. The Commission does not participate in these cases unless the matter is referred to the Commission by the court under 28 U.S.C. § 1398(b). In those cases where an appeal is permitted, appeal is direct to the Supreme Court.

APPENDIX B.—COMPARATIVE SUMMARY OF PROVISIONS OF S. 2687 WITH EXISTING LAW

EXISTING LAW	S. 2687
Item 1—Jurisdiction	
	[*p. 1, lines 1–10; p. 2, lines 1–14*] [1]
(a) All orders appealable to three-judge district courts with right of direct appeal to Supreme Court (28 U.S.C. § 2284, 2321–25, 1253), *except* orders involving 1) the payment of money damages and 2) the collection of fines, penalties, and forfeitures.	(a) Substitutes the court of appeals for all cases now heard by three-judge district courts. Appeal to Supreme Court by writ of certiorari.
(b) Cases involving the payment of money or the collection of fines, etc., are initially heard by a single-judge district court. Appeals may be taken to courts of appeals and thence to the Supreme Court by a writ of certiorari 28 U.S.C. § 1331, 1336, 1398, 1254(1). Similar appellate procedure applies to cases referred to the Commission by the Court of Claims, 28 U.S.C. § 1398(b).	(b) Makes no change in existing law with regard to 1) orders involving the payment of money; 2) cases prosecuted directly in court involving fines, penalties, etc., or 3) referrals from the Court of Claims.
(c) Jurisdiction invoked upon the filing of an application for injunction or "other relief", 28 U.S.C. § 2284.	(c) Jurisdiction invoked by the filing of a petition for review.
Item 2—Venue	
	[*p. 2, lines 15–18*]
(a) Provides that venue shall be in the district wherein the party filing petition for review either resides or has his principal office. 28 U.S.C. § 1398(a).	(a) Makes no change except to expand venue to entire judicial circuit.
(b) Makes no provision for consolidation of multiple suits brought against the same order in different courts.	(b) In adidtion, by virtue of paragraph (c)(ii) [p. 3, lines 19–20] of this bill, which incorporates by reference 28 U.S.C. § 2112, permits the consolidation of multiple suits.
Item 3—Practice and Procedure	
	[*p. 2, lines 19–25; p. 3, lines 1–23*]
(a) No specified requirements for application review.	(a) As set forth in paragraph (c)(i), requires that petition for review specify (1) nature of proceeding, (2) facts upon which venue is based, (3) grounds for seeking relief and (4) relief requested.
(b) Requires that the Attorney General and Commission be notified five days in advance of hearing, 28 U.S.C. § 2284(2) and the copies of the complaint be served on all defendants. Federal Rules of Civ. Proc. 4, 28 U.S.C. Appendix. No fixed rules of procedure.	(b) Requires that copy of petition be served on Attorney General and Commission. All procedure subject to rules promulgated by the Supreme Court under 28 U.S.C. § 2072.
(c) Requires complaining party to submit record of Commission proceeding to clerk of the court.	(c) Unless terminated on motion to dismiss, Commission must provide the record, as provided in 28 U.S.C. § 2112, to clerk of the court.
(d) Present statutory law is silent as to the right of Commission to correct its own errors after appeal is filed.	(d) Permits Commission to correct own errors until record is filed.
(e) No counterpart in existing statutory law although permitted in practice.	(e) Requires appeal to be determined on record unless, for cause, the parties request the right to adduce additional evidence.

[1] Refers to page and lines of S. 2687.

EXISTING LAW	S. 2687
Item 4—Representation	
	[*p. 4, lines 14–25*]
(a) All appeals brought in the name of the United States with intervention, as of right, by the Commission and permission to intervene for other interested parties 28 U.S.C. § 2322–23.	(a) Paragraph (e) eliminates the United States as a statutory defendant, replacing it with the Commission. The Attorney General and other parties to a proceeding before the Commission would be permitted to intervene as of right with permission to intervene being granted others not parties to the proceeding as under existing law.
Item 5—Stays and Preliminary Injunctions	
	[*p. 5, lines 1–25; p. 6, lines 1–9*]
(a) Provides for a stay of a Commission order by a single district judge and a preliminary injunction by a three-judge court 28 U.S.C. 2284(3) and 2284(5).	(a) Paragraph (f) is similar to existing law except that stays could be granted by the court rather than a single judge.
Item 6—Review by the Supreme Court	
	[*p. 6, lines 10–21*]
(a) Provides for direct appeal from a three-judge court 28 U.S.C. § 1253.	(a) Paragraph (g) provides that appeals from a decision of court of appeals shall be by writ of certiorari within 45 days after entry of the lower courts judgment.
Item 7—Service of Process, etc.	
	[*p. 6, lines 23–25; p. 7, lines 1–2*]
(a) Provides for nationwide service of orders, writs and process of the district courts in matters arising out of an order of the Commission, the enforcement of sections 20 and 23 of the Interstate Commerce Act and section 3 of the Elkins Act. 28 U.S.C. § 2321.	(a) Paragraph (h) is the same as existing law except that section 3 of the Elkins Act, 49 U.S.C. § 43 is shown *erroneously* as "section 43" of the Interstate Commerce Act.
Item 8—Repeals	
	[*p. 7, lines 3–9*]
Not applicable.	(a) Section 2 repeals existing three-judge court provisions, 28 U.S.C. § 2321–25, and so much of other existing laws as are inconsistent with S. 2687.
Item 9—Effective Date	
	[*p. 7, lines 10–17*]
Not applicable.	(a) Section 3 provides for this Act to become effective 60 days after enactment while the proviso in section 2 deals with handling cases pending in the district courts or the Supreme Court as of the date of enactment.

Mr. TIERNEY. I should apologize. I have not introduced our General Counsel, Mr. Robert Ginnane.

The CHAIRMAN. Thank you very much.

The next bill, S. 2687. If this is passed, it would put you in line with practically all of the other agencies. Is that true?

Mr. TIERNEY. That is correct, Mr. Chairman.

The CHAIRMAN. Are there any questions from the members of the committee?

Mr. WATSON. May I ask the Chairman of the Commission a question or two in reference to the apparent conflict you have presently, or at least you have had in the past in the decisions relative to the defense of appeals and the conflict between the Justice Department and your agency?

If this bill is passed, is it contemplated the Commission will supply its own defense?

You will move out totally independent of the Justice Department?

Mr. TIERNEY. That is correct. We will be representing in effect ourselves in defense of any of our orders which are contested.

As I have indicated, Mr. Watson, of course the Department of Justice under the bill would have the right to intervene in opposition, for example, to a position taken by the Commission, or support it.

Mr. WATSON. What has been your practice in the past? I must say I can agree with you that you could very well have these conflicts. What has been your experience in the past?

Have you had your attorneys handling these matters or the Justice Department attorneys?

Mr. TIERNEY. When you get right down to it, under the present law, the Department of Justice is the defendant where Commission orders are contested.

Nevertheless, under those circumstances, the responsibility generally always has been for the Commission's staff and counsel to really prepare for the defense of these orders.

The main party defendant is represented in these cases by the Department of Justice. They are the main party defendant.

In those instances, where it disagrees, in effect the United States confesses error to the order which the Commission would defend.

Mr. WATSON. You did not mean the Department of Justice was the main party defendant then, did you?

Mr. TIERNEY. The United States is the defendant but the Department of Justice represents the United States.

Mr. WATSON. As a matter of fact, in the past you have your separate attorneys and you do not call upon any attorneys in the Justice Department to assist in any appeal?

Mr. TIERNEY. There is some assistance. I would like our General Counsel to answer that more in detail.

Mr. GINNANE. They have very little interest in the great majority, run-of-the-mill cases. In most cases, we write the briefs, they rubberstamp them, and overall I would say lawyers for the Commission handle the oral argument in 24 out of 25 cases.

In an occasional case, a lawyer for the Department of Justice will also appear.

Mr. WATSON. I am sure you understood the thought behind my question. If they are going to supply the lawyers, you would still have the practical problem of a lawyer going in trying to defend a matter on which he does not agree.

Mr. GINNANE. We would not have that problem.

Mr. WATSON. On page 2 of the bill, line 23, you say that upon the filing of a petition within 60 days from the date of the order com-

plained of the court for good cause may extend the time for filing the petition 60 days.

Is it "for good cause" with or without hearing, or what?

In other words, may a petitioner file with the court and just go before the court on his own motion and get the court to extend up to 60 days?

Mr. GINNANE. Under the universal court rules, the person filing such a petition would be required to serve it upon the Commission and the Department.

As a practical matter, if he files it on the 59th day asking that the time be extended, as a practical matter, the court is going to have to act immediately or not at all.

In those circumstances, in effect, it would be an ex parte procedural decision which the court would have to make but I don't know of any way to get around it.

Mr. WATSON. If you need any extension, quite often I have found in practice you discover it right near the expiration of the initial period.

I am sure there is a practical problem of getting some of the agency's attorneys in.

Perhaps, Mr. Chairman, as legislative history we could spell that out.

Later on in the same paragraph we make references to what the petition shall contain.

Are we referring to the petition for delay or the petition on appeal? I think you are referring to the petition on appeal; is that correct?

Mr. GINNANE. There, we are talking about the petition for an extension of time for the filing of the petition for review.

Mr. WATSON. In the next sentence you say the petition shall contain a concise statement of A, B, C, D, and E.

Mr. GINNANE. That would be the petition for the review itself.

Mr. WATSON. Do you intend that this include the grounds upon which the delay is to be predicated if granted at all?

Mr. GINNANE. That is right—what is the petitioners justification for seeking an extension of time—what good reasons does he have?

Mr. WATSON. You do not anticipate these changes in the existing law will delay the final adjudication of any of these matters?

Mr. GINNANE. A year or two ago I made a study of the time it took some of the courts of appeals to dispose of reviews by administrative orders and the average time in the three-judge courts and they were so close together in time that it did not seem to make much difference one way or the other on the average.

Mr. WATSON. You don't anticipate any material change?

Mr. GINNANE. On the average not at all.

Mr. WATSON. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. HARVEY. Looking at section 2 with regard to existing cases, do I understand correctly that in the pending cases they would continue under the same procedure as heretofore provided?

Would that be all the way through to appeal?

Mr. GINNANE. That is correct; and the purpose of that is to allow a transition time for the bar to become accustomed to the new judicial review procedure.

Mr. HARVEY. I have no further questions.

The CHAIRMAN. If there are no further questions, we thank you very kindly for coming here today and being with us.

Mr. GINNANE. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to place in the record at this time a statement by Hon. John Biggs, Jr., senior U.S. circuit judge of the Third Judicial Circuit and chairman of the Committee on Court Administration of the Judicial Conference of the United States.

(Statement referred to follows:)

STATEMENT OF HON. JOHN BIGGS, JR., CHAIRMAN OF THE COMMITTEE ON COURT ADMINISTRATION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, ON S. 2687

Mr. Chairman, gentlemen of the committee, I express my sincere thanks to Chairman Staggers and to the Members of the Committee on Interstate and Foreign Commerce at the promptness with which the Committee has taken up for consideration S. 2687.

My name is John Biggs, Jr., and I am a Senior United States Circuit Judge of the Third Judicial Circuit of the United States. I became a U.S. Circuit Judge on March 3, 1937 and from 1939 until I went on Senior Judge status on October 30, 1965 I was Chief Judge of the Third Judicial Circuit. I am also Chairman of the Committee on Court Administration of the Judicial Conference of the United States. The Judicial Conference of the United States was created by Section 331, Title 28, U.S.C. It is the top policy-making body of the Federal judiciary and consists of the Chief Justice of the United States as Chairman, the Chief Judges of the eleven Circuits, the Chief Judge of the Court of Customs and Patent Appeals, the Chief Judge of the Court of Claims, and eleven District Judges selected by their respective Circuit Judicial Conferences. Section 331 also provides that "The Chief Justice shall submit to the Congress an annual report of the Judicial Conference and *its recommendations for legislation.*" (Emphasis added.)

The Committee on Court Administration in the 12 years of its existence has dealt with needs and problems of court management, and problems relating to the tenure and salaries of judges, annuities to judges' survivors, the creation of additional judgeships, places of holding court, and similar matters.

S. 2687 came before the Committee on Court Administration at its August 1967 meeting, and the Committee recommended to the Judicial Conference in its report that S. 2687 be approved "in principle." The Conference adopted the Committee's recommendation. See Rept. Judicial Conf. of U.S., Sept. Sess. 67, pp. 64–65. The Judicial Conference report referred to stated:

"Judge Biggs called the attention of the Conference to the fact that I.C.C. orders are now reviewed by district courts comprising three judges, one of whom is required to be a circuit judge. Appeals from the judgment of such courts lie directly to the Supreme Court. He stated that this system is an anomaly since in almost every instance the agency reviews are brought to the courts of appeals of the respective circuits and are reviewed by the Supreme Court on certiorari. The Conference approved, in principle, the draft bill providing for review of I.C.C. orders by the respective courts of appeals and for review by certiorari to the Supreme Court of the United States. It agreed that the Committees on Court Administration and on Revision of the Laws should reexamine the draft bill, particularly those provisions relating to the issuance of stays and interlocutory injunctions, and should present to the Conference a bill in final form at a later session."

At the February Session 1968, the Judicial Conference went further and stated as follows:

"The Conference approved the joint recommendation of the Committee on Court Administration and the Committee on Revision of the Laws to approve S. 2687 which would provide that instead of review of orders of the Interstate Commerce Commission by three-judge district courts, jurisdiction for review of I.C.C. orders would be placed in the respective United States court of appeals, thereby eliminating direct appeal to the Supreme Court of the United States from orders of the Interstate Commerce Commission. The Conference agreed with a motion by Judge Harper that the Committee study, in advance, the establish-

ment of machinery (court reporters, clerks, etc.) to take care of this change should the legislation be enacted." (Conf. Rept. Feb. Sess. '68, pp. 12–13).

It follows that S. 2687 as it was submitted to the Senate was approved *in haec verba* by the Judicial Conference of the United States. It was passed by the Senate in the form approved by the Judicial Conference save for two amendments. The second amendment was a correction of a "minor stylistic error". (See page 12 of Report No. 1499, Senate, 90th Congress, 2d Session, Calendar No. 1484. The error need not be commented on here.) The other amendment (p. 2, line 23, of the bill) would strike the period after the word "order" and insert in lieu thereof the following:

"*Provided*, That, upon the filing of a petition within 60 days of the date of service of the order complained of, the court, for good cause shown, may extend the time for filing a petition to review such order for an additional period not exceeding 60 days."

The foregoing amendment has not been approved by the Judicial Conference of the United States but it was brought to the attention of the Committee on Court Administration at its August 1968 meeting and the Committee on Court Administration recommended its approval to the Judicial Conference of the United States.

S. 2687 provides for the review of the Interstate Commerce Commission orders by the Courts of Appeals of the United States in the same manner as most major agency regulatory orders are now reviewed. At present I.C.C. orders are reviewed by three-judge district courts, one of the judges of which must be a circuit judge. The review by the three-judge court is made on the record before the I.C.C. There is a right of direct appeal to the Supreme Court of the United States. If S. 2687 becomes law, the orders of the I.C.C. will come before the several courts of appeals for review and appeals from the decisions of the courts of appeals will be by way of certiorari. Nothing in S. 2687 would change the present jurisdiction of the United States district courts over criminal or civil cases involving only fines, penalties or civil forfeiture for violations of the Interstate Commerce Commission Act. The jurisdiction of a court of appeals would be invoked by filing a petition for review in substantially the same form as petitions presently filed with the three-judge district courts.

Report No. 1499 accompanying S. 2687 (Calendar No. 1484) sets out with a great deal of particularity and with complete accuracy, insofar as I can ascertain, the provisions of the bill and I think it unnecessary to repeat here what is so competently stated there. It is the belief of the undersigned that the orders of the I.C.C. can be more quickly reviewed by the courts of appeals rather than by three-judge courts as provided by Section 2284, Title 28, U.S.C. The courts of appeals in all the circuits hear numerous appeals every day that they sit and it is the belief of the present writer that setting up panels of judges to review I.C.C. orders could be more expeditiously handled in the respective courts of appeals than in the United States district courts.

Thank you.

The CHAIRMAN. Our next witness will be Mr. Harry J. Breithaupt, general solicitor, Association of American Railroads.

Mr. MARSHALL. My name is J. Paul Marshall. Mr. Breithaupt intended to be here to submit a short statement, but due to illness he is unable to be here, so I should like to submit his statement for him.

The CHAIRMAN. His statement will be placed in the record at this point.

(Statement referred to follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS, WITH RESPECT TO S. 2687

My name is Harry J. Breithaupt, Jr. I am General Solicitor of the Association of American Railroads, with office at Washington, D.C. I wish to express the support of the Association of American Railroads for S. 2687.

This bill, introduced at the instance of the Interstate Commerce Commission and passed by the Senate just a few days ago, would amend section 17 of the Interstate Commerce Act in such a way as to provide a new procedure and method for the judicial review of that Commission's orders. It would make ICC orders reviewable in the same general manner as the orders of other principal Federal

regulatory agencies (Civil Aeronautics Board, Federal Communications Commission, Federal Maritime Commission, Federal Power Commission, Federal Trade Commission, etc.).

Under present law, judicial review of orders of the Interstate Commerce Commission is unique in that such orders are reviewable by special statutory three-judge United States district courts. The decisions of those courts with respect to ICC orders are then reviewable, in turn, in the Supreme Court by appeal (not by way of petition for writ of certiorari). The proposal here is to have the Commission's orders judicially reviewed in the United States courts of appeals, with Supreme Court review only by writ of certiorari.

We favor this proposal. We believe that the courts of appeals would, on the whole, constitute a more satisfactory forum for reviewing ICC orders than is provided by three-judge district courts. The courts of appeals are accustomed to the review of orders of Federal agencies, and have a background for that type of case. Most district judges, on the other hand, are confronted only infrequently—if at all—with such cases.

Moreover, the courts of appeals have rules applicable to judicial review proceedings. There are no such rules in the case of three-judge district courts. Each case in these special courts develops its own rules, so to speak. This, understandably, leads to a certain amount of uncertainty and even confusion.

S. 2687 is a comprehensive measure that would make the changes I have already mentioned and that would, at the same time, deal in what seems to us to be a sound and constructive way with such important related matters as venue, limitations, the record of review, stays, interlocutory injunctions, etc. The Association of American Railroads supports the bill and urges its favorable consideration.

The CHAIRMAN. Mr. Vernon V. Baker, Motor Carrier Lawyers Association.

STATEMENT OF VERNON V. BAKER, CHAIRMAN, LEGISLATIVE COMMITTEE, MOTOR CARRIER LAWYERS ASSOCIATION

Mr. BAKER. Mr. Chairman, I have a prepared statement which I should like to read.

The CHAIRMAN. You may proceed.

Mr. BAKER. My name is Vernon V. Baker. I am a member of the law firm of Baker and Raley with offices in this city; and I am appearing here in behalf of the Motor Carrier Lawyers Association. The association is grateful for the opportunity of presenting its views to this committee.

The Motor Carrier Lawyers Association, founded shortly after enactment of part II of the Interstate Commerce Act, has more than 450 members, domiciled throughout the United States and Canada and specializing in practice before the Interstate Commerce Commission.

As the name of the association implies, the major interest of most of the members of the association is in the representation of motor carriers.

At its annual conference in Detroit, Mich., held in May of this year, the membership devoted much time to an analysis and discussion of H.R. 13927 and the companion Senate bill, S. 2687.

After thorough discussion, the association voted to oppose these bills, and I have been directed to present its views to your committee.

I am certain that the witnesses who preceded me will have discussed in detail the changes in procedure which would be effected by enactment of S. 2687. Thus, I will not burden you with repetition concerning the details of the bill.

The most important and basic change which is proposed in the bill is the transference of jurisdiction in respect of judicial review of ICC

orders—excepting those involving only the payment of money—from a three-judge district court to the U.S. courts of appeal.

The existing procedure for review by three-judge courts has been followed since 1913. The members of my association are of the view that this procedure has worked well. We are aware of no substantial complaints concerning this basic procedure.

Presently, a party dissatisfied with a Commission order may bring an action to set it aside in the district court for the district in which he resides. Not only are these courts generally nearer the home of the complaining party and the office of his counsel, but also proceedings therein are relatively inexpensive.

Transference of jurisdiction to the courts of appeal will necessitate in many more cases the retention of additional counsel, and will entail substantial additional costs resulting from the necessity of printing briefs and appendixes containing pertinent portions of the record made before the Interstate Commerce Commission. Such printing is not generally required in the district courts. The matter of expense is an important factor when the average motor carrier is concerned.

As of June 30, 1967, there were subject to the jurisdiction of the Interstate Commerce Commission more than 16,000 motor carriers, scattered throughout the United States. Of these, less than 1,700 are class I carriers; that is, carriers having annual operating revenues of $1 million or more. About 11,500 have annual operating revenues of less than $200,000. With businesses of this size, it is apparent that many will be unable to afford to undertake the more expensive procedure provided for in this bill—even though they may have a legitimate grievance which merits judicial review.

So far as members of my association are concerned, I am sure that we would encounter many instances wherein we would have to advise our clients against an appeal because of the costs involved, even though we might feel optimistic about the chances of success.

The association also is concerned over the proposed change in procedure in respect of temporary restraining orders.

Under existing law—28 U.S.C., section 2284—a district judge may grant a temporary restraining order to prevent irreparable damage. When necessary, upon proper showing, such an order may be obtained very quickly. In the subject bill, no provision is made for the granting of such a restraining order by a single judge.

Such action would have to be taken by the court, and a formal hearing would be required, after the giving of "reasonable notice" to the Commission and the Attorney General. There are occasions when orders of the Commission are made effective immediately and where appropriate protection of a litigant requires most prompt action. It is questionable whether under the provisions of this bill adequate remedy would be afforded in such emergency situations.

In conclusion, it is the position of the Motor Carrier Lawyers Association that enactment of H.R. 13927 would make more cumbersome, rather than simplify, the judicial review of orders of the Interstate Commerce Commission; that it would add unnecessarily to the expense of obtaining judicial review, and thus, in many cases, make the seeking of judicial review prohibitive, regardless of the merits in particular cases.

The CHAIRMAN. Thank you, Mr. Baker.

Are there any questions?

Mr. DINGELL. Mr. Chairman, if I may be recognized briefly, I was under the impression when I entered the hearing room this morning that there was no opposition to the legislation before us.

Mr. Baker seems to indicate to this committee that the changed review procedure would affect his clients, the members of the association to which he belongs, adversely. He indicates that the review would be at points far distant from the residences of the potential litigants because it would be at the seat of the circuit court of appeals.

Do you have any idea what the increased costs would be?

Mr. BAKER. Frequently, you would have to retain counsel located at the situs of the court of appeals; whereas, frequently the counsel representing a motor carrier would reside in the district and could prosecute an appeal in the district court.

Mr. DINGELL. You make the statement that this is also going to provide no authority for the courts to issue temporary restraining orders.

Mr. BAKER. I did not intend to imply that the bill would not permit the issuance of a restraining order but the procedure would be more cumbersome in that the court would have to act, instead of a single judge as now provided.

Now you can go to a single district judge and in an emergency get a restraining order very promptly. Under this bill, there would have to be a hearing before the court after notice to the Attorney General and to the Interstate Commerce Commission.

Mr. DINGELL. Do you have any idea what the time difference might be in the different procedures?

Mr. BAKER. I would think it would take at least several days and sometimes you need an order immediately.

As I have indicated, the Commission sometimes makes its orders effective immediately without any time lag which would permit you to go to court for a restraining order.

Mr. DINGELL. I wonder, Mr. Chairman, if we could have the committee staff scrutinize these matters so we can ascertain what the facts are both with regard to the additional cost, if there be such, to party litigants and also, if we could, with regard to the particular change with regard to restraining orders.

I would also like to go into some other matters, Mr. Baker.

The bill itself is far more broad than just the points you have raised here. It deals with the whole change in the review process in changes of this kind. Do you have any other objections to other portions of the bill?

Mr. BAKER. Those are the only two points on which the association took a position and with which they were most greatly concerned.

There are some procedural changes which I am sure if the association voted on they would be in favor of, but they felt that this basic change of jurisdiction was so important that they should oppose the bill.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any other questions?

Mr. Harvey?

Mr. HARVEY. I wonder if the witness would care to further comment with regard to some of the questions my colleague from Michigan raised.

With regard to the additional costs, you say this would involve additional costs involved in printing additional briefs and appendices.

I don't understand that. It seems to me that the number of steps are the same and the number of briefs and the record, and so forth, would all be the same.

Is that not correct?

Mr. BAKER. The number of briefs would be the same but in the district courts you are permitted to duplicate them in a less expensive way than printing; for example, by multigraph, offset printing, and so on, but the most expensive phase of it would be printing portions of the record.

Some of these records before the Commission get very voluminous. In the district courts it is not necessary to reproduce that record but in the court of appeals it is necessary to have printed those portions of the record which are pertinent to the issues involved in the proceeding.

Mr. HARVEY. Didn't I understand Mr. Tierney a very few minutes ago to say this new procedure would shift the burden from the one who was aggrieved to the Commission itself to bring the record in for appeal.

Did I misunderstand him?

Mr. BAKER. I don't believe you misunderstood him on the point he made.

Presently it is incumbent upon the complaining party to present a certified copy of the record to the district court.

Ordinarily, a party in a Commission proceeding has copies of the record. It is just a question of taking it down to the Commission and having the Secretary certify that this is a true copy and then that is filed with the court.

Under this bill, the Commission has the burden of certifying the record to the district court.

But it is my understanding that the general practice has been, under the Hobbs Act, that the Commissions merely submit a list of the various documents contained in the record to the district court.

It then will be incumbent upon the complainant to designate those portions of the record upon which he relies and have those portions printed for the use of the court.

Mr. HARVEY. Do you think the hardship would be greater for the practitioners before the Interstate Commerce Commission than for those practicing before the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission, the Federal Trade Commission, and the other agencies that use the other procedure.

Is there a difference before this Commission as distinguished from the other Commissions?

Mr. BAKER. I would say "No" except for the size of the parties involved.

I have emphasized that many of the motor carriers which my association represents are businesses of very small size and they are less able perhaps to bear the cost that would be entailed by this bill than some of the larger organizations like airlines and railroads.

Mr. HARVEY. I have no further questions, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. Watson?

Mr. WATSON. I can appreciate the problems you might encounter in moving from the district court to the circuit court. Your statement on page 3 that no provision is made for such a restraining order by a single judge—I do not see such restriction in the bill.

In fact, on page 5, line 7, it says specifically for the court of appeals in its discretion may restrain or suspend in whole or in part.

In other words, you will be moving from a district judge to a circuit judge but they would still have the right to give a restraining order, would they not?

Mr. BAKER. We construe that as requiring action not by a single judge of the court of appeals but by the court as such which ordinarily is composed of a panel of three judges.

Mr. WATSON. But is it not within the power and prerogative of a single judge to issue a restraining order?

I will grant you the filing of a petition shall not in and of itself stay the execution of any order of the Commission.

Perhaps we can get the Commission's counsel back up here and seek his interpretation of it.

My understanding of it was that even a single judge may temporarily restrain the execution in whole or in part of any pending order or orders that may be issued.

Mr. BAKER. We are apprehensive that it would not be so construed.

Mr. WATSON. If we could get some legislative history to help assure you in that regard, that would remove some of your objection to this bill?

Mr. BAKER. On that aspect, yes, indeed.

The CHAIRMAN. Would the gentleman like to have the counsel for the Commission?

Mr. HARVEY. I think that it would be helpful in a showing on irreparable damage here. What would counsel's opinion be?

Mr. GINNANE. It is counsel's opinion that this provision based upon many provisions for review of orders of other agencies, would require that the order be issued by the court and not by a judge.

In court of appeals practice you don't have to have three judges do it. Two can do it.

As I understand what they do on the review of the orders of these other agencies, a party gets before one judge and if he thinks the application for a stay has some merits, if necessary, he calls up another court of appeals judge.

I have discussed this with members of the Judicial Conference and I understand at their meeting they considered specifically the question it should be one judge or the court to issue a temporary restraining order.

They concluded that they could see no reason why there should be a different procedure solely for the orders of the Interstate Commerce Commission.

Mr. Chairman, may I add a brief comment or two?

Mr. WATSON. May we keep this matter in practical context?

As a practical matter, if a petitioner goes to a judge who determines there is merit to the request to stay the execution of the Commission's order, then there would be no difficulty in him requesting another judge to join him in such a restraining order.

Mr. GINNANE. As a practical matter, sir, he could do this. He could ask the Commission to postpone the effective date of its order until he had an opportunity to confer with another judge, and it would be a very rare situation indeed, if any, when the Commission would not honor such a reasonable request.

Mr. DINGELL. Would the gentleman yield for a question here?

The CHAIRMAN. Yes, the gentleman yields.

Mr. DINGELL. I am much troubled by this. I would like to have an orderly procedure and have the procedure to be the same for all Government agencies, but I confess I find there is precedent for a single judge of a court acting in a stay in the case of an appeal.

This is true in the case of the Supreme Court. A single judge may during certain times stay the effect of a lower court's ruling. Is that not a fact?

Mr. GINNANE. That is correct.

Mr. DINGELL. It is not infrequently done even in cases of appeals from the Federal regulatory agencies; am I correct?

Mr. GINNANE. Under the existing statutory provisions——

Mr. DINGELL. I am talking about a single Justice of the Supreme Court staying the effect of a lower court order.

Mr. GINNANE. Yes, I know of a recent example.

Mr. DINGELL. So this is not a unique thing. It does make sense that this kind of order should take place by a single judge where there is need for expeditious consideration and where there is a clear case of irreparable harm that could be done.

Am I correct?

Mr. GINNANE. May I answer your question in this way: When members of the Judicial Conference raised the question with us whether we would oppose empowering a single judge to grant a temporary restraining order, we said we did not particularly oppose it, that whatever they thought as a matter of practical judicial administration would be best, that the Commission would go along with that and that would be our position today.

Mr. DINGELL. A temporary restraining order requires the showing of irreparable harm, it requires the showing that there would be no other relief.

Mr. GINNANE. That is basically correct, the showing of irreparable damage.

Mr. DINGELL. It is issued usually after effective notice to the parties.

It requires generally a brief hearing before the court and it is subject to review at the earliest possible time through a more extensive hearing to establish again whether or not a temporary injunction should lie based upon again the showing of irreparable harm and based upon again a showing that there is no other way to prevent the harm.

Am I correct?

Mr. GINNANE. You can always appeal from an order of one judge to a three-judge panel.

Mr. DINGELL. This particular review I am talking about in connection with irreparable harm is something that follows immediately, as a matter of fact, usually within a matter of 3 days, as I recall, from my association with Federal courts, to determine whether or not it should continue in force or whether it should be broadened into a temporary injunction?

Mr. GINNANE. Those applications are usually heard promptly.

Mr. DINGELL. A temporary restraining order is usually for a brief period of time so that review is almost automatic?

Mr. GINNANE. The review of the temporary restraining order?

Mr. DINGELL. Yes; because a temporary restraining order is issued for a very brief period of time, so it necessarily follows that the review almost automatically follows because of the brief period for which the restraining order is issued.

Mr. GINNANE. I guess that would depend upon the burdens and workload of the particular court.

Mr. DINGELL. I think they have moved with great speed to prevent a temporary restraining order from——

Mr. GINNANE. I have seen them remain in effect for many weeks.

Mr. DINGELL. As a practical matter, they don't.

Mr. GINNANE. No; but it does happen and it happens with some frequency.

The CHAIRMAN. Are there any further questions?

If not, did you want to make a statement?

Mr. GINNANE. Just briefly.

Mr. Baker referred to the fact that parties would be taken from their home district to district courts of appeals in many cases with ensuing expense.

I would just like to say nearly half of the present court review proceedings under present law takes place in the very cities where the courts of appeals meet, such as Boston, New York, Baltimore, Philadelphia, Chicago, New Orleans, San Francisco.

This is where much of the litigation falls anywhere because nearly half of the cases would be in the same town.

The CHAIRMAN. Are there any further questions?

If not, thank you very kindly, Mr. Baker.

Our next witness is Mr. C. G. Willis, Jr., president of C. G. Willis Inc., Paulsboro, N.J., and chairman of the executive committee of the Water Transport Association.

Is Mr. Hard accompanying you?

Mr. WILLIS. Yes.

STATEMENT OF CHAUNCEY G. WILLIS, JR., CHAIRMAN, EXECUTIVE COMMITTEE, WATER TRANSPORT ASSOCIATION; ACCOMPANIED BY ROBERT HARD, COUNSEL, AMERICAN BARGE LINE CO., HOUSTON, TEX.

Mr. WILLIS. Mr. Chairman and members of the committee, I would like to summarize my written statement as has been suggested by the chairman.

The CHAIRMAN. We would be very happy for you to summarize your statement, and we will place your entire statement in our hearing record at this point.

(Mr. Willis' prepared statement follows:)

STATEMENT OF CHAUNCEY G. WILLIS, JR., CHAIRMAN, EXECUTIVE COMMITTEE, WATER TRANSPORT ASSOCIATION, WITH REGARD TO H.R. 7151

Mr. Chairman and members of the committee, my name is Chauncey G. Willis and I am President of C. G. Willis Barge Line of Paulsboro, N.J., a common

carrier barge line operating on the Atlantic Coastal Canal. I appear here today as Chairman of the Executive Committee of the Water Transport Association, a national association of the leading certificated water carriers in the coastwise, intercoastal, Great Lakes and inland waterway trades.

The water carrier industry has in the past, and will most certainly in the future, be faced with problems of equipment obsolescence and the resulting need for capital improvements as the industry continues to modernize its fleet for service to the public. Of course, this problem is not peculiar to water carriers. The nation's railroads and airlines have been involved in similar modernization programs.

Obviously, a substantial portion of the funds for these capital improvements must be obtained from financial institutions rather than from working capital. Because a great deal of a water carrier's total assets is represented by floating equipment, the logical and only available security for financing is the towboats and barges being purchased by the carrier. This, I understand, is also generally true of the airlines, and I also understand that most of the railroad equipment modernization is via the medium of equipment trust certificates.

At the present time, under virtually all financing arrangements available to the water carrier industry, the trustee in a reorganization under Chapter 10 of the Bankruptcy Act may elect to keep any and all equipment of the bankrupt to the exclusion of security creditors, if, in the trustee's opinion, the equipment is beneficial to the continued operation of the bankrupt. The net effect of this is that even though a creditor retains title to equipment as security for the debt, he is unable to repossess in the event of default if the trustee finds the equipment is necessary for the operation of the bankrupt's business.

The only procedure for obtaining possession of the equipment is a petition for reclamation which must be filed with the Federal district court, and the court's action upon this petition is entirely discretionary with the result that more times than not, the creditor, even though he holds updisputed title, is unable to obtain the property for satisfaction of the defaulted debt. Because the trustee normally does not make payments upon the debt as required by the promissory note or other debt instrument, the creditor finds himself, as a practical matter, in somewhat the same position as an unsecured creditor.

Obviously, administrative costs and bankruptcy possibilities are considered by financial institutions in evaluating applications for loans upon marine equipment and in determining how much of the cost of such equipment will be financed and at what interest rates. It is our belief that lenders look more favorably upon the security offered by equipment trust certificate type of financing than upon traditional security arrangements and that, as a result, they are less concerned with debt-equity ratios, thus permitting a greater degree with debt financing as compared to more costly equity financing.

Both the railroads and the airlines presently have available to them equipment trust certificate type of financing which is somewhat exempt from the provisions of the Bankruptcy Act in that a lender's title in financed equipment, and his concurrent right to repossess that equipment, may not be restricted, limited or hindered by the trustee in a reorganization of a railroad or of an airline.

Legislation was enacted for the benefit of the railroads many years ago when Congress enacted Section 77(j) of the Bankruptcy Act (11 U.S.C. 205 j) pertaining to the reorganization of railroads. That section protects the interest of the lender by providing in part:

"* * * The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section."

Under existing procedure railroad equipment trust certificates must be recorded with the Interstate Commerce Commission under Section 20(c) of Part I of the Interstate Commerce Act (49 U.S.C. 20 c), which recordation constitutes notice to all persons including subsequent purchasers and trustees in bankruptcy.

In 1957, in recognition of the favorable effects of Section 77(j) of the Bankruptcy Act upon railroad financing, the Congress enacted similar type legislation to help the nation's certificated airlines in the financing of aircraft, aircraft engines and related parts. Section 116 of the Bankruptcy Act (11 U.S.C. 516) was amended by adding Subsection (5) which provides that the title holder under a title retention type security agreement could repossess or take physical possession of the equipment even though the debtor is in Chapter 10 reorganiza-

tion. The Federal Aviation Agency serves as the recordation office for equipment trust certificates applicable to the airlines.

The bill H.R. 7151 now proposes to extend to the regulated water carrier industry the same recordation and limited bankruptcy benefits now available to the railroads and the airlines.

The proposed amendment to Part III of the Interstate Commerce Act would provide for the recording of security instruments with the Interstate Commerce Commission in much the same manner as equipment trust certificates of the railroads are presently recorded with that Commission and security agreements of the airlines are recorded with the Federal Aviation Agency. Because towboats and barges move between many states, it is extremely difficult, if not impossible, for a creditor to protect his security interests unless he records in virtually every county in which the debtor company operates. The proposed amendment would designate the Interstate Commerce Commission in Washington, D.C. as the single recording office and anyone desiring to determine whether a particular piece of equipment was subject to such a lien would merely have to check the records at the Commission.

Because water carriers are subject to regulation by that Commission, it seems logical to designate that Commission as the place for recordation in the same manner as was done for railroads. This procedure would not burden the Commission nor require the expansion of the Commission's existing staff or facilities as the small amount of work could be easily handled by those persons presently responsible for the recording of instruments under Section 20 (c) of the Act.

The proposed amendment to Section 116 of the Bankruptcy Act (11 U.S.C. 516) would add a new subsection (6), applicable to regulated water carriers, with language substantially the same as that contained in subsection (5) which was added in 1957 to cover the airlines.

It should be emphasized that the proposed legislation is strictly voluntary in nature in that both the water carrier and the financial institution would have to mutually agree upon taking advantage of the proposed exemption before it would become applicable to any given security instrument.

History shows that the railroads through the use of equipment trust financing have been able to obtain extremely favorable interest rates on their equipment trust certificates which are virtually identical to a title retention type of contract, except that a trustee in reorganization does not have the power to retain possession of the equipment.

The water carrier industry is faced with substantial capital expenditures for the replacement of obsolete towboats and barges and must resort to long-term secured type financing in order to obtain the necessary funds for the purchase of this equipment. The legislation proposed would tend to open new sources for funds and would tend to enable water carriers to obtain financing at extremely reasonable interest rates. Benefits to the general public would flow from this legislation to the extent water carriers would find equipment modernization to be much more feasible as compared to past years.

Mr. Chairman, I appreciate the time the Committee has given to me and I sincerely urge the Committee to give favorable consideration to H.R. 7151. I believe that it will be of substantial benefit to the water carriers and consequently to the general public, without cost to the federal government.

Mr. WILLIS. The purpose of S. 913 is to assist the water carrier in the modernization of this floating equipment, to better serve the public by enabling such carriers to utilize equipment trust certificates financing in a manner now available to the railroad and airline industry.

This bill was unanimously passed by the Senate with broad support from the industry, all industries, and support from the Governor, and there was absolutely no opposition to it.

The Senate accepted an amendment to include the exempt carriers and at that point there was absolutely no opposition from any of the water industry.

I would be glad to answer any of your questions on this, if you like.

The CHAIRMAN. You know of no opposition that appeared anywhere to this particular bill?

Mr. WILLIS. No, sir.

The CHAIRMAN. Either in the Senate or here?

Mr. WILLIS. No, sir.

Mr. KEITH. I would like to know the present method of financing.

Mr. WILLIS. The present method of financing in the water industry is by what they call preferred first mortgage.

In a case of bankruptcy under chapter 10, the lending institutions or the lendor finds himself in a position even though the carrier is not making payments on the equipment, he cannot physically repossess this equipment, the lending institution; whereas with the remaining trust certificates, remaining institution can repossess the equipment.

Mr. KEITH. How does it happen such legislation was not requested earlier?

They have had these certificates with the railroads for years.

Mr. WILLIS. I guess the railroads went to it because their financing was so vast and their requirements so great and, of course, the water industry at this point has just become large enough to seek this type of financing.

They were pretty well satisfied with the first preferred mortgage-type financing until recently where institutions have said, "Well, your rate would be possibly better and also the volume of financing would be under equipment trust."

Mr. KEITH. This would in effect free a lot of your capital for other purposes?

Mr. WILLIS. It would possibly amount to the same amount of capital because you are still obligated to the bonds as you are obligated to the mortgage.

Mr. WATSON. Actually, in essence does this not provide a central agency; namely, the Commission, for recordation of the indebtedness on any of your equipment?

Mr. WILLIS. That is correct.

Mr. WATSON. I assume the industry is going to prepare a standardized or do you have presently a standardized document or documents dealing with this particular matter?

What I am thinking of is this: The Commission will have to come up with various documents and so forth?

Mr. WILLIS. No.

Mr. WATSON. You will have the standardized version to impose a minimum burden upon the Commission and serving as a central recordation agency?

Mr. WILLIS. That is correct. There should be no additional cost to the ICC.

Mr. WATSON. Thank you very much.

The CHAIRMAN. Are there any further questions?

If not, thank you very much for coming before the committee and giving us your testimony.

Our next witness is Mr. Oscar Bakke, Acting Deputy Administrator, Federal Aviation Administration.

You are testifying on S. 2499.

STATEMENT OF OSCAR BAKKE, ACTING DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION; ACCOMPANIED BY NATHANIEL GOODRICH, GENERAL COUNSEL

Mr. BAKKE. I have with me Nathaniel Goodrich, General Counsel of the Federal Aviation Administration.

I have a very brief statement I would be happy to summarize for the committee. I would like to submit a copy of my full statement for the record.

The CHAIRMAN. Your full statement will be placed in the record at this point.

(Mr. Bakke's prepared statement follows:)

STATEMENT OF OSCAR BAKKE, ACTING DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, REGARDING THE EXTENSION OF THE AIRCRAFT GUARANTEE LOAN PROGRAM

Mr. Chairman and members of the committee, My name is Oscar Bakke. I am Acting Deputy Administrator of the Federal Aviation Administration. I appreciate this opportunity to appear before you today in support of H.R. 13141 and H.R. 13047 and the version passed by the Senate, S. 2499. These bills revive and extend until 1972 the Act of September 7, 1957, which authorized the Secretary of Transportation to provide Government guarantee of private loans to the local service and certain other air carriers for the purchase of commercial transport aircraft and spare parts. This legislation expired on September 7, 1967.

The loan guarantee law was originally enacted in 1957. At that time new aircraft were being developed which it was felt would be more economical and efficient, and better adapted to the needs of the local service carriers than the DC–3 which was then commonly in use. It was apparent, however, that many of the carriers would have found it difficult or impossible to obtain new aircraft without some kind of Government assistance. The Civil Aeronautics Board suggested, therefore, that legislation be enacted which would permit the Government, under appropriate conditions, to assist these air carriers in acquiring new equipment by guaranteeing private loans negotiated by the carriers for the purchase of such aircraft. Legislation to implement these recommendations was enacted on September 7, 1957, as Public Law 85–307. That enactment provided for termination of the Program after five years. An amendment to the measure enacted in 1962 (Public Law 87–820) extended the program to 1967 and placed the responsibility for its administration in the Secretary of Commerce. That responsibility was transferred to the Secretary of Transportation last year when the Department of Transportation Act was enacted.

The benefits of the Act are limited to carriers holding a certificate of public convenience and necessity issued by the CAB designating them for local or feeder service; for metropolitan helicopter service; for service within Alaska, Hawaii, or Puerto Rico; for service between the United States and Alaska or between Florida and the British West Indies.

The Act authorizes the Board to guarantee loans up to $10 million per air carrier. A guarantee may not exceed 90 percent of the face value of the loan and 100 percent of unpaid interest. The loan itself may not exceed either 90 percent of the purchase price or $10 million. Loans must be repaid within 10 years. A guarantee may be made only if the Secretary finds that the air carrier would not otherwise be able to obtain funds for the purchase of aircraft upon reasonable terms and only if the aircraft purchased are needed to improve the service and efficiency of operation of the air carrier. In general, the reasonableness of other terms and conditions of the loan is determined by the Secretary.

During the first five-year period of the program, 12 carriers received guarantees for loans for the purchase of aircraft worth $42 million covering: 33 F–27's, two DC–6's, 14 Convair 240's and 340's, a Boeing 720, three Martin 404's, and 13 helicopters. During the second five years of the program, 4 carriers received

guarantees for loans for the purchase of aircraft worth $13.3 million covering: three DC–9's, four DC–6's, two Hercules 382–B's, and four PC–6A's.

The need for the extension of the program at this time is not as great as the need was for the program initially, or in 1962 when it was last extended, in terms of the number of carriers that will require the assistance of the program or in the number of aircraft loans that are expected to be made in the next 5 years. However, some carriers continue to need the assistance of the program and it is still in the interest of the Government to provide the guarantee to those carriers. The fact that the loan guarantee is no longer needed in the degree of 10 years ago attests to the success of the program in aiding the classes of carriers involved toward a sounder financial position and demonstrates the wisdom of keeping the program in force until it has served its purpose completely by providing assistance to those carriers still in need of it.

That concludes my prepared statement, Mr. Chairman. Now I will be happy to try to answer any questions you may have.

Mr. BAKKE. The Federal Aviation Administration, on behalf of the Department of Transportation, is here to support the provisions of S. 2499, to extend the Aircraft Guarantee Loan Act.

This act has been in existence for 10 years. A total of over 80 aircraft have been purchased under its provisions, some 66 aircraft during the first 5 years of operation under the act, and 15 aircraft during the second 5 years. Sixty-six of the aircraft were of the fixed-wing variety, and 15 were rotary-wing aircraft.

There has been no instance of default. The guarantee fees which have been collected from the lending institutions have more than covered th administrative costs of the program.

We think in the light of the financial uncertainties which face the feeder and helicopter carriers that there is good cause for the extension of this act.

I should be happy, Mr. Chairman, to answer any questions which the committee members may have.

The CHAIRMAN. This is simply an extension of an act which is already in being?

Mr. BAKKE. That is correct.

The CHAIRMAN. No amendments are being proposed?

Mr. BAKKE. The only amendment proposed is to its effective date.

The CHAIRMAN. Are there any questions from the members of the committee of our witness?

Mr. Friedel?

Mr. FRIEDEL. I sponsored H.R. 13047, to extend the act, the same as the Senate bill. I was convinced this was very good, it helped the airlines considerably at no cost to the Government, and in fact there has been considerable revenue since the program has been in effect. I think it is a very good bill, and I would support the Senate bill.

Mr. BROWN. Who is eligible under the act?

Mr. BAKKE. The carriers include the Alaskan carriers, Hawaiian carriers, certain carriers providing service between Florida and the British West Indies, and carriers providing service within Puerto Rico, including service to the Virgin Islands.

They also include the helicopter operations certificated by the Board.

Mr. BROWN. Would helicopter operations between Friendship, Dulles, and National be included?

Mr. BAKKE. If it were certificated by the Civil Aeronautics Board.

I did not mention the local service carriers or feeder carriers who are also eligible.

Mr. BROWN. Are the airlines that serve within a State from the major airports to smaller airports in that State eligible?

I could mention them parochially. In Ohio I think it is TAG Airlines.

Mr. BAKKE. The act specifically identifies feeder-type operations certificated by the Board. Air commuter or third-level carriers such as TAG operate under an exemption from the Board.

They are not certificated as such, and would not be eligible under this legislation.

Mr. BROWN. Is there any thought of broadening the legislation to include such service?

Mr. BAKKE. No, sir; there has been no specific need identified by the carriers concerned. We have been able to recognize no such need at the present time.

The carrier, of course, would achieve eligibility under the act were the Board to issue the appropriate certificate.

Accordingly, our proposal at this time is merely to extend the provisions as they appear.

Mr. DINGELL. Mr. Chairman, since we got into this business of guaranteeing loans, I have always been interested in seeing that the public interest is protected.

Can you tell us what the level of default on these loans has been?

Mr. BAKKE. There has been no default.

Mr. DINGELL. No default at all?

Mr. BAKKE. That is right.

Mr. DINGELL. What regulations do you have to assure that guarantees will not be made where defaults will occur and the Government will own depreciated securities?

Mr. BAKKE. The act itself charges the Secretary with the responsibility of insuring that the equipment for which the loan guarantee is sought is necessary for the improved efficiency of the operation of the carrier.

The Secretary is also charged to coordinate the application for a guarantee with the Civil Aeronautics Board which has the responsibility for economic surveillance over the carriers concerned.

The decision of the Secretary is made after having received the recommendations and findings of the Civil Aeronautics Board.

Mr. DINGELL. Do you have regulations in being to protect public interest in cases of this kind?

In other words, I am asking you not do you just do these things, but what specific regulations do you have to assure that we won't have defaults?

Mr. BAKKE. There is a body of regulations which was developed in the first instance by the Department of Commerce. Part 7 includes the rules applicable to the aircraft loan guarantee program, and the conditions for participation in the program are spelled out in that part.

Mr. DINGELL. Would you submit those to the committee counsel so he may scrutinize them on behalf of the committee?

Mr. BAKKE. I would be happy to.

Mr. STUCKEY. A lot of airlines are leasing their equipment, are they not?

Mr. BAKKE. That is right.

Mr. STUCKEY. Would this be guaranteed loan, also?

Mr. BAKKE. No, sir.

This particular program is to cover the purchase of aircraft by the carriers.

Mr. STUCKEY. In other words, a person purchasing say a DC–9 can turn around and lease it which is being done quite commonly now.

This type of loan would not be guaranteed.

Mr. BAKKE. No, sir, it would not.

Mr. STUCKEY. That is a shame.

The CHAIRMAN. If there are no other questions, thank you very much for coming and giving us the benefit of your views on this legislation.

Mr. Robert C. Lester, Washington attorney, Association of Local Transport Airlines.

I see you have a prepared statement. Would you present it for the record and summarize it?

STATEMENT OF ROBERT C. LESTER ON BEHALF OF JOSEPH P. ADAMS, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, ASSOCIATION OF LOCAL TRANSPORT AIRLINES

Mr. LESTER. Yes, indeed, Mr. Chairman.

I want to express our pleasure at being able to appear here and present our views.

I regret General Adams who worked previously with the committee on prior legislation is unable to be here, but he is out of the country.

I can summarize our views.

A number of carriers would be the beneficiaries of this legislation, carriers in Alaska, Hawaii, continental United States, and Puerto Rico, and they are giving strong support to the legislation.

With that comment I think I can submit the statement for the record in support of the legislation.

If there are any questions, I would be happy to answer them for you.

(Mr. Adams' prepared statement follows:)

STATEMENT OF JOSEPH P. ADAMS, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, ASSOCIATION OF LOCAL TRANSPORT AIRLINES, RELATING TO H.R. 13047

Dear Chairman Staggers and distinguished members of the House Interstate and Foreign Commerce Committee.

It is a pleasure to appear before you in support of H.R. 13047 which I consider one of the most successful Government programs with which I have been associated in my experience with the Government.

This guarantee loan program was first authorized for a five-year period. During that period, through September 7, 1962, 12 carriers received guarantees under the program for loans totalling $42 million. These loans covered the purchase of 33 F–27's, 2 DC–6's, 14 Convair 240's and 340's, a Boeing 720, 3 Martin 404's and 13 helicopters.

In 1962, the program was extended for an additional five years, to September 7, 1967. During that period new loans totalling $13.3 million were guaranteed for four carriers covering the purchase of 3 DC–9's, 4 DC–6's, 2 Hercules 382B's and 4 PC–6A's.

More significantly, the first such guaranteed loan made possible the first acquisition by an ALTA carrier member of modern, jet-powered aircraft and, by a strange coincidence, a second loan to the same company made possible the

first acquisition by an ALTA member carrier of full jet-powered aircraft, the DC–9.

The program has been operated at no cost to the Government, with no individual loan having defaulted during the 10-year period; and, with the small percentage of less than 1% paid to the Government as a carrying charge, the Government has made considerable money on the program to date.

To bring you up to date on the needs of the ALTA members, I shall include here brief excerpted statements from a sampling of the membership.

ALASKA AIRLINES

". . . Alaska is now successfuly operating a Lockheed Hercules cargo schedule and this first commercial usage resulted in Lockheed sales of nine additional commercial versions. Without the guaranteed loans we would be out of business. Respectfully request assistance your good offices in requesting Congressional extension of loan act with new loan limitations of twenty million dollars."

ALOHA AIRLINES

"Aloha Airlines used loan guaranty on two occasions to purchase aircraft. Transition to full jet continues. Financing of future requirements may require guaranteed loan. Urge renewal guaranteed loan extension."

BONANZA AIRLINES (NOW AIR WEST, INC.)

"Aircraft loan guaranty program has been extremely beneficial to Bonanza Air Lines on three occasions in obtaining loan capital with longer maturities and on more favorable terms. All three loans presently oustanding. Future programs for jet aircraft will require even longer term loan capital. Unless loan guaranty program is extended, anticipate difficulty in securing capital with adequate maturity and reasonable rate terms."

CARIBAIR

"The mere existence of the guaranteed loan act and knowledge to banks that we are eligible has helped Caribair in its financing. Now financing is more difficult and we have need for additional equipment. Caribair has not been a beneficiary in the past but recommends that the act be extended under more liberal terms."

FRONTIER AIRLINES

". . . while Frontier is not presently participating in such a loan arrangement, I do feel that this act should be continued in the interest of not only those carriers currently finding it helpful and/or necessary to their equipment financing but also so that such financing might be available should present economic conditions require its use in future years."

"This act . . . has served a most useful purpose. If my information is correct that continuance will impose no cost burden on the taxpayers or government, it is my humble suggestion, as President of Frontier Airlines, that Congress pass H.R. 13047 and assure availability of such loans for another five years."

OZARK AIR LINES

"Ozark supports extension of guaranteed loan program. We used program for loans in 1959 and 1961 and believe it beneficial to have program available for possible future use."

PACIFIC AIR LINES (NOW AIR WEST, INC.)

"Pacific Air Lines urges extension of the Guaranteed Loan Act as unanimously endorsed by the Association of Local Transport Airlines. Pacific has not heretofore utilized that legislation but its availability in the years ahead could well become a vital factor in some of the local airlines' re-equipment programs and would therefore be a matter of prime public interest. We also believe that the very existence of the law has been and will continue to be beneficial in establishing more reasonable lending terms. Thus even those carriers not directly using the guaranty have been benefited. This legislative support for airline fleet mod-

ernization has aided and encouraged better, more efficient and safer public service."

Today we are experiencing an unusual seesaw in availability of loan money, from tight money to the point of unavailability. For this reason and in the public interest, which is best promoted by the ability of these small airlines to borrow and buy modern, safe, more efficient jet aircraft, I respectfully recommend and urge the passage of H.R. 13047.

Thank you for your consideration and concern for the small business airlines, members of the Association of Local Transport Airlines (ALTA).

The CHAIRMAN. Your organization is in accord with the intent of the legislation?

Mr. LESTER. Entirely; yes, sir.

The CHAIRMAN. Are there any questions by members of the committee?

If not, we thank you for coming. Please do tell Mr. Adams we are sorry he was unable to be here with us today. We have enjoyed working with him in the past on the committee.

Mr. LESTER. I will pass that on to him, Mr. Chairman.

Thank you.

The CHAIRMAN. This concludes our witnesses for these three bills today.

Thank you all for being here.

The committee will stand adjourned.

(The following material was submitted for the record:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 18, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This responds to your request for information concerning any additional expense to the Government which may be entailed by the enactment of S. 913 and S. 2687, upon which I testified before the Committee on September 17, 1968.

In the case of S. 913, we believe that any additional costs incurred by the enactment of this bill will be minor since the provisions of this bill will be administered by the Commission in conjunction with its administration of present section 20c of the Interstate Commerce Act which covers the filing of similar documents for railroads. Any additional expense that may be entailed by the enactment of S. 913 will be more than offset by the fees which, as indicated in my testimony on this bill, will be imposed for the recordation of the documents covered by S. 913.

In the case of S. 2687, with one exception, we do not anticipate that any additional expense will be involved in the changeover in our judicial review procedures from district courts to the courts of appeals made by this bill.

The one exception has to do with the requirement imposed by 28 U.S.C. § 2112, which is incorporated by reference in this bill, that the Commission file with the reviewing court the original or a certified copy of record of the proceedings before the Commission. Under present practice in the district courts this expense falls on private litigants. Although this change may impose some additional burden on the Commission, it is consistent with the present practice and procedure for the review of all other Federal agency orders. Since under present practice the courts of appeals can permit the filing of a certified list of contents of the record for review in lieu of the record itself, it is highly possible that any additional expense entailed by this change in existing practice will be held to a minimum. While we have not been able to project as yet the amount of increased expenses, if any, that may result from this change, we are confident that it can be met within our existing budget limitations.

I hope this information will be of assistance to your Committee.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., September 13, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: On behalf of the Board of Directors of the Transportation Association of America, I should like to express TAA's strong support of S. 913, as passed by the Senate. This bill, on which hearings are to be held by your Committee on September 17, would amend Part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and to amend the Bankruptcy Act to provide for the exemption of such agreements from Section 116, Chapter 10 (II USC 516).

For the record, TAA is a national transportation policy organization composed of transport interests of all types who work collectively to develop sound national policies aimed at the creation of the strongest possible transportation system under private enterprise. Policy positions, prior to final vote by the 115-member TAA Board of Directors, are first studied carefully by eight permanent advisory Panels composed of approximately 350 leaders from user, investor, air, freight forwarder, highway, oil pipeline, rail, and water carrier fields respectively. All eight Panels advised the Board, prior to approval of a policy position on legislation such as incorporated into S. 913, that they either support or do not oppose it.

Passage of S. 913 would permit the parties to a lease or a conditional sales contract to agree to make proceedings under Section 116, Chapter 10 of the Bankruptcy Act inapplicable insofar as they affect title and the right to possess vessels. Thus, in the event of default, the right of these creditors to take possession would be preserved. Furthermore, by providing for the recordation of these security agreements at the Interstate Commerce Commission, information on these instruments will be available at one central location and thus afford creditors protection from unknown liens on equipment.

We believe that legislation under this bill would permit water carriers to provide shippers, consumers, and communities with more modern and efficient equipment through equipment trust financing. The reason for this is the greater security afforded conditional sales vendors and lessors which would result in an increased availability of capital and at a lower interest rate than would be demanded under present conditions. The existence of similar legislation for rail and air carriers has enabled those carriers to obtain financing from sources which may not have been otherwise available at relatively favorable interest rates.

The proposed legislation would not adversely affect the financial well being of either a water carrier or a financial institution, as it is strictly permissive and can only be utilized where both parties mutually desire to take advantage of this particular type of financing. On the other hand, it will permit the domestic water carrier industry to continue to modernize its fleet for service to the public.

For the reasons stated above, we believe that passage of S. 913 would be in the public interest and respectfully urge that your Committee take favorable action on this legislation at the earliest possible date.

We request that this letter be made a part of the official transcript of the hearings on S. 913.

Sincerely,

HAROLD HAMMOND, *President.*

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Washington, D.C., September 17, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

MY DEAR CHAIRMAN STAGGERS: The National Industrial Traffic League desires to support S. 2687, a bill to amend Section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission and for other purposes.

The National Industrial Traffic League is a voluntary organization of shippers, groups and associations of shippers, chambers of commerce, and boards of

trade. The League's membership includes shippers and receivers of all types—small, medium and large—which are located throughout the United States. The League has previously appeared before your committee and other congressional committees and presented its views on pending legislation of particular interest to its membership.

S. 2687 was introduced November 22, 1967, upon the request of the Interstate Commerce Commission. Similar legislation has been requested by the I.C.C. in other sessions of Congress. However, final congressional action was never completed. The main objective of S. 2687 would be to provide for judicial review of I.C.C. orders by the U.S. Courts of Appeal. Presently orders of the Interstate Commerce Commission are reviewed by three-judge courts specially constituted from the ranks of the District Courts and the U.S. Courts of Appeal. The changes proposed in S. 2687 would be beneficial to members of The National Industrial Traffic League and the shipping public at large in that it would enable them to avoid the extraordinary and unwieldly procedure presently in existence. Such procedure does not fit in with the normal business of the District Courts and the Courts of Appeal. Additionally, the present procedure involves difficulty and delay in convening special courts and is not conducive to efficient administration. On the other hand, the several U.S. Courts of Appeal are intimately familiar with the basic process of judicial review.

In making the above observations, the League wishes to make it clear that it is in no sense being critical of the substantive decisions of the present three-judge statutory U.S. District Courts.

The National Industrial Traffic League's policy on judicial review provides: "The Courts of Appeal should be given exclusive jurisdiction to review Commission orders." This policy has been in effect since 1961.

Uniformity is an additional important benefit which would result from enactment of S. 2687. Orders of the other federal regulatory agencies including the Federal Maritime Commission and the Civil Aeronautics Board are presently subject to review by the U.S. Courts of Appeal. The Courts of Appeal also have jurisdiction under the prevailing statutes over the other federal regulatory agencies. It is the League's view that uniformity on this subject would be most desirable. According exclusive jurisdiction to the Courts of Appeal initially to review orders of the Interstate Commerce Commission would permit adequate and reasonably expeditions review and would eliminate the unwieldly and less efficient procedure now provided.

There are several other provisions of S. 2687 which will be beneficial to shippers. These include: (1) naming the Commission as respondent in the proceeding; (2) serving notice of appeal on all parties; (3) limiting the time for serving the notice of appeal; (4) providing for combining all appeals in one court; (5) preserving the right of intervention; and (6) empowering the court to stay the order under review upon reasonable notice and pending hearing pursuant to the rules of the court.

On September 5, S. 2687 was passed by the Senate with committee amendments. One amendment would authorize the court for good cause shown, to extend the time for filing the review petition for an additional period not to exceed 60 days. The League is in accord with this amendment as well as with the second amendment correcting a minor stylistic error.

In behalf of The National Industrial Traffic League, I appreciate this opportunity to present the views of the League in support of S. 2687 and urge that the legislation be favorably considered by your committee.

Very truly yours,

SAM HALL FLINT,
Chairman, Legislative Committee.

STATEMENT OF BERNARD RANE, ASSISTANT CORPORATION COUNSEL, CITY OF CHICAGO, ON S. 2687

Mr. Chairman, members of the committee, my name is Bernard Rane. I am Assistant Corporation Counsel of the City of Chicago with offices at 511 City Hall Building, Chicago, Ill. 60602. This statement is submitted by the City of Chicago in opposition to S. 2687 in its present form as passed by the Senate and introduced in the House on September 9, 1968.

S. 2687 would transfer judicial review of orders of the Interstate Commerce Commission ("Commission") from the U.S. district courts (which have had

jurisdiction since the year 1913) to the U.S. court of appeals; ultimate review by the U.S. Supreme Court would be changed from the present direct appeal from the three-judge district courts, in favor of a petition for certiorari to the high court. However, as part of the transfer of judicial review jurisdiction, S. 2687 contains many new provisions which would sharply curtail the right to effective judicial review.

The proposed legislation is in the form of an amendment to section 17 of the Interstate Commerce Act, plus the repeal of sections 2321–25, inclusive, of Title 28 of the United States Code. The legislation is sponsored by the Commission's Office of General Counsel.

Our opposition to the proposed legislation, in its present form arises from the participation of the City of Chicago in numerous passenger train discontinuance proceedings under section 13a(1) of the Interstate Commerce Act, 49 U.S.C. 13a(1).[1] Our objections run to the fact that S. 2687 would cut off important substantive and procedural rights presently available to City of Chicago, and to other communities and to the public generally, in seeking effective judicial review of unlawful agency action in approving a given passenger train discontinuance. Enactment of S. 2687 would virtually preclude judicial review, both from the standpoint of effectiveness as well as substantially increasing the cost of filing law suits. We take no position as to whether jurisdiction to review Commission decisions ultimately should be vested in the court of appeals. We do believe, however, that substantial amendments are necessary and that no urgency exists to rush S. 2687 through the Congress at this time.

Chicago is the leading railroad center of the country. The railroad industry plays an important role in the economy of the area. Chicago is the leading interchange point for passengers traveling over more than one railroad for their journey. As the nation's leading convention city, Chicago is anxious to have adequate passenger transportation facilities available by all modes of transportation so as to provide ready access to and from all parts of the country. In accordance with assuring this necessary passenger service, City of Chicago, through its corporation counsel, reviews all railroad passenger discontinuance proceedings instituted at the Commission which might affect Chicago and, where the facts warrant, participates in the proceeding.

THE PRESENT PROCEDURE FOR JUDICIAL REVIEW OF PASSENGER TRAIN DISCONTINUANCES

The present procedure for judicial review of railroad passenger train discontinuances can best be described by a recent illustration. City of Chicago was a participant to the Commission proceeding involving the proposed discontinuance of the "Hummingbird" trains operated by Louisville & Nashville Railroad Company ("L&N").[2] The "Hummingbird" formerly operated with the "Georgian" trains, the latter already being the subject of judicial review.[3] Discontinuance of the "Hummingbird" was placed under investigation by the Commission on April 24, 1968 and operation required pending hearing and decision in the investigation, but not for a longer period than the four month period provided by statute. The four-month expiration date was September 7, 1968.

On Friday, September 6, at 9:30 AM, Division 3 of the Commission released its decision and report finding that continued operation of the "Hummingbird" is not required by public convenience and necessity and would unduly burden interstate commerce. It is the practice of the agency to so release its decision on the final day before expiration of the four month statutory period without prior notice to the protesting parties.

Upon review of the report, it was concluded to seek immediate court action. This "review" consisted of telephone conversations because, of course, copies of the 16-page report with 4 pages of attached appendices were available only in Washington, D.C.

Emergency court action was required, because the discontinuance could not otherwise be restrained since it would become effective the next day (Saturday). An attorney was dispatched from Washington, D.C. to Chicago by air with copies of the Commission's decision—the complaint had to be drawn aloft. Simultane-

---

[1] Enacted as part of Transportation Act of 1958, 72 Stat. 571.

[2] Finance Docket No. 25047, Louisville & Nashville Railroad Company Discontinuance of Trains Nos. 6 and 7 Between New Orleans, La., and Cincinnati, Ohio.

[3] No. 68 C 956, City of Chicago v. United States, N.D. Ill. E.D.

ously, an attorney for the Tennessee Public Service Commission departed from Nashville, Tenn. for Chicago. Witnesses had to be secured immediately for an emergency court hearing on a temporary restraining order that afternoon. Counsel for the railroad (headquartered at Louisville, Ky.), the United States and the Commission had to be notified immediately.

We were ready to proceed at 2 PM at the U.S. District Court in Chicago. However, the judge previously assigned to hear procedural matters in the suit already filed in the companion "Georgian" case [4] was engaged in jury trial, necessitating hearing before another judge who happened to be available that Friday afternoon.[5] The restraining order was entered at about 4 PM.

These events are described to illustrate the difficulties present even under the present set up, which difficulties would be greatly magnified under S. 2687; indeed, it is my opinion that judicial review would be impossible in virtually all instances.

Once the temporary restraining order is issued, it is the usual practice to file a petition for reconsideration to the Commission. This is required in most discontinuance cases since the decision is made by Division 3 of the Commission, and does not constitute a "final order" under the Commission's rules.[6] The temporary restraining order would be continued in effect (subject to review by the three-judge panel) pending the Commission's disposition of petitions for reconsideration. This period usually exceeds 60 days because protestants have 30 days to file their petitions, the carrier has 20 days to reply thereto, and the Commission itself must thereupon re-evaluate the matter. Upon issuance of the order on reconsideration, assuming the Commission affirms the initial decision of Division 3, the court would next consider whether an interlocutory injunction should issue.

The burden is usually upon plaintiffs to the action to see to it that the court is furnished with a certified copy of the transcript made at the Commission. This is of very little expense since one or more of the protestants has usually ordered the daily hearing transcripts for its own use in preparing briefs to Division 3.

In short, to seek judicial review of an I.C.C. train-off decision, which would be impaired if the trains are discontinued pending such review, requires a high degree of coordination and cooperation by all counsel. Judicial review is not expensive.

THE PROPOSED PROCEDURE

S. 2687 would drastically modify the present procedure. Indeed, it is doubtful that the public's right to judicial review could be maintained at all.

1. *Final order.*—Section 2321 of Title 28, which would be repealed, presently authorizes suits "to enforce, enjoin, annul or set aside in whole or in part any *order* of the Interstate Commerce Commission". Section 17(9) of the Interstate Commerce Act provides that a suit to set aside a *decision, order or requirement* may be made under the same provisions as are applicable to suits to set aside orders.

The new sections 17(10)(a) and 17(10)(c)(i) would not carry over the *order* from 28 U.S.C. 2321 into the proposed new section 17(10) of the Interstate Commerce Act. Rather, the U.S. courts of appeals would have exclusive jurisdiction to "enjoin, set aside, annul or suspend, in whole or in part, all *final orders* of the Interstate Commerce Commission . . ." The proposed change from *order* in the present statute to *final order* might very well be construed to preclude the present practice of instituting actions in train-off cases, before the final order is issued upon reconsideration, in order to save the train and not to prejudice the Commission in its deliberations on reconsideration. A three-judge court for the Middle District of Pennsylvania gave considerable attention to this question. *City of Williamsport* v. *United States*, 273 F. Supp. 899 (M.D. Pa. 1967).

2. *Contents of review petition.*—The new section 17(10)(c)(i) would make it a statutory requirement that petitions for review of I.C.C. matters filed in the courts of appeals must contain a copy of the "order, report or decision of the Commission." Apart from the finality requirement, this might prove impracticable in a passenger discontinuance case because the time of release in Washing-

---

[4] See footnote 3. The action was filed May 27, 1968.

[5] The case is docketed as No. 68 C 1666, Tennessee Public Service Commission, et al. v. United States. N.D. Ill. E.D., filed September 6, 1968.

[6] 49 CFR 1100.101(a)(2).

ton, D.C. simply would not allow the Commission's report to reach distant cities in time. Moreover, the Commission on occasion has not been able to release its report authorizing discontinuance prior to the expiration date provided by the train-off statute. For example, in F.D. No. 2400, *Boston and Maine Corp. Discontinuance of Trains Nos. 75, 21, 20 and 76 Between Springfield, Mass., and White River Junction, Vt.*, 328 I.C.C. 224 (1966), the Commission merely released an order on July 6, 1966. The report was not served until July 25, 1966.[7] A telephone call to Washington, D.C., to inquire as to the order was all the District Court at Montpelier, Vt. had to go on in issuing a temporary restraining order on July 6, 1966, to prevent discontinuance the very next day. *Public Service Board of State of Vermont* v. *United States* (C.A. No. 4611, D. Vt.)

It may very will be that a city as large as Chicago will at sometime need the telephone technique which S. 2687 would bar by statute.

3. *Intervention.*—S. 2687 would restrict the present right of communities to intervene in judicial review proceedings. At present section 2323 of Title 28, which would be repealed, permits any party in interest to the proceeding before the Commission to have an absolute and unqualified right to intervene in court. In repealing section 2323, the proposed section 17(10)(d) of the Interstate Commerce Act would qualify this absolute right of intervention by adding, "whose interests will be affected if an order of the Commission is or is not enjoined. . . ." This may create harassment by the Commission or other parties.[8]

4. *Temporary restraining order.*—The new section 17(10)(f) would drastically revise and sharply curtail the present right of communities to seek a restraining order in obtaining effective judicial review in passenger discontinuance cases.

A. *Security.*—The public parties to judicial review of train discontinuances presently are not required to post security because Rule 65(e) of the Federal Rules of Civil Procedure expressly exempts, by its terms, actions brought in three-judge district courts under section 2284 of Title 28. The posting of security would effectively destroy judicial review in discontinuance cases. The two district judges at Chicago who have thus far issued temporary restraining orders in train-off cases have both declined to require posting of security. See also *City of Williamsport* v. *United States*, 237 F. Supp. 899, 903–4 (M.D. Pa. 1967). In removing I.C.C. orders from section 2284, there is a serious question as to whether the exemption from security will continue to apply.

B. *Hearing.*—S. 2687 would impose a statutory requirement that a hearing be held in order to secure a temporary restraining order, whereas a hearing is now discretionary with the district court judge. The statutory requirement for a hearing, which would seem to imply adequate notice to the adversary to attend the hearing, would be impracticable and impossible in many situations. The Commission's custom of releasing its discontinuance orders at the latest possible time, will simply prohibit a hearing in the conventional sense.

C. *Two judges.*—S. 2687 would require that at least two judges concur in the issuance of a temporary restraining order, whereas at present only one district judge is required. It is not always easy to reach one judge to issue out a restraining order. The requirement that a hearing be held before two judges would be especially burdensome, if possible at all. I wish to impress upon the Committee that we have no advance warning as to when the Commission will issue a discontinuance report. The hour of 3 PM on Fridays is a favorite time for the Commission in passenger discontinuance cases.

D. *Terms of restraining order.*—S. 2687 would transfer section 2324 of Title 28 over into 49 U.S.C. 17(10)(f), but would tighten up the requirement for a restraining order by addition of the word "discretion". Further, the duration of the restraining order would be restricted to a maximum of 60 days, whereas no maximum period is now specified. The proposed restriction would impair judicial review of train-off cases since the Commission is not ordinarily expected to issue a final order within 60 days from the initial decision of its Division 3 authorizing discontinuance. Since an interlocutory injunction would not ordinarily issue until after a final order of the Commission, the right of communities and the public to effective judicial review would be impaired if not destroyed.

---

[7] Reported on reconsideration, *Boston & Maine Corp. Discontinuance of Trains*, 328 I.C.C. 594 (1967).

[8] See problems of Pottsville, Pa. in intervening in railroad merger case. *Borough of Moosic* v. *United States*, 272 F. Supp. 513, 518 (M.D. Pa. 1967), vac. and rem. *Penn-Central Merger Cases*, 389 U.S. 486, 506–7, 531 (1968).

E. *Cost of litigation.*—S. 2687, by transfering jurisdiction to the courts of appeals, would substantially increase the cost of seeking judicial review. This is because, as the Commission's Chairman testified, the petitioners usually must foot the bill for printing a joint appendix for the court of appeals. The joint appendix consists of relevant portions of the Commission's proceedings, and would be a heavy if not prohibitive expense. At present under the three-judge district court procedure, City of Chicago need only have its copy of the transcript of the Commission proceedings certified by the agency itself. Our only out-of-pocket expense would be the stenographers minutes of the hearings, which may have been ordered previously anyway for use in preparing briefs to the Commission. But even where the hearing transcripts were not purchased for use in the Commission proceedings, our maximum expense for securing the volumes for Commission certification usually would run about $500.00.

Printing of the agency hearings would be a much greater additional expense—running into at least several thousand dollars per court case. This would limit the number of judicial review proceedings in which City of Chicago could participate.

THERE IS NO URGENCY REQUIRING IMMEDIATE ENACTMENT OF S. 2687

This is not the first attempt to change the three-judge district court review of I.C.C. orders. Similar proposals of the Judicial Conference of the United States have been unsuccessful. See: H.R. 5488 (81st Cong., 1949); H.R. 1468 and H. Rep. 1619 (80th Cong., 1948); Hearings before Subcommittee of House Committee on Judiciary on H.R. 1468, 1470 and 2271 (80th Cong.) and H.R. 2915 and 2916 (81st Cong.). An identical recommendation was made by the Administrative Conference of the United States in December 1961.

Why the rush to enact this legislation in the current session of Congress? The Commission's justification is based upon the asserted complexity of multiple suits challenging the same I.C.C. order in current railroad unification approvals, and also mentions pending suits challenging per diem charges between railroads for the use of equipment. Enactment of S. 2687 would provide that the first party to win the race to the courthouse to attack a Commission order would be the winner, to which court all subsequent suits must be transferred.

The lack of urgency for this legislation is best indicated by examining the two principal situations advanced by the Commission in support of S. 2687. These are the *Northern Lines* merger case, involving the Commission-approved merger of the Great Northern, Northern Pacific, Burlington and S. P. & S. railroads, and the *Penn-Central* merger case, involving the merger of the Pennsylvania and New York Central railroads.

1. *Northern Lines.* Judicial review of the Commission's approval was instituted first by Auburn, Wash. in Washington, then by security holders in New York, and finally by the Department of Justice in Washington, D.C. The first two plaintiffs subsequently agreed to join the United States suit filed last in Washington, D.C. However, under S. 2687, all parties would have deferred to Auburn, Wash. (1960 Pop. 11,933) since its suit was filed first. Certainly the Commission, with its counsel located in the nation's capital, should not complain of having its merger order heard here when the various plaintiffs, employing the flexibility provided by the three-judge court procedure, selected the most convenient forum.

2. *Penn-Central merger.*—Suits were initially filed by all parties in the Southern District of New York in September, 1966. The decision of the district court was reversed by the Supreme Court and remanded to the Commission. *Erie-Lackawanna R. Co.* v. *United States*, 259 F. Supp. 964 (1967), rev. sub. nom. *Baltimore & O.R. Co.* v. *United States*, 386 U.S. 372 (1967). Thereafter the Commission issued a supplemental report on reconsideration and further hearing. 330 I.C.C. 328. On the same day the Commission, by an entirely separate report and order, granted the petitions of three railroads to be included in the Norfolk & Western Railway Company, known as the *N&W Inclusion* case. 330 I.C.C. 780.

N&W promptly instituted, the very next day, its suit at Roanoke, Va. to set aside the inclusion order. All of the railroad parties then took the *Penn-Central* order back to the original New York court. Three Pennsylvania communities and a Pennsylvania stockholder thereupon brought a consolidated action against both orders at Scranton, Pa. By means of staying the Virginia *N&W Inclusion* proceeding and joining N&W as an involuntary plaintiff to a New York action

brought by another railroad, the New York court heard the Penn-Central and N&W Inclusion cases, although separately. The Pennsylvania parties declined to go to New York, and sought mandamus. These matters are discussed in *Erie-Lackawanna Railroad Company* v. *United States*, 279 F. Supp. 303, et seq. (1967) and *Borough of Moosic* v. *United States*, 272 F. Supp. 513 (M.D. Pa. 1967). The Supreme Court decided all matters on January 15, 1968. *Penn-Central Merger Cases*, 389 U.S. 486.

What would have happened under S. 2687? The Penn Central merger order would have been litigated in New York, the N&W Inclusion order in Virginia, and the Pennsylvania parties splitting their cause of action by intervening in both New York and in Virginia. Certainly, this result is not urgently needed by the Commission.

I direct attention to the opinions of Justice Fortas for the majority and Justice Douglas, dissenting in part, both suggesting to the Commission that the nationwide service of process provisions could be used to achieve the objective of concentrating all litigation in a single forum. *Penn-Central Merger Cases*, 389 U.S. 486, 504, 545 fn. 11. Yet the Commission would repeal 28 U.S.C. 2321 in favor of S. 2786, having the first suit filed to be governing, although retaining the service of process provision in section 17(10)(h) of the Interstate Commerce Act.

CONCLUSION

I appreciate the opportunity extended to submit this statement in opposition to S. 2687 in its present form. The Chairman indicated at the September 17, 1968 hearing that a Committee staff member will be assigned to this bill. City of Chicago stands ready to assist the Committee and its staff.

(Whereupon, at 11:30 a.m., the hearing was adjourned.)

○