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PASSENGER TRAIN SERVICE

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETIETH CONGRESS
FIRST SESSION
ON
S. 1175, S. 512, S. 1685, S. Con. Res. 25,
and S.J. Res. 52
TO AMEND SECTION 13a OF THE INTERSTATE COMMERCE
ACT, AND FOR OTHER PURPOSES

Part 1

MAY 24, 25, 1967

Serial No. 90-17

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AMENDMENTS TO SECTION 13a OF THE INTERSTATE COMMERCE ACT

WEDNESDAY, MAY 24, 1967

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

The subcommittee met at 10:02 a.m., in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

Senator LAUSCHE. The meeting will come to order.

This hearing is to be held by the Surface Transportation Subcommittee of the Committee on Commerce on S. 1175 introduced at the request of the Interstate Commerce Commission.

S. 1175 proposes to amend section 13a of the Interstate Commerce Act in a number of respects for the stated purposes of correcting deficiencies which have come to the attention of the Commission since this provision was enacted in 1958.

The specific purpose of the bill is to correct deficiencies which have come to the attention of the Commission in dealing with issues that come before the Commission respecting the discontinuance of passenger train service by railroads.

There will be inserted in the record with the unanimous consent of the members of the committee at this point a copy of the bill S. 1175, the Commission's statement of justification for this bill, and the reports of the Comptroller General and Attorney General submitted to the committee by these several agencies.

(The documents referred to follow:)

[S. 1175, 90th Cong., 1st sess.]

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

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

"(1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operated in service between a point in one State or a foreign country and a point in any other State or in the District of Columbia, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot, or other facility served thereby, notice at least forty days in advance of any such proposed discontinuance or change. The

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

carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said forty-day-notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. When an investigation by the Commission is instituted under this section, the carrier or carriers filing such notice shall have the burden of establishing that public convenience and necessity permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will unduly burden interstate or foreign commerce. Upon the institution of such investigation, the Commission, by its investigation order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than seven months beyond the date when such discontinuance or change would otherwise have become effective: *Provided*, That the Commission may further require such train or ferry to be continued in operation or service, in whole or in part, for a period of no longer than two months beyond the date specified in its investigation order, pending completion of the investigation or the Commission's determination of any petition or petitions for reconsideration of its decision and order in such investigation. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that public convenience and necessity do not permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service, in whole or in part, subject to such terms, conditions, and modifications pertaining to operations or service as it shall find to be reasonable and just, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall not longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

"(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority, in whole or in part, subject to such terms, conditions, and modifications pertaining to operations or service as it shall find to be reasonable and just, after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records,

and facilities of the authorities in such State in the performance of its functions under this paragraph.

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

JUSTIFICATION

In the years since section 13a was enacted in 1958, it has become evident that the statute contains deficiencies and requires amendment. This amendment is proposed as the result of our experience in more than 200 train-discontinuance proceedings, and the criticism voiced by members of Congress, State officials, and others concerned with those proceedings.

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

Added to that are the announcements made in the press that various railroads intend to continue the pursuit of section 13a relief from certain passenger obligations. Some roads apparently contemplate major revisions in their passenger systems.

While present procedures are substantially adequate for most discontinuance cases, we feel they would be strained by certain kinds of important or exceptional cases. In such cases, particularly where the train or trains serve an extensive route with several large cities or where a system of trains is involved, a period of more than four months could well be needed in affording the people the full opportunity for hearing to which we believe they are entitled. We believe that, in the more important cases, state agencies and interested members of the public would need more time to prepare for hearing and to analyze the carrier proposals—some of which are both voluminous and complex. More time is needed in the hearings themselves, in analyzing the record, digesting the pleadings, and preparing our decisional report.

Under our proposal the Commission would be empowered to require the continuance of service unchanged for a period up to seven months rather than four. While many cases in the future, as in the past, can certainly be disposed of within four months, we want to be prepared for those cases that require additional time. Our bill also provides for an additional period up to two months, if needed, for completing the investigation and dealing with administrative appeals.

To further facilitate the investigation, the burden of proof, under the bill, is specifically assigned to the carrier, since that is the party possessing most of the material data. This assignment, in addition, would impel the carrier to make a more complete initial presentation, leaving less supplementation to be done after the hearings begin.

To better deal with situations where practical or temporary solutions might lie along lines other than a mere approval or denial of the carrier's proposal, we are requesting authority to render decisions on a conditional basis, i.e., contingent upon modifications in factors affecting service or operations. This would open up avenues thus far untried toward arresting the decline of the passenger train.

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

Commission which is determinative of a discontinuance proposal in the same manner now available to the carriers. All decisions of the Commission would be appealable except decisions not to investigate a proposed discontinuance.

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

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

[Omit the part in black brackets and insert the part printed in italic]

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

"(1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry ~~operating from~~ *operated in service between* a point in one State ~~[to]~~ *or a foreign country and* a point in any other State or in the District of Columbia, ~~[or from a point in the District of Columbia to a point in any State.]~~ are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least ~~[thirty]~~ *forty* days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said ~~[thirty]~~ *forty* days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. *When an investigation by the Commission is instituted under this section, the carrier or carriers filing such notice shall have the burden of establishing that public convenience and necessity permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will unduly burden interstate or foreign commerce.* Upon the institution of such investigation, the Commission, by its investigation order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than ~~[four]~~ *seven* months beyond the date when such discontinuance or change would otherwise have become effective; *Provided, That the Commission may further require such train or ferry to be continued in operation or service, in whole or in part, for a period of no longer than two months beyond the date specified in its investigation order, pending completion of the investigation or the Commission's determination of any petition or petitions for reconsideration of its decision and order in such investigation.* If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that ~~[the operation or service of such train or ferry is required by]~~ public convenience and necessity *do not permit the proposed discontinuance or change, in whole or in part and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will not unduly burden interstate or foreign commerce,* the Commission may by order require the continuance or restoration of operation or service ~~[of such train or ferry],~~ in whole or in part, *subject to such terms, conditions, and modifications pertaining to operations or service as it shall find to be reasonable and just,* for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continu-

ance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

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

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 16, 1967.

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

DEAR MR. CHAIRMAN: Your letter of March 6, 1967, transmitted a copy of S. 1175 entitled "A bill to amend section 13a of the Interstate Commerce Act, and for other purposes," and requested our comments thereon.

Section 13a was added to the Interstate Commerce Act in 1958 (Pub. L. 85-625, 72 Stat. 568, 571) at the instigation of rail carriers which urged that the several states, by denial or by refusal to act, prevented the cessation of passenger train operations and ferries no longer required or used by the public. It provides a method and procedures to make to make it possible for carriers by railroad subject to the Interstate Commerce Act to discontinue or change, in whole or in part, the interstate or intrastate operation or service of trains or ferries operated by them, notwithstanding otherwise applicable state laws.

We have no special information as to the necessity for or desirability of the changes in section 13a proposed by S. 1175.

If enacted, the proposed amendments to section 13a of the Interstate Commerce Act would not materially affect the work of the General Accounting Office. As part of a plan which is designed to facilitate the transportation of people in our urbanized society, the proposed changes concern matters of congressional policy. We therefore make no recommendation as to the action to be taken by your committee on S. 1175.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 11, 1967.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1175, a bill "To amend section 13a of the Interstate Commerce Act, and for other purposes."

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Attorney General.

Senator LAUSCHE. The first witness this morning is William H. Tucker, Chairman of the Interstate Commerce Commission.

Mr. Tucker, you will proceed.

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, WASHINGTON, D.C.; ACCOMPANIED BY FRITZ KAHN, ASSOCIATE GENERAL COUNSEL; THEODORE FORBES, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS; AND ROBERT CALHOUN, LEGISLATIVE COUNSEL

Mr. TUCKER. Good morning, Mr. Chairman.

My name is William H. Tucker. I am Chairman of the Interstate Commerce Commission and have been Chairman since January 1 of this year.

I have with me assisting me, Mr. Chairman, Mr. Forbes on my right, Assistant Director of our Bureau of Proceedings; Mr. Fritz Kahn on my left, Associate General Counsel, who appeared last August in a similar matter; and Mr. Calhoun, our Legislative Counsel.

I have a 24-page prepared statement, Mr. Chairman, which I would be very happy to insert in the record and then summarize it if the chairman desires.

Senator LAUSCHE. Yes.

Your statement will be fully transcribed into the record.

Mr. TUCKER. Mr. Chairman, on behalf of the Commission, I want to thank you and the members of the subcommittee for this opportunity to express our views on S. 1175, which implements a legislative recommendation of the Commission transmitted to Congress on March 2, 1967, and is designed to give the Commission more time and improve procedures for dealing with railroad passenger train discontinuances than are afforded by the present law.

The present law, sections 13a(1) and 13a(2) of the Interstate Commerce Act, was enacted as a part of the Transportation Act of 1958, which, in turn, was a comprehensive program designed in part to alleviate the financial problems of the railroads.

Prior to the enactment of this legislation, jurisdiction over passenger train operations and service discontinuance was entirely a matter of State law. The difficulties experienced by the railroads in discontinuing financially unprofitable services under such laws in large part prompted the passage of the present section 13a.

Since the enactment of section 13a, the Commission has considered 239 passenger train discontinuance proposals; 194 of these arose under

section 13a(1), dealing with interstate train service, while 45 arose under section 13a(2), which covers passenger service operated solely within a single State.

Of these proposals, the Commission has permitted the discontinuance to take effect in 125 cases involving 476 trains under 13a(1) and has required continuance of service in 31 proceedings involving 349 trains. Under section 13a(2), we have authorized 331 trains to be discontinued, while requiring 37 trains to be continued. For the information of the subcommittee, we have prepared a supplemental detailed breakdown of this summary, showing the results of each section 13a proceeding on an individual basis, through May 15, 1967, which I would like to submit for the record at this time.

Although this exhibit provides a good indication of the decline in railroad passenger service, it does not reflect the full magnitude of this decline. Since under section 13a(1) the carriers have the option of filing a discontinuance notice with either the States or the Commission, it does not reflect those interstate trains which may have been discontinued under State law.

Likewise, under section 13a(2), dealing with intrastate service, the Commission's authority is limited to those cases in which the State authorities have not approved the carrier's request for discontinuance and the carrier appeals the action of the State agency. We therefore have no precise estimate as to how many intrastate trains have been discontinued over and above those authorized by us under section 13a(2).

A somewhat more meaningful picture of the effects of these discontinuances may be obtained by examining the amount of service which is still available today. For the information of the subcommittee, we prepared a summary study of the intercity through-passenger service that presently exists by carriers between a number of the Nation's largest cities and metropolitan areas, which I would like to submit for the record at this time. Although this study is limited in that it includes neither commutation service nor other strictly local service, an indication of the quality of service available, nor the availability of connecting service requiring a change of trains, we believe that this summary does clearly show the serious degree to which passenger service has declined in recent years to its present level.

For example, although the heavily populated Northeast corridor between Boston and Washington is now served by some 26 daily trains, in the corridor reaching west through Cleveland, Detroit to Chicago, through-passenger service is much more limited.

From New York to Detroit, only one through train a day is now available; to Cleveland, only four; and to Chicago itself, a maximum of 11.

Not shown at all in this study is the present complete lack of through service from points in the East and South to points in the West which formerly existed in some quantity. This study does not take into account a number of proceedings currently pending under section 13a(1), which would further reduce this already limited number of trains.

Despite these extensive reductions in service, many of the problems which prompted the enactment of section 13a are still with us. On intercity rail passenger service, patronage continues to decline, even though the total volume of intercity travel continues to increase.

Between 1939 and 1965, the latest year for which precise data is available, the number of miles over which intercity rail passenger service was operated declined from 172,031 to an estimated 77,282.

During the same period, passenger revenues declined from a high of \$1.790 billion in 1944 to approximately \$416.4 million in 1965.

For the information of the subcommittee, I would like to submit for the record several statistical summaries and indexes which graphically show this decline in more detail and further indicate the corresponding growth in service by air and motorbus companies.

Although the rail passenger deficit, as computed under the Commission's accounting regulations, has declined sharply from a high of around \$724 million in 1957 to \$399 million in 1963, the passenger deficit is again beginning to increase.

In 1965 the passenger train deficit approached \$410 million. Added to these factors is the declining use of passenger train service by the Post Office Department for the transportation of mail, which increasingly is moving by highway or air.

In recent weeks, for example, the Post Office has announced plans to discontinue or sharply curtail the use of rail passenger trains on a number of Midwestern and Western railroads. It is not intended, by these comments, to be critical of the transportation policies adopted by the Post Office, nor to say that such policies were or are ill advised, but merely that the effect of further reducing the amount of mail revenues now earned by the railroads, now estimated at about \$300 million annually, will thereby deprive many passenger trains of their principal economic sustenance and convert formerly profitable or marginal operations into clear-cut candidates for discontinuance.

While this brief background summary indicates that there is still a clear need for a simple and expeditious procedure to eliminate clearly unprofitable passenger train service, along the lines of section 13a, at the same time it is equally clear that many passenger operations in this country are essential and should be preserved. By this, we do not mean preserved in a static, unchanged form, but, rather, an undertaking by the carriers in conjunction with governmental representatives and others to make a reasonable effort to sustain and improve essential and economically viable passenger services for the future travel needs of the Nation.

A number of such efforts are already underway. These include the high-speed Northeast corridor program between Washington and New York, now approaching the completion of its first phase as a result of the joint efforts of the Department of Transportation and the Pennsylvania Railroad; a similar effort by the Pennsylvania and the State of Pennsylvania in the so-called Keystone corridor between Philadelphia and Pittsburgh; and the programs now being developed for the preservation of essential commuter passenger operations on the New Haven, the Reading, and the Erie-Lackawanna between those carriers and the State and local authorities involved.

During this transitional period from the presently available pattern of rail passenger service to that being designed and planned for the future, the function and role of the Commission must be to assure that this transition will be orderly and that service for which there is a public need is not discontinued, except upon a considered determination of both the relevant facts and the social and economic conse-

quences which may flow from a Commission decision in a particular case.

To accomplish this, we need better and more flexible tools and, in certain cases, more time, than are afforded by the present law. The provisions of S. 1175 are a modest step in this direction, being designed to provide the Commission with improved procedures and, at the same time, to eliminate certain other deficiencies which also exist in the present law. These changes in section 13a are proposed as the result of our own experience with the present statute and, in addition, criticism voiced by Members of Congress, State officials, and others concerned with these proceedings.

At this point I would like to indicate the basic changes made by the provisions of this bill to the existing law and to discuss them briefly in the context of our experience with the existing provisions of section 13a:

First, the provisions of this bill would give the Commission more time in the initial and final investigation of train discontinuance petitions filed by the railroads. The present 4-month limitation would be changed to 7 months beyond the date when the discontinuance or change in passenger service would otherwise have become effective.

In addition, the Commission would be authorized to require the continuance of a train for 2 additional months, if such time were required either to complete the investigation or for the Commission to act on any petition for reconsideration of its decision in the investigation.

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

In this regard it should be pointed out that many passenger discontinuance proposals submitted to us in recent years have marked different characteristics from those submitted in the first years following the enactment of section 13a in 1958. Most of these earlier proceedings involved clearly marginal branch line or secondary main line service which had been substantially abandoned by the public for other modes of transportation. In order to provide service for the remaining handful of patrons, the carriers involved were sustaining significant out-of-pocket losses.

Since 1964, however, this pattern has shifted. An increasingly large number of proceedings involve large numbers of trains or else involve complex economic and public interest questions, and we are finding it increasingly difficult to render a decision within the statutory period.

For example, the proposal of the Boston & Maine Railroad in June 1964 to discontinue all interstate train service to and from Boston, to be effective in August of that year: That proposal, embraced in three simultaneous section 13a(1) cases, involved a total of 40 trains. It was processed before the Commission contemporaneously with Boston & Maine's proposal to discontinue 229 intrastate trains under section 13a(2).

A joint hearing on these cases lasted 20 days in September and October. Division 3 of the ICC decided the interstate train case on

December 31, 1964, issuing a brief summary order on that date and then a full report some 2 weeks later. These two proceedings are set forth in *Boston & Maine Corp.*, 324 I.C.C. 418 and 705 (1965), respectively.

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

Similarly, the proposal of the Western Pacific to discontinue, in Finance Docket No. 24277, its heavily utilized train, "The California Zephyr," could not be processed within the statutory period because of the complex issues involved in this proceeding involving one of the Nation's finest trains. Here again, at the request of the Commission, the carrier postponed the discontinuance for 1 month beyond the 4-month period. Since the Commission required the continuance of this train for 1 year, this extra time was of material value in preserving uninterrupted service to the public.

Another change provided in this bill is that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service and that the continuation of the service would unduly burden interstate or foreign commerce.

Although carriers presently submit a considerable quantum of evidence either with their initial notice or, if the Commission decides to investigate a proposed discontinuance, at the subsequent oral hearing, this area requires clarification, since at the present time section 13a does not specify upon whom the burden of proof rests.

Although in no instance have the railroads refused to offer evidence on either of these two points, despite their insistence that the existing law does not place the burden of proof on them, this question is sufficiently in doubt to require a clarifying amendment. Assigning of the burden specifically to the carrier places it squarely on the party possessing most of the material data and will, in addition, impel the carrier to make a more complete initial presentation as part of its notice. This will provide the Commission with a more complete record upon which to base its decision and should shorten the period of time required at the hearing, since less supplementation of the record will be required at this stage. This saving in hearing time can, in turn, be used to good advantage by the Commission in reaching its decision. Even with the extension in time provided for by this will, we will still need to handle these cases on an expedited basis.

At this point, however, I should mention that in the course of the House subcommittee hearings on the companion bill, H.R. 7004, to this legislation, several members of the subcommittee expressed misgivings about this provision.

In view of these misgivings, the Commission reviewed its position on this matter and forwarded our views in a letter dated May 8, 1967

to the subcommittee chairman, Congressman Friedel. After indicating our reasons for desiring this provision, this letter concluded as follows:

We have taken into consideration the misgivings about this provision expressed by certain members of the Subcommittee. Because of the critical need for this legislation as a whole and in view of the fact that the Commission has established a working practice with the railroads in the area of the provision in question, we feel that this provision could be deleted without seriously impairing our ability to administer the statute effectively. Therefore, if the subcommittee is of the opinion that this section is a detriment to the legislation as a whole, we would not object to deleting this requirement by striking out lines 20 to 25, beginning with "When . . ." on line 20 of page 2, H.R. 7004, and ending with line 2 on page 3.

With the chairman's permission, I would at this time like to have a copy of this letter made a part of the record. (See p. 29.)

Another portion of this bill would eliminate two jurisdictional problems which have occurred under the present law.

First, section 13a(1) would be amended also to cover train service operating from a single State into a foreign country in addition to service between two or more States. At the present time such service is deemed to fall within the provisions of section 13a(2), since insofar as it is performed within the United States, the service is "intrastate." *Soo Line Discontinuance of Trains*, 328 I.C.C. 610 (1967). However, it seems more appropriate that service operated partially in foreign commerce be covered by the same provisions applicable to intrastate commerce.

Section 13a(1) would also be amended to deal with the problems where the service itself is provided only in one State but where the train, for operating convenience, operates into another State.

For example, in the New Haven Railroad's proposal to discontinue all of its passenger service, certain trains provided service only in New York State; but the New Haven, solely for operating convenience, terminated the trains in the State of Connecticut. As a result, it was argued by certain parties that the carrier could not invoke section 13a(1) to discontinue these trains but rather would first have to seek authority to discontinue from the New York Public Service Commission, as provided under section 13a(2).

Since the Commission determined that all of the New Haven's New York City area commuter service should be continued, it was unnecessary to pass on this point. However, to prevent this issue from arising again in a proceeding which, like the *New Haven* proceeding, is essentially interstate in character, notwithstanding the intrastate nature of some of its service, we believe that this proposed change is desirable.

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

This new provision is intended to make it clear that a court appeal will lie as to Commission decisions affecting the outcome of a carrier's discontinuance proposal, whether the discontinuance is permitted or not.

Under the present law, judicial review has been held to be available in either event. This position has most recently been taken in Civil No. 4799, *State of Vermont v. United States, et al.*, decided May

11, 1967, which affirmed our decision in F.D. 24000, *Boston & Main Co.—Discontinuance of Trains*, 328 I.C.C. 224 (1966).

On the issue of judicial review, the District Court for the District of Vermont, after discussing the contention that Congress did not intend to provide judicial review in those cases where a discontinuance was permitted, stated:

But we fail to find convincing evidence that the Congress intended the unusual and concededly unfair result of granting judicial review of the Commission's determination solely to the roads, and not to opposing parties. The statutory scheme gives the Commission power to control discontinuances, and sets limits on the Commission's powers, allowing discontinuances to become effective unless the Commission acts within four months and empowering it to require continuance of service only for a period of one year after the date of the order, after which period the carrier could again move for relief under the statute.

If an order is wrongfully granted, the road can obtain review and reversal. If an order is wrongfully refused, ordinary principles of review of administrative determinations, as well as elemental fairness call for review at the instance of opposing parties. Congress having set standards for the Commission in the Act, its decision to refuse to order continuance as well as its decision to order it, should be reviewable and we have jurisdiction to do so here.

The court also alluded to the fact that the Commission had requested this amendment "to remove any doubt on the point * * *."

In other cases, however, notably in *New Hampshire v. Boston & Maine Co., et al.*, 251 F. Supp. 421 (1965), the courts have held that judicial review is available only in the event that the Commission requires the continuance of the passenger service in question. The Commission itself has consistently taken the position that the right to appeal from a decision under section 13a should not depend on the outcome of the case, but rather, as a matter of simple fairness, should be available to a State or any other adversely affected party. In the hearings before this subcommittee last year on Senate Resolution 284, former Chairman Bush, on behalf of the Commission stated:

The Interstate Commerce Commission subscribes fully to the sense of the resolution that decisions of the Commission rendered under section 13a(1) of the Interstate Commerce Act, authorizing the discontinuance of interstate trains no longer required by the public convenience and necessity, be subject to judicial review, upon appeal of any aggrieved person to an appropriate district court. (Statement of John W. Bush, Chairman, Interstate Commerce Commission, in a hearing before the Surface Transportation Subcommittee of the Committee on Commerce, United States Senate, 89th Congress, Second Session, on S. Res. 284, August 3, 1966.)

We believe, therefore, that this matter should be clarified by Congress through enactment of our proposed section 13a(3). This new section would permit any adversely affected party, including a State, State regulatory commissions, or other persons, to appeal an administratively final action of this Commission which is determinative of a discontinuance proposal in the same manner now available to the carriers. Except for decisions by the Commission not to investigate a proposed discontinuance, all decisions of the Commission would be appealable in the same manner as other Commission proceedings.

The second of these two changes would permit that Commission to deal better with situations where practical or temporary solutions might lie along lines other than a mere approval or denial of the carrier's proposal.

In essence, we are requesting authority to render decisions on a conditional basis, that is, contingent upon modifications in factors

affecting service or operations. This would open up avenues thus far untried toward arresting the decline of the passenger train.

Although under the present section 13a we can and do give weight to such matters as the rescheduling of the remaining passenger service provided by the carrier and the level of public support that may be made available, it is not possible under the present law to impose conditions in a section 13a proceeding without the consent of the carrier or other party upon whom the condition would be effective. Given the changing character of passenger service discontinuances, which I alluded to earlier, and the importance of preserving and improving as much of the present rail passenger service network as the public is willing to patronize, we believe that the power to condition a passenger discontinuance proposal is of the utmost importance.

With this authority, we will be in a position to adjust or modify flexibly a discontinuance proposal along lines that are fair and reasonable to both the traveling public and the carriers involved, in contrast to all-or-nothing options that exist under the present law.

The following example may serve to illustrate the differences between the present 13a and our proposed amendment: A railroad has two interstate trains operating between the same points—one operating during the daylight hours, the other during the evening—both of which it proposes to discontinue. Under the present law the Commission has only the following options: To permit the discontinuance of one or both trains; or, in the alternative, to require the continuance of one or both trains—without, however, requiring any alteration in the scheduling of these trains or any other conditions which it might be in the public interest to impose. Such conditions could, however, be imposed under this provision of the bill.

In conclusion, I would like to point out that we do not regard this bill as a complete and satisfactory solution to the problem of preserving and improving the Nation's essential rail passenger service.

It is now clear that traditional regulatory techniques, such as those embraced in section 13a, can serve only a limited purpose and must be joined with forceful and imaginative long-range planning, research, and development by the railroads; authorities in local, regional, State and Federal governments; and concerned members or groups of the general public. This work must proceed along lines that will not only revitalize the economic and technological advantages of railroad passenger service but will, in turn, integrate such programs into others having as their major goal the enhancement of the Nation's economic and social environment, particularly in and around our major centers of population.

On the part of the carriers, there must be a willingness to make the same reasonable effort to improve and sustain passenger service as they accord to their basic freight service. This reasonable effort should be manifested in service improvements, long-range market analysis, rate reformation, capital investment in research and technological achievements applicable to passenger operations, and sound analysis of the real costs of providing passenger services with a rail plant used also for the provision of freight services. This reasonable effort would not, however, be sustained beyond the point at which the carrier can demonstrate an unwillingness on the part of the public either to sustain the services through patronage or by assuming a fair share of the cost of maintaining such services.

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

As the Commission stated in the *New Haven* case, *supra*, at p. 223.

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

Such public support should not, of course, be limited solely to the contribution of direct or indirect financial assistance to railroads. Beyond this, it must encompass joint governmental-carrier programs to determine, on the basis of current and projected demand patterns, what rail passenger services actually are essential to the public, and at what level they should be maintained or modified.

In our judgment, the provisions of S. 1175 will provide us with tools and more flexible procedures needed to carry out these goals in cooperation with the carriers, the public authorities, and others concerned with the solution of this vital problem.

Senator LAUSCHE. Now, will you proceed dealing with the highlights that you want to make in support of this proposal for the adoption of S. 1175.

I would suggest that you follow your manuscript in dealing with the matters so that I will be able to read your paper and also listen to what you are saying.

Mr. TUCKER. All right. My outline will follow along with the prepared testimony, Mr. Chairman.

S. 1175 implements the recommendation that the Commission sent to the Senate on March 2.

At the outset, Mr. Chairman, I would like to point out that, as the chairman noted in opening the hearing today, this legislative proposal does not in our view constitute any real change in the law.

I would like to suggest to the chairman that we are here today not only to review the law and suggest what we find can be helpful changes to the Commission in carrying out the intent of the Congress, but also to render a stewardship report to Congress on its 1958 legislation.

The chairman will recall that that legislation was enacted by the Congress at a time when railroads were sustaining enormous passenger deficits and when they were having a great deal of difficulty in obtaining discontinuances, which prior to 1958 were totally a matter of State jurisdiction.

Of course, the 1958 act, present section 13, gave the Federal Government jurisdiction to hear these cases.

Senator LAUSCHE. Will you at this point state the significant aspects of the 1958 act which put jurisdiction in the Interstate Commerce

Commission to deal with discontinuance of railway passenger service?

Mr. TUCKER. Yes, Mr. Chairman.

The 1958 act provided that with respect to trains operated in interstate commerce a railroad could, by filing notice, invoke the jurisdiction of the Commission.

Upon that jurisdiction being invoked, the Commission would have 30 days in which to decide whether to undertake an investigation.

Within 10 days of the expiration of that 30 days, the Commission could order an investigation. And under the present law, the 1958 law, such investigation, which would include a hearing of course, had to be completed and a decision rendered at the end of a 4-month period.

The criteria were whether or not the trains involved would unduly burden interstate commerce and whether or not the public convenience and necessity required the continued operation of that train.

As I said, Mr. Chairman, since that time we have dealt with 239 passenger train discontinuance proposals under section 13; 194 of those were under section 13a(1) and 45 under section 13a(2).

In connection with that and with my testimony, I would like to present as an exhibit at this time, Mr. Chairman, a summary showing each case, the disposition of it, the number of trains involved.

Senator LAUSCHE. How voluminous is it?

Mr. TUCKER. It is rather voluminous, because it covers every single case we have had, Mr. Chairman.

Senator LAUSCHE. Well, at this time it will be included as a part of the record but not transcribed into this testimony.

Mr. TUCKER. All right, Mr. Chairman.

I also had prepared for the convenience of the committee a summary study of intercity passenger service which presently exists.

Senator LAUSCHE. The same disposition will be made of that statistical report.

Mr. TUCKER. All right.

Now, as I pointed out in my testimony, Mr. Chairman, and again in the sense of giving the committee a report on our stewardship under this statute, we still have problems with passenger service which are quite well known—namely, declining patronage, declining revenues, and mounting deficits.

To give the committee a closer insight into that, I also prepared another exhibit showing statistics and charts in connection with the decline of rail passenger service in this country, decline of revenues, and the number of trains involved, which I would like to also present.

Senator LAUSCHE. Without objection, the same disposition will be made of that document.

Mr. TUCKER. Now, Mr. Chairman, the position of the Commission with respect to this bill is that we—

Senator LAUSCHE. Just one moment, please.

I think that the information contained in these three documents is of importance. Therefore, without objection, it will be transcribed into the record of the testimony.

Mr. TUCKER. Thank you, Mr. Chairman.

(The documents referred to appear on pp. 30-52.)

Mr. TUCKER. Those exhibits and my testimony on the first six or seven pages should give the committee and the Senate, Mr. Chairman,

a pretty extensive view of what has happened with respect to passenger trains and discontinuances in connection with that since 1958.

The position of the Commission is that we still need to preserve rail passenger service that is found to be essential in the public interest and in accordance with the statutory criteria involved.

But at the same time we suggest to the committee that there is still a need to discontinue unprofitable and burdensome trains that are not being used and that that program should be continued.

What we seek here today is merely those improvements which our experience and perhaps I might say our expertise suggest to us as we have looked over our stewardship of this law in the past 9 years.

The changes that we suggest, if I—

Senator LAUSCHE. Before you get to the changes, I am looking at your manuscript, and I wish you would discuss the situation that these statistics show developing between 1939 and 1965.

Mr. TUCKER. Well, as I point out there, Mr. Chairman, the significant figure, is that the number of miles—operated in intercity rail passenger service declined from 172,031 miles in 1939 to an estimated 77,282 miles today.

During the same period we point out that passenger revenues have declined from a high of \$1.790 billion in 1944 to approximately \$416.4 million in 1965.

The charts and the graphs that we have in the exhibits indicate the trends in connection with the particular intervening years involved, Mr. Chairman.

Senator LAUSCHE. Do I correctly interpret these figures when I state that the miles of intercity rail passenger service have declined a bit more than 50 percent? That is, it fell from 172,000 miles to 77,000 miles?

Mr. TUCKER. You are correct, Mr. Chairman.

Senator LAUSCHE. And the passenger revenues in that same period declined by 75 percent? In other words, the revenues decline in a greater percentage than did the reduction of the miles of service?

Mr. TUCKER. That is correct, Mr. Chairman.

It is particularly significant to note that the miles of service comparison is between 1939 and 1965, while the revenue comparison, is between 1944 and 1965.

Senator LAUSCHE. I see. I did not observe that before.

All right. Proceed further.

Mr. TUCKER. Well, as far as the changes are concerned, Mr. Chairman, I'm going to emphasize again that we are not here to ask for a new law. We are merely seeking improvements in the tools which the Congress gives us to do the work which Congress intends to have done.

First of all, we would like more time. We would like the initial 30-day period raised to 40 days.

The reason for this request, Mr. Chairman, is that in 30 days it might be easy to render an order to investigate a proceeding, but it is a very difficult task to decide not to investigate a particular proposal.

In the rather difficult case where we might have to get to the point of saying, "Well, this is the end of that train; we are not going to investigate it," we feel another 10 days would be helpful.

Senator LAUSCHE. To make the record clear, the law now allows a railroad to make application for discontinuance of service, and you

have 30 days within which to decide whether you will investigate or not?

Mr. TUCKER. That is correct.

Senator LAUSCHE. And that announcement of your purpose must be made within the last 10 days of the 30-day period?

Mr. TUCKER. Not less than 10 days prior thereto.

Senator LAUSCHE. And you must make final disposition of the application within 4 months from the time the application was filed or within 4 months after the expiration of the first 30 days?

Mr. TUCKER. Within 4 months after the expiration of the first 30 days, Mr. Chairman.

Senator LAUSCHE. And you are asking that this initial 30-day period be extended to 40?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Would the same 10-day provision prevail under your present request that does prevail under the present law?

Mr. TUCKER. Yes, sir. That would mean if we had the 40 days we would have to make our decision 30 days after the notice was filed.

In that same context of time, Mr. Chairman, we are asking that the present 4-month period be increased to 7 months and that the Commission be given the authority to order an additional 2 months beyond the 7 months.

Mr. Chairman, it is not the intention of the Commission in the easy case—the case that does not require a lot of evidence—to go beyond the 4-month period. But, as I indicated in my testimony, we have been running into more complicated cases that involve groups of trains or a very, very important train of some historical significance, such as the California Zephyr, where we have needed more time.

And we foresee a situation, Mr. Chairman, where there might be three to four railroads coming before us with proposals to restructure their service where we would need all of the 7 months to hear everybody who was interested, including all segments of the public, Mr. Chairman, as well as to give the railroads an opportunity to demonstrate fully the aspects of burden on commerce and so forth.

With respect to the additional 2-month period, Mr. Chairman, the particular significance of that is that——

Senator LAUSCHE. Are you now speaking of the 2 months that the Commission would have within its discretion?

Mr. TUCKER. That is right, sir. That 2-month period for the most part would give us an opportunity to rule on petitions to reconsider a decision that was rendered at the end of the 7-month period.

Under either the present 4-month limitation or the proposed 7-month period, the minute our decision is served approving the discontinuance and the time is up, the train comes off.

Now, we have situations where parties file a petition to reconsider that decision. By the time we have received all the pleadings and replies—which usually will run 20 to 30 days—the train is taken off and we are dealing with a situation where we might find something which we ought to reconsider.

We think that there should be a 2-month period when we could, in a difficult case, require the trains to operate for 2 months by invoking the 2-month notice.

Senator CANNON. Will the Senator yield at that point?

Senator LAUSCHE. Surely.

Senator CANNON. Are there any cases in which you have changed your position as a result of the petition to reconsider?

Mr. TUCKER. Yes. I believe there are. We had one, I think, involving the Erie Railroad, or the Missouri Pacific, when we changed our viewpoint on reconsideration.

Senator CANNON. What is the normal time it takes you to make a decision on a petition to reconsider from the time a petition is filed?

Mr. TUCKER. Well, it is hard to say, Senator Cannon. Sometimes it is as short as 2 months. Sometimes it is longer.

We would do our best to make a decision on petitions for reconsideration, given this 2-month period, within the 2 months.

Senator CANNON. Well, if it is longer, then the 2-month period really would not help you, would it, unless you could make your decision within the 2-month period?

Mr. TUCKER. Well, as I say, we would expedite our decision so as to make it within that 2-month period, unless we ran into an extraordinarily difficult case.

Of course, the difficulty we have now is when we get to a petition for reconsideration the train is usually gone anyway.

Senator CANNON. Thank you, Mr. Chairman.

Senator LAUSCHE. Proceed.

Mr. TUCKER. All right.

We are asking, Senator, for what I would like to call a technical change in the burden of proof.

Under the present law we suggest to the subcommittee that there is no specific burden of proof. My personal view is that if there is a burden of proof applied in the present law, it is on the Commission, since I regard section 13 as an investigatory, executive-type proceeding, even though it is a judicatory in nature.

We would like to clear that up. But in saying that, Mr. Chairman, I want to point out that we have not had any severe difficulties with railroads in coming forward and presenting the economic evidence. But in many cases the railroads' attorneys will suggest, while they are willing to go ahead with the evidence, they do not accept the burden of proof.

Without making this a matter of vital importance, I suggest a technical change in this law would be helpful.

Senator LAUSCHE. What do you specifically recommend in your present bill?

Mr. TUCKER. We recommend the insertion of the wording:

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

Senator LAUSCHE. Have you given any thought to the adequacy of the words "that it shall have the burden of proof" without defining what that burden of proof is?

That is, is it by a preponderance of the evidence, or is it by clear and convincing evidence, or by evidence beyond a reasonable doubt?

Mr. TUCKER. It would be by the preponderance of the evidence, Mr. Chairman.

Senator LAUSCHE. And you construe that the words used, "that the carrier shall have the burden of proof," would mean that he would have to establish his application to discontinue the service by a preponderance of the evidence?

Mr. TUCKER. Yes, sir.

Senator CANNON. Wouldn't that already be required of a carrier? If he is an applicant, how could you say other than that the burden of proof would fall on the applicant to prove his case?

Mr. TUCKER. Well, as I pointed out, Senator Cannon, technically there is no burden of proof established in the law now. And some of the railroads who have addressed this point say that the burden is not on them.

Again I point out that we have not had trouble in getting them to come forward, and I cannot suggest that we foresee a great deal of difficulty, to be perfectly candid.

Senator LAUSCHE. Senator Cannon, is it your position that since the railroad makes the application and asserts the right to discontinue, that in itself puts the burden of proof upon it?

Senator CANNON. It would certainly seem that way to me. They are applying to a regulatory agency for a specific authority to do something, and I would assume that they would have to prove their case. I thought that was one of the basic principles of administrative law.

Senator LAUSCHE. There is a Latin maxim to the effect that he who alleges must prove.

But go ahead. Pardon me.

Mr. TUCKER. Well, in connection with this technical burden of proof change we are requesting, Mr. Chairman, it would be fair to point out that we had considerable discussion on this point in our hearing before the House committee, and considerable confusion developed.

As a result of that, we wrote to Chairman Friedel of the subcommittee on May 8 and pointed out that this burden of proof change was not one of the more essential elements of our proposal, and I would just like to quote the last paragraph for the purpose of this record.

Senator LAUSCHE. Go ahead.

Mr. TUCKER. After stating that this was not absolutely essential to us, we said:

We have taken into consideration the misgivings about this provision expressed by certain members of the Subcommittee. Because of the critical need for this legislation as a whole and in view of the fact that the Commission has established a working practice with the railroads in the area of the provision in question, we feel that this provision could be deleted without seriously impairing our ability to administer the statute effectively. Therefore, if the Subcommittee is of the opinion that this section is a detriment to legislation as a whole, we would not object to deleting this requirement by striking out line 20 to 25, beginning with "When . . ." on line 20 of page 2, H.R. 7004, and ending with line 2 on page 3.

Senator LAUSCHE. The motivation for your request in the bill that is before us comes from the fact that the railroads have specifically asserted that they do not under law feel that they must carry the burden of proof?

Mr. TUCKER. On several occasions, Mr. Chairman.

Senator LAUSCHE. All right. Proceed.

Mr. TUCKER. The next suggestion is a technical change relating to jurisdiction, and one we feel is quite necessary, Mr. Chairman.

At the present time a train that operates from a foreign country into one State of the Nation would be considered intrastate. We feel that a train crossing a national borderline should be considered interstate and, therefore, come under section 13a(1). We have included a provision in this proposed statute in regard to that.

Similarly, at the present time the law provides that section 13a(1) can be invoked when a train is operated between one State and another State. We had a severe issue involving 19 of some 247 New Haven trains where, Mr. Chairman, they were scheduled between points in the State of New York but the operational tabulations, and schedules which are required to be filed with us showed the train as having a turnaround, or a start and stop in Connecticut.

We feel that that should be clarified to the extent that the law would require that a train come under section 13a(1) or be considered interstate in character when it operates in service between one State and another.

Senator LAUSCHE. Would that expand your jurisdiction or narrow it? Do you now hold that where it operates within the State of New York but turns around in Connecticut that that is interstate?

Mr. TUCKER. Well, there is a division of viewpoint on that, Mr. Chairman.

Senator LAUSCHE. Well, what are you recommending?

Mr. TUCKER. We are recommending that where, for example, a train operates between Connecticut and New York, even though it has no scheduled stop for picking up passengers in Connecticut, that that be considered interstate in character.

Senator LAUSCHE. All right.

Mr. TUCKER. Now, Mr. Chairman, in all fairness, I would like to point out that on my review of the last few days of the statute I am not absolutely sure that this is the best wording on that one particular point, and I would like leave to review that point and file a further statement on it.

That is my own personal view. My colleagues do not agree with me. But I think I am right, so I would like to review it.

Senator LAUSCHE. All right.

Mr. TUCKER. Now, the next matter is quite important, Mr. Chairman. At the present time a railroad can now file for discontinuance of one train or 247 trains. And we can only say yes or no with respect to each train. We cannot take an overall look at the structure of that railroad and see whether there is any kind of intermediate proposal that could be worked up.

We are asking the Senate to give us the authority to impose conditions with respect to the discontinuance of a train or trains.

I would like to give the committee just an illustration of what I mean.

Again I cite the New Haven case and the B. & M. case that came up and was discussed before this committee last year, where governmental entities will come in and offer public aid on the record.

That offer of aid might be contingent upon legislative approval or some particular problem in the State involved. It might not be immediately forthcoming.

Now, all we can do presently is to consider that. Now, let's assume that if we were sure that the necessary aid was forthcoming, we would require the train to be continued. Now, this requested change would give us the authority to condition an order continuing the train on the production of the aid suggested in the evidentiary record at a later date.

In other words, if the aid did not come forth from the State, the continuance order would come to an end automatically as of certain date.

Now, another situation arises. We have cases where a railroad picks out the best train in terms of scheduling and patronage, out of three trains that operate between the same points. Here again, Mr. Chairman, we could order continuance but require schedule readjustments.

In the case where we have a structural reappraisal of a railroad's passenger service, we could take a look at the whole passenger service and order certain continuances, while dropping some trains based on the conditions that many others be completely rescheduled.

This does not give us a plenary authority or ultimate authority to tell a railroad how to run its business, because they are the ones that come before us with a notice, but it certainly would give us a little flexibility—a flexibility which I want to assure the chairman I would have liked to have been able to employ when I heard the *New Haven* case, and their proposed recommendations to the Interstate Commerce Commission.

I would like to add one other comment about public aid which I think is important for the record. The Commission will not just reach out and say to somebody, "Well, you ought to pay these railroads so much money." If this law be enacted, Mr. Chairman, any such conditions must be predicated on clear and convincing evidence in the record.

That is, for the Commission to impose a condition based on an offer of aid, such an offer ought to be presented in the evidentiary record and not something that the Commission conjured up.

We believe that the power of conditioning, if given to us, Mr. Chairman, will be wisely and constructively used.

Senator LAUSCHE. The situation as it prevails under existing law is that you have no power to issue a conditional order dealing with the discontinuance of a passenger train?

Mr. TUCKER. Not in my opinion, Mr. Chairman.

Senator LAUSCHE. Proceed.

Mr. TUCKER. I wanted to ask Mr. Kahn if he disagrees with me on that point. If he does, it might be important for the record.

Mr. KAHN. No, and I would invite the committee's attention to one of the first proceedings decided by the Commission under section 13a(1).

The Great Northern train discontinuance case, in which the Commission concluded that it was without power under section 13a(1) of the statute to impose conditions.

Senator LAUSCHE. Proceed.

Mr. TUCKER. Now, the last change I will discuss, Mr. Chairman, was the subject of your constructive hearing in late August which was brought about by Senator Aiken's resolution. I refer to the hearing before your subcommittee on Senate Resolution 284, August 3, 1966.

I reviewed that record, and it is quite a good demonstration of the need for an absolute right to judicial review for all parties.

Now, we have a situation that has changed since August. The chairman might recall that last August we reported that the Federal court in New Hampshire has held that if we ordered a continuance of a train, the railroad could appeal, but the public or the labor interests could not appeal.

Senator LAUSCHE. The position is that when the judgment was in favor of the railroad, the public could not appeal?

Mr. TUCKER. Yes. That is right.

Senator LAUSCHE. When the judgment was in favor of the public ordering a continuance of the service, the railroad did have the right to appeal?

Mr. TUCKER. Correct, Mr. Chairman.

Senator CANNON. Did that ever go beyond the State court?

Mr. TUCKER. No, it did not. Did it?

Mr. KAHN. Decision was by the U.S. District Court for the District of New Hampshire. The State filed a notice of appeal to the Supreme Court of the United States but did not perfect that appeal.

Senator CANNON. I see. Would the appeal route have been directly to the Supreme Court or to the circuit court?

Mr. KAHN. The appeal would have been directly to the Supreme Court, sir.

Mr. TUCKER. Now, we had another case, Mr. Chairman, that is rather interesting.

Senator LAUSCHE. Wait a minute. I want to ask this question. If this bill is enacted into law, could the Interstate Commerce Commission order restitution of service of any train whose discontinuance had been approved prior to the effective date of the new law?

Mr. TUCKER. No, not in my opinion, Mr. Chairman.

Senator LAUSCHE. It would be operative from the time of enactment?

Mr. TUCKER. That is correct, Mr. Chairman.

Senator LAUSCHE. Proceed.

Mr. TUCKER. Now, on the appeal proposal, we simply propose that every party have a right to appeal from our decisions. Whatever he does, whether it is by simple discontinuance of a proceeding notice or by a more involved decisional process, we believe the parties have a right to appeal.

Senator LAUSCHE. Senator Cannon.

Senator CANNON. I would just like to ask, if that has been your position, did you take that position before the court in the case that you referred to?

Mr. TUCKER. We have taken it in every court, including that New Hampshire case. I believe Mr. Kahn was in on that case.

Mr. KAHN. Correct.

Senator CANNON. Who took the adverse position? The railroads?

Mr. KAHN. Yes, sir.

Mr. TUCKER. Now, in Vermont we had a very interesting case as a result of the B. & M. case that this committee referred to last August.

Just recently, May 11, a U.S. court of Vermont held that all parties have a right to appeal.

I wonder, Mr. Chairman, if I could just read a short portion of that decision into the record here.

Senator LAUSCHE. Yes.

Mr. TUCKER. The District Court for the District of Vermont, after discussing the contention that Congress did not intend to provide judicial review, stated:

But we fail to find convincing evidence that the Congress intended the unusual and concededly unfair result of granting judicial review of the Commission's determination solely to the roads, and not to opposing parties. The statutory scheme gives the Commission power to control discontinuances, and sets limits on the Commission's powers, allowing discontinuances to become effective unless the Commission acts within four months and empowering it to require continuance of service only for a period of one year after the date of the order, after which period the carrier could again move for relief under the statute.

If an order is wrongfully granted, the road can obtain review and reversal. If an order is wrongfully refused, ordinary principles of review of administrative determinations, as well as elemental fairness call for review at the instance of opposing parties. Congress having set standards for the Commission in the Act, its decision to refuse to order continuance as well as its decision to order it, should be reviewable and we have jurisdiction to do so here.

But then the court goes on to allude to the fact that the Commission now has requested an amendment to "remove any doubt on this point."

It is our opinion that there is a right to review, but we are faced with cases other than the Vermont case which say that full right is not there.

Mr. Chairman, we would like to remove any doubt in the act by this amendment.

Senator LAUSCHE. Senator Cannon.

Senator CANNON. Mr. Chairman, I have to say that I agree with him. I think the Vermont court used very proper language in that case. I am surprised that any court would come to a contrary conclusion and to be so unfair as to say one party had the right of appeal and the opposing party did not have the right of appeal.

I think that the Commission should be commended for taking a consistent position throughout that both parties should have the right to appeal.

Mr. TUCKER. Thank you, Senator Cannon.

Mr. Chairman, I have a photostat copy of that Vermont opinion.

Senator LAUSCHE. It will not be put into the record.

Mr. TUCKER. I would like to present it.

Senator LAUSCHE. I mean it will not be transcribed. We will make it a part of the regular file.

Mr. TUCKER. In closing, Mr. Chairman, I would like to go back to what I suggested at the outset. Despite the reaction that seems to have been generated in some quarters, the Commission is not here to ask Congress to change its mind about what it did in 1958. We are reporting to the Congress now through this subcommittee on what has happened since 1958 and what, in our opinion, the Congress can do to improve the law.

What we propose, Mr. Chairman, is not a solution to the rail passenger problem in America. That solution, Mr. Chairman, I hope will come from promotional planning agencies. They have the resources and responsibilities to tackle the problem and to determine where the population is growing and where it needs service.

I think we can be a little optimistic, Mr. Chairman, because some railroads are now looking at the problem in the context of finding an appropriate rail passenger system with good, efficient, clean, high speed service.

So we do not have any ultimate solution here, Mr. Chairman. We merely seek to improve the tools that the Congress has given us.

I want to thank the committee for hearing us this morning.

Senator LAUSCHE. Senator Cannon.

Senator CANNON. As I understand it, Mr. Chairman, you are simply saying that if we grant you these changes that this will help you better carry out your duties in the administration of the act. Is that right?

Mr. TUCKER. Yes, sir.

Senator CANNON. And you are not requesting any basic changes or any material changes in the basic law, in the basic theory of the law?

Mr. TUCKER. No, sir; we are not. I would say that the conditioning power could be called a basic change. It gives us more authority. But that conditioning power is entirely related to whether we continue and how we can improve whatever order of continuance is involved.

Senator CANNON. Thank you, Mr. Chairman. That is all I have.

Senator LAUSCHE. Senator Hartke.

Senator HARTKE. Mr. Chairman, is there any immediate hope for any increase in rail transportation, passenger rail transportation facilities?

Mr. TUCKER. I couldn't say there was any immediate hope, Senator. Being somewhat of an advocate of the need for rail passenger service where the demand exists, I hope that our technology and our research will show us the future here.

Senator HARTKE. From a very practical viewpoint, there are a lot of people in the country who need some means of low-cost transportation to move from city to city.

Now, what I am asking very simply is: Is there any hope of any type or any ray of sunshine that these people can look for in the field of passenger transportation by rail?

Mr. TUCKER. Well, as I said, Senator, my hope would be that our present research in the northeast corridor would give us a good picture of what we could look for or what we could look to develop in other areas of the country.

Senator HARTKE. Let me come on back then. In other words, unless there is some new development that comes along the lines of the present fast transportation experiment on the east coast, the prospects really are for less passenger service instead of more? Is that what you are saying?

Mr. TUCKER. You are correct, Senator.

Senator HARTKE. All right. Now, then, I am sure that you are aware of the recent serious bus accident that occurred in which a 73-year-old woman was killed and 13 others were injured.

Mr. TUCKER. We have transferred our safety functions, as you know, Senator, to the Department of Transportation.

Senator HARTKE. Yes, I understand that.

Mr. TUCKER. But we would be responsible for awareness of that.

Senator HARTKE. I am not trying to accuse you of a bus accident.

Mr. TUCKER. No, sir.

Senator HARTKE. I am trying to point out the very great seriousness of the problem you have here. How are these elderly people going to get around? How are they going to move from place to place? They have no passenger train service. The buses are not even safe.

Mr. TUCKER. Well, to a degree I share the Senator's concern. I believe that we have to go—and I say this in a promotional and planning

sense—beyond what we have proposed here today. I hope plans can be developed that will meet the concern of the Senator.

Senator HARTKE. I understand that this is not any longer in your jurisdiction though to be concerned with these matters. Is that what you are telling me?

Mr. TUCKER. No; we have a concern, Senator, but the basic mission we have is section 13 of the law.

Senator HARTKE. Yes.

Mr. TUCKER. I wouldn't want to say that is all there is. We certainly have a concern in what we call the national transportation policy, and that should permeate any expertise we apply in all of these cases.

But our immediate problem is to adjudicate the proposals that come before us and try to keep an eye on the developing situation in the sense of national transport policy.

Senator HARTKE. Yes; but under section 13a at the present time, the policy which is established there provides for a method whereby the burden of the evidence is upon the public. Isn't that true?

Mr. TUCKER. Well, we discussed the burden of proof, and we are proposing that it be put on the railroads. At the present time it is my view—there is a division of opinion on this—that it is on the public, which would mean the Interstate Commerce Commission.

Senator HARTKE. That is right.

Mr. TUCKER. Of course, the burden of proof could not be on the public as such; that is, public body. They do not have the equipment, the resources, or the statistics to come forward, and we would not expect them to, other than to show how they were affected in a particular case.

Senator HARTKE. You, in effect, then are recommending repeal of section 13a?

Mr. TUCKER. No; we are recommending certain changes which would improve it, Senator Hartke.

Senator LAUSCHE. They are recommending that we declare the burden of proof shall be upon the carriers to sustain their application for a discontinuance of the service. Am I correct?

Mr. TUCKER. Correct, Mr. Chairman.

Senator HARTKE. That is the way it was before 1958?

Mr. TUCKER. No; before 1958 the Federal Government had no jurisdiction, Senator Hartke. We did not have any power at all. The 1958 act provided that the jurisdiction of the Federal Government would be invoked automatically by the Interstate Commerce Commission on the filing of a notice. But basic jurisdiction is in the affected States.

Senator HARTKE. But coming away from the technicalities of procedure, as far as the Commission is concerned, do you feel you have any responsibility under the law as it is at the present time to make any suggestions or make any recommendations as to how to accommodate the needs of the people who want to move in interstate transportation?

Mr. TUCKER. We do, Senator, in the sense of what becomes the policy of the law. We just can't administer the provisions of the act with blinders on. We have to have an awareness of the basic needs in this area. We try to relate those policy matters to every case.

Senator HARTKE. Yes. I understand that, but you have no overriding policy that is being developed by the Commission? Is that what you are saying?

Mr. TUCKER. I do not understand what the Senator means by "over-riding policy."

Senator HARTKE. You have two problems here basically. One of them is: How do you move people en masse if you do not have the method to move them? No. 2 is: How are you going to move them safely?

The reason I raised the question about the bus transportation is because I wanted to call attention to and put into this record the tremendous increase—and this does not alone deal with passenger service, but the tremendous increase in railroad accidents. In your last annual report, on page 64, it shows that train accidents in 1965 increased 43.8 percent over 1961.

Mr. TUCKER. Correct.

Senator HARTKE. What I am trying to find out is this: How are these low-income, elderly people who do not drive, who cannot afford a car, who cannot afford to fly, but who need this type of transportation, going to get around in this country? What do you suggest? That they bum a ride?

What I am asking you is: Does the Interstate Commerce Commission have any policy or any policy ideas or any programs or any thoughts on how we are going to solve this? Or do we just let people go ahead and shift for themselves?

Mr. TUCKER. No, all of the things the Senator mentions are problems which are part of our concern in any section 13 case.

Senator HARTKE. But going to the procedural aspects of this is not going to really solve this problem. You have already said that in answer to the first question I asked you. Isn't that right?

Mr. TUCKER. Well, Senator, what we are dealing with is a law that Congress has asked us to administer in connection with discontinuances of unprofitable passenger service.

Senator HARTKE. I understand that. I understand that, and part of that problem is very big. It comes back to the basic question. What I am asking you is: Do you, under the law, have the responsibility for recommending policies which would make it possible for people to move through this country?

Mr. TUCKER. We have.

Senator HARTKE. I mean, after all, if you don't have any policy along that line, to worry about a little technicality like this is sort of miniscule by comparison.

Mr. TUCKER. I would like to say, Senator, that I would not want to leave the impression with the committee that we do not approach the mission that Congress has given us specifically—which is section 13 and the national transportation policy, without developing an awareness and a record on all the points. What we are running into, Senator, are train proposals which can be borderline and which might be held up under those circumstances because of developing urban areas.

But at the same time we are running into marginal train situations where there might be only a few people traveling on a train and it could be losing several hundred thousand dollars.

The law does not give us much room in that kind of situation.

Senator HARTKE. Yes, sir.

Mr. TUCKER. Now, we—

Senator LAUSCHE. May I interrupt here? Which agency in the Federal Government by law has been vested with the responsibility of do-

ing research and promoting improved service in cargo carrying and passenger carrying? It is the Department of Transportation, is it not?

Mr. TUCKER. It is, Senator. But I would not want to say that we are ready to be called upon for any view that the Department or this Congress might ask us for.

Senator LAUSCHE. Pardon me for interrupting. Go ahead.

Senator HARTKE. That is all right.

Mr. TUCKER. In answer to Senator Hartke, we wrote a letter on April 18 of this year, to Assistant Secretary Mackey, Department of Transportation. In that letter, which was signed by the Commission's Legislative Committee, consisting of me, the vice chairman, and Commissioner Walrath, we recommended that the Department consider a study for the development of a national passenger transportation system.

Mr. Chairman, I would be very happy to make this a part of the record.

Senator LAUSCHE. It will be done without objection.

(The letter referred to follows:)

APRIL 18, 1967.

HON. CECIL MACKEY,
Assistant Secretary, U.S. Department of Transportation,
Washington, D.C.

DEAR MR. MACKEY: In the course of our discussions on various legislative solutions designed to arrest the serious decline in railroad passenger service, the Commission considered several proposals aimed at modernizing and revitalizing essential segments of the nation's railroad passenger network. Although we determined that the most promising approach in getting an early Congressional response would be legislation amending Section 13a along the lines set forth in the Commission's recent legislative recommendation on the subject, we believe that Section 13a, even as we have proposed to amend it, is not an effective instrument for the revitalization of rail passenger service. For this reason and because of the growing interest and involvement of the Department of Transportation in the rail passenger service area, we would like to bring to your attention some of our other ideas on this subject which, in our judgment, have merit.

In particular, Section 13a procedures may not be the most appropriate vehicle to determine the best possible solution to such a typical train-off case as the *New Haven* or the recently decided *California Zephyr* case. Beyond this, neither 13a procedures or the Commission's limited staff resources permit a complete and detailed examination of the present and prospective needs of the public for improved rail passenger service and its relationship to the problems attendant to our expanding economy, particularly those present in our major cities and metropolitan areas.

In order to determine what course the future development of rail passenger service should take, we have considered as a first step legislation which would authorize the Commission, in cooperation with the Department, to investigate the operations and services of all rail passenger carriers with a view toward designating certain trains as part of a National Rail Passenger System. In determining whether particular trains should be part of such a system, the Commission would consider the following factors without regard to the question of financial burden on either a particular carrier or interstate commerce:

(1) The minimum amount of rail passenger service required to form the nucleus of a national rail passenger network between major centers of population.

(2) The extent to which particular trains are patronized.

(3) Whether a particular rail passenger service serves a more important function than a competitive rail passenger service.

(4) The extent to which particular trains or ferries of different carriers may be operated more economically and efficiently through the common use of tracks and terminal facilities, or under common control.

(5) The extent to which patronage of particular trains could be increased through improved service.

(6) Any other factors relevant to a determination of what portion of existing rail passenger services is essential to the establishment of a National Rail Passenger System adequate to meet the minimum present and future needs of commerce of the United States, of the Postal Service, and of the national defense.

To supplement this basic plan, we envisioned additional provisions to Section 13a which would provide for special handling of proposed discontinuances of trains included as part of a National Rail Passenger System. Trains not so included would be covered by the present Sections 13a (1) and 13a (2).

Throughout the implementation of this program, we would work closely with those members of the Department's staff concerned with this area and, in drawing up the National Rail Passenger System, would take into account the Department's research and development programs in the rail passenger field.

Because any comprehensive program to revitalize rail passenger service will necessarily require bold and imaginative efforts on the part of the carriers and various levels of Government under the leadership of the Department, the proposal outlined above is only a means for preserving those aspects of the existing service which are truly essential so as to provide a sound framework from which to begin the restructuring of rail passenger service for the needs of the future. Although so limited in scope, we hope you will give this proposal your consideration and support.

Sincerely yours,

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

Mr. TUCKER. I would like to say this, Senator, if I might address myself to a little self-charity here.

Senator HARTKE. All right.

Mr. TUCKER. We would like to work on the concept of a national passenger transportation system, but in the same breath we would not like to see our authority to discontinue unprofitable, burdensome trains stop. We would like to work in this in a positive sense. We would like resources to do the kind of a job that we have recommended that the Department study. We think it is an interesting and important thing.

It is early yet to get any reaction from the Department.

I want to apologize for just bringing this letter in without the Department being here, but I think it is called for by the dialog, Mr. Chairman.

Senator HARTKE. I fully appreciate it. I will look at the letter. I do not want to necessarily burden the record with it at this moment.

The point I am getting at is: what you are dealing with in this bill is a very specific problem dealing with the question of isolated cases which are before the Commission under petitions filed under section 13a. I understand that. But it is difficult for me to see how we can really provide what is ultimately in the public interest—the type of low-cost transportation or mass transportation really, and to the whole Nation—without somebody giving it some attention.

And I am not saying that the railroads should be required to operate a rail line which is absolutely losing money or anything of the kind. I understand what your judgment is on that. But in making these decisions I am trying to find out whether you have other positive recommendations to make as to how they can provide the necessary transportation for these people.

I think it is a very serious matter, and it is going to become more serious as we move along.

Mr. TUCKER. I would agree with the Senator and point out that I think that leadership in this promotional and—

Senator HARTKE. That is a good word—"leadership"—I like that.

Mr. TUCKER. Leadership in that area is now in the Department of Transportation. Now, we want to help. We do not think that we are just here to administer the law. We have a national transportation policy that we want to have permeate every facet of everything we do, and that policy compels us to make recommendations.

We have made that recommendation to the Department, and I suspect that they are looking it over now, Senator.

Senator HARTKE. All right. Just one more comment on that. If you find that this responsibility is still in the law, resides still in the Interstate Commerce Commission, and is not in fact a responsibility solely of the Department of Transportation, I would hope that the Commission then would give some time and some thought to what I consider a very serious problem especially for the older people, especially for that person who is a 73-year-old woman who has now lost her life. I mean she is dead. She went on probably the only means by which she could move. She went on a bus.

She could not go on a train. The plane is out of the question financially. And she probably did not have a relative. So she goes on a bus, and then she ends up with the bus using tires which are—I don't mind telling you that we are checking into it at the present time.

But the point still is that she had only one way to go, and it ought to at least be safe.

Mr. TUCKER. Senator, I just want to say this in response. I would not want to leave it that we do not have a responsibility in the context of the Senator's viewpoint. I have suggested that we cannot assume the leadership in a pure promotional and planning sense, and I also want to suggest to the Senator that we think our advice in developing these things is of use and is of value. We are ready to employ it, and we have employed it as evidenced by this letter.

Senator HARTKE. I want a copy of that.

Mr. TUCKER. And we will continue to do so.

Senator HARTKE. That is all.

Senator CANNON. Do you have anything further to add, Mr. Chairman?

Mr. TUCKER. Pardon me?

Senator CANNON. Do you have anything further to add?

Mr. TUCKER. No. I have finished with my testimony.

Senator CANNON. Thank you very much for being with us here today.

(The letter of May 8, 1967, from Chairman Tucker to Hon. Samuel N. Friedel, chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, referred to in the testimony, follows:)

INTERSTATE COMMERCE COMMISSION

May 8, 1967.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: In the course of my testimony before the Subcommittee on H.R. 7004 and related bills, a number of questions were directed to the provision of this bill imposing on the railroads the burden of establishing

that the public convenience and necessity permit the discontinuance of the service involved and that continued operation would unduly burden interstate or foreign commerce. The Commission has therefore reviewed its position on this matter.

We believe that this proposed amendment to the Interstate Commerce Act would be valuable in clarifying the uncertainty which presently exists in this area. As I indicated in my prepared statement and in my oral testimony, we have had no serious problems to date in compiling an adequate record in section 13a(1) cases. The parties, primarily the railroads, have submitted sufficient evidence on both the statutory issues—whether the trains in question are required by the public convenience and necessity and whether their continuance would constitute an undue burden on interstate or foreign commerce. Protestants repeatedly insist, however, that the railroads have a burden of proof imposed by section 13a in conjunction with section 7(c) of the Administrative procedure Act; and the railroads, equally insistent, deny it. Since the Commission has no power to assign a burden of proof where none is imposed by law, we feel that the proposed change would provide a desirable clarification and insure against the future possibility that the carriers in some important cases would not adhere to their present practice, with the result that the Commission would lack an adequate record upon which to base a decision.

We have taken into consideration the misgivings about this provision expressed by certain members of the Subcommittee. Because of the critical need for this legislation as a whole and in view of the fact that the Commission has established a working practice with the railroad in the area of the provision in question, we feel that this provision could be deleted without seriously impairing our ability to administer the statute effectively. Therefore, if the Subcommittee is of the opinion that this section is a detriment to the legislation as a whole, we would not object to deleting this requirement by striking out lines 20 to 25, beginning with "When . . ." on line 20 of page 2, H.R. 7004, and ending with line 2 on page 3.

Sincerely yours,

WILLIAM H. TUCKER, *Chairman.*

Proceedings under section 13a of the Interstate Commerce Act, as of May 15, 1967

	Proceedings	Trains involved
1. Interstate trains:		
(a) Notices:		
Pending.....	1	2
Becoming effective without investigation.....	24	63
Dismissed without investigation.....	2	8
Investigations instituted.....	167	932
Total notices.....	194	1,005
(b) Investigations:		
Discontinuance permitted.....	101	2 413
Continuance required.....	31	2 349
Proceeding involving both continuance and discontinuance.....	12	
Dismissed.....	8	127
Withdrawn.....	4	15
Pending.....	11	28
Total investigations.....	167	932
2. Intrastate trains:		
Petitions pending.....	0	0
Petitions granted.....	24	331
Petitions denied.....	4	37
Petitions granted in part, denied in part.....	3	
Withdrawn.....	2	16
Dismissed.....	12	67
Total.....	45	451

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

² Differences in numbers of discontinuances permitted and continuances required shown under 1(b) from the numbers shown in the same categories in the prior summation is due largely to reverse apportionment in the prior summation of the trains involved in Finance Docket No. 23831—New Haven RR., wherein 234 were required to be continued and 40 were permitted to be discontinued.

³ Trains involved in these proceedings are counted under the designations "discontinuance permitted" or "continuance required."

⁴ These trains are counted under the designations "petitions granted" or "petitions denied."

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

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

Footnotes at end of table.

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

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4 months' date	Hearing date	Number of trains	Action
20595	Louisville & Nashville: Bowling Green, Ky., to Memphis, Tenn.	Mar. 30, 1959	May 4, 1959	Apr. 16, 1959	Sept. 4, 1959	June 15, 1959	2	Continuance required for 1 year, Sept. 2, 1959; 307 ICC 392.
20596	Missouri Pacific: Kansas City, Mo., to Omaha, Neb.	Apr. 1, 1959	do	do	do	June 9, 1959	2	Granted Jan. 26, 1959.
20607	Wabash RR. Co.: Moberly, Mo., to Des Moines, Iowa.	Apr. 15, 1959	June 1, 1959	May 4, 1959	Oct. 1, 1959	June 22, 1959	2	Granted Sept. 18, 1959 307 I.C.C. 352.
20609	Chicago & North Western: Waukegan, Ill., to Milwaukee, Wis.; Chicago, Ill., to Milwaukee, Wis.	Apr. 17, 1959	May 17, 1959	Apr. 29, 1959	Sept. 17, 1959	June 17, 1959	6	Granted Sept. 10, 1959.
20638	Chicago & North Western: Minneapolis, Minn., to Council Bluffs, Iowa.	May 11, 1959	June 11, 1959	May 21, 1959	Oct. 11, 1959	June 25, 1959	2	Granted Oct. 6, 1959 307 I.C.C. 463.
20639	Texas & New Orleans: Houston, Tex., to New Orleans, La.	do	do	May 20, 1959	do	July 6, 1959	2	Dismissed Aug. 6, 1959.
20658	St. Louis Southwestern Ry.: St. Louis, Mo., to Pine Bluff, Ark.	June 1, 1959	July 1, 1959	June 11, 1959	Nov. 1, 1959	Aug. 5, 1959	2	Granted Oct. 14, 1959 307 I.C.C. 639.
20671	New Jersey & New York: Hoboken, N.J., to Spring Valley, N.Y.	June 12, 1959	July 13, 1959	June 29, 1959	Nov. 13, 1959	Aug. 24, 1959	1	Granted Nov. 10, 1959 307 I.C.C. 532.
20681	Chicago & North Western: Chicago to Duluth, Minn.; Chicago to Minneapolis; Elroy, Wis., to Mankato, Minn.; Mankato to Chicago.	June 22, 1959	July 22, 1959	July 6, 1959	Nov. 21, 1959	Aug. 10, 12, 13, 1959	4	1 granted (Chicago-Minn.) 3 denied, Nov. 19, 1959; 307 ICC 335.
20684	Delaware, Lackawanna & Western: Hoboken, N.J., to Scranton, Pa.	June 26, 1959	July 27, 1959	July 14, 1959	Nov. 26, 1959	Aug. 26, 28 1959	2	Granted Nov. 24, 1959; 307 ICC 627.
20710	Wabash RR. Co.: Fort Wayne, Ind., to Toledo, Ohio.	July 2, 1959	Aug. 10, 1959	July 28, 1959	Dec. 9, 1959	Oct. 5, 1959	2	Granted Nov. 30, 1959.
20711	Louisville & Nashville: Montgomery, Ala., to New Orleans, La.	July 6, 1959	Aug. 8, 1959	No	do	do	2	Granted July 24, 1959.
20712	New York Central: Weehawken, N.J., to West Haverstraw, N.Y.	July 9, 1959	Aug. 10, 1959	July 29, 1959	Dec. 9, 1959	Sept. 14, 1959	22	Granted Dec. 7, 1959.
20716	St. Louis-San Francisco: Tulsa, Okla., to Dallas, Tex.	July 13, 1959	Aug. 15, 1959	Aug. 3, 1959	Dec. 14, 1959	Sept. 14, 1959	2	Granted Dec. 10, 1959; 307 ICC 477.
20727	Delaware, Lackawanna & Western: Scranton, Pa., to Binghamton, N.Y.	July 17, 1959	Aug. 24, 1959	No	do	do	1	Granted Aug. 7, 1959.
20730	Chicago, Milwaukee St. Paul & Pacific: Madison, Wis., to Canton, S. Dak.	July 22, 1959	do	Aug. 7, 1959	Dec. 24, 1959	Sept. 28, 30, 1959	2	Granted Dec. 21, 1959; 307 ICC 565.
20743	Chicago, Rock Island & Pacific: Kansas City, Mo., to Fort Worth, Tex.	July 30, 1959	Sept. 1, 1959	Aug. 18, 1959	Dec. 31, 1959	Sept. 28, 30, 1959	2	Continuance required for 1 year, Dec. 29, 1959. Affirmed Nov. 28, 1960; 307 ICC 655 and 312 ICC 324.
20779	Texas & New Orleans: Houston, Tex., to New Orleans, La.	Aug. 27, 1959	Oct. 1, 1959	Sept. 15, 1959	Jan. 31, 1960	Nov. 4, 1959	2	Continuance required for 1 year, Feb. 4, 1960; 307 ICC 725.
20780	Chicago, Milwaukee St. Paul & Pacific: Milwaukee, Wis., to Channing, Mich.	Aug. 21, 1959	Sept. 23, 1959	Sept. 8, 1959	Jan. 22, 1960	Oct. 14, 1959	2	Granted Jan. 21, 1960; 307 ICC 668.
20799	SpoKane, Portland & Seattle: Portland, Oreg., to Pasco, Wash.	Aug. 27, 1959	Oct. 1, 1959	No	do	do	2	Granted Sept. 15, 1959.

20811	Minneapolis, St. Paul & Sault Ste. Marie; Sault Ste. Marie, Mich., to Minneapolis, Minn.	Sept. 1, 1959	Oct. 2, 1959	Sept. 17, 1959	Feb. 1, 1960	Nov. 2, 4, 6, 1959	2	Granted Jan. 27, 1960; 307 ICC 677.
20860	Missouri Pacific: Pleasant Hill, Mo., to Newport, Ark.	Oct. 14, 1959	Nov. 15, 1959	Oct. 30, 1959	Mar. 14, 1960	Dec. 14, 16, 1959	2	Granted Mar. 9, 1960; 307 ICC 787.
20861	Chicago & North Western: Council Bluffs, Iowa, to Chicago, Ill.	Oct. 15, 1959	do	do	do	Dec. 21, 1959	2	Granted Mar. 8, 1960; 307 ICC 775.
20874	Missouri Pacific: Kansas City, Mo., to Little Rock, Ark.	Oct. 21, 1959	Nov. 22, 1959	Nov. 6, 1959	Mar. 21, 1960	Jan. 5, 8, 1960	2	Granted Mar. 18, 1960; 312 ICC 31.
20881	Chicago, Milwaukee, St. Paul & Pacific: La Crosse, Wis., to Austin, Minn.	Oct. 28, 1959	Nov. 30, 1959	Nov. 18, 1959	Mar. 30, 1960	Jan. 12, 1960	2	Granted Mar. 28, 1960; 312 ICC 44.
20925	Atchison, Topeka & Santa Fe and Gulf, Colorado & Santa Fe: Kansas City, Mo., to Houston, Tex.	Dec. 7, 1959	Jan. 7, 1960	Dec. 23, 1959	May 6, 1960	Feb. 8, 11, 1960	2	Granted Apr. 27, 1960; 312 ICC 79.
20934	St. Louis-San Francisco: Tulsa, Okla. to Fort Scott, Kans.	Dec. 15, 1959	Jan. 16, 1960	Dec. 31, 1959	May 15, 1960	Feb. 15, 18, 1960	2	Granted May 6, 1960.
21015	Minneapolis & St. Louis: Minneapolis to Watertown, S. Dak.	Feb. 15, 1960	Mar. 21, 1960	Mar. 8, 1960	July 20, 1960	Apr. 26, 1960	2	Granted June 30, 1960.
21062	St. Louis-San Francisco: St. Louis, Mo., to Memphis, Tenn.	Mar. 25, 1960	Apr. 30, 1960	Apr. 15, 1960	Aug. 29, 1960	June 15, 18, 1960	2	Continuance required for 1 year, Aug. 24, 1960; 312 ICC 713.
21105	Western Pacific: Salt Lake City, Utah, to Oakland, Calif.	Apr. 25, 1960	June 1, 1960	May 17, 1960	Sept. 30, 1960	July 25, 26, 1960	2	Granted Sept. 21, 1960.
21137	Chicago & North Western: Mankato, Minn., to Rapid City, S.D.	May 25, 1960	June 25, 1960	June 13, 1960	Oct. 24, 1960	July 27, 29, 1960	2	Granted Oct. 14, 1960; 312 ICC 313.
21255	Southern Pacific: Consolidation of trains 27 and 28 with 101 and 102.	Aug. 25, 1960	Sept. 25, 1960	Sept. 13, 1960	Jan. 24, 1961	Nov. 7, 11, 1960	2	Denied Mar. 27, 1961; 312 ICC 437.
21260	Lehigh Valley: New York, N.Y., to suspension bridge, New York; New York, N.Y. to Lehigh Valley, Pa.	Aug. 30, 1960	Oct. 1, 1960	Sept. 19, 1960	Jan. 31, 1961	Nov. 1-3, 7, 1960	4	Granted Jan. 31, 1961; (see also F.D. 20443) 312 ICC 399.
21298	New Jersey & New York: Hoboken, N.J., to Spring Valley, N.Y.	Sept. 29, 1960	Oct. 29, 1960	No	do	do	4	Granted Oct. 12, 1960.
21353	Chicago & Eastern Illinois: Evansville, Ind., to Chicago, Ill.	Nov. 14, 1960	Dec. 14, 1960	Nov. 29, 1960	Apr. 14, 1961	Jan. 23, 1961	2	Withdrawn Jan. 23, 1960.
21366	Chicago & North Western: Chicago to Duluth, Minn.; Elroy, Wis., to Mankato, Minn.	Nov. 17, 1960	Jan. 4, 1961	Dec. 20, 1960	May 4, 1961	Feb. 6, 1961	4	Granted Apr. 25, 1961; 312 ICC 517.
21391	Chicago, Milwaukee, St. Paul & Pacific: Minneapolis to Tacoma, Wash.	Dec. 6, 1960	Jan. 8, 1961	Dec. 23, 1960	May 8, 1961	Feb. 13-15, 17, 20, 21, 24, 1961	2	Partial continuance required for 1 year, Minneapolis-Butte, May 17, 1961; 317 ICC 691.
21394	Chicago & North Western Green Bay, Wis., to Ishpeming, Mich.	Dec. 14, 1960	Jan. 13, 1961	Jan. 12, 1961	May 12, 1961	Feb. 13-16, 1961	2	Granted July 20, 1961; 312 ICC 621.
21412	Seaboard: St. Paul, Minn., to Superior, Wis.; Duluth, Minn.	Jan. 17, 1961	Feb. 22, 1961	Feb. 9, 1961	May 31, 1961	Mar. 21, 23, 1961	2	Granted June 7, 1961; 312 ICC 571.
21417	New York, Pennsylvania & Western: Butler, N.J. to New York City	Dec. 30, 1960	Jan. 30, 1961	No	May 29, 1961	do	6	Dismissed Jan. 18, 1961.
21595	Missouri Pacific: Kansas City, Mo., to Omaha, Neb.	May 15, 1961	June 19, 1961	June 5, 1961	Oct. 18, 1961	Aug. 1, 3, 29, 1961	2	Continuance required for 1 year, Oct. 16, 1961; 312 ICC 765.
21606	Pennsylvania Reading Seashore Lines and Philadelphia RR. Co.: Atlantic City, N.J., to Philadelphia, Pa.	May 19, 1961	July 6, 1961	June 21, 1961	Nov. 5, 1961	Aug. 7-11, 1961	18	Continuance required for 1 year, Apr. 4, 1962; 317 ICC 111.
21611	Chicago & North Western: Chicago to Green Bay, Wis.	May 24, 1961	do	No	do	do	2	Granted June 21, 1961.

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

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4 months' date	Hearing date	Number of trains	Action
21613	Chicago, South Shore & South Bend: Chicago Ill., to South Bend, Ind.	May 25, 1961	June 29, 1961	June 19, 1961	Oct. 25, 1961	July 31, 1961	9	Granted Oct. 5, 1961; 312 ICC 655.
21620	Soo Line RR.: St. Paul, Minn., to Portal, N. Dak.	June 1, 1961	July 2, 1961	June 20, 1961	Nov. 1, 1961	Aug. 7, 9, 1961	2	Continuance required for 1 year, Oct. 31, 1961; 312 ICC 729.
21695	Texas & Pacific: Fort Worth to Marshall, Tex.	July 20, 1961	Aug. 22, 1961	No	Jan. 29, 1962	Oct. 30, 1961	2	Granted Aug. 4, 1961.
21733	Louisiana & Arkansas: Hope, Ark., to Shreveport, La.	Aug. 25, 1961	Sept. 30, 1961	Sept. 14, 1961	Mar. 11, 1962	Dec. 11, 13, 1961	2	Granted Jan. 24, 1962; 317 ICC 155.
21786	Boston & Maine: Springfield, Mass., to Windsor, Vt., to Brattleboro, Vt.	Oct. 9, 1961	Nov. 12, 1961	Oct. 30, 1961	Feb. 25, 1962	Jan. 8, 10, 12, 15, 1962	6	Granted Mar. 9, 1962; 317 ICC 165.
21795	Boston & Maine: Lowell, Mass., to White River Junction, Vt.	Oct. 18, 1961	Nov. 20, 1961	No	June 24, 1962	Feb. 8, 1962	6	Granted Nov. 7, 1961.
21814	Chicago & North Western: Chicago, Ill., to Minneapolis, Minn.; Chicago, Ill., to Mankato, Minn.	Oct. 31, 1961	Dec. 1, 1961	Nov. 15, 1961	Apr. 15, 1962	Feb. 1, 5, 7, 1962	4	Continuance required for 1 year, Mar. 23, 1962; 317 ICC 21.
21817	Boston & Maine: Wells River, to Berlin, N.H.	Nov. 1, 1961	Dec. 3, 1961	No	July 7, 1962	Apr. 16, 19, 20, 1962	2	Granted Nov. 20, 1961.
21818	Boston & Maine: Conway to Dover, N.H.	do	do	No	do	do	5	Do.
21844	Chicago Great Western: Kansas City, Mo., to Minneapolis, Minn.	Nov. 15, 1961	Dec. 16, 1961	Dec. 5, 1961	June 24, 1962	Apr. 16, 19, 20, 1962	2	Granted Apr. 3, 1962; 317 ICC 99.
21936	Pennsylvania RR.: Harrisburg, Pa., to Hagerstown, Md.	Jan. 24, 1962	Feb. 25, 1962	No	July 9, 1962	Apr. 12, 16, 18, 1962	2	Granted Feb. 8, 1962.
21946	Southern Pacific Co.: Ogden, Utah, to Oakland, Calif.	Feb. 5, 1962	Mar. 8, 1962	Feb. 11, 1962	Aug. 14, 1962	May 15, 18, 21, 1962	2	Continuance required June 14 to Labor Day and Dec. 22, to Jan. 2, for 1 year, July 6, 1962; 317 ICC 519.
21958	Baltimore & Ohio: Washington, D.C., to Cleveland, Ohio.	Feb. 8, 1962	Mar. 10, 1962	Feb. 26, 1962	Oct. 15, 1962	July 16, 18, 19, 20, 1962	2	Granted Oct. 31, 1962; 317 ICC 371, 509.
21986	Pennsylvania RR.: Buffalo, N.Y., to Harrisburg, Pa.	Mar. 6, 1962	Apr. 15, 1962	Apr. 4, 1962	Nov. 14, 1962	Aug. 13, 15, 16, 1962	5	Continuance required for 1 year, July 27, 1962.
22011	Baltimore & Ohio: Washington, D.C., to Baltimore, Md.	Mar. 21, 1962	Apr. 21, 1962	No	Dec. 14, 1962	Sept 17, 20, 1962	12	Granted Apr. 9, 1962.
22094	Chesapeake & Ohio: Washington, D.C., to Huntington, W. Va.	May 16, 1962	June 16, 1962	June 5, 1962	Dec. 28, 1962	Oct. 1, 4, 5, 1962	2	Granted Oct. 11, 1962.
22126	Chicago, Rock Island & Pacific: Wichita, Kan., to Fort Worth, Tex.	June 11, 1962	July 15, 1962	June 3, 1962	Feb. 27, 1963	Jan. 30, Feb. 1, 1963	2	Granted Nov. 27, 1962; 317 ICC 601.
22152	New York Central: Albany, N.Y., to Boston, Mass.	June 28, 1962	July 28, 1962	No	May 6, 1963	Jan. 24, 1963	2	Granted July 17, 1962.
22171	Missouri Pacific and Illinois Central: Houston, Tex., to New Orleans, La.	July 12, 1962	Aug. 15, 1962	Aug. 3, 1962	do	do	4	Withdrawn Aug. 24, 1962.
22201	Baltimore & Ohio: Washington, Baltimore, and Pittsburgh (152 changes).	July 27, 1962	Aug. 29, 1962	Aug. 17, 1962	do	do	3	Granted Jan. 14, 1963 317 ICC 673.
22268	New York Central: Elkhart, Ind., to Chicago, N.Y.	Sept. 26, 1962	Oct. 28, 1962	No	do	do	1	Granted Oct. 16, 1962
22341	Missouri Pacific: Kansas City, Mo., to Omaha, Neb.	Nov. 8, 1962	Jan. 7, 1963	Dec. 19, 1962	do	do	2	Continuance required for 1 year Apr. 26, 1963; 320 ICC 1.
22366	New York, Chicago & St. Louis RR.: Buffalo to Chicago.	Dec. 3, 1962	do	do	do	do	2	Granted May 15, 1963; 317 ICC 775.

22418	Pennsylvania RR.: Pittsburgh to Cleveland.	Jan. 8, 1963.	Feb. 10, 1963.	Jan. 28, 1963.	June 9, 1963.	Feb. 27, Mar. 4, 1963.	2	Dismissed June 5, 1963.
22425	Chicago & North Western: Chicago to Minneapolis; Chicago to Mankato, Minn.	Jan. 16, 1963.	Mar. 24, 1963.	Feb. 20, 1963.	July 23, 1963.	Apr. 2, 4, 5, 8, 10, 12, 1963.	4	Granted July 18, 1963; 320 ICC 85.
22428	Chicago, M., St. P. & P.: Aberdeen, S. Dak., to Deer Lodge, Mont.	Jan. 18, 1963.	Feb. 22, 1963.	Feb. 8, 1963.	June 21, 1963.	Mar. 18, 21, 25, 1963.	2	Dismissed June 18, 1963; 317 ICC 761.
22511	Soo Line: St. Paul, Minn., to Portal, N. Dak.	Mar. 14, 1963.	Apr. 15, 1963.	Mar. 27, 1963.	Sept. 14, 1963.	May 20, 22, 23, 1963.	2	Granted Nov. 27, 1963; 320 ICC 337.
22551	Erie-Lackawanna RR.: Elmira, N.Y., to Hoboken, N.J.; Danville, N.J., to Scranton, Pa.; Scranton to Elmira.	Apr. 5, 1963.	May 8, 1963.	Apr. 24, 1963.	Sept. 6, 1963.	June 3, 5, 6, 10, 11, 1963.	3	1 granted; 2 partial continuance, Aug. 27, 1963.
22552	Erie-Lackawanna RR.: Port Jervis, N.Y., to Susquehanna, Pa.; Binghamton, N.Y., to Hoboken, N.J.	do.	do.	do.	do.	do.	2	1 granted; 1 partial continuance, Aug. 27, 1963.
22567	Southern Pacific: Houston to New Orleans.	Apr. 15, 1963.	May 15, 1963.	Apr. 29, 1963.	Sept. 14, 1963.	Sept. 17, 19, 21, 1963.	2	Granted Sept. 12, 1963; 320 ICC 302.
22566	Union Pacific RR. Co.: Los Angeles to Ogden, Utah.	June 12, 1963.	July 15, 1963.	June 20, 1963.	Nov. 14, 1963.	Withdrawn July 22, 1963.	4	
22722	Missouri Pacific RR. Co.: Lake Charles to Alexandria, La.	July 29, 1963.	Sept. 9, 1963.	Aug. 26, 1963.	Jan. 8, 1964.	Oct. 24, 28, 1963.	2	Granted Jan. 6, 1964.
22728	New York Central: Albany, N.Y., to Boston, Mass.	July 31, 1963.	Aug. 31, 1963.	Aug. 14, 1963.	Dec. 30, 1963.	Oct. 1, 3, 1963.	2	Continuance required for 1 year
22757	Chicago South Shore & South Bend: Chicago to South Bend, Ind.; Chicago to Michigan City, Ind.; Chicago to Tremont, Ind.; Chicago to Gary, Ind.	Aug. 29, 1963.	Oct. 1, 1963.	Sept. 18, 1963.	Jan. 31, 1964.	Oct. 28, 1963.	4	Dec. 24, 1963; 320 ICC 364.
22758	Chicago, Milwaukee, St. Paul & Pacific: Aberdeen, S. Dak., to Deer Lodge, Mont.	Aug. 30, 1963.	Oct. 1, 1963.	Sept. 17, 1963.	Jan. 31, 1964.	Oct. 28, 31, Nov. 4, 1963.	2	Do.
22781	New York, New Haven & Hartford: New London, Conn., to Worcester, Mass.	Sept. 17, 1963.	Oct. 21, 1963.	Oct. 4, 1963.	Feb. 20, 1964.	Nov. 18, 19, 1963.	5	Denied Feb. 19, 1964; continuance required for 6 months
22782	New York, New Haven & Hartford: New London, Conn., to Providence, R.I.	do.	Nov. 5, 1963.	Oct. 18, 1963.	Apr. 2, 1964.	Jan. 13-17, 1964.	3	Granted in part, denied in part Mar. 31, 1964.
22783	New York, New Haven & Hartford: Danbury, Conn., to Pitsfield, Mass.	do.	do.	Oct. 21, 1963.	Mar. 4, 1964.	Dec. 3-6, 1963.	6	Granted in part, denied in part Mar. 2, 1964.
22828	New York Central: Chicago to Elkhart, Ind.	Oct. 24, 1963.	Nov. 25, 1963.	Nov. 8, 1963.	Mar. 24, 1964.	Jan. 7-10, 1964.	3	Granted Mar. 19, 1964.
22843	Union Pacific RR. Co.: Los Angeles to Ogden, Utah.	Nov. 1, 1963.	Dec. 2, 1963.	Nov. 19, 1963.	Apr. 1, 1964.	Jan. 6-10, 13, 1964.	4	Granted Mar. 27, 1964.
22880	Louisville & Nashville: Pass Christian, Miss., to New Orleans.	Dec. 2, 1963.	Jan. 7, 1964.	Dec. 23, 1963.	May 6, 1964.	Feb. 5-7, 1964.	2	Granted Apr. 29, 1964.
22896	Chicago, Rock Island & Pacific and Southern Pacific: Chicago to Tucuman, N. Mex.	Dec. 11, 1963.	Jan. 11, 1964.	Dec. 27, 1963.	May 10, 1964.		4	Dismissed Feb. 5, 1964.
22905	Southern Pacific: Oakland, Calif., to Portland, Ore.	Dec. 19, 1963.	Jan. 20, 1964.	Jan. 6, 1964.	May 19, 1964.	Feb. 25-28, Mar. 2-5, 10-12, 1964.	2	Granted May 14, 1964.
22939	Chicago & North Western: Chicago to Ashland, Wis.; Chicago to Land O'Lakes, Wis.; Chicago to Green Bay, Wis.	Jan. 16, 1964.	Feb. 18, 1964.	Feb. 3, 1964.	June 17, 1964.	Mar. 18, 19, 23, 1964.	5	Granted June 11, 1964.
22959	Baltimore & Ohio: Cincinnati, Ohio, to Cumberland, Md.	Jan. 29, 1964.	Mar. 3, 1964.	Feb. 18, 1964.	July 2, 1964.	Apr. 7-9, 13, 1964.	2	Granted June 26, 1964.
23015	Chicago, Rock Island & Pacific: Memphis, Tenn., to Amarillo, Tex.	Mar. 2, 1964.	Apr. 5, 1964.	Mar. 24, 1964.	Aug. 4, 1964.	May 6, 7, 11, 1964.	2	Granted July 27, 1964.
23045	Erie-Lackawanna: Scranton, Pa., to Hoboken, N.J.	Mar. 25, 1964.	Apr. 27, 1964.	No.			1	Granted Apr. 14, 1964.

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PASSENGER TRAIN SERVICE

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

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4 months' date	Hearing date	Number of trains	Action
23095	Atlantic Coast Line: Savannah, Ga., to Florence, S.C.	Apr. 21, 1964	June 1, 1964	No			2	Granted May 19, 1964.
23142	Soo Line: Chicago to Superior, Wis.; Chicago to St. Paul, Minn.	May 22, 1964	June 22, 1964	June 9, 1964	Jan. 11, 1965 ²	July 20-24, 1964	4	Granted January 4, 1965.
23175	Boston & Maine: Boston to Concord, N.H., Meredith, N.H., and White River Junction, Vt.	June 24, 1964	Aug. 8, 1964	July 17, 1964	Dec. 31, 1964 ³	Sept. 21, Oct. 5-7, 1964	14	11 granted, 3 denied; Dec. 31, 1964.
23176	Boston & Maine: Boston to Dover, N.H.; Portland, Maine.	do	do	do	do ³	do	16	14 granted, 2 denied; Dec. 31, 1964.
23177	Boston & Maine: Boston to Portsmouth, N.H.	do	do	do	do ³	do	10	8 granted, 2 denied; Dec. 31, 1964.
23272	Southern Pacific: Los Angeles to Phoenix, Ariz.	Sept. 1, 1964	Oct. 2, 1964	Sept. 17, 1964	Feb. 1, 1965	Oct. 26-29, 1964	2	Denied Jan. 26, 1965.
23277	Reading Co.: Philadelphia, Pa., to Bound Brook Junction, N.J.	Sept. 2, 1964	do	Sept. 18, 1964	do	Oct. 26, 29, 1964	8	Dismissed Oct. 29, 1964.
23278	Missouri Pacific and Illinois Central: Houston, Tex., to New Orleans.	Sept. 4, 1964	Oct. 4, 1964	do	Feb. 3, 1965	(Canceled) Nov. 9, 11, 13, 16, 1964	4	Granted Jan. 28, 1965.
23313	Pennsylvania R.R.: St. Louis, Mo., to New York City.	Sept. 25, 1964	Oct. 25, 1964	Oct. 12, 1964	Feb. 24, 1965	Nov. 16, 19, 23, 24, 1964	2	Denied Feb. 15, 1965.
23383	Southern Pacific Co.: Portland, Oreg., to Oakland, Calif.	Nov. 9, 1964	Dec. 10, 1964	Nov. 25, 1964	Apr. 9, 1965	Jan. 18, 22, 26, 1965	2	Granted Mar. 26, 1965.
23487	Erie-Lackawanna R.R.: Hoboken, N.J., to Chicago, Ill.	Feb. 1, 1965	Mar. 3, 1965	Feb. 17, 1965	July 2, 1965	Apr. 5, 7, 9, 1965	2	Granted Jun. 28, 1965.
23514	New York, New Haven & Hartford R.R. Co.: Certain trains to and from New York City.	Feb. 18, 1965	Mar. 29, 1965	Mar. 10, 1965	July 23, 1965	Apr. 12-16, 19, 23, 26-30, 1965	105	Dismissed July 7, 1965.
23547	St. Louis-San Francisco Ry.: St. Louis, Mo., to Oklahoma City, Okla.	Mar. 15, 1965	Apr. 19, 1965	Mar. 30, 1965	Aug. 18, 1965	May 3-7, 10-14, 17, 19, 1965	2	Denied Aug. 9, 1965 (trains re-numbered and rescheduled).
23548	do	do	do	do	do	do	2	Granted Aug. 9, 1965.
23549	St. Louis-San Francisco Ry.: Kansas City, Mo., to Birmingham, Ala.	do	do	do	do	do	2	Do.
23550	do	do	do	do	do	do	2	Do.
23551	St. Louis-San Francisco Ry.: Monett, Mo., to Fort Smith, Ark.	do	do	do	do	do	2	Denied Aug. 9, 1965 (trains re-numbered and rescheduled).
23552	St. Louis-San Francisco Ry.: St. Louis, Mo., to Memphis, Tenn.	do	do	do	do	do	2	Granted Aug. 9, 1965.
23554	Pennsylvania R.R. Co.: Philadelphia, Pa., to Delmar, Del.	do	do	do	do	do	2	Do.
23572	New York Central: Albany, N.Y., to Boston, Mass.	Mar. 26, 1965	Apr. 18, 1965	Apr. 5, 1965	Aug. 17, 1965	None	2	Dismissed May 13, 1965.
23574	Missouri Pacific R.R. Co.: Omaha, Neb., to Kansas City, Mo.	Mar. 29, 1965	Apr. 25, 1965	Apr. 13, 1965	Aug. 24, 1965	June 7, 10, 11, 1965	2	Granted Aug. 17, 1965.
23581	Chicago Great Western Ry.: Omaha, Neb., to Minneapolis, Minn.	Mar. 31, 1965	May 2, 1965	Apr. 20, 1965	Sept. 1, 1965	June 7, 10, 1965	2	Granted Aug. 26, 1965.
23584	Norfolk & Western Ry.: Buffalo, N.Y., to Chicago, Ill.	Apr. 2, 1965	Apr. 30, 1965	Apr. 15, 1965	Aug. 30, 1965	June 14, 17, 1965	2	Granted Aug. 19, 1965.
			May 9, 1965	Apr. 27, 1965	Sept. 8, 1965	June 7, 10, 1965	2	Granted Aug. 30, 1965.

23597	Chicago, Milwaukee, St. Paul & Pacific RR. Co.: Manila, Iowa, to Sioux Falls, S. Dak.	Apr. 16, 1965	May 17, 1965	May 4, 1965	Sept. 16, 1965	June 7, 9, 1965	2	Granted Sept. 10, 1965.
23625	Chicago, Rock Island & Pacific: Kansas City, Mo., to Tucumcari, N. Mex.	Apr. 29, 1965	June 6, 1965	May 12, 1965	Oct. 5, 1965	June 14-16, 18, 21, 1965	2	Denied Sept. 27, 1965.
23646	Chicago, Milwaukee, St. Paul & Pacific RR. Co.: Milwaukee, Wis., to Savannah, Ill.	May 14, 1965	June 15, 1965	June 3, 1965	Oct. 14, 1965	July 22, 1965	2	Granted Sept. 27, 1965.
23657	Missouri-Kansas-Texas R.R.: Kansas City, Mo., to Dallas, Tex.	May 24, 1965	July 1, 1965	June 30, 1965	Oct. 29, 1965	Aug. 2, 4, 5, 1965	2	Granted Nov. 18, 1965.
23658	Missouri-Kansas-Texas R.R.: Kansas City, Mo., to Dallas, Tex.	do	do	do	do	do	2	Do.
23684	Louisville & Nashville R.R.: Memphis, Tenn., to Bowling Green, Ky.	June 11, 1965	July 15, 1965	July 1, 1965	Nov. 12, 1965	Aug. 9, 12, 1965	2	Granted Nov. 5, 1965.
23720	Erie-Lackawanna R.R. Co.: Hoboken, N.J., to Scranton, Pa.	July 6, 1965	Aug. 6, 1965	July 21, 1965	Dec. 3, 1965	Sept. 1-3, 1965	3	Granted Nov. 26, 1965.
23756	Southern Pacific Co.: Portland, Ore., to San Francisco, Calif.	July 30, 1965	Sept. 1, 1965	Aug. 18, 1965	Dec. 31, 1965	Oct. 18, 22, 25, 1965	2	Denied May 24, 1966.
23766	Chicago & North Western Ry.: Chicago, Ill., to Madison, Wis.	Aug. 5, 1965	Sept. 6 and Sept. 11, 1965	No	do	do	3	Granted Aug. 26, 1965 (507-10); Aug. 30, 1965 (508); Pet. D Sept. 10, 1965.
23770	Chicago & Eastern Illinois R.R.: Danville, Ill., to Evansville, Ind.	Aug. 23, 1965	Sept. 22, 1965	Sept. 9, 1965	Jan. 21, 1966	Oct. 25, 29, Nov. 1, 1965	2	Granted Jan. 14, 1966.
23773	Chicago & Eastern Illinois R.R.: Danville, Ill., to Evansville, Ind.	do	do	do	do	do	2	Do.
23781	Louisville & Nashville R.R.: Evansville, Ind., to Atlanta, Ga.	Aug. 18, 1965	Sept. 21, 1965	do	Jan. 20, 1966	do	2	Do.
23787	Atlantic Coast Line RR.: Waycross, Ga., to Montgomery, Ala.	Aug. 24, 1965	Oct. 1, 1965	Sept. 16, 1965	Jan. 31, 1966	Nov. 1, 3, 5, 8, 1966	2	Dismissed Nov. 22, 1965.
23790	Atlantic Coast Line RR.: Wilmington, N.C., to Florence, S.C.	Aug. 27, 1965	do	do	do	Nov. 10-11, 1965	2	Granted, Jan. 11, 1966.
23800	Southern Pacific Co.: Tucumcari, N. Mex., to Phoenix, Ariz.	Sept. 2, 1965	Oct. 6, 1965	Sept. 23, 1965	Feb. 5, 1966	Nov. 3-5, 1965	2	Denied Jan. 24, 1966.
23808	Chicago R.: Missouri to Fort Worth, Tex.	Sept. 15, 1965	Oct. 17, 1965	Oct. 4, 1965	Feb. 16, 1966	Nov. 8, 10-12, 1965	2	Denied Feb. 8, 1966.
23810	Atchafalaya, Iowa & Santa Fe: Missouri to Tulsa, Okla.	Sept. 16, 1965	Oct. 20, 1965	Sept. 30, 1965	Feb. 19, 1966	Nov. 17, 18, 19, 22, 1965	2	Denied Feb. 10, 1966.
23820	Northern Pacific Ry. Co.: Spokane, Wash., to Lewiston, Idaho	Sept. 27, 1965	Oct. 31, 1965	Oct. 19, 1965	Feb. 28, 1966	Dec. 11, 1965	2	Granted Feb. 18, 1966.
23821	Chicago, Burlington & Quincy RR.: Alliance, Neb., to Jasper, Wyo.	Sept. 28, 1965	do	do	Feb. 27, 1966	Dec. 7, 1965	2	Granted Feb. 23, 1966.
23831	New Haven RR.	Oct. 11, 1965	Mar. 1, 1966	Oct. 14, 1965	June 30, 1966	Dec. 1, 1965	274	Apr. 5, 1966; 234 continued, 40 dis-continued.
23853	Missouri Pacific RR. Co.: St. Louis, Mo., to Pueblo, Colo.	Oct. 25, 1965	Nov. 29, 1965	Nov. 15, 1965	Mar. 26, 1966	Jan. 4, 7, 10, 12, 14, 17, 19, 1966	2	Granted May 22, 1966.
23959	Boston & Maine Corp.: Boston, Mass., to Concord, N.H.	Jan. 3, 1966	Feb. 7, 1966	Jan. 25, 1966	June 3, 1966	Mar. 7, 1966	3	Granted June 2, 1966.
23960	Boston & Maine Corp.: Boston, Mass., to Dover, N.H.	do	do	do	do	do	2	Do.
23961	Boston & Maine Corp.: Boston and Newburyport, Mass.	do	do	do	do	do	4	Denied June 2, 1966.
23969	Northern Pacific Railway Co.: Jamestown and Mandan, N. Dak.	Jan. 24, 1966	Feb. 28, 1966	No	do	do	2	Feb. 16, 1966. No invest.

Footnotes at end of table.

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

F.D. No.	Railroad and points served	Filed	Effective date	Investigation ordered	4 months' date	Hearing date	Number of trains	Action
24000	Boston & Maine Corp.: Springfield, Mass., to White River Junction, Vt.	Feb. 1, 1966	Mar. 7, 1966	Feb. 21, 1966	July 6, 1966	Mar. 7, 1966	4	Granted July 6, 1966.
24061	Missouri Pacific Railroad Co.: Illinois Central Railroad Co.	Mar. 14, 1966	Apr. 15, 1966	Apr. 4, 1966	Aug. 14, 1966	June 20, 1966	4	Denied Nov. 15, 1966.
24074	Pennsylvania Railroad Co.: St. Louis, Mo., to New York, N. Y.	Mar. 31, 1966	Apr. 24, 1966	Apr. 11, 1966	Aug. 23, 1966	May 31, 1966	2	Denied Aug. 16, 1966.
24078	New York Central R.R. Co.: Elkhart, Ind., to Chicago, Ill.	Mar. 24, 1966	do	No	Oct. 17, 1966	July 18, 1966	1	Granted Apr. 12, 1966.
24155	Atlanta & West Point RR. Co.: the Western Railway of Alabama.	May 13, 1966	June 19, 1966	June 6, 1966	do	do	2	Granted Oct. 14, 1966.
24158	Louisville & Nashville RR.: Montgomery, Ala., to New Orleans, La.	do	June 18, 1966	do	do	do	2	Do.
24159	Louisville & Nashville RR.: Flomaton, Ala., to Chattahoochee, Fla.	do	do	do	do	do	2	Do.
24160	Chicago, Rock Island & Pacific RR.: Omaha, Neb., to Denver to Colorado Springs, Colo.	do	June 19, 1966	do	do	do	1	Do.
24161	Seaboard Air Line Ry.: Portsmouth, Va., to Raleigh, N. C.	May 16, 1966	June 16, 1966	June 2, 1966	Oct. 15, 1966	do	2	Granted Oct. 6, 1966.
24175	Erie-Lackawanna RR. Co.: Chicago to Hoboken to Binghamton.	May 27, 1966	July 1, 1966	June 17, 1966	Oct. 31, 1966	Aug. 1, 1966	2	Denied Oct. 11, 1966.
24205	Soo Line RR. Co.: Portal, N. Dak., to Glenwood, Glenwood, Minn., to Enderlin, N. Dak.	June 15, 1966	July 15, 1966	June 30, 1966	Nov. 14, 1966	Aug. 9, 1966	4	Granted Nov. 4, 1966.
24218	Colorado & Southern RR. Co. and Fort Worth & Denver Ry. Co.: Dallas, Tex., and Denver, Colo.	June 27, 1966	July 31, 1966	No	Dec. 14, 1966	Sept. 7, 1966	2	Granted July 19, 1966.
24244	Louisville & Nashville RR. Co.: Cincinnati, Ohio and Montgomery, Ala.	July 14, 1966	Aug. 15, 1966	Aug. 2, 1966	Dec. 27, 1966	Sept. 26, 1966	2	Do.
24252	The Western Pacific RR. Co.: San Francisco, Calif., and Salt Lake City, Utah.	July 21, 1966	Aug. 23, 1966	Aug. 16, 1966	Jan. 14, 1967	Oct. 10, 1966	2	Denied Feb. 13, 1967.
24277	Southern Railway Co.: Atlanta, Ga., and Birmingham, Ala.	Aug. 3, 1966	Sept. 15, 1966	Aug. 29, 1966	Feb. 28, 1967	Nov. 30, 1966	2	Granted Sept. 1, 1966.
24293	Chicago, Rock Island & Pacific RR. Co.: Kansas City, Mo., and Tucuman, N. Mex.	Aug. 16, 1966	do	No	Mar. 9, 1967	Dec. 12, 1966	2	Granted Feb. 15, 1967.
24337	Illinois Central RR. Co.: Carbondale, Ill., and Memphis, Tenn.	Sept. 29, 1966	Oct. 31, 1966	Oct. 18, 1966	do	do	5	Granted Mar. 1, 1967.
24384	Memphis and New Orleans, La.	Oct. 11, 1966	Nov. 10, 1966	Oct. 26, 1966	do	do	do	do

24354	Southern Ry. Co.: Bristol Va., and Chattanooga, Tenn.	Oct 19, 1966	Nov. 19, 1966	No	Apr. 7, 1967	Jan. 9, 1967	2	Granted Nov. 7, 1966.
24370	Chicago Rock Island & Pacific RR. Co. and Chicago Burlington & Quincy RR. Co.: Minneapolis, Minn., and St. Louis, Mo.	Nov. 4, 1966	Dec. 8, 1966	Nov. 22, 1966	Apr. 7, 1967	Jan. 9, 1967	6	Granted Mar. 20, 1967.
24383	St. Louis-San Francisco Ry. Co.: St. Louis, Mo., and Oklahoma City, Okla.	Nov. 23, 1966	Dec. 31, 1966	Dec. 19, 1966	Apr. 30, 1967	Jan. 23, 1967	2	Granted Apr. 24, 1967.
24384	St. Louis-San Francisco Ry. Co.: Kansas City, Mo., and Birmingham, Ala.	do	do	No			2	Withdrawn; dismissed Dec. 19, 1966.
24395	Northern Pacific Ry. Co.: Minneapolis and Duluth, Minn. (via Superior, Wis.)	Dec. 12, 1966	Jan. 5, 1967	No			2	Granted Dec. 21, 1966.
24398	Pennsylvania RR. Co. Co.: Buffalo N.Y., and Baltimore, Md.	Dec. 7, 1966	Jan. 15, 1967	Jan. 3, 1967	May 14, 1967	Mar. 15, 1967	2	Partial continuance required. May 5, 1967.
24399	Southern Ry. Co.-Birmingham, Ala., and Brunswick, Ga.	Dec. 9, 1966	Jan. 9, 1967	No			2	Granted Dec. 23, 1966.
24404	The Denver & Rio Grande Western RR. Co.: Denver, Colo., and Salt Lake City, Utah.	Dec. 15, 1966	Jan. 29, 1967	Jan. 17, 1967	May 28, 1967	Mar. 1, 1967	2	
24424	Southern Railway Co.: Chattanooga and Memphis, Tenn.	Dec. 30, 1966	Jan. 30, 1967	No			2	Granted Jan. 17, 1967.
24435	Chesapeake & Ohio Ry. Co.: Washington, D.C.; Cincinnati, Ohio and 4 others.	Jan. 10, 1967	Feb. 10, 1967	Jan. 26, 1967	June 9, 1967	Feb. 27, 1967	6	
24462	Chicago, Burlington & Quincy RR. Co.: Alliance, Nebr. and Brush, Colo.	Feb. 6, 1967	Mar. 15, 1967	Mar. 2, 1967	July 14, 1967	Apr. 3, 1967	2	
24499	Illinois Central RR. Co.: Chicago, Ill., and Waterloo, Iowa.	Mar. 3, 1967	Apr. 5, 1967	Mar. 22, 1967	Aug. 4, 1967	Apr. 24, 1967	2	
24529	Southern Pacific Co.: Tucumcari, N. Mex., and Los Angeles, Calif.	Mar. 19, 1967	Apr. 21, 1967	Apr. 7, 1967	Aug. 20, 1967	May 25, 1967	2	
24542	Monon RR.: Chicago, Ill., to Louisville, Ky.	Mar. 27, 1967	May 8, 1967	Apr. 25, 1967	Sept. 7, 1967	June 12, 1967	2	
24545	Chicago, Burlington & Quincy RR. Co.: Billings, Mont., and Alliance, Nebr.	Mar. 30, 1967	May 1, 1967	Apr. 19, 1967	Aug. 31, 1967	June 5, 1967	2	
24546	Colorado & Southern Ry. Co. and Chicago, Burlington & Quincy RR. Co.: Denver, Colo., and Billings, Mont.	do	do	do	do	do	2	
24558	Norfolk & Western Ry. Co.: St. Louis, Mo., and Chicago, Ill.; St. Louis and Detroit.	Apr. 7, 1967	May 10, 1967	Apr. 26, 1967	Sept. 9, 1967	June 19, 1967	4	
24562	The Colorado & Southern Ry. Co., Fort Worth & Denver Ry. Co.: Dallas, Tex., to Denver, Colo.	Apr. 10, 1967	do	Apr. 25, 1967	do	June 20, 1967	2	
24571	Southern Railway Co.: Washington, D.C., and Salisbury, N.C.	Apr. 26, 1967	May 27, 1967	May 12, 1967	Sept. 26, 1967		2	
24589	Chicago, Milwaukee, St. Paul & Pacific RR.: Chicago, Ill., and Omaha, Nebr.	May 12, 1967	June 12, 1967				2	

¹ 16 daily, 8 Saturday and 6 Sunday.

² Agreement reached at hearing.

³ Applicant's voluntary extension.

⁴ Ordered after expiration of time for requiring continuance of trains pending hearing and decision.

⁵ Railroad agreed to continue operating trains pending decision.

PASSENGER TRAIN SERVICE

Status of proceedings under sec. 13a(2)

F.D. No.	Railroad and points served	Filed	Hearing	Examiner's report	Decision	Number of trains	Action
20416	Northern Pacific Co.: Valley City to McHenry, N. Dak.	Nov. 24, 1958	Mar. 26, 1959	July 13, 1959	Oct. 28, 1960	2	Dismissed.
20417	Northern Pacific Co.: Jamestown to Wilton, N. Dak.	do	Mar. 20, 1959	June 24, 1959	Oct. 21, 1960	2	Dismissed; 312 ICC 309.
20418	Northern Pacific Co.: Fargo to Streeter, N. Dak.	do	Mar. 24, 1959	July 13, 1959	Aug. 29, 1960	2	Granted.
20419	Northern Pacific Co.: Jamestown to Oakes, N. Dak.	do	Mar. 23, 1959	July 6, 1959	Aug. 29, 1960	2	Granted; 312 ICC 559.
20420	Northern Pacific Co.: Jamestown to Leeds, N. Dak.	do	Mar. 19, 1959	June 24, 1959	Aug. 29, 1960	2	Granted.
20421	Northern Pacific Co.: Carrington to Turtle Lake; Esmond to Oberon, N. Dak.; Oberon to Leeds, N. Dak.; Jamestown to Oberon, N. Dak.	do	Mar. 17, 1959	June 10, 1959	Aug. 1, 1960	(1)	Dismissed; 312 ICC 150.
20422	Northern Pacific Co.: Fargo to Marion, N. Dak.	do	Mar. 25, 1959	July 31, 1959	Oct. 25, 1960	(2)	Dismissed.
20503	Southern Pacific Co.: Oakland to Sacramento, Calif.; Los Angeles to Sacramento; San Francisco to San Jose.	Jan. 19, 1959	May 18, 1959	Dec. 18, 1959	July 21, 1960	3 6	Granted; 312 ICC 631, 320 ICC 59.
20524	New York Central: Utica to Ogdensburg, N.Y.; Syracuse to Massena, N.Y.	Jan. 30, 1959	Apr. 13, 1959	Aug. 5, 1959	Mar. 28, 1960	8	Denied; 312 ICC 4.
20553	Pennsylvania RR. Co.: Camden to Pemberton, N.J.	Feb. 25, 1959	Apr. 27, 1959	Aug. 24, 1959	June 6, 1960	2	Granted.
20592	Missouri Pacific Co.: Atchison to Downs, Kans.	June 11, 1959	June 11, 1959	Sept. 10, 1959	May 25, 1960	2	Granted; 312 ICC 105.
20606	Pennsylvania RR. Co.: Trenton to Red Bank, N.J.	Apr. 15, 1959	July 30, 1959	Dec. 4, 1959	Dec. 28, 1961	2	Granted; 317 ICC 5.
20731	Pennsylvania RR. Co.: Camden-Trenton, N.J.	July 24, 1959	Nov. 30, 1959	Apr. 8, 1960	Aug. 8, 1960	2	Granted; 312 ICC 167.
20792	Lehigh Valley RR. Co.: Harrisburg to Williamsport, Pa.	Aug. 25, 1959	Dec. 7, 1959	May 10, 1960	Aug. 4, 1960	2	Granted.
20824	Pennsylvania RR. Co.: Leighton to Hazelton, Pa.	Sept. 14, 1959	Dec. 3, 1959	Apr. 27, 1960	Jan. 31, 1961	4	Granted; 312 ICC 411.
20863	Pennsylvania RR. Co.: Trenton to Phillipsburg, N.J.	Oct. 16, 1959	Mar. 28, 1960	May 18, 1960	Sept. 15, 1960	2	Granted.
20820	New York, Susquehanna & Western	Dec. 3, 1959	May 2, 1960	Oct. 28, 1960	Feb. 24, 1961	10	Withdrawn Jan. 14, 1960.
21030	Southern Pacific Co.: Oakland to San Jose, Calif.; San Francisco to San Jose.	Feb. 24, 1960	June 20, 1960	Oct. 28, 1960	Feb. 24, 1961	6	Withdrawn May 3, 1960.
21039	Pennsylvania-Reading Seashore Lines: Hammononton to Camden, N.J.; Hammononton to Clementon, N.J.	Mar. 3, 1960	Aug. 1, 1960	Dec. 13, 1960	June 24, 1961	4	Granted.
21063	Great Northern Ry.: Great Falls to Butte, Mont.	Mar. 28, 1960	Aug. 1, 1960	Dec. 13, 1960	June 24, 1961	2	Granted; 312 ICC 580.
21273	Reading Co.: Philadelphia to Bethlehem, Pa.	Sept. 19, 1960	Nov. 28, 1960	Feb. 17, 1961	May 17, 1961	3	Granted.
21563	Southern Railway Co.: Greensboro to Goldsboro, N.C.	Apr. 6, 1961	July 11, 1961	Oct. 27, 1961	Aug. 6, 1962	2	Granted; 317 ICC 255.
21589	Pennsylvania Railroad Co.: All trains at Pittsburgh stations.	May 5, 1961	July 10-13; Aug. 22-24, 1961	Apr. 19, 1962	May 21, 1962	30	Granted 9, denied 21.

21607	Pennsylvania-Reading Seashore Lines.	May 19, 1961.	Aug. 7, 1961.	Waived.	Apr. 4, 1962.	30	Dismissed; 317 ICC 111.
21770	Boston & Maine RR.: Conway and Berlin Branches.	Sept. 25, 1961.	Apr. 26, 1962.	-----	Oct. 9, 1961.	7	Dismissed.
21840	Pennsylvania Railroad Co.: Harrisburg to Philadelphia; Philadelphia to Pittsburgh.	Nov. 13, 1961.	-----	-----	June 10, 1963.	3	Dismissed; 317 ICC 737; 320 ICC 319.
21972	Denver & Rio Grande: Western R.R. Co.: Denver to Craig, Colo.	Feb. 19, 1962.	May 28, 31 1962.	-----	Mar. 22, 1963.	2	Denied; 317 ICC 722.
22325	New York Central: Boston to Springfield, Mass.	Oct. 24, 1962.	Feb. 21-25, 1963.	-----	Aug. 13, 1963.	1	Partial grant, Worcester to Springfield.
22742	New York Central: Syracuse to Massena, N.Y.	Aug. 20, 1963.	Oct. 7, 1963.	Dec. 27, 1963.	Jan. 27, 1964.	2	Granted.
22948	New York Central: Springfield to Boston, Mass.	Jan. 24, 1964.	Apr. 13, 1964.	June 4, 1964.	July 6, 1964.	2	Partial grant, Springfield to Worcester.
23069	Grand Trunk Western: Detroit to Durand, Mich.	Apr. 7, 1964.	May 28-29 1964.	-----	Aug. 9, 1965.	2	Granted.
23117	Southern Pacific Co.: San Jose to Monterey, Calif.	May 11, 1964.	Aug. 6-11 1964.	-----	Sept. 22, 1965.	2	Denied.
22889	New York Central RR. Co.: Hudson-Albany, N.Y.	Dec. 5, 1963.	Apr. 14, 1964.	-----	Apr. 2, 1965.	2	Granted.
23170	Boston & Maine Corp.: Boston-all points in Massachusetts.	June 17, 1964.	Sept. 21-25, 1964; Oct. 5-7, 26-30, 1964.	-----	Jan. 15, 1965.	229	Do.
23195	New York, New Haven & Hartford RR.: Boston-Needham Heights, West Medway, Blackstone and Dedham, Mass.	July 6, 1964.	Oct. 11-16, 1964; Feb. 24, 1965.	Waived.	Nov. 3, 1965.	37	Do.
23321	Atchison, Topeka & Santa Fe RR.: Newton-Kinsley, Kans.	Oct. 5, 1964.	Jan. 14, 1965.	Apr. 22, 1965.	May 24, 1965.	2	Do.
23395	Erie-Lackawanna RR. Co.: Buffalo-Hornell, N.Y.	Nov. 20, 1964.	Jan. 21, 22, 1965.	Apr. 14, 1965.	Oct. 27, 1965.	2	Do.
23464	Southern Pacific Co.: Los Angeles-Oakland, Calif.	Jan. 18, 1965.	Mar. 29, 1965.	-----	May 10, 1965.	2	Dismissed.
23542	Canadian Pacific Ry. Co.: Wells River, Vt.-Canadian border.	Mar. 8, 1965.	-----	-----	July 30, 1965.	Do.	Do.
23573	Atchison, Topeka & Santa Fe, Los Angeles to San Diego, Calif.	Mar. 29, 1965.	-----	-----	Oct. 12, 1965.	5	Do.
23707	Soo Line RR. Co., St. Paul to Noyes, Minn.	June 22, 1965.	Oct. 18, 20, 22, 1965.	-----	Jan. 26, 1967.	2	Granted.
23924	Chesapeake & Ohio Ry., Grand Rapids to Traverse City, Mich.	Dec. 14, 1965.	-----	-----	Oct. 12, 1966.	2	Do.
24007	Atlantic Coast Line RR. Co., Jacksonville and St. Petersburg, Fla.	Feb. 7, 1966.	Apr. 25, 28, 1966.	-----	Apr. 3, 1967.	2	Do.
24156	Northern Pacific Ry. Co., Mandan and Mott, N. Dak.	May 13, 1966.	-----	-----	June 28, 1966.	2	Dismissed.
24289	The Baltimore & Ohio RR. Co., Parkersburg and Huntington, W. Va.	Aug. 9, 1966.	Cancelled, Jan. 16, 1967.	-----	Jan. 16, 1967.	2	Do.

¹ Discontinuance of 4 mixed trains and reduction of 4 freight trains to triweekly service.

² 2 mixed trains to discontinue passenger service and reduce freight service to triweekly.

³ Reopened for reconsideration on present record on 2 additional trains, Nov. 21, 1960.

Through intercity railroad passenger trains, 20 major cities or metropolitan areas

[Excludes commutation or other local service, special trains, and trains not advertised as part of a through service]

	Out-bound	In-bound		Out-bound	In-bound
New York to Chicago:			Chicago to Washington, D.C.:		
Erie-Lackawanna	1	1	Baltimore & Ohio	3	3
New York Central	5	5	Pennsylvania	1	1
Pennsylvania	4	5	Chicago to St. Louis:		
New York to Philadelphia: Pennsylvania	25	25	Gulf, Mobile & Ohio	3	3
New York to Detroit: New York Central	1	1	Illinois Central	1	1
New York to Baltimore: Pennsylvania	13	13	Norfolk & Western	2	2
New York to Cleveland: New York Central	4	4	Chicago to Milwaukee:		
New York to Washington: Pennsylvania	13	14	Chicago & North Western	5	5
New York to St. Louis:			Chicago, Milwaukee, St. Paul & Pacific	7	8
New York Central	1	1	Chicago to San Francisco:		
Pennsylvania	2	3	Atchison, Topeka & Santa Fe	1	1
New York to Boston: New York, New Haven & Hartford	14	15	Chicago, Burlington & Quincy (orig.)	1	1
New York to Dallas			Chicago, Milwaukee, St. Paul & Pacific (orig.)	1	1
New York to New Orleans:			Southern Pacific (orig.)		1
Pennsylvania (orig.)	2	1	Western Pacific (orig.)		1
Louisville & Nashville (orig.)		1	Chicago to Boston: New York Central	1	1
Southern (orig.)		1	Chicago to Dallas: Atchison, Topeka & Santa Fe	2	2
New York to Pittsburgh: Pennsylvania	7	9	Chicago to New Orleans: Illinois Central	3	2
New York to Buffalo:			Chicago to Pittsburgh:		
Erie-Lackawanna	1	1	Baltimore & Ohio	3	3
New York Central	8	8	Pennsylvania	5	5
New York to Cincinnati:			Chicago to Seattle:		
New York Central	1	1	Chicago, Burlington & Quincy (orig.)	4	2
Pennsylvania	1	1	Great Northern (orig.)		2
Pennsylvania (orig.)	2	2	Northern Pacific (orig.)		2
Chesapeake & Ohio (orig.)		2	Chicago to Buffalo: New York Central	6	6
New York to Memphis			Chicago to Cincinnati:		
New York to Atlanta			New York Central	1	1
Pennsylvania (orig.)	4	1	Pennsylvania	2	2
Seaboard (orig.)		3	Chicago to Memphis: Illinois Central	3	3
Southern (orig.)		3	Chicago to Denver:		
New York to Indianapolis:			Chicago, Burlington & Quincy	3	3
New York Central	1	1	Chicago, Milwaukee, St. Paul & Pacific (orig.)	2	2
Pennsylvania	2	3	Union Pacific		2
New York to Columbus, Ohio:			Chicago to Atlanta:		
New York Central	1	1	Chicago & Eastern Illinois (orig.)	1	1
Pennsylvania	2	3	Louisville & Nashville (orig.)		1
New York to Louisville:			Chicago to Minneapolis:		
Pennsylvania (orig.)	1	1	Chicago, Burlington & Quincy	7	7
Chesapeake & Ohio (orig.)		1	Chicago, Milwaukee, St. Paul & Pacific	4	5
New York to Birmingham, Ala.:			Chicago to Indianapolis:		
Pennsylvania (orig.)	4	1	New York Central	2	2
Seaboard (orig.)		3	Pennsylvania	2	2
Southern (orig.)		3	Chicago to Kansas City, Mo.:		
New York to Rochester, N.Y.: New York Central	7	7	Atchison, Topeka & Santa Fe	7	7
New York to Toledo: New York Central	4	4	Chicago, Burlington & Quincy	2	2
New York to Miami:			Chicago, Rock Island & Pacific	2	2
Pennsylvania (orig.)	4	1	Chicago to Columbus, Ohio: Pennsylvania	2	2
Atlantic Coast Line (orig.)		3	Chicago to Phoenix:		
Seaboard (orig.)		3	Atchison, Topeka & Santa Fe	1	1
New York to Akron: Erie-Lackawanna	1	1	Chicago, Rock Island & Pacific (orig.)	1	1
New York to Tampa:			Southern Pacific (orig.)		1
Pennsylvania (orig.)	5	2	Chicago to Louisville:		
Atlantic Coast Line (orig.)		3	Monon	1	1
Seaboard (orig.)		3	Pennsylvania	2	2
New York to Dayton, Ohio:			Chicago to Portland Oreg.:		
New York Central	1	1	Chicago, Burlington & Quincy (orig.)	4	4
Pennsylvania	2	3	Chicago, Milwaukee, St. Paul & Pacific (orig.)	1	4
Chicago to Los Angeles:			Union Pacific (orig.)		1
Atchison, Topeka & Santa Fe	4	4	Chicago to Fort Worth: Atchison, Topeka & Santa Fe	2	2
Chicago, Milwaukee, St. Paul & Pacific (orig.)	3	3	Chicago to Birmingham:		
Chicago, Rock Island & Pacific (orig.)	1	1	Chicago & Eastern Illinois (orig.)	1	2
Southern Pacific (orig.)		3	Illinois Central (orig.)	2	3
Union Pacific (orig.)		1	Louisville & Nashville (orig.)		2
Chicago to Philadelphia: Pennsylvania	4	5	Pennsylvania (orig.)	2	2
Chicago to Detroit:			Chicago to Oklahoma City: Atchison, Topeka & Santa Fe	2	2
Grand Trunk	2	2			
New York Central	4	4			
Chicago to Baltimore: Pennsylvania	1	1			
Chicago to Houston: Atchison Topeka, & Santa Fe	1	1			
Chicago to Cleveland: New York Central	4	3			

Through intercity railroad passenger trains, 20 major cities or metropolitan areas—Continued

[Excludes commutation or other local service, special trains, and trains not advertised as part of a through service]

	Out-bound	In-bound		Out-bound	In-bound
Chicago to Rochester, N.Y.: New York Central	6	4	Philadelphia to Baltimore: Pennsylvania	15	14
Chicago to Toledo: New York Central	4	4	Philadelphia to Cleveland		
Chicago to Norfolk:			Philadelphia to Washington, D.C.: Pennsylvania	15	14
Pennsylvania (orig.)	2		Philadelphia to St. Louis: Pennsylvania	2	3
Norfolk & Western (orig.)		2	Philadelphia to Milwaukee		
New York Central (orig.)	1		Philadelphia to Boston:		
Chesapeake & Ohio		1	New York, New Haven & Hartford (orig.)		4
Chicago to Omaha:			Pennsylvania (orig.)	4	
Chicago, Burlington & Quincy	5	5	Philadelphia to New Orleans:		
Chicago, Milwaukee, St. Paul & Pacific	6	6	Pennsylvania (orig.)	2	
Chicago, Rock Island & Pacific	2	2	Louisville & Nashville (orig.)		1
Chicago to Miami:			Southern (orig.)		1
Atlantic Coast Line (orig.)		2	Philadelphia to Pittsburgh: Pennsylvania	7	10
Illinois Central (orig.)	1		Philadelphia to Buffalo		
Pennsylvania (orig.)	1		Philadelphia to Cincinnati: Pennsylvania	1	1
Chicago to Akron:			Philadelphia to Atlanta:		
Baltimore & Ohio	3	3	Pennsylvania (orig.)	4	
Erie-Lackawanna	1	1	Seaboard (orig.)		1
Chicago to El Paso:			Southern (orig.)		3
Chicago, Rock Island & Pacific (orig.)	1		Philadelphia to Indianapolis: Pennsylvania	2	3
Southern Pacific (orig.)		1	Philadelphia to Columbus, Ohio: Pennsylvania	2	3
Chicago to Tampa:			Philadelphia to Louisville:		
Atlantic Coast Line (orig.)	1	2	Pennsylvania (orig.)	1	
Illinois Central (orig.)	1		Chesapeake & Ohio (orig.)		1
Pennsylvania (orig.)	1		Philadelphia to Birmingham, Ala.:		
Chicago to Dayton: Pennsylvania	2	2	Pennsylvania (orig.)	4	
Chicago to Tulsa: Atchison, Topeka & Santa Fe	2	2	Seaboard (orig.)		1
Chicago to Wichita: Atchison, Topeka & Santa Fe	3	3	Southern (orig.)		3
Los Angeles to Houston:			Philadelphia to Rochester, N.Y.		
Atchison, Topeka & Santa Fe	1	1	Philadelphia to Toledo		
Southern Pacific	1	1	Philadelphia to Norfolk		
Los Angeles to St. Louis:			Philadelphia to Miami:		
Norfolk & Western (orig.)		1	Pennsylvania (orig.)	4	
Union Pacific (orig.)	1		Atlantic Coast Line (orig.)		1
Los Angeles to San Francisco			Seaboard (orig.)		3
Southern Pacific	2	2	Philadelphia to Akron, Ohio		
Los Angeles to Dallas: Atchison, Topeka & Santa Fe	1	1	Philadelphia to Tampa:		
Los Angeles to New Orleans:			Pennsylvania (orig.)	5	
Southern Pacific	1	1	Atlantic Coast Line (orig.)		2
Los Angeles to San Antonio:			Seaboard (orig.)		3
Southern Pacific	1	1	Philadelphia to Dayton: Pennsylvania	2	3
Los Angeles to San Diego:			Detroit to Baltimore: Baltimore & Ohio	1	1
Atchison, Topeka & Santa Fe	3	3	Detroit to Cleveland		
Chicago, Rock Island & Pacific (orig.)		1	Detroit to Washington, D.C.: Baltimore & Ohio	1	1
Southern Pacific	1		Detroit to St. Louis: Norfolk & Western	2	2
Los Angeles to Denver: Union Pacific	1	1	Detroit to Milwaukee		
Los Angeles to Atlanta			Detroit to Boston		
Los Angeles to Minneapolis:			Detroit to Pittsburgh: Baltimore & Ohio	1	1
Chicago, Rock Island & Pacific (orig.)		1	Detroit to Buffalo: New York Central	3	3
Southern Pacific (orig.)	1		Detroit to Cincinnati:		
Los Angeles to Kansas City:			Baltimore & Ohio (orig.)		2
Atchison, Topeka & Santa Fe	4	4	Chesapeake & Ohio (orig.)	2	
Chicago, Rock Island & Pacific (orig.)		1	Detroit to Indianapolis		
Southern Pacific (orig.)	1		Detroit to Columbus, Ohio: Chesapeake & Ohio	1	1
Union Pacific	1	1	Detroit to Louisville		
Los Angeles to Phoenix: Southern Pacific	2	2	Detroit to Long Beach, Calif.		
Los Angeles to Portland, Ore.			Detroit to Oklahoma City		
Los Angeles to Fort Worth: Atchison, Topeka & Santa Fe	1	1	Detroit to Rochester, N.Y.: New York Central	2	2
Los Angeles to Oklahoma City			Detroit to Toledo: Chesapeake & Ohio	3	3
Los Angeles to St. Paul:			Detroit to Norfolk:		
Chicago, Rock Island & Pacific (orig.)		1	New York Central (orig.)	1	
Southern Pacific	1		Chesapeake & Ohio (orig.)		1
Los Angeles to Omaha: Union Pacific	3	3	Detroit to Miami		
Los Angeles to El Paso: Southern Pacific	2	2	Detroit to Akron: Baltimore & Ohio	1	1
Philadelphia to Detroit			Detroit to Tampa		
			Detroit to Dayton:		
			Baltimore & Ohio (orig.)		
			Chesapeake & Ohio (orig.)	2	
			Baltimore to Cleveland		
			Baltimore to Washington:		
			Baltimore & Ohio	7	8
			Pennsylvania	15	4
			Baltimore to St. Louis: Baltimore & Ohio	1	11

Through intercity railroad passenger trains, 20 major cities or metropolitan areas—Continued

[Excludes commutation or other local service, special trains, and trains not advertised as part of a through service]

	Out-bound	In-bound		Out-bound	In-bound
Baltimore to Boston:			Washington, D.C., to St. Louis:		
New York, New Haven & Hartford (orig.)		4	Baltimore & Ohio	1	1
Pennsylvania (orig.)	4		Chesapeake & Ohio	1	1
Baltimore to New Orleans. (See New York and Philadelphia.)			Washington, D.C., to Milwaukee		
Baltimore to Pittsburgh:			Washington to Boston:		
Baltimore & Ohio	4	4	New York, New Haven & Hartford (orig.)		4
Pennsylvania	1	1	Pennsylvania (orig.)	4	
Baltimore to Buffalo: Pennsylvania	2	2	Washington to New Orleans:		
Baltimore to Cincinnati:			Louisville & Nashville (orig.)		1
Baltimore & Ohio	3	2	Southern (orig.)	3	2
Chesapeake & Ohio		1	Washington, D.C., to Pittsburgh:		
Baltimore to Atlanta. (See New York to Philadelphia.)			Baltimore & Ohio	4	4
Baltimore to Indianapolis: Pennsylvania	1	1	Pennsylvania	1	1
Baltimore to Kansas City, Mo.			Washington, D.C., to Buffalo: Pennsylvania	1	1
Baltimore to Columbus, Ohio			Washington, D.C., to Cincinnati: Baltimore & Ohio	2	2
Baltimore to Louisville			Chesapeake & Ohio	1	1
Baltimore to Birmingham. (See New York to Philadelphia.)			Washington, D.C., to Memphis		
Baltimore to Toledo: Baltimore & Ohio	1	1	Washington, D.C., to Atlanta:		
Baltimore to Miami. (See New York to Philadelphia.)			Richmond, Fredericksburg & Potomac (orig.)	3	
Baltimore to Akron. (See Washington, D.C.)			Seaboard (orig.)		3
Baltimore to Tampa. (See New York to Philadelphia.)			Southern (orig.)	3	3
Baltimore to Dayton. (See Washington, D.C.)			Washington, D.C., to Indianapolis: Pennsylvania	1	1
Houston to St. Louis: Missouri Pacific	1	1	Washington, D.C., to Columbus, Ohio: Pennsylvania	1	1
Houston to San Francisco: Atchison, Topeka & Santa Fe	1	1	Washington, D.C., to Newark, N.J. (See New York.)		
Houston to Dallas			Washington, D.C., to Louisville: Chesapeake & Ohio	1	1
Houston to New Orleans:			Washington, D.C., to Birmingham:		
Missouri Pacific	1	1	Richmond, Fredericksburg & Potomac (orig.)	2	
Southern Pacific	1	1	Seaboard (orig.)		2
Houston to San Antonio: Southern Pacific	1	1	Southern (orig.)	3	3
Houston to Denver			Washington, D.C., to Rochester, N.Y.		
Houston to Minneapolis			Washington, D.C., to Toledo: Baltimore & Ohio	1	1
Houston to Kansas City, Mo.: Atchison, Topeka & Santa Fe	1	1	Washington, D.C., to Norfolk, Va.		
Houston to Phoenix: Southern Pacific	1	1	Washington, D.C., to Miami:		
Houston to Portland, Oreg.			Richmond, Fredericksburg & Potomac (orig.)	4	
Houston to Oakland, Calif. (See San Francisco.)			Atlantic Coast Line (orig.)		1
Houston to Fort Worth: Atchison, Topeka & Santa Fe	1	1	Seaboard (orig.)		3
Houston to Long Beach, Calif.			Washington, D.C., to Akron: Baltimore & Ohio	4	4
Houston to Oklahoma City: Atchison, Topeka & Santa Fe	1	1	Washington, D.C., to Tampa:		
Houston to St. Paul			Richmond, Fredericksburg & Potomac (orig.)	5	
Houston to Omaha			Atlantic Coast Line (orig.)		2
Houston to El Paso: Southern Pacific	1	1	Seaboard (orig.)		3
Houston to Tulsa			Washington, D.C., to Dayton: Pennsylvania	1	1
Houston to Wichita: Atchison, Topeka & Santa Fe	1	1	St. Louis to San Francisco:		
Cleveland to Washington, D.C.			Norfolk & Western (orig.)	1	
Cleveland to St. Louis: New York Central	1	1	Southern Pacific (orig.)		1
Cleveland to Milwaukee			St. Louis to Boston		
Cleveland to Boston: New York Central	1		St. Louis to Dallas: Missouri Pacific	3	3
Cleveland to Pittsburgh			St. Louis to New Orleans: Illinois Central	2	2
Cleveland to Buffalo: New York Central	5	4	St. Louis to Pittsburgh: Pennsylvania	3	3
Cleveland to Cincinnati: New York Central	2	2	St. Louis to San Antonio: Missouri Pacific	1	1
Cleveland to Atlanta			St. Louis to Buffalo		
Cleveland to Indianapolis: New York Central	2	2	St. Louis to Cincinnati: Baltimore & Ohio	2	2
Cleveland to Columbus, Ohio: New York Central	2	2	St. Louis to Memphis: Illinois Central	3	3
Cleveland to Louisville			St. Louis to Denver:		
Cleveland to Birmingham			Norfolk & Western (orig.)	1	
Cleveland to Rochester, N.Y.: New York Central	4	3	Union Pacific (orig.)		1
Cleveland to Toledo: New York Central	3	4	St. Louis to Atlanta: Louisville & Nashville	1	1
Cleveland to Akron			St. Louis to Minneapolis:		
Cleveland to Dayton: New York Central	2	2	Chicago, Burlington & Quincy	1	
			Chicago, Rock Island & Pacific		1

Through intercity railroad passenger trains, 20 major cities or metropolitan areas—Continued

[Excludes commutation or other local service, special trains, and trains not advertised as part of a through service]

	Out-bound	In-bound		Out-bound	In-bound
St. Louis to Indianapolis:			San Francisco to New Orleans		
New York Central	1	1	San Francisco to Seattle		
Pennsylvania	3	3	San Francisco to Denver:		
St. Louis to Kansas City:			Southern Pacific (orig.)	1	
Missouri Pacific	3	3	Union Pacific (orig.)		1
Norfolk & Western	2	2	Western Pacific (orig.)	1	
St. Louis to Columbus, Ohio: Pennsylv-			Denver & Rio Grande Western (orig.)		1
vania	3	3	San Francisco to Minneapolis		
St. Louis to Phoenix			San Francisco to Kansas City:		
St. Louis to Newark			Atchison, Topeka & Santa Fe	1	1
St. Louis to Louisville			Southern Pacific	1	
St. Louis to Portland, Oreg.			Union Pacific		1
St. Louis to Oakland, Calif. (See San			San Francisco to Phoenix		
Francisco.)			San Francisco to Portland: Southern		
St. Louis to Fort Worth:			Pacific	1	1
Missouri Pacific	3	3	San Francisco to Fort Worth		
Illinois Central	2	2	San Francisco to Oklahoma City		
St. Louis to Oklahoma City: St.			San Francisco to Omaha:		
Louis-San Francisco	1	1	Southern Pacific (orig.)	1	
St. Louis to Rochester, N.Y.			Union Pacific (orig.)		1
St. Louis to Toledo			Western Pacific (orig.)	1	
St. Louis to St. Paul. (See Minne-			Chicago, Burlington & Quincy (orig.)		1
apolis.)			San Francisco to El Paso		
St. Louis to Norfolk:			San Francisco to Tulsa		
Baltimore & Ohio (orig.)	1		San Francisco to Wichita: Atchison,		
Chesapeake & Ohio		1	Topeka & Santa Fe	1	1
St. Louis to Omaha			Boston to New Orleans		
St. Louis to Miami:			Boston to Pittsburgh		
Illinois Central (orig.)	1		Boston to Buffalo: New York Central	1	1
Atlantic Coast Line (orig.)		1	Boston to Cincinnati		
St. Louis to Akron			Boston to Atlanta		
St. Louis to El Paso			Boston to Indianapolis		
St. Louis to Tampa			Boston to Columbus, Ohio		
St. Louis to Dayton: Pennsylvania	3	3	Boston to Newark. (See New York City.)		
St. Louis to Tulsa: St. Louis-San			Boston to Louisville		
Francisco	1	1	Boston to Birmingham, Ala.		
St. Louis to Wichita			Boston to Rochester, N.Y.: New York		
Milwaukee to San Francisco			Central	1	1
Milwaukee to Boston			Boston to Toledo: New York Central	1	1
Milwaukee to Dallas			Boston to Norfolk		
Milwaukee to New Orleans			Boston to Miami		
Milwaukee to Pittsburgh			Boston to Akron		
Milwaukee to San Antonio			Boston to Tampa		
Milwaukee to San Diego			Boston to Dayton		
Milwaukee to Seattle			Dallas to New Orleans: Texas & Pacific	2	2
Milwaukee to Buffalo			Dallas to San Antonio		
Milwaukee to Cincinnati			Dallas to San Diego		
Milwaukee to Memphis			Dallas to Seattle		
Milwaukee to Denver			Dallas to Denver:		
Milwaukee to Atlanta			Fort Worth & Denver (orig.)	1	
Milwaukee to Minneapolis: Chicago,			Colorado & Southern (orig.)		1
Milwaukee, St. Paul & Pacific	4	5	Dallas to Kansas City, Mo.: Atchison,		
Milwaukee to Indianapolis			Topeka & Santa Fe	2	2
Milwaukee to Kansas City, Mo.			Dallas to Phoenix		
Milwaukee to Columbus, Ohio			Dallas to Portland, Oreg.		
Milwaukee to Phoenix			Dallas to Oakland. (See San Francisco.)		
Milwaukee to Louisville			Dallas to Fort Worth:		
Milwaukee to Portland, Oreg.			Atchison, Topeka & Santa Fe	1	1
Milwaukee to Oakland, Calif.			Fort Worth & Denver	1	1
Milwaukee to Fort Worth			Texas Pacific	3	3
Milwaukee to Birmingham			Dallas to Oklahoma City: Atchison,		
Milwaukee to Oklahoma City			Topeka & Santa Fe	2	2
Milwaukee to Rochester, N.Y.			Dallas to Omaha		
Milwaukee to Toledo			Dallas to El Paso: Texas & Pacific	1	1
Milwaukee to St. Paul. (See Minne-			Dallas to Tulsa		
apolis.)			Dallas to Wichita: Atchison, Topeka &		
Milwaukee to Omaha			Santa Fe	2	2
Milwaukee to Miami			New Orleans to San Antonio: Southern		
Milwaukee to Akron			Pacific	1	1
Milwaukee to El Paso			New Orleans to San Diego		
Milwaukee to Dayton			New Orleans to Seattle		
Milwaukee to Tulsa			New Orleans to Cincinnati: Louisville &		
Milwaukee to Wichita			Nashville	2	2
San Francisco to Dallas					

Through intercity railroad passenger trains, 20 major cities or metropolitan areas—Continued

[Excludes commutation or other local service, special trains, and trains not advertised as part of a through service]

	Out-bound	In-bound		Out-bound	In-bound
New Orleans to Memphis: Illinois Central	3	3	San Antonio to Phoenix: Southern Pacific	1	1
New Orleans to Atlanta:			San Antonio to Portland		
Louisville & Nashville (orig.)	1		San Antonio to Fort Worth		
Atlanta & West Point (orig.)		1	San Antonio to Oklahoma City		
Southern	1	1	San Antonio to St. Paul		
New Orleans to Minneapolis			San Antonio to Omaha		
New Orleans to Indianapolis			San Antonio to El Paso: Southern Pacific	1	1
New Orleans to Kansas City, Mo.: Kansas City Southern	2	2	San Antonio to Tulsa		
New Orleans to Columbus, Ohio			San Antonio to Wichita		
New Orleans to Phoenix: Southern Pacific	1	1	San Diego to Seattle		
New Orleans to Louisville: Louisville & Nashville	2	2	San Diego to Denver		
New Orleans to Oakland, Calif.			San Diego to Minneapolis		
New Orleans to Fort Worth: Texas & Pacific	2	2	San Diego to Kansas City, Mo.		
New Orleans to Birmingham:			San Diego to Phoenix		
Louisville & Nashville	2	2	San Diego to Portland, Oreg.		
Southern	2	2	San Diego to Oakland, Calif.		
New Orleans to Oklahoma City			San Diego to Fort Worth		
New Orleans to St. Paul			San Diego to Oklahoma City		
New Orleans to Norfolk			San Diego to St. Paul		
New Orleans to Omaha			San Diego to Omaha		
New Orleans to Miami			San Diego to Tulsa		
New Orleans to Akron			San Diego to Wichita		
New Orleans to El Paso: Southern Pacific	1	1	Seattle to Denver		
New Orleans to Tampa			Seattle to Minneapolis:		
New Orleans to Dayton			Great Northern	2	2
New Orleans to Tulsa			Northern Pacific	2	2
New Orleans to Wichita			Seattle to Kansas City, Mo.		
Pittsburgh to Buffalo			Seattle to Phoenix		
Pittsburgh to Cincinnati: Pennsylvania	1	1	Seattle to Portland, Oreg.:		
Pittsburgh to Memphis			Great Northern	3	3
Pittsburgh to Atlanta			Northern Pacific	1	1
Pittsburgh to Minneapolis			Union Pacific	3	4
Pittsburgh to Indianapolis: Pennsylvania	3	3	Seattle to Oakland, Calif.		
Pittsburgh to Kansas City, Mo.			Seattle to Fort Worth		
Pittsburgh to Columbus, Ohio: Pennsylvania	3	3	Seattle to Oklahoma City		
Pittsburgh to Newark. (See New York City.)			Seattle to St. Paul (See Minneapolis.)		
Pittsburgh to Louisville			Seattle to Omaha		
Pittsburgh to Birmingham			Seattle to El Paso		
Pittsburgh to Rochester, N.Y.			Seattle to Tulsa		
Pittsburgh to Toledo: Baltimore & Ohio	1	1	Seattle to Wichita		
Pittsburgh to Norfolk			Buffalo to Cincinnati: New York Central	1	1
Pittsburgh to Miami			Buffalo to Memphis		
Pittsburgh to Akron: Baltimore & Ohio	4	4	Buffalo to Atlanta		
Pittsburgh to Tampa			Buffalo to Minneapolis		
Pittsburgh to Dayton: Pennsylvania	3	3	Buffalo to Indianapolis: New York Central		
San Antonio to San Diego			Buffalo to Louisville	1	1
San Antonio to Seattle			Buffalo to Cincinnati: New York Central	1	1
San Antonio to Denver			Buffalo to Newark. (See New York City.)		
San Antonio to Atlanta			Buffalo to Louisville		
San Antonio to Minneapolis			Buffalo to Birmingham		
San Antonio to Kansas City, Mo.			Buffalo to Rochester, N.Y.: New York Central	9	8
			Buffalo to Toledo: New York Central	4	1
			Buffalo to Norfolk		
			Buffalo to Miami		41
			Buffalo to Akron		
			Buffalo to Dayton: New York Central		

Source: Official Railway Guide, April 1967.

Route miles, rail and air,¹ and passenger revenue, rail, bus, and air,² 1939-65

Year	Passenger route mileages operated										Passenger revenues (millions)		
	Class I railroads	Domestic scheduled air carriers ³	Federal airways				Class I railroads			Domestic scheduled air carriers	Intercity scheduled bus service		
			Low frequency		Very high frequency		Including commutation	Excluding commutation					
			Direct	Alternate	Low altitude	Jet routes							
1939	172,031	36,654	27,074					\$416.5	\$375.8	\$34.8	\$142.4		
1940	170,175	42,757	32,100					416.8	376.4	53.3	147.8		
1941	167,951	45,163	34,000					514.5	473.5	69.8	199.6		
1942	163,698	41,996	36,062					1,027.9	975.6	74.8	430.2		
1943	162,429	42,537	38,498					1,652.5	1,596.4	87.5	444.2		
1944	162,290	47,384	42,549					1,789.9	1,733.3	116.4	443.2		
1945	161,920	48,516	43,285					1,716.0	1,657.9	166.5	436.5		
1946	161,407	53,981	44,145					1,259.0	1,196.2	275.6	407.1		
1947	161,115	62,705	47,029					963.1	895.6	308.6	407.1		
1948	160,140	68,702	56,069					964.1	887.8	343.3	410.4		
1949	156,821	72,667	61,392					860.6	782.0	388.9	399.4		
1950	147,511	77,440	70,253					813.4	734.4	444.5	426.9		
1951	139,178	78,913	74,424					900.2	817.0	807.7	402.5		
1952	136,843	79,178	72,328	45,831	19,511			906.1	817.1	699.3	428.7		
1953	128,943	77,894	72,097	54,480	21,379			841.9	749.1	807.7	402.5		
1954	124,572	78,294	69,359	94,390	27,783			767.3	671.0	909.1	353.9		
1955	120,711	84,189	67,770	91,360	27,418			742.9	641.1	1,064.7	340.2		
1956	115,907	88,325	67,783	91,268	29,773			756.6	649.6	1,347.5	350.1		
1957	112,560	90,506	64,817	101,484	30,523			734.8	619.2	1,432.2	379.6		
1958	106,439	90,506	57,705	121,870	34,723	(9)		674.7	551.5	1,722.5	369.5		
1959	98,989	96,655	47,302	129,632	35,204			650.5	525.8	1,722.5	373.8		
1960	94,117	106,439	36,879	142,045	38,486			640.1	517.6	1,860.4	407.9		
1961	89,515	104,761	14,543	170,904	33,481			624.6	492.1	1,951.5	418.0		
1962	86,028	105,104	10,559	176,235	34,081			618.9	457.9	2,167.5	448.3		
1963	84,744	105,196	9,038	182,153	34,524			587.9	443.4	2,374.4	464.8		
1964	81,807	104,870	8,242	131,747	29,713			577.9	443.4	2,701.1	480.1		
1965 ⁸	77,282	104,870	6,630	30,017	30,017			553.1	416.4	3,142.0	504.1		

¹ Includes miles of road used in passenger service by class I railroads and air route mileage of the scheduled domestic airways and Federal airways.

² Includes regular route-intercity-schedule passenger revenues of class I railroads, scheduled domestic airlines, and class I, II, and III motor carriers of passengers.

³ Air route mileage for 1939 does not include Marine Airlines, and data subsequent to 1944 are based on revised CAB procedures.

⁴ Passenger revenues for class I, II, and III motor carriers for years 1939 through 1943 are estimates.

⁵ From 1951 data includes intra-Alaska and intra-Hawaii; data for years prior to 1951 includes

only intra-Hawaii.

⁶ Not available.

⁷ Very high frequency "Victor" does not include route mileage for the intermediate altitude, for 1961, 98,476; 1962, 103,281; and in 1963, 103,063; it was discontinued in 1963.

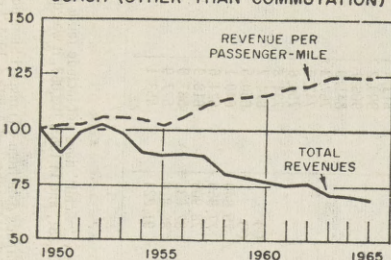
⁸ Preliminary.

Source: Class I railroads data from "Transport Statistics in the United States," Federal Airways data from "FAA Statistical Handbook of Aviation, 1964," pp. 26, 136 and 163; later data from CAB; and motor carrier data from "Transport Economics" and ICC T.E. & S. statement No. 388.

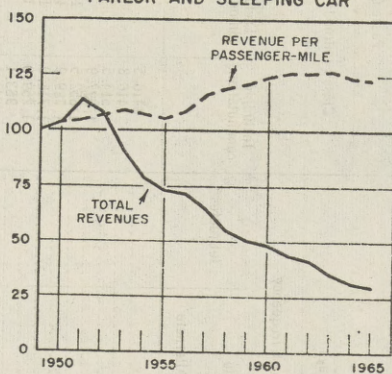
INDEXES OF PASSENGER REVENUES AND AVERAGE REVENUE PER PASSENGER-MILE, 1949-1965

1949 = 100

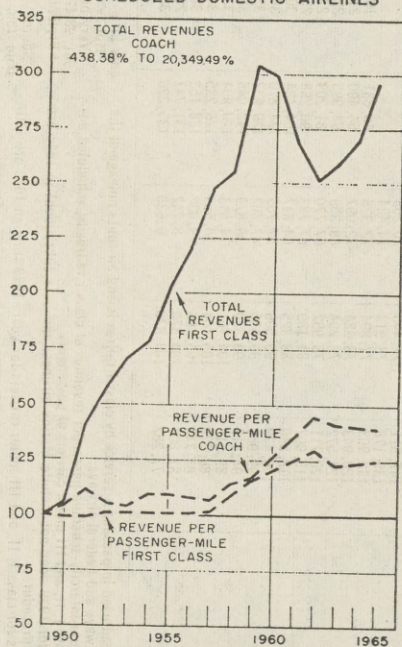
CLASS I RAILROADS
COACH (OTHER THAN COMMUTATION)



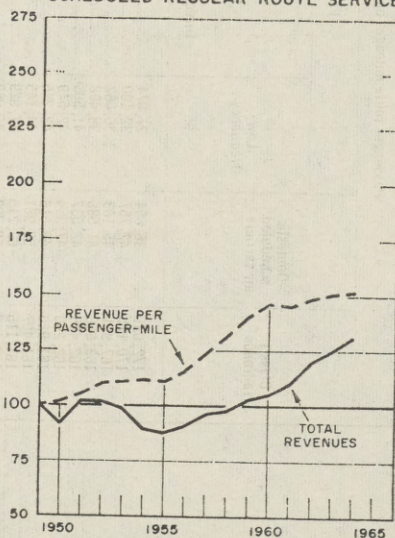
CLASS I RAILROADS
PARLOR AND SLEEPING CAR



SCHEDULED DOMESTIC AIRLINES



CLASS I INTERCITY MOTOR CARRIERS
SCHEDULED REGULAR ROUTE SERVICE



Indexes of route miles, rail and air,¹ and passenger revenue, rail, bus, and air,² 1939-65

[1957-65]

Year	Passenger route mileages operated				Passenger revenues (millions)				
	Class I railroads	Domestic scheduled air carriers ³	Federal airways		Class I railroads		Domestic scheduled air carriers	Intercity scheduled bus service	
			Low frequency	Very high frequency		Including commutation			Excluding commutation
				Low altitude					
			Direct	Alternate					
1939	161.7	39.9	47.8			\$60.7	\$66.5	\$2.3	\$38.0
1940	160.0	46.6	56.7			60.7	66.6	3.6	39.5
1941	158.0	49.2	63.7			74.9	83.7	4.7	53.3
1942	153.9	45.3	68.0			149.7	172.5	5.0	91.5
1943	152.8	46.3	73.3			240.6	282.3	5.8	114.9
1944	152.6	51.6	75.2			260.7	306.5	7.8	118.7
1945	152.3	52.8	76.5			249.9	293.2	11.1	118.4
1946	151.8	58.8	78.0			183.3	211.5	18.4	116.6
1947	151.5	67.8	83.1			140.2	158.4	20.6	108.8
1948	150.6	74.8	89.0			140.4	157.0	22.9	109.5
1949	147.5	79.1	99.0			125.3	138.3	25.9	110.2
1950	138.7	84.3	124.1			118.4	129.9	29.6	106.7
1951	130.9	85.9	131.5			131.1	144.5	39.6	115.6
1952	125.0	84.8	127.8	38.3	58.2	122.6	132.5	46.6	114.5
1953	121.3	85.4	127.4	45.5	63.8	111.7	118.7	53.8	107.5
1954	117.2	85.3	122.5	54.3	68.0	108.2	113.4	60.6	94.5
1955	113.5	86.0	119.7	67.9	81.9	110.2	114.9	70.9	90.9
1956	109.0	91.7	114.5	75.4	88.9	107.0	109.5	83.5	93.5
1957	105.9	96.2	114.5	87.3	91.2	98.3	97.5	89.8	101.4
1958	100.1	98.6	101.9	104.4	103.7	98.3	97.5	95.4	98.7
1959	105.3	105.3	108.3	108.3	105.1	94.7	93.0	114.8	99.9
1960	88.5	107.1	118.7	118.7	114.9	93.2	91.5	124.0	109.0
1961	84.2	114.1	101.0	101.0	99.9	91.0	88.0	130.0	111.7
1962	80.9	114.5	101.7	101.7	99.9	90.1	87.0	144.4	119.8
1963	79.7	114.6	103.1	103.1	104.3	85.6	81.0	158.2	124.2
1964	76.9	114.2	107.1	107.1	87.5	84.2	78.4	180.0	128.3
1965	72.7	114.2	113.0	113.0	80.5	80.5	73.6	209.4	134.7
Percent change, 1965 over 1952				53.8					
Percent change, 1965 over 1960				20.6					
Percent change, 1965 over 1939	55.1	186.1	75.5			32.8	10.8	8,928.7	254.0

¹ Includes miles of road used in passenger service by class I railroads and air route mileage of the scheduled domestic airways and Federal airways.

² Includes regular route-intercity-scheduled passenger revenues of class I railroads, scheduled domestic airlines, and class I, II, and III motor carriers of passengers.

³ Air route mileage for 1939 does not include Marine airlines, and data subsequent to 1944 are based on revised CAB procedures.

⁴ Jet routes mileage index based on 1960 = 100.

⁵ Passenger revenues for class I, II, and III motor carriers for years 1939 through 1943 are estimates.

⁶ From 1951 data includes intra-Alaska and intra-Hawaii; data for years prior to 1951 includes only intra-Hawaii.

⁷ Very high frequency "Victor" does not include route mileage for the intermediate altitude, for 1961, 98,476; 1962, 103,281; and in 1963, 103,063; it was discontinued in 1963.

⁸ Preliminary.

Source: Class I railroads data from "Transport Statistics in the United States"; Federal airways data from "FAA Statistical Handbook of Aviation, 1964," pp. 26, 196; and 163; later data from CAB; and motor carrier data from "Transport Economics," and UCC T. E. & S. statement No. 589.

Average revenue per passenger mile,¹ class I railroads, intercity class I motor carriers and scheduled domestic airlines 1949-65

[Cents per passenger-mile]

Year	Class I railroads		Class I motor carrier intercity regular route scheduled	Scheduled domestic airlines	
	Coach ²	Parlor car and sleeping car ³		Coach	First class
1949	2.41	3.14	1.84	3.96	5.85
1950	2.47	3.25	1.88	4.11	5.79
1951	2.47	3.27	1.94	4.44	5.77
1952	2.53	3.35	2.02	4.17	5.89
1953	2.53	3.38	2.05	4.13	5.91
1954	2.50	3.35	2.07	4.33	5.92
1955	2.47	3.31	2.05	4.32	5.90
1956	2.56	3.39	2.13	4.29	5.91
1957	2.71	3.68	2.29	4.25	5.95
1958	2.76	3.75	2.43	4.52	6.38
1959	2.77	3.84	2.59	4.63	6.78
1960	2.80	3.88	2.71	5.01	7.06
1961	2.86	3.96	2.69	5.42	7.34
1962	2.89	3.97	2.72	5.76	7.57
1963	3.00	4.00	2.78	5.62	7.17
1964	3.00	3.91	2.80	5.58	7.26
1965 ⁴	2.99	3.87	(⁵)	5.52	7.33

INDEX OF AVERAGE REVENUE PER PASSENGER-MILE (1949 EQUALS 100)

1949	100.00	100.00	100.00	100.00	100.00
1950	102.49	103.50	102.17	103.79	98.97
1951	102.49	104.14	105.43	112.12	98.63
1952	104.98	106.69	109.78	105.30	100.68
1953	104.98	107.64	111.41	104.29	101.03
1954	103.73	106.69	112.50	109.34	101.20
1955	102.49	105.41	111.41	109.09	100.85
1956	106.22	107.96	115.76	108.33	101.03
1957	112.45	117.20	124.46	107.32	101.71
1958	114.52	119.43	132.07	114.14	109.06
1959	114.94	122.29	140.76	116.92	115.90
1960	116.18	123.57	147.28	126.52	120.68
1961	118.67	126.11	146.20	136.87	125.47
1962	119.92	126.43	147.83	145.45	129.40
1963	124.48	127.39	151.09	141.92	122.56
1964	124.48	124.52	152.17	140.91	124.10
1965	124.07	123.25	(⁵)	139.39	125.30

¹ Source: ICC statements No. Q-220 and Q-250, and ICC bus data, and Civil Aeronautics Board, Handbook of Airline Statistics.

² Coach revenue other than commutation.

³ Revenue figures cover rail passage tickets only, excluding space charges for parlor and sleeping cars.

⁴ Preliminary.

⁵ Not available.

Passenger revenues, 1949-65¹ class I railroads (excluding commutation), class I scheduled intercity buses, scheduled domestic airlines, coach and 1st class

[Millions]

Year	Class I railroads		Class I motor carrier intercity regular route scheduled	Scheduled domestic airlines	
	In coaches ²	In parlor and sleeping cars ³		Coach	1st class
1949	\$488.1	\$293.9	\$334.8	\$9.9	\$381.0
1950	431.0	303.4	307.5	43.4	403.4
1951	482.8	334.1	342.7	56.7	537.6
1952	498.9	318.2	340.5	98.2	601.1
1953	480.3	268.8	331.6	153.7	654.0
1954	441.8	229.2	299.5	230.1	679.5
1955	427.6	213.5	294.9	290.3	774.4
1956	436.6	213.0	303.9	346.6	846.8
1957	428.6	190.6	324.7	404.1	943.4
1958	392.4	159.1	328.0	455.8	976.4
1959	380.1	145.7	343.9	569.8	1,152.7
1960	376.1	141.5	354.8	721.7	1,138.6
1961	368.4	129.1	370.4	927.9	1,023.6
1962	369.0	123.2	406.0	1,206.9	960.6
1963	353.4	104.5	419.0	7,385.9	988.5
1964	349.0	94.4	442.0	1,673.9	1,027.2
1965 ⁴	331.5	84.9	(*)	2,014.6	1,127.5
Index of passenger revenues, 1949-65 (1949=100)					
1949	100.00	100.00	100.00	100.00	100.00
1950	88.30	103.23	91.85	438.38	105.88
1951	98.91	113.68	102.36	572.73	141.10
1952	102.21	108.27	101.70	991.92	157.77
1953	98.40	91.46	99.04	1,552.52	171.65
1954	90.51	77.99	89.46	2,324.24	178.35
1955	87.60	72.64	88.08	2,932.32	203.25
1956	89.45	72.47	90.77	3,501.01	222.26
1957	87.81	64.85	96.98	4,081.82	247.61
1958	80.39	54.13	97.97	4,604.04	256.27
1959	77.87	49.57	102.72	5,755.56	302.55
1960	77.05	48.15	105.97	7,289.90	298.85
1961	75.48	43.93	110.63	9,372.73	268.66
1962	75.60	41.92	121.27	12,190.91	252.13
1963	72.40	35.56	125.15	13,998.99	259.45
1964	71.50	32.12	132.02	16,908.09	269.61
1965	67.92	28.89	(*)	20,349.49	295.93

¹ Source: ICC Statements No. Q-220 and Q-250, and ICC bus data, and Civil Aeronautics Board, "Handbook of Airline Statistics."

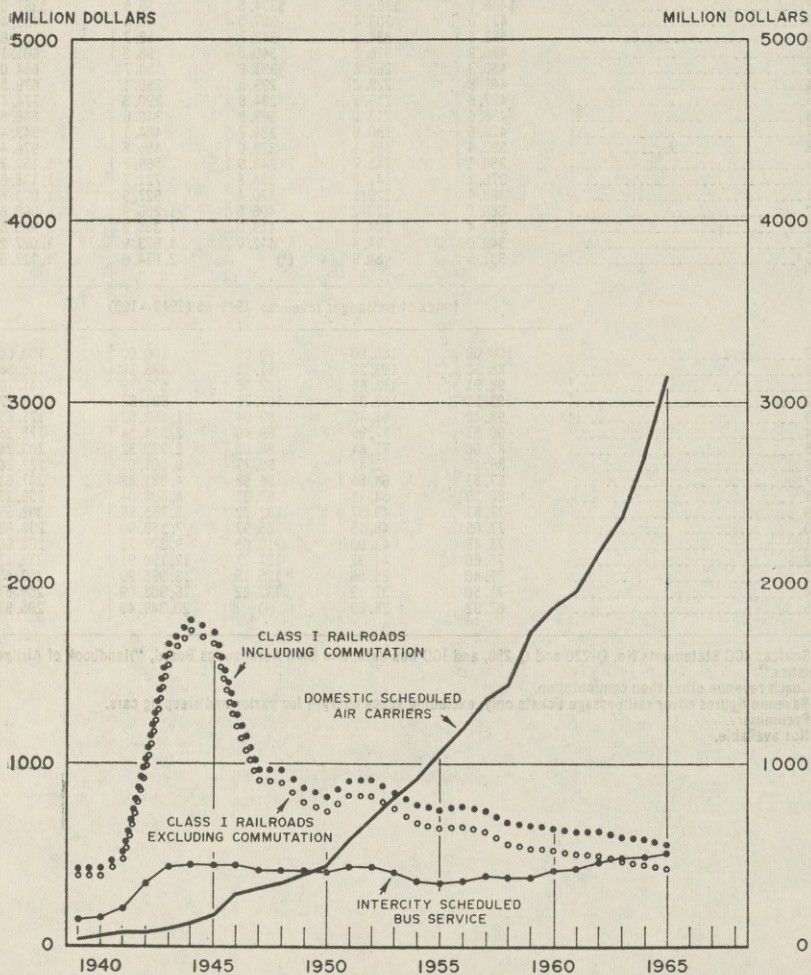
² Coach revenue other than commutation.

³ Revenue figures cover rail passage tickets only, excluding space charges for parlor and sleeping cars.

⁴ Preliminary.

* Not available.

PASSENGER REVENUES, 1939-1965



Source: Accompanying table.

Senator CANNON. The next witness will be Frank Reinhold, chairman of the Connecticut Transportation Authority, State of Connecticut, and Samuel Kanell, executive director.

Senator LAUSCHE. Mr. Reinhold, you can proceed to read your statement if you so desire.

**STATEMENT OF FRANK M. REINHOLD, CHAIRMAN, CONNECTICUT
TRANSPORTATION AUTHORITY, ACCOMPANIED BY SAMUEL
KANELL, EXECUTIVE DIRECTOR**

Mr. REINHOLD. Thank you, Mr. Chairman and members of the committee.

I am Frank M. Reinhold, chairman of the Connecticut Transportation Authority. I appear in these proceedings on behalf of the Connecticut Transportation Authority of the State of Connecticut.

This authority was established by the Connecticut General Assembly at the request of Gov. John Dempsey, upon our recognition of the need for preservation and improvement of our essential rail transportation service.

Mr. Chairman, I want to thank you and members of the subcommittee for opportunity to express our views with respect to this proposed legislation. I think members of the subcommittee may be aware that Connecticut has a special interest in problems concerning railroad transportation.

As you know, we are served by only one major railroad—the New Haven Railroad. While the Central Vermont Railroad provides freight service to a limited portion of our State, our major rail carrier of freight and our only rail carrier of passengers is the New Haven Railroad. This railroad, which serves every major city in our State, has been in bankruptcy since July 1961.

To my knowledge, this is the only railroad that has invoked the provisions of section 13a of the Interstate Commerce Act in seeking the right to stop all passenger service. This was not a minor proceeding concerning limited passenger service. This was a proceeding involving a major railroad that operates almost 300 passenger trains per day, a railroad that carries 24 million passengers per year.

While the New Haven Railroad receives revenues of \$38 million per year from passenger service, it has been sustaining a passenger service deficit of \$10 million to \$15 million per year for the past 20 years.

In order to keep the essential operations of this major railroad going, the four States served by this railroad have been providing tax relief and cash support.

In a decision issued just over a year ago, the Interstate Commerce Commission denied the petition of the trustees of the New Haven Railroad to stop all passenger service. In denying this proposal of the trustees, the Commission took into account the support provided by the States and outlined broad guidelines to assist public agencies in determining what type of support should be granted to railroads that provide essential but unprofitable public service. The Commission exercised imagination and skill in formulating these guidelines.

We are still confronted with the problem of supporting the essential service provided by the New Haven Railroad, pending its inclusion in the merged Penn-Central Co.

As you may be aware, litigation has resulted in delay of this merger.

Mr. Samuel Kanell, executive director of the authority and special assistant attorney general, has represented Connecticut in the various proceedings concerning the New Haven Railroad before the Interstate Commerce Commission and before the courts.

Mr. Kanell will review with you the reasons for our support of the changes in the Interstate Commerce Act proposed by Senate bill 1175.

Senator LAUSCHE. Any questions?

Senator CANNON. No.

Senator LAUSCHE. Mr. Kanell, you may proceed.

Mr. KANELL. Thank you, Mr. Chairman, and members of the committee.

I am Samuel Kanell, director of the Connecticut Transportation Authority. I am also a special assistant attorney general, designated by Gov. John Dempsey to represent Connecticut in the various legal proceedings concerning the New Haven Railroad.

The intent of the bill before you, as I understand it, is to enable the Interstate Commerce Commission to prescribe conditions in passing upon applications of railroads that seek to discontinue essential passenger service. While the Commission prescribed broad guidelines in our New Haven case, for which we are grateful and which have been of assistance to us, it operated under severe limitations with respect to its statutory authority.

The bill before you would clarify this power of the Commission. It would give the Commission more time in which to decide cases that present broad transportation issues such as presented by the New Haven Railroad case.

The bill would also clarify the right of judicial review, as Chairman Tucker discussed quite appropriately.

I do not believe that this bill could be construed as limiting the right of railroads to discontinue unprofitable service. I know the historic background of the bill that prior to 1958 there was no Federal agency that could authorize the railroad to stop unprofitable service, and the State refused to do so for political reasons. Therefore, you have 13a added in 1958.

Now, this bill would give the Interstate Commerce Commission the power to prescribe conditions in passing on train discontinuance cases.

If unprofitable railroad services are essential to a community, there is a public responsibility to assist the railroad in continuing such service. Connecticut has recognized this responsibility, and it is for this reason that we now grant the New Haven Railroad exemption from all taxes on railroad property and on railroad operations.

I want to make it clear that Connecticut does not merely defer tax liability. We forgive tax liability to keep this railroad alive.

Senator LAUSCHE. What is the situation in other States where the New Haven operates with respect to a dispensation in the payment of taxes?

Mr. KANELL. It varies from partial exemption to no exemption.

Senator LAUSCHE. Which State has given no exemption?

Mr. KANELL. Massachusetts, sir, has a statute on its books which purports to give exemption, but there is a provision in the statute which restricts the right of the railroad in order to qualify for this exemption, restricts their right with respect to laying off any of their people. The practical effect of this has been that the railroad has

not qualified for any tax exemption within Massachusetts, save for a historic so-called five-ride exemption.

Basically, the fact is that taxes accrue in that State at the rate of over \$3 million a year, and these taxes are a preferred claim against the estate of the bankrupt New Haven Railroad when this estate is settled.

Senator LAUSCHE. Does the New Haven still own the station in Boston?

Mr. KANELL. I think that the pending arrangements for sale of that station were recently consummated, and I think that Boston through its redevelopment has taken over that station, but I am speaking from hearsay.

Senator LAUSCHE. The New Haven offered the building without pay, did it not, to the city of Boston, just so as to relieve itself from the tax burden?

Mr. KANELL. Yes, sir. You are quite correct. The tax burden there was oppressive.

Senator LAUSCHE. Well, I think the building was constructed in about 1896, and the tax burden was about a million dollars a year several years ago.

Mr. KANELL. And I think it was well in excess of that, sir, up to the time that the New Haven disposed of the building.

Senator LAUSCHE. All right. Now, we have dealt with Massachusetts. What other States are involved here?

Mr. KANELL. Rhode Island.

Senator LAUSCHE. Has it granted any tax relief?

Mr. KANELL. Yes, sir. Partial tax relief.

Senator LAUSCHE. What is the nature of it?

Mr. KANELL. To the best of my memory, Rhode Island grants tax relief in the neighborhood of well over \$550,000 per year and continues to accrue taxes at the rate of approximately \$350,000 to \$400,000 per year.

I could obtain these specific figures, sir. I am speaking now from memory without having the figures before me.

Senator LAUSCHE. Identify the States through which the New Haven travels?

Mr. KANELL. The New Haven, sir, runs between New York and Boston and with an extension to Springfield. This includes the States of New York, Connecticut, Rhode Island, and Massachusetts.

Senator LAUSCHE. Will you please provide for the record a statement of the tax dispensation that has been granted in the several States?

Mr. KANELL. Senator, I will be very glad to do so.

(The information requested follows:)

Taxes, 1960-65

FORGIVEN

	Connecticut	New York	Rhode Island	Massachusetts	Total
1960.....	\$1, 106, 441	\$450, 000	\$172, 869	-----	\$1, 729, 310
1961.....	1, 048, 036	1, 615, 000	162, 846	-----	2, 825, 882
1962.....	1, 056, 293	2, 860, 000	554, 000	-----	4, 470, 293
1963.....	1, 014, 241	2, 235, 000	549, 410	-----	3, 798, 651
1964.....	1, 004, 149	2, 068, 000	548, 946	-----	3, 621, 095
1965.....	992, 881	3, 045, 000	549, 546	-----	4, 587, 427
Total.....	6, 222, 041	12, 273, 000	2, 537, 617	(2)	21, 032, 658

Taxes, 1960-65—Continued

ACCRUED OR PAID

	Connecticut	New York	Rhode Island	Massachusetts	Total
1960-----	\$57,378	\$3,326,081	\$999,539	\$1,873,177	\$6,256,175
1961-----	54,843	2,194,822	966,271	1,484,806	4,700,742
1962-----	54,830	1,005,423	501,327	1,839,970	3,401,550
1963-----	68,008	1,668,026	556,569	1,491,486	3,784,089
1964-----	71,936	1,711,460	393,886	1,657,864	3,835,146
1965-----	75,875	1,026,870	430,777	1,741,095	3,274,617
Total-----	382,870	\$ 10,932,682	3,848,369	10,088,398	25,252,319

¹ Includes New Haven's share of tax relief in Grand Central Terminal area of \$7,863,000.

² Does not include exemption of all railroad right of way to a width of 5 rods.

³ Includes New Haven's share of Grand Central Terminal taxes, \$3,912,353.

NOTES

(a) Does not include accruals for sales and use taxes, State taxes less than \$50,000 per year, or any Federal taxes.

(b) Does not include interest and penalties.

(c) Taxes remaining in Connecticut, Rhode Island, and Massachusetts, are on real property.

(d) Taxes remaining in New York include, in addition to real property taxes, the New York State gross earnings and New York City utility taxes each amounting to about \$65,000 per year.

(e) Estimate that 1966 taxes forgiven and amount of taxes remaining will be at 1965 levels.

Senator LAUSCHE. Proceed.

Mr. KANELL. Furthermore, we recognize that no enterprise can operate without sufficient cash on hand to meet payrolls and other non-deferrable expenses.

In cooperation with our neighboring States, Connecticut provides cash support at the rate of almost \$3 million per year for New Haven operations. We are cooperating with New York State in sponsoring an \$80 million modernization program for improvement of service in the New York-Connecticut commuter area. We are the only State in the country, sir, that is making a contribution, a cash contribution, in support of the northeast corridor highspeed train demonstrations that are scheduled to start this summer.

Governor Dempsey specifically asked me to bring to the attention of this committee the continued commitment of Connecticut to provide public support for essential public service.

To make our program effective, we need the cooperation of the Federal Government. We are pleased that at the request of Governor Dempsey, and the Governors of other States served by the New Haven Railroad, President Johnson has directed the U.S. Department of Transportation to cooperate with us in seeking a practical solution to the problem of assuring continuation of the essential services provided by the New Haven Railroad.

We believe that the bill before this committee will assist our national economy and our national defense in facilitating the continuation of the dependable and efficient service that is provided by our vital railroad network, service that only railroads can provide.

Senator LAUSCHE. Senator Cannon.

Senator CANNON. No questions.

Senator LAUSCHE. Senator Hartke.

Senator HARTKE. I have no questions.

Mr. KANELL. I might, if I may, comment briefly on the matter of burden of proof, which was a subject of some dialog with Chairman Tucker.

As counsel for Connecticut and the train-off case involving the New Haven Railroad, there was some question in those proceedings as to where the burden of proof lay, and it was argued that the railroad had no responsibility.

I think, sir, that to clarify this section of the statute would be very helpful in any future train-off case involving the New Haven or any other railroad.

Senator LAUSCHE. Is your support of this bill predicated upon the situation that was described by Mr. Tucker with respect to the operation of the New Haven in New York but making its turnaround in Connecticut?

Mr. KANELL. That was only one facet of our support, sir. Our basic support is the fact that we came before the Interstate Commerce Commission to preserve our essential service. We asked the Commission to tell us what we could do to keep the service going.

We realized that we had an unprofitable railroad. We realized that the service was essential but there was support required.

We were in a situation of a railroad operating in four States, not just one State. How should the support be allocated? What conditions should be prescribed?

Senator LAUSCHE. I see.

Senator HARTKE. Mr. Chairman, let me come on back to the basic question. Do you think that this change in section 13a will be a really effective instrument toward having a major effect upon revitalization of passenger rail transportation?

Mr. KANELL. Yes, Senator.

Senator HARTKE. How?

Mr. KANELL. For this reason: I take it as recognized—I think other States recognize it as well—that rail transportation is a public service. When railroads started a hundred years ago, they were a public highway system. They were the highway system of the country.

They were started by free enterprise. Free enterprise has not been able to keep railroads' service attractive, competitive.

We need, in effect, a new partnership between the States and the Federal Government and the free enterprise railroads.

Connecticut is now committed to embark upon this partnership by our modernization program of the west end. That is the New York, New Haven commuter service which we call west end.

We are embarking on a program to find out whether these new highspeed trains that are part of the northeast corridor program will work. If these trains will work and they are released by the Department of Transportation, we are permitted to acquire these trains and place them into service.

It is part of this partnership, Senator, that will make railroads attractive, make them competitive.

We are in the situation, sir, where we do not solve our transportation problem by building more highways and more airports. There is nothing more dependable than the steel wheel on steel rails. If we make the services faster, more attractive, competitive, we will solve not only the railroad problem, but we will solve transportation problems.

Senator HARTKE. This deals with a part of the bill which Commissioner Tucker dealt with in his statement? Is that right?

Mr. KANELL. You are talking, sir, now about——

Senator HARTKE. Jurisdiction.

Mr. KANELL. The matter of jurisdiction where the trains——

Senator HARTKE. Yes. Is that the part you feel will help to revitalize?

Mr. KANELL. Sir, I am more concerned with the part concerning conditions—

Senator HARTKE. Pardon me?

Mr. KANELL. The authority of the Interstate Commerce Commission to prescribe conditions in passing on a proposal to discontinue passenger service.

I support that the Commission has the right, has the authority to tell the railroad that, "You will continue this service," providing some Government entity is interested in the service, provided there is a prescribed degree of support.

Senator LAUSCHE. Mr. Tucker testified that presently all the Commission can do is say yes or no to the application. The Commission suggests they be given some intermediate authority, and that is by saying, "Yes, we will grant you the application on certain conditions." And that is what you are talking about?

Mr. KANELL. Yes, sir. Yes, Senator. And these conditions could well include a commitment by the States served to provide tax relief, to provide a system of financing new equipment, to make other benefits available that would preserve this essential service.

Senator HARTKE. Could they require them under this authority to not only provide the service that they are providing now, but to increase the service?

Mr. KANELL. I do not interpret it that way, sir. No, sir.

Senator HARTKE. That is what I thought. Well, then, how would this revitalize the whole rail transportation passenger service, which is practically, for all intents and purposes, becoming almost nonexistent and is now almost nonexistent in the United States in most places?

Mr. KANELL. Senator, I believe it is dying because it is not competitive, not attractive.

Senator HARTKE. And you think this will make it competitive?

Mr. KANELL. This will be one step in that direction rather than simply having the Commission in the position of saying that the train is losing money, that they have no choice under our Constitution, that there would be deprivation of property without due process of law to require continuation.

If a State comes forward, as Connecticut has done, and says, "We will assist you in financing new equipment to make this attractive so we can preserve this important rail corridor that we have," the Commission could then say, "All right. If the State does not come forward in 6 months or a year to meet its commitments, you may then discontinue."

It is a qualified discontinuance.

If the State gives you support, if the Federal Government gives you support, you keep the service going and improve the service, which I trust with these improvements will attract more patronage and will be profitable.

Senator HARTKE. All right. I have no further questions, Mr. Chairman.

Senator LAUSCHE. Any questions, Senator Cannon?

Senator CANNON. No.

Senator LAUSCHE. All right. Thanks very much for your help.

Mr. KANELL. All right, sir.

Senator LAUSCHE. The next witness is Mr. Paul Rodgers on behalf of the California Public Utilities Commission.

Mr. Rodgers, your statement will be fully printed in the record. It would be helpful, with that understanding, if you would discuss the highlights of what you have to say about this bill. Or, on the other hand, if you want to read your paper, go ahead.

STATEMENT OF PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA, BY PAUL RODGERS

Mr. RODGERS. Mr. Chairman, members of the committee, I would prefer to read the statement because my capacity normally is general counsel for the National Association of Railroad & Utility Commissioners. Our witness will testify tomorrow. I am merely reading this statement as a spokesman on behalf of the California commission. So I believe it would be better if I quickly read the statement into the record rather than try to summarize, because I am not familiar with the fine points of it.

Senator LAUSCHE. Very well.

Mr. RODGERS. The California Public Utilities Commission, representing the people of the State of California, respectfully requests that the following statement of position be considered by your committee regarding S. 1175.

The California Public Utilities Commission (California) is well acquainted with section 13a of the Interstate Commerce Act, having conducted numerous hearings of its own in connection with 13a(2), and having participated in many discontinuance cases before the Interstate Commerce Commission pursuant to section 13a(1).

We heartily endorse the suggested revisions of section 13a as embodied in the bill before you. This statement reflects our views on the bill as well as suggested revisions.

California's presentation is in two parts. Part I is an analysis of the changes in existing law which the proposed bill would effect, and part II will present California's suggestions for revisions.

I

SECTION I

1. The bill would require the railroad to give 40 days' notice to Governors of States affected before the effective date of a proposed discontinuance. The present act requires 30 days.

Analysis

This provision would be a positive improvement but, in the opinion of California, a 60- or 90-day period would be more reasonable. The railroad involved obviously knows of its intention to make a discontinuance or change long before it files. In addition, the States involved have serious administrative difficulties in dealing with matters of this magnitude in 30 or 40 days.

2. The bill would add a section which states that the railroad shall have the burden of proof.

Analysis

This proposal by itself will not in the view of California accomplish what the bill intends. The Commission has heretofore interpreted the

present act so that the railroad does not have the burden of proof. This provision would ostensibly change that.

The problem, however, arises from the fact that the bill would create an inconsistency between the section stating the required findings and the section assigning the burden of proof to the carrier.

Under the present 13a(1) the Commission must find that the operation of the train is required by public convenience and necessity and will not burden interstate commerce, or it must dismiss the investigation.

The result of the present 13a(1) is that the only way the train will be ordered continued is if there is evidence to sustain a finding that the operation of the train is still needed. Only the public will supply that evidence; thus the burden of proof is really on the public, since no one else would come forward.

Under the proposed bill, the finding required would be that "public convenience and necessity do not permit the discontinuance." This requirement is simply the reverse side of the same coin. Thus, there must be evidence to prove a negative—that is, that the public convenience and necessity do not permit the discontinuance. We have found it both expensive and extremely difficult to prove this negative.

This finding requirement effectively destroys the burden of proof requirement stated above.

What is needed, in our view, is that the Commission be required to find that there is evidence to support the discontinuance, and then the burden of proof would be on the carrier in clear terms.

In summary on this part, then, it is suggested that the proposed bill creates an inconsistency between the section purporting to put the burden of proof upon the carrier and the section setting forth the requirements of the Commission's findings.

3. The bill would give the Commission an extra 3 months to decide the matter of investigations under 13a(1). The present act provides that if the Commission chooses to investigate a railroad's proposed discontinuance, it may order the discontinuance held up for 4 months. The amendment would attain a 7-month maximum.

Analysis

The addition of the 3 months by the proposed bill does not give the Commission adequate time to properly adjudicate the matter. It is suggested, therefore, that the committee consider a 1-year period under this section, but, failing that, the 7-month period is certainly preferable to the present 4-month period.

4. The bill adds a paragraph authorizing the Commission to extend the 7-month period referred to above for an additional 2 months "pending completion of the investigation or the Commission's determination of any petition * * * for reconsideration * * *."

Analysis

This provision apparently added 2 months to the 7-month period with which we agree, but both of the delay provisions are discretionary with the Commission, so the separation of the provisions is curious. It would be more straightforward to simply say that the Commission may have 9 months to finally decide and that would include any petitions for recognition.

5. The proposed bill would specifically authorize the Commission to attach conditions to an order requiring continuance of service after a 13a(1) investigation.

Analysis

Clearly, the attaching of conditions to the Commission's final order is sorely needed. California very recently protested a carrier's proposed discontinuance of a train between California and Oregon. The examiner's report in that decision, which was adopted by the Interstate Commerce Commission, found numerous abuses and deliberate downgrading of the carrier's level of service and discouragement of passengers.

Constrained by the present act, the Commission was of the view that it could only order continuance of the train for 1 year, and that it could not order the carrier to correct the various abuses that were found. Therefore, the authority to condition a Commission order is the most meaningful provision that could be added to this act.

The attaching of conditions to the statutory finding proposed would not be meaningful. California recommend that the Commission be given an alternative of possible findings at the conclusion of hearings on a discontinuance.

The first: That the applicant has not proven that public convenience requires discontinuance and thus deny the application. If the carrier proves that the public convenience and necessity permit the proposed discontinuance, the Commission should be able to authorize discontinuance on prior performance of whatever terms and conditions will serve public convenience and necessity and not unduly burden the interstate operations of the carrier.

SECTION II

Section II of the bill would amend section 13a of the act dealing with intrastate discontinuances.

The only change concerning intrastate discontinuance would be to authorize the Commission to attach conditions to orders requiring continuances. California's comments as to the provisions pertaining to interstate discontinuances apply here also.

SECTION III

The proposed bill would establish a new section III to 13a providing for judicial review of any order entered by the Commission pursuant to one or two above.

Analysis

This section does not address itself to a major problem in the present act. The present act does not require the Commission to issue an order if it decides not to hold a hearing on a proposed discontinuance. There is therefore no appeal from such a decision.

California will suggest in part II of this statement that the Commission be required to issue an order if it decides not to hold hearings on a proposed discontinuance.

II

California makes the following suggestions after much experience dealing with the present section 13a.

1. The present section 13a(1) apparently creates an ambiguity as to whether a carrier must seek Commission authority before discontinuing under 13a(1). This section is interpreted by some as follows:

A State commission can reject a carrier's proposed discontinuance of the intrastate portion of an interstate train; if the carrier then ignores the State, it can simply discontinue the interstate train without notice to or authority from the ICC.

Any amendment must make clear that a carrier must receive ICC authority to discontinue an interstate train.

2. It is further recommended that the carrier be required to apply to the Commission for authority to discontinue or change rather than file notice of its intention to change or discontinue a train.

The burden of proof should clearly be upon a carrier who wishes to change an existing condition. The carrier should be required to show that the public convenience and necessity permit the proposed discontinuance or change and, further, that to continue the operations without discontinuance or change would unduly burden the interstate operations of that carrier.

If the Commission determines not to hold a hearing, it should be required to issue an order to that effect, which would be an appealable order.

The Commission should be required to find that the public convenience and necessity permit the proposed discontinuance or change and that the continued operation or service of such train without discontinuance or change would constitute an unjust and undue burden upon the interstate operations of such carrier. In addition, any bill should allow the Commission to issue such an order authorizing the discontinuance or change subject to any conditions or terms as the Commission may feel warranted.

The Commission should also be authorized to deny the application and issue an affirmative order based upon the evidence adduced at the hearing. Phrasing the statutory findings in this way has the dual advantage of keeping the burden of proof on the carrier and allowing the Commission to authorize a change upon condition that the railroad give some service improvement to the public.

13a(2): The proposed bill is satisfactory to California as it would amend 13a(2) except for the fact that the 120-day period given to a State commission to finally adjudicate a matter of this great magnitude is so unreasonable as to be a prohibition to meaningful State action. It is recommended, therefore, that this provision be consistent with the time the Interstate Commerce Commission is given under section 13a(1), whether 7 months, as proposed in H.R. 7004, or 1 year, as proposed by California.

Senator LAUSCHE. Senator Cannon?

Senator CANNON. I have no questions.

Senator LAUSCHE. You are connected with the Public Utilities Commission of the State of California? Is that correct?

Mr. RODGERS. Well, only indirectly. I am general counsel for the national association, which is composed of all 50 State commissioners. California is one of our member commissions.

California had hoped to have one of its attorneys here today to present the statement, but they were unable to get the funds for transportation, so I am presenting this statement on behalf of the California commission.

Senator LAUSCHE. You heard this morning in my questioning that I used the words "petition" and "application" filed by the carrier. I was in error in that. What the carrier filed is a notice of intention to discontinue.

Are you a lawyer?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. And I observed that in your paper you point out that if they were required to file an application or a petition, in that application or petition they would have to allege affirmatively what the situation is justifying the discontinuance. Is that correct?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. And if they make the allegation affirmatively, the burden of proof would fall upon them as distinguished from the situation that prevails when they are only required to file a notice of an intention to discontinue. Is that your thinking?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. Now, from the basic approach to this subject, you state the burden of proof should clearly be upon the carrier who wishes to change an existing condition?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. The carrier should be required to show that the public convenience and necessity permit the proposed discontinuance? That is, when the carrier can show that public convenience and necessity does permit the proposed discontinuance, then the application or petition should be granted?

Mr. RODGERS. That is correct, sir.

Senator LAUSCHE. Or if it shows that to continue the operations without discontinuance or change would unduly burden the interstate operations of that carrier, then in that event it shall again have the right to discontinue and the Commission would be required to grant the petition or application?

Mr. RODGERS. Yes, sir.

Senator LAUSCHE. You do not argue against the principle that the Commission should have the authority when public necessity permits it or when the situation is of a character that the losses involved do have an effect on interstate commerce that they may approve a discontinuance?

Mr. RODGERS. Yes, sir; that is the California position. The NARUC position varies somewhat from that, but that will be presented tomorrow.

Senator LAUSCHE. Thank you very much.

I think the three or four papers that were offered this morning were quite to the point, and I commend you for the clarity with which you submitted your views.

Mr. RODGERS. Thank you, sir.

Senator LAUSCHE. We will recess until tomorrow morning at 9 o'clock.

(Whereupon, at 11:37 a.m., the subcommittee recessed, to reconvene at 9 a.m., Thursday, May 25, 1967.)

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AMENDMENTS TO SECTION 13a OF THE INTERSTATE COMMERCE ACT

THURSDAY, MAY 25, 1967

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

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

Senator LAUSCHE. The meeting will come to order.

I am incorporating in the record a statement submitted by Senator Prouty. He testified a year ago in connection with this same subject. He wanted to be here this morning, but he had another appointment. The full statement will be included in the transcript.

(The statement referred to follows:)

STATEMENT OF HON. WINSTON L. PROUTY, U.S. SENATOR FROM THE STATE OF
VERMONT

Mr. Chairman, as a member of the Commerce Committee, I appreciate being given the opportunity to submit this statement to your Subcommittee in support of S. 1175. As you know, I am a cosponsor of this bill, which is designed to make several changes in Section 13(a) of the Interstate Commerce Act of 1958, which are required in the public interest.

You will recall that I testified before your Subcommittee last August in connection with S. Res. 284 which was sponsored by Senators Aiken, Kuchel and myself as a result of the Boston and Maine's discontinuance of the last railroad passenger service in the State of Vermont.

I would like to review briefly the circumstances in that case. In that situation, following the Boston and Maine's filing of notice to discontinue the Montrealer and other through trains between New York and Montreal, the Interstate Commerce Commission held lengthy hearings. At the conclusion of the four-month period, Division 3 of the I.C.C. issued an order permitting discontinuance of these passenger trains. As I understand it, these trains could have been discontinued in any event at the end of the four-month period if the Interstate Commerce Commission had failed to issue an order.

As I said, however, Division 3 did issue an order permitting discontinuance of these passenger trains, but, unfortunately, it did not issue the report upon which this order was based until several days later. This left the State of Vermont in the position of being unable to file an appeal for reconsideration with the full Interstate Commerce Commission until such time as the report of Division 3 was issued, while at the same time there was nothing to preclude the Boston & Maine from discontinuing the passenger trains. The State of Vermont did obtain a temporary injunction requiring the continuance of passenger service, but this injunction was eventually dissolved by a special three-man Federal Court on the ground that no appeal was permissible except from a final order of the I.C.C. and that at this stage of the proceeding there was no such final order.

One of the points I made with Chairman Bush of the I.C.C. last year was that I knew of no instance where a passenger train had been permitted to be discontinued and had subsequently been ordered put back in service either by the full

Commission or by a Federal Court on appeal from a final order of the Commission. I asked Chairman Bush the specific question of how many instances he knew of where such action had been taken, and while not giving me a direct answer, he replied, "There have been very few cases".

Today, there are no passenger trains running in my State of Vermont. I believe that if the provisions embodied in S. 1175 had been part of the statute a year ago, these trains might still be running today. Obviously, there is no reason to believe that enactment of this legislation now will result in the restoration of any passenger train service in Vermont. However, because of our recent experiences in this connection, I strongly support the revisions in the law suggested by this bill so that other sections of the country may receive more adequate protection from the somewhat arbitrary discontinuance of necessary rail passenger service.

The bill which is the subject of these hearings would require that passenger trains be continued without change for a period of up to seven months rather than the present limit of four months. It also provides that the seven-month period may be extended for an additional period of up to two months if the Commission feels that such extension is necessary to complete its work on a particular case, including the time to hear necessary requests for reconsideration. I feel very strongly that, considering the lengthy hearing involved, Division 3 of the I.C.C. did not have sufficient time to adequately consider and analyze the interests of the State of Vermont in Boston and Maine case because of the procedural pressures placed upon it as the four-month period neared its termination.

Certainly, if these proposals had then been law the State of Vermont would not have been placed in the intolerable position of having these trains discontinued at a time when it was legally impossible for it to follow its administrative remedies provided under the statutes.

I would like to add that I believe these changes are meritorious for another reason. As I listened to the testimony of Chairman Bush and Vice-Chairman Tucker during the hearing last August, it became obvious that in the beginning, the cases presented to the I.C.C. involved the discontinuance of a single passenger train. It was also clear from the testimony that when Section 13(a) was enacted, it was not contemplated that discontinuance of certain passenger trains under its provisions would leave geographic areas of our country without any passenger train service at all. In my opinion, the evidence today establishes that a substantial number of cases coming before the I.C.C. involve the discontinuance of more than one passenger train, and often involve the abandonment of passenger service in certain sections of our nation. These cases are, of necessity, much more involved and complex, and I believe the additional time allowed under the proposed amendments is entirely justified.

I further believe that S. 1175 corrects another inequity in the present law by providing that the carrier seeking to discontinue passenger train service be required to assume the burden of proof to show affirmatively that continuance of the service in question would unduly burden interstate commerce. Again, particularly in view of the proposed merger under consideration at that time, I do not believe that the Boston and Maine could have carried this burden of proof last year in the Vermont case.

I urge both your Subcommittee, our full Committee, and the Interstate Commerce Commission to more realistically consider the public interest when railroads attempt to justify abandonment of passenger service on the basis of "declining passenger revenues".

It appears to me that, in considering requests for discontinuance of rail passenger service, the I.C.C. has relied primarily on the apparent effect on costs of the trains in question and the comparatively few number of vocal protests to the proposed discontinuance.

I am convinced that in considering the public interest in such cases—and in determining whether the railroads have carried their burden of proof under S. 1175—the I.C.C. should also give substantial weight to (1) the effect on cost apportionment to the passenger trains remaining in service; (2) the extent to which the costs of actual freight operations are charged off to passenger train expenses under the I.C.C. accounting procedures which require that freight and passenger service be independently accountable; (3) whether an excess percentage of fixed expenses is written off to passenger rather than freight service on the basis of a realistic evaluation of over-all operating expenses; (4) the question of necessary service to the general public; and (5) the over-all pattern (if any) of the railroads action—or inaction—in discouraging patronage on the train or trains it is attempting to remove from service. Another important factor

in determining the merits of a request for discontinuance should be whether permitting the requested abandonment will merely decrease the rail passenger service available or will result in its complete elimination. If the latter is the case, there should be a much greater burden of proof required to justify the finding that the passenger service in question unduly burdens interstate commerce.

I am also glad to see that this bill clarifies the intent of Congress to establish beyond any doubt that any adversely affected party may appeal a final order of the I.C.C. concerning the discontinuance of train service, rather than leaving this portion of the statute open to the interpretation that only a railroad aggrieved by such final order has the right to judicial review.

This proposed amendment to the Interstate Commerce Act also contains several changes of a technical nature. However, I do not need to take the Committee's time discussing these changes, as they are adequately covered in the remarks of the Senior Senator from Washington upon the introduction of this legislation.

Mr. Chairman, thank you for the privilege of submitting this statement in support of S. 1175. I know this bill will receive your serious consideration and I trust it will be reported favorably to our full Committee.

The first witness this morning is Mr. Walter McDonald, commissioner, Georgia Public Service Commission, and chairman of the NARUC, Committee on Railroad Problems.

STATEMENT OF WALTER R. McDONALD, CHAIRMAN, COMMITTEE ON RAILROAD PROBLEMS OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

Senator LAUSCHE. You have given us a report of the committee on national railroad problems for 1966. This will be placed in the file to be considered in connection with this entire subject. We will be glad to hear your testimony, Mr. McDonald.

Mr. McDONALD. Thank you, sir. I intended to ask that it be included where it might. I hope you might print it in the proceedings of the committee, but I realize it is a long one.

Senator LAUSCHE. I will not make any decision on that at this time. It is rather a lengthy report.

Mr. McDONALD. Yes, sir; I realize that.

Senator LAUSCHE. When the committee as a whole takes up the subject, I will discuss your suggestion with them.

Mr. McDONALD. Thank you, Senator. Thank you very kindly.

My name, sir, as you have already said, is Walter R. McDonald and I am a member of the Georgia Public Service Commission and I have been a member of that commission since January 1, and I am also a member of the executive committee of the National Association of Railroad and Utilities Commissioners and was president of that organization in 1948. I am now president of the Southeastern Association of Railroad and Utilities Commissioners, a post which I have held since 1937.

The National Association of Railroad and Utilities Commissioners (NARUC) is a voluntary organization of the regulatory commissions of all 50 States responsible for the regulation of the intrastate rates, services, and facilities of the privately operated public transportation companies in their respective States. The Southeastern Association of Railroad and Utilities Commissioners is a regional association of the same commissions from the 10 Southeastern States.

My appearance in this proceeding is as chairman of the NARUC Committee on Railroad Problems. This committee was formerly char-

acterized as the "Special Committee on Cooperation With the Interstate Commerce Commission in the Study of the Railroad Passenger Deficit Problem" and was originally created by a resolution of the NARUC at its 61st annual convention at Cleveland, Ohio in August 1949. It has been my privilege to serve as chairman of both the original committee and the present committee since 1949 and to appear in that capacity before various congressional committees, including an appearance before Congress in 1958 opposing the extension of section 13 of the Interstate Commerce Act to cover passenger train services.

At the time we reviewed the work of our NARUC committee in the study of the railroad passenger service problem and the efforts we had made to alleviate that problem.

If I could, Senator, interpolate here just for a minute. I will not try to put anything else in the record but I would like to say that study that we went into then was very full. The railroads had contended that the States were too slow in acting on these petitions although that was true only in a few States, and among other things, we made a careful study all over the Nation of all of the unprofitable trains and up to that time, we had been responsible for the discontinuance of some 1,200.

We developed a form and I would like to pass up for your inspection a copy of the form that we worked out that provided some uniformity in the method and form of making applications, because that was one of the great troubles that no one had given any thought as to how the petitions or requests should be made and it didn't show that the information was needed.

So this form was adopted by NARUC and I happen to have had a hearing just yesterday, in Georgia, for discontinuance and this is one of the filled-out forms that we prescribed back in 1953 for use by the railroads in making application for discontinuance of the trains. As I say, we had accomplished a great deal up to that time.

We were unsuccessful in our opposition to that measure and what had theretofore been State jurisdiction over the passenger operations of the railroads was transferred to the Interstate Commerce Commission by the Transportation Act of 1958.

We knew in 1958 that there were serious defects in the proposed section 13a and time has confirmed the inadequacy of some of the provisions of that section—the Interstate Commerce Commission now seeking in the bill presently before you seven specific amendments to section 13a designed to remove some of the statutory barriers to the effective administration by it of passenger train discontinuance proceedings.

We do not contend that the amendments proposed in section 13a will solve our railroad passenger service problems, and certainly they will not correct the erroneous basic concept of the existing law. However, the proposed amendments will correct some obvious inequities and unrealistic provisions of section 13a and will permit more effective consideration by the Interstate Commerce Commission of passenger train discontinuance proceedings instituted before it. To that end, the National Association of Railroad and Utilities Commissioners supports those features of S. 1175 which will—

1. Authorize the Interstate Commerce Commission to require the continuance or restoration of operation of service subject to just and reasonable terms and conditions;
2. Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;
3. Affirmatively provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service and that the continuation of the service would unduly burden interstate or foreign commerce; and
4. Provide for judicial review in the Federal district courts of any order of the ICC entered after hearing under Section 13a.

We believe that these features of S. 1175 are fair and reasonable and will advance the public welfare within the present framework of section 13a. In addition, however, we recommend that you go beyond the amendments proposed in S. 1175 and further amend section 13a to change its concept and return to the States what had historically been prior to 1958 their jurisdiction over the passenger operations of the railroads, thus permitting the utilization in the public interest of the intimate familiarity of the State commissions with all phases of the railroads' passenger services in their respective States.

To that end we recommend that the first paragraph of section 13a—which pertains to passenger trains operating in two or more States—be revised to provide that discontinuance applications filed thereunder should be first heard and determined by a board of State commissioners when the proposed discontinuance involves not more than nine States.

Senator LAUSCHE. Mr. McDonald, why have you decided that when it involves not more than nine States, initial hearings should be conducted by the State commission?

Mr. McDONALD. Frankly, we thought of the same sort of reasoning that we did when we prepared the Motor Carrier Act and the Motor Carrier Act—we didn't contemplate then that the motor carriers would generally extend over a few States and we put in there that not more than four States, and we needed a number here, and frankly, I think that would cover about all of the trains, if you take a trans-continental train, it covers about nine States, and that was the thing that influenced us in suggesting nine. I think that would cover all of the interstate trains.

Senator LAUSCHE. All right. Thanks very much.

Mr. McDONALD. Procedurally such a joint board would be constituted and would function in a manner similar to the motor carrier joint boards which are now authorized in part II of the Interstate Commerce Act (49 U.S.C. sec. 305). This motor carrier joint board procedure was a basic provision of the original Federal Motor Carrier Act adopted in 1935 and has functioned successfully in interstate motor carrier regulation for the ensuing 31 years and this effectuation of the concept of cooperative local-national effort has significantly strengthened Federal-State relations in the transportation regulatory field. We believe that the success of this procedure and its ready adaptation to railroad passenger train discontinuance cases recommends its extension to section 13a.

Under the NARUC proposal the section 13a joint board of State commissioners would apply the same legal standards for deciding

railroad passenger train discontinuance applications as are now applied by the ICC, hopefully modified as sought in the bill here under consideration. To establish a proper chain of regulatory appeal, provision would be made that the ICC could reverse or modify the decision of the joint board if it determined that the joint board failed to apply the proper legal standards on the basis of the findings of fact made by the board.

Further, under the amendments already proposed, the parties would be entitled to court review of either the joint board initial decision or of the ICC action upon appeal.

We believe that such an amendment would provide for an effective use of the extensive local knowledge of the State commissions and would provide a salutary balance between local, regional, and national needs regarding passenger train service and the overall welfare of the railroads. It would be consistent with President Johnson's acknowledged goal of achieving a "total working partnership" between Federal and State Governments as contained in his 1967 state of the Union message.

The basic justification for enactment of section 13a in 1958 was the railroads' continued assertions that some State commissions were too reluctant in permitting the discontinuance of what the railroads characterized as losing passenger train services. However, it appears to us—and from press reports it seems to appear to a number of Congressmen—that the pendulum has now swung too far in the opposite direction.

Since 1958 there have been discontinued under the present law hundreds of interstate trains, a figure which would be multiplied many times if those trains were considered to be separate trains in each State in which they operated—as was the case when they were regulated by the State commissions. The result today is that railroad passenger service is at best sparse throughout the country, in many areas is totally inadequate and on some lines has ceased to exist.

To anyone concerned with the movement of troops and civilians during times of emergency—as well as with the rapidly approaching saturation of our highways and airways—it is frightening to learn of the rapid dissolution of our once incomparable passenger train fleet.

In spite of the loss of most State commission jurisdiction over passenger train services, our membership has continued to concentrate on this area of railroad problems. As illustration, I am supplying to each member of the subcommittee a copy of the 1966 report of the NARUC Committee on Railroad Problems which contains an in-depth study of the transportation of mail and the effect of Post Office Department policies on the passenger services of the railroads.

We believe that a joint board composed of the State commissioners, knowledgeable in this field and applying specified national standards, will give a badly needed balance to local and national needs in passenger train discontinuance cases. If the joint board should err in its decision on the side of local need then, of course, the ICC—and the courts—would be free on appeal to correct any misapplication of national standards.

The NARUC further recommends, whether the joint board procedure is adopted or not, that section 13a be amended to require that any application under that section be made the subject of public hear-

ing when such is requested by a protestant. The discontinuance of passenger train service is of great local concern to every town served by a train and is much too important a matter to be decided without giving all interested parties a chance to be heard when such is sought.

We also recommend that paragraph (2) of section 13a dealing with trains operated in a single State be amended to provide that where the State law does not permit the State commission to require continuation of passenger train service a railroad shall not discontinue or reduce its passenger train service in that State unless it first gives notice to the public and to the ICC in the manner set forth in paragraph (1). Under the existing law a carrier is free to discontinue or reduce such passenger train service without notice if the State cannot require continuation of that service. We believe that such a loophole is inimical to the public interest.

Summarizing, we believe that the present section 13a is defective in procedure and concept and that S. 1175 should be enacted into law with the three amendments which I have just described.

I thank you very much for this opportunity of appearing.

Senator LAUSCHE. Did I understand, Mr. McDonald, you favor the bill that is before us to the extent that it deals with the right to impose conditions connective with discontinuance?

Mr. McDONALD. Yes, sir.

Senator LAUSCHE. The granting of more time to the commission to act?

Mr. McDONALD. That is right.

Senator LAUSCHE. The fixing of the burden of proof to be on the carrier?

Mr. McDONALD. That is right.

Senator LAUSCHE. And the giving of the right of appeal to the public in the event that an order to discontinuance of service is entered?

Mr. McDONALD. That is right. We thought it ought to have been in the original bill.

Senator LAUSCHE. You then go on further and suggest and recommend there should be included in the bill an amendment to create joint boards involving nine, not more than nine States that will have the authority to initially hear applications under guidelines fixed by Federal law or by the Interstate Commerce Commission?

Mr. McDONALD. To hear and make a determination.

Senator LAUSCHE. Yes.

And then after that regional board has had a hearing and made a determination, the ICC does have the right to determine whether it will abide by the decision made by the regional board?

Mr. McDONALD. That is right, sir.

Senator LAUSCHE. Very good.

Now then, you go one step farther that whenever requested, under section 13a by amendment, a public hearing should be had of the application to discontinue the service?

Mr. McDONALD. Yes, sir; that is a matter of discretion now and we, in the very few instances in which we have participated, the commission has granted these hearings, but we have complaints from other regions that they do not have hearings and we just feel like that where there is a request for it, a reasonable request, it ought to be put down for public hearing.

Senator LAUSCHE. Now then, the next suggestion is that section 13a dealing with trains operated in a single State be amended to provide that where the State law does not permit the State commission to require continuation of passenger train service, a railroad shall not discontinue or reduce its passenger train service in that State unless it first gives notice to the public and to the ICC in the manner set forth in paragraph 1 of 13a?

Mr. McDONALD. Yes, sir; there are a few States that do not give the commission specific authority over passenger train operation and we have some of our members who have asked that be included. So far as my State is concerned, I think all of the Southeastern States, Tennessee for a long time had no jurisdiction but they do now.

That simply covers those States where the State commission has no authority to order the continuance of service.

Senator LAUSCHE. Thanks very much for your testimony.

Mr. McDONALD. I certainly thank you, Mr. Chairman.

Senator LAUSCHE. We are very glad to have had you here, Mr. McDonald.

Mr. McDONALD. Delighted to see you again, sir.

Senator LAUSCHE. Is Mr. Haswell here?

Mr. Anthony Haswell, attorney at law, 77 West Washington Street, Chicago, Ill.

Mr. Haswell, we will hear your testimony.

**STATEMENT OF ANTHONY HASWELL, ATTORNEY AT LAW,
CHICAGO, ILL.**

Senator LAUSCHE. Mr. Haswell, your complete statement will be printed in the record. You can proceed to read it or you can dispense with reading it and discuss the highlights of what you have to say in connection with this pending bill.

Mr. HASWELL. Thank you, Senator.

I will not read the entire statement. I will read parts of it which I feel are most significant.

My name is Anthony Haswell. I am an attorney at law with offices at 77 West Washington Street, Chicago, Ill. I am a graduate of the University of Wisconsin with a major in transportation and public utilities. Subsequently I was employed for 2 years in the Law Department of the Illinois Central Railroad in Chicago. I appear here today on behalf of myself as an individual in support of S. 1175. My interest is that of a railroad passenger.

I make periodic use of passenger trains in my own travels. This service is useful and convenient to me. As a citizen, I have a further interest in its preservation as a valuable national asset, which fulfills substantial demand for transportation in peacetime and is a vital need in time of war or national emergency. I am convinced that enactment of S. 1175 will be of material assistance in preserving and improving passenger service.

Yesterday, Chairman Tucker and I believe some of the other witnesses outlined what has been happening to railroad passenger service over recent years in terms of the great decrease in the number of trains running and the number of passenger miles and the amount of service available to the public. I can merely emphasize that candidates for train discontinuance today are not limited to what we would call

the locals or the milk runs or the plug runs, but include such famous trains as the California Zephyr and Century Limited.

Accordingly, I believe that unless action is taken now to strengthen controls over discontinuance that much of the present rail passenger service will be up for abandonment within the next few years.

Before discussing the specifics of S. 1175, I will try to define the kinds of railroad passenger service which I believe are worth keeping and improving.

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

I can only add that this is going on at the same time San Francisco is spending hundreds of millions of dollars, Washington, D.C., is about to spend very large sums of money and other cities are contemplating this type of expenditure for transit, rail transit facilities.

The second is high-speed intercity service.

In a very short time, high-speed train service between big cities will be as essential as commuter service. I need not dwell at length on the need for this service, as that has been eloquently documented by Senator Claiborne Pell and a number of others. Commonsense tells us that the institution of such service will be facilitated if in the meanwhile the present trains are retained.

If stations are closed, ticket selling and sales organizations disbanded, and tracks ripped up, it will be that much more difficult and expensive to revive train service later on. Yet in a number of instances, the railroads have already discontinued passenger service or have proposed that it be discontinued between points which might well need high-speed service in the future.

One example that immediately comes to mind is between Cleveland and Pittsburgh.

3. Other kinds of useful passenger service: Aside from commuter service and high-speed service in densely populated areas, there is and will continue to be a useful and valuable place for rail passenger service in a number of other markets:

(a) Long distance service for tourists: The steamship lines used to promote business by proclaiming that "getting there is half the fun." Such roads as the Santa Fe, Union Pacific, Great Northern, Northern Pacific, Burlington, Illinois Central, and Coast Line offer service that makes this claim true for rail travel as well, and as a result are continuing to fill their long-distance trains.

As vacation time is increased for more and more people, there is less incentive for them to get where they are going by the fastest possible means. The picture windows and domes of a good train offer an ideal way to see our country in comfort. Also, the overnight runs such as the Panama Limited between Chicago and New Orleans are an attractive alternative to air travel for business travelers.

Some have argued that this type of service should not be continued because it is "nonessential." To be sure, reasonable men may differ on the meaning of "essential." I contend that long-distance train service is indeed essential.

Few would dispute that travel across our country is educational and beneficial. All of our people—and travelers from other lands as well—

should have the opportunity to see our natural and scenic heritage. Our Supreme Court has said that travel—

may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our scheme of values." *Kent v. Dulles*, 357 U.S. 116 at 126 (1958).

Since travel occupies such an important place in our society, I submit that long-distance train service is essential, for it offers a means of travel that has unique advantages over other modes. The train is faster, more relaxing, and safer than the automobile, and of course much closer to the scenery than the airplane.

The transcontinental air traveler sees no more than a relief map of the country if he is lucky; otherwise he sees the clouds. The transcontinental motorist must allow at least a week for his trip, and even at that pace he is likely to be a physical and nervous wreck at journey's end. And then he has to do it all over again to get back home.

The Interstate Commerce Commission recently observed that—

Operation of the California Zephyr has permitted more than 135,000 persons a year to enjoy some of the most spectacular scenery in the country under ideal conditions. In this sense, the trains proposed to be discontinued are a unique national asset.

Another useful type of train service is short to medium distance day service (100 to 500 miles).

Even apart from future potential for high-speed service in some areas, trains continue to offer sufficient advantages over other modes to justify their continuation and improvement. The train is roomier, more comfortable, and generally faster than the bus; cheaper and more relaxing than the airplane; and more relaxing, safer and often faster than automobile. New equipment such as the United Aircraft "Turbotrain" could sharply improve the competitive standing of train service, as well as making it more economical to operate.

Finally there are advantages to the railroads in group movements, specials, and excursions.

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

Now, the specific provisions of S. 1165 and the hoped-for effect have been explained to you fully by Chairman Tucker and the other witnesses and I will not repeat what they have said. I can only emphasize I favor enactment of the bill as it stands for the improved ability that it will give to the Interstate Commerce Commission to evaluate the public interest factor in specific cases which come to it.

But beyond its helpfulness in specific discontinuance cases, I believe that this legislation in two respects will bring about an improvement in the total picture of rail passenger service.

First, passage of this bill will be a clear message from the Congress to the railroad industry that useful passenger service must be continued and improved. Once this message sinks in, I am confident that there will be a much more positive approach to passenger business on the part of the industry than there is now. Were the railroads to become convinced that they cannot go out of the passenger business, service would improve substantially, because it would then be in their best interest to attract more patronage. Continued poor service would only increase losses and tarnish the companies' public image.

I point out that the Canadian National Railway was pursuing a policy of withdrawal from the passenger business until its management became convinced that this would not be permitted. Passenger policy was reevaluated and reversed completely, with the result that today the Canadian National service is the envy of many people in this country.

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

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

Senator LAUSCHE. Are you able to tell what the situation is with respect to the operation of the Chicago & North Western with all of its improved facilities, whether it is operating in the black or in the red? Do you know?

Mr. HASWELL. It is my understanding that it is operating in the black, the commuter service of the North Western. I am not prepared to state exactly how much, but I will say that it is making a profit. It is contributing to the company's net income. I believe that the same result will follow as to intercity passenger service once management reaches the same conclusion.

A second beneficial effect of the proposed legislation will be, by slowing down the pace of discontinuances, to allow sufficient time for the development of positive governmental programs to alleviate the economic problems which beset much of present rail passenger service.

One possibility is a National Passenger Car Corporation, which could acquire, rebuild, repair, and maintain much of the present passenger rolling stock, and eventually provide new equipment, operate joint passenger terminals, et cetera. But such things cannot be done overnight, and if many more trains are discontinued, the question will be academic.

I might add that passage of this bill would also signify the concern of the Congress to the new Department of Transportation, and thus encourage the Department to provide for train service in its planning for an overall transportation policy.

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

1. The language of the existing law giving the Commission power to order continuance of the service upon showing of public convenience and necessity, et cetera, would appear inconsistent with the provision in S. 1175 placing the burden of proof on the railroads. I suggest

that the wording be revised to give power to the ICC to authorize discontinuances upon a showing that public convenience and necessity, et cetera, do not require the service. This would make clear that the railroad, not the public, had the duty of seeking affirmative relief.

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

3. The law should be amended to provide that no interstate train service may be discontinued or changed in whole or in part, unless authority is obtained from all the States through which it runs, or from the Commission under 513a. As things are now, an interstate train can be discontinued piecemeal by discontinuing the segment through one of the States through which it operates. Thus, the interest of one State in maintaining through train service can be undermined by the indifference of its neighbor.

4. In my opinion, the proposal of the National Association of Railroad and Utilities Commissioners for a joint board procedure is imaginative and constructive, and I would support it as an alternative to S. 1175.

Another approach which this committee might consider is a simple repeal of 513a(1), leaving 513a(2) as an avenue of relief for the railroads from arbitrary refusal of State commissions to grant discontinuance in proper circumstances. If this is done, 513a(2) could be amended to insure prompt disposition of cases thereunder by the ICC, as is now required under 513a(1).

I appreciate the opportunity to state my views before this committee. I also would like to applaud Chairman Tucker and the Interstate Commerce Commission for the initiative they have taken in the passenger service field.

Thank you very much.

(Mr. Haswell's prepared statement follows:)

TESTIMONY OF ANTHONY HASWELL, ATTORNEY AT LAW, CHICAGO, ILL.

My name is Anthony Haswell. I am an Attorney at Law with offices at 77 West Washington Street, Chicago, Illinois. I am a graduate of the University of Wisconsin with a major in transportation and public utilities. Subsequently I was employed for two years in the Law Department of the Illinois Central Railroad in Chicago. I appear here today on behalf of myself as an individual in support of S1175. My interest is that of a railroad passenger.

I make periodic use of passenger trains in my own travels. This service is useful and convenient to me. As a citizen, I have a further interest in its preservation as a valuable national asset, which fulfills a substantial demand for transportation in peacetime and is a vital need in time of war or national emergency. I am convinced that enactment of S1175 will be of material assistance in preserving and improving passenger service.

Unless action is taken now to strengthen controls over train discontinuances, much of present rail passenger service will be up for abandonment in the next few years. The Southern Pacific has made clear that it would get out of the passenger business as fast as possible if the regulatory authorities would agree. The Southern Pacific, the Chicago and North Western, and perhaps others

have alleged that railroads no longer have a public utility obligation to run intercity passenger trains. While the ICC refused to permit the discontinuance of the Western Pacific's *California Zephyr*, another attempt for discontinuance could be made anytime after next February. Last year's proposal of the New York Central to discontinue its through passenger service between the east and the midwest, including the famed *20th Century Limited*, could be revived at any time.

KINDS OF RAIL PASSENGER SERVICE WORTH KEEPING

Before discussing the specifics of S1175, I will try to define the kinds of railroad passenger service which I believe are worth keeping and improving.

1. Commuter Service

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

2. High Speed Intercity Service

In a very short time, high-speed train service between big cities will be as essential as commuter service. I need not dwell at length on the need for this service, as that has been eloquently documented by Senator Claiborne Pell and others. Common sense tells us that the institution of such service will be facilitated if in the meanwhile the present trains are retained. If stations are closed, ticket selling and sales organizations disbanded, and tracks ripped up, it will be that much more difficult and expensive to revive train service later on. Yet in a number of instances, the railroads have already discontinued passenger service or have proposed that it be discontinued between points which might well need high-speed service in the future.

3. Other Kinds of Useful Passenger Service

Aside from commuter service and high-speed service in densely populated areas, there is and will continue to be a useful and valuable place for rail passenger service in a number of other markets:

(a) *Long distance service for tourists.*—The steamship lines used to promote business by proclaiming that "getting there is half the fun." Such roads as the Santa Fe, Union Pacific, Great Northern, Northern Pacific, Burlington, Illinois Central, and Coast Line offer service that makes this claim true for rail travel as well, and as a result are continuing to fill their long-distance trains. As vacation time is increased for more and more people, there is less incentive for them to get where they are going by the fastest possible means. The picture windows and domes of a good train offer an ideal way to see our country in comfort. Also, the overnight runs such as the *Panama Limited* between Chicago and New Orleans are an attractive alternative to air travel for business travelers.

Some have argued that this type of service should not be continued because it is "non-essential". To be sure, reasonable men may differ on the meaning of "essential". I contend that long-distance train service is indeed essential.

Few would dispute that travel across our country is educational and beneficial. All of our people—and travelers from other lands as well—should have the opportunity to see our natural and scenic heritage. Our Supreme Court has said that travel "may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our scheme of values." *Kent v. Dulles*, 357 US 116 at 126 (1958).

Since travel occupies such an important place in our society, I submit that long-distance train service is essential, for it offers a means of travel that has unique advantages over other modes. The train is faster, more relaxing, and safer than the automobile, and of course much closer to the scenery than the airplane. The transcontinental air traveler sees no more than a relief map of the country if he is lucky; otherwise he sees the clouds. The transcontinental motorist must allow at least a week for his trip, and even at that pace he is likely to be a physical and nervous wreck at journey's end. And then he has to do it all over again to get back home! The Interstate Commerce Commission recently observed that "Operation of the *California Zephyr* has permitted more than 135,000 persons a year to enjoy some of the most spectacular scenery in the country under ideal conditions. In this sense, the trains proposed to be discontinued are a unique national asset".

(b) *Short to medium distance day service (100 to 500 miles).*—Even apart from future potential for high-speed service in some areas, trains continue to offer sufficient advantages over other modes to justify their continuation and improvement. The train is roomier, more comfortable, and generally faster than the bus; cheaper and more relaxing than the airplane; and more relaxing, safer and often faster than automobile. New equipment such as the United Aircraft "Turbo train" could sharply improve the competitive standing of train service, as well as making it more economical to operate.

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

OPERATION AND EFFECT OF S1175

S1175 would change present law in the following respects:

(1) Allow the ICC more time to consider and decide proposals for passenger train discontinuances.

(2) Authorize the Commission to attach reasonable terms and conditions to orders relating to proposed discontinuances.

(3) Place the burden of proof on the railroad proposing the discontinuance, rather than on protestants.

(4) Provide for the right of judicial review at the request of any aggrieved party.

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

But beyond its beneficial effect in specific cases, this legislation will in two respects bring about an improvement in the total picture of rail passenger service. First, passage of this bill will be a clear message from the Congress to the railroad industry that useful passenger service must be continued and improved. Once this message sinks in, I am confident that there will be a much more positive approach to passenger business on the part of the industry than there is now. Were the railroads to become convinced that they cannot go out of the passenger business, service would improve substantially, because it would then be in their best interest to attract more patronage. Continued poor service would only increase losses and tarnish the companies' public image. I point out that the Canadian National Railway was pursuing a policy of withdrawal from the passenger business until its management became convinced that this would not be permitted. Passenger policy was re-evaluated and reversed completely, with the result that today the Canadian National service is the envy of many in this country. Some time ago, Chairman Ben W. Heineman of the Chicago and North Western was asked why his company had spent so much money and effort to improve its commuter service. He replied:

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

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

A second beneficial effect of the proposed legislation will be, by slowing down the pace of discontinuances, to allow sufficient time for the development of posi-

tive governmental programs to alleviate the economic problems which beset much of present rail passenger service. One possibility is a National Passenger Car Corporation, which could acquire, rebuild, repair and maintain much of the present passenger rolling stock, and eventually provide new equipment, operate joint passenger terminals, etc. But such things cannot be done overnight, and if many more trains are discontinued, the question will be academic. I might add that passage of this bill would also signify the concern of the Congress to the new Department of Transportation, and thus encourage the Department to provide for train service in its planning for an over-all transportation policy.

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

(1) The language of the existing law giving the Commission power to order continuance of the service upon showing of public convenience and necessity, etc. would appear inconsistent with the provisions in §1175 placing the burden of proof on the railroads. I suggest that the wording be revised to give power to the ICC to authorize discontinuances upon a showing that public convenience and necessity, etc. do not require the service. This would make clear that the railroad, not the public, had the duty of seeking affirmative relief.

(2) As the law now stands, the railroads can come back to the Commission again for discontinuance authority after one year has elapsed from the date of an order requiring continuance of service. I believe that the Commission should have discretion to set this period between one and five years. In cases where there is a clear potential for the service, a longer period would be appropriate. If the railroad knew it could not apply again for discontinuance authority for several years, it would have incentive to make a sincere effort to improve the service, rather than promptly begin to prepare for the next attempt at discontinuance.

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

(4) In my opinion, the proposal of the National Association of Railroad and Utilities Commissioners for a joint board procedure is imaginative and constructive, and I would support it as an alternative to §1175. Another approach which this Committee might consider is a simple repeal of § 13a (1), leaving § 13a (2) as an avenue of relief for the railroads from arbitrary refusal of state commissions to grant discontinuance in proper circumstances. If this is done, § 13a (2) could be amended to insure prompt disposition of cases thereunder by the ICC, as is now required under § 13a (1).

I appreciate the opportunity to state my views before this committee. I also would like to applaud Chairman Tucker and the Interstate Commerce Commission for the initiative they have taken in the passenger service field.

Senator LAUSCHE. Thank you very much, Mr. Haswell.

Is Donald S. Beattie here?

STATEMENT OF WILLIAM MAHONEY, COUNSEL FOR THE RAILWAY LABOR EXECUTIVES' ASSOCIATION ON BEHALF OF DONALD S. BEATTIE, EXECUTIVE SECRETARY-TREASURER, RLEA

Mr. MAHONEY. Mr. Chairman, my name is William Mahoney. I'm counsel for the RLEA. Mr. Beattie is necessarily absent and asked if I could seek permission to put his statement in and summarize it.

Senator LAUSCHE. We will hear what you have to say. You are appearing here today as the representative or substitute of Mr. Beattie?

Mr. MAHONEY. Yes, sir, that is correct.

Senator LAUSCHE. I have Mr. Beattie's statement before me. It will be printed in the record. Do you contemplate reading his statement?

Mr. MAHONEY. No, sir; I do not.

Senator LAUSCHE. Proceed to give your views, Mr. Mahoney.

Mr. MAHONEY. Mr. Chairman, I'm a member of a law firm here in Washington, which is retained as general counsel by the Railway Labor Executives Association and as counsel to that association, I have participated in every case which has arisen under section 13a of the Interstate Commerce Act since 1958.

Section 13a, as originally conceived, was passed during an emergency to aid the railroads. It was a time of low income and certain of the State commissions allegedly, at least, were refusing to permit the discontinuance of unused and uneconomic trains.

About the time that this matter was before the Congress, the *Weehawken Ferry* case came along. This involved the discontinuance of a ferry operated by the New York Central between Weehawken and 24th Street. The Interstate Commerce Commission had held hearings under section 118, line abandonment provisions of the ICC Act regarding discontinuance of this ferry.

The Commission regarded the ferry as a line of a railroad and, therefore, subject to its jurisdiction under 118. The hearings lasted for about a year. The railroad proved that they were losing \$1 million a year on this ferry and they couldn't give it away. They tried to give it away and they couldn't. So the Commission granted the railroad the authority to discontinue the ferry.

Well, some of the protestants, not my clients, I might add, appealed this case on the grounds that this really wasn't a line of the railroad, it wasn't a line abandonment and, therefore, the Commission had no jurisdiction over the abandonment and the appellate court upheld this theory. Well, this meant that the New York Central was stuck with this losing proposition and just simply couldn't get rid of it.

This came along about the time that the Congress was considering the Transportation Act of 1958, and it aided in the passage of that act, because it was clear that here we had a desperate situation of a railroad losing money overall and was compelled to carry on its losing service. When this act was passed, the line abandonment provisions which deal with discontinuance of railroad operations were found in section 1 of the act. The train abandonment or train discontinuance provisions, it would seem, would properly have gone in that section. But, it was not placed in that section of the act. It was placed in the pricing or tariff section of the act and it was written as tariff suspensions and changes are written into the act.

Now a train abandonment is no different in relation to the public or to the employees or to the Commission in terms of the type of evidence that has to be put in. It is no different than a line abandonment because a line abandonment involves, in 99 percent of the cases, discontinuance of the last freight train. However, this provision, which involves operations and services of a railroad, was placed in the rate section of the act and written in conformity with the rate section, and problems have been created because it doesn't fit in that section.

If a railroad decides to raise or lower a rate and issues a notice to that effect, it will go into effect in 30 days unless the ICC stops it. Well, that is all right because if the ICC effort goes into effect, the size of the rate should be returned to its original level. It is a very simple matter to accomplish that result. But, if a train comes off on the same 30 day notice or after 4 months if a train comes off, it is

almost impossible to recapture the passengers and put the train back on. It just simply is not the same thing as changing the price of service.

All of the difficulties, I believe, of Section 13a, particularly section 13a(1), have stemmed from this problem of putting it into the wrong section of the act. Section 13a(2), dealing with intrastate train discontinuances is not written that way at all. It is written very similar to section 118 dealing with line abandonment. It requires the railroad to file an application with the Commission. It requires a hearing and it requires the railroad to have pertinent proof and the train will continue on operating unless the railroad proves and the Commission finds that it should come off.

Now, the financial emergency of the railroads in 1958 is long over. Recently there was distributed by the Soo Line Railroad Co., proposed testimony of a transportation consultant. He states that the railroad industry broke a long-term downtrend in about 1961, both in absolute terms and in terms of competition relative to other modes. He also states that the recovery of the railroad industry is based on more than the general improved business conditions of the last 6 years. Certain long-run technological trends have come into play which are favorable to the railroads as opposed to their motor and water carrier competitors.

In fact in 1966, the net income of the railroad industry was about \$902 million. And all of the trains which the carriers back in 1958 had told the Congress the State agency would not let them take off, all of those trains have long since been discontinued. So we are now faced with another emergency and that emergency, as we see it, is the extinction of rail passenger service.

There have been 786 trains discontinued under section 13a. Sixty-one of those trains were discontinued without any hearing of any kind and 10 of those 61 were discontinued in 1966. Now while we create new departments to develop our transportation complex in the most fruitful manner possible, such as the Department of Transportation, and while we enact legislation to develop high speed intercity passenger service, our rail passenger system is disappearing. And unless this disappearance is halted or curtailed substantially, all of the legislation and all of the work of the Department of Transportation will be rendered futile.

Now the Congress in its wisdom may decide that rail passenger service is outmoded and should cease to be. But it seems to me that the Congress just simply has to confront the problem of whether it wants to continue on or continue off or permit it to come off. If it wants to continue on, I think the present law must be substantially modified.

Under the present law, for example, the railroads are completely within their rights to destroy a train in effect before coming before the Interstate Commerce Commission. There was an excellent example of this in a train of the Pennsylvania Railroad. On April 30, 1961, the Pennsylvania Railroad desired to discontinue two trains and put a solid express train on instead. Now one of these two trains had 18 cars. So, the railroad cut the consist of the train from 18 cars to one coach and a pullman. Now prior to that time, this train had produced a profit of \$341,000 and after being skeletonized, it produced a loss of \$500,000.

Now, this was taken before the Pennsylvania commission to see whether or not they couldn't require the train to be returned to its original consist. And during testimony by the Pennsylvania's director of passenger service, this question was asked him:

And is it not true, sir, the reason for that—

This knocking down the consist of the train—

was a feeling on the part of the railroad's confidence, shall we say, the Commission, the ICC, would ultimately grant the permission because the railroad felt that it could, if necessary, reduce the consist of the trains to make the trains unprofitable?

Answer. That is correct.

Senator LAUSCHE. At this point, what motivated the railroad to discontinue a service that produced a profit of over \$300,000 a year?

Mr. MAHONEY. This isn't unusual and it happens frequently. In some cases, they are unsuccessful, such as in the case of the Spirit of St. Louis, which they have tried twice to take off and haven't been able to. The reason, I believe, is that for every dollar invested, they can get more return out of freight than they can out of passengers. So that their books look better at the end of the year if they are able to invest their money and capital into freight operations rather than passenger operations.

Passenger operations, I think, historically have never and probably could never return as much per dollar of investment as freight.

Senator LAUSCHE. Why couldn't they do both?

Mr. MAHONEY. Well, they used to do both and I understand the philosophy was that although the trains did not return the profit; that is, the passenger trains as the freight trains returned, that they used the services as an attraction to their freight customers.

Senator LAUSCHE. I see.

Mr. MAHONEY. Now, the proposed bill, S. 1175 would effect approximately five changes in the present law. First of all, it would add 3 to 5 months' time within which the ICC must act in interstate train cases. The ICC has no limitation of time upon it now in intrastate cases. But this isn't any substantive change. It merely delays the inevitable by 3 to 5 months. The ICC procedures would remain short-circuited. You would have no examiner's report, no opportunity to file exceptions to the report. The order would ordinarily come out the day before the train would come off and no time to file any effective petition for reconsideration because the trains would already be gone by the time you filed it. However, under the present law and under S. 1175, the railroads do have the right and an opportunity to file an effective petition for reconsideration, whereas the public doesn't.

This just happened recently in a case involving the Missouri Pacific, where the Commission says you can't take the train off and you have to keep it going. The train stays on. The railroad files a petition for reconsideration and, as it did in a recent case, the Commission reversed itself and said, "No, I guess the train should come off after all." So they have this opportunity, whereas on the other hand, if the Commission comes out, and it usually comes out with its order the day before the automatic discontinuance time limit goes into effect anyhow, and says, no, we think the train should come off, the public has no real opportunity to file a petition. It can file a petition, but by

the time it is considered 3 or 4 months later, the train has been off 3 or 4 months and the Commission then must find that it should be restored to service, which is impractical.

Now this law or bill, S. 1175, would also——

Senator LAUSCHE. What would you do about it as being different from what the Commission asked be done in this bill?

Mr. MAHONEY. Well, we feel that the law should be amended, that is 13a(1) should be amended in conformity with section 13a(2), the intrastate train discontinuance, that there should be no time limitation as there is in 13a(2), and as there is none in 118, line abandonment section.

The bill would also shift the burden of proof in interstate cases. The railroads now have the burden of proof in intrastate cases. This would have the railroads prove that the public convenience and necessity permits the discontinuance and, first of all, have them prove that continued operation would be an undue burden on interstate or foreign commerce.

Senator LAUSCHE. I thought it was in disjunctive and not conjunctive. You don't have to prove both, but prove either.

Mr. MAHONEY. Perhaps it is. I would have to look it up. In any event, they would have to prove one or the other. But, even so, this, it seems to me, is meaningless and doesn't really effectively shift the burden of proof. Because regardless of the evidence which the railroads might put in in any particular case, the train will come off automatically in any event at the end of 7 or 9 months unless the ICC finds that the continued operation of that train will not unduly burden interstate commerce.

Senator LAUSCHE. It is in the conjunctive.

Mr. MAHONEY. But, as I say, to have this burden of proof so-called on the railroads, wouldn't mean anything because the train will come off automatically anyway under findings of 1175, as it does now under findings of 13a(1). It will come off unless the Commission can find that its continued operation will not unduly burden interstate or foreign commerce and that the public convenience and necessity does not permit their discontinuance.

The evidence on which such findings must be based will not come from the railroads. They will have to come from the public. Therefore, unless the findings in the law are changed, are reversed from what they are now, the burden of proof, effectively speaking, will remain upon the public.

And with this analysis, I understand the California Public Utilities Commission has presented a statement here and also agrees with this analysis.

Senator LAUSCHE. Now let me interrupt. While it is in the conjunctive, the way it is worded, all that has to be proved is one of the two. I will study it further. May I read:

If after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that public convenience and necessity do not permit——

I emphasize the word "not"——

the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will not unduly burden interstate or foreign commerce . . .

That is, they have to find that it will not unduly burden the interstate and foreign commerce and then they may order a discontinuation or continued operation of the service.

Mr. MAHONEY. Yes, sir; I understand.

Senator LAUSCHE. Now you are arguing that there should be written into the law a provision placing the burden of proof on the railroads?

Mr. MAHONEY. Yes, sir.

Senator LAUSCHE. All right, proceed with your next subject.

Mr. MAHONEY. And that the only way that can be done is by changing those findings. At the present time the train will come off unless the Commission makes affirmative findings that it should stay on. We would recommend strongly that the law be changed that the train will stay on unless the Commission makes affirmative findings that it should come off.

S. 1175 also changes the designation of interstate and intrastate trains. As written, this change would place more trains in the interstate category, rendering them easier of discontinuance.

There is also a provision on judicial review. Some question regarding reviewability has come up about ICC decisions which are rendered after hearing and which permit discontinuance of the trains. Now this permission in 1175 would clear that up and would permit appeals from orders permitting discontinuance. However, there would still be no appeal from situations in which the Commission does not act and the train comes off automatically.

Senator LAUSCHE. You therefore recommend that when it has taken no action, that is the equivalent of taking action and that, therefore, there should be the right of appeal?

Mr. MAHONEY. Yes, sir; we do.

Senator LAUSCHE. All right, proceed to your next subject.

Mr. MAHONEY. Now, the Commission requests authority for discontinuances and they restrict the authority requested to operations and service. In section 120 of the Interstate Commerce Act, which deals with train abandonments, they now have language which says that the Commission may condition the abandonment of the service upon such terms and conditions as it feels are required.

This language could have been adopted here and was adopted except the Commission added the words: "* * *" pertaining to operations and service." The effect of adding those words would be to only have one effect and that would be to exclude protection to employees. Now, so far as I know, neither the Commission or any railroad, who has ever appeared before this committee, has stated that the effect upon employees of discontinuation of the operation of a train is any different than the effect upon employees of discontinuance of a railroad line. And while they may not want to protect the employees on the discontinuance of trains, because it costs money, there is no difference in the philosophy or reasons for protecting or not protecting them than in the case of people who are let go because of line abandonment. Discontinuance of their jobs contribute to these savings. Congress has provided in other provisions of the law, ever since it passed the Transportation Act of 1933, that employees be permitted to share in the savings which they contribute to the railroads.

Now the primary reason, Commissioner Tucker stated, I believe, for this additional authority was to permit the ICC to reschedule other

trains, so that when they allow one train to come off, they should be able to reschedule the remaining trains so as to better serve the public. Now, the Commission has already done that and I think they have the authority to do that now under the law.

They did it in a case involving Lehigh Valley Railroad back in 1959, when Lehigh Valley decided it wanted to discontinue all passenger train service and it applied to the Commission to do that under 13a(1). The Commission allowed them to take off all but three pairs of trains, but among the trains that came off, where the trains which served Ithaca, N.Y., and Cornell University and a great deal of protest came from that quarter. So the Commission reopened the case and put out a supplemental report and in that supplemental report, which appears at 307 ICC 257, it required the railroad to reschedule one pair of those trains so as to serve Cornell University. And this was on May 18, 1959.

Senator LAUSCHE. Do you recommend that the law be amended so as to give the Commission definitely the power to impose conditions?

Mr. MAHONEY. Yes, sir; we do.

Senator LAUSCHE. Do you think it now has the power under existing law?

Mr. MAHONEY. Well, we feel that it does. The Commission feels it does not. We feel that it should be specific and they should be given this authority.

We also feel that a long-range solution must be found to meet this existing crisis and while S. 1175 extends the time limits a bit, it does little more than that and doesn't meet the crisis. I think Mr. Haswell, who appeared before me this morning, made a very valid point when he said if the railroads feel they can get out of business, they will do so. If they feel they cannot get out of business, they will do something about it and, as Mr. Heineman did with his commuter service and as the Canadian National did, they will also do something about it and improve the service and make it a profitable service.

The present law has been characterized as an invitation to the railroads to get out of business and in view of the number of trains which have come off since this law was passed, I believe it has been used for that purpose.

Now, bills have been introduced which would provide a short time to permit the solution to be found and investigation to be made by the ICC, by the Department of Transportation, and recommendation was made to the Congress for legislation. We feel that this type of enactment or this type of bill should be passed.

Senator LAUSCHE. That is not in this bill.

Mr. MAHONEY. That is true. If this committee should recommend that section 12a be amended, we respectfully submit that such an amendment should require an application proceeding, as in section 118, and as in section 13a(2) of the present law and that the trains would stay on until the railroads proved and the Commission found that they should come off.

Senator LAUSCHE. Your position is that instead of serving notice, they would be required to file an application?

Mr. MAHONEY. Yes, sir.

Senator LAUSCHE. For the purpose to discontinue?

Mr. MAHONEY. That is correct and that the Commission would be required to hold hearings; the time limitation would be eliminated and

that the Commission should be authorized to impose whatever conditions it felt the public convenience and necessity required including, in its discretion, conditions for the protection of employees. And we believe that S. 1685, introduced by Senator Case, would accomplish this result, and we have also submitted language which is attached to Mr. Beattie's statement, which we also believe would accomplish this result.

I thank you for the opportunity of appearing before you this morning.

Senator LAUSCHE. Thank you very much for your concise presentation.

(Mr. Beattie's statement follows:)

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

My name is Donald S. Beattie. I am Executive Secretary-Treasurer of the Railway Labor Executives' Association. I appear here today to testify in regard to S. 1175, which was introduced by Senator Magnuson at the request of the Interstate Commerce Commission. This bill would amend the present provisions of the Interstate Commerce Act dealing with the discontinuance of interstate and intrastate passenger trains.

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

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

The Transportation Act of 1958 was enacted to provide the railroads of the country with emergency assistance. It was passed in the time of economic recession, and a time of very low income for the railroads, and it was passed at a time when certain state agencies allegedly were refusing to permit discontinuance of uneconomic and unused trains.

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

After these hearings were held, the Commission authorized the New York Central to abandon this ferry operation holding that it was not required by the public convenience and necessity. In the Commission's view, the railroad has proved its case and the ferry should be abandoned.

Certain of the protestants—I might say the Association was not included—appealed the decision of the courts and challenged the Commission's ruling on the ground that the ferry operation did not constitute a line of railroad and therefore the ICC had no authority to authorize its abandonment under Section 1(18) of the Interstate Commerce Act.

The courts upheld this theory of the protestants. Therefore, the New York Central had to continue the operation of a ferry which it could not even give away. Because of the Central's unfortunate financial condition at that time and because of the overall economic situation confronting most of the railroads in 1958, the Transportation Act of that year, containing Section 5 (which later became Section 13(a) of the Interstate Commerce Act), was placed before the Congress and the Congress passed the bill to relieve what was then a very desperate situation.

Our Association opposed the enactment of Section 13(a) as we feared it would be used by the railroads, not only as a means of eliminating uneconomic and unused trains but as a weapon to destroy all passenger service. Our fears have proved well founded. Within two years following the enactment of Section 13(a), the trains which the railroads could not discontinue because of allegedly obstinate state agencies had been discontinued. But after Section 13(a) had accomplished its purpose it did not expire; it remained in effect providing the railroads an easy means of ridding themselves of a service which could never be as profitable as their freight service. In the first two years of its existence Section 13(a) saw the discontinuance of 157 trains. However, primarily because of the basic deficiencies in Section 13(a) which amounted to an invitation to the railroad industry to discontinue its passenger service, the railroads, beginning in 1961 and continuing through December 31, 1966, had discontinued an additional 629 trains. Since the enactment of Section 13(a) the railroads have discontinued more than 786 passenger trains. This number includes 61 trains which were discontinued without hearing or investigation by the Interstate Commerce Commission.

It is now clear that the passenger train "emergency" which impelled the passage of Section 13(a) in 1958 has shifted from the railroads to the public. This nation now needs emergency legislation which will halt, or at least substantially curtail, the extinction of rail passenger service. The evidence of the use of Section 13(a) by the railroad industry compels the conclusion that unless the present law is substantially amended intercity rail passenger service in this country will cease to exist. The Congress in its wisdom may conclude that this nation no longer needs passenger train operations. If Congress believes such a conclusion warranted, then the enactment of S. 1175, which does nothing more than delay the ultimate abandonment of each train by three to five months, is justified. However, if the Congress is of the opinion that rail passenger operations should continue, it must amend Section 13(a) so as to permit the abandonment of only those trains which are uneconomic and which are unused. S. 1175 does not accomplish that result. We believe S. 1685 introduced by Senator Case of New Jersey on May 4, 1967, would accomplish that result and we have prepared language which we would like to present to this Committee which we believe also would accomplish that result.

The basic difficulty with Section 13(a) of the Interstate Commerce Act is that provisions for the discontinuance of a railroad operation do not belong in the pricing, tariff or rate section of the Act. A provision of law dealing with discontinuance of railroad operations should have been included in the section of the Interstate Commerce Act which deals with the discontinuance of railroad operations, namely Section 1.

Under the rate section of the Act a carrier may publish a proposed rate to go into effect in 30 days. This rate will go into effect within 30 days unless the Commission, after investigation, determines it shall not go into effect and orders its suspension. If the Commission permits the rate to go into effect and later determines that it should not have done so, it is a relatively easy matter for the Commission to issue an order returning the rate to its original level. The problem with Section 13(a) is that the rate suspension procedure was applied to the discontinuance of railroad passenger train service. But when a train comes off it cannot be put back on with the simplicity with which one can change

the price of his service. When a passenger train is discontinued, it is, for all practical purposes, lost forever. All of the difficulties with Section 13(a) stem basically from the fact that the interstate and intrastate passenger train discontinuance provisions were placed in the wrong section of the Interstate Commerce Act.

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

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

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

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

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

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

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

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

The above-listed defects render inevitable the extinction of rail passenger service in the near future. Today we are creating new departments (such as a newly created Department of Transportation) to develop our transportation complex in the most fruitful manner possible. We are passing legislation to develop high-speed inter-city rail service. But our rail passenger system is disappearing because of the existence of Section 13(a). Unless this law is effectively and immediately modified, all of this new legislative and departmental activity will be rendered academic.

The Interstate Commerce Commission has requested the introduction of S. 1175, which the Commission believes would allow it a bit more flexibility in dealing with passenger train discontinuance proceedings. Our Association is eager to support any legislation which would tend to preserve the passenger carrying capabilities of the rail network of our nation. We enthusiastically support legislation which would remove any of the procedural and substantive inequities in the present law. However, we must be candid in our appraisal of the legislation before you. It does nothing to meet the emergency situation confronting us. It merely would delay by three to five months, in individual train abandonments, the inevitable extinction of rail passenger service. It does no more than that.

S. 1175 would lengthen the time limitation from the present four months to seven or nine months and would permit the Commission to subject a discontinuance to "such terms, conditions and modifications pertaining to operation or services as it shall find to be reasonable and just." The bill originally would have attempted to shift the burden of proof from the public, where it now rests, to the railroads, but I understand the Commission has informed the Congress that it is content to have the burden of proof remain on the public. The Commission's ap-

parent reversal of position on this point, while surprising, is not material because its original language "shifting" the burden did not accomplish that result. The findings which must be made by the Commission remain the same under S. 1175, therefore, the provision shifting the burden of proof is ineffective.

The present law authorizes the automatic discontinuance of a passenger train within four months unless the Commission makes findings based upon sufficient evidence that the continued operation of the train is required by the public convenience and necessity. Under this law it is obvious that the public must prove that public convenience and necessity require the continued operation of a particular train in order for the Commission to make the necessary findings to order its continued operation. S. 1175, despite its attempt to shift the burden of proof to the railroad, does not change this situation. S. 1175 would authorize the automatic discontinuance of a passenger train within seven to nine months unless the Commission made findings based upon sufficient evidence that its continued operation is required by the public convenience and necessity. Should a railroad refuse to submit evidence the train will be discontinued because without evidence the Commission cannot make the findings necessary to order its continued operation. If such evidence is forthcoming at all, it will be received from the public. Therefore, the burden of proving that the train should continue to operate would continue to rest with the public under S. 1175 as it does under Section 13a(1). This situation will remain unchanged until the basic approach to the problem is changed.

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

S. 1175 would also change the designation of what constitutes an interstate train and what constitutes an intrastate train. The effect of this modification would be to place more trains in the "interstate" category which would render them easier to discontinue. At the present time it is more difficult to discontinue an intrastate train because under the present law there must be a hearing, there are no time limitations, the railroad must carry the burden of proof, and unless the Commission finds that the train should come off, the train will continue on. Although the intrastate train discontinuance provisions in Section 13(a) make more difficult the discontinuance of such trains it has not deterred the railroads from securing the discontinuance of trains which are uneconomic and unused. In the past ten years, the railroads have removed 327 intrastate trains and have been denied removal of only 37 intrastate trains by the Commission in cases arising under Section 13(a)(2).

S. 1175 would also effect a change in the judicial review characteristics of the present statute. Some question has been raised as to whether a party has a right to appeal an order of the Commission or a decision of the Commission which permits the discontinuance of a train after a hearing has been held. S. 1175 would clear this up as it would permit a party to appeal such a decision. However, it would not correct the deficiency in the present law which permits no appeal from Commission action allowing a train to be discontinued automatically without a hearing and without a written decision of the ICC. Such discontinuances have occurred in some 61 cases; ten of which occurred in 1966. S. 1175 permits the public no right of appeal where the Commission just sits back and lets the time limits expire and a train be discontinued.

Through S. 1175 the Commission has requested the authority to condition discontinuance of passenger train service. According to the statement of Chairman Tucker, the primary objective of this authority would be to permit the Commission to require a railroad to reschedule remaining trains when the Commission permits the discontinuance of one of its trains. Chairman Tucker has given the example of a railroad having a day train and a night train which it wishes to abandon. The Commission informs the railroad that it can abandon one of the trains but will have to run the other train and, the remaining train to be economically operated and serve the public adequately, will require a change in schedule. Chairman Tucker believed that the Commission now has no power to do that.

In drafting language that would authorize it to impose conditions in passenger train discontinuance cases the Commission did something that neither

I nor the members of my Association understand. It requests *limited* authority to impose terms and conditions. In Section 1 of the Interstate Commerce Act the Commission may approve the abandonment of a line of railroad "subject to such terms and conditions as in its judgment the public convenience and necessity may require." The use of such language in Section 13(a) would have given the Commission authority to require a certain level of quality and service in the operation of passenger service and also would have given the Commission the discretionary authority to protect the employees who are adversely affected by the discontinuance of passenger trains, as they are now protected by the abandonment of a line of railroad under Section 1. However, the Commission did not merely adopt the language of Section 1 of the Act. They added words which would restrict their authority. The Commission states that they wish to impose terms and conditions "pertaining to operations and service." The only effect of adding such language is to exclude from protection all of the employees adversely affected by the discontinuance of train service.

The Commission's reasons for excluding the employees affected by passenger train abandonments are not stated. We do not know why the Commission has taken this position. In previous testimony before this Committee and the House Subcommittee on Transportation and Aeronautics, no one interested in the legislation to amend Section 13(a) has ever argued that the effects upon employees in train discontinuance cases are any different from the effects upon employees in line abandonment proceedings arising under Section 1(18) of the Interstate Commerce Act. Indeed, the abandonment of a passenger train is essentially identical to the abandonment of a line of railroad in terms of its effect upon the public and the employees. Ninety-nine percent of the cases involving the abandonment of a line of railroad really involved only the discontinuance of the last freight train over that line.

Abandonment of a passenger train is essentially identical to a line abandonment in terms of its effect upon the public which uses the service of that train; it is essentially the same in relation to the Commission insofar as the type of evidence introduced concerning the use of the train and the cost of its operation; and, it is essentially the same in relation to employees in terms of the effects upon them of the loss of their jobs due to the discontinuance of the service performed.

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

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

Of course, the railroads object to the protection of employees affected by the discontinuance of passenger trains (virtually all of which are secured pursuant to Section 13a) because they simply do not wish to share the savings which they realize from the discontinuance of such trains with the employees who provide them with such savings by their disemployment. No one has argued that protecting employees under Section 1(18) is unfair or inequitable to the railroads and no one can argue that there is any essential difference between the effect upon employees in the abandonment of a line of railroad and the effect upon employees in the abandonment or discontinuance of a passenger train.

With regard to a need to amend the present law to grant the Commission authority to condition discontinuance upon the re-scheduling of trains, the Commission has that authority under the present law. In 1959—eight months after

the enactment of Section 13a—the Commission conditioned discontinuance of certain Lehigh Valley trains.

Shortly after the enactment of Section 13a of the Lehigh Valley posted notices seeking the discontinuance of all of its passenger train service. The Commission permitted it to discontinue most of its trains. However it required the continued operation of two or three pairs of trains. None of the trains which the Commission required to continue in operation served Ithaca, New York, the site of Cornell University. A great protest was raised by Cornell because the Commission had deprived it of rail service. On May 18, 1959, the Commission issued a second order which appears in Volume 307 of the ICC Reports at page 257, in which it required the Lehigh Valley to re-schedule one pair of the trains which it had required to be continued in operation so as to serve Ithaca and Cornell. This type of requirement appears to be exactly the type of act which the Commission has stated it needs specific authority to perform. This precedent was created immediately after the passage of the law and was not challenged by any party to the proceeding. Had the Commission desired to continue issuing such requirements in train discontinuance cases I know of no impediment to their doing so.

My Association agrees that the Commission should clearly have authority to condition matters pertaining to the quality of service, the scheduling of trains and so forth, but there should also be authority to protect employees who, after all, are the people who are most directly affected by the discontinuance of the trains and who, in addition, are the people who provide the savings to the railroads out of their own pockets. The Congress has protected railroad employees in every statute it has passed which could adversely affect railroad employees since it enacted the Emergency Transportation Act of 1933. The Commission has interpreted Section 13a as not providing such protection, and, for some reason the Commission apparently does not want it provided.

As I mentioned a moment ago, the Railway Labor Executives' Association is eager to support a bill which would *effectively* improve the state of the law from the point of view of the public. S. 1175 however, would partially improve but one aspect of the present law and that is the time limitations. Extending the time limitations from four to seven or nine months serves little public purpose. For example, almost a year ago the Interstate Commerce Commission on the petition of the states of California, New Mexico, Arizona, Texas, and Louisiana instituted an investigation into the adequacy of Southern Pacific passenger service between California and Louisiana. The written testimony of witnesses for those states and others who were challenging the adequacy of Southern Pacific passenger service were filed with the Commission on February 27, 1967. On March 19, 1967, the Southern Pacific issued a notice to discontinue a pair of trains between Tucumcari, New Mexico, and Los Angeles, California. On April 6, 1967, the California Public Utilities Commission requested that the discontinuance of this pair of trains be consolidated with the Commission's investigation of the adequacy of Southern Pacific passenger service. On April 20, 1967, the Commission issued an order denying the California petition because the "adequacy" investigation "will require extensive proceedings and a consolidation of" the train discontinuance case with that case would preclude a final determination of the train discontinuance within the four-month statutory period. In short, because of the time limitations in the present law—and indeed, those present in S. 1175—the investigation of the Commission into the adequacy of Southern Pacific passenger service could be rendered moot long before the "adequacy" case could come to hearing merely by the Southern Pacific's posting of notices to discontinue its train service in the states involved.

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

S. 1175 does not meet the present emergency. A temporary delay may prolong the ultimate death throes of rail passenger service; it does nothing to avoid them. A long range solution is needed. The resolution introduced by Senator Moss S.J. Res. 52 would permit such a solution to be found and effectuated. This nation simply cannot sit by as its rail passenger network is destroyed, train by train by train. Many possible solutions to the rail passenger service emergency have been proposed but all will be rendered academic exercises unless given a chance to be effected.

If this Committee cannot recommend the effective cessation of passenger train discontinuances pending resolution of the passenger train crisis confronting us and if it should recommend that Section 13a be amended, we respectfully urge that any such amendment to the present law provide for an application proceeding under Section 13a(1) similar to the application proceeding now required under Section 13a(2), so that interstate train discontinuances would be treated in the same fashion as intrastate train discontinuances are now treated; in other words, passenger trains will remain in service until the railroads prove and the Commission finds they should come off.

We would also recommend the elimination of any time limitations because time restrictions exist for one reason and can be used for only one purpose—at the expiration of the time limitation the train comes off automatically. Such a provision has no place in an application proceeding and, indeed, is not found in the intrastate passenger train discontinuance provisions of the present law.

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

Our Association will strongly support such legislation. I thank you for the opportunity of presenting the views of our Association to you this morning.

Senator LAUSCHE. The next witness is Mr. William M. Moloney, general solicitor of the Association of American Railroads. Mr. Moloney.

STATEMENT OF WILLIAM M. MOLONEY, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS, TRANSPORTATION BUILDING, WASHINGTON, D.C.

Senator LAUSCHE. Your complete statement will be printed in the record. You may proceed to read it or discuss its highlights, whichever you please.

Mr. MOLONEY. Thank you, Mr. Chairman. Since it will be printed in the record, I would prefer to simply discuss the subjects that I deal with in the written statement.

We have a very strong feeling that in considering the proposed legislation, that is now before your committee, it is essential and necessary that this committee, and we hope the Members of Congress generally, will not lose sight of certain very relevant facts that deal with the overall railroad passenger train situation and the deficit that is being incurred.

As you have heard other witnesses state, section 13a was placed in the law 1958 as a part of the Transportation Act of 1958. At that time there was a large passenger service deficit being incurred by the railroad industry. In 1957, the year before the passage of the Transportation Act of 1958, that passenger service deficit amounted to \$723 million and it consumed 44 percent of the net railway operating income from freight service.

Now, the picture is not quite as gloomy today insofar as the passenger train service deficit is concerned, but it is by no means a rosy picture.

In the year 1966 the passenger train service deficit totaled in excess of \$400 million and consumed almost 28 percent of the net railway operating income from freight service. We feel that when you have a situation today where the passenger train service deficit is consuming approximately 30 percent of the net that we are able to earn on our freight service, that situation certainly does not lend itself to com-

placency or any idea that we no longer have a serious problem insofar as passenger train service deficit is concerned.

And we feel certainly that in the light of such situation it ill behooves Congress to consider making it more difficult to remove unneeded and losing passenger train service or to delay such removal when that service is not needed and cannot be made to pay its own way.

Senator LAUSCHE. Referring to your statement about the losses in 1957, you state that the passenger train service deficit was \$723 million and consumed 44 percent of the net railway operating profit, operating income from freight service.

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. That would mean that your profits, or your net operating income from freight service, was about \$1.7 billion?

Mr. MOLONEY. About \$1.6 billion.

Senator LAUSCHE. Now, going to the year of 1966, your passenger train service deficit is estimated at \$400 million and consumed 27.7 percent. That would mean that your operating income was again about \$1.6 billion? Do you have the exact figure?

Mr. MOLONEY. Yes, sir. In 1957 the net railway operating income from freight service was \$1,645 million. The deficit from passenger train service was \$723.7 million or consuming 44 percent of the \$1.6 billion that was earned on freight service.

Senator LAUSCHE. Now go to 1966.

Mr. MOLONEY. In 1966 it is estimated. We do not have the firm final figure, but we have a very sound estimate that net railway operating income from freight service is \$1,446 million, and the deficit from the passenger train service is slightly in excess of \$400 million, or consuming 27.7 percent of what we were able to earn on freight.

Senator LAUSCHE. Proceed.

Mr. MOLONEY. The magnitude of these deficits, Senator, while we refer to them as we have here year by year, the magnitude of the cumulative effect of those deficits is rather staggering and I point to the fact that since 1946—let's say since the end of World War II—the railroad industry passenger service deficit has totaled the sum of \$10.9 billion.

In other words, the shippers and receivers of freight and stockholders, and security holders of the railroads have in effect for the last 20 years subsidized passenger train service operations to the tune of about one-half billion dollars a year for each of the 20 years.

We think this is significant, too, that even with the passage of section 13a, and with that law being on the statute books, and its remedies being available to the industry, that in the last 8 years our passenger train service deficit has totaled \$3.5 billion, and has consumed almost 36 percent of the total net railway operating income that we were able to earn during those last 8 years.

Senator LAUSCHE. Do you have the figure of the total net operating income for the 8-year period during which you state that you suffered a deficit of \$3.5 billion or equal to 35 percent of your net operating income?

Mr. MOLONEY. Just a moment, Senator. I think I do have.

Yes. During the last 8 years, that I refer to, our net railway operating income from freight service was \$9,686 million. Our passenger service deficit was \$3,461 million, and that works out at about 36 percent of the total that we were able to earn during those years.

Now, I point to this because you have heard from witnesses today, and possibly yesterday, enough to create an impression that we have reached an irreducible minimum as far as passenger train service is concerned, that as a matter of fact, it is rather nonexistent in the United States and that it has just practically disappeared.

Well, it occurred to me when I heard that statement, Senator, that any service that today costs me as a losing operation close to one-half billion dollars must be a substantial service and certainly not something that is totally disappearing. If so, I wonder how I manage to lose one-half billion dollars on the service.

We hear the argument that the status quo must be maintained because at some unforeseen time, by some unforeseen technological advancement, we are going to need passenger train service, so let's be sure and hold on to what we have today, whether it is really being used or not or whether we can make it pay its way today.

I have indicated to you what it can cost to hold on to the passenger train service that we have today for the next 15 years. You take 15 years, and if the deficit does not increase, and you heard the Chairman of the Interstate Commerce Commission say it is now on the rise again, simply multiply 15 years by over \$400 million a year, and that will be the cost to the railroad industry of maintaining the status quo while we attempt to solve this problem by tube trains, monorails, high-speed transportation, and so on.

We think the wisdom of Congress in putting section 13a on the books is clearly manifested by the fact that had the 1957 level of passenger train service that we were performing before Congress put section 13a on the books, had that level of passenger train service been maintained and we were rendering that same level of service today, but we were rendering it at 1967 prices and costs, rather than 1957, we would have a railroad passenger train service deficit for the year 1967 based on 1957 operations and 1967 prices of \$1,600,000, and that would exceed by \$200 million the entire anticipated net railway operating income from freight service. In other words, if we had held the status quo in 1957, paid for it in today's prices, the entire industry would be operating at a deficit.

We think that clearly shows the wisdom of the statute and we don't think that this committee should lose sight of this fact.

Now, there are those who today say railroad management has set about to deliberately destroy passenger train service. And I must admit, for instance, that I am not familiar with the Pennsylvania illustration that Mr. Mahoney gave about the train that was making \$350,000 a year, making that much money, and that its management set about to destroy it.

I was interested in the chairman's question, because immediately, the question flashed in my mind, that I do not accept that criticism, that indictment of railroad management without some further and positive showing that the train was earning \$350,000 a year, and that management said, "We don't want it." I don't think that is the way railroad management or any other management looks at their operations.

Now, so they say, we have set about to destroy a railroad service, passenger service. This is no new indictment. This same indictment, Senator, if you will recall, was leveled against the railroad industry

when this committee and the Congress was considering the passage of the Transportation Act of 1958 including section 13a, and it was said then that "your service is so sorry, no one will ride it. You have set about to destroy it. You have done the best you can to drive passenger business away."

In the very lengthy investigation by the Interstate Commerce Commission which lasted over 3 years, had thousands of pages of testimony, thousands of pages of exhibits, the investigation into and concerning the passenger train service deficit, what caused it and what might be done about it, this same indictment was leveled. And the Interstate Commerce Commission made certain significant findings and answers, let's say, to that indictment. And you will find those set forth in my written statement. And in substance they said this:

The record shows that the railroad industry has increased its net investment in passenger train service by about a half billion dollars in about 10 years. And it said that the railroads could hardly be charged with undue conservatism in modernizing their passenger facilities.

It further said that the voluminous evidence that the Commission had before it supported the general conclusion that the railroads by upgrading and replacing equipment, by experimenting with new types of equipment, and by other means, have consciously endeavored to improve their standards of service.

Senator LAUSCHE. Are you reading?

Mr. MOLONEY. I am summarizing that.

Now, also on that same page in my written statement you will find a significant excerpt from a report by the New York Public Service Commission, made in January 1959, and there the New York Public Service Commission recounts the experience of the New York Central Railroad in its sincere efforts to solve its passenger train service deficit. And if you note, you will find that the New York Public Service Commission says that the New York Central after World War II made a detailed market study, concluded that they would make substantial investments, I think somewhere around \$170 million, in new passenger train equipment, put on more trains. They did everything with the end result that their losses continued to mount and their patronage continued to decline.

So they reversed themselves and they cut down. Then something happened and they went back again, and they tried it again, and the upshot of it was that the deficit continued to grow all of the time and in substance, they almost gave up.

Senator LAUSCHE. What is the New York Public Service Commission?

Mr. MOLONEY. That, Mr. Chairman, is the regulatory State commission in the State of New York that regulates the railroads and other public utilities in the State of New York and is a member of the National Association of Railway and Utility Commissioners from whom you heard this morning.

Now, I think it also is significant—that we heard a witness this morning say, for instance, the California Zephyr—the Commission found that the California Zephyr has great scenic value. It goes through the heart of the country; it is almost like a national park. And let's say, maybe it should be preserved because of its scenic value.

Well, if we are going to look on a privately operated, privately financed passenger train as being a national asset, like a national park,

maybe the Department of the Interior could take a look at how the California Zephyr might be able to pay its way so as to let the people enjoy the scenery. It is beautiful. I myself have made the trip probably 15 times.

I point in my statement to the declining portion of the railroads—well, the decline in the railroad's portion of the total intercity travel market.

And the Commission, of course, made a significant statement in pointing to the decline up to the time of the Commission's investigation. And they said that there were many people who still preferred to go by train, but the sad fact was that there just was not enough of that kind of people.

Now that situation hasn't changed at all today, and since the Commission's report; that is, since 1957, the travel market, general travel market, has increased 43 percent. The total for-hire share of that market has increased 46 percent, while the railroad's share of that market, has decreased 34 percent.

Senator LAUSCHE. Explain that.

Mr. MOLONEY. How do we explain it?

Senator LAUSCHE. Explain it. You say that the number of passengers has increased 43 percent?

Mr. MOLONEY. The number in terms of intercity passenger miles—

Senator LAUSCHE. Oh.

Mr. MOLONEY (continuing). Has increased; that is, the market, that is in substance, you—that is what you pay for, your passenger miles, service performed, how many miles you are going to ride and so on. So your intercity passenger miles, that is the market, has increased 43 percent.

Now that includes your private automobile, that includes the people going from one city to another, that is the potential market, the for-hire share of that market, that is the part of those intercity passenger miles that went by bus, airline, railroad, and so on, increased 46 percent, but the railroad's share of that for-hire deal, decreased 34 percent.

Senator LAUSCHE. Why?

Mr. MOLONEY. Because of the increase in air transportation and bus transportation.

I think it is significant also, back to this idea of not doing anything to improve your service, that since World War II, 1946 through 1965, that the class 1 railroads and the Pullman Co. have spent \$1,800 million for betterment and improvement to passenger train equipment. And during that same period of time, while they were spending \$1.8 billion on capital improvement to passenger trains, at the same time, the industry was incurring a total passenger service deficit in excess of \$10 billion.

The \$1.8 billion I refer to is a rather large capital expenditure for the improvement and betterment of the service that was losing \$10 billion.

Now also in my statement I point to trains that we possibly have forgotten about, attempts to improve passenger service and I mention names such as Aerotrain, Talgo train, Train X, Explorer; many of us have even forgotten those names. But in actuality, those were the new and experimental trains that were developed in the middle and late 1950's in a sincere effort to improve and modernize and make more efficient and economical passenger train operations.

None of those, we are sorry to say, were successful, but the fact that the endeavor was made and that the money was spent is an uncontroverted fact.

Senator LAUSCHE. What was particularly done to make these trains supposedly attractive?

Mr. MOLONEY. Well, they were supposed to be faster, much faster. They were supposed to be more comfortable. They were supposed to give the passenger a more comfortable, quicker, efficient, and cheaper transportation.

We hear today a great deal of discussion and properly so about the high speed experiment in the eastern corridor. And we all know that the Pennsylvania Railroad and the U.S. Government are cooperating in developing the high speed transportation in the eastern corridor.

But I thought it very significant that in the passenger service deficit report in 1959, the proceeding lasting from about 1956 to 1959, that the Commission at that time stated, and I would like to quote this:

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

I then go ahead and point out that the Pennsylvania Railroad has persevered in this investigation, and that today, the Pennsylvania Railroad and the U.S. Government are jointly undertaking such an operation with the Pennsylvania Railroad paying the largest part of the tab for the experiment.

The New York Central is experimenting with jet propelled trains, and it is contemplating a complete revision of its passenger train service so as to provide faster, cheaper, and more efficient transportation for medium range routes.

You probably read in the paper not too long ago that about the first of next year, or let's say during the next winter season, they expect to have in operation between the East and Florida, trains that will transport both automobiles and people in a new type of equipment, where you get on the train with your automobile, you can sit in your automobile part of the way, you have lounge facilities and so on.

I point to these and to other situations in my written statement in an effort answer, and I think a successful effort, if I may say so, to answer those who say that we do nothing about trying to improve passenger train service.

I have only two other illustrations that I would like to make. It is said that if you will upgrade your service, make it more attractive and so on, that you will have passenger business running out of your ears. Well, I have given you enough history to show that when we tried that before, it did not turn out to be true, and when we have tried it today, it has not turned out to be true.

Just recently, during the 1962-'63 winter season, the Atlantic Coast Line, with a great amount of fanfare, advertising, and so on, and even today the train is highly advertised, inaugurated the so-called super-service of the Florida Special. Now that train was given the best equipment available today. It was staffed with hostesses. It was provided with a recreation car, innovations such as bingo games, movies, reserved dining hours, fashion shows, and other passenger entertainment, free champagne, cigars, and other favors.

Well, the end result of that has been a steady decline in passengers and net revenue per train mile has gone down from \$2.40 the first season it operated to \$1.69 in 1965-66, and through February of this year, it had dropped down to \$0.48.

Now this certainly doesn't paint the picture that soup up your service, make it more attractive and it will work. I don't know what we could do to make a train any more attractive than that.

But not only confining my illustration to the Florida run, and keep in mind, this is the heavy tourist travel route, if there is any market, if there is any market where you ought to be able to get people to get on a train, such a train as I have described, you would think this Florida route would be it.

So then I move over to the New York-Chicago run, and I recount the experience of the Pennsylvania Railroad with respect to the Broadway. Pretty much the same thing, big fanfare advertising, \$75,000, best equipment available, intensive training of train crews and public relations, hostesses, dining cars stepped up, free dinner wines, cigars, and cigarettes, and fruit after dinner, advertisements in the New Yorker, Time, Life, and Good Housekeeping magazines, and the end result of this was a steady decline in the patronage of the train from an average daily load of 70 passengers in each direction in November 1965 to 48 passengers in each direction in April 1967.

Senator LAUSCHE. How many passengers would you have had to have to make it pay?

Mr. MOLONEY. I couldn't give you the exact figure, but I would say that it would be somewhere in the neighborhood of 125 to 150 passengers.

I do point to the fact that the standby nature of that service, even made as attractive as it was, the standby nature of that service was clearly evidenced when the airlines were shut down last summer, I think, because when the airlines were shut down, the patronage on that train jumped up to 138 passengers a day, and when the airlines started operating again, it went right straight back down.

Now I could give other illustrations, but I see no reason to burden the record and to take the time of the committee. I simply have given enough, I think, to show that those people who say first, we have done nothing, second, do these things and everything will be heaven, we have very serious doubts about the latter, and we certainly know that we have done an awful lot about it.

Senator LAUSCHE. Are you familiar with what the results were of the program that was promoted by the Federal Government about 3 or 4 years ago providing money to railroads or to governmental bodies to be used in financing increased commuter service at reduced prices? The moneys were provided mainly up in the northeast corridor, or the eastern corridor.

Mr. MOLONEY. I'm not familiar with the history of the Federal funds that may have gone in. I don't think there were any available until you had the Urban Mass Transit Act and there again, I'm not familiar with just how that works, Senator, but I can make this comment, that we do have areas in the United States where public contribution; that is, the State and local levels, there may be some Federal funds in—this I'm not sure—are being used to help finance commuter operations.

Senator LAUSCHE. That is not what I'm asking.

I was present at the hearings on that program and the tests were made to see what would happen if you reduced the rates substantially and increased the frequency of service, and since the tests were made, as far as I can recall, there have been no definite reports filed. They probably are in existence, but I have not seen any.

Mr. MOLONEY. I have not either.

Senator LAUSCHE. Proceed with your next subject.

Mr. MOLONEY. In my written statement, I also go into the question of the costs of passenger train service and point to the fact that service is still performed today under work rules that were written and agreed upon and so on back in 1919, and that despite the efforts through bargaining, collective bargaining to modernize the work rules that applied to the operation of passenger train service, that railroad management has been unable to obtain any modernization of those rules. And I give illustrations of the impact of those rules.

I quote from the report of the Interstate Commerce Commission which went into this question very thoroughly in the passenger service deficit investigation, and which concluded that there was a tremendous need for a revision and modernization of the work rules.

I point to the fact that in instance after instance, where you have a train that its running time from one point to another, say, is 16 hours, 15 hours, that you will have nine engine crews to make the run, or six engine crews, and that they will earn the equivalent of $9\frac{1}{2}$ basic day's pay for the run of 16 hours.

This is laid out in some detail in my statement, and I think that unless and until there is a modernization of those rules, unless and until railroad labor is more realistic in doing something to reduce the costs of passenger train service by modernization of work rules, that it somewhat ill behooves them to carry the banner of the protector of the public and complain about the discontinuance of services until we have exhausted every effort to modernize the rules and make those services less costly.

Now, there is another aspect of the passenger train service problem that was mentioned by the Chairman of the Interstate Commerce Commission and I think by Mr. MacDonald of NARUC, and that is the policy of the Post Office Department with respect to mail. In the investigation by the Interstate Commerce Commission that I have referred to, that was gone into at some length.

The Commission concluded that there should be a second look taken at the policies of the Post Office Department, as well as the Department of Defense, and so recommended. But since the time of that report, the policies of the Post Office Department have been even more detrimental to the continued operation of passenger train service.

Senator LAUSCHE. Are you speaking of the Interstate Commerce Commission?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. And when was that report filed?

Mr. MOLONEY. That report was in 1959. The investigation extended from some time in 1956 to the issuance of the report in 1959.

Senator LAUSCHE. And what did the Commission recommend about the Postal Department?

Mr. MOLONEY. The Commission recommended, and you will find it in my written statement and I quote:

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

The Chairman of the Interstate Commerce Commission in his written statement submitted to this committee, as well as in statements submitted to the House committee, also commented on the policies of the Post Office Department and referred to the fact that the policy of transferring mail from rail to highway, and I might say to air, and thereby depriving passenger trains of one of their primary sources of income, and inevitably converted formerly profitable or marginal operations into, as the Chairman expressed it, clear-cut candidates for discontinuance.

Senator LAUSCHE. Since 1959, when the Commission report was filed, what has been the trend with respect to the use of the railroads to carry mail? Has it been increased?

Mr. MOLONEY. No, sir; it has declined.

Senator LAUSCHE. Is that continuing?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. I see.

Mr. MOLONEY. If you will recall, Senator, on the placing of mail on the planes, for instance, the Postmaster, who was it, Summerfield then, I believe, embarked on this flying the first-class mail as an experimental basis. The law, of course, as you know, provides for air-mail to bear airmail rates and to be treated as airmail. But, they embarked upon this space available approach, flying first-class mail. When they did that, our industry went to court to try to stop it, as being unlawful, since if you are going to fly a letter, it ought to have an air-mail stamp on it. We lost the litigation.

The court said that this was an experiment by the Post Office Department and it was not unlawful for them to experiment, in substance. But it has turned out to be the continued policy of the Post Office Department and it is continuing today and just recently, they took the mail of a substantial number of trains in the Midwest, vitally affecting the Rock Island operations. The president of that railroad announced that there would have to be a further decrease in the passenger train service performed by the Rock Island.

The stated reason in the newspaper, and this is all I know, as given by a spokesman for the Post Office Department, was that, for instance, the trains were just too late too often. Immediately when I read that, it occurred to me that it was quite an interesting question why you would take mail off of a train because it might run late, but offer it to the airline on a space available basis, to wit, move it or leave it. Maybe there is some explanation, I'm sure there is, but the question at least seemed interesting.

Senator LAUSCHE. How long has the experiment gone on in which they are carrying mail as first class, with the first-class rate instead of the airmail rate?

Mr. MOLONEY. Well, Senator, I couldn't give you the exact length of time, but a number of years now.

Senator LAUSCHE. If it was under Summerfield, it was prior to 1960.

Mr. MOLONEY. Yes, sir; this is the reason I tied it in with this report of the Interstate Commerce Commission in 1959.

Moving to the provisions of the bill that is before you, and I'm confining my remarks entirely to S. 1175, I may say that while a bill recently introduced by Senator Case has been referred to in testimony here and suggestions in substance have been made that the provisions of that bill be adopted, in lieu of S. 1175 or be placed in S. 1175 by amendment, if there is any consideration going to be given by the committee to the bill introduced by Senator Case, then we would appreciate very much the opportunity to appear and testify on that proposal by Senator Case.

Senator LAUSCHE. For Mr. Cannon's benefit, I just spoke to Mr. Sender to see how we ought to handle these several bills. It seems to me we ought to handle them en banc. They shouldn't be taken up separately. That is, we shouldn't dispose of the issue contained in this bill before us now and then subsequently take up the Case bill and others. You are asking for the right to appear if and when the Case bill is heard?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. We will hear the Case bill before we dispose of this issue, if the committee will go along with me.

Proceed.

Mr. MOLONEY. Referring to S. 1175 and the amendments that would be made, first, I would like to address myself to the burden of proof issue. Now, the Chairman of the Interstate Commerce Commission stated in his testimony before this committee and before the House committee that in actuality, the present law insofar as burden of proof is concerned, has created no serious problem in the Interstate Commerce Commission's administration of the present law.

There was some reference to the fact that railroad lawyers on occasion in cases had stated that they did not have the burden of proof, but as far as the actual handling of the case itself, or the administration of the law is concerned, it appears nothing more than an oral statement by lawyer representing the railroad.

Senator CANNON (presiding). What is your position as to where the burden of proof lies now?

Mr. MOLONEY. Our position is that there is no burden of proof under section 13a(1) on the railroad. There is a burden to go forward with the evidence. The Commission has full power and authority to require that—let me go back. Shortly after the passage of section 13a, the Commission, pursuant to its statutory powers, issued what I might term voluminous regulations, and rules, pertaining to the filing of a notice under section 13a(1). And they prescribed in detail the forms, the information that must be filed with the Interstate Commerce Commission at the same time the notice is filed.

In substance, those regulations and that form, the information, calls for a complete history of the train, the patronage of the train, the expenses of the train, the revenues of the train, over a period of time, and even the availability of other forms of transportation, the number of schedules operated by the buses, by the airlines, and the availability of everything.

If the Commission feels that it is not receiving sufficient information at the time of the filing of a notice and the railroad has other information which it could furnish, then all the Commission has to do is amend its regulations, change its form and require that the additional information be filed.

Senator CANNON. Don't you think if a railroad is applying to or is filing a notice attempting to discontinue a run, that they should carry the burden of proof to show why they should be able to discontinue it? That is, they are not able to sustain it financially, that it is not making money, that there are other types of service available, and so on.

Mr. MOLONEY. Senator, what I am trying to say is that is done today in going forward with the evidence. That is done today by the Commission requiring this information to be furnished. But the legal effect, the legal effect of placing the burden of proof on the carrier is quite different than going forward with the evidence and quite different than being sure that this material is in the record. It is in the record and you heard the Chairman of the Interstate Commerce Commission say that they had no real problem in this respect. But the legal effect, the placing of the burden of proof on the railroad, will be a radical departure from the present regulatory scheme set up in section 13a(1).

Let me explain, as I think it might be extremely helpful, the regulatory concept as Congress enacted it in section 13a(1). Shortly after that statute was put on the books and in connection with the *Weehawken Ferry* case that you heard Mr. Mahoney refer to, the case went to a three judge court in a district court in New Jersey. And I may say, later to the Supreme Court and the decision of the three judge court was affirmed per curiam.

In the decision, the three judge court pointed out very clearly that Congress had directly legislated in this area, that the statute was self-implementing, that when a train came off, it did not come off, that is under section 13a(1), it did not come off pursuant to any authority granted by the Interstate Commerce Commission, but came off pursuant to authority directly granted by the Congress. That when the notice is posted, Congress said the train may come off, subject however, to a veto power on the part of the Commission. Upon proper finding, the Commission can veto the taking off of that train and the train will stay on.

Senator CANNON. Doesn't that in effect place the burden of proof on the railroad to make sure that they don't get a veto?

Mr. MOLONEY. I would say, Senator, it would probably place no more burden on the railroads to be sure they don't get a veto than it would on this Congress to be sure they don't get a veto in passing legislation. You do not need the authority of the President to pass legislation, but he can veto your legislation. The same situation prevails here.

Another analogy is the granting of the power of eminent domain by a legislature. That is the legislature acting directly and when your property is condemned, you do not have the right generally to challenge the taking of the property or the necessity for the taking. You can challenge the amount that you may receive and, in some instances, you may be able to get into the extent of the taking, but by virtue of the action of the legislature, as you gentlemen know, the question of the power to take has been decided.

Senator CANNON. Let me carry that a little further now. I think you have used a very good analogy there and you go in and you attempt to exercise the right of eminent domain as to property belonging to me. I take you to court on it and I say that there is no public need for

this property. The burden is then on you to go forward with your case and show actually that you do have the right to take that under the power of eminent domain, that it is for a public purpose. If you can't show that, you can't convince the court to let you take the property. I think that is exactly the situation you are in here.

Mr. MOLONEY. The burden is, as you said, Senator, to go forward with the evidence and establish that. But the law doesn't put it on you. I'm trying to draw the difference between the legal effect and let me indicate how this can flow over and why even this burden of proof is a radical change.

If you have the legal burden of proof, then someone has to decide that you have met it. Someone has to give you authority. Now this is what the court said Congress did not intend; in fact, the court in the case I have mentioned, said that Congress spoke loudly and clearly. They said you may post your notice and unless you are stopped, the train may come off. That is the statutory scheme today under section 13a(1).

The burden of proof would completely change that because then you would have to get authority. The minute you get authority, you get into the question of conditions to which I will address myself in a very few moments, the very important matter of conditions. So we feel that, first, when the Commission tells you as members of this committee that the burden of proof has given us no real problem in our administration of the act, that is a very weak reason to change it. Now if it isn't creating any problems in that respect, as far as the burden of proof is concerned, then why change it?

Senator CANNON. Mr. Chairman?

Senator LAUSCHE. (presiding). Yes.

Senator CANNON. If I remember the witness' testimony correctly, I believe it was the Chairman of the Commission that I asked this question, and they proceed on the assumption that the burden of proof is on the railroads now. But their reasoning for supporting this position is that some of the railroads' lawyers contend that the burden of proof does not lie on the railroads. Isn't that in substance what he said?

Mr. MOLONEY. No, sir; he said that the burden of proof was not on the railroads; as a matter of fact, it wasn't on anyone unless possibly the Commission. He did say that the lawyers for the railroads, as I mentioned a few minutes ago, may orally say that the burden of proof is not on me, but he in substance said, having disavowed that burden of proof, that they go ahead and carry it and it has really created no problem. The lawyer is simply expressing the legal implications of burden of proof are not on him.

As a matter of fact, in the chairman's written statement, he has this sentence:

Although in no instance have the railroads refused to offer evidence on either of these two points despite their insistence that the existing law does not place the burden of proof on them—

and then he says:

This question is sufficiently in doubt to need a clarifying amendment.

I say it is not in doubt. It has created no problems whatsoever.

Senator LAUSCHE. What is the reasoning that the lawyers for the carriers use in disclaiming that the burden of proof is upon the carrier?

Mr. MOLONEY. Exactly what I have earlier described, Mr. Chairman, that the Commission has only a veto power here and that it is not up to the railroads to give them evidence to support the exercise of their veto power. The burden of proof is on the one who claims that the service is needed.

Senator, it is much easier for you to prove to me that you need something than it is for me to prove that you do not need it.

Senator LAUSCHE. I think you have given the answer to me, that is, yes, I made the statement that in the law generally, and there are maxims supporting this statement, he who affirms must prove.

Now then, yes, I think I said that the railroad applying for the right to discontinue is affirming and therefore must prove. Your position now is that when the veto issue is up that is an affirmative statement that the discontinuance should be canceled and being an affirmative statement that it should be canceled the burden is upon him who affirms.

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. That which is not alleged need not be proved.

Mr. MOLONEY. It is back to what I said that it is easier for you to prove that you need something that you say you need, than it is for me to negate the fact that you need it.

In the testimony of the Commission you will find references to when the Commission has permitted a train to come off under section 13a (1). I have tried to show you that the train does not come off by virtue of any permission or authority obtained from the Interstate Commerce Commission. Congress did not write the law that way, and had a purpose in not writing the law that way.

Senator LAUSCHE. All right. You have presented that. Proceed with your next subject.

One other comment on this burden of proof. You heard figures mentioned about how many trains have been taken off. I think I have already, I hope, persuaded you that \$400 million deficit is still a mighty big service. But since section 13a has been on the books, investigations under section 13a (1) involving 904 trains have been disposed of one way or another. Of these 904 trains, with respect to which investigations were instituted, 413 have been discontinued, 413 out of 904. If the failure of the present law to impose the burden of proof on the railroads gives them such a great advantage, and places other parties at such a great disadvantage, then it seems to me that the railroads could have certainly been expected to do better than 50 percent in their cases and in their efforts to get trains off. If this alleged advantage of not having to carry the burden of proof, if with that advantage on my side, I only am 50 percent successful in my cases, then perhaps, one conclusion that could be reached is that the railroad industry ought to fire all us lawyers and get some lawyers in there that with that advantage could do better than 50 percent.

Senator CANNON. Are you, in effect, saying you could not have had that many trains discontinued if you had to carry the burden of proof?

Mr. MOLONEY. No, sir, I am saying without carrying the burden of proof, that more trains were left on than were taken off. When I went

in without the burden of proof, that I go in to try to get trains off, and out of 904, 413 of them come off, and almost 500 stay on.

On the time basis, the Commission has said that they need more time. They have made a case, if at all, in my opinion, not for the ordinary case, which they admit the present statute affords adequate time to handle, but they say that there are big cases, or they can foresee big cases in this transition period that they refer to, in which they might well need more time. We do not think any more time should be given. We think the present time is adequate. But if time is going to be given, we think it should be carefully tailored so that it will be available only in these unusual cases that they foresee, and where more time would be of aid and assistance to them.

We do not think any general case has been made for blanket extension of time on all train-off cases and they say, "well, true, the blanket extension of time is what we are asking for," but they also say, "however, of course, we will not take that full time in the ordinary case."

Our answer to that is that our experience with regulatory agencies, State and Federal, and ICC is no exception, that generally speaking what time is available will be the time that is taken. And one of the exhibits that the Chairman of the Commission submitted to you is a summary of the train-off proceedings before the Commission under section 13a(1) and under section 13a(2).

Now, under section 13a(2) there is no time limitation on the Commission. They are removed from the pressures of time. So I invite your attention to that part of his exhibit, which shows the section 13a(2) cases, and you will find that the time taken by the Commission to dispose of section 13a(2) cases runs almost up to 3 years in some cases, and generally will average about a year and a half.

So we say, if that is the way 13a(2) cases are handled, we have no reason to honestly believe that section 13a(1) cases if the time pressures are removed or relaxed, will be handled any differently. Whatever time is available will be used.

And we think time in the abstract may be an interesting subject to discuss, it is the whole idea of what is another 30 days, but to the man sitting in jail it is pretty big. What is another 9 months to the railroads, what is another 5 months? What is another year?

Well, when that train is losing hundreds or thousands of dollars a day, then days, months, and years become extremely important. When you put the court of review provision on top of this extension of time by the Commission you are really talking about years. You are talking about thousands of dollars a day maybe for months or years, and we say the burden becomes almost intolerable. I think if the court review section goes in, you can safely assume that every one of these cases will go to court. The public has nothing to lose by it.

I also say that if you put in the court review, and more time to the Commission, you are going to do just the opposite of what Congress intended when it passed section 13a(1). It intended then to put the pressures on the local areas, State and local areas, to solve the problem of how you are going to keep a service which the public demands but which cannot be made to pay its way. And I think any public official knowing that through the processes of the law, he can require the continued operation of the train for an indefinite period of time,

you are going to take the heat off of them and they are going to be much less likely to stir their bones to really try to solve the problem.

On the court review section, I also call attention to the fact that if my interpretation of the law, and mine is the New Jersey court's, if my interpretation of the law is correct, then in effect, when the Commission does not exercise its veto power, you are in substance saying that you will then have the right to appeal and review an action of Congress because the power and authority to discontinue the train flows directly from the Congress subject only to the veto power of the Commission.

Now, there is one other area that I would like to mention briefly and that has to do with the attaching of conditions.

Boiled down, the justification of the Commission really comes back to language used by the Chairman in his testimony before the House committee, to wit, flexibility, and flexibility has a marvelous sound and a marvelous ring to it. But I for one would like to know a little bit more, what "flexibility" means. The imposition of conditions actually will invade the responsibilities, in fact usurp the responsibilities of management.

The attaching of conditions, as is set out in S. 1175, is a very peculiar one. The authority that would be given under section 13a(1) is authority to attach conditions to the continued operation of a train, not to the discontinuance of the train, but to the continued operation, where the Commission tells you to continue to operate the train. The authority to attach conditions that would be given under section 13a(2) by the provisions of S. 1175 is authority to attach conditions to the discontinuance of the train. I would suspect that a court taking the statute, the bill, and reading it as a whole, would probably conclude that the authority to attach conditions exists whether you are ordering the train to stay on or whether the train is coming off.

Now furthermore, there is nothing in the language proposed by the Commission that would limit the conditions to those pertaining to the operations and service of the train that was the subject matter of the proceeding before the Commission. And if it is not so confined, then it is an even greater invasion or usurpation of the responsibilities of management. It is kind of like my household budget, for instance, and you want to have the authority to say that I can or cannot spend \$25 for entertainment. Well, that might not be too bad, but the only difficulty is that in telling me what I can or cannot spend \$25 for entertainment, you are also going to tell me what I can spend for all of the rest of the items in my budget, and you in substance take over the running of my household. It is, in simple terms, maybe another illustration, you can send your boy to Harvard, if you send your girl to Vassar.

These are maybe silly illustrations, but I use them to show that there is no limit to this thing. If in connection with trains, six and seven cases before the Commission, they are then going to be able to tell me revamp my entire passenger train operations, tell me how many trains to run, when to run them, and what they consist of, they can even tell me "step up your advertising campaign, because we know better. You really haven't spent; spend some more money, because we think you can make this a very attractive service."

I may be worse off by having gone to the Commission in the first instance, to get a train off, I might have been much better to go and

operate it and lose \$100,000 or \$500,000 a year, because I may be told, "well, operate that, but change your whole system, and continue to operate," and my loss will go up and and up, and at the end of 1 year, say, I find that nothing has changed except I have tripled my loss.

There is no limit, if you will examine it. It is very nice for the Commission to say that "We ought to have flexibility." We ought to be able to attach some conditions to this. But I say when you buy that, you are buying a pig in a poke, you have no concept of where it will go, and I have tried to show you that the consequences could be extremely burdensome and harmful. Now if they have in mind, for instance, a condition like "use it or lose it," for instance, as some of the CAA may be talking of, the conditions of that kind might not be objectionable, but I don't know how you can find what statutory language you use to tell the Commission the conditions that it can and cannot attach. They either have a wide-open purchase or they don't have a wide-open purchase.

We think it would be a terrible mistake.

Senator LAUSCHE. Do you place any distinction in the two cases, one, we deny the right to discontinue providing the governmental agencies will do—on condition that the governmental agencies will provide certain money. Is that clear now?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. One is that the Commission deny the right to discontinue on condition that the governmental agencies will do certain things, provide you with a million dollars; two, we grant you the right to continue but under conditions that you revamp your service.

Mr. MOLONEY. Grant you the right to discontinue.

Senator LAUSCHE. No, to continue.

Mr. MOLONEY. You mean they require me, not grant me the right, but require me to continue.

Senator LAUSCHE. They require you to continue, and order you to revamp your service.

Mr. MOLONEY. Yes, sir. I see what you have in mind.

Senator LAUSCHE. You discussed that earlier, didn't you, the two different types of order. One you impose the performance of conditions upon the carrier, and two, you impose the performance of the conditions upon the public.

Mr. MOLONEY. The Chairman of the Commission—

Senator LAUSCHE. We will allow you to discontinue this service providing you shuffle certain things.

Mr. MOLONEY. Provided I run my business the way you think I should run it, because you think you know how to run it better than I do.

Senator LAUSCHE. That is imposing conditions upon you, upon the carrier. The other instance is that where the Commission says we will require you to render service, if the public bodies subsidize you.

Mr. MOLONEY. Let me address myself to this last point and the public subsidy. First, we don't consider that the subsidy is a subsidy in the true sense of the word, when the public demands something, and I have no choice but to give it. In other words, public payment for public service demanded is not subsidy.

Senator LAUSCHE. Good enough.

Mr. MOLONEY. All right. If the Commission is going to tell me you continue to operate this train if the public puts up dough, then the

Commission better also in that same case do something that I don't think they are prepared to do, and I don't think the public authority is prepared to let them do it, and that is they better have a real good hearing on whether the amount of public dough is adequate and proper.

Senator LAUSCHE. That is not answering my question. My question is: Is it equally repugnant to you whether the conditions are imposed upon the railroad or whether imposed upon the public?

Mr. MOLONEY. No, sir; I told you, Senator, that if it was a use it or lose it basis, we would not find that kind of a condition objectionable, and that is a condition on the public. You either use the train, or the train comes off. Does that answer your question?

Senator LAUSCHE. Yes. Go ahead.

Mr. MOLONEY. So on the condition, but back to this subsidy deal, for instance, we have a situation today, where a railroad is in utter or complete bankruptcy, the Central Railroad of New Jersey. It is in bankruptcy largely because of its passenger deficit. That is what has broken its back. The State of New Jersey has spent several millions of dollars in support of the passenger service. The railroad handled about 10,000 commuters a day, but the State of New Jersey has now decided that it will no longer spend that money and the railroad is now in bankruptcy.

Now, maybe the salvation of the Central of New Jersey would have been to let it go on and get out of the passenger business, because the temporary public support may have been the thing that has now brought the railroad to its knees. And if the railroad itself, the whole railroad, goes down the drain, 528 industries served exclusively by that railroad in the State of New Jersey would not have railroad service and those industries employ 100,000 people, and the railroad itself employs 4,300 people.

In the beginning, when its passenger service problem hit them, and when they were losing their shirt on it, and when they began to go down the drain, maybe that was the time they should have gotten completely out of the passenger service business and reserved the essential freight business to these industry and these people that I have mentioned.

Senator LAUSCHE. Did the State of New Jersey exert efforts to improve the service, make it more frequent in order to expand the passengers that would use it?

Mr. MOLONEY. I am not familiar with the details of the operation. All I do know is that the State of New Jersey paid in cash, I think it was, to the Central Railroad of New Jersey a given sum of money each year up until just recently. In 1 year, I think maybe it was pretty close to the lose on the passenger operation. In other years it was considerably less than what was lost on passenger operations. So the whole combination of things, I simply point to as the fact that public aid, unless very carefully looked at, is not necessarily the solution. If you are going to require the service to continue, yes. Yes, because then it is something the public requires of the railroad, and it is something the railroad is demanded to continue to do, the railroad has no election or option to get out of it, except with approval say, and so then go ahead and let the public pay for it.

Senator LAUSCHE. Go to your next subject.

Mr. MOLONEY. Well, I think that concludes my statement, Senator. I will be glad to answer any questions.

Senator CANNON. I take it that you are opposed to every one of the proposals collectively and separately in S. 1175; is that right?

Mr. MOLONEY. Yes, sir; I would say we are opposed. I did attempt to indicate that if this committee felt that a case for more time had been made on the part of the Commission, that we felt that extension of time should be carefully tailored so as not to apply to the ordinary case, in which they admit, or they say "we won't need this much time on that kind of a case." Leave the law the way it is on time, but if you are going to extend any time, do it only in the larger unusual case.

Senator CANNON. And if the Congress should determine that they wanted to write into law this provision concerning conditions, imposing of conditions, you would then want to see that spelled out more precisely so that an unreasonable condition of operation could not be imposed such as taking over management?

Mr. MOLONEY. Yes, sir, the condition proposal, frankly, Senator, just scares the daylights out of us.

Senator CANNON. That is all I have.

Senator LAUSCHE. Do you know whether the Commission was unanimous in its decision on these recommendations?

Mr. MOLONEY. No, sir, I do not.

Senator LAUSCHE. All right. Thank you very much for your help. (Prepared text follows:)

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

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

I appear here on behalf of that Association in opposition to S. 1175, a bill which would substantially amend Section 13a of the Interstate Commerce Act.

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

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

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

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

During the last eight years, while Section 13a has been on the statute books and its remedies available, the passenger train service deficit totaled three

billion, five hundred million dollars and consumed 35.7 percent of the total net railway operating income from freight service during those years.

We find many people today urging that the status quo be maintained with respect to the level of passenger train service, awaiting solution of the passenger train service deficit problem by some unforeseen means and at some unforeseen time. The continuing burden of a \$400 million annual deficit, and the consumption by that deficit of almost 30 percent of annual net railway operating income from freight service, seems to be ignored in such thinking.

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

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

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

This same indictment was leveled against the railroad industry with respect to its passenger train service operations prior to the enactment of the Transportation Act of 1958. It was leveled against the industry in the exhaustive investigation conducted by the Interstate Commerce Commission into and concerning the passenger train service deficit, its causes and what might be done to correct the matter. That investigation, and the hearings therein, extended over a period of more than three years, from March 19, 1956, to May 18, 1959. As a result of such investigation, and based upon the voluminous evidence and testimony submitted therein, the Interstate Commerce Commission, in its report (306 ICC 417), May 18, 1959, had the following to say:

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

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

Of similar import, is the statement of the New York Public Service Commission in its report of January 26, 1959, recounting the experience of the New York Central Railroad in its efforts to solve its passenger service deficit.

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

The Interstate Commerce Commission, in its report to which I have referred, summarized the situation then confronting the railroads as follows:

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

Since 1957, in terms of intercity passenger-miles, the "travel market" has increased 43 percent. The total "for-hire" share has increased 46 percent, while railroad revenue passenger-miles have decreased 34 percent since 1957.

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

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

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

Perhaps time, even though the short period of ten years, has dulled our collective memories. Do the names Aerotrain, Talgo train, "Train X" and "Xplorer" call anything to mind? They should, because these were the names of new and unique types of passenger trains built and operated on an experimental basis in the middle and late 1950's in an effort to make passenger service more efficient and economical. While we hear much today of the projected high-speed ground transportation in the Eastern Corridor, it is significant that the Interstate Commerce Commission, in its Report of May 18, 1959, stated that:

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

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

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

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

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

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

During the 1962-63 season the Atlantic Coast Line Railroad reinaugurated what might be termed super service on the Florida Special. This train was assigned the best and most modern passenger equipment; was staffed with host-

esses; provided with a recreation car and innovations such as bingo games, movies, reserved dining hours, fashion shows and other passenger entertainment; free champagne, cigars and other favors. The result has been a steady decrease in the patronage of the train and a reduction in net revenue per train mile, from \$2.40 in 1962-63 to \$1.69 in 1965-66, and to 48¢ through February 1967. The Atlantic Coast Line's total passenger train service deficit increased from nine million, nine hundred thousand dollars in 1962 to fourteen million, nine hundred thousand dollars in 1966.

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

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

Even in those instances where the railroad may have been successful in holding patronage of a particular train at pre-existing levels or even increasing patronage, the effect of rapidly increasing costs has taken its toll. The cost of passenger train operations is the next subject to which I shall address my comments.

Generally speaking, today's passenger train operations are conducted under work rules and agreements arrived at in 1919, and with respect to which the processes of collective bargaining have since afforded little or no relief. Management's efforts, including those in 1962-63, through the processes of collective bargaining to bring about modernization of these work rules and thereby a reduction in the cost of passenger train operations, have been wholly unsuccessful. This is largely because of labor's adherence to and insistence upon those outmoded, and indeed archaic, work rules and agreements.

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

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

* * * * *

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

In support of these conclusions, the Commission pointed to the basic-day rule for engine crews, providing that "100 miles or less (straight-away or turn-

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

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

The Commission's report sets out examples of the effect of the basic-day rules and of the interdivisional point rules. A fireman whose run was 109 miles and involved 2 hours and 11 minutes in the cab received compensation in excess of a full day's pay; a passenger conductor running 346 miles and on duty for 6 hours on the run received approximately $2\frac{1}{2}$ days' pay; the Denver Zephyr, operating between Chicago, Illinois, and Denver, Colorado, running 1034 miles in 16.5 hours, required the services of 8 engine crews whose members received a total of $10\frac{1}{2}$ basic-days' pay.

The Florida Special, to which I have previously referred, runs for 1057 miles on the Atlantic Coast Line Railroad. The schedule time for the run is 18 hours. Seven engine crews are required to make the run and they receive a total of $10\frac{1}{2}$ basic-days' pay. The Broadway Limited, to which I have also referred, runs 907 miles in 16 hours, between New York and Chicago, requires a total of 6 engine crews to make the run and they receive a total of 9 basic-days' pay. The Panama Limited, running between Chicago, Illinois, and New Orleans, Louisiana, covering a distance of 921 miles in 16.5 hours, requires 7 engine crews to make the run and they receive a total of 9.2 basic-days' pay.

In its report referred to, the Commission pointed out that the average compensation received by engine and train employees in passenger service per hour of straight time and overtime actually worked increased 107 percent from 1947 to 1958. It also stated that the number of hours actually worked by those employees in 1958 was 57 percent of the number of hours for which they were paid at straight time and overtime rates and that this percentage had dropped from a level of 64 percent in 1947. Today this percentage—hours worked to hours paid for—has further dropped to 55.8 percent.

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

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

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

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

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

If anything, the policies of the Post Office Department since the date of the Commission's Report have been even more detrimental to the maintenance of

passenger train service. The Chairman of the Interstate Commerce Commission, in his testimony on H.R. 7004 before the House Committee the other day, stated that:

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

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

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

A recent article in the Washington Post of April 19, 1967, referred to the removal of a large amount of railway mail from certain trains operating in the midwest. The article stated that while trains would continue to carry mail between many midwestern mail centers, increasing emphasis would be placed on airlifting first-class mail on a space-available basis. According to the news article, part of the justification for the removal of the mail from the trains was that the train schedules did not meet the needs of the Post Office Department and that the trains were just late too often, with such delay causing additional expense to the Post Office Department. An interesting question might be raised as to why mail would be removed from a train because it was late and then that same mail would be offered to the airlines upon a space-available basis, in other words, for the airlines to move it or to leave it.

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

S. 1175 was introduced at the request of the Interstate Commerce Commission to implement a special recommendation made by it to the Congress.

Present Section 13a(1) applies to the discontinuance of a train operating from a point in one state to a point in any other state or in the District of Columbia or from a point in the District of Columbia to a point in any state. The first amendment proposed would confine the application of Section 13a(1) to a train "operated in service between a point in one state or foreign country and a point in any other state or in the District of Columbia." This amendment may appear simple and innocuous but would actually relegate to a realm of limbo certain passenger trains insofar as jurisdiction of the Interstate Commerce Commission is concerned. There are passenger trains, and the Commission has had such cases before it, where the train performs service only in a single state but, for operating convenience, such as cleaning, maintenance, refueling, turn-around, etc., the train terminates its run in another state. Such a train, performing service only in a single state but operating in more than one state, would be removed from the purview of Section 13a(1). However, S. 1175 makes no corresponding amendment of Section 13a(2), so as to place ultimate jurisdiction in the Interstate Commerce Commission. Section 13a(2) applies only to a train operated wholly within the boundaries of a single state. While we are opposed to this particular amendment of the provisions of Section 13a(1), we deem it essential, if any such amendment is made, that the provisions of Section 13a(2) also be amended so as to place those trains which I have described within the purview of the latter section.

The next amendment made by S. 1175 would be to extend the notice period under Section 13a(1) from the present 30 days to 40 days in advance of the proposed discontinuance. No sound reason has been advanced for the additional 10-days' notice and it simply means further delay in the disposition of a train discontinuance case.

The next amendment made by S. 1175 would place upon the carrier the burden of proof that public convenience and necessity permit the proposed train discontinuance and that continued operation of such train would unduly burden interstate or foreign commerce. The Interstate Commerce Commission, in its reports in numerous train discontinuance cases, and through the testimony of its Chairman the other day before the House Committee, has stated that the matter of burden of proof has presented no real problem in the Commission's administration of the present law. Accepting this fact, there appears to be no valid reason for changing the present law insofar as burden of proof is concerned. Imposition of such burden upon the carrier would represent a radical departure from the regulatory scheme adopted by the Congress in the present provisions of Section 13a(1) of the Interstate Commerce Act. By the terms of that section, Congress vested in management the right to decide that a particular passenger train should be discontinued. The equivalent of a veto power, however, was placed in the hands of the Commission, so that after investigation and upon proper finding, the Commission can direct management to continue to operate the train for a period of one year. After the expiration of that year the jurisdiction of the state commissions again attaches to any discontinuance of the train, subject only to preemption by again following the provisions of Section 13a(1). The present regulatory scheme enacted by the Congress has worked well and no justification exists for the radical departure from that scheme that would be made by S. 1175.

The next amendment of importance would extend the period of time in which the Commission may dispose of the matter, and during which the continued operation of the train would be required, from the present 4 months to 7 months beyond the date on which such discontinuance would otherwise have become effective. Further, the Commission could add an additional 2 months pending completion of its investigation or disposition of any petition or petitions for reconsideration. The time-wise effect of the amendments so far discussed would be to require the continued operation of the train for a period of 5 months and 10 days beyond the 4-month period required by present law. In his testimony to which I have referred, the Chairman of the Interstate Commerce Commission admitted that present time requirements are entirely adequate for the normal case handled by the Commission. However, he referred to some possible situation with which the Commission might be confronted at some future time as the justification for these particular amendments. No real justification was offered for a general extension of time, as would be provided by S. 1175. The Chairman did say that the Commission, of course, would not necessarily take the entire extended period of time to dispose of the normal case but the general experience of the railroads has been that the time available is the time that will be used. In any event, if the extension of time is to be granted, it should be confined entirely to the unusual, and seemingly as yet unexperienced, case which might at some time confront the Commission.

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

An immediately following amendment would authorize the Commission, in requiring the continued operation of the train, to attach such terms, conditions and modifications pertaining to operations or service as the Commission shall find to be just and reasonable. Here is a clear invasion of the responsibilities of management and the Commission could tell management how it must run the

train, the service to be performed by the train and, possibly, even the nature of the equipment in the train consist. Moreover, it is not at all clear that the terms, conditions and modifications pertaining to operations and service would be confined to the operations or service performed by that particular train. If such is not the case, then the invasion of the responsibilities of management is even more far reaching and might encompass the entire passenger train service performed by the railroad.

The only justification offered by the Interstate Commerce Commission for this particular change in the law is a plea for "flexibility", whatever that term may mean. Such a plea, with the ill-defined or wholly undefined meaning of the term "flexibility", certainly affords no sound basis upon which to so amend the present statute. Indeed, upon the conclusion of an investigation by the Commission, a railroad might be even worse off by having sought relief. Many well intentioned people, and I do not exclude members of the Interstate Commerce Commission, believe they know better than does management how a railroad should run its passenger train operations . . . but such seems highly questionable. No case has been presented for the grant of such broad authority to the Interstate Commerce Commission and, indeed, such should not be done.

Moving to the next amendment made by S. 1175, we find that the Commission, in permitting discontinuance of an intrastate train pursuant to Section 13a(2), would be authorized to attach to the discontinuance of that train such terms, conditions and modifications pertaining to operations or service as it might find to be reasonable and just. Here, again, we find a clear invasion of the responsibilities of management. The terms, conditions and modifications here referred to seemingly are not those pertaining to the operations or service of the particular train since that train is to be discontinued. Once again the plea for "flexibility" affords little or no support for the proposed amendment. The invasion of the responsibilities of management, no matter how well intentioned, with respect to its passenger train operations and service is wholly unjustified.

S. 1175 would add a new Section 13a(3), providing that any person adversely affected or aggrieved by an order of the Commission entered after hearing pursuant to subparagraphs (1) or (2) of that Section might bring suit to obtain judicial review. Under such a provision it can be safely assumed that in every instance where a train would be discontinued under this section of the Interstate Commerce Act, and notwithstanding the unneeded and losing nature of the particular service being performed, the matter will be taken to court and it is most likely that the train will continue to operate indefinitely while the judicial processes are exhausted. Such an amendment is not designed, as is the present statute, to exert pressures upon public authorities to find solutions for the problem posed by a service allegedly needed by the public but which cannot be made to pay its way. Indeed, I have the feeling that public authorities, knowing they could through judicial processes keep the train in operation for an indefinite period of time, would be much less likely to exert themselves in an effort to find the needed solution.

Summarizing with respect to S. 1175, no substantial case has been submitted to your Committee justifying the amendments that bill would make to the present law. The end result of the bill would be to make it more difficult and costly to eliminate unneeded and losing service and certainly prolong for an indefinite period of time the continuation of such services. In the meantime, the financial burden would continue and probably mount.

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

For the reasons stated, the railroad industry is opposed to enactment of S. 1175 and we urge that your Committee take no action thereon.

We have one more witness, Mr. Frank A. Smith, Vice President—Research, Transportation Association of America.

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT—RESEARCH,
TRANSPORTATION ASSOCIATION OF AMERICA

Mr. SMITH. Mr. Chairman, since most of the points in my statement have been covered, I would, if it is all right with you, file it for the record and just quickly go through it and pick up the highlights. I think I can cover them rather rapidly.

Senator LAUSCHE. The statement will be printed in the record.

Mr. SMITH. Thank you.

In the beginning, I basically state that I am representing the board of directors, Transportation Association of America, which is a national transportation policy organization. It is composed of members representing users, investors, and various carrier modes.

Our particular interest in this legislation is primarily directed to three of these so-called panels that work with us in our cooperative project. Our user panel, of course, are basically shippers who are concerned about being the ones that have to pay the higher freight costs to offset these passenger deficits that are still running over \$400 million a year.

Our investor panel, obviously, is interested because of the adverse effect this deficit has on their investments in the railroad industry.

The Railroad Panel, one of the six carrier groups within our organization, for reasons pointed out by Mr. Moloney is also concerned about this legislation.

The other carrier panels, basic concern is on the question of to what extent should a publicly regulated carrier be required to perform unprofitable services, which is an underlying problem in this particular legislation.

Now, in 1958, when this legislation was passed, it had strong support of the association and in several instances, when efforts were made to either repeal it or rather sharply modify it we opposed them.

Just 2 days ago, our board of directors met, and adopted another resolution where, in effect, we expressed our support of Section 22, and opposition to amending it.

Senator LAUSCHE. Section 22? Is that in this?

Mr. SMITH. I'm sorry, section 13a.

I mention briefly the situation in 1958. I won't go into that in great depth, but comparative situations with the railroads, of course, are much better today. We have to recognize that.

The passenger deficit has been reduced approximately \$200 million a year, but it still ranges well over \$400 million, so it is still quite high. And unfortunately, ever since 1962, it has started to rise again and the rate of return to the railroads, of course, is much better than it was, say in 1958. Yet the railroad industry is still practically at the bottom of the list when you compare it with other representative industrial groups.

Senator LAUSCHE. Do you have a tabulation of the rate of return of the different industries which will in some manner parallel the statistics that were put in the 1958 record?

Mr. SMITH. Yes, sir; I could. I don't have them right here.

Senator LAUSCHE. I think we could get that from the Department of Commerce.

Mr. SMITH. Yes, sir.

Senator LAUSCHE. What did you use, sir?

Mr. SMITH. What I have used is taken from the First National City Bank. Each year they put out a newsletter that compares percent of return on net worth of 65 industrial classifications. The reason we have taken this, in order to make this kind of analysis, is that you have to use a comparable base or it is sort of meaningless.

This is what I have used and this would be shown from previous years.

Senator LAUSCHE. Can you put that in the record, that tabulation?

Mr. SMITH. Yes, sir.

Senator LAUSCHE. It will be placed in the record.

(The table referred to follows:)

Net income of leading corporations for the years 1965 and 1966

(Dollar figures in thousands)

Industrial groups	Number of companies	Reported net income after taxes		Percent change	Net worth, ¹ beginning of year		Percent return on net worth		Percent margin on sales ²	
		1965	1966		1965	1966	1965	1966	1965	1966
Baking.....	15	\$71,613	\$84,203	+18	\$602,714	\$607,875	11.9	13.9	2.9	3.1
Dairy products.....	13	200,249	221,028	+10	1,596,847	1,786,509	12.5	12.4	3.2	3.2
Meat packing.....	27	61,132	70,140	+15	1,283,157	1,473,977	9.5	5.5	0.6	0.7
Sugar.....	14	45,904	54,904	+22	1,473,977	521,099	5.3	10.5	3.5	3.8
Other food products.....	84	557,360	625,612	+12	4,312,838	4,718,270	12.6	13.3	4.3	4.4
Soft drinks.....	14	129,826	150,132	+16	616,211	673,653	21.1	22.3	4.3	7.3
Brewing.....	17	71,053	86,704	+22	640,546	679,574	11.1	12.8	4.5	4.9
Distilling.....	13	160,970	184,149	+14	1,681,746	1,731,294	9.6	10.6	4.5	4.7
Tobacco products.....	12	317,314	330,914	+4	2,385,793	2,389,994	13.3	13.8	6.0	5.9
Textile products.....	70	344,382	381,953	+11	2,962,030	3,205,919	11.6	11.9	4.5	4.7
Clothing and apparel.....	85	161,306	177,280	+10	992,605	1,117,664	16.3	15.9	4.3	4.1
Shoes, leather, etc.....	25	71,842	84,140	+17	606,679	644,707	11.8	13.1	3.3	3.7
Rubber and allied products.....	58	364,600	431,567	+18	3,079,530	3,321,880	11.8	13.0	5.3	5.4
Lumber and wood products.....	25	219,981	224,234	+2	1,906,533	2,048,411	13.0	14.2	6.2	5.6
Furniture and fixtures.....	37	59,469	70,898	+19	458,352	499,075	10.5	11.6	3.8	3.6
Paper and allied products.....	75	570,746	671,178	+18	5,415,090	5,691,382	16.9	18.1	6.2	5.7
Printing and publishing.....	89	270,052	325,603	+21	1,600,731	1,796,885	13.4	13.9	8.8	8.5
Chemical products.....	79	1,685,206	1,790,905	+6	10,953,710	11,859,640	14.1	15.0	11.0	10.8
Paint and allied products.....	22	123,141	130,333	+6	875,662	937,152	21.2	21.0	5.0	5.5
Drugs and medicines.....	39	645,565	710,876	+10	3,050,021	3,377,284	17.9	17.7	9.5	9.6
Soap, cosmetics.....	29	301,094	335,965	+12	1,772,475	1,894,348	17.9	17.6	7.4	7.2
Petroleum products and refining.....	106	4,630,113	5,174,628	+12	38,761,537	41,052,828	18.9	18.0	9.0	8.5
Cement.....	17	88,855	71,969	-19	1,007,388	1,052,153	13.5	12.8	7.4	6.4
Glass products.....	15	211,070	222,141	+5	1,966,072	1,736,976	9.9	9.6	6.8	6.9
Other stone, clay products.....	38	219,741	220,469	+0	12,145,241	12,616,238	9.6	9.3	5.9	5.8
Iron and steel.....	82	1,160,067	1,186,362	+2	6,148,976	6,879,861	11.8	15.4	8.0	7.0
Nonferrous metals.....	65	726,735	1,005,337	+38	1,952,960	1,442,768	10.6	19.2	6.7	7.0
Hardware and tools.....	44	135,796	167,337	+23	1,353,558	1,732,801	12.9	14.0	4.9	4.5
Building, heating, plumbing equipment.....	63	143,503	171,780	+20	1,682,382	2,833,724	14.4	14.6	6.0	6.5
Other metal products.....	60	211,995	249,360	+18	3,416,582	3,934,664	18.7	16.0	8.9	8.5
Farm, construction material handling equipment.....	45	501,113	561,233	+12	3,648,954	5,093,741	14.4	16.4	5.8	6.1
Office, computing equipment.....	44	367,160	815,415	+22	7,846,686	7,697,972	14.8	16.5	4.8	4.9
Other machinery.....	210	1,61,843	1,452,632	+23	7,152,979	1,242,129	15.0	14.4	5.5	5.1
Electric equipment and electronics.....	315	1,161,874	1,452,632	+23	13,295,394	14,891,319	23.4	17.8	7.8	6.5
Household appliances.....	20	3,173,367	2,643,672	-15	1,952,807	2,094,366	13.4	14.5	4.9	5.2
Automotive parts.....	15	1,08,734	304,516	+17	1,845,665	2,906,651	12.7	14.2	5.5	5.8
Railway equipment.....	41	106,985	128,835	+20						

See footnotes at end of table, p. 121.

Net income of leading corporations for the years 1965 and 1966—Continued

[Dollar figures in thousands]

Industrial groups	Number of companies	Reported net income after taxes		Percent change	Net worth, ¹ beginning of year		Percent return on net worth		Percent margin on sales ²	
		1965	1966		1965	1966	1965	1966	1965	1966
Aircraft and space.	55	\$545,908	\$593,185	+9	\$3,533,724	\$3,825,583	15.4	15.5	3.2	3.0
Instrument, photo goods, etc.	108	687,066	875,684	+27	3,582,833	4,027,323	19.2	21.7	9.3	9.9
Miscellaneous manufacturing.	85	189,258	197,210	+4	1,398,537	1,511,740	13.5	13.0	5.4	5.1
Total manufacturing.	2,279	22,000,863	24,074,034	+9	158,061,157	170,005,351	13.9	14.1	6.4	6.3
Metal mining ³ .	23	80,892	90,279	+12	645,788	709,334	12.5	12.7	13.0	13.6
Coal mining ³ .	15	56,683	63,182	+12	535,291	573,319	10.6	11.0	6.8	7.0
Other mining, quarrying ³ .	11	67,482	94,471	+40	495,492	545,736	13.6	17.3	17.0	19.3
Total mining.	49	204,857	247,932	+21	1,676,571	1,828,389	12.2	13.6	10.9	11.9
Chain stores, food.	59	327,350	338,447	+3	2,614,896	2,764,007	12.5	12.2	1.3	1.3
Chain stores, variety, etc.	79	225,577	261,190	+16	1,691,154	1,871,487	13.3	14.0	3.3	3.2
Department and specialty.	66	408,137	449,053	+10	2,987,313	3,699,565	13.6	13.7	3.1	3.1
Mail order.	9	347,095	346,988	+0	2,674,659	2,971,473	12.9	12.1	3.9	3.9
Wholesale and misc.	179	336,288	406,330	+21	2,443,867	2,705,913	13.8	15.0	2.6	2.8
Total trade.	392	1,644,447	1,802,608	+10	12,436,869	13,482,445	13.2	13.4	2.5	2.5
Class I railroads ⁴ .	76	814,888	902,172	+11	17,622,350	17,746,696	4.6	5.1	8.0	8.5
Common carrier trucking.	36	69,789	86,780	+24	2,353,799	2,395,698	19.1	21.9	3.7	4.2
Shipping.	13	40,567	68,104	+68	636,677	689,635	6.4	3.9	8.7	7.9
Air transport ⁴ .	29	383,407	417,565	+9	1,299,216	1,757,773	29.5	23.8	7.0	7.5
Miscellaneous transportation.	37	105,828	119,807	+13	674,433	730,876	15.7	16.4	7.1	7.2
Total transportation.	191	1,414,479	1,594,428	+13	20,586,475	21,320,588	6.9	7.5	7.5	7.7
Electric power, gas, etc. ⁴ .	244	3,344,319	3,474,965	+4	29,487,581	30,973,150	11.3	11.2	14.0	13.6
Telephone and telegraph ⁴ .	23	2,069,797	2,298,587	+11	20,857,542	22,204,661	9.9	10.4	14.6	14.6
Total public utilities ⁴ .	267	5,414,116	5,773,552	+7	50,345,123	53,177,761	10.8	10.9	14.2	14.0
Amusements.	51	91,984	107,318	+17	791,086	841,776	11.6	12.7	5.2	5.2
Restaurants and hotels.	45	61,936	76,300	+23	534,496	576,873	11.6	13.2	3.1	3.3
Other business services.	125	217,469	267,414	+23	1,108,053	1,275,757	19.6	21.0	5.5	5.5
Construction.	31	89,887	101,161	+13	773,966	812,521	11.6	12.5	4.6	4.6
Total services.	252	461,276	552,193	+20	3,207,601	3,506,927	14.4	15.7	4.8	4.8

Commercial banks	(c)	2,103,000	+5	24,047,000	25,609,000	8.7	8.6
Fire and casualty insurance	35	210,323	+69	5,567,085	5,587,649	3.8	6.4
Investment trusts ¹	229	987,279	+15	35,580,017	41,216,865	2.8	2.8
Sales finance	86	394,474	+1	3,220,695	3,435,680	12.2	11.6
Real estate	70	38,675	+30	532,122	554,791	7.3	9.0
Total finance	420	3,733,751	+11	68,946,919	75,403,985	5.4	5.4
Grand total	3,850	34,873,789	+10	315,260,715	340,125,446	11.1	11.2
							6.4

¹ Net worth (listed previously as "book net assets") is based upon the excess of total balance sheet assets over liabilities; the amounts at which assets are carried on the books may not represent present-day values.

² Profit margins are computed for all companies publishing sales or gross income figures, which represent 98 percent of the total number of reporting companies, excluding the finance group; in includes income from investments and other sources as well as from sales.

³ Net income is reported before depletion charges in some cases.

⁴ Due to the large proportion of capital investment in the form of funded debt, rate of return on total property investment would be lower than that shown on net worth only.

⁵ Federal Reserve Board tabulation of all member banks; number of banks (6,150) is not included in total number of companies; earnings include profits and losses on sale of securities; net worth figures are annual averages.

⁶ Figures in most cases exclude capital gains or losses on investments.

Mr. SMITH. Proceeding on, we are trying to point out briefly some of the advantages we feel of section 13a. And one of them is the fact that even though the rail communication area is probably one of the heaviest deficit areas, as we look at it, the very fact that the level of passengers, commutation passengers, is approximately the same now as it was in 1960, is an indication that this statute has stimulated local effort and assistance to maintain this type of service in what I call a heavy density area.

In the intercity travel area, we feel that 13a has been beneficial in helping to bring about, through in part the Government's high speed ground transport program, the actual innovation and renewed interest in modernized passenger trains, the major emphasis being today in the Northeast Corridor.

Now, while perhaps it is only one of many factors, we do feel that the overall impact of Section 13a in reducing the financial losses on the railroads has had an impact on helping improve railroad freight service. And I have cited in my statement that on the other side of the coin, from the railroad's freight side, for 1958 through 1966, you can show from each year, there has been a steady decline in the average revenue per ton-mile; that, what was paid by shippers.

Now I am not trying to insinuate, of course, that this can all be attributed to savings that they have made in dropping passenger trains, but I do feel that this is one of the factors, such as new innovations and various types of rate incentives.

Further on, I express basically our concern about changes in 13a. Now we are fearful that permitting passenger train discontinuance proceedings to be unreasonably delayed or by imposing obligations on the carriers, it will discourage their use of this means of long-needed relief. The end result will be the nullification of the proven effectiveness of this section.

Now, briefly, our analysis of most of the points have been covered, but I should stress that we have gone through the proceedings—well, we didn't, the ICC itself showed these figures on the total number of proceedings—and approximately 55 percent of the discontinuances have been granted, and that not quite half, around 45 percent, the Commission has turned down, even though the Commission has to take affirmative action to prevent such discontinuances.

Now, moving over to page 6, we have actually gone quickly through the dockets—and when I say the “dockets,” I mean, basically, the Examiner's final report.

We were quite impressed by the scope and the comprehensive coverage that has been practiced in such cases.

Now as Mr. Moloney pointed out, there are quite a few requirements that the railroads have to comply with in submitting information that will support their requests for discontinuance. Now, as to one of the points that was stressed, we went through 45 dockets and in all of the cases—of course some were denied—but all of those where they were allowed, that is the discontinuance was allowed, the point was stressed that there was reasonably adequate public service, passenger service, available to the people being affected in this community. In other words, this is a point that is stressed.

Now I am not trying to say that this means that there wouldn't be inconveniences to the people, but I'm saying there would be reason-

ably adequate public service and this is a major consideration given in these cases.

Now another, to me, principle or standard that I would say appears to be applied in these cases is that the railroads have to justify discontinuances on an out-of-pocket loss basis. In other words, they have to actually show that they are directly losing money on the service itself. They can't come in on the basis of joint costs, or a basis of costs that would be easier to build up a case from the standpoint of heavy losses.

Now, as to the actual analysis of S. 1175, practically all of the points have been pretty well covered. I think our main concern is the question of the lack of time the Commission has. If it is going to be extended, it should be extended to what they ask for, in the exceptional case.

If, for example, a railroad wants to discontinue all of its passenger trains, as perhaps the Central of New Jersey may have to request, I can see a reason for more time—certainly 4 months would be very difficult.

Senator LAUSCHE. Then your position on the matter of extending the time is that you support the time in the present law, but if extended time is to be given, it should apply only to exceptional cases?

Mr. SMITH. That is right, sir.

For our next point, we are talking about section 13a(2). To illustrate our concern, we have made a rather detailed analysis and found that the average time—while there is no time limit in it for the Commission—the average time taken was 14 months. But that has already been pointed out.

Continuing, our feelings would relate basically, as Mr. Moloney expressed, on the conditions and modifications. Our concern here would be that, in effect, we believe this would discourage its use. We would have to see the results of it, but the way it is written, it is in fairly broad language. The impact could be to discourage the railroads from using this section.

On page 9, one other point. These cases are, under section 13a, discontinuance proceedings, not abandonment proceedings; in other words, removal of passenger service, and not complete abandonment of the line. And while in some ways, it may be difficult to restore service, that doesn't necessarily mean it could not be done, especially if there is introduced some new passenger train innovation, or the reentry is made under more favorable operating conditions.

In other words, they are not precluded, once they are off, from coming back on the line, as long as the railroads are still operating freight service.

I did attach an item from an article in "Traffic World." I did it because of the currency of the problem of the Central of New Jersey.

Mr. Moloney mentioned the same points and I won't go into it, but basically, our position is that we think section 13a has been constructive legislation, and we think it should remain basically as is. If there are changes, we think they should be at the minimum, and that in extending the time, it should be limited to important proceedings. If the conditions were similar to what you expressed to Mr. Mohoney, I would say that certainly, we would not object to that, because we can't think that would be detrimental to this problem.

(The document referred to follows:)

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT—RESEARCH, TRANSPORTATION ASSOCIATION OF AMERICA

My name is Frank A. Smith. I am Vice President—Research of the Transportation Association of America, a national transportation policy organization with headquarters in Washington, D.C. I am appearing today on behalf of the Board of Directors of TAA in opposition to S. 1175, which would amend Section 13a of the Interstate Commerce Act. This Section was enacted in 1958, with strong TAA support, as a fair and expeditious means by which the railroads could seek relief from the severe burden of unprofitable passenger trains.

For the benefit of Subcommittee members not familiar with TAA, it is an organization made up of users, investors, and carriers of all modes who work together to develop national policy positions designed to maintain the strongest possible transport system in this country under private enterprise principles.

The Association's policy positions are formally adopted by a 115-man Board of Directors of top agricultural, general business, and transport industry executives, which acts after receiving individual views of eight permanent advisory Panels made up of representatives from transport users and investors, as well as air, freight forwarder, highway, pipeline, railroad, and water carriers. Following this procedure, the TAA Board has gone on record, in several instances, in opposition to the requiring of carriers to continue services that are unprofitable and an undue burden on interstate commerce. The Board has also adopted a policy position that calls for expeditious handling of railroad passenger-train discontinuance proceedings.

Three of the TAA Panels—its User, Investor, and Railroad Panels—have a direct interest in this particular problem area since their members are directly affected by passenger-train losses. Shippers object to passenger deficits since they must pay higher freight rates to offset them. Investors see such deficits draining their equity in the railroad industry and thus become reluctant to put their money into railroads. Railroads, in turn, must resort to non-equity type financing, at higher costs, and try to recoup passenger losses from freight services. Other carrier Panels are interested in this problem because it deals with the basic question of to what extent should publicly regulated carriers be required to perform unprofitable services.

As stated above, TAA supported the enactment of the legislation that added Section 13a to the Interstate Commerce Act. The need for such legislation was clearly substantiated at that time, although repeated attempts were made following its passage into law to either repeal it or nullify its effect. With specific TAA Board endorsement, the Association also expressed opposition to these attempts, which to date have been unsuccessful.

On Tuesday, May 23, the TAA Board held its spring meeting in Washington and, among other actions, adopted the following policy statement:

"The Board of Directors of the Transportation Association of America reaffirms its support of Section 13a of the Interstate Commerce Act as a fair and expeditious means by which railroads can seek relief from unprofitable passenger-train losses. The Board opposes any attempts to amend this provision."

In favoring both the enactment and retention of Section 13a, TAA has cited, in brief, the following reasons:

The railroads should not be forced to continue operating services that are so unprofitable as to impose an undue burden on interstate commerce.

The users of rail freight services should not have to subsidize rail passenger services, nor should investors in railroads be asked to do so.

The underlying reason for the decline in rail passenger service has been, and still is, the sharp competition from the private automobile and the commercial airlines and not apathy on the part of the railroads.

Procedures under which the railroads can seek relief at the state level—without the appeal features of Section 13a—are too slow.

The "do nothing" attitude that had been adopted at the local level with respect to heavy deficit rail commutation service can be overcome, in part, by legislation such as now in the statutes under Section 13a.

We believe that Section 13a has proved to be, and still is, very constructive and in the over-all public interest. It has undoubtedly caused hardships for some of the interests directly affected by the resulting discontinuances, but we believe these disadvantages have been far offset by the benefits to shippers, investors, carriers, and the general public.

At the time of passage of Section 13a, the railroads were experiencing what could be called a state of severe depression. The situation was so bad that the

Congress held extensive hearings on the railroad problem, the findings of which played an important part in passage of The Transportation Act of 1958, which included Section 13a.

Today we find the railroads, compared to 1958, in a far better position, with a generally optimistic rather than pessimistic outlook. We believe this improvement has been brought about, in part, by their ability to rid themselves of many hopelessly unprofitable passenger trains. While the current annual passenger deficit of approximately \$420 million is still very substantial, it is far better than the \$610 million passenger deficit in 1958. Unfortunately, this deficit has been increasing since it reached a post-Section 13a low of \$394 million in 1962, with higher labor and other costs more than offsetting savings from discontinuances.

In 1966, the railroads earned an estimated 3.9 percent rate of return on investment, which likewise is much better than the 2.8 percent earned in 1958. Yet, according to figures reported by the First National City Bank of New York, the railroad industry last year was second from the bottom of a list of 65 industrial groups on the basis of the percentage of return on net worth. The days of railroad financial problems are obviously still not over. This is brought out by the fact that for the first time since 1960, the railroad industry is now seeking a general freight rate increase to help cover rising costs.

While it is true that many passenger trains have been discontinued during the eight and one-half years of Section 13a, it should be noted that in the commutation field, where most of the complaints about rail passenger service are voiced, the total number of rail commuters has held practically stable since 1960, when 203 million commutation passengers were carried compared to an estimated 195 million in 1966. This illustrates, in our opinion, another benefit of Section 13a, which is the effect it has had on stimulating local and state action to assist in maintaining rail commuter service—at least on the high-density routes.

In the intercity travel area, we believe the impact of Section 13a has likewise been beneficial. The actual, and threatened, loss of intercity rail service has stimulated—with a definite boost from the Government's three-year \$90 million high-speed ground transport program—innovation and renewed interest in use of modernized passenger trains in so-called high-density "corridors" where rail travel may help solve the serious and worsening traffic congestion problem.

Another benefit of Section 13a has been its influence on the other side of railroad operations, the freight service, by helping carriers to keep general freight levels down despite continuously rising costs. While new technological innovations and aggressive rate competition on selected commodities are major reasons for the improved rail freight picture, there is no doubt in our mind that the easing of a sizeable portion of the heavy passenger-train deficit has played an important role in this area. In 1958, when Section 13a was passed into law, the railroads reported an average revenue of 1.46 cents per ton-mile, the third straight year that they showed an increase. It is significant to note that in every year since 1958, this index of the over-all cost to shippers of rail freight service has gone down, reaching an estimated 1.26 cents in 1966, the lowest since 1948 despite rising cost levels. Lower rail freight costs have unquestionably been of great benefit to the general public in helping to hold down consumer prices.

Before stating our specific views on S. 1175, we should emphasize our primary concern about this or any related bill that seeks to make changes in Section 13a. We are fearful that by permitting passenger-train discontinuance proceedings to be unreasonably delayed, or by imposing obligations on the carriers that will discourage their use of this means of long-needed relief, the end result will be the nullification of the proven effectiveness of Section 13a.

Analysis of Use of Section 13a

Despite public statements that the use of Section 13a has been widely abused, an analysis of the over-all experience of this provision indicates just the contrary. According to an ICC tabulation of Section 13a proceedings through December 31, 1966, a total of 227 were instituted. In 126 of these, or approximately 55 percent, discontinuance was granted. Thus, even though the Commission had to take affirmative action to disallow the discontinuance, it was obviously able to do so in nearly half the proceedings.

From the standpoint of actual trains—recognizing the term "train" is somewhat nebulous since it could mean a single self-propelled car or a 20-car train—carriers sought to discontinue 1,426 during this period, and were permitted to drop 1,031 or 72 percent. This latter figure, however, includes 262 trains of

the Boston & Maine Railroad in a single, consolidated proceeding, which, if deducted from the total, would show the discontinuance rate also at approximately 55 percent. This indicates that the Commission is not indiscriminately permitting discontinuances, nor that it is unable to obtain sufficient information to support an affirmative rejection of passenger-train discontinuances.

Because of TAA's continuing interest in the passenger deficit problem and the impact that Section 13a has had on easing it, we have reviewed briefly all the dockets through December 31, 1965. This review clearly indicates to us that the type of information requested by the ICC from the carriers is quite extensive and, based on experience through use of Section 13a, covers the points needed to make a fair determination. Among many other factors, definite consideration is given to the availability of reasonably adequate substitute public passenger service. Also, the financial loss test appears to be direct or out-of-pocket losses, which obviously make it more difficult for the railroads to justify discontinuances.

Analysis of S. 1175

This ICC-sponsored bill is designed, in the Commission's words, to eliminate "deficiencies" that it has found in Section 13a. The proposed changes would give the Commission more time to consider "important or exceptional cases," place the burden of proof on the carrier, give the Commission broad authority to set operating conditions for passenger trains included in discontinuance proceedings, and give adversely affected parties the right to appeal a discontinuance ruling in the courts.

It is difficult to quarrel with the Commission on its stated objectives in proposing such changes in Section 13a, yet careful consideration of these changes, especially on an over-all basis, brings us to the conclusion that the end result will be a considerable delay in all such proceedings, and an indefinite delay in any major discontinuance proceeding. Passage of this bill could also, in our opinion, discourage its use by carriers because of such delays and the possibility of being required to comply with unreasonable conditions before being permitted to discontinue an unprofitable passenger train, or even in continuing one under the amended Section 13a(1).

As to the proposed amendments in S. 1175 that would extend the various time periods in Section 13a, we believe the effect will be to delay all such proceedings that are investigated, even though the Commission admits that "present procedures are substantially adequate for most discontinuance cases." If it is concerned about the lack of time to handle "certain kinds of important or exceptional cases," it is not prevented from asking the railroad for more time, as it now does in certain instances in rate cases. Our concern is that in order to give more time for a few exceptional cases, the time that will be taken to handle the routine cases will, in all probability, be more than doubled.

To illustrate this point, we have tabulated the time periods that the Commission took to handle proceedings under Section 13a(2), where no time limits are imposed. It showed that the average time, on both an average mean and median basis, was 14 months, although this has been reduced somewhat to about 10 months since 1965. Yet, since this is an appeal provision following state rejection of a discontinuance or failure to act within four months, the railroads had already been forced to wait a considerable period before even going to the ICC for relief. Even then, the Commission's rejection rate was approximately 50 percent, since it approved only 23 of a total of 45 proceedings under this provision. A strong case could be made to put Section 13a(2) proceedings under a time limit since opposition parties have already had proper notice and four months to develop their case during the proceedings at the state level.

As to the proposed change in the burden of proof, we fail to see the purpose from the standpoint of obtaining adequate information on which the Commission can justify its final decision in such proceedings. Certainly the carriers must furnish sufficient data to justify any discontinuances, and the Commission doesn't lack the authority to insist on getting it. As to proof of the public convenience and necessity for the service, it would appear to us that this should best be assumed by the parties that oppose the discontinuances, such as labor unions, local chambers of commerce, municipalities, and rail passengers themselves.

As to the granting of broad authority to the Commission to establish "conditions and modifications pertaining to operations or service," we can see many potential dangers. As we interpret the amended Section 13a(1), the Commission would be given very broad authority to set "terms, conditions and modifications pertaining to operations or service" on passenger trains that it requires to remain

in operation for another year. In other words, if the carrier seeking relief is successful, it has won a gamble, for if it loses it must face the possibility of being required to modify its services on that particular train, or trains, as the Commission thinks "reasonable and just." The carrier may be required to experiment with a costly innovation or other "condition" that could prove to be even more costly than prior to its institution of the discontinuance proceeding.

Under Section 13a(2), this power takes a somewhat different form, in that it is granted to the Commission in connection with the trains that can be discontinued. In other words, the Commission can impose "conditions" that must be met by the carrier before it can discontinue the train. In this instance, the carrier may lose even if it can justify discontinuance of the passenger train, especially if the Commission decides to use this power to require labor protective provisions as a condition for discontinuance.

Our final point deals with the added Section 13a(3), which gives all adversely affected parties the opportunity to appeal in ICC discontinuance ruling in the courts. As we understand the present situation, this power already exists in Section 13a(2), and a U.S. district court in eastern Michigan has just recently remanded an ICC discontinuance ruling for failure to make an adequate record.

While we cannot interpret our policy positions in this area as specifically covering this proposed change, with respect to Section 13a(1), we can express our concern about its probable impact if enacted into law. Many authorized discontinuances, including all of the major ones, will end up in drawn-out court proceedings.

Conclusion

While we are fully aware of the concern of persons directly affected by the discontinuances of passenger trains, we have attempted to show some of the direct benefits of Section 13a and why we believe its retention is in the public interest. Even though many passenger trains have been discontinued as a result of Section 13a, the discontinuance of a passenger train along a line that still moves freight—as is the case in these proceedings—certainly doesn't prevent the introduction of new passenger-train innovations and the re-entry of such service under more favorable operating conditions in the future.

Before concluding, I should like to insert, for the record, a very timely article from the May 6 issue of "Traffic World" that illustrates the serious impact that passenger-train losses can have on a railroad—in this instance the bankrupt Central Railroad of New Jersey. It not only illustrates the perils of relying on state aid to provide such services, but also shows the adverse impact on the carrier's shippers through disruption of freight services. Finally, it illustrates the need for Section 13a if the CNJ hopes to continue operations under present conditions.

In summary, we believe the over-all result of passage of S. 1175 will be to nullify the effectiveness of Section 13a and to discourage its use. We recommend, therefore, that the Subcommittee not give it favorable consideration.

[From Traffic World, May 6, 1967]

CNJ CHARGES STATE FORCED ACTION TO SEEK HALT OF ALL PASSENGER OPERATIONS

The chief executive of the Central Railroad of New Jersey charged May 4 that the state of New Jersey has forced the railroad to initiate proceedings for the complete discontinuance of passenger service.

P. M. Shoemaker, trustee and chief executive officer of the CNJ, said that trustees of the railroad requested authority May 2 from the U.S. district court at Newark to apply for the discontinuance of all passenger operations. He declared that the action followed a refusal of the state to recommend immediate reimbursement of the railroad's 1965 passenger loss of \$7.1 million, toward which no payment has been made.

Mr. Shoemaker placed blame on the state for the action in a speech at the annual conference of the New Jersey Society of Professional Engineers held May 4 in Atlantic City.

MONTHLY LOSS: \$600,000

In addition to reimbursement of the 1966 passenger loss, Mr. Shoemaker said the trustees have asked the state to reimburse the railroad quarterly during 1967 and 1968, for continuing passenger losses in those years. He said that such losses are currently running at a rate approaching \$600,000 a month.

"We see no way to continue passenger service unless these actions are taken," he said.

In addressing the engineering society, Mr. Shoemaker asserted:

"Faced with the destruction of the railroad's credit and rapid deterioration of cash since March 22, when the railroad had no alternative but to file a petition for reorganization, the trustees found themselves with a choice of three courses of action:

"1. Reduce expenditures by curtailing freight operations. This was rejected as being self-defeating.

"2. Issue trustee certificates to pay past bills and restore working capital. Although the trustees are vigorously exploring this potentiality, it appears questionable that approval of either the court or the Interstate Commerce Commission would be granted unless it can be shown that reimbursement of passenger losses of the past 16 months, amounting to almost \$10 million, is in prospect, and that the drain of continuing passenger losses has been eliminated.

"3. Place the passenger problem directly in focus by initiating action to discontinue all passenger service. The trustees continue to feel that mass transportation by rail is essential to the economy of our state.

"If, however, there must be a choice between maintaining essential freight service to New Jersey industry—involving employment of more than 100,000 people—and continuing passenger service to the point of destroying both passenger and freight operations, the choice must be to sacrifice passenger service.

"But this choice was not ours. The state of New Jersey made the decision which forced the trustees to move for the elimination of passenger service. And the state has the power to reverse its position, if it has the political courage and responsibility to do so."

Mr. Shoemaker said that precisely what he predicted would happen if the company were forced into insolvency has happened. Said he:

"Credit for supplies and material has been wiped out, normal freight movement has been disrupted as a result of other railroads putting CNJ on a cash-on-the-barrelhead basis, and industrial development in CNJ territory has been immobilized.

"While the cash required to maintain the solvency of the railroad could have been provided by full reimbursement of CNJ passenger losses, I pointed out time and time again that failure to do so would result in a state of insolvency requiring a far greater amount.

"We are now seeing the full measure of repercussions to New Jersey stemming directly from lack of responsible leadership at Trenton. It is to be hoped that the current experience of the Central Railroad of New Jersey can be a public lesson in how not to handle a major public problem."

Senator LAUSCHE. Senator Cannon?

Senator CANNON. No questions.

Senator LAUSCHE. As I understand your testimony, you support the present law as it is?

Mr. SMITH. Yes, sir.

Senator LAUSCHE. On the question of granting more time for the Commission to dispose of cases, you would, if the law is to be changed, you would have it applicable only to exceptional cases?

Mr. SMITH. Yes, sir.

Senator LAUSCHE. With respect to specifically writing into the law that the burden of proof is upon the railroad, you don't believe that should be done?

Mr. SMITH. I consider that a legal point, and I would not think our position could be narrowed down that much.

I think, basically that the railroads should justify their petition, and we think they have done it. So I would rather say, basically, we think that is not a problem. I would say we have no position in that area.

Senator LAUSCHE. And with respect to giving the Commission the right to impose conditions, you don't think that would be helpful generally?

Mr. SMITH. Not the way it is suggested. I think it is too sweeping, and that it may be beneficial, but it may also be very detrimental to the problem.

Senator LAUSCHE. And now getting to the right of appeal, to be given to the public?

Mr. SMITH. I would say we have no position on that particular point.

Senator LAUSCHE. Your association represents shippers—

Mr. SMITH. Yes, sir.

Senator LAUSCHE (continuing). Railroads?

Mr. SMITH. Yes, sir.

Senator LAUSCHE. And business?

Mr. SMITH. Yes, sir; as well as the other carrier modes: airlines, bus companies, pipelines, freight forwarders, trucking companies, and water carriers.

Senator LAUSCHE. Do you take the position that the composition of your organization indicated that it is in a position to be objective and present what is in the best interest of the general public, the carriers, the manufacturers, the—

Mr. SMITH. I would say from the transportation community, from the management side, I would say, "Yes, sir."

I would not say we are attempting to speak for labor. They are not part of our organization, so I would certainly not go into that.

Senator LAUSCHE. All right.

This will conclude the hearings for today. We will keep the record open for a period of 10 days. There will be no more witnesses to appear on this measure.

We will recess the hearing until the call of the Chair.

(Whereupon, at 11:57 a.m., the subcommittee recessed, to reconvene at the call of the Chair.)

STATEMENT OF HON. GALE MCGEE, U.S. SENATOR FROM THE STATE OF WYOMING

Mr. Chairman, I appreciate this opportunity to submit my views on S. 1175 and to register my strong support for this proposed legislation which is now under consideration by this committee.

During the past several years every section of this country has been affected by discontinuances of railroad services, and my state of Wyoming and the Rocky Mountain region are no exceptions. A substantial part of the rail passenger service that once served the state and the people of Wyoming has already been discontinued. At the present time there are pending before the Interstate Commerce Commission applications to authorize further discontinuances.

In these latter cases the ICC has scheduled field hearings on the proposed discontinuances at several cities along the route which would be affected, including three points in Wyoming. These hearings will be held in the month of June, and under present ICC authority the proposed discontinuances which would otherwise have been effective on May 1 have been delayed to a date not later than August 31 as a result of the investigation which was instigated by the ICC.

I am certain that during the course of these several field hearings there will be considerable and significant testimony presented in opposition to the proposed discontinuance of this vital passenger service. In Wyoming, for example, if the request for termination of this service is granted, it would leave a substantial portion of this great state without any passenger train service. It would eliminate what remains of any north-south passenger service in Wyoming. This would be a most serious blow to our nation's transportation system, the strength of which at one time consisted of a strong railroad system.

As a result of the several hundred service discontinuances during the past several years, it is evident that the ICC does not have sufficient jurisdiction and authority to adequately represent the public's interest in matters involving dis-

continuance of rail service throughout the country. If our national transportation system is to be preserved and protected and, at the same time, the public's interest protected, the ICC must be given greater authority and more latitude in considering matters of this nature. These provisions are contained in S. 1175 and I would not only urge that this committee take favorable action on this legislation, but also that it take such action as expeditiously as possible. In my opinion the time element is an important one since as each day passes, more requests for rail service discontinuances are being proposed. The ICC should be given this additional authority and jurisdiction with as little delay as possible.

Mr. Chairman, I am submitting with my statement a copy of a letter I received from the Public Service Commission of the State of Wyoming in which they too go on record in strong support of this bill. I would appreciate it if this correspondence could be made a part of the committee hearings so that it might be available to the committee membership when this proposed legislation is further considered by the Committee.

THE STATE OF WYOMING,
PUBLIC SERVICE COMMISSION,
Cheyenne, May 29, 1967.

Re S. 1175 and H.R. 7004, Bills to Amend Section 13a of the Interstate Commerce Act, and for Other Purposes.

HON. GALE MCGEE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCGEE: As you are well aware the nation's railroads, in an understandable concerted effort to effect economies wherever possible, have for the most part looked to the limitation and curtailment of marginal but, nonetheless, essential passenger services as the most feasible approach to accomplish this end. The present laws governing the administrative consideration and effectuation of such service limitations and curtailments are such that the same may be accomplished on an interstate basis without full and proper consideration being given important aspects of the cases relating to the particular and special local needs and circumstances. There have been instances where, unanticipated by all parties involved, the hoped for purported expeditious procedure has worked to submerge the most important substantive consideration—that of the public need and interest.

This Commission, commensurate with its responsibilities and duties concerning the healthful and adequate operation of the Wyoming railroads, is an active and interested member of the National Association of Railroad and Utilities Commissioners (NARUC), an organization of all the state commissions whose chief objective is to serve the public interest through the careful, intelligent and needful advancement of governmental regulation of carriers and utilities.

This Commission and the NARUC are very interested in S. 1175 and H.R. 7004, which propose an amendment to Section 13a of the Interstate Commerce Act relative to passenger train discontinuance procedures. These bills were introduced at the request of the Interstate Commerce Commission (ICC).

We are vitally concerned with the development of a sound and adequate rail passenger service which will be responsive to the needs of a growing America. The proper amendment of Section 13a will be an important tool in conserving a nucleus of rail passenger service to provide the foundation for expanding to meet tomorrow's transportation needs.

We believe that S. 1175 and H.R. 7004 as presently drawn will correct several deficiencies which now exist in Section 13a procedures.

In particular, we support these features of these bills which will:

1. Authorize the ICC to require the continuance of restoration of operation of service subject to just and reasonable terms and conditions;
2. Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;
3. Provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service; and
4. Provide for judicial review of any order of the ICC entered after hearing under Section 13a in the federal district courts.

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

First, we believe that the first paragraph of Section 13a, which concerns trains crossing state borders, should be amended to provide that applications filed

thereunder would be first heard and determined by a joint board of state commissioners when the proposed discontinuance involves not more than nine states. Such a joint board would be constituted in a manner similar to the joint boards which are now provided for in Part III of the Interstate Commerce Act, 49 U.S.C., Section 305.

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

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

The use of the joint board procedure would not lengthen the administrative process because it would be a substitute for preliminary consideration of discontinuance applications by the ICC.

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

You may recall that Section 13a was enacted in 1958 because some believed that some state commissions were too reluctant in permitting railroads to discontinue unprofitable passenger train services. However, it appears to us that the pendulum has now swung too far in the opposite direction. The ICC, acting under Section 13a, has permitted hundreds of trains to be discontinued in the past several years with the result that railroad passenger service is at best sparse throughout the country and in some areas has ceased to exist. During the past five years rail travel has decreased sixteen percent and is now but one-fifth of the all time peak set in the World War II year of 1944.

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

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

The NARUC has testified in support of its position before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce, and again before the Subcommittee on Surface Transportation of the Senate Commerce Committee as recently as May 24, 1967.

Your vote and support of our position on these bills will be greatly appreciated.

If you need further information or assistance in this matter, please do not hesitate to call upon us of upon the NARUC Washington staff. The NARUC staff telephone number in Washington, D.C. is 628-7326, and its mailing address is Post Office Box 684, Washington, D.C. 20044.

Yours very truly,

PUBLIC SERVICE COMMISSION OF WYOMING.
 RICHARD J. LUMAN, *Chairman*.
 WALTER W. HUDSON, *Commissioner*.
 ZAN LEWIS, *Commissioner*.

U.S. SENATE,
 Washington, D.C., May 24, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Because a study trip to Southeast Asia makes it impossible for me to testify personally, I send this letter to urge that the Subcommittee consider incorporation of the provisions of my bill, S. 1685, in any action it takes on S. 1175.

The deterioration of rail passenger service was hastened by the passage in 1958 of Section 13a of the Interstate Commerce Act, the law governing procedures in proposed inter and intrastate passenger train and ferry boat discontinuances. Better known, perhaps, as the Transportation Act of 1958, this law was intended primarily to provide improved regulatory procedures and financial assistance to the railroads. Congress did not intend that wholesale curtailment of badly needed passenger service should result. Yet this is what has happened.

Between September, 1958 and December, 1966, according to the Interstate Commerce Commission, 786 trains were discontinued through the authority granted by Section 13a. Over the same period, the ICC said, 61 of those trains were dropped, as section 13a permits, without the Commission conducting any investigation whatever. As so many of our New Jersey commuters know to their regret, the Weehawken ferries went out of business a number of years ago without let or hindrance from the ICC. As the public learned in that case, not only can a passenger service be dropped at will, but the public has no chance whatever for a review in the courts.

It is clear that Section 13a is weighted against the public in the maintenance and strengthening of essential mass transportation facilities.

S. 1175, the bill introduced at the request of the ICC, makes a start in the direction of overhauling 13a. While I support the bill generally, I do not believe it goes nearly far enough. Therefore, I have introduced my own bill (S. 1685) as a more realistic alternative.

S. 1685 incorporates several provisions of S. 1175 which I considered sound. However, it is different from the ICC bill and it is these differences that I would like to commend to the subcommittee's attention.

My bill differs from S. 1175 in three important ways.

First, it closes the loophole which has permitted the curtailment of essential interstate passenger service without the ICC holding a hearing on a petition before it. My bill accomplishes this by requiring the ICC to issue orders in cases it decides not to hear. This would be affirmative action by the Commission and therefore would be appealable to the courts. Under present law, the Commission's inaction cannot be appealed. S. 1175 does not deal with this defect.

Second, the railroads, under my bill, would be required to justify their petitions for interstate discontinuances. Under present law, the public has the burden of proving the discontinuances are unjustified. While S. 1175 attempts to deal with this problem, its language is contradictory; but the net of it is that the public would continue to carry the burden of proof. My bill, in contrast, is written so there is no mistaking which party carries the burden of proof. It is the railroad.

Third, S. 1175 does not provide the ICC with discretionary authority to impose employee protective provisions as is routinely accorded workers who lose their jobs because of train abandonments. My bill would make the employee protective provisions used in abandonments applicable to discontinuances as well.

I would like to point out two other provisions of my bill which I believe merit the Subcommittee's consideration.

One adopts the practice used in abandonments and allows the Commission unlimited time for consideration of interstate discontinuances. The reason is that train curtailments may very well amount to abandonments when all service except freight is lopped off.

The second provision amends Section 13a(2) to lengthen to from four to seven months the time state regulatory bodies have for consideration of intrastate train or ferry discontinuances. The present time limit is unreasonable from the standpoint of the public interest, particularly since the railroad normally is the party of knowledge and can delay the disclosure of facts and figures that are essential to development of the public's case.

The bill I have introduced, I believe, would breathe more justice for the train-riding public into 13a than would S. 1175. I urge the Subcommittee give it the most serious consideration in developing substitute provisions for Section 13a.

Sincerely,

CLIFFORD P. CASE,
U.S. Senator.

STATE OF OHIO,
PUBLIC UTILITIES COMMISSION,
Columbus, Ohio, May 25, 1967.

Re S. 1175 and H.R. 7004, Bills to Amend Section 13a of the Interstate Commerce Act, and for other Purposes.

Hon. FRANK J. LAUSCHE,
*Senate Office Building,
Washington, D.C.*

DEAR SIR: This Commission and the commissions of the other forty-nine States engaged in the regulation of carriers are members of the National Association of Railroad and Utilities Commissioners (NARUC). The chief objective of the NARUC, which was founded in 1889, is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

This Commission and the NARUC are very interested in S. 1175 and H.R. 7004, which propose an amendment to Section 13a of the Interstate Commerce Act relative to passenger train discontinuance procedures. These bills were introduced at the request of the Interstate Commerce Commission (ICC).

We are vitally concerned with the development of a sound and adequate rail passenger service which will be responsive to the needs of a growing America. The proper amendment of Section 13a will be an important tool in conserving a nucleus of rail passenger service to provide the foundation for expanding to meet tomorrow's transportation needs.

We believe that S. 1175 and H.R. 7004 as presently drawn will correct several deficiencies which now exist in Section 13a procedures.

In particular, we support those features of these bills which will:

1. Authorize the ICC to require the continuance or restoration of operation of service subject to just and reasonable terms and conditions;
2. Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;
3. Provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service; and
4. Provide for judicial review of any order of the ICC entered after hearing under Section 13a in the federal district courts.

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

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

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

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

The use of the joint board procedure would not lengthen the administrative process because it would be a substitute for preliminary consideration of discontinuance applications by the ICC.

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

You may recall that Section 13a was enacted in 1958 because some believed that some state commissions were too reluctant in permitting railroads to discontinue unprofitable passenger train services. However, it appears to us that the pendulum has now swung too far in the opposite direction. The ICC, acting under Section 13a, has permitted hundreds of trains to be discontinued in the past several years with the result that railroad passenger service is at best sparse

throughout the country and in some areas has ceased to exist. During the past five years rail travel has decreased sixteen percent and is now but one-fifth of the all time peak set in the World War II year of 1944.

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

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

The NARUC has testified in support of its position before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce. It will testify again before the Subcommittee on Surface Transportation of the Senate Commerce Committee on May 24, 1967.

Your vote and support of our position on these bills will be greatly appreciated.

If you need further information or assistance in this matter, please call upon me or upon the members of our NARUC Washington staff. The staff's telephone number is 628-7326. Its mailing address is Post Office Box 684, Washington, D.C. 20044.

Sincerely yours,

THE PUBLIC UTILITIES COMMISSION OF OHIO,
CARL R. JOHNSON, *Chairman*.
KENNETH R. JOHNSTON,
JAY C. FLOWERS,

Commissioners.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,
Olympia, May 26, 1967.

HON. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The Washington Utilities and Transportation Commission supports the stand taken by our national organization (NARUC) relative to the passage of S. 1175 and H.R. 7004, Bills to Amend Section 13a of the Interstate Commerce Act, and for Other Purposes. While we have very little train passenger service left in the State of Washington, it has proved extremely essential at times when there was been a bus or airline strike or during certain weather conditions when the planes have been unable to fly. Train passenger service has been discontinued in this state to a point where any further eliminations will make it practically nonexistent.

We believe that S. 1175 and H.R. 7004 as presently drawn will correct several deficiencies which now exist in Section 13a procedures. In particular, we support those features of these bills which will:

1. Authorize the ICC to require the continuance of restoration of operation of service subject to just and reasonable terms and conditions;
2. Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;
3. Provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service; and
4. Provide for judicial review of any order of the ICC entered after hearing under section 13a in the federal district courts.

We further feel that there should be additional amendments to Section 13a as proposed by our national organization in testimony before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce and before the Subcommittee on Surface Transportation of the Senate Commerce Committee on May 24, 1967.

Your vote and support of our position on these bills will be greatly appreciated.

Sincerely,

ROBERT D. TIMM, *Chairman*.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., May 29, 1967.

In re S. 1175.

HON. FRANK J. LAUSCHE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LAUSCHE: A substantial agricultural interest is involved in the revision of Section 13a of the Interstate Commerce Act as proposed in the above indicated bill.

The present provisions of Section 13a of the Act were approved as part of the Transportation Act of 1958. The enactment of this legislation was the culmination of a three year study by the House and Senate Commerce Committees. An important aspect of the study was the chronic and increasing size of railroad losses from passenger service.

The revision of Section 13a included in the Transportation Act of 1958 was designed to expedite the procedure for the termination of unprofitable passenger service.

The revised procedures have been partially successful in reducing the passenger deficit. In the years prior to the enactment of the revised procedure the passenger deficit was exceeding \$700 million. In 1966 the passenger deficit will be about \$400 million. There appears to be little question that if the revised procedure in Section 13a had not been in effect during the 1959-66 period that the passenger deficit currently would be substantially in excess of \$700 million a year.

If the railroads are required to continue unprofitable passenger services, the losses sustained must inevitably be borne partially or entirely by shippers. We need not review the importance of rail rates on prices received by farmers and the reflection on net farm incomes.

In recognition of this relationship, at the last annual meeting of the American Farm Bureau Federation, the voting delegates of the member State Farm Bureaus recommended that the "continuation of unprofitable services (by railroads) should not be required."

It would be impossible for us to assess the increased passenger deficit that might result from the enactment of S. 1175. However, the proposed revision of Section 13a of the Interstate Commerce Act would operate to prolong in some degree the period during which railroads must continue to provide passenger service on which losses are being sustained—thus resulting in higher rates for shippers than would otherwise be the case.

It appears to us that the present provisions of Section 13a of the Act represent a reasonable compromise between the interests of shippers on the one hand, and on the other the interests of communities that are concerned about the termination or reduction of passenger service.

It will be appreciated if you will include this letter in the record of the hearing on this issue.

Sincerely yours,

JOHN C. LYNN,
Legislative Director.

STATE OF VERMONT,
PUBLIC SERVICE BOARD,
Montpelier, May 24, 1967.

Re S. 1175 and H.R. 7004, Bills to Amend Section 13a of the Interstate Commerce Act, and for Other Purposes.

Senator GEORGE D. AIKEN,
Senator WINSTON L. PROUTY,
Senate Office Building,
Washington, D.C.:

We have been asked to write to you in support of the above bills, and I am happy to do so. I know that you are very familiar with the passenger train discontinuance cases which last summer resulted in the end of rail passenger service in Vermont, and these bills may well be locking the barn door after the horse has been stolen as far as we are concerned. However, it is clear that improvements in the law need to be made, and perhaps these bills will be of assistance in other areas, including the rest of New England.

This Commission and the commissions of the other forty-nine States engaged in the regulation of carriers are members of the National Association of Rail-

road and Utilities Commissioners (NARUC). The chief objective of the NARUC, which was founded in 1889, is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

This Commission and the NARUC are very interested in S. 1175 and H.R. 7004, which propose an amendment to Section 13a of the Interstate Commerce Act relative to passenger train discontinuance procedures. These bills were introduced at the request of the Interstate Commerce Commission (ICC).

We are vitally concerned with the development of a sound and adequate rail passenger service which will be responsive to the needs of a growing America. The proper amendment of Section 13a will be an important tool in conserving a nucleus of rail passenger service to provide the foundation for expanding to meet tomorrow's transportation needs.

We believe that S. 1175 and H.R. 7004 as presently drawn will correct several deficiencies which now exist in Section 13a procedures.

In particular, we support those features of these bills which will:

1. Authorize the ICC to require the continuance or restoration of operation of service subject to just and reasonable terms and conditions;
2. Afford the ICC more time in the initial and final investigation of train discontinuance petitions filed by railroads;
3. Provide that the carrier proposing to discontinue passenger service shall have the burden of proof in establishing that the public convenience and necessity permit the discontinuance or change in service; and
4. Provide for judicial review of any order of the ICC entered after hearing under Section 13a in the federal district courts.

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

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

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

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

The use of the joint board procedure would not lengthen the administrative process because it would be a substitute for preliminary consideration of discontinuance applications by the ICC.

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

You may recall that Section 13a was enacted in 1958 because some believed that some state commissions were too reluctant in permitting railroads to discontinue unprofitable passenger train services. However, it appears to us that the pendulum has now swung too far in the opposite direction. The ICC, acting under Section 13a, has permitted hundreds of trains to be discontinued in the past several years with the result that railroad passenger service is at best sparse throughout the country and in some areas has ceased to exist. During the past five years rail travel has decreased sixteen percent and is now but one-fifth of the all time peak set in the World War II year of 1944.

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

Third, we recommend that hearings under Section 13a be made mandatory when requested by an aggrieved party. The discontinuance of passenger train service is

much too important a matter to be permitted without a hearing when one is requested.

The NARUC has testified in support of its position before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce and before the Subcommittee on Surface Transportation of the Senate Commerce Committee.

Your vote and support of our position on these bills will be greatly appreciated.

If you need further information or assistance in this matter, please call upon me or upon the members of our NARUC Washington staff. The staff's telephone number is 628-7326. Its mailing address is Post Office Box 684, Washington, D.C. 20044.

Sincerely yours,

ERNEST W. GIBSON, *Chairman.*

STATEMENT OF THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

The Chicago Association of Commerce and Industry, consisting of 5,864 members including every segment of the business and professional community, and carriers engaged in all modes of freight and passenger transportation, is a voluntary organization under the laws of the State of Illinois, created for the purpose of protecting and promoting industry, trade, and the public good. Consistent with this purpose, a primary objective of the Association is the fostering and promotion of adequate, efficient, and economical transportation services by all types of carriers. Although the names of our organization is The Chicago Association of Commerce and Industry, it functions as the chamber of commerce for the Chicago Metropolitan Area.

Chicago, the nation's center of transportation is involved in all forms of freight and passenger transportation. With its strategic location, Chicago is the junction between the eastern and western railroads and the hub of highway and air transportation. Chicago continues to lead all United States cities in volume, variety and importance in transportation. More people are daily transported from Chicago by rail, air, and highway to the rest of the nation in less time, at less cost, and with fewer transfers than from any other city. Over 150,000 Chicago Area residents are responsible for the effective and successful operation of this the world's largest transportation complex.

We oppose the principle embodied in S. 1175 and similar legislation which would have the effect of changing the procedures for handling passenger train discontinuance proceedings, thereby imposing an additional handicap on this important industry as it strengthens its plant and organization to provide more economical and efficient transportation service.

Economical and efficient passenger transportation by all modes is essential to the marketing and distribution of many Chicago area companies. Our Association supported the Section 13a amendment to the Interstate Commerce Act which became effective in 1958, recognizing that the public with a few exceptions had in effect voted against continuation of intercity railroad passenger service—a vote that has been confirmed since by the rapid growth and continued emphasis and use of the private automobile and the airlines. The few exceptions are some popular name trains which enjoy continued patronage.

Vigorous competition within and between all modes of transportation is a major element in dictating that each form of transportation service pay its own way—unless the public through its elected representatives determines that it is in the nation's best interests to subsidize some of these services.

We believe that freight revenues have been bearing the burden of passenger deficits too long. The recent proposal of the nation's railroads for increased freight rates which is now before the Interstate Commerce Commission in Ex Parte 256 might have been substantially lower or found to be completely unnecessary if the burden of the passenger deficit had not existed during the last two decades. It is neither rational nor fair for the shippers and receivers of freight to subsidize a little-used passenger service. It is completely illogical and contrary to sound policy for the nation's consumers who actually pay the costs of transportation, to subsidize a stand-by service that, with minor exceptions previously noted, has lost the support of the travelling public.

The nation's growing population and expanding urbanization may at some future date enlarge the need for railroad intercity passenger transportation.

In many areas, highways and airways are nearing the saturation point. There is reason to have some confidence in the belief, as recognized by the current experiment in the Washington-Boston corridor, that high-density, short-haul markets (perhaps even up to 400 or 500 miles) may belong primarily to railroad transportation, with air being supplementary.

Until a national policy exists concerning the need for railroad passenger service, the present Section 13a, which has served well in providing some financial relief for this vital industry, should remain as it is. We cannot agree with the premise that Section 13a should be amended to help preserve existing intercity railroad passenger service when there exists no national policy and when the travelling public abandons passenger trains before the railroads are forced to seek relief by discontinuing service.

Accelerated diversion of mail to air and highway transportation presents another facet of this overall problem which must be taken into consideration before any national policy can be developed. Hopefully, the new Department of Transportation will have some recommendations to cover this.

This is by no means a new problem. While it existed long before 1958, the Interstate Commerce Commission drew particular attention to its importance in the 1959 decision in the Railroad Passenger Train Deficit case 306 I.C.C. 417, when the Commission made 11 separate recommendations with the view toward reducing or eliminating the passenger deficit while at the same time preserving the service. Failure of the public and Congress to implement these recommendations does not create an emergency demanding the proposed amendment to Section 13a. Sufficient consideration should be given to the entire problem before any changes are made in the law.

In reporting out the bill which became the Transportation Act of 1958, the Senate Commerce Committee recommended a study of the complete transportation situation before a full appraisal of the major problem areas could be undertaken. This study was to include "policy considerations for the kind and amount of railroad passenger service necessary to serve the public and provide for the national defense." The Doyle report which covered this subject and made some recommendations that have not been implemented, pointed out that railroad intercity passenger-miles in 1959 amounted to only 3 per cent of the estimated national total of all public and private carriers.

The proposed legislation, by providing authority to attach certain terms, conditions and modifications pertaining to operations and services, would give the Interstate Commerce Commission power over matters which are the prerogative of management. The remedy will not come from granting such power to the Commission by Congress but with the railroad industry itself which has shown the ability and imagination to provide improved freight transportation to meet the needs of shippers in the face of increased competition from other modes. We agree with the conclusion in a study prepared for The Brookings Institution in 1959 which said:

"effective passenger service solutions will have to come from the railways. Under a system of private enterprise, only the roads can initiate the forceful action necessary for dealing constructively with this situation."

Enactment of S. 1175 or other bills with similar objectives would be inimical to the long range best interests of the railroads, the public, and railroad employees and would serve only to delay formulation of a national policy with respect to intercity railroad passenger service.

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