

Y4  
.c 13/2  
90-50

1041  
KANSAS STATE UNIVERSITY LIBRARIES

90-50  
c13/2  
HHH

# AMENDMENTS TO THE INTERSTATE COMMERCE ACT

GOVERNMENT  
Storage

## HEARINGS BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETIETH CONGRESS FIRST SESSION ON S. 755, S. 756, S. 757, and S. 758 TO AMEND CERTAIN SECTIONS OF THE INTERSTATE COMMERCE ACT, AND FOR OTHER PURPOSES

JUNE 8 AND 9, 1967

AND  
S. 913

TO AMEND PART III OF THE INTERSTATE COMMERCE  
ACT, TO PROVIDE FOR THE RECORDING OF TRUST AGREE-  
MENTS AND OTHER EVIDENCES OF EQUIPMENT INDEBT-  
EDNESS OF WATER CARRIERS, AND FOR OTHER PURPOSES

AUGUST 9, 1967

Serial No. 90-50

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1968

87-832

KSU LIBRARIES  
A11900 501876 ✓

Y 4  
e. 12/2  
90-20

AMENDMENTS TO THE INTERSTATE  
COMMERCE ACT

HEARINGS

BEFORE THE  
SUBCOMMITTEE ON SURFACE TRANSPORTATION  
OF THE

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island  
A. S. MIKE MONRONEY, Oklahoma  
FRANK J. LAUSCHE, Ohio  
E. L. BARTLETT, Alaska  
VANCE HARTKE, Indiana  
PHILIP A. HART, Michigan  
HOWARD W. CANNON, Nevada  
DANIEL B. BREWSTER, Maryland  
RUSSELL B. LONG, Louisiana  
FRANK E. MOSS, Utah  
ERNEST F. HOLLINGS, South Carolina

NORRIS COTTON, New Hampshire  
THRUSTON B. MORTON, Kentucky  
HUGH SCOTT, Pennsylvania  
WINSTON L. PROUTY, Vermont  
JAMES B. PEARSON, Kansas  
ROBERT P. GRIFFIN, Michigan

FREDERICK J. LORDAN, *Staff Director*  
JAMES J. BARRY, *Assistant Staff Director*  
MICHAEL PERTSCHUK, *General Counsel*  
RALPH W. HORTON, *Assistant General Counsel*  
STANTON P. SENDER, *Transportation Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

FRANK J. LAUSCHE, Ohio, *Chairman*

VANCE HARTKE, Indiana  
HOWARD W. CANNON, Nevada  
FRANK E. MOSS, Utah  
ERNEST F. HOLLINGS, South Carolina

THRUSTON B. MORTON, Kentucky  
HUGH SCOTT, Pennsylvania  
JAMES B. PEARSON, Kansas

(II)

## CONTENTS

	Page
Opening statement by the chairman-----	1
Text of—	
S. 755-----	2
S. 756-----	5
S. 757-----	8
S. 758-----	11
Agency comments:	
Comptroller General of the United States-----	3, 7, 10, 13
Office of the Attorney General-----	4, 13
Interstate Commerce Commission-----	2, 5, 8, 10, 11
Answer to questions posed concerning S. 755, submitted to Senator Vance Hartke by the Interstate Commerce Commission-----	100
Department of Transportation-----	5

### CHRONOLOGICAL LIST OF WITNESSES

JUNE 8, 1967

William H. Tucker, Chairman, Interstate Commerce Commission, accompanied by: Richard Block, Jr., Assistant Chief, Section of Finance; Thaddeus Forbes, Deputy Director of Proceedings and Chief, Section of Finance; B. E. Stillwell, Director, Office of Proceedings; Richard J. Ferris, Assistant Director, Bureau of Accounts; Edward H. Cox, Director, Bureau of Traffic; and Boyd E. Garrett, Chief, Section of Evaluation, Bureau of Accounts-----	14
Joseph W. Engel, Ad-Hoc Pooling Committee of the Movers' & Warehousemen's Association of America, Inc.; Harold W. Breffle, president, American Security Moving & Storage Co.; John Rapp, president, Trans American Van Service, Inc.; Charles Cottilla, Plymouth Van Lines, Inc.; Arthur Morrisette, Ace Van & Storage, accompanied by Robert J. Gallagher, attorney-----	34
Lloyd H. Meyer, president, United Van Lines, Inc., accompanied by Bryce Rea, Jr., attorney-----	43
Paul Clarke, on behalf of North American Van Lines, Inc.-----	50
Charles A. Washer, transportation counsel, American Retail Federation, Hugo Alexander, American Racing Pigeon Union, Inc.; Mickey J. Russo, president, American Racing Pigeon Union, and William Indyk, Central Jersey Concourse Association-----	56

JUNE 9, 1967

Beverly Simms on behalf of Motor Carrier Lawyers Association, Washington, D.C., accompanied by Paul Coyle-----	63
James F. Pinkney, chief counsel, American Trucking Association, Inc., Washington, D.C.-----	65
Harry J. Breithaupt, Jr., general attorney, Association of American Railroads, Washington, D.C.-----	66

### ADDITIONAL INFORMATION

Anderson, Elwin F., Everett Trust & Savings Bank, Everett, Wash., letter dated June 2, 1967-----	78
Bader, Herman D., Bader Bros. Van Lines, Inc., Syosset, N.Y., statement-----	75
Beattie, Donald S., executive secretary, Railway Labor Executives' Association, letter dated June 16, 1967-----	80
Caputo, Vincent F., Director, Transportation and Warehousing Policy, DOD, letter to Senator Magnuson, November 9, 1967-----	98
Durand, J. D., general counsel, Association of Oil Pipe Lines, letter dated June 16, 1967-----	79

IV

Franzen, Gerald E., Chicago Association of Commerce & Industry, letter dated June 14, 1967-----	Page 71
Golden, G. Zan, vice president and general counsel, North American Van Lines, letter to Senator Lausche, with attachments, November 27, 1967--	98
Hamilton, Stanley, Director, Publications Staff, DOT, letter to Mr. Zan Golden, November 12, 1967-----	99
Hammond, Harold F., president, Transportation Association of America, letter to Senator Lausche, May 16, 1967-----	76
Indyk, William R., International Federation of American Homing Pigeon Fanciers, Inc., letter-----	79
Magnuson, Hon. Warren G., U.S. Senator from the State of Washington, letter to Mr. Caputo, October 30, 1967-----	98
Rapp, John J., president, Trans-American Van Service, Inc., letter dated June 14, 1967-----	72
Rea, Bryce, Jr., Rea, Cross & Kuebel, letter dated June 16, 1967-----	72
Rebman, G. M., Rebman & La Tourette, St. Louis, Mo., letter dated July 6, 1967-----	75
Russo, Mickey J., president, the American Racing Pigeon Union, letter dated June 6, 1967-----	78
Webb, Charles A., president, National Association of Motor Bus Operators, letter dated June 13, 1967-----	77

---

Opening statement by the chairman-----	83
Text of S. 913-----	83
Agency comments:	
Federal Maritime Commission-----	84
Office of the Attorney General-----	85
Comptroller General of the United States-----	85
Department of Transportation-----	85

AUGUST 9, 1967

Paul J. Tierney, Vice Chairman, Interstate Commerce Commission, Washington, D.C.-----	86
Chauncey G. Willis, president, C. G. Willis Barge Line of Paulsboro, N.J., and chairman of the executive committee, Common Carrier Conference of Domestic Water Carriers; accompanied by Peter M. Kennedy, Dominick & Dominick, 14 Wall Street, New York, N.Y.; and J. Robert Hard, attorney, American Commercial Lines, Inc., Houston, Tex-----	90

ADDITIONAL INFORMATION

Hammond, Harold, president, Transportation Association of America:	
Letter dated August 3, 1967-----	95
Letter dated October 25, 1967-----	96
Russell, Lew S., president, Tidewater Barge Lines, Inc., statement presenting views of Tidewater Barge Lines, Inc., and affiliated companies--	97

# AMENDMENTS TO THE INTERSTATE COMMERCE ACT

JUNE 8, 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.

## OPENING STATEMENT BY THE CHAIRMAN

Senator LAUSCHE. The committee is in order.

This is a hearing to be held before the Surface Transportation Subcommittee of the Committee on Commerce on four bills, S. 755, S. 756, S. 757, and S. 758, introduced at the request of the Interstate Commerce Commission by Senator Magnuson and myself.

S. 755 proposes to amend section 5(1) of the Interstate Commerce Act so as to eliminate the requirement for Commission approval of contracts, agreements, or combinations affecting the transportation of household goods to which any common carrier by motor vehicle may be a party with other such carrier or carriers for the pooling or division of traffic, service, or earnings.

S. 756 proposes to amend part II of the Interstate Commerce Act so as to authorize the Commission to exempt from the requirements of that part, or any provision thereof, such service and transportation as may be determined by the Commission to be of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

S. 757 proposes to amend section 19a to eliminate the requirements (1) that the Commission determine the present value of land; (2) determine the valuation of property held by carriers for purposes other than for use in common carrier service; (3) ascertain and report the amount and value, and disposition of aids, gifts, grants, and donations and the amount and value of concessions and allowances made by carriers in consideration thereof; and (4) make optional the requirement that the Commission keep itself informed of changes in the quantity of property of carriers, following the completion of the original valuation of such property.

S. 758 proposes to amend section 17(2) of the Interstate Commerce Act so as to authorize the Commission to delegate to qualified individual employees, including transportation economists and specialists, those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

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

If there is no objection, there will be inserted in the record at this point copies of S. 755, S. 756, S. 757, S. 758, the Commission's statements of justification for these four bills, the reports of the Comptroller General received on them, the reply of the Attorney General on S. 755 and S. 757, and the comments of the Department of Transportation on these bills.

(The material referred to follows:)

[S. 755, 90th Cong., First Sess.]

A BILL To amend section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, 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 5(1) of the Interstate Commerce Act (49 U.S.C. 5(1)) is amended by striking out the period at the end and inserting in lieu thereof a colon and the following: "Provided further, That nothing herein shall be construed as declaring unlawful or as empowering the Commission to approve and authorize any contract, agreement, or combination relating to the pooling or division of traffic, service, or earnings, or any portion thereof in the transportation of household goods to which any common carrier subject to part II may be a party with any other such carrier or carriers."*

#### POOLING AGREEMENTS OF HOUSEHOLD GOODS CARRIERS

*We recommend that section 5(1) be amended so as to exempt contracts, agreements, or combinations affecting the transportation of household goods to which any common carrier by motor vehicle may be a party with other such carrier or carriers for the pooling or division of traffic, service, or earnings.*

Cooperative practices of household goods carriers were described by the Commission in *Practices of Property Brokers*, 53 M.C.C. 633, 636-637, as follows:

The transportation of small shipments at reasonable rates and the relatively high ratio of empty-to-loaded mileage are persistent economic problems with which the household goods carriers have always been faced and which they have had to overcome. This has required constant efforts within the industry for cooperative handling of shipments. Extremes in light and heavy traffic of individual carriers are frequent and are met by arrangements whereby inactive vans and trained personnel are diverted to those carriers who are experiencing above-normal demands for service. The carriers are unable to predict in advance the amount of equipment and personnel they will need to meet demands for service. They are especially confronted with the problem of maintaining employment for personnel who have to be trained for several years before being assigned to vehicles which operate for extended periods away from their home terminals. The driver's character and their skill in handling valuable and fragile shipments are said to be more important than their ability to drive and, since the number of qualified drivers is limited, the carriers are interested in keeping them in gainful employment.

The practice of diverting small shipments from one carrier to other carriers has long been an inherent part of, and essential to, the economy and efficiency of the Nation's household-goods moving service. In many instances, economy and expeditious handling require the services of two carriers, although but seldom is joint carriage physically performed by both carriers over the highway. The services of one of the carriers may consist only of the use of its established terminal for the preparation of shipping documents, packing, and the performance of other services necessary to prepare the shipment for loading onto the line-haul vehicle. Whether or not two carriers are used is determined by the size of the shipment and the desired time of movement, and the relating of these factors to economy of operation by the booking carrier. For instance, a small shipment may be diverted, under a joint agency tariff, to a carrier satisfactory to the booking carrier which at the moment is in a position to provide immediate transportation and the use of which will save the shipper the cost of storage or the weight penalty assessed for so-called expeditious handling and obviate the operation by the booking carrier of empty return mileage. The compensation of commissions received in such cases by the booking carrier from the line-haul carrier are described as a division of the revenue based upon the performance by it of the terminal portion of the "joint carriage." Most shippers have but infrequent

need for the services of a household goods carrier and are unversed in how the carriers operate and the laws and regulations governing them. Accordingly, when a shipper requires service, he usually consults and obtains the service of a local carrier with which he is acquainted and to which he will look for redress in case the shipment is not handled satisfactorily, the local booking carrier accepting with the line-haul carrier joint responsibility under the bill of lading for the safe delivery of the shipment.

These practices provide the public with a more expeditious and economical service than would otherwise be possible, and the carriers are enabled to utilize their equipment more fully, maintain a more reasonable level of rates, hold down empty mileage, and otherwise bring stability to their operations. In short, the requirements for approval under the pooling provisions of section 5(1) of being "in the interest of better service to the public or of economy in operation" would seem to have been met generally by present cooperative practices among groups of household goods carriers.

The pooling provisions of the Act require a hearing and approval by the Commission before agreements may lawfully be entered into. Strict enforcement of this provision as to household goods carriers has not been practicable. Combinations whereby they divert, surrender, or exchange shipments, allocate or control solicitation, use service facilities and instrumentalities or employees cooperatively, and divide proceeds of diverted traffic, are so flexible that before agreements can be filed and approved, many are terminated or changed and new arrangements entered into involving new or different participating carriers.

Under arrangements with noncarriers, and compliance with the leasing rules of the Commission, carriers may obtain most or all of the advantages of pooling arrangements with carriers, without the disadvantages incident to filing applications for approval under section 5(1). The proposed exemption would place carriers on an equal basis with non-carriers in making arrangements with other carriers essential to their economical and efficient operations.

Recently, in Ex Parte No. MC-51, the Commission re-examined its authority under section 5(1) to determine the feasibility of promulgating general regulations whereby carriers would be permitted to file their pooling agreements with the Commission; and, if found to conform to the general regulations, such agreements would be considered approved unless subsequently determined to be unlawful.

While this proceeding was pending, we requested that Congress defer action on legislative proposals (S. 1146 and H.R. 5240 of the 89th Congress) previously recommended by the Commission. However, we have now determined that the rule-making proceeding was not an appropriate vehicle for alleviating the household pooling agreement problem. For this reason the Commission now renews its recommendation for legislation in this area. Attached is a draft bill which would implement the above recommendation.

A BILL To amend section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, 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 5(1) of the Interstate Commerce Act (49 U.S.C. 5(1)) is amended by striking out the period at the end and inserting in lieu thereof a colon and the following: "Provided further, That nothing herein shall be construed as declaring unlawful or as empowering the Commission to approve and authorize any contract, agreement, or combination relating to the pooling or division of traffic, service, or earnings, or any portion thereof in the transportation of household goods to which any common carrier subject to part II may be a party with any other such carrier or carriers."*

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., March 7, 1967.

B-135036.

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

DEAR MR. CHAIRMAN: Reference is made to your letter of February 22, 1967, requesting our comments on S. 755, which would amend section 5(1) of the Interstate Commerce Act, 49 U.S.C. 5(1), to exempt therefrom any contract, agreement, or combination relating to the pooling or division of traffic, service, or earnings between common carriers subject to Part II of the Interstate Commerce Act in connection with the transportation of household goods.

The bill was introduced at the request of the Interstate Commerce Commission, which in Ex Parte No. MC-51, *Pooling by Motor Carriers of Household Goods*, determined that the rulemaking proceeding was not an appropriate vehicle for authorizing and approving certain pooling agreements by common carriers by motor of household goods which agreements it considers are conducive to more expeditious and economical service to the public than otherwise would be possible.

The enactment of S. 755 would not affect the functions and operations of our Office, nor do we have any special knowledge of the need for the legislation. However, while present pooling agreements among motor carriers of household goods may bring about the beneficial results the Interstate Commerce Commission refers to, certain pooling agreements among motor carriers of household goods conceivably might unduly restrain competition or be adverse to the public interest and detrimental to the interests of the United States as the largest user of such carriers' services in transporting the household goods of its military and civilian personnel on change of station. Accordingly, we are unable to recommend approval of S. 755 in its present form.

Yet, the Interstate Commerce Commission apparently has found the procedures set out in 49 U.S.C. 5(1) as applied to at least some pooling agreements ordinarily in use in the household goods motor common carrier industry are inappropriate and unwieldy. Your Committee, therefore, may wish to consider requiring copies of all pooling agreements among common carriers by motor of household goods not previously approved by it to be filed with the Commission with authority in the Commission, on its own motion or upon complaint of persons claiming to be adversely affected by the agreement, to disapprove any such agreement which it finds to be adverse to the public interest or which will unduly restrain competition and making unlawful any such agreements not so filed or disapproved after filing by the Commission. Compare 49 U.S.C. 1382.

Sincerely yours,

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

---

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., June 20, 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. 755, a bill to amend Section 5(1) of the Interstate Commerce Act (49 U.S.C. 5(1)) to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, and for other purposes.

This bill is identical to that introduced by you in the prior Congress (S. 1146), the enactment of which this Department favored. That bill and the current one represent legislative proposals of the Interstate Commerce Commission. Under the proposed legislation the Commission would relinquish its jurisdiction over pooling activities of motor common carriers of household goods. The effect of the bill would be that the lawfulness of such activities would be determined under the antitrust laws.

The Department of Justice continues to favor enactment of this legislation.

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

Sincerely,

RAMSEY CLARK, *Attorney General.*

---

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
*Washington, D.C., June 16, 1967.*

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department on S. 755, a bill to amend section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, and for other purposes; S. 756, a bill to amend Part II of the Interstate Commerce Act, as amended, so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce;

S. 757, a bill to amend Section 19a of the Interstate Commerce Act to eliminate certain valuation requirements, and for other purposes; and S. 758, a bill to amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency.

S. 755 would authorize pooling of household goods shipments without the presently-required prior approval of the Interstate Commerce Commission. The removal of the condition of approval will provide appropriate flexibility which in turn will permit a more expeditious and economical movement of household goods, to the benefit of both the carriers and the shipping public.

S. 756 would authorize the Commission to exempt from economic regulation under Part II of the Interstate Commerce Act a motor transportation function when the Commission determines that the exemption will impair its regulatory effectiveness and the exemption will not result in undue discrimination nor be detrimental to commerce. Enactment of this legislation will permit the Commission proper latitude in removing the regulatory burden where it is not necessary to impose regulation, while at the same time providing adequate safeguards for the protection of affected parties.

S. 757 would relieve the Commission of a statutory requirement for making determinations and collecting data which is no longer necessary to the proper exercise of its regulatory functions. We agree with the Commission that these requirements can and should be eliminated.

S. 758 would authorize delegation of what are essentially administrative functions to Commission employees, a step which should permit the Commission to accomplish its responsibilities more efficiently.

The Department of Transportation therefore favors enactment of these bills.

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

Sincerely yours,

JOHN L. SWEENEY,  
*Assistant Secretary for Public Affairs.*

---

[S. 756, 90th Cong., first sess.]

A BILL To amend part II of the Interstate Commerce Act, as amended, so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 204 of the Interstate Commerce Act (49 U.S.C. 304) is amended by adding thereto the following new subsection:

“(g) Notwithstanding any other provision of this part, the Commission, upon application or on its own motion, may by order or rule exempt for the future from the requirements of this part or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any services or transportation to which this part applies, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. The Commission may attach conditions to any such exemptions and may, by order, revoke any such exemption. No order or rule of exemption or revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons. Upon revocation of any such order or rule of exemption, in whole or in part, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, held by such carrier or carriers at the time the order or rule of exemption affecting such carrier or carriers became effective.”

---

#### ELIMINATION OF UNNECESSARY MOTOR CARRIER REGULATION

*The Interstate Commerce Commission recommends that part II be amended so as to authorize the Commission to exempt from the requirements of that part, or any provision thereof, such service and transportation as may be determined by the Commission to be of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.*

At present, the for-hire motor transportation of passengers and property in interstate or foreign commerce is, with a number of exceptions specified in the

statute, subject to full economic regulation under part II of the Interstate Commerce Act. The current statutory exemptions vary in purpose, scope, and applicability, but plainly do not embrace all transportation functions which seem worthy of regulatory exemption. As a consequence, the Commission regularly is called upon to apply and enforce the requirements of part II with respect to certain motor carrier operations and activities which contribute but slightly to the national transportation system and which cannot be said to be of significance in the overall design of regulation contemplated by the Act. For example, the interstate motor movement of such commodities as homing pigeons or trash and garbage would appear to be of such nature, character, or quantity as not substantially to affect or impair effective regulation, and exemption of such transportation from regulation would in no way hinder the effectuation of the national transportation policy or affect materially the welfare of regulated transportation. Likewise, the exclusion from interstate regulation of local mass transit motor-bus operations conducted within precisely defined territorial limits would in certain circumstances appear to have little or no effect upon regulation of this segment of the for-hire industry.

While individual and specific legislative recommendations could be submitted from time to time with respect to each commodity or transportation service found by the Commission to be susceptible of statutory exemption, enactment of the proposed general exempting power is believed to be in the best interests of all concerned. Not only would such authority relieve the Commission and the affected carriers of what seems to be an undue regulatory burden, but also would tend to free the Congress of much of the legislative workload that would be encountered by a piecemeal approach. As an example, such authority probably would have eliminated the need for Public Law 88-208 (H.R. 2906) partially exempting from regulation the emergency transportation of accidentally wrecked or disabled motor vehicles. Additionally, the recommended authority would result in increased flexibility, since any exemption created thereunder would be subject to continuous administrative review and to repeal or modification upon a finding of changed circumstances.

The approach taken in this recommendation does not represent a marked departure from previous legislative techniques. Comparable exempting authority is conferred upon the Commission by section 204(a)(4a) of the Act with respect to motor carriers lawfully engaged in operation solely within a single State, and the Civil Aeronautics Board is empowered by 49 U.S.C. 1386 to establish similar exemption from air carrier economic regulation. Further, through Public Law 89-778 enacted November 6, 1966, the Federal Maritime Commission received authority from the Congress to establish similar exemptions for certain agreements under the Shipping Act, 1916 (46 U.S.C. 801 et seq.). We believe that the recommendation made herein is in harmony with the form and substantive provisions of Public Law 89-778.

Finally, to safeguard against possible abuse of the powers and privileges to be conferred upon the Commission, the draft bill imposes important limitations and conditions upon the exercise of the authority to exempt. Thus, an order of exemption may be issued or revoked only after all interested persons have been accorded a reasonable opportunity to be heard and only upon definitive Commission findings, based upon a thorough analysis of the nature, character, and quantity of the involved transportation, as to the effect which such action may have upon the transportation industry. These findings will, of course, be subject to appropriate judicial review, while still other safeguards in the bill would, upon revocation of an exemption, restore affected carriers to the status quo enjoyed by them prior to the creation of the exemption.

A primary goal of the proposed measure is to relieve both this Commission and the affected carriers of the burdens of regulation in those situations in which continued economic regulation is neither necessary nor desirable. So long as the limitations and safeguards are retained, we believe that the proposed measure would benefit the public as well as affected individuals and carriers.

Attached is a draft bill which would implement the above recommendation.

A BILL To amend part II of the Interstate Commerce Act, as amended, so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 204 of the Interstate Commerce Act (49 U.S.C. 304) is amended by adding thereto the following new subsection:

“(g) Notwithstanding any other provision of this part, the Commission, upon application or on its own motion, may by order or rule exempt for the future from

the requirements of this part or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any services or transportation to which this part applies, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. The Commission may attach conditions to any such exemptions and may, by order, revoke any such exemption. No order or rule of exemption or revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons. Upon revocation of any such order or rule of exemption, in whole or in part, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, held by such carrier or carriers at the time the order or rule of exemption affecting such carrier or carriers became effective."

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., February 13, 1967.*

B-140217.

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

DEAR MR. CHAIRMAN: Reference is made to your letters of February 2 and 7, 1967, requesting our comments on S. 756.

This bill proposes to amend section 204 of the Interstate Commerce Act, 49 U.S.C. 304, by adding thereto a new subsection (g). The new subsection would authorize the Commission upon application or on its own motion, after giving interested persons an opportunity for hearing, (1) to exempt, from the requirements of Part II of the Interstate Commerce Act, or any provision thereof or any rule or regulation prescribed thereunder, any service or transportation subject to that part where it finds such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory or be detrimental to commerce; and (2) to revoke the exemption. Upon revocation of such exemption, the bill would require the Commission to restore to the carrier or carriers affected thereby, without further proceedings, such operating authorities as were held by such carrier or carriers prior to the exemption order.

The aim of this proposal apparently is to relieve the Interstate Commerce Commission from the obligation to regulate areas of transportation having no particular effect on interstate commerce or the national transportation system, as for example, the transportation of homing pigeons, trash and garbage. See the justification for S. 1151 of the 89th Congress contained in the Congressional Record for February 17, 1965, page 2716.

If enacted, this legislation would not affect the functions of our Office or the interests of the United States as a purchaser of transportation. From a broad standpoint, we favor legislation designed to relieve the Interstate Commerce Commission of unnecessary regulatory burdens and to permit more efficacious use of its staff. We therefore would not object to favorable consideration of S. 756 by your Committee.

We note, however, that the opening phrase of S. 756 "Notwithstanding any other provision of this part," is quite broad and the authority proposed to be granted to the Interstate Commerce Commission, in exempting a particular kind of transportation from regulation, might encompass the statutory provisions and regulations pertinent to the qualifications and maximum hours of service of employees and safety of operation and equipment as set out in 49 U.S.C. 304(a)(3), 304(a)(3a), and 304(a)(5), the administration of which functions pursuant to Public Law 89-670 approved October 15, 1966, 80 Stat. 931, 940, will shortly be assumed by the new Department of Transportation.

In granting authority to the Civil Aeronautics Board to exempt air carriers from economic regulation, the Congress specifically prohibited exemption from safety requirements as to maximum flying hours, 49 U.S.C. 1386(b)(2). Section 203(b) of the Interstate Commerce Act, 49 U.S.C. 303(b), which exempts from regulation vehicles engaged in certain operations and several particular types of transportation, also is specific in continuing subjection to the safety provisions of section 204, 49 U.S.C. 304. Your Committee may wish to give consideration to the inclusion in S. 756 of a similar specific limitation relative to such safety provisions.

Sincerely yours,

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

[S. 757, 90th Cong., first sess.]

A BILL To amend section 19a of the Interstate Commerce Act to eliminate certain valuation requirements, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subsection (b) of section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a(b)) is amended as follows:

(1) In the paragraph which begins "Second", strike out "and the present value of the same".

(2) Strike out the paragraph which begins "Third" and the paragraph which begins "Fifth".

(3) In the paragraph which begins "Fourth", strike out "Fourth" and insert in lieu thereof "Third".

(b) Subsection (f) of such section 19a (49 U.S.C. 19a (f)) is amended to read as follows:

"(f) Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of the cost of all new construction, extensions, improvements, retirements, or other changes in the condition, use, and classification of the property of all common carriers as to which original valuations have been made, and may keep itself informed of current changes in quantities, costs and values of such properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary, may revise, correct, and supplement any of its inventories and valuations."

#### ELIMINATION OF UNNECESSARY VALUATION AND REPORTING REQUIREMENTS

*We recommend that section 19a be amended in the following respects: (1) to eliminate requirement that the Commission determine the present value of land; (2) to eliminate the requirement that the Commission determine the valuation of property held by carriers for purposes other than for use in common carrier service; (3) to eliminate the requirement that the Commission ascertain and report the amount, value, and disposition of aids, gifts, grants, and donations and the amount and value of concessions and allowances made by carriers in consideration thereof; and (4) to make optional the requirement that the Commission keep itself informed of changes in the quantity of the property of carriers, following the completion of the original valuation of such property.*

The purpose of this recommendation is to eliminate or make optional certain mandatory valuation requirements which are no longer considered necessary or appropriate to the proper performance of the regulatory functions of the Interstate Commerce Commission. Foremost among these are the requirements (1) that the Commission determine the present value of carrier land holdings, and (2) that the Commission keep itself informed of changes in the quantity of the property of carriers following the completion of the original valuation of such property.

The requirement that the Commission determine the present value of land was appropriate in finding original property valuations under an earlier concept which also gave consideration to the reproduction cost of property other than land. Accounting methods have changed, however, and today the concept of "reproduction cost" generally is in disuse by this Commission for rail rate making purposes. In this respect, it is significant that the Commission, in establishing a base for measuring rate of return for railroads, now uses the *original cost* of property other than land less depreciation thereon as shown on the books of the carrier, and to this sum is added an allowance for working capital and the estimated *present value* of land. Clearly, this formula would be more logical and consistent if the original cost of land were substituted for a determination of present value.

There has been considerable latitude for a number of years with respect to what might properly be considered in arriving at a rate base, and the wide choice available to regulatory agencies in this connection has been recognized by the Supreme Court. In *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 586 (1942), the Court held that "The Constitution does not bind ratemaking bodies to the service of any single formula or combination of formulas \* \* \*," and in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 602 (1944), the Court amplified its opinion in the *Natural Gas Pipeline Co.* case by holding

that "it is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. \* \* \*"

In the absence of a continuous need for present value of land data by the Commission, it is not in the public interest to spend large sums of money to develop the information and keep it reasonably current as contemplated by the present statutory requirement.

At the present time, by virtue of regulations issued by the Commission pursuant to the mandatory requirement in section 19a(f) of the Interstate Commerce Act, railroads and pipeline companies must report annually the number of units of property acquired or retired during the year. This information is utilized in determining the cost of reproduction of such property. As indicated above, however, the concept of reproduction value is no longer the dominant consideration in the determination of a rate base for railroads; and, in this circumstance, we believe that this reporting requirement represents an unnecessary burden upon rail carriers.

The situation with respect to the reporting of units of property changes by pipeline carriers, however, is unlike that of the railroads. The Commission finds property valuations for pipeline carriers each year; and, in this process, property units are used in the development of the cost of reproduction—new, an element which is considered by the Commission in arriving at rate bases for pipelines. For this reason, we recommend that, in lieu of repeal, the mandatory requirement in section 19a(f) be made optional as the needs of the Commission dictate.

The Commission has made adequate provision for the proper accounting and financial reporting of noncarrier property, and the value of such property is not considered for valuation or rate-making purposes. Therefore, we see no need to value noncarrier property as is presently required by the third subparagraph of section 19a(b) of the Act.

Insofar as aids, gifts, grants, and donations are concerned, practically all property in this category is of record in the original valuations found by the Commission for railroads. The significance of this information has diminished over the years, and carriers have long since discontinued the granting of concessions in the form of land-grant rates in consideration of such gratuities. Accordingly, the draft bill would also repeal subparagraph "Fifth" of section 19a(b) of the Act.

Enactment of this recommendation would, in our opinion, relieve the Commission of unnecessary valuation and reporting requirements, and, in principal effect, would eliminate a statutory requirement no longer necessary nor feasible because of the magnitude of the undertaking necessary to keep reasonably current.

A BILL To amend section 19a of the Interstate Commerce Act to eliminate certain valuation requirements, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subsection (b) of section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a(b)) is amended as follows:

(1) In the paragraph which begins "Second," strike out ", and the present value of the same".

(2) Strike out the paragraph which begins "Third" and the paragraph which begins "Fifth".

(3) In the paragraph which begins "Fourth", strike out "Fourth" and insert in lieu thereof "Third".

(b) Subsection (f) of such section 19a (49 U.S.C. 19a(f)) is amended to read as follows:

"(f) Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of the cost of all new construction, extensions, improvements, retirements, or other changes in the condition, use, and classification of the property of all common carriers as to which original valuations have been made, and may keep itself informed of current changes in quantities, costs and values of such properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary, may revise, correct, and supplement any of its inventories and valuations."

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., February 15, 1967.*

B-149219.

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

DEAR MR. CHAIRMAN: We have your letter of February 7, 1967, in which you asked for our comments on S. 757.

This bill, part of the 1967 legislative program of the Interstate Commerce Commission, incorporates a recommendation made several times since 1961; three bills were introduced to effect it: S. 3420, 87th Cong. 2nd Sess.; S. 675, 88th Cong. 1st Sess.; and S. 1149, 89th Cong. 1st Sess. The Congress acted on none of these bills.

S. 753, if enacted, would relieve the Commission of certain mandatory valuation requirements and would free the railroads from performing some costly and time-consuming reporting tasks by appropriate amendment of section 19a of the Interstate Commerce Act, 49 U.S.C. 19a. In justification, the Commission has explained that the valuation and reporting requirements proposed to be deleted are no longer necessary.

The subject matter of S. 753 does not have any bearing upon the functions and operations of our Office. Since it would apparently eliminate some unnecessary work and record keeping, we do not object to its favorable consideration by your Committee.

Sincerely yours,

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

---

INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., June 26, 1967.*

HON. FRANK J. LAUSCHE,  
*U.S. Senate,  
 Washington, D.C.*

DEAR SENATOR LAUSCHE: This responds to your request of June 21, 1967, forwarded to us by Stanton P. Sender, Transportation Counsel for the Subcommittee, asking for our comments on the matters raised in the letter to you, dated June 16, 1967, from Mr. J. Donald Durand, General Counsel, Association of Oil Pipelines in reference to S. 757. Mr. Durand's letter states that the Association would have no objection to this bill provided that it is clear that the Commission intends to continue its present program of ascertaining the valuation of oil pipelines on an annual basis.

As indicated in my testimony before the Subcommittee on June 8, 1967, on this bill, our purpose in proposing this legislation is to make optional certain requirements which are now mandatory under section 19a(f) of the Act. I also pointed out that, in the event Congress acted favorably on S. 757, the Commission would be in a position to relieve rail carriers of filing under section 19a(f) very voluminous annual reports of property changes which are not presently being used by us.

With respect to pipeline carriers subject to section 19a of the Act, the Commission still has a continuing need for annual reports of property changes. These carriers have submitted annual reports for each year subsequent to the date of their basic valuation. Using this and other data, the Commission has issued a valuation report on each oil pipeline carrier annually. During the current fiscal year, we have processed 72 such annual valuation reports of property changes for pipeline carriers and issued a valuation docket in each instance. For the reasons stated in my testimony before the Subcommittee, it is our intention to continue this work in the future.

Sincerely yours,

WILLIAM H. TUCKER, *Chairman.*

[S. 758, 90th Cong., first sess.]

A BILL To amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(2) of the Interstate Commerce Act (49 U.S.C. 17(2)), is amended—*

(1) by inserting immediately after the second parenthetical expression therein the following: “, and the Commission may also assign or refer those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits to eligible individual employees of the Commission,”

(2) by striking the second sentence and substituting in lieu thereof the following: “The following classes of employees shall be eligible for designation by the Commission to serve on such boards, or to receive individual delegations: directors or assistant directors of bureaus, examiners, chiefs and assistant chiefs of sections, chiefs and assistant chiefs of branches, attorneys, accountants, transportation economists and specialists, and such other qualified persons as the Commission may designate.”

#### DELEGATION OF AUTHORITY TO QUALIFIED INDIVIDUAL EMPLOYEES

*We recommend that section 17(2) be amended so as to authorize the Commission to delegate to qualified individual employees, including transportation economists and specialists, those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.*

In addition to a voluminous number of formal cases, the Commission's responsibilities under the Act extend to numerous matters of relatively routine and specialized nature. For example, matters relating to extensions of time for filing annual, periodical, or special reports; rejection of tariff publications for failure to give lawful notice or failure to comply with the Commission's regulations; and orders assigning cases for hearing, extending dates for the filing of pleadings and postponing compliance dates. Except with respect to assignments to a Division or an individual Commissioner, under the present provisions of section 17(2), the Commission may delegate such functions only to three-man boards, and the only employees eligible to serve on these boards are “examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys.”

When applied to matters of the type described above, we believe that the mandatory requirements of section 17(2) are unnecessary and unduly limit our authority in what essentially is an administrative area.

The proposed recommendation has been narrowly drawn so as to affect only the processing of matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.<sup>1</sup> In this limited area the draft bill (1) would authorize the Commission to refer such matters to eligible individual employees, and (2) would expand the list of “eligible” employees to include assistant chiefs of sections, chiefs and assistant chiefs of branches, accountants, transportation economists and specialists, and other qualified persons designated by the Commission.

In our judgment, enactment of the proposed legislation would enable us to utilize key employees more effectively and would contribute significantly to improved overall administrative efficiency. In this respect, a preliminary estimate indicates that as many as 22,000 matters of a routine or specialized nature could be handled each year by qualified Commission employees.

#### APPENDIX

##### EXAMPLES OF COMMISSION WORK, BUSINESS AND FUNCTIONS WHICH COULD BE DELEGATED TO INDIVIDUAL EMPLOYEES

###### *Office of proceedings*

1. Areas where orders now are entered in the name of a single Commissioner or Division I, such as orders assigning cases for hearing, orders extending dates for

<sup>1</sup> Matters of a type included in this category, together with brief comments pertaining thereto, are listed in an attached appendix.

the filing of pleadings, orders postponing compliance dates, effective dates, and orders authorizing the changing of name of a carrier, etc.

2. Non-contested motor, water and freight forwarder application cases of the type now handled by Operating Rights Board No. 1.

Item No. 1 would relieve Commissioners of the possibility of dealing personally with up to 10,000 items a year. Item No. 2 appears desirable since actions of Board No. 1, about 1200 a year, are seldom questioned by the filing of petitions for reconsideration, and it is believed that the nature of the cases is such that delegations to an individual would be just as effective.

#### *Bureau of Accounts*

1. Authority to permit the use of prescribed accounts which by provisions of their own texts require special authority.

2. Authority to permit departures from general rules prescribing uniform systems of accounts.

3. Authority to prescribe by order, rates of depreciation to be used by individual carriers by railroad, water, and pipeline.

4. Authority to issue special authorizations permitted by the prescribed regulations governing the destruction of records of carriers.

5. Annual valuation of pipelines.

6. Approval of protective service contracts.

It is apparent that matters arising under items 1 through 6 (about 125 a year) are of a highly technical nature; and in this circumstance, we believe that the professional judgment of the bureau director or qualified members of his staff could be relied upon for their disposition.

7. Matters relating to annual, periodical or special reports of carriers, lessors, brokers, freight forwarders, and other persons under Parts I, II, III and IV, presently assigned to Division 2, for example; approval of changes in the reporting forms and other requirements which often are made to conform them to corresponding changes in the Commission's accounting rules governing the respective types of carriers.

8. Extensions of time for filing annual, periodical, or special reports; exemption of individual carriers and others from reporting requirements now assigned to the Vice-Chairman.

Items 7 and 8 are routine in nature. For example, the extension of filing dates is essentially an administrative matter. These delegations would relieve Division 2 of the necessity of passing upon some 25 report matters each year, and the Vice-Chairman of acting on 200 applications per year in matters currently assigned to him.

#### *Bureau of Economics*

Matters of access to waybills or photostat copies thereof.

#### *Bureau of Operations and Compliance*

Authority for District Supervisors to approve one-time shipment motor carrier temporary authorities, in bona fide emergencies, in the field.

In about 100 cases annually, authorization is given for one-time shipments in severe emergencies; e.g., replacement parts for a transformer which has interrupted electrical power in a community; a bridge span portion to repair a bridge closed to traffic until repaired.

#### *Bureau of Traffic*

Approval of special permission applications, now handled by the Special Permission Board, consisting of three members.

There are about 10,000 of these items coming before the Special Permission Board each year. If this work is delegated to individuals, it probably would be divided among as many as three persons because of the volume. However, rather than have two or three board members look at each request for special permission (e.g., each board member now reviews about 6,700 a year), each of three individual delegates would look at one third of the total number or about 3,300.

A BILL To amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(2) of the Interstate Commerce Act (49 U.S.C. 17(2)), is amended—*

(1) by inserting immediately after the second parenthetical expression therein the following: “, and the Commission may also assign or refer those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits to eligible individual employees of the Commission,”

(2) by striking the second sentence and substituting in lieu thereof the following: “The following classes of employees shall be eligible for designation by the Commission to serve on such boards, or to receive individual delegations: directors or assistant directors of bureaus, examiners, chiefs and assistant chiefs of sections, chiefs and assistant chiefs of branches, attorneys, accountants, transportation economists and specialists, and such other qualified persons as the Commission may designate.”

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., February 15, 1967.*

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

DEAR MR. CHAIRMAN: Reference is made to your letter of February 7, 1967, requesting our comments on S. 758, which would amend section 17(2) of the Interstate Commerce Act (49 U.S.C. 17(2)) to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency by permitting the Commission to assign or refer, with certain exceptions, any of its work, business or functions in matters which have not involved the taking of testimony at a public hearing, or the submission of evidence by opposing parties in the form of affidavits, to individual Commission employees of particular classes or such other qualified employees as it may designate. Such employees would also be eligible for assignment to boards through which the Commission performs certain of its work.

The enactment of S. 758 would not affect the functions and operations of our Office, nor would it adversely affect the interests of the United States as a user of transportation. It apparently would enable the Commission to utilize its qualified employees more effectively in the handling of routine or specialized matters with the purpose of contributing to improve over-all administrative efficiency and, therefore, we have no objection to favorable consideration of S. 758.

Sincerely yours,

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

---

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., April 12, 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. 757, a bill “To amend section 19a of the Interstate Commerce Act to eliminate certain valuation requirements, 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 make no comment concerning it.

Sincerely,

RAMSEY CLARK, *Attorney General.*

Senator LAUSCHE. The first witness this morning will be Chairman Tucker of the Interstate Commerce Commission.

Mr. Tucker, you may proceed.

STATEMENT OF WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, WASHINGTON, D.C.; ACCOMPANIED BY RICHARD BLOCK, JR., ASSISTANT CHIEF, SECTION OF FINANCE, OFFICE OF PROCEEDINGS; THADDEUS FORBES, DEPUTY DIRECTOR OF PROCEEDINGS AND CHIEF OF SECTION OF FINANCE; B. E. STILLWELL, DIRECTOR, OFFICE OF PROCEEDINGS; RICHARD J. FERRIS, ASSISTANT DIRECTOR, BUREAU OF ACCOUNTS; EDWARD H. COX, DIRECTOR, BUREAU OF TRAFFIC; AND BOYD E. GARRETT, CHIEF, SECTION OF VALUATION, BUREAU OF ACCOUNTS

Mr. TUCKER. I will discuss each bill, if it please the Senator, and stop as we did before.

Before I begin my testimony, I have a number of staff officials who have been with the Commission for a great deal of time, ranging from 15 to 41 years. All four of these technical bills stem from the sum total of their experience in working day by day with the problems that give rise to our hearing today, and I trust the chairman will allow me to have the gentlemen participate on the basis of their experience.

Senator LAUSCHE. I believe it would be well for the record to have each one state his name and length of service and in which division he is now working.

Mr. BLOCK. Richard Block, Jr., 31 years with the Commission, Assistant Chief, Section of Finance in the Office of Proceedings.

Mr. FORBES. Thaddeus Forbes, 21 years service, Deputy Director for Proceedings and Chief of the Section of Finance.

Mr. STILLWELL. B. E. Stillwell, 41 years of service, Director of the Office of Proceedings.

Mr. FERRIS. Richard J. Ferris, Assistant Director, Bureau of Accounts, 41 years of service.

Mr. Cox. Edward H. Cox, Director of the Bureau of Traffic, 40 years of service.

Mr. GARRETT. Boyd E. Garrett, Chief, Section of Evaluation, Bureau of Accounts, 25 years of service.

Senator LAUSCHE. I would like to put one question to you. There is a tremendous quantity of experience among these several men. Are they all in accord with the recommendations of the Commission respecting these bills?

Mr. TUCKER. Yes, sir. More than that, these bills actually stem from their recommendations and their experience. They were initiated by these men and presented to the Commission, where we evaluated them and made our own recommendations based on their advice.

Senator LAUSCHE. All right, proceed.

Mr. TUCKER. As I said, I underestimated the years of experience. I should have said 20 to 40 years of experience.

Senator LAUSCHE. It really makes you vibrate a bit to get this information about the length of service they have had with the Government.

Mr. TUCKER. Thank you, sir.

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

For convenience I will discuss each of these four bills separately, beginning with S. 755, which exempts carriers of used household goods from the pooling provisions of section 5(1) of the act.

The transportation of small shipments at reasonable rates and the relatively high ratio of empty-to-loaded mileage are persistent economic problems with which the household goods carriers have always been faced and which they have had to overcome. This has required constant efforts within the industry for cooperative handling of shipments. Extremes in light and heavy traffic of individual carriers are frequent and are met by arrangements whereby inactive vans and trained personnel are diverted to those carriers who are experiencing above-normal demands for service. The carriers are unable to predict in advance the amount of equipment and personnel they will need to meet demands for service. They are usually confronted with the problem of maintaining employment for personnel who have to be trained for several years before being assigned to vehicles which operate for extended periods away from their home terminals. The driver's character and his skill in handling valuable and fragile shipments is as important as his ability to drive.

The practice of channeling these small shipments of household goods from one carrier to other carriers has long been an inherent part of, and essential to, the economy and efficiency of the Nation's household-goods moving service.

In many instances, economical and expeditious handling require the services of two carriers, although the joint carriage is seldom physically performed by both carriers over the highway. The services of one of the carriers may consist only of the use of its established terminal for the preparation of shipping documents, packing, and the performance of other services necessary to prepare the shipment for loading onto the line-haul vehicle.

Whether or not two or more carriers are used is determined by the size of the shipment and the desired time of movement, and of course, the relation of these factors to economy of operation by the booking carrier. For instance, a small shipment may be diverted, under a joint agency tariff, to a carrier satisfactory to the booking carrier which at the moment is in a position to provide immediate transportation and the use of which will save the shipper the cost of storage or the weight penalty assessed for so-called expeditious handling and obviate the operation by the booking carrier of empty return mileage.

The compensation of commissions received in such cases by the booking carrier from the line-haul carrier are described as a division of the revenue based upon the performance by it of the terminal portion of the "joint carriage."

Senator LAUSCHE. Now, at this point, I think it would be well for the purpose of the record for you to define the terms "booking carriers" and "line-haul carriers."

Mr. TUCKER. I think Mr. Stillwell or Mr. Cox could give a better definition.

Senator LAUSCHE. Define what is meant by "booking carriers."

Mr. STILLWELL. A booking carrier is a household-goods carrier who actually books the shipment. In other words, he arranges, takes on the responsibility of moving the household goods for some particular person or concern.

Senator LAUSCHE. What is the definition of a "line-haul carrier?"

Mr. STILLWELL. Line-haul carrier is the authorized carrier who performs the line-haul transportation between cities or other points.

Senator LAUSCHE. Good enough.

Mr. TUCKER. Most shippers have only infrequent need for the services of a household goods carrier. They are therefore unversed in how the carriers operate and the laws and regulations which govern them. Accordingly, when a shipper requires service, he usually consults and obtains the services of a local carrier with which he is acquainted and to which he will look for redress in case the shipment is not handled satisfactorily. The local booking carrier, together with the line-haul carrier joint, accepts responsibility under the bill of lading for the safe delivery of the shipment.

These practices provide the public with a more expeditious and economical service than would otherwise be possible. The carriers are enabled to utilize their equipment more fully, maintain a more reasonable level of rates, hold down empty mileage, and otherwise bring stability to their operations. In short, the requirements for approval under the pooling provisions of section 5(1) of the act of being "in the interest of better service to the public or of economy in operation" would seem to have been met generally by present cooperative practices among groups of household goods carriers.

The pooling provisions of the act require a hearing and approval by the Commission before agreements may lawfully be entered into, Mr. Chairman. Strict enforcement of this provision as to household goods carriers has not been practicable as far as we are concerned. Combinations whereby they divert, surrender, or exchange shipments, allocate or control solicitation, use service facilities and instrumentalities or employees cooperatively, and divide proceeds of diverted traffic, are so flexible that before agreements can be filed and approved, many are terminated or changed and new arrangements entered into involving new or different participating carriers.

In other words, this practice is of such a flowing nature and spasmodic in character with regard to some carriers that it makes it awfully difficult to go through with the requirements of a hearing with regard to each pooling agreement, Mr. Chairman.

Under arrangements with noncarriers, and compliance with the leasing rules of the Commission, carriers may obtain most or all of the advantages of pooling arrangements with carriers, without the disadvantages incident to filing applications for approval under section 5(1). The proposed exemption would place carriers on an equal basis with noncarriers in making arrangements with other carriers essential to their economical and efficient operations.

Recently, in *Ex Parte No. MC-51*, the Commission reexamined its authority under section 5(1) to determine the feasibility of promulgating general regulations whereby carriers would be permitted to file their pooling agreements with the Commission and, if found to conform to the general regulations, these agreements would be considered approved unless subsequently determined to be unlawful.

While this proceeding was pending, we requested that Congress defer action on legislative proposals (S.1146 and H.R. 5240 of the 89th Cong.) previously recommended by the Commission.

However, we have now determined that the rulemaking proceeding was not an appropriate vehicle for alleviating the household pooling

agreement problem. For this reason the Commission has renewed this recommendation for legislation in this area.

That completes my testimony on S.755.

Senator LAUSCHE. Are you able to state, when the hearings were held in the last session of Congress, whether any opposition was interposed to this proposal?

Mr. TUCKER. I do not believe there was.

Senator LAUSCHE. If you do not know.

Mr. TUCKER. I do not know. I was just checking with my colleagues.

Senator LAUSCHE. If you do not know, we will have to check it out.

Mr. TUCKER. I do not know.

Senator LAUSCHE. That is, it is your opinion and the opinion of your associates that the requirement that hearings be had and decisions made are not necessary to protect the public interest in these pooling arrangements.

Mr. TUCKER. That is correct, sir.

Senator LAUSCHE. Is there any method in which you would have jurisdiction to check into a matter where it is brought to your attention that a pooling arrangement was bad after it was filed and approved by you?

Mr. TUCKER. Yes, sir. We would still have jurisdiction over the practices. This would only eliminate the requirement that we have a hearing.

Senator LAUSCHE. This would only deal with procedure?

Mr. TUCKER. Yes.

Senator LAUSCHE. But the power to act in the interest of the general public and the shipper would still be with you so that you could in the end control or eliminate improper pools.

Mr. TUCKER. Yes and we would continue to do that under our enforcement responsibility.

Senator LAUSCHE. Now you can go to S. 756.

Mr. TUCKER. Yes, sir. Thank you.

The S. 756, Mr. Chairman, amends section 204 of part II of the act so as to authorize the Commission, upon application or on its own initiative after hearing, to exempt for the future from the provisions of part II, and provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any services or transportation by carriers subject to part II where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

At present, the for-hire motor transportation of passengers and property in interstate or foreign commerce is, with a number of exceptions specified in the statute, subject to full economic regulation under part II. The present statutory exemptions, set forth in section 203(b) of the act, vary in purpose, scope, and applicability. It is clear, however, that these specific exemptions do not embrace all transportation functions performed by carriers subject to part II of the act which might be worthy of exemption from some or all aspects of the Commission's economic regulation.

As a consequence of the comprehensive coverage of part II, except for those functions which are specifically exempt by various provisions of the act, the Commission is regularly called upon to apply and enforce the requirements of the act to certain motor carrier operations which,

although providing useful and needed service, contribute little to the Nation's transportation system as a whole and which cannot be said to be of significance in the overall design of regulation contemplated by the act; for example, the interstate motor carrier transportation of such commodities as homing pigeons, and trash and garbage. The exemption of these and other commodities whose transportation characteristics are so unique or highly specialized or would otherwise appear to be of such a nature, character, or quantity that exemption in whole or in part from the requirements of part II or any of the Commission's rules and regulations issued thereunder would in no way hinder or undermine the effectuation of the goals of the national transportation policy. Such exemption, under the restricted approach of this bill would not materially affect the economic welfare of those motor carriers who transport the bulk of the Nation's freight moving by such carriers.

Similarly, the exclusion from certain aspects of interstate regulation of motorbus operations with interstate urban or metropolitan areas now conducted within precisely defined areas or territorial limits could be accomplished under certain circumstances with little or no economic effect on this segment of the industry. In this regard, we would point out the Congress has already exempted certain operations of this type from the Commission's regulation in approving certain bistate or multistate compacts for the development of passenger transportation services and facilities for contiguous metropolitan areas which spread over two or more States. For example, in Public Law 89-599 (S. 3051), granting the consent of Congress to a compact between the States of Kansas and Missouri creating the Kansas City Area Transportation District and Kansas City Area Transportation Authority, operations conducted by the transportation authority were made expressly exempt from the provisions of the Interstate Commerce Act. Under the provisions of this bill such express exemptions, insofar as the operations in question might fall within part II, would not be necessary since the Commission itself could grant such an exemption.

While individual and specific legislative recommendations could be submitted from time to time to the Congress with respect to each commodity or transportation found by the Commission to be susceptible of statutory exemption, enactment of the proposed general exempting power is believed by us to be in the best interests of all concerned. Such authority would relieve the Commission and the affected carriers of an undue regulatory burden, and also would tend to free the Congress of much of the legislative workload that would be encountered by a piecemeal approach. As a further example, such authority probably would have eliminated the need for Public Law 88-208—H.R. 2906—partially exempting from regulation the emergency transportation of accidentally wrecked or disabled motor vehicles. Additionally, the recommended authority would result in increased flexibility, since any exemption created thereunder would be subject to continuous administrative review and to repeal or modification upon a finding of changed circumstances.

The approach taken in this recommendation does not represent a marked departure from previous legislative techniques. Comparable exempting authority is conferred upon the Commission by section 204(a) (4a) of the act with respect to motor carriers lawfully engaged

in operation solely within a single State, and the Civil Aeronautics Board is empowered by 49 U.S.C. 1386 to establish similar exemption from air carrier economic regulation. Further, through Public Law 89-778 enacted November 6, 1966, the Federal Maritime Commission received authority from the Congress to establish similar exemptions for certain agreements under the Shipping Act of 1916 (46 U.S.C. 801 et seq.). We believe that the recommendation made herein is in harmony with the form and substantive provisions of Public Law 89-778.

To safeguard against possible abuse of the powers and privileges to be conferred upon the Commission, the draft bill imposes important limitations and conditions upon the exercise of the authority to exempt. Thus, an order of exemption in this situation may be issued or revoked only after all interested persons have been accorded a reasonable opportunity to be heard and only upon definitive Commission findings, based upon a thorough analysis of the nature, character, and quantity of the involved transportation, and the effect which such action may have upon other carriers. These findings would, of course, be subject to appropriate judicial review, while still other safeguards in the bill would, upon revocation of an exemption, restore affected carriers to the status quo enjoyed by them prior to the creation of the exemption.

Senator LAUSCHE. In regard to the restoration of any operating rights the carrier had prior to the time the operation in question was exempted by the Commission.

Mr. TUCKER. A primary goal of the proposed measure is to relieve both this Commission and the affected carriers of the burdens of economic regulation in those situations in which continued economic regulation is neither necessary nor desirable. So long as the limitations and safeguards I referred to are retained, Mr. Chairman, we believe that the proposed measure would benefit the public as well as the individuals and carriers involved.

As I pointed out, this legislation was proposed as a result of the long experience of the men who deal with this problem in day-to-day activities. It also is a policy well known to the committee, which the Commission has pursued for many, many years. We have come before this committee many, many times and asked to be relieved of regulations where we felt it was not in the public interest to continue that. That ends my statement on this bill.

Senator LAUSCHE. Now, the purpose of S. 756 is to give the Commission the power on its own action or upon application to exempt from the operations of the Interstate Commerce Act those services which do not substantially affect the public interest. Is that correct?

Mr. TUCKER. That states the problem quite well.

Senator LAUSCHE. Now, the bill reads:

Notwithstanding any other provision of this part, the Commission, upon application or on its own motion, may by order or rule exempt for the future from the requirements of this part or any provision thereof, or any rule, regulation, term, condition, or limitations prescribed thereunder, any services or transportation to which this part applies, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

In other words, you have to find that (1) such exemption will not substantially impair effective regulation by the Commission; (2) will

not be unjustly discriminatory; and (3) will not be detrimental to commerce?

Mr. TUCKER. Yes, sir. We would have to make all findings in every case where we exempted any service or transportation.

Senator LAUSCHE. Now, the bill further provides, so as to protect other interests:

No order or rule of exemption or revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. That enables all interested persons, competitors, and otherwise, to be heard in accordance with your general rules on who or who may not become party.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Now, the bill has a further provision, and I read:

Upon revocation of any such order or rule of exemption, in whole or in part, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, held by such carrier or carriers at the time the order or rule of exemption affecting such carrier or carriers became effective.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. The language which I just read gives you the ability to restore the status quo as it existed at the time the exemption was granted.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Now, in summary, is it fair to say that prohibition against discrimination, prohibition against conduct which is detrimental to commerce, and prohibition against the impairment of effective regulation by the Commission is provided in this bill?

Mr. TUCKER. Yes, sir. And that, we feel, gives everyone the safeguards that would be needed from any arbitrary action by the Commission.

Senator LAUSCHE. All right. You may proceed to the next bill.

Mr. TUCKER. Thank you. The third bill, S. 757, amends in four respects section 19a of the act, sometimes known as the Valuation Act of 1913, and I want to emphasize the date of this act. These amendments to section 19a are designed—

(1) To eliminate the requirement that the Commission determine the present value of land;

(2) To eliminate the requirement that the Commission determine the valuation of property held by carriers for purposes other than for use in common carrier service;

(3) To eliminate the requirement that the Commission ascertain and report the amount, value, and disposition of aids, gifts, grants, and donations to carriers and the amount and valuation of concessions and allowances made by carriers in consideration thereof; and

(4) To make optional the requirement that the Commission keep itself informed of changes in the quantity of the property of carriers, following the completion of the original valuation of such property.

The purpose of this recommendation is to eliminate or make optional certain mandatory valuation requirements which are no longer

considered necessary or appropriate to the proper performance of the regulatory functions of the Commission.

And, to be quite candid, Mr. Chairman, certain responsibilities we have been unable to carry out due to the lack of resources for many, many years.

The Valuation Act was originally enacted out of concern over the lack of any definitive knowledge as to the actual value of the physical properties owned or used by the Nation's railroads. The purpose of the act, among other things, was to establish an authoritative valuation of the carrier's properties which in turn could be used as a guide for the imposition of fair and uniform State taxation of railroad property, provide a basis for the more effective administration of the carriers' depreciation accounts, and facilitate sound judgment as to the extent and propriety of railroad capitalization. Although originally directed at the railroads, this section also applies to other carriers subject to part I of the act, the most important of these being common carrier oil pipeline companies. Above all, the most important purpose of valuation was its use in maximum rate regulation because of the then general rule that rates must be set so as to allow a carrier a fair return on the investment value of their properties. The standard for investment value was then either the ascertainable original cost of the property or its reproduction, new, cost, depending on the circumstances. This task became highly important with enactment of the Transportation Act of 1920 which, among other things, included the fair return on investment standard as the rule of ratemaking in section 15a of the act.

Between 1916 and 1933, the Commission undertook the task of determining, in accordance with many criteria and requirements of section 19a, the value of the Nation's railroads at a cost to the Commission of some \$46 million. Although we have attempted in subsequent years to keep these records as current as possible, as I indicated earlier, Mr. Chairman, our limited resources have not permitted us to engage in the same extensive fieldwork and actual physical inventory of the carriers' property as in the past. In addition, because of more effective accounting regulation, changes in the act, and liberalization of the former rule that rates must be directly related to a definite valuation base have made this work far less essential than at the time of the enactment of this section. In particular, the rule of ratemaking requiring that rates be related to a fair return on their investment base has been replaced by the present section 15a. Competition, particularly that from other modes of transportation, has eliminated the danger that railroad rates will generate an excessively high return on investment.

With this background, I would like to briefly touch upon each of the four changes in section 19a which are made by this bill. For the convenience of the subcommittee, we have attached exhibit A to my statement showing the pertinent parts of this section which are amended by S. 757.

First, this bill would repeal the requirement that the Commission determine the "present value of land" used in common carrier service.

This requirement was appropriate in finding original property valuations, which we did, under an earlier concept of valuation which required consideration to the "reproduction cost" of property other

than land. Today the concept of "reproduction cost" generally is in disuse by this Commission for rail ratemaking purposes. In this respect, it is significant that the Commission, in establishing a base for measuring rate of return for railroads, now uses the original cost of property (other than land) less depreciation thereon as shown on the books of the carrier, and to this sum is added an allowance for working capital and the estimated original cost of land.

There has been considerable latitude for a number of years with respect to what might properly be considered in arriving at a rate base, and the wide choice available to regulatory agencies in this connection has been recognized by the Supreme Court. In *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 602 (1944), the Court stated that "it is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. \* \* \*"

In the absence of a real need for determining present value of land data by the Commission, it is not in the public interest to spend large sums of money to develop the information and keep it reasonably current as contemplated by the present statutory requirement.

May I respectfully suggest that it is difficult to obtain these large budget figures.

Senator LAUSCHE. The first change is that the bill would repeal the requirement that the Commission determine the present value of land used in common carrier service. Does the present law direct at what intervals the Commission shall determine the present value of the land?

Mr. TUCKER. No, sir.

Senator LAUSCHE. That is left discretionary with the Commission?

Mr. TUCKER. Yes, sir. We have the obligation to keep current on that, and we are not current.

Senator LAUSCHE. What have you construed the word, "to keep current," to mean?

Mr. TUCKER. Those are my words, not the words in the act, sir.

Senator LAUSCHE. Can any one of you tell me what you feel you would have to do in order to comply with the law, the present law?

Mr. FERRIS. I think, Senator, there is some discretion in the way the statute now reads. But in application in a major railroad rate case—such as this general rate increase case now before the Commission—we could be asked to determine for the railroad involved the present value of their land used in common carrier service. Of course, we would use certain criteria. We do have the original records, and so forth. It would be a question of bringing up to date the basic information that we now have, which again would be a very, very difficult task for us to do.

Senator LAUSCHE. All right. Proceed to your next change.

Mr. TUCKER. The second change would delete the paragraphs in section 19a which begin "Third" and "Fifth," dealing with the requirements that the Commission (1) ascertain the value of property held by carriers for noncarrier purposes and (2) ascertain the values of gifts, donations, and grants to carriers.

Although the need for ascertaining the value of property not used in common carrier service was once important, this no longer is true.

Senator LAUSCHE. Why was it once important?

Mr. TUCKER. It was once important because of the rate making concept of some 30 or 40 years ago, but it is not important today in view of the ratemaking concept presently in force, Mr. Chairman.

Senator LAUSCHE. Years ago in fixing the rates of return on the capital investment, did they include the capital structures, properties that were not used in the transportation service?

Mr. TUCKER. Those properties would be considered.

Mr. FERRIS. They would be considered to the extent, Senator, they were not used as part of the capitalization value applied to determine a reasonable rate of return to the railroads. But many of these land acquisitions involved the acquisition of land that was needed for common carrier purposes and land that was not; excess land so to speak. Consequently, in order to establish what the value of the common carrier land was, we necessarily had to establish also what the value of the nontransportation land was. This was an exceedingly difficult valuation problem.

Senator LAUSCHE. And what is your reasoning justifying the elimination of the requirements?

Mr. FERRIS. We have found over the years that the same difficulties of determining the present value of land used in the common carrier service also apply with respect to land not used in common carrier services. Exactly the same difficulties would be encountered. We do not have the staff and we do not feel that based on what it would cost to develop this information that the cost would be in any degree commensurate with the Commission's use and need of this evaluation of noncarrier property.

Mr. TUCKER. The Commission has made adequate provision for the proper accounting and financial reporting of noncarrier property, and the value of such property is not now considered necessary for valuation or ratemaking purposes. Therefore, we see no need to value noncarrier property as is presently required by the third paragraph of this section.

Senator LAUSCHE. Why is it not?

Mr. TUCKER. We feel, Mr. Chairman, that we have a proper basis in the reports that the carriers are required to file with us. Therefore, we no longer feel these other things are necessary.

Senator LAUSCHE. That is the value of such property which is not used in the transportation service is not now considered necessary for valuation or ratemaking purposes?

Mr. TUCKER. Well, that is right, Senator. We get information from our accounting requirements that is adequate to get a good general picture of the situation.

Insofar as aids, gifts, grants, and donations are concerned, practically all property in this category is of record in the original valuations found by the Commission for railroads. The significance of this information has diminished over the years. The carriers have long since discontinued the granting of concessions in the form of land-grant rates in consideration of such gratuities. Accordingly, we believe that this requirement should be repealed.

The fourth change, in section (b) of this bill, revises section 19(f) to permit the Commission to make optional the requirement that carriers report annually changes in the number of units of property acquired or retired. In the past, the principal use of this data was in determining the reproduction cost new, of such property. As indicated,

however, the concept of reproduction value is no longer the dominant consideration in the determination of a rate base for railroads. For this reason we believe that this reporting requirement represents an unnecessary burden upon rail carriers. In a study done by our Bureau of Accounts on this matter in 1965, it was estimated that elimination of this mandatory requirement would in turn eliminate at least 355,324 man-hours of unneeded work by the railroads. This change, however, would not repeal this requirement but rather make it optional as the needs of the Commission dictate. As indicated previously, both changes in law and in competitive circumstances, and the development by the Commission of comprehensive reporting and accounting requirements have reduced the importance of the valuation work over past years with regard to railroads. However, because the economic and transportation characteristics of the oil pipeline still require some regulatory oversight as to their maximum level of earnings and rate of return, the Commission still requires this data for use in developing the cost of reproduction, new, of pipeline property, an element which is considered by the Commission in arriving at rate bases for pipelines. For this reason, we recommend that, in lieu of repeal, the mandatory requirement in section 19a(f) be made optional.

Since in the past concern has been expressed that repeal or revision of these portions of section 19a would render the Commission ignorant of the value of the railroads' or pipelines' property and thus impair effective regulation of these carriers, we should point out that the purpose of this bill is to simply repeal or revise certain sections which are clearly obsolete and which now serve to burden the carriers with unnecessary regulation. Nothing in this bill, Mr. Chairman, impairs our power to investigate or inspect the records or property of the carriers as provided in section 12 of the act, or our power to require reports, prescribe accounting regulations, or to prescribe the form and manner under which the carriers must keep their records under sections 20(1), 20(3) and 20(5) of the act. These and other provisions of the act will permit us to keep an ample check on all matters covered by this bill.

Senator LAUSCHE. I want to ask you this. Let's assume that you have a case before you and the opponents to the application for an increase in rate argue that the Commission does not have adequate information about the true status of the capital structure of the carrier, that the carrier has included as his capital items which cannot be justified. How would you proceed to handle it so as to insure protection of the public interests?

Mr. TUCKER. Well, first of all, we feel even in the absence of these matters here, we now have adequate information with regard to just about any cost a carrier puts in.

Senator LAUSCHE. How do you have it?

Mr. TUCKER. We have a cost-finding section which delves into the cost in any rate case, and we have the ability to investigate any matters in connection thereto.

Senator LAUSCHE. That means there are two sources: (1) You can currently proceed to investigate; and (2) You have records that are filed by regulation.

Mr. TUCKER. That is right.

Senator LAUSCHE. Is there any other source?

Mr. TUCKER. Of course, the evidence in a particular case and matters which might be the subject of a particular inquiry. We have the accounting section right now checking  $x$  numbers of railroads and going through their books and records. If we run across any questionable items, we investigate them even if they are not related to a specific case before the Commission.

Senator LAUSCHE. You state, Mr. Tucker, nothing in this bill impairs our power to investigate or inspect the records or properties of the carriers as provided in section 12 of the act, or our power to require reports prescribed by the accounting regulations, or to prescribe the form and manner in which the carrier must keep their records under section 20(1); that is, you have the power under existing law to obtain reports and records that will enable you to perform the functions required in fixing rates.

Mr. TUCKER. Yes, sir; and we call that, if you will, an adequate power.

Senator LAUSCHE. What does section 20(1) provide? You have three sections which I mentioned, section 20(1) is one of them.

Mr. TUCKER. Section 20(1) refers to the periodic or special reports that rail carriers have to give us and it describes that type of report in some detail.

Senator LAUSCHE. Section 20(3).

Mr. TUCKER. Section 20(3) gives the Commission discretion to prescribe the uniform system of accounting which we revise from time to time. The uniform system of accounts is a matter we give very close and continuing scrutiny.

Section 20(5) gives us again discretion to prescribe not only a uniform system of accounts, but any and all accounts, memorandums, and so forth. And if my recollection of this section is accurate, it also gives the Commission a great deal of authority and discretion, Senator, to require the railroads to maintain just about any kind of documents that the Commission may feel it needs.

Senator LAUSCHE. All right, that concludes your presentation on Senate bill 757, is that right?

Mr. TUCKER. Yes.

Senator LAUSCHE. Now, proceed to S. 758.

Mr. TUCKER. Thank you, sir.

S. 758, Mr. Chairman, would amend section 17(2) of the Interstate Commerce Act to authorize the Commission to delegate to qualified individual employees, including transportation economists and other transportation specialists, the authority to process certain routine matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits under our system of modified procedure.

In addition to its large volume of formal cases disposed of each year, which in 1966 amounted to some 9,000 cases, the Commission's responsibilities under the act extend to numerous matters of an essentially routine and specialized nature, which we feel could be delegated to individual employees. The examples of these responsibilities include processing requests from carriers for extensions of time for filing their annual or other financial and statistical reports with the Commission.

Senator LAUSCHE. Under the present law, are members of the Commission required to individually officiate in an application to obtain

an extension of time for the filing of annual and other financial and statistical records?

Mr. TUCKER. We have to have a three-man board comprised of staff officials. Mr. Ferris knows more about that.

Mr. FERRIS. That is correct, Senator. Until recently this responsibility was delegated by the full Commission to one Commissioner who acted for the full Commission. Subsequently, we had a three-member employee board created to act on these particular types of matters. Now we feel that it can and would expedite and remove difficulties if this responsibility could be assigned to a single individual with knowledge in that particular field.

Senator LAUSCHE. And unless the law is modified, you still have to continue the process which you have just described.

Mr. TUCKER. That is right, either a three-man board or the vice chairman, all of whom are extremely busy individuals.

Senator LAUSCHE. Continue.

Mr. TUCKER. The matters to be delegated to individual employees include: (1) Processing requests from carriers for extensions of time for filing their annual or other financial and statistical reports with the Commission; (2) rejection of tariff publications for failure to give lawful notice to the public or for failure to comply with the Commission's tariff publishing requirements; (3) approval of special permission applications by carriers for authority to deviate from the requirements of the Commission's tariff publishing rules in appropriate circumstances; (4) various requests by carriers dealing with the Commission's accounting procedures and regulations, including and not limited to: (a) Authority to permit the use of prescribed accounts which by provisions of our accounting rules require special authority; (b) authority to permit departures from general rules prescribing uniform systems of accounts; (c) authority to prescribe by order, rates of depreciation to be used by individual carriers by railroad, water, and pipeline; (d) authority to issue special authorizations permitted by the prescribed regulations governing the destruction of records of carriers; (5) valuation of pipelines; (6) extensions of time for the filing of pleadings in formal cases, assigning cases for hearings, and postponing compliance dates.

In that regard, Mr. Chairman, with respect to No. 6, last week I had to review 16 or 17 of these orders which came to me on recommendation from the Office of Proceedings. I feel certain this order for extension of time is something that the chief hearing examiner or someone in that category could handle quite easily and save the file from being handled by the chairman.

Senator LAUSCHE. It is the position of the Commission that the proceedings envisioned in this paragraph identified alphabetically in your paper while they are of consequence, they are to a substantial degree capable of being efficiently performed by nonmembers of the Commission, but by experts in the particular field involved.

Mr. TUCKER. Exactly. This would not mean everything in these categories would be so performed, but matters which do not involve great issue or substance could be delegated specifically by the Commission, to a particular expert in the area involved.

Senator LAUSCHE. Have there been complaints expressed publicly that the processing of business is delayed inordinately?

Mr. TUCKER. I have not run across complaints of inordinate delays. I would say, however, that some of these matters have been delayed a day or two just because a file had to be prepared, for a Commissioner or employees who then must review the file.

Senator LAUSCHE. You are concerned with these delays?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. For the purpose of assuring the expeditious disposition of the work without sacrificing the proper consideration of what are the highly important matters, you recommend that you have the authority to delegate certain work, sometimes purely administrative rather than discretionary, to experts in your agency?

Mr. TUCKER. That covers it quite well, sir.

Senator LAUSCHE. Now, you proceed.

Mr. TUCKER. For the information of the subcommittee, we have prepared a more detailed breakdown of these and similar activities showing the types of matters handled by each bureau and, where possible, the number of such matters handled in the fiscal year 1966. This study is attached at the conclusion of my statement, Mr. Chairman, as exhibit B. All of these matters, estimated to total some 22,000 items annually, are either routine or technical items that are essentially minor in nature, requiring the attention of specialists in these areas.

With the exception of an amendment in 1961, section 17(2) has not been changed since the Transportation Act of 1940. Except where a matter is assigned to a Division of the Commission, or a single Commissioner, section 17(2) limits the Commission's power to delegate any functions only to three-member employee boards, all members of these boards must be "examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys."

With the growth in our formal proceedings caseload, there has been a corresponding growth in the activities previously mentioned. When applied to matters of this type, we believe that the present requirements of section 17(2) unduly restrict the Commission's ability to handle these matters with efficiency and dispatch, when the public is entitled to it.

Our proposed recommendation reflected in the provisions of this bill would affect only the processing of matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits. In this limited area, the draft bill (1) would authorize the Commission to refer such matters to "eligible" individual employees, and (2) we are requesting the expansion list of "eligible" employees to include assistant chiefs of sections, chiefs and assistant chiefs of branches, accountants, transportation economists and specialists, and other qualified persons designated by the Commission. Since the Senator used the word expert, I would also add the word expert in this area.

In our judgment, enactment of the proposed legislation would enable us to utilize key employees more effectively and would contribute significantly to improved overall administrative efficiency.

We would like to point out in this respect that, should this bill be enacted, the Commission certainly does not intend to delegate to individual employees any matter which would require an employee to decide the merits of a formal proceeding or even a part of any such proceeding. We further believe that nothing in this bill would

affect the right of any party to appeal a decision by an individual employee on a matter delegated to him for decision. At the present time they are fully appealable, either by way of petition or letter of request. It has never been our policy, Senator, to make any board employee decision nonreviewable at the Commission level. Should the subcommittee feel, however, that this latter matter requires clarification, we would have no objection to the inclusion of an amendment similar to that suggested by the witness for the Association of American Railroads during the hearings on a prior version of this bill, S. 1148, before this subcommittee on May 19, 1965. This amendment was added by the subcommittee in its favorable report of July 16, 1965, on S. 1148. It would be inserted after the word "reference" in line 13 of present section 17(2) and reads as follows:

"In cases here such matters are assigned to individual employees of the Commission, any order or requirement of such individual employee shall be subject to the same provisions with respect to reversal or modification, with respect to stay or postponement pending disposition of the matter by the Commission or appellate division, and with respect to suits to enforce, enjoin, suspend, or set aside such order or requirement in whole or in part, as are contained in paragraphs (6), (7), (8), and (9) of this section with respect to orders or requirements of a board."

This concludes my prepared testimony on these four bills. I wish to thank the subcommittee for its consideration.

Senator LAUSCHE. Senator Hartke submitted a list of questions he would like answered. I will give you the list and ask you to prepare your answers so they can be included in the record so that his request will be fulfilled.

Mr. TUCKER. I have no further statements. Thank you for letting us appear here today.

(The documents attached to Mr. Tucker's statement follow:)

#### EXHIBIT A

SUBSECTION (a), SECTION 19a OF THE INTERSTATE COMMERCE ACT AS AMENDED BY THE PROVISION OF S. 757

(Language deleted by amendments in brackets, language added in *italic*.)

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, [and the present value of the same.]

[Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of same, together with an analysis of the methods of valuation employed.]

[Fourth] *Third*. In ascertaining the original cost to date of the property of such common carrier, the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purpose for which the same were expended.

[Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by

individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift grant, or donation.]

#### EXHIBIT B

#### EXAMPLES OF COMMISSION WORK, BUSINESS AND FUNCTIONS WHICH COULD BE DELEGATED TO INDIVIDUAL EMPLOYEES

1. Areas where orders now are entered in the name of a single Commissioner or Division, such as orders assigning cases for hearing, orders extending dates for the filing of pleadings, orders postponing compliance dates, effective dates, and orders authorizing the changing of name of a carrier, etc. This item would relieve Commissioners of the possibility of dealing personally with up to 10,000 items a year.

##### *Bureau of Accounts*

1. Authority to permit the use of prescribed accounts which by provisions of their own texts require special authority.

2. Authority to permit departures from general rules prescribing uniform systems of accounts.

3. Authority to prescribe by order, rates of depreciation to be used by individual carriers by railroad, water, and pipeline.

4. Authority to issue special authorizations permitted by the prescribed regulations governing the destruction of records of carriers.

5. Annual valuation of pipelines.

6. Approval of protective service contracts.

It is apparent that matters arising under items 1 through 6 (about 273 in fiscal year 1966) are of a highly technical nature; and, in this circumstance, we believe that the professional judgment of the bureau director or qualified members of his staff could be relied upon for their disposition.

7. Matters relating to annual, periodical or special reports of carriers, lessors, brokers, freight forwarders, and other persons under Parts I, II, III and IV, presently assigned to Division 2, for example: approval of changes in the reporting forms and other requirements which often are made to conform them to corresponding changes in the Commission's accounting rules governing the respective types of carriers.

8. Extensions of time for filing annual, periodical, or special reports; exemption of individual carriers and others from reporting requirements now assigned to three-member Accounting and Valuation Board.

Items 7 and 8 are routine in nature. For example, the extension of filing dates is essentially an administrative matter. These delegations would relieve Division 2 of the necessity of passing upon some 25 report matters each year, and the Board of acting on some 50 applications per year in matters currently assigned to it.

##### *Bureau of Economics*

Matters of access to waybills or photostat copies thereof.

##### *Bureau of Operations*

Authority for District Supervisors to approve one-time shipment motor carrier temporary authorities, in bona fide emergencies, in the field.

In about 100 cases annually, authorization is given for one-time shipments in severe emergencies; e.g., replacement parts for a transformer which has interrupted electrical power in a community; a bridge span portion to repair a bridge closed to traffic until repaired.

##### *Bureau of Traffic*

Approval of special permission applications, now handled by the Special Permission Board, consisting of three members.

There are about 10,000 of these items coming before the Special Permission Board each year. If this work is delegated to individuals, it probably would be divided among as many as three persons because of the volume. However, rather than have two or three board members look at each request for special permis-

sion (e.g., each board member now reviews about 6,700 a year), each of three individual delegates would look at one third of the total number, or about 3,300.

JULY 31, 1967.

HON. FRANK J. LAUSCHE,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR LAUSCHE: In the course of my testimony before the Subcommittee on S. 755, a bill to amend section 5(1) of the Interstate Commerce Act, you requested that I reply to eleven questions posed by Senator Hartke in a letter dated June 7, 1967. Our answers to these questions are taken from Commission records and are attached hereto.

Sincerely yours,

WILLIAM H. TUCKER, *Chairman.*

ANSWERS TO QUESTIONS POSED CONCERNING S. 755

1. In the Commission's view, what types of relationships between household goods carriers constitute pooling as provided in section 5(1) of the Act?

No list can be compiled, because the Commission has not had occasion to state its views concerning every relationship which may constitute pooling. Some relationships which do constitute pooling are described in *North American Van Lines, Inc.—Investigation of Control*, 60 M.C.C. 701; *Geitz Stor. & Moving Co., Inc.—Investigation of Control*, 65 M.C.C. 257; *United Van Lines, Inc., Pooling*, 65 M.C.C. 755 and 70 M.C.C. 587; and *Atlas Van Lines, Inc.—Control and Merger*, 70 M.C.C. 629.

The transfer of household goods from one vehicle to another, when goods are interlined in the course of transportation, frequently results in damage to the goods. For this reason such transfer of goods seldom occurs. One of the areas which at least approaches pooling is the contractual relation between an agent carrier who holds limited authority and a principal carrier who holds substantial authority. Such contracts usually provide that when the goods are destined to points beyond the authority of the agent carrier they shall be turned over to the principal carrier at origin. The practice of doing this is not objectionable when the shipper knows the identity of the carrier performing the transportation, but the contract requiring this to be done may or may not create a pooling arrangement.

2. According to a Commission release concerning the proposed legislation, if a booking carrier surrenders a household goods shipment at origin to another carrier for linehaul transportation, that constitutes a form of pooling motor carrier services. Such a practice was described by the Commission in *Practices of Property Brokers*, 53 M.C.C. 633. According to that decision, the booking carrier which surrendered the shipment did so in its capacity as a motor carrier.

(a) Why then in *Kingpak, Inc.—Investigation of Operations*, 103 M.C.C. 318, decided December of 1966, did the Commission find at Page 335 that when a household goods carrier surrenders a shipment to another carrier for transportation it does so as a freight forwarder and not in a motor carrier capacity?

The Commission did not so find. The activities under scrutiny on page 335 were exempt forwarder services, not services rendered under motor carrier certificates. The Commission found that a regulated motor carrier might function in the capacity of an exempt forwarder if it makes this known to the public and conducts its exempt operations in such a manner as to not affect the service rendered under its outstanding certificates. How such carrier might function in its capacity as a carrier having appropriate authority to perform services for household goods forwarders was beyond the scope of that proceeding.

(b) Has the Commission changed its concept of pooling since the *Brokers'* case?

No.

(c) If so, are all booking carriers which surrender shipments now acting as freight forwarders?

No. Regulated carriers are not required to conduct exempt forwarder operations. If forwarder operations are conducted, they must be conducted separately from motor carrier operations.

(d) If all such carriers are now freight forwarders as suggested by the previous question, has the Commission waived jurisdiction over the practices of those carriers by virtue of the household goods forwarder exemption in § 402(b) (2) of the Act?

See (b) and (c). The Commission has not waived jurisdiction over motor carrier services of regulated carriers.

(e) Can the Commission point to any express Congressional authority for its waiver of such jurisdiction?

See. (d). Section 402(b)(2) exempts household goods forwarder services.

3. The Commission release states that agency enforcement of the pooling provisions with respect to household goods carriers is "impracticable." Apart from instituting rule-making proceedings, what efforts has the Commission made in the past four or five years to enforce and police pooling in order to formulate its conclusion of "impracticability?"

The Commission's efforts in the past four or five years have been devoted to making its household goods carrier regulations more definite and more effective, reducing the causes of complaints by shippers of household goods, requiring meaningful information on freight bills and bills of lading, and assuring shippers of information of services they may or may not expect from carriers. *Practices of Motor Common Carriers of Household Goods*, 95 M.C.C. 138, 96 M.C.C. 196, and 102 M.C.C. 267. No specific formal proceedings, or court actions, have been instituted in which the contention was made that the specific practices of specific carriers were unlawful pooling practices. A few minor instances of pooling were noted and when brought to the attention of the carriers the practices were discontinued.

4. (a) § 5(8) provides that the Commission may obtain an injunction or a mandate in a federal district court to restrain violations of § 5(1) or to compel observance thereto. Has the agency applied to the federal courts for such injunctions or mandates in the past four or five years?

No. No practices were noted which required this type of corrective action.

(b) Has the Commission attempted to prosecute any violators of § 5(1) under any other punitive sections of the Act during the past four or five years?

No. See (a) above.

(c) If the Commission has taken none of the action suggested by the previous three questions, particularly during the past four or five years, isn't it precipitous to state that enforcement is "impracticable"?

No. The practices described in answer to (1) above are the type most commonly found. As noted, no formal decision has been made as to whether this is pooling. If it were found to be pooling it is not objectionable in this field and the more appropriate action would be to approve the practice.

5. According to the release, a substantial amount of pooling among household goods carriers is currently taking place for which no Commission approval has been sought or given. Can the Commission point to any express Congressional authority for its failure to invoke its powers to curb such unauthorized pooling or to otherwise subject such unauthorized plans to hearing and consideration?

The Commission is enjoined to administer and enforce the provisions of the Act so as to promote safe, adequate, economical and efficient transportation service. The household goods carrier industry's methods of operation were established before the pooling provisions were made applicable to motor carriers. We have investigated many of these questionable operations from time to time, but because of their often transitory nature, we have usually not been able to build a case susceptible of being prosecuted successfully in the courts.

6. According to the release, the "public interest" requirements of § 5(1) have already been met generally by the present unapproved cooperative pooling practices among groups of household goods carriers. What evidence of record is available to substantiate that conclusion since no hearings have been held to consider such unapproved plans?

The Commission has considered household goods carriers' methods of operation in many proceedings over many years, most recently in Ex Parte MC-51, *Pooling by Motor Carriers of Household Goods* and Ex Parte MC-19, *Practices of Motor Common Carriers of Household Goods supra*.

7. One of the purposes of § 5(1) is to assure the public that pooling arrangements do not "unduly restrain competition." If household goods carriers are exempt from that section, what remedy would be available to insure that competition is not unduly restrained by such pooling arrangements.

The remedy available would be the Sherman and Clayton Antitrust laws which are generally applicable to unlawful restraints of trade and monopolies. Section

5(1) is not limited in its applicability to arrangements which unduly restrain competition. In addition, an agent endeavoring to serve more than one carrier would be in violation of the brokerage provisions of part II of the Act (49 U.S.C. 311).

8. Pooling is not confined to household goods carriers. It exists among rail carriers and other types of motor carriers, particularly bus lines. Since § 5(1) has as its worthy objective the balancing of better service to the public and economy of operation against undue restraints on competition, why now should that objective not be valid for household goods carriers when it is apparently still valid for all other types of carriers?

The objective would remain valid for household goods carriers in that the antitrust laws would remain applicable to undue restraints on competition. On the other hand, the Commission might, if it disregarded its responsibility to maintain a balanced work program, investigate the operations of all of the over 2,200 household goods carriers, find a substantial amount of pooling, yet not find a single instance in which competition was unduly restrained.

9. (a) Without authorized pooling plans, what assurance has a household goods shipper that the booking carrier will surrender the shipment to a capable and reliable linehaul carrier?

No correlation is known between an authorized pooling plan and a booking or linehaul carrier's reliability.

- (b) Is there any present requirement among carriers participating in non-approved pooling plans that the shipper be advised that his shipment may or will be surrendered to another carrier for transportation.

Yes. 49 CFR, section 176.8, Receipt of bill of lading, information thereon; and section 176.12, Information for prospective shippers. The requirements are the same for all carriers.

- (c) If not, how can the shipper now protect himself against such a surrender if it violates his desires?

- (d) If the proposed legislation is passed, how then can the shipper protect himself against such a surrender?

Neither an approved plan nor the proposed legislation would have any effect on the information required on a receipt or bill of lading naming the carrier which will transport the shipment; and if the shipment is to be interlined, the names of the connecting carriers provided they are known when the shipment is received. There is no reason to believe that a carrier would abide by an approved pooling plan better than it would comply with present regulations.

10. (a) Isn't one of the difficulties in the household goods carrier industry that there are so many carriers that traffic is divided thinly, thus requiring certain carriers to pool so as to best utilize their facilities?

Excessive competition may be one difficulty. The shipping public does not tender a sufficient amount of traffic to one carrier at one time from one origin territory to one destination territory to allow the carrier to handle the traffic tendered to it alone and return economically and efficiently. In *Practices*, 95 M.C.C. at p. 152, the Commission found that the average shipment of household goods weighs about 3,300 pounds, but the average van has a capacity of about 16,000 pounds. Also, the movement of household goods is a highly personalized, specialized, and seasonal service. We do not agree that there is a substantial excess of household goods carriers. The annual reports of Class I and Class II carriers of household goods shows they are in good financial condition. The real control here is the number of vehicles operated. This is a management responsibility over which the Commission has no jurisdiction.

- (b) In that regard, how many new household goods certificates and temporary authorities has the Commission authorized in the past three years?

Our records are not maintained in a manner by which this information would be readily available. However, we do not believe that the number is large.

- (c) (If the number is large) Hasn't this compounded the Commission's own problem of attempting to police pooling?

No. See (b) above.

- (d) In the aforesaid *Kingpak* case the Commission noted that there are several hundred applications now pending by warehousemen seeking household goods authority. At least three of the Commissioners stated that affirmative action on such applications is foreordained. The Commission's report further states that the applications will be handled

without oral hearings. If the Commission thus intends to create several hundred more household goods carriers, without affording competitors the protection of an oral hearing, wouldn't that action further compound the pooling problem? And wouldn't it be better to have oral hearings so that public interest considerations of § 5(1) could be considered as weighing either for or against the efficacy of creating several hundred more carrier entities which obviously would pose even more opportunity for pooling?

While the operations referred to in the *Kingpak* case are in existence, there is no assurance that certificates will be issued authorizing their continuance. In theory, if certificates are issued, the warehousemen become carriers subject to section 5(1) and "compound the pooling problem."

(e) Assuming that the proposed legislation is not enacted and assuming further that the several hundred new carrier entities will be authorized by the Commission as suggested by the previous question, will the Commission take affirmative action to assure that the new carrier entities will not enter into pooling arrangements except with express Commission approval under § 5(1)?

If the proposed legislation is not enacted, it will become necessary for the Commission to take corrective action in the area.

(f) If answer to the preceding question is in the negative, what remedies are available to the public and the competing carriers to afford themselves the protection to which they are entitled under § 5(1)?

If the public and the competing carriers are being injured they may bring their situation to the attention of the Commission for such appropriate action as may be available.

11. (a) The Commission proposes that new legislation be enacted which would give the agency jurisdiction to require and to supervise thru route and joint rate arrangements among motor common carriers. Is it the Commission's view that the surrender of shipments at origin by household goods carriers as described in the *Brokers'* case constitutes such a thru route and joint rate arrangement so as to be subject to the new legislation; or is the Commission's view that such activity constitutes pooling only?

The new legislation would be subject to the exemption of section 202(c), as is section 5(1). In *Interchange of Traffic at Point of Origin*, 46 M.C.C. 623, it was held that joint rates may not be maintained by a line haul motor carrier and one performing pick-up and delivery service. See *Ric's Transfer Co., Inc., Extension—Seattle, Wash.* But in *Substituted Service—Piggyback*, 322 I.C.C. 301, the earlier decisions were criticized, and it was indicated that they apply only when the local service was performed "for" the line haul carrier, and it was held that an authorized line haul motor carrier which substitutes rail carriage for its line haul is not transporting "for" the railroad, and may establish joint rates and through routes with the railroad for such substituted service, though it (the motor carrier itself) provides only the pickup and delivery service. Footnote 5, at p. 360, stated:

"While we believe that this conclusion adequately settles the matter here in dispute, we think it appropriate to note our belief that such decisions also suffer from a general failure to recognize that the provisions of section 202(c) only provide a partial exemption from "direct" regulation under part II and that such terminal area operations, including the rates and charges therefor, are subject to indirect regulation through the line-haul service to which they are incidental. Accordingly, application to this situation of the general principle prohibiting joint rates between regulated and nonregulated operations, as noted above, is at best questionable."

Certain aspects of the Commission's decision in *Substituted Service—Piggyback*, *supra*, were sustained by the Supreme Court in *American Trucking Ass'ns., Inc. v. Atchison, T. & S. D. Ry. Co.*, 35 LW 4465, decided May 29, 1967. A suit by a freight forwarder attacking the validity of plan I (joint intermodal service) is pending. *Lone Star Package Car Company v. United States*, Civ. No. 4-3555 (D.C. N.D. Tex.). In the circumstances, it is too soon to say whether the surrender of shipments at origin by household goods carriers would constitute such a thru route and joint rate arrangement as to be subject to the new legislation; or such activity, under appropriate tariff rules and publications, would not constitute pooling.

(b) If it is the Commission's view that such arrangements would not be subject to the new legislation relative to thru routes and joint rates, what

benefit accrues to the household goods shipping public as a result of the proposed thru routes and joint rate legislation?

See (a). The same benefits would accrue to the household goods shipping public as would inure to the shipping public generally, as result of advances in containerization, exempt household goods freight forwarder services, and utilization of general-commodity carriers as well as railroads in through movements.

Senator LAUSCHE. The next witness who will appear here is Joseph W. Engel.

**STATEMENTS OF JOSEPH W. ENGEL, AD HOC POOLING COMMITTEE OF THE MOVERS' & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.; HAROLD W. BREFFLE, PRESIDENT, AMERICAN SECURITY MOVING & STORAGE CO.; JOHN RAPP, PRESIDENT, TRANS-AMERICAN VAN SERVICE, INC.; CHARLES COTTILLA, PLYMOUTH VAN LINES, INC.; ARTHUR MORRISSETTE, ACE VAN & STORAGE; ACCOMPANIED BY THEIR ATTORNEY, ROBERT J. GALLAGHER**

Mr. GALLAGHER. Mr. Chairman, may we have all our witnesses come up at this time? Also, there are two other witnesses who would like to make brief oral statements, Mr. Charles Cottilla and Mr. Arthur Morrisette.

Senator LAUSCHE. Let them come forward.

Mr. Engel, this statement will be fully transcribed in the record. If you desire to read it, you may do so, but I think you can present your cause just as well by discussing the highlights of what you think are the matters involved so that the committee and the Senators will become acquainted with your views.

(The full statement of Mr. Engel follows:)

**STATEMENT OF JOSEPH W. ENGEL ON BEHALF OF THE AD HOC POOLING COMMITTEE OF THE MOVER'S AND WAREHOUSEMENS ASSOCIATION OF AMERICA, INC.**

My name is Joseph W. Engel. I am president of Engel Brothers, Inc., of 901 Julia Street, Elizabeth, New Jersey. Engel Brothers is a certificated Motor Common Carrier of household goods. Our firm has been active in the moving business since 1885. My great-grandfather founded the business, and his descendants have been active in the business since that time. At the present time, my brother and I operate the business and the general manager of the business is my nephew, who is the fifth generation of our family to be engaged in the moving business.

Engel Brothers has large, non-radial authority, issued by the Interstate Commerce Commission, which generally speaking, permits operations in all states east of the Mississippi River. We have in excess of 50 agents and these agents represent us in the various states in which we have authority. We also operate a fleet in excess of 50 vehicles. I have been with the company since 1934, and have been its president since 1948.

I have also been the president of the Movers and Warehousemen's Association of America, Inc., and I appear before this committee as Chairman of The Ad Hoc Committee of that association, which was formed to support the legislation presently before the Congress; which would exempt household goods carriers from the necessity of filing pooling agreements. The Movers and Warehousemen Association is a trade organization of the independent movers of this country. It has over 577 members, and has been in existence since 1935.

Senate Bill S.755 is legislation that would enable household goods carriers to be exempt from the requirements as to filing contracts or agreements prior to engaging in pooling.

There have been several definitions of pooling in Interstate Commerce Commission cases. In Freeport Fast Freight, Inc., and Liberty Trucking Co., Pooling 85 M.C.C. 577 it was held that the commingling by two motor carriers of less than truckload shipments not exceeding certain weights in one day, regardless of the

number of shipments for transportation in vehicles of one between Chicago and Freeport, Illinois, the operating carrier to receive 85 percent of net revenue accruing to the billing carrier, was a pooling arrangement.

More succinctly, in the *T.E.K. Van Lines, Inc. case 86 M.C.C. 139 (147, 148)*, it was said that pooling contemplates the mutual surrender of traffic by one competitive carrier to another without regard to individual performance.

Another definite element that we should note in considering pooling that in order for cooperative practices between carriers to constitute pooling, the two parties to the agreement must have a competitive relationship (*Vide Application of Pullman Company 259 I.C.C. 41, 45*).

This is important to note as frequently in the household goods field, two carriers will interline traffic under valid interline agreements, and where the two carriers are not competitive in the territories they are authorized to serve, this would not be pooling, but would be interlining of traffic.

For example, Carrier A might have authority between Chicago, Illinois, and St. Louis, Missouri, and Carrier B have authority between St. Louis and New Orleans, La. The Carriers might interline a through shipment from Chicago to New Orleans, but this would not be pooling.

We would also note that we know of no situation in the household goods field where Carrier A would surrender traffic to a competitive carrier without regard to performance, or where a pooling arrangement such as described in the *Freeport Case* would occur between household goods carriers.

Household goods carriers, it is my opinion avidly scrutinize the service of all carriers with which they cooperate.

In moving or pooling traffic and the arrangement in the *Freeport* case would never arise in the household goods industry, as the household goods industry never has such a regular pattern of traffic flow.

With those exceptions, may I note, however, that as the Commission pointed out in its justification for the enactment of S-755, that carriers of household goods have been pooling traffic for a long time. May I also note that we think that the Commission's justification of this bill sets out in clear and unambiguous terms, the reasons for this pooling, and we support this reasoning and this statement unreservedly.

As noted, The Commission said, "The practice of diverting small shipments from one carrier to other carriers has long been an inherent part of, and essential to, the economy and efficiency of the nations household-goods moving service."

Without quoting the entire paragraph, may I note my own personal observation that this practice has always been a part of the moving industry, and it was a practice long prior to the enactment of the Motor Carrier Act of 1935.

Basically, all carriers pool traffic, especially in the peak summer season, when the motor vehicle equipment of the entire industry must be used at its optimum capacity, in order to serve the needs of the shipping public.

For example, even within the so-called national van lines set up, the agent who books the shipment, may have that shipment hauled by the equipment of another agent, thousands of miles away, whom the first agent may or may not know. In the van-line operations, all of these agents operate under the umbrella of one nationwide certificate, in the independent structure, the two parties would each be a certificated carrier.

These practices have grown up because of the need of the shipping public. They are peculiar to the household goods industry, but they are necessary to that industry. Factors that necessitate these practices are, the seasonal nature of the industry, the irregularity of traffic patterns, the flexible and episodic nature of agreements between carriers and the utilization of skilled personnel and expensive tractor-trailer equipment.

It should be further noted that there is a cooperation between carriers in these practices, but that the initiating or origin carrier has the full liability to the shipper, so the practices in no way destroy or diminish the carrier's liability on the shipper's protection.

Basically, pooling works this way. If carrier A and Carrier B both have large non-radial authority through the midwestern states, each of which duplicates substantially the authority of the other carrier, Carrier A may have a van leaving June 30, 1967, from Columbus, Ohio, to Hannibal, Missouri. This van may have several stops before it reaches Hannibal, but suppose that it has an extra 200 cubic feet of space that could accommodate a 1000 pound shipment.

Now if Carrier B has a shipment leaving June 30, 1967, for Columbus, to some spot in Missouri, or some spot intermediate, it makes good sense to the trucker and the shipper for Carrier A to move Carrier B's shipment.

If Carrier A does not do it, Carrier B may have a wait of two or three weeks before it could consolidate that shipment, with other shipments moving in the same direction.

Pooling, thus, makes sense. As the Commission said in its recommendation:

"These practices provide the public with a more expeditious and economical service than would otherwise be possible, and the carriers are enabled to utilize their equipment more fully, maintain a more reasonable level of rates, hold down empty mileage, and otherwise bring stability to their operations. In short, the requirements for approval under the pooling provisions of section 5(1) of being "in the interest of better service to the public or of economy in operation" would seem to have been met generally by present cooperative practices among groups of household goods carriers."

Senator Lausche, Chairman of this Committee, summed it up succinctly in an extemporaneous remark he made at the hearing on this bill last year.

"Let's accept that as a fact that pooling arrangements are needed because of the uniqueness of the operation."

As noted by the Commission, however, the burden of having each independent carrier file a pooling agreement, because of the fact that such applications require a hearing and approval by the Commission, would be a far too-difficult procedure, because of the shifting, episodic nature of these arrangements.

Therefore, on behalf of my company, and our association, I wish to support Senate Bill S-755.

Mr. ENGEL. I am an independent mover and have been in the business personally since 1932. I have some very strong feelings about this pooling bill. What we are primarily concerned with is we have our ups and downs; we have peaks and valleys in the moving business; and there are certain times of the year when we cannot fully cope with the equipment we have on hand to service the traffic that is available.

Now, this does not only apply to COD, it also applies to national account traffic as well. I don't know if you gentlemen are fully familiar with what we are discussing or whether I should go into the ramifications.

Senator LAUSCHE. You present your matter as you want to most effectively have your views known. Do not assume that we know your problem. At least do not assume that I know it.

Proceed, Mr. Engel.

Mr. ENGEL. Engel Bros. operates a fleet of trucks. We have approximately 65 vans in our fleet. We have approximately 75 agents. Because of the unusual nature of the household goods moving business, there is no general flow of traffic. In other words, one day it may be in the direction of Boston, Mass., and the next time into Texas and the next time into Florida. What will happen to a company like ours, we may be loading three trucks for Florida, for instance, and after these three trucks are loaded, we will find that we may have an excess of 2,000 pounds. Two thousand pounds ordinarily would not be too much to a general shipper, but it is a very important item to a householder because it would represent about two or two and a half rooms of his furniture. So rather than have this householder wait until we develop additional tonnage, for economical reasons we cannot start out another trailer. We, through our association of Movers & Warehousemen, of which I am past president, have various contacts with companies who we know, and we keep up almost daily contact with their traffic department, their dispatch department, and we will call these people and tell them precisely what we have available and exactly where it is going.

Now, this has absolutely no undermining effect on the shipper, because when Engel Bros.—and I say Engel Bros. in this case although I am also here representing the Ad-Hoc Pooling Committee of the

Movers' & Warehousemen's Association of America, Inc.—but when Engel Bros. issues that bill of lading, it assumes full common carrier responsibility. Also, it goes a little further than this. We constantly check that shipment to make sure that it has been properly delivered.

The thing that we are concerned with is if we are deprived of this privilege that we have exercised—as I said I have been in this business since 1932, and it was going on long before I went into the business—if we were deprived of this privilege, we just could not operate. It would create two problems. No. 1, it would either create a terrific economic problem to a shipper if we had to start out a shipment as 5,000 pounds, or No. 2, we don't always have the equipment available. But on the other side of the coin, it also helps out economically to the movers in general because this same shipment I speak of, say, from New York to Jacksonville, Fla., if we had a van or knew of a van of American Security of Atlanta, Ga., whom we know to be a reliable company, we would tender to them this shipment.

Senator LAUSCHE. What is there about the present law that makes impossible an efficient constructive pooling beneficial to the general public, the shipper, and the carrier?

Mr. ENGEL. Well, the present law—as we generally operate and we have been operating and the Commission knows the way we have been doing it, except they come and say, "What are you fellows doing? You are pooling and this is not permissible." We say, "All right. We are cognizant of this, but it is a way of life with us."

Senator LAUSCHE. Do they give you the reason why it is not permissible in the manner you have been doing it?

Mr. ENGEL. Speaking for my company personally, we have never been challenged in that particular regard.

Senator LAUSCHE. That is what is said, "That your pooling is not allowable under the law." Why isn't it allowable under the law?

Mr. GALLAGHER. Senator, if I may just interject, I think the Commission's position is that in order for a carrier to pool, they have to file a pooling agreement.

Senator LAUSCHE. That is what I am trying to get to. Now then, what is recommended to cure what is an obstacle toward efficient operations?

Mr. ENGEL. What we would like to have is exemption from pooling requirements.

Senator LAUSCHE. Proceed with your further presentation.

Mr. ENGEL. I think I can summarize very quickly and say that, No. 1, if we were required by the Interstate Commerce Commission to have a pooling arrangement, it would almost make it economically impossible for the average company to go through all the ramifications and expenses that would require this. On the other hand, if we cannot continue to provide the service so-called pooling as we have been doing, then it would put an economic, also put an economic burden on us, not only us but also on the shipper, and also there are certain times of the year that even when everybody or every independent operator pools to the final degree, they still cannot move the traffic.

Senator LAUSCHE. Is it correct to say that conditions frequently arise where in the interest of saving money for a household shipper, pooling of the transportation services is essential?

Mr. ENGEL. I would say very definitely, yes.

Senator LAUSCHE. That is because of the periods of the year in which the business is heavy and in instances where shipments are made in one community, as you described it here a moment ago, going into one area and not into another. You support this bill then having in mind not only the interest of our own industry but the general public and the shipper of household furniture?

Mr. Engel. Yes, sir.

Senator LAUSCHE. The Foreign Relations Committee is having a meeting and Secretary of State Rusk is attending, and I want to go down and hear what he says. Senator Pearson will preside, and I will undoubtedly read what you men have to say.

Senator PEARSON. Where are we now?

Mr. ENGEL. We are talking about pooling. I am Joseph W. Engel. I think I can best summarize as I quoted in almost the last paragraph of my statement.

These practices provide the public with a more expeditious and economical service than would otherwise be possible, and the carriers are enabled to utilize their equipment more fully, maintain a more reasonable level of rates, hold down empty mileage, and otherwise bring stability to their operations. In short, the requirements for approval under the pooling provisions of section 5(1) of being "in the interest of better service to the public or of economy in operation" would seem to have been met generally by present cooperative practices among groups of household goods carriers.

I would just like to add one thing to this. Senator Lausche summed it up very well in extemporaneous remarks he made at the hearing on this bill last year.

Let's accept that as a fact that pooling arrangements are needed because of the uniqueness of the operation."

Senator PEARSON. Thank you, Mr. Engel.

We are all in about eight places at the same time, and I just left one committee to come over here.

Who else at the witness table wishes to make a statement at this time?

Mr. BREFFLE. My name is Harold W. Breffle. I am president and owner of American Security Moving & Storage Co., Inc., located in East Point, Ga., a suburb of Atlanta. My firm is a motor common carrier of household goods operating pursuant to certificate No. MC-7971, granted by the Interstate Commerce Commission to engage in transportation in interstate and foreign commerce as a motor carrier.

Mr. Chairman, I respectfully appreciate this occasion to appear before your committee to express strong support for Senate bill 755 pertaining to the recommendation of the Interstate Commerce Commission to amend section 5(1) of the Interstate Commerce Act; that is, eliminate the requirement of pooling arrangements between motor carriers of household goods.

When several of my fellow movers learned of my opportunity to appear before your committee, each expressed to me their hearty support of Senate bill 755. These movers are independent household goods carriers and are class III carriers, meaning carriers whose annual gross operating revenue does not exceed \$200,000.

I am told that long before enactment of the Motor Carrier Act of 1935, it was a way of life for movers to cooperate with one another in order to provide better moving services to the public and/or in the interest of economy in their operation to enter into agreements for

the pooling of division of traffic, service, and earnings. However, upon passage of the Motor Carrier Act of 1935, it became unlawful for common carriers to enter into pooling arrangements, except upon specific approval by the Interstate Commerce Commission.

It is my understanding to this day there are only a handful of motor carriers of household goods out of some 3,000 to 4,000 who have an approved pooling arrangement by the Commission. So after 32 years of operating under the Motor Carrier Act, it is still the way of life of movers to practice cooperativeness in the interest of providing better service to the public or of economy in movers operations.

It is exceedingly difficult to tell a young couple that the small lot of personal possessions, consisting of wedding gifts and a few pieces of furniture that are in storage awaiting shipping instructions, that as to these, that you cannot deliver their goods, as an example, from Atlanta, Ga., to Washington, D.C., by some reasonable delivery date.

The reason given is either nonavailability of equipment or if available that economics prevail in running equipment with such a small payload that you will have to wait until we get some more traffic going in that direction.

On the other hand, everyone is pleased and happy when the driver of carrier X, who you have not seen in a year and may not see for another year, or never, whose home base is near Washington, D.C., calls and says, "I've just emptied out in Atlanta and I'm on my way home, have you got anything to help pay the gas back?"

By turning this small shipment over to carrier X, not only is the shipper getting good service, but the carrier derives a benefit in that he will receive some amount of revenue to help defray operating costs to cover the trip home.

This situation frequently happens all over the Nation; of course, it does not always cover wedding gifts, but, it could be a piano, a bedroom suite, et cetera, yet under present regulations this is unlawful. To be otherwise, it would be necessary for the two carriers to seek and gain specific approval from the Interstate Commerce Commission to service traffic of this nature. Now to get this approval, a pooling arrangement would have to be filed with the Commission and a hearing held, all of which would take considerable time just to cover the situation recited herein above.

I have heard that proponents supporting approved pooling arrangements advance the arguments that diversion of traffic from one carrier to another diminishes service to the public, is more costly to the public and reduces safety of operations. This I cannot comprehend; on the contrary, it has the opposite effect. Take, for example, on a small shipment weighing 1,000 pounds. For a carrier to move this shipment 600-700 miles and deliver it on a specified date, would obligate the shipper to pay a weight penalty of 4,000 pounds; whereas, if carrier X can handle the shipment as a return partial load, the shipper would only pay for the actual weight which would be a much lesser cost. In summary, the shipper pays less and at the same time receives better service. In regards to safety of operations, all certificated carriers are compelled to comply at all times with the safety rules and regulations of the Interstate Commerce Commission which is fact regardless of whether or not the equipment is loaded or empty of lading.

In closing, let me mention one other thought and that is—if approved pooling arrangements are so beneficial to the public and carriers, why are the substantial majority of motor carriers of household goods still operating without approved pooling plans? There must be a reason. Further, if the Interstate Commerce Commission believed that the public was being hurt, they would not have made the recommendation to the Senate and House of Representatives to amend section 5(1) of the Interstate Commerce Act to eliminate approval of pooling arrangements between motor carriers of household goods.

I urge this committee to strongly back the recommendations of the Interstate Commerce Commission and report favorably to Senate bill 755. Thank you very much.

Senator PEARSON. Thank you. I think that is a very helpful statement, and, of course, your illustration is very good. Your statement indicates that this regulation had been on the books for 3 years. Thank you, very much.

Next witness.

Mr. RAPP. My name is John Rapp. I have been 42 years in the moving business. My family has been in the moving business with a horse and wagon since 1900. I am actually fourth generation. I am president of Trans-American Van Service, Inc., Chicago, Ill., and president of T.E.K. Van Lines, Inc., Rosemead, Calif. We have authority from the Interstate Commerce Commission for joint control of that operation as part of the original application.

I support S. 755 because it is vitally necessary for the independent carriers. I have been for 2 years president of the Movers' & Warehousemen's Association of America, which has in its membership some 600 of these carriers, most of whom have only partial authority for parts of the United States. These companies need to cooperate and work together to furnish each other transportation, packing, sometimes unloading and labor, and to help serve the public and give the public a good, efficient moving service. We do this for approximately 50 carriers, mostly at Chicago, Ill.

We feel that S. 755 is important to us, that it is something we have been doing as long as I can remember, and it is vital and necessary to our future existence as a common carrier of household goods throughout the United States.

Senator PEARSON. What would you estimate to be the percentage of independent carriers who have sought and obtained pooling arrangements under the Interstate Commerce Commission regulations?

Mr. RAPP. Only one, Atlas Van Lines.

Senator PEARSON. Out of how many?

Mr. RAPP. Perhaps three.

Senator PEARSON. Thank you very much. We appreciate your statement.

Mr. GALLAGHER. Senator, there are two other witnesses here, Charles Cottilla and Arthur Morrisette. Mr. Cottilla is from Pittsburgh, Pa. and Mr. Morrisette is from Washington, D.C., and they would also like to make brief oral statements with your permission.

Senator PEARSON. They certainly may. We are pleased to have them.

Mr. COTTILLA. My name is Charles Cottilla, president of the Plymouth Van Lines, Inc., Pittsburgh, Pa.

We started in business, two brothers, in 1926, and went along with things, and since then we have been exchanging traffic all these years. I want to fully support this S. 755 because it is a way of life in our operation, and as mentioned before and I could just go down the line, I am in full accord with the statements of the other witnesses. There is only one thing I have found different. It is not only the peak season that we have to exchange traffic, there is the dead season that an old friend of the family, old friend of the company, wants to move with 1,000 or 2,000 pounds, and we have to get it out, not always for the delivery expediency but the rent factor comes in there. Now, either we pick it up and hold it in the warehouse and charge for storage or it lays in the house. With this exchange of traffic, we can have this little shipment moved.

That is the only thing I wanted to mention other than what was mentioned before.

Senator PEARSON. A very good point.

Mr. MORRISSETTE. My name is Arthur Morrissette. I am president of Ace Van & Storage, of Washington, D.C., and operate under authority from the Interstate Commerce Commission under certificate MC-35719.

I started my own business 25 years ago, humping the first piece of furniture and drove the first truck. I found myself typical of the 3,000 carriers in the United States. We find that our way of life—if this is pooling and there is a question remaining as to whether it is technically considered pooling—that this is the way that we do operate as carriers, and it is the only way that we can exist.

We find that most of the shipments must travel over irregular routes and with less-than-truckload quantities. We find also that the household goods movement is of a personalized nature and unlike any other freight moving; therefore, it requires certain management techniques that are not employed in the other types of merchandise.

We find also that in order to maintain reasonable rates offered to the public that we must be privileged to exchange and cooperate with each other in the carriage of household goods. In addition to that, we believe that if we were forced to comply with the Interstate Commerce Commission requirements of reporting or having our pooling operations authorized that it would be discriminatory to the small carrier.

As pointed out by one of the previous speakers, there is only one at this time among our number who has been authorized pooling arrangements. It is very impractical to expect that independent movers, each of which have small certificates from two or three States up to 25 or 30 States, can organize themselves in such a fashion that they would become manageable as a single entity.

I just want to add my endorsement to the Interstate Commerce Commission representation in behalf of S. 755.

Senator PEARSON. Thank you very much.

Mr. GALLAGHER. If I may just sum up very briefly, Mr. Senator, these gentlemen appear here as independent movers. They are distributed throughout the country. They are also the representatives and the duly constituted representatives of the Movers' & Warehousemen's Association of America. That is a trade organization of independent movers. It has over 575 members. It has been in existence since 1935. These members and this association appear here for two prime reasons: benefit to themselves in that they have engaged in

these practices; but an overriding reason, benefit to the public so that they will be allowed to continue practices that have served the public well since the institution, since the beginning of the moving industry in the 1800's.

We heartily support this bill, Mr. Senator.

Senator PEARSON. Thank you very much.

I am advised by counsel that actually this part of the 1920 act had a relationship then to antitrust consideration. I would put the question to any of you who would like to comment upon it, as to whether or not you are aware if the Commission no longer approved pooling arrangements, such arrangements could be subject to the antitrust provision. I would ask if that is your understanding, and also whether or not it would alter your support of the bill here this morning. In short, do you seek relief from this particular provision of the Antitrust Act as well as this section that we have referred to as section 5?

Mr. GALLAGHER. We are cognizant of the question about the antitrust effect of this bill. Frankly, among the membership of the Movers' & Warehousemen's Association, they are small carriers in relationship to the total proportion of the moving in the country. They would comprise a small percentage of that total, and pooling arrangements between the individual carriers is so episodic, so occasional in our considered judgments, we could be wrong, we do not believe create a monopolistic situation or an antitrust situation.

We have discussed it with a representative of the Commission and I know we can say for our association the bill is redrafted in such a way that the provision of antitrust immunity can be granted to those carriers who have a need for such provision. We have no objection to that either.

Senator PEARSON. Thank you very much. Would you like to comment?

Mr. RAPP. The percentage of total traffic which the members of our association bear to the total is small or in my opinion less than a third of the total traffic among all of our 577 members. In my particular case, our company would probably not exceed one-half of 1 percent of the total traffic that is available in the domestic United States. I feel that we have no problem with antitrust.

Mr. MORRISSETTE. Speaking for myself, personally I find myself on the horns of a dilemma with very little choice, but I do feel that complying with the existing regulations would eliminate me as a businessman, whereas I am willing to take the calculated risk on antitrust.

Senator PEARSON. I am shocked by the small percentage of your business affected by this. In accordance with your statement, sir, what percentage of your business would you estimate is affected by this restriction on pooling now?

Mr. MORRISSETTE. More than 90 percent.

Mr. GALLAGHER. Mr. Senator, when Mr. Rapp talked about the half of 1 percent, he means his total business in relation to \$200 or \$300 million total volume of the country. He wasn't talking about the percentage of his pooling.

Senator PEARSON. I see. Are there any other comments? I don't want to cut you off, but I do want to move on.

The next witness is Mr. Lloyd H. Meyer.

STATEMENT OF LLOYD H. MEYER, PRESIDENT, UNITED VAN LINES, INC., ACCOMPANIED BY BRYCE REA, JR., ATTORNEY

Mr. MEYER. Senator Pearson, first, I want to thank you for the opportunity to appear before your subcommittee, and may I just for the record answer a question that Senator Lausche asked before and which remained unanswered, and it is that we did appear in opposition to a similar bill in the 89th Congress

My name is Lloyd H. Meyer. I am a director of United Van Lines, Inc., and have been its president since March 1963. United Van Lines, Inc., is a motor common carrier of household goods operating pursuant to certificate No. MC 67234 in interstate and foreign commerce. I have been affiliated with United Van Lines as a stockholder and agent since October 14, 1947. I am also associated with the William B. Meyer Co., Bridgeport, Conn., a carrier of household goods. The company was organized in 1915 and has been actively operated by myself since 1927.

It is my understanding that the intent of the above bill is to remove from the jurisdiction of and control by the Interstate Commerce Commission, pooling activities carried on by motor common carriers of household goods as defined by the Interstate Commerce Commission.

On behalf of United Van Lines, Inc., I wish to express strong opposition to this proposal. Under date of March 17, 1947, a group of approximately 100 local warehousemen, all small business concerns, most of whom held Interstate Commerce Commission certificates to transport household goods, acting through one of their members, Mr. W. E. Lee, now deceased, contracted to purchase the capital stock of United Van Lines, for a consideration of \$532,949.40. From this original group of approximately 100 local warehousemen the activities and operations of United Van Lines, Inc., have expanded to encompass agency arrangements with approximately 600 agents in the United States, of whom approximately 350 are certificated carriers of household goods. All of these agents within this group of some 600 are small independent business concerns.

Their purpose was motivated by a desire to effect a stability, at least insofar as they were concerned, in the industry. Their plan was to stabilize for themselves the division of revenues accruing from their activities, according to the services which each would render from time to time. In this connection they established a uniform booking commission of 20 percent with very minor exceptions, and a uniform division of revenues (71½ percent) to those agents which furnished equipment for the movement of the traffic. The remaining 8½ percent was retained by United Van Lines, as the carrier. This plan has remained in effect since its inception in 1947.

Subsequent to the acquisition by the agents referred to above of the capital stock of United Van Lines, Inc., the Interstate Commerce Commission initiated an investigation proceeding entitled *Geitz Storage & Moving Co., Inc.—Investigation of Control*, No. MC-F-3457 to determine whether the acquiring stockholders, as carriers in their own right, had acquired control of United Van Lines within the meaning of the word "control" as used in section 5(4) of the act. Further purpose of the investigation was to determine whether the practices of the involved carrier stockholders and the divisions of revenues, as above, constituted a "pooling or division of traffic, services or earn-

ings" within the meaning of section 5(1) of the act. After hearing, the Commission concluded that the carrier stockholders had acquired control of United Van Lines, Inc., and were engaged in pooling practices within the meaning of sections 5(4) and 5(1) of the act. Thereafter United Van Lines and its agent carrier stockholders filed appropriate applications for approval of the transaction. These proceedings were assigned docket Nos. MC-F-4525 and MC-F-4901 and were the subject of a report and order of the Commission on June 23, 1955, in *Geitz Storage & Moving Co.—Investigation of Control*, 65 M.C.C. 257. The prosecution of these applications was quite costly to both United Van Lines and its agents. However, it was felt that the cost was essential to achieve their aim and purpose and to bring their operation in compliance with laws.

In the light of the investment of our agents and United itself in the approved pooling plan under which we operate, we most strongly oppose any legislation which would nullify that investment. Further, we feel that it has stabilized our arrangements with our agents, has legalized our activities, has given assurances to the public of responsibility in connection with the removal of their effects, it has insofar as United and its agents are concerned effectively put an end to the interlining of traffic. Further, operations under our approved plan affords better and more economical use of our equipment in that it tends to reduce our empty miles. This results in reduction in cost of our operating expense which ultimately reflects itself in savings to the public. Also operations under our plan enable us to know the quality and character of numerous warehousemen and their facilities around the country and assures us of their availability at all times to serve the shippers' needs.

We are cognizant of the fact that numerous carriers of household goods engage in what are tantamount to pooling activities. With the exception of only one or two companies such pooling activities have not been approved by the Interstate Commerce Commission. Such failure of approval by the Commission does not in our opinion afford any valid reason for the enactment of the proposed legislation which would exempt household goods carriers from the provisions of section 5(1) of the Interstate Commerce Act. It is our firm conviction that the existence of a regulatory power in the Interstate Commerce Commission through the terms of the provisions of section 5(1) of the act have been a deterrent to expansion of pooling activities by other carriers which deterring factor has tended to prevent a chaotic condition in the industry insofar as rates and charges to the public are concerned. This by reason of the following facts, which can be substantiated from a reading of many transcripts of records of cases before the Interstate Commerce Commission involving extensions of operating authorities by household goods carriers.

A number of carriers of household goods have sought to maintain what they term a so-called independence and have preferred not to affiliate with a major nationwide household goods carrier. These so-called independents, as noted in yellow-page directories of the various telephone companies throughout the country, have in nowise limited their solicitation of available household goods traffic to their own certificated territory. Rather they have engaged in so-called interline arrangements with other carriers holding certificates from the Interstate Commerce Commission authorizing operations beyond

the scope of their own limited authorities. As above indicated, the transcripts of records before the Interstate Commerce Commission will reflect that in many instances the local carrier having limited authority, but who advertises his service on a nationwide or worldwide basis, will secure business on the premise of this advertising and holding out of this service and will actually transport traffic tendered to him on the basis of his holding out from points on the east coast to points on the west coast. Frequently the so-called interline carrier, that is the carrier whose operating authority is utilized in an attempt to legalize the operation of the origin carrier does not have knowledge of the fact that his certificate is being used until long after the fact of transportation has been accomplished. In some instances the so-called interline carrier is never made aware of these facts; nonetheless he is being subjected to liability not only to the public traveling on the highway but also to the shipper whose effects are being transported.

In other instances the so-called origin carrier because of the lack of availability of additional traffic, the size of the shipment, backhaul or other considerations will without communication to the shipper tender the goods to another carrier which happens to have equipment available in the territory, moving in the direction of the particular shipment, based upon the amount of booking commission which such other carrier is willing to pay to obtain this particular type of traffic. As a result the shipper and owner of the goods does not know who is responsible for the movement and safety of his traffic.

Another problem which the promiscuous so-called interline arrangement has resulted in is the lack of effective control over safety of operations between various so-called interline carriers. The Interstate Commerce Commission rules and regulations concerning the lease and interchange of equipment between carriers cannot effectively be enforced and maintained where carriers are permitted to effect so-called interline arrangements which are nothing other than pooling arrangements without some regulation or control by the Interstate Commerce Commission.

A further problem arising has to do with the stabilization of cost of transportation to the shipping public whether it be the military or the general public. A lack of regulatory supervision upon the pooling arrangements between carriers will result in nothing other than a chaotic rate condition in the regulated motor common carrier household goods transportation industry, which will ultimately affect the cost of transportation services available, to the detriment of all users of such service.

It has been our experience in the years of our association in this industry that the existence at least of possible regulation of these practices has been a deterrent to the widespread abuse despite the failure of enforcement by the Commission, in the same manner that the knowledge of the existence of various laws on the statute books which provide for criminal penalties in case of violation, will deter many violations which would otherwise occur.

To avoid the problems attendant upon either abuse or enforcement many of the affected carriers have filed and prosecuted applications for extensions of existing authorities which have resulted in costly and time-consuming proceedings both to the Interstate Commerce Commission and the affected competing carriers. In some of these cases the results have not been satisfactory in that the Commission

has without following the statutory mandate granted authorities which have resulted in the dilution of available traffic, particularly traffic from the military which is awarded to approved carriers on a rotation basis. Such dilution of traffic has adversely affected previous existing and available service since such diversion reduces the load factor at any given time which must result in delay to shipments and increased cost. Many other problems could be cited which are the result of the Commission's failure to enforce the pooling provisions of the act insofar as the household goods carrier industry is concerned. Enactment of the proposed legislation would only multiply them since it would be considered tantamount to congressional approval of the "hands off" policy of the Commission. It is our firm belief that strict enforcement policies by the Commission of existing legislation will be of benefit to the Commission in other enforcement areas, will stabilize the practices in the household goods carriers industry and afford better service to the public generally, including the military, at lower cost.

Certainly with the recent establishment of the Department of Transportation which has relieved the Interstate Commerce Commission of its enforcement obligations as to safety of operations, the Interstate Commerce Commission should now be in a more favorable position to police and enforce the provisions of section 5(2) of the act as to all regulated carriers within its jurisdiction.

In addition to the above reasons in support of our position in opposition to the above legislation, we adopt the statement of admonition made by the Interstate Commerce Commission in its order discontinuing the proceedings in *Ex parte MC-51*, as follows:

*It is further ordered,* That carriers of household goods presently engaging in pooling arrangements without approval from the Commission, be, and they are hereby, admonished to bring their operations in compliance with the statute and the Commission's rules and regulations.

And I would add to same that the public and the industry would be better served if the Commission would now, after the lapse of almost 6 months after its order of discontinuance in said proceeding, heed its own admonition and enforce the law as it is written on the books.

Senator PEARSON. Thank you very much.

Mr. MEYER. I have one other statement I would like to make.

Senator PEARSON. You certainly may make it.

Mr. MEYER. That is in relation to the small business concept of our business. The United Van Lines is owned by very small businessmen. As a matter of fact, I would say that predominantly our stockholder-agents are smaller businesses than the people who are or were represented at the table by the so-called independent businessmen.

Senator PEARSON. The Interstate Commerce Commission has indicated that it is just not practical to strictly enforce this pooling condition with respect to household goods. I take it it is your position that it ought to be strictly enforced?

Mr. MEYER. We do not think they have tried to.

Senator PEARSON. And that such pooling arrangements are now existing?

Mr. MEYER. I am sorry?

Senator PEARSON. That such pooling arrangements now exist under other names and under other conditions?

Mr. MEYER. Everybody who has testified as to the fact that they are pooling, they are pooling now without regulation, where the few companies who are authorized to pool are pooling under regulations. There is the other antitrust concept that I think is quite important, but I don't have legal background. I would like to have Mr. Rea make a statement to that fact.

Senator PEARSON. Mr. Rea is very welcome.

I want to put one more question to you. Is the main basis of your opposition the public need for pooling arrangements or the desire for antitrust immunity?

Mr. MEYER. I think one is as important as the other.

As I said I would like to have Mr. Rea speak on antitrust. I think it is very important to have the people regulated by the Commission to protect the public insofar as pooling is concerned. I can just take you back on some of the testimony previously offered here and which was stated, that a shipper might offer some wedding gifts to a company for transportation rather than let them sit around the warehouse, so to speak. They would be tendered to a carrier who called up and says, "Do you have tonnage back that would pay for the gas?"

The shipper did not know who the truck was or who was liable. The bill of lading actually was not—the shipment was not written on the bill of lading of the actual carrier of the goods.

Senator PEARSON. Mr. Rea, excuse me for just a moment. Proceed.

Mr. REA. Senator Pearson, I represent the individual motor carriers, a good many of the individual motor carriers operating under certificate from the Interstate Commerce Commission who are participants in the pooling plan. I represent specifically 120 of the several hundred individual small business motor carriers who are engaged in pooling, pursuant to the approved plan of which Mr. Meyer spoke.

We are independent and we are individually concerned as I think is evident by the fact 120 have retained me to protect their interests, and the interest of the United Van Lines itself. They are small carriers throughout the country, and I will be glad to furnish the committee with a list. I point this out to everybody in the room, from the Chairman of the Commission, who support the bill, as well as Mr. Meyer, and I am sure Mr. Clarke, who will follow, agree that pooling is necessary, is and important in terms of assuring the public adequate service at reasonable rates.

At the same time, we all know that, by definition, pooling is the division of markets, and we all know that there is very little that flies more directly in the face of the antitrust laws than agreement to divide markets, unless it is an agreement to fix prices. Consequently, the Interstate Commerce Act has recognized from the beginning that if pooling by railroads first, then by motor carriers, including household carriers, is needed, is appropriate, there must be a vehicle or provision for it without subjecting the participants in it to prosecution under the antitrust laws. This bill would mean that the immunity already granted by the Commission after an extensive investigation to United Van Lines and several motor carriers, of whom I represent 120, the agreement approved for the Mayflower Co. for whom Mr. Clarke will speak, and agreement approved for Atlas to which reference was made earlier, the approval of those agreements will nullify if this bill passes. And immediately, of course, the business that has been conducted by United Van Lines and hundreds of motor carriers

since 1947 under a pooling plan approved by the Commission will be without any protection whatever, and every single one of my clients, as well as Mr. Meyer of United Van Lines, will be subject to prosecution as well as civil suit under the antitrust laws.

It is just to me unthinkable that with one stroke of the pen, so to speak, this course of business built up over the years, the necessity of which everybody acknowledges, is going to be completely deprived of legal protection under the statute of the United States. The carriers are going to find themselves faced with serious problems almost per se violations of the law, and it is the carriers who proceed under the approved pooling plans who carry, as the prior witness indicated, the bulk of the household goods traffic. It is these independent carriers joined together in pooling plans.

Now, as far as the practicality of the Commission acting in this field, I think the proof of the pudding is in the eating. There have been three pooling plans filed in accordance with the statute. Hearings have been held and approval has been granted. There is no reason that I can think of why any other group of carrier who desire to engage in pooling cannot file an application and have it processed and acted upon by the Commission. I would say one other thing: The Commission referred in its testimony, Chairman Tucker referred in his testimony, to difficulties, because carriers join and then carriers leave a group. Those minor changes in relationships do not have to be, as I inferred from his testimony, the subject of a great, full-blown proceeding before the Commission.

As we suggested to the Commission in the pleadings in *Ex parte 51* in behalf of the 120 carriers I represent, adequate scope for day-to-day operations that do not change the substantial nature of the arrangements can be provided by rules or regulations of the Commission without the necessity of an elaborate proceeding. There is no reason, as I said, why those who desire to engage in pooling should be deprived of the right to do so free of the danger under the antitrust law by complying with the statutes now written; namely, filing an application and getting their plan approved.

Senator PEARSON. Thank you, Mr. Rea.

Mr. REA. I referred to Mr. Clarke from Mayflower. He is from North American Van Lines.

Senator PEARSON. A letter from the Comptroller General of the United States in reference to this bill—do we have a copy I can give to Mr. Rea? I will read, then, and try to get a copy sent to you.

Near the last paragraph of the letter says:

Yet, the Interstate Commerce Commission apparently has found the procedures set out in 49 U.S.C. 5(1) as applied to at least some pooling agreements ordinarily in use in the household goods motor common carrier industry are inappropriate and unwieldy. Your Committee, therefore, may wish to consider requiring copies of all pooling agreements among common carriers by motor of household goods not previously approved by it to be filed with the Commission with authority in the Commission, on its own motion, or upon complaint of persons claiming to be adversely affected by the agreement, to disapprove any such agreement which it finds to be adverse to the public interest or which will unduly restrain competition and making unlawful any such agreements not so filed or disapproved after filing by the Commission. Compare 49 U.S.C. 1382.

I don't know whether you follow the reading, but I place a copy before you. Take time and read it, then comment on that suggestion, if you will.

Mr. REA. As I understand it, what is contemplated is that approval would be automatic, absent the institution of a proceeding.

Senator PEARSON. Rather than a proceeding to approve, you have a proceeding to disapprove.

Mr. REA. I see two problems with that. It is certainly better than what is proposed, but I see two problems.

First, it is fundamental in our law in the constantly reiterated declaration of this Congress that concerted action among competitors, absent control, is against the public policy of the United States. And I do not know of any situation in which action which might be in violation of the Antitrust Act has been authorized, except affirmatively.

I don't think it would be in keeping with that policy to provide for what amounts to a negative acquiescence in activity which would in all probability be otherwise in violation of the Antitrust Act.

The second problem is that these agreements would be filed. The Commission might or might not, on its own motion, institute an investigation. A competing group of carriers might or might not file a complaint. Once the agreement was filed, the carriers would presumably proceed to operate under it. Subsequently, an investigation might be lodged by the Commission, *sui juris*, or subsequently a complaint filed or an agreement be found unlawful or improper under the standard of the Interstate Commerce Act, one aspect or another. It would seem to me that the operations previously conducted on the basis of the respective action of the accepted agreement in not rejecting would be prosecutable under the antitrust laws and would also give rise to civil suit—

Senator PEARSON. Pardon me. It's my understanding that under title 49, the air carriers do this now under the jurisdiction of the Civil Aeronautics Board. We might look at that operation and see how it is worked.

Mr. REA. As I understand, I think you are referring to 1458 of the Federal Aviation Act, which requires approval by the Civil Aeronautics Board of an agreement between and among the air carriers and other types of carriers.

Senator PEARSON. I am referring to 1382, if you want to make reference to that.

Mr. REA. But my understanding, is my observation has been, that the Board acts affirmatively in every instance in which agreements among carriers are filed.

I see coming across my desk every day a list of orders of the Civil Aeronautics Board approving agreements between motor carriers and air carriers to enable the interchange of traffic at certain tariffs. I do think the Board acts affirmatively in those cases.

Senator PEARSON. I think it is an important point we are dealing with without forethought. If you desire, the committee would welcome from you, or anyone else who has an interest, a statement in regard to this.

Mr. REA. I will be happy to do so, and I will.

Senator PEARSON. We will hold the record open in regard to this legislation.

Mr. REA. Thank you, Senator.

(A further statement by Mr. Rea will be found on p. 72.)

Senator PEARSON. Mr. Clarke, I have your statement and you may proceed in any manner you desire.

STATEMENT OF PAUL CLARKE, ON BEHALF OF NORTH AMERICAN  
VAN LINES, INC.

Mr. CLARKE. Because of my association with North American Van Lines, and because it is one of the three carriers whose pooling application was proposed, heard, and approved, I have had fairly broad experience with pooling as it applies to the household goods industry, and particularly within the area of operating under a pooling order, because our order was issued back, oh, I think in 1954, perhaps, and thereafter North American, in compliance with the act, filed subsequent pooling applications, we call them, that entailed the addition of carrier agents and slight modification of the pooling plans.

Senator PEARSON. Mr. Clarke, back in 1954 when you first filed an application, how long did it take you? What was the procedural time?

Mr. CLARKE. It took a long time, Senator. Ours wasn't characteristic of what I think the actual practice would be today. We were the first applicant.

Senator PEARSON. You say a long time. Do you remember how long?

Mr. CLARKE. It took 3 years and the matter proceeded from the filing of an application through the report of the examiner that followed hearings at various locations about the United States, exceptions to the examiner's report, a Commission order, exceptions to it, and finally the order became final.

Senator PEARSON. You say that subsequent to 1954 you filed additional records or applications. What was the time element in processing these?

Mr. CLARKE. It depends upon the opposition. If groups within the industry, or if shippers oppose, then of course it takes longer, because it becomes more partisan. If there is no opposition—and there was very little opposition to our subsequent filing—it is a matter of perhaps 6 months.

Senator PEARSON. But you continued operating under the original order during this period?

Mr. CLARKE. That is right. Now the first application we filed was not only the original one within our industry, so we were pioneering, so to speak, the Commission and North American Van Lines—in addition, it involved an application by which certain carrier agents of North American Van Lines who owned stock, sought to obtain control or approval of control of North American Van Lines by the Commission, and that complicated it tremendously. It is probably responsible for 75 percent of the time that was required to dispose of these two joint applications in that first and original proceeding. On the matter of the burden that will be imposed upon the carriers who seek approval of their pooling practices and upon the Commission, in processing those applications, to prepare an application requires a plan. The plan must be in writing. The plan must be acceded to by the applicants. The plan becomes part of the application. The application is filed. It is set for hearing wherever the Commission can hear it, and after the hearing the Commission makes a determination of whether or not the plan is in the public interest, which I think is the most important aspect of this whole proceeding, and whether competition will be unduly restricted because there is a restriction on competition inherent in every plan.

If the Commission approves, it issues an order accordingly. The approved plan then becomes effective and all participants must adhere to it rigidly. Our plan was very detailed. It spelled out the circumstances under which a shipment tendered to North American by a shipper could be diverted to the carrier agent through which it was tendered to North American and vice versa. The controlling circumstance was generally whether diversion of a shipment would afford better service to the shipper. In other words, the total arrangements between North American and 350 of our carrier agents were incorporated in this plan which was scrutinized by the Commission at these hearings, approved, and thereafter operated by North American and these carrier agents.

Senator PEARSON. Let me interrupt to ask you one or two questions. I am proceeding with you very informally. There is expected to be a vote on the floor in about 15 minutes. Is it true there are only about three or four of these pooling agreements now in effect?

Mr. CLARKE. Three.

Senator PEARSON. Well, now, does the fact that North American or United Van—and who would be the other one? Mayflower?

Mr. CLARKE. Atlas Van Lines.

Senator PEARSON. Does the fact—and I put it to you bluntly—not in the spirit of cross-examination—

Mr. CLARKE. I do not mind.

Senator PEARSON. I am sure you don't. Does the fact that three of these pooling arrangements exist and are operative now give your company, or any other company, an added or beneficial position in securing business in relation to other companies, large or small?

Mr. CLARKE. No, it doesn't, Senator, but the Commission knows exactly how we operate, and so do the shippers that we serve. We cannot change our practice on a day-to-day basis to suit our own convenience without too much regard to the shipper's interest. In that connection—

Senator PEARSON. I can put it more bluntly, and I am sure you do not mind. Is the opposition to the repeal of this section an economic situation? Are you seeking here to protect an element of business that you might potentially lose if this section is repealed?

Mr. CLARKE. The answer to that, and I am not equivocating, or not meaning to, depends upon whether if this section is repealed, North American Van Lines and carrier agents can chance a continuation of the pooling arrangement, pooling by finding of the Commission between us, whether we can chance a continuation of—

Senator PEARSON. Because of the antitrust laws.

Mr. CLARKE. That is right. And I would think we might be in a bit more favorable position than are carriers whose pooling plans have not been approved by the Commission. The Department of Justice just might say our plan was approved, while the act provided exemption if certain conditions were met. Those conditions were met, and the exemptions inured to the benefit of North American Van Lines and our carrier agents.

I would hope that the Department of Justice would say that the mere fact that the act was amended to eliminate that immunity does not give rise to the conclusion that it was not properly granted in our case. But I am not sure about that, and I am afraid of it.

I think, really, that the carriers who testified today, and others like them, are pooling and everybody admits pooling is existent. Pooling is all right and good if conducted in a way that is in the shipper's interest.

Senator PEARSON. You testified that pooling now exists by independent carriers outside the authority of this section, and it is just simply not enforced by the Interstate Commerce Commission, is that right?

Mr. CLARKE. That is right.

Senator PEARSON. Do you know of any case where antitrust provisions or antitrust action have been filed against such pooling arrangements?

Mr. CLARKE. No.

Senator PEARSON. Do you think the Interstate Commerce Commission can enforce it, if it is provided?

Mr. CLARKE. I do and I do not think it would be too difficult. I think all the Commission has to do is tell our industry to get our houses in order, poolingwise, that it intends to enforce the section of the act. That means that these people will form their group, and I think it is very practical for them to do it. They will devise their plan. They will file their plan. They will have a hearing, and if their practices are in the public interest, they will get approval and then go about their business.

One other thing I'd like to say—and there are lots of things, but we don't have time—and that is, the Commission has had difficulty in regulating the household goods industry. The difficulty is inherent in our history. We serve amateur shippers who do not know a thing about transportation. They own the goods, and there are 4,000 of us, not 20 or 30 or 40 big systems. There are 4,000 of us. As a result, things happen in our industry. And part of the happenings are caused by the great variety and really nonrepetitive arrangements that can occur daily in certain groups.

Now, this situation has resulted in a flow of letters to the Commission which are complaints by shippers, articles in papers such as Consumer's Digest, and so forth, criticizing our industry.

We need regulation. If the Commission would enforce the pooling section, considering that everybody in our industry does pool, it would not be very long before we would all be under a plan.

The Commission would know what we are doing, would have approved the good and rejected the bad, so the good would be left. It is then up to us—let's say North American Van Lines—to police the compliance of our participants with this plan. That is exactly what we do, because if we do not comply, the Commission has the right to revoke its approval of the arrangement between us. So that, to me, is an excellent way of regulating the industry, and I say—and I am sorry the Commission people are not here—that the Commission has just paid lipservice to this effort. They have not tried. They inaugurated a rulemaking proceeding that did not follow the course of the normal rulemaking proceedings at all.

I think they have come to the conclusion that it is just too burdensome.

Senator PEARSON. I think this is their position.

Mr. CLARKE. I think that is completely erroneous. If they face up to it and do the original work, then we will become self-regulated,

and the Commission can go away. Because we will regulate ourselves by seeing to it that all in our group complies with the plan which has been approved.

I think it would be very bad, if this section were repealed.

Senator PEARSON. I think there is a little cynicism, and I think mine shows most when I talk to businessmen who are asking for continued, or more, regulations by the Federal Government than ever before. Every time this happens, there is behind it, in many cases, sort of a self-interest thing. Yet the point you develop, that complete regulation may someday lead to self-regulation is something I can understand.

Mr. CLARKE. I would like to say one other thing, Senator. I heard these people testify. I know them. They talk as if they would be prohibited from engaging in the practices they must follow to exist. That is not true at all.

What they are doing is pooling, and if the pooling they are doing is in the public interest—I don't say it is not and the Commission puts the stamp of legality on it, they would not be hurt. Their business would not be adversely hurt at all.

I do not want you, or Senator Lausche, to think it is a matter of these people going out of business, because it isn't.

Senator PEARSON. Mr. Clarke, we just got into sort of a colloquy. I appreciate your talk. First of all, I want to incorporate your entire statement in the record as it is given in full, and also give you the opportunity of reading it, time permitting, or you may summarize same.

At any rate, your complete statement will be incorporated in the record.

(The full statement of Paul Clarke follows:)

STATEMENT OF PAUL CLARKE, NORTH AMERICAN VAN LINES, INC.

My name is Paul Clarke. I'm Assistant President of North American Van Lines' Inc., Fort Wayne, Indiana. North American is a certificated common carrier by motor vehicle of household goods as defined by the Interstate Commerce Commission. Its authority and operations encompass 50 states.

From 1948 until 1958, North American fully complied with the provisions of Section 5(1) of the Act by filing applications and getting approval from the Interstate Commerce Commission of pooling between North American and its carrier-agents. In 1958 certain of our applications then pending, some of which had been heard, were dismissed by the Commission without prejudice incident of institution of a rule-making proceeding purportedly intended to prescribe rules and regulations governing pooling among household goods carriers. My association with North American antedates the first application and I have personal knowledge of operations North American conducted under its approved pooling plans, the benefits that came from our regulated pooling activities, and all subsequent occurrences, including the rule-making proceedings just referred to.

Our industry is in a chaotic state and the Commission, by urging deregulation of pooling, concludes that our problems are beyond its regulatory capacity. Mostly all this results from an oversupply of carriers which probably exceed 4,000. 95% are small. Many are incompetent. Some continuously flout laws and regulations. A sizeable number operate on the theory that most shippers won't use their services a second time and make no effort to retain goodwill. All this is reflected in the poor repute of our industry, is evidenced by a constant flow of complaint letters to the ICC, Congressmen, and our industry associations, and articles in magazines, such as Consumer's Report, Reader's Digest and other media.

Long ago Congress recognized that regulation of transportation serves the public interest. By virtue of implementing laws, appropriate agencies, including the ICC, have expanded their regulatory activities with proportionately greater benefit to the shipping public. Now, however, the ICC urges partial deregulation

of an industry most in need of strict supervision; an industry which transports for amateur shippers the personal possessions which he, or she, owns. I can't visualize a class of shippers more deserving and in need of protection.

Why under these circumstances does the ICC urge this deregulation upon you? Its expressed reasons aren't the real reasons because every benefit it claims for deregulation of pooling is inherent in pooling arrangements. Actually the Commission hasn't regulated pooling in our industry excepting for North American and two other carriers, so all the non-regulated carriers have been free to operate as if deregulation were existent. Yet, to the concern of all including the ICC, our industry is in serious disrepute. It doesn't appear that not regulating pooling or legally deregulating it, has produced, has produced or will produce the benefits claimed for deregulation by the ICC.

Simply and bluntly stated, the ICC wants to avoid the burdensome work load involved in regulating pooling. It is a chore but one which can be simplified by procedural modifications. Regardless, regulation is worth its cost because, by proper administration of 5(1), the ICC can eventually impose, and mostly by delegation, a helpful level of regulation on the entire household goods industry. North American's pooling history discloses this. Our pooling application was the joint product of North American and about 350 household goods carriers that were agents of North American. It included a plan of arrangements between all of us that spelled out the exact circumstance under which North American's carrier-agents could transport on their individual operating authority as carriers a shipment that was tendered to North American through the agent; it detailed the responsibility of North American and its carrier-agents for damage to shipments; it included specific percentage divisions of revenues, and all other aspects of the arrangement under which North American and its agents furnish service to our shippers. This "pooling" application was heard by the Commission. Its details were supported by testimony. The Commission concluded this plan was not restrictive of competition; served the public interest, and should be approved.

An appropriate order was issued which required 351 carriers, including North American, to carry on their individual collective operations strictly in accord with a detailed plan which had been thoroughly scrutinized and approved by the ICC. No carrier in our group can afford to deviate because the deviation of one jeopardizes the entire plan and thus all. North American, with a bigger stake in the total than the rest, assumed and continues to exercise the policing activity needed to maintain compliance. I'm sure the ICC will quickly accord with my conclusion that it, the ICC, has effectively regulated about 9% of our industry via the North American pooling order. The other 91% can be regulated the same way provided the ICC will face up to the one time, non-recurring chore of conducting a hearing and issuing a pooling order. Thereafter, self regulation takes over.

Because the need for regulation in our industry was never greater, and since pooling is a vehicle to effectively accomplish this regulation, without excessive-Commission activity, we urge that its proposed modification of § 5(1) be rejected.

An unfortunate corollary of the ICC's request is that deregulation of pooling will really eliminate pooling entirely. Pooling contemplates the division of traffic and restriction of competition to a not undue degree to paraphrase the statute. Restriction of competition among carriers without antitrust immunity, which the section grants, is very hazardous and neither North American nor its carrier-agents can chance the antitrust consequences of carrying on under their presently approved pooling plan. In effect, then, deregulation of pooling breaks up the highly controlled, effectively policed, 9% segment of the industry and its components will go their separate ways with added industry chaos.

If, in spite of all the benefits from regulated pooling, you believe enforcement is too burdensome, then I suggest a solution which seems simple and appears to produce greater and different benefits. It is to amend § 5(1) by providing that a carrier-agent's operating authority be dormant and unusable while the carrier-agent represents a carrier-principal with equal or greater operating authority.

Many carriers will be eliminated on an interim basis. The principal-carrier will have less deadhead mileage and more shipments to fill its vans. This means less waiting for loads and that small shipments, which are the bugaboo of our industry, can be more expeditiously transported. The temporarily eliminated carrier will save all the expense of being a regulated carrier and should actually net more functioning strictly as an agent instead of as a combination agent-carrier. Duplication in insurance, reporting, registration and other areas will be eliminated. The Commission will have fewer carriers to police and, in systems such as North American's, all the regulatory benefits from present pooling practices will be retained. North American, as principal, will be responsible for the conduct of our agents,

including those carriers whose authority has been temporarily inactivated. I think this plan has considerable merit and warrants your consideration.

Mr. CLARKE. I don't think, under these circumstances, that there is very much point in me either reading or summarizing. I much prefer having done what I did with your help.

Senator PEARSON. And you also might give some consideration to the question I put to Mr. Rea, regarding the recommendations of the Comptroller General. I don't know whether you would like to comment.

Mr. CLARKE. I can say this: I am no antitrust expert but considering the present proclivity of the Department of Justice to even attack findings of regulatory agencies after conclusion of proceedings in which the Department of Justice didn't participate on the basis that these agencies didn't adequately consider the effect of their orders on competition, I don't believe the Department of Justice will accept an amendment that provides for automatic approval of a pooling plan just because the plan isn't opposed unless its competitive impact is thoroughly scrutinized.

I do not think the Department of Justice will stand still for that.

Senator PEARSON. That may be accurate. I come back to the question: Why haven't we had some antitrust action in existing pooling arrangements that you have described?

Mr. CLARKE. I think there are several answers.

Senator PEARSON. Are they too busy to?

Mr. CLARKE. Not as far as the household goods are concerned. The Antitrust Division has worked over North American Van Lines and two or three others for 20 years.

We are sort of a target, in my opinion, which adds to my concern. I think the reason the Department of Justice has not attacked any of the unapproved pooling arrangements is primarily because the Commission has not clearly indicated until now it does not intend to do what it is supposed to do under the act. It sets up rulemaking proceedings, designed to make it easier to regulate and sent out a notice that we all had to get in compliance. It also accepted, processed and acted upon the applications of three carriers.

I suspect that the Department of Justice will take a position and make its decision depending upon what happens here.

Senator PEARSON. I understand there are some people from out of town, and I want to accommodate them, because if they have come in to Washington, I want to hear them.

Mr. Clarke, thank you very much for your helpful testimony. It is most welcome, and as I said, your entire statement will be incorporated into the record.

We are going to take a little recess, and I want to make sure that we hear you today. I understand that you gentlemen are from Washington?

Mr. COYLE. Yes, sir.

Senator PEARSON. Are you from Washington, Mr. Coyle?

Mr. COYLE. Yes.

Senator PEARSON. We have run out of time. If it would be convenient for you, I would just say that it is my intention to take a short recess and answer the quorum and come back and hear Mr. Washer and Mr. Alexander, and take these other things up at such time as you will be notified of further hearings. I hope that will be agreeable. That will be the order of the day.

You will be notified,  
(A short recess was taken.)

Senator PEARSON. The next witnesses are Mr. Washer and Mr. Alexander.

**STATEMENTS OF CHARLES A. WASHER, TRANSPORTATION COUNSEL, AMERICAN RETAIL FEDERATION, AND HUGO ALEXANDER, LEGAL ADVISER, THE AMERICAN RACING PIGEON UNION, INC.; ACCOMPANIED BY MICKEY J. RUSSO, PRESIDENT, AMERICAN RACING PIGEON UNION, AND WILLIAM INDYK, CENTRAL JERSEY CONCOURSE**

Mr. WASHER. The American Retail Federation is comprised of 44 statewide and 29 national associations of retailers representing, through this constituent membership, retail establishments of all types and sizes throughout the United States. We wish to express our complete support of S. 756.

Senator PEARSON. There is a great deal of this in interstate commerce.

Mr. WASHER. Yes.

Senator PEARSON. The reason I say that is in attempting to draft Government Operations legislation 2 or 3 years ago, we were amazed by the number of cities in the United States that border on State lines. I live right outside Kansas City, Mo., on the Kansas side. The situation there in relation to sales taxes and delivery and all the rest of it is something we have been aware of; in addition to that, we had occasion at that time to look at the number of great metropolitan areas in the United States that probably—because they are located and originated on rivers which form boundaries of States—there are a great number of these. I take it that motor carrier delivery service in these cities is where you are running into a lot of problems; is that right?

Mr. WASHER. Yes, sir; that is precisely it.

Senator PEARSON. Go ahead.

Mr. WASHER. In the transportation services utilized by the retail industry there is one type that falls within the contemplation of the proposed legislation—that is the motor carrier delivery services performed for retailers in effecting delivery of merchandise from stores or warehouses into the customer's home.

The American Retail Federation policy, adopted by the general membership on May 14, 1964, upon the recommendation of the Transportation Committee, states as follows:

Legislation should be developed and supported which will permit local delivery carriers not holding interstate authority to perform a retail store customer delivery service including pickup and delivery in an entire retail trading area, part of which is in another state.

The delivery service provided by these carriers is very specialized and entails more than dropping the merchandise at the doorstep. Many articles are delivered crated and must be unwrapped in the home at the time of delivery. Very often the article must be connected or placed in a particular location in the home at the request of the customer. Such service sometimes includes testing electrical appliances for proper functioning. The delivery operations are usually

scheduled for specific days and "call back" notices are given in case the customer is not at home. None of these features is provided by an over-the-road common carrier by motor vehicle. Yet, unless private delivery operations are used, a local common or contract carrier must be able to perform this type of service.

Frequently the store trading area, and the resultant delivery area, covers more than one State. One need only think of the major cities such as Cincinnati, New York, Chicago, or Philadelphia. I should have included Kansas City.

Senator PEARSON. That is a bad omission with me presiding.

Actually, what percentage of the retail business is conducting their own delivery service and which contract out to delivery companies?

Mr. WASHER. That is pretty hard to say. I think here in Washington, Jacobs' Transfer is a local carrier that provides local transfer, yet Woodward & Lothrop does their own deliveries.

In some cities, United Parcel services major department stores.

Senator PEARSON. I just wanted to know to what extent shippers contract to do their own, and how many contract it out.

Mr. WASHER. The city of Washington, D.C., is a prime example. Years past there was no real problem in most cases, because the carriers were sufficiently exempt under section 203(b)(8) of the Interstate Commerce Act applicable to transportation within a commercial zone. However, in recent years, the trading area of any store has expanded well beyond the commercial zone, particularly for those stores which have extended their sales area through suburban stores.

To serve customers over State lines and beyond the commercial zone requires, today, a certificate or permit from the Interstate Commerce Commission. This procedure is costly, time consuming, and unnecessary, when viewed from the standpoint of the effective regulation of our transportation system.

Senator PEARSON. How time consuming?

Mr. WASHER. It takes a matter of several months, anyway<sup>1</sup> to process an application. I mentioned this in the next paragraph, that one of the problems is that delivery carriers, to provide interstate service beyond the commercial zone, must petition the Commission for authority which, of necessity, must be for general commodities.

Every motor carrier having rights in, to, or from this area immediately will file a protest against the granting of any authority.

When, after hearing, it develops that the contemplated service is specialized and not of detriment to the existing carriers, the authority is issued, usually restricting the carrier to delivery of merchandise to customers' homes, from stores or warehouses—or the return thereof. This does not permit interchange of merchandise from stores to warehouses, or vice versa—only customer service.

The authority to exempt transportation services of this nature from economic regulation should not be feared by other motor carriers for several reasons. The services are not competitive.

Secondly, the bill provides that the ICC cannot grant an exemption without first affording an opportunity for all interested parties to be heard.

Lastly, but most importantly, the ICC can attach any conditions to the exemption that it sees fit and may always revoke or rescind the order. The provisions of the bill will have no effect upon State regulation of intrastate commerce.

It is our view that the work of the Commission could be alleviated, and the effectiveness of the economic regulation of commerce not impaired, by the authority to exempt such small, specialized services. S. 756 should accomplish that objective and should be approved.

Thank you for the opportunity to present these views in behalf of the retail industry.

Senator PEARSON. Thank you, sir.

Mr. WASHER. I should state that we have not presented our view to the Commission as yet. In submitting this bill, S. 757, the Commission mentions one or two types of motor carriers that they thought fell within the purview of this authority. We think this is another one, although I must say we have not told the Commission that yet. It would be a matter of us petitioning them.

Senator PEARSON. Mr. Washer, I want to thank you for this statement.

Mr. WASHER. Thank you for allowing me to be heard today.

Senator PEARSON. Mr. Alexander, who is the legal adviser of the American Racing Pigeon Union.

Mr. ALEXANDER. Senator, I have two men who would like to make brief oral statements at this time.

Senator PEARSON. They are certainly welcome, and you may proceed in any manner you see fit.

Mr. ALEXANDER. Mr. Russo will speak first.

Mr. RUSSO. As president of the American Racing Pigeon Union of which we are over 15,000 strong, I wish to render my opinion and reasons why my organization would like to have bill S. 756 amended with the Interstate Commerce Commission so that we can transport our racing homing pigeons without interfering with the ICC Commission.

Our hobby of breeding, training, and racing homing pigeons is a clean and wonderful sport. To us it is like the everyday tennis player, golfers, archers, et cetera. This hobby is a weekend pleasure for us, as all our races are flown on weekends, where it wouldn't interfere with anyone.

Our 15,000-plus members are spread out all over the United States. Therefore, it is very difficult at times to hire transporters with ICC rights to truck our pigeons for our weekend races.

It is even more difficult to even hire these truckers in many of our small Western and Midwestern States and cities, as the accommodations are just not there.

Then again, the expense is quite a problem, particularly with the very small clubs in our organization. Some clubs have just five to 15 members, and to hire a trucker with ICC rights would lead to the disbandment of these clubs, as they just couldn't stand the expense with such small entries in each race.

Our feathered friends have served in the last three wars, and though disbanded now by the Government, we stand ready at all times to have these pigeons ready again for national defense. Let us hope and pray we will never ever again have to use the pigeons again, as we most certainly can do without war.

On behalf of my members and myself, we urge you to please give this matter your every consideration and help us to pass this amendment to the ICC rulings.

Senator PEARSON. Is there any special type of carrier required; any type of shipping cages?

Mr. Russo. The trucks we have now have to be made up special to carry shipping baskets. If it were a case of the individual club, any individual member would be able to transport the birds in a station wagon or pickup truck, things of that nature.

In the case where we have to ship for a race some five or six hundred miles away, we have to hire a transport with ICC rights, costing us roughly four or five hundred dollars. If it was a club member, it would just cost us the tolls and gasoline. That is the big problem.

Mr. INDYK. I represent the New Jersey Homing Pigeon Union and the Central Jersey Concourse Association in New Jersey.

We have specially built trailers for the transportation of our birds, and in order for our pigeons to be pulled to the destination where they are supposed to be liberated, at the present time requires someone with ICC authority. Some of these people that have this authority, they only have one truck, and if their truck breaks down it puts us in a very bad position where the birds never reach their destination and create a delay.

We are fortunate. We have a trailer. There are other organizations that have no trailer, and these common carriers are these individuals who have authority, they haven't got the proper equipment. We have our own trailer racks, where the birds were placed in these baskets, where the birds are watered and fed right on our trailer. It requires special equipment, and these common carriers, or these individuals who have rights, they can't provide us with any such facilities.

Senator PEARSON. You are aware, I take it, and were present when the Commission stated what commodities should be exempted from regulation, where the Commission specifically made reference to homing pigeons. Do you have further testimony, Mr. Alexander?

Mr. ALEXANDER. I have submitted a prepared statement, which I will read. It will only take about 2 minutes to do so, and I may add a few comments.

Senator PEARSON. All right.

Mr. ALEXANDER. Gentlemen, the more than 20,000 members of the American Racing Pigeon Union and the International Federation of American Homing Pigeon Fanciers enthusiastically appreciate your interest in solving one of our most vexatious problems by the consideration of Senate bill 756.

For members of your committee who may not be well informed on our background and the problems we are faced with, a brief summary is submitted for your information and consideration.

The two aforementioned organizations have had continuous existence and growth, one since its foundation in 1881 and the other since 1902. These two national organizations are well organized, efficiently managed, and by and large control the sport of pigeon racing in the United States.

The country is divided into both large and small units. The larger units are called centers and the smaller units, local clubs. The centers usually have a large number of clubs which fly races under the auspices and management of the center organization.

Each year two series of races are held—one in the spring and early summer for old birds—at least a year old—and a young bird—born the year of the race—series in the early fall. The "old bird races" are run from 100 to 600 miles on weekends, and the "young bird races" are run from 100 to 300 miles, also on weekends.

Years ago all the birds were shipped to the various racing stations by rail. Conveyors traveled with the birds and saw to the release of the birds at the point of liberation. Because of many factors too numerous and detailed to report herein, rail transportation was eliminated and truck transportation took its place. Today, the railroads do not accept our birds for our races. We are compelled to ship by truck.

Because of the many problems connected with the transportation of our racing pigeons, the requirement of the present act that only those haulers who have rights can haul our pigeons, has been a source of innumerable difficulties, frustrations, harassment, and complications.

Because of the casual nature of our requirements, none of the major haulers are either prepared or interested in hauling live racing pigeons. Our birds can be neither mixed with other cargo, or left at some dock for reshipment, et cetera, by another truck. Once they are shipped, the hauler must make one continuous trip to the racing point and return the empty shipping crates to the club or center where the trip originated.

The carriers are not equipped to handle racing pigeons. The usual equipment used by the average hauler is the ordinary closed body trailer. You can readily understand the problem this fact alone poses when you can visualize many hundred, and often many thousand, thoroughbred racing pigeons penned up in shipping crates jammed into a closed trailer, piled as high as the top in many cases, and subjected to the intense, suffocating heat, and lack of air en route to the race point. You can imagine the condition of the racing pigeon when so confined for so many hours, and on the longer races for 2 days under these conditions. No wonder then that we often lose many fine racers after they are shipped under these conditions.

Because our business is not a daily or year-round source of income, we are at the mercy of the few who do have ICC rights to haul. These haulers are usually small operators with old unreliable equipment. Their tractors have broken down time and time again causing races to be called off or delayed to the point of making late liberation a real hazard.

I might interject that all our races are liberated early in the morning.

Senator PEARSON. Do you ever fly them to fly back?

Mr. ALEXANDER. I beg your pardon?

Senator PEARSON. Now, in the transportation of racing birds, you are talking about a truck. Have you ever flown them out by aircraft?

Mr. ALEXANDER. We had one race about 600 miles away. It was a small shipment, and we were able to do it. The birds are liberated early in the morning so they get back early in the day.

If the truck does not get there in time—we had one truck in Centerville that caught fire, and we almost lost our birds.

Senator PEARSON. This would still be the case.

Mr. ALEXANDER. Many of our larger centers have built trailers specially designed and built to haul racing pigeons. They can't, however, use them to do their own hauling, because of ICC prohibition.

As Mr. Russo stated, I am a member of the Pittsburgh center. We have specially built aluminum trailers that have sides that can be opened simultaneously and the birds put in and released all at one

time. There are aisles in there where you can walk up and down and feed them and water them, and they have plenty of fresh air.

Most of these truckers cant afford this type of equipment. There isn't enough volume of business for them to go into that expense, so it is just a case of we have to use self-help, and then, of course, we are limited, because practically every race schedule going from 100 to as much as 600 miles puts us beyond State lines. So we have come to the Interstate Commerce Commission. In our case, we live in the Pittsburgh district. We ship to West Virginia, Ohio, Indiana, Illinois, and even into Missouri. So, no matter what State you go into, we do have the interstate commerce to contend with.

Many small clubs would like to either own equipment or deal with someone who would be interested in furnishing adequate transportation facilities. Under present regulation, this cannot be done.

You are familiar with the limited number of exempted items under present ICC regulations; poultry is one of the excluded items. The ICC ruled that pigeons were not poultry by a 5-to-4 decision. Therefore, we cannot, under present law, do what the chicken breeders can do. And certainly there is no comparison in the handling of pigeons and the handling of livestock and chickens.

We are respectfully requesting that the racing pigeon be placed on the exemption list. Our organizations do much in our local communities to combat juvenile delinquency by working with our youth, such as the Boy Scouts, and other organizations of young boys. We sponsor charity races to raise funds annually for our local charities. Our membership comes from the broad spectrum of our society.

We had over 10,000 pigeons at Camp Crowder, mostly for use in World War II.

As Mr. Russo said, in the past we have furnished thousands of pigeons to our country in time of war. Hundreds of our members have served in the Signal Corps in the pigeon units.

We now have an association of those who have served in World War II, called the Pigeon Volunteers of America.

For our service to our communities, our country, and as members of two national organizations which promote good fellowship, healthful recreation, and good sportsmanship, we ask for your favorable consideration of S. 756.

I will be glad to answer any questions you may have.

Senator PEARSON. Thank you, Mr. Alexander. Your testimony and those that you introduced, will be most helpful to the committee. We are very pleased that we are able to hear you today, and that you came to Washington to speak to us.

Mr. ALEXANDER. We appreciate the fact of your staying over to hear us, because we are from out of town.

Senator PEARSON. Thank you also. Mr. Washer.

Mr. WASHER. Thank you.

Senator PEARSON. We stand in recess until tomorrow morning at 9 o'clock.

(Whereupon, at 12:10 p.m., the committee adjourned, to be reconvened at 9 a.m., Friday, June 9, 1967.)

...the ... ..

... ..

... ..

... ..

... ..

... ..

... ..

## AMENDMENTS TO THE INTERSTATE COMMERCE ACT

FRIDAY, JUNE 9, 1967

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

The subcommittee met at 11:15 a.m., in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

Senator LAUSCHE. We have a number of witnesses who were supposed to testify yesterday with regard to bills S. 755, S. 756, S. 757, and S. 758.

Yesterday's testimony was concluded on S. 755, and there are three witnesses remaining to be heard on S. 756, S. 757, and S. 758, inclusive.

Inasmuch as I understand that the statements of Mr. Coyle or Beverley Simms are very brief, we will call upon them first to make their presentation.

### STATEMENT OF BEVERLEY SIMMS ON BEHALF OF MOTOR CARRIER LAWYERS ASSOCIATION, ACCOMPANIED BY PAUL COYLE, WASHINGTON, D.C.

Mr. SIMMS. Mr. Chairman, I am Beverley Simms. My address is 1700 Pennsylvania Avenue. And I appear on behalf of the Motor Carrier's Lawyers Association at its president.

I want to make clear at the outset that we are not opposing bill S. 758. As a matter of fact, we endorse any help that the Commission can receive in alleviating its problems. Our only concern is that under the language, the Commission is not prohibited from referring to non-lawyers in matters of adjudication and rulemaking.

The language as used would limit such use to cases that do not involve the taking of testimony or submission of affidavits.

For us, there are certain types of adjudications—for instance, a section 5 case—where a large application is filed containing much information. If there is no opposition, the Commission will frequently dispose of that informally without a hearing, without submission of testimony, with submission of affidavits. That becomes an adjudication of a very important case because under section 5 you have certain legal principles to follow.

We believe that if a layman, for instance, an economist, were assigned that type of case, he might very well dispose of it in a way that might do violence to certain basic principles of law as well as the interpretation of the Interstate Commerce Act itself.

Another example are alternate route cases, elimination of gateways. In those cases, they are frequently disposed of without oral testimony.

While the objection could be made that if there is nobody opposing, what difference would it make, but every decision rendered by the Commissioner becomes a precedent. Those cases disposed of by a non-lawyer would be cited as a precedent just as though it had been handled by a hearing examiner under the Administrative Procedure Act.

On rulemaking, many rulemaking proceedings do not take oral testimony. Likewise, many of them do not require that affidavits be filed. And yet, a rulemaking proceeding has very important results. We believe that they should be handled initially by a lawyer who is conscious of precedents, the limitations of the statute and everything else.

To that end, we recommend and urge that a proviso be added to the bill which briefly would prohibit any employee of a commission who is not an attorney being assigned to act in any case of adjudication or rulemaking as those terms are defined in the Administrative Procedure Act.

I might add, sir, that the Motor Carrier Lawyers Association is composed of about somewhere between 450 and 500 lawyers being domiciled throughout the country as well as in Canada. And I am here pursuant to a vote taken at its last conference recommending that we urge the committee to place such a limitation in this bill.

That concludes my testimony and thank you, sir.

Senator LAUSCHE. Is there anything you desire to say in the matter, Mr. Coyle?

Mr. COYLE. Just this, Mr. Chairman. We previously discussed this matter with Mr. Pinkney of the American Trucking Associations. Mr. Pinkney has a suggestion for a change in the text of the bill which he believes and we believe will entirely divorce this new proposal from the present statute.

The present statute permits the assignment of opposed proceedings to boards composed of three employees. That assignment has been working as well as it could be. We do not want any change in that assignment. So Mr. Pinkney and we are agreed to make the new provision a separate part of section 17(2) so that the present boards can continue to function as well as they do at present.

Thank you very much for listening to us and for this opportunity to place our thoughts before you.

Mr. SENDER. Two of the present 10 Commissioners are not attorneys. Would you suggest that they similarly be prohibited from ruling on matters before the Commission?

Mr. SIMMS. No, sir; if I may answer that.

We certainly do not. However, I believe that we all recognize that a large amount of the work before the Commission is done by lawyers. They have the benefit of the lawyer's advice, and I want to make clear, Mr. Chairman, that the proviso I have proposed should in no way be interpreted or meant to take away any of the existing statutory authority of the Commission.

Senator LAUSCHE. Good enough.

Mr. SIMMS. Thank you very much.

Senator LAUSCHE. Yes, thank you.

Mr. Pinkney?

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.

Mr. PINKNEY. Mr. Chairman, may I first address myself to the matter just discussed a moment ago in connection with S. 758, a bill to broaden the authorities—that is, to delegate certain minor matters to certain employees.

The Interstate Commerce Commission bill does not make clear that delegation to the individual employees is strictly to be limited to “matters which have not involved the taking of testimony at a public hearing by the submission of evidence by opposing parties in the form of affidavits.”

However, Chairman Tucker’s testimony made it clear that such limitation was intended.

Now, to clear up this point, we suggest that section 17(2) of the Interstate Commerce Act be amended by inserting immediately after the second sentence the following, and this is a suggested amendment:

“The Commission may also refer to individual qualified employees for decision those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.”

This, as I stated, would put into effect exactly what the Commission intended and remove the present doubt that is inherent in the Commission’s language, its suggested amendment.

Under its suggested amendment, some of us feel that it would change to some extent the present very satisfactory working of Board matters in the more formal proceedings. This would clearly limit this individual delegation to the minor matters referred to by the Commission.

Senator LAUSCHE. The recommendation made by you is intended to make certain that what the Commissioners said they wanted to achieve will be achieved, is that correct?

Mr. PINKNEY. That is correct, sir.

Senator LAUSCHE. You are not intending to change the substantive thoughts that they have on what should be done in delegating certain work?

Mr. PINKNEY. That is correct, sir.

Senator LAUSCHE. All right.

Mr. PINKNEY. I might add that although the American Trucking Associations has no position on the proposal just made by the gentleman from the Motor Carrier Lawyers Association, I personally can see no objection to that and think it might be helpful.

I also understand in advance because we have discussed these matters that Mr. Breithaupt has a suggestion with respect to appeals that might be taken. And I can say that we subscribe to that one as well.

If I may devote just a moment or two now, sir, to S. 756, the bill having to do with authorizing the Commission or permitting the Interstate Commerce Commission to authorize exemptions from the provision of part II of the Interstate Commerce Act under certain circumstances, we object to this. And our objection stems from the fact that the authorization is extremely broad and conceivably could result in deregulation of a serious nature. Commissioners often hold sharply divergent views on the necessity for, and the required scope of, regulation.

The exemptions already included in part II of the Interstate Commerce Act have been and continue to be a major source of trouble for all concerned—except for those who receive preferential treatment thereby. We fear any further broadening of them without congressional action.

The Commission has suggested that passage of this bill might relieve it and the Congress of work entailed by a piecemeal approach. This may be true, but we believe and the experience of States possessing such powers indicates that far more work would be required as the result of pressures brought to bear by persons seeking the advantage of broadened exemption from regulation.

If the Commission does have any actual serious problems at the moment, we suggest that it clearly identify the transportation involved. In the absence of such specific information which would permit an appropriate amendment to the Commission's bill, we feel we must oppose the bill.

That concludes my statement, Mr. Chairman.

Senator LAUSCHE. Thanks very much, Mr. Pinkney. I am sorry I made you wait the whole morning for this brief presentation.

Mr. PINKNEY. That is perfectly all right. I was intensely interested in the testimony that went before and wished to hear it anyway. Thank you.

Senator LAUSCHE. Mr. Breithaupt, you desire to speak on three bills as I understand it.

Proceed.

**STATEMENT OF HARRY J. BREITHAAPT, JR., GENERAL ATTORNEY,  
ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.**

Mr. BREITHAAPT. Mr. Chairman, I will endeavor to be more brief this time.

I have a prepared statement, Mr. Chairman.

Senator LAUSCHE. Your prepared statement deals with S. 756 to S. 758, both inclusive.

Mr. BREITHAAPT. That is correct, Mr. Chairman. I would like to deal with those bills in numerical sequence.

Senator LAUSCHE. Would you mind at the very beginning state whether you oppose or support them?

Mr. BREITHAAPT. In the case of S. 756, the bill as to which Mr. Pinkney just testified, we would support the bill provisionally, Mr. Chairman, and that is—

Senator LAUSCHE. Do you deal with that in your paper?

Mr. BREITHAAPT. I do.

Senator LAUSCHE. Now, what about 757?

Mr. BREITHAAPT. On S. 757 which deals with reporting with respect to the valuation of railroad property, we support that without qualification.

And in the case of S. 758, again, with a manner of protective amendment, we will support the bill.

Senator LAUSCHE. Now, proceed with your presentation.

Mr. BREITHAAPT. S. 756, the bill on which you just heard testimony, would amend part II of the Interstate Commerce Act "so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially

impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce."

I will omit description of the technical details of the bill, Mr. Chairman, and say that the railroads believe that where regulation is not needed, it should be avoided. They also believe, however, that regulation should be fair and impartial. The railroads would, therefore, support S. 756 if it be so amended as to be made uniform in its application to the several modes of transportation.

As has been noted, the bill applies only to motor carriers. It does not apply to services or transportation performed by railroads. Yet, the reasons advanced by the Commission for its enactment with respect to highway transportation are equally sound and cogent in the case of transportation by rail.

We are of the view that the Commission's objective is laudable; but for all of the reasons the ICC advances in the case of motor carriers, plus simple equity, the bill's coverage should be enlarged to include railroads under part I of the Interstate Commerce Act as well as motor carriers under part II of the act.

I would point out, this ought not to be considered a shocking suggestion. The same safeguards would apply in the case of railroads as in the case of motor carriers. Before any exemption could be granted, opportunity for hearing would have to be afforded interested persons. It would have to be found that the exemption would not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. And the Commission could attach conditions and, by order, revoke any exemption it had granted.

In summation, I repeat, then, that the Association of American Railroads would support S. 756 if it be made uniform in its application to the several modes of transportation.

Senator LAUSCHE. Do you know what reasons have been given for not making it uniform?

Mr. BREITHAAPT. To my knowledge, no reasons have been given. No reasons have been given.

Senator LAUSCHE. You think the situation in each instance is of substantial identity and that, therefore, a principle applied to one justly ought to also be applied to the other?

Mr. BREITHAAPT. I think that is a fair statement, Mr. Chairman. I do not know, for example, that the transportation of pigeons is as important in the railroad industry as apparently it must be in the motor carrier industry, on the basis of testimony yesterday. But one of the specific instances mentioned by the Interstate Commerce Commission as justification for motor carrier exemption is the transport—I hesitate to use the word—of garbage. I have noticed in the press recently that the Federal Government is supporting a Federal grant for a research study as to the feasibility of railroad transportation of garbage from our urban centers to some dumping point.

Mr. SENDER. Do you read the Commission's bill as empowering the Commission to remove, not only entry controls, but also to remove rate regulation and to leave entry restrictions?

Mr. BREITHAAPT. I think it gives a good bit of discretion to the Commission. I read the Commission's bill, as a matter of fact, in

connection with motor carriers, as permitting the ICC to remove safety regulation. But I doubt they would do that.

They, by the terms of the bill, are given the power to attach terms and conditions; I assume that means they could give partial relief from regulation.

Mr. SENDER. If the same language were applied to part I, the Commission could, for example, remove entry controls on such things as spur tracks, industry tracks, or even entry into certain types of railroad business.

Mr. BREITHAAPT. Was that a question?

Mr. SENDER. Yes.

Mr. BREITHAAPT. As I understand it, the bill, they could conceivably grant exemption in that regard. There would have to be a full hearing for interested persons, however.

Mr. SENDER. And you would suggest it be applied to all four parts; is that correct?

Mr. BREITHAAPT. Well, I really do not want gratuitously to offer the water carriers and freight forwarders an opportunity for this exemption, but that is my suggestion.

Senator LAUSCHE. Proceed to S. 757.

Mr. BREITHAAPT. S. 757, Mr. Chairman, also introduced at the request of the Commission, has to do with the valuation of property of railroad carriers. It would eliminate a number of requirements with which I believe the chairman is familiar, having gone over them, and, of course, heard the Commission testimony yesterday.

Senator LAUSCHE. What you have had to say on this item will be printed in the record, and I do not think there is any need of your discussing it.

Mr. BREITHAAPT. I will not discuss it, then, Mr. Chairman, except to say that we support the bill.

S. 758, the last of the three, is one as to which the subcommittee has also heard testimony and which would authorize the Interstate Commerce Commission to delegate to qualified individual employees of certain types those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

Again, without detailing the provisions of the bill, I would like to say that we have some concern as to whether or not, probably as a technical matter, there is adequate provision for review, either within the administrative agency or by the courts, of these proposed actions by individual employees.

Senator LAUSCHE. My recollection is that Mr. Tucker said that there would be provided all of the safeguards.

Mr. BREITHAAPT. He said that in the opinion of the Commission, that was implicit in their proposal. But Chairman Tucker also went on to call attention to the fact that when your subcommittee heard this bill 2 years ago I at that time suggested that the matter be specifically covered in the bill.

I might point out that the subcommittee accepted the recommendation we made at that time. You did so report the bill, and the Senate passed the bill with that amendment in it. And I would like to suggest that if you report the bill again, you include that amendment.

Senator LAUSCHE. Mr. Tucker testified he would have no objection to the inclusion of an amendment similar to that suggested by the

witness for the Association of American Railroads during the hearings on a prior version of the bill S. 1148 before this subcommittee on May 19, 1965.

When he gave this testimony, he was discussing the subject which we are now discussing.

Mr. BREITHAAPT. He was, indeed. He was referring to testimony that I had adduced in 1965 and, especially in view of the Commission's willingness to have that amendment reincorporated in the bill, I urge the subcommittee to do so.

Senator Lausche. Well, what you have had to say on S. 758 will be fully transcribed into the record.

Mr. BREITHAAPT. Thank you, Mr. Chairman.

(Mr. Breithaupt's complete statement follows:)

STATEMENT OF HARRY J. BREITHAAPT, JR., GENERAL ATTORNEY,  
ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am General Attorney of the Association of American Railroads, with headquarters at Washington, D.C. The Association of American Railroads is a voluntary, non-profit organization. Its membership comprises railroads that operate 96 percent of the total mileage of all railroads in the United States and have annual revenues approximating 96 percent of the total annual revenues of the railroads.

My appearance here today is by the authority of the Board of Directors of the Association and is for the purpose of expressing the views of the Association and its members on S. 756, S. 757 and S. 758, all of which were introduced by the chairman of the Committee on Commerce for himself and the chairman of this Subcommittee (by request) and all of which appear to have been drafted to reflect and implement legislative recommendations made to the Congress earlier this year by the Interstate Commerce Commission.

With your permission I shall deal with the three bills in numerical order. To avoid unnecessary repetition and thus conserve the Subcommittee's time I shall refrain from detailed discussion of the measures at hand, for other witnesses—especially the Interstate Commerce Commission—have discussed their provisions with particularity. Naturally I shall attempt to answer any questions that may occur to the members of the Subcommittee and be put to me.

S. 756

S. 756 would amend part II of the Interstate Commerce Act "so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce".

The Interstate Commerce Commission, in recommending this bill, said that—

"A primary goal of the proposed measure is to relieve both this Commission and the affected carriers of the burdens of regulation in those situations in which continued economic regulation is neither necessary nor desirable. So long as the limitations and safeguards are retained, we believe that the proposed measure would benefit the public as well as affected individuals and carriers." (Congressional Record of January 31, 1967, page S1146).

Among the "limitations and safeguards" so mentioned are—

1. Any exemption granted by the Commission must be found by it to be such that it will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

2. The Commission may attach conditions to any such exemptions and may, by order, revoke any such exemption.

3. No order or rule of exemption or revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons. These specifics are contained in the bill. In addition, the Commission has recognized that its findings "will, of course, be subject to appropriate judicial review" (Congressional Record, January 31, 1967, page S1146).

The railroads believe that where regulation is not needed it should be avoided. They also believe, however, that regulation should be fair and impartial. The railroads would therefore support S. 756 if it be so amended as to be made uniform in its application to the several modes of transportation.

As has been noted, the bill applies only to motor carriers. It does not apply to services or transportation performed by railroads. Yet the reasons advanced by the Commission for its enactment with respect to highway transportation are equally sound and cogent in the case of transportation by rail. We are of the view the Commission's objective is laudable; but for all of the reasons the ICC advances in the case of motor carriers, plus simple equity, the bill's coverage should be enlarged to include railroads under part I of the Interstate Commerce Act as well as motor carriers under part II of the Act.

This should not be a shocking suggestion. The same safeguards would apply in the case of railroads as in the case of motor carriers: Before any exemption could be granted, opportunity for hearing would have to be afforded interested persons; it would have to be found that the exemption would not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce; and the Commission could attach conditions and, by order, revoke any exemption it had granted.

I repeat, then, that the Association of American Railroads would support S. 756 if it be made uniform in its application to the several modes of transportation.

#### S. 757

S. 757 would effect a number of changes in section 19a of the Interstate Commerce Act, which has to do with the valuation of property of carriers. It would (1) eliminate the requirement that the Commission determine the present value of land; (2) eliminate the requirement that the Commission determine the valuation of property held by carriers for purposes other than for use in common carrier service; (3) eliminate the requirement that the Commission ascertain and report the amount, value, and disposition of aids, gifts, grants, and donations and the amount and value of concessions and allowances made by carriers in consideration thereof; and (4) make optional the requirement that the Commission keep itself informed of changes in the quantity of the property of carriers, following the completion of the original valuation of such property.

Thus the bill would eliminate or make optional a number of mandatory valuation requirements that the Commission no longer considers necessary or appropriate to the proper performance of its regulatory functions. We agree with the Commission (Congressional Record, January 31, 1967, see page S 1146) that "in the absence of a continuous need for present value of land data by the Commission, it is not in the public interest to spend large sums of money to develop the information and keep it reasonably current as contemplated by the present statutory requirement". We also agree with the Commission that the other reporting and valuation requirements of which the Commission and the carriers would be relieved by S. 757 are unnecessary, and that the bill's passage, "\* \* \* in principal effect, would eliminate a statutory requirement no longer necessary nor feasible because of the magnitude of the undertaking necessary to keep reasonable (sic) current" (*id.*, page S 1147).

Enactment of this measure would permit very large savings to the railroads in the cost of record keeping and reporting and would substantially reduce the paper work and expense burden on the Commission. It would accomplish this, moreover, without depriving the Commission of any information deemed essential.

We support S. 757, and earnestly urge the Subcommittee to act favorably upon it.

#### S. 758

S. 758 is a bill that would so amend section 17(2) of the Interstate Commerce Act as to authorize the Commission to delegate to qualified individual employees, including transportation economists and specialists, those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.\*

We are concerned that the bill contains no provision for review of the proposed individual employee action. While the Commission may feel that matters not involving the taking of testimony at a public hearing or the submission of evidence by opposing parties by affidavit are not of sufficient importance to warrant an opportunity for review by the Commission or by one of its Divisions, and while as a general proposition such orders may not be of particular importance,

\*S. 758 actually goes somewhat beyond this description, which is the Commission's. It would, in addition, expand the classes of employees eligible for designation by the Commission to serve on three-man boards to include assistant chiefs of sections, chiefs and assistant chiefs of branches, accountants, transportation economists and specialists, "and such other qualified persons as the Commission may designate". Thus employees of these additional classes might, as members of such boards (but not as individuals), be handling matters other than those "which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits".

there are undoubtedly some orders that the Commission may make in matters not involving the taking of testimony or the submission of affidavits which are of substantial importance. In such instances it appears that an opportunity for review should be provided.

S. 758 would, presumably, give individual employees' orders of the type covered by the bill the standing of Commission orders but would appear to provide no machinery for consideration of such orders by the Commission itself or by a Division thereof. Moreover, the right to challenge such an order in court would not be clearly spelled out as it now is under the terms of section 17(8) and (9) of the Interstate Commerce Act.

We suggest, therefore, that the bill be amended by inserting the following sentence immediately after the quotation mark appearing in line 4 on page 2 of the bill: "In cases where such matters are assigned to individual employees of the Commission, any order or requirement of such individual employee shall be subject to the same provisions with respect to reargument and reconsideration, with respect to reversal or modification, with respect to stay or postponement pending disposition of the matter by the Commission or appellate division, and with respect to suits to enforce, enjoin, suspend or set aside such order or requirement in whole or in part, as are contained in paragraphs (6), (7), (8) and (9) of this section with respect to orders or requirements of a board."

The Interstate Commerce Commission in 1965 advanced a delegation of authority recommendation similar to the one it now makes. It was incorporated in S. 1148 (89th Congress) and was the subject of hearing by this Subcommittee, also in 1965. At that time we raised this same question of review, and suggested the amendment above-proposed. The amendment was adopted by the Committee on Commerce when it reported the bill (Senate Report No. 461, 89th Congress) and, so amended, S. 1148 passed the Senate on July 20, 1965.

If again so amended, we would support S. 758.

Senator LAUSCHE. Thanks very much to all of you.

Mr. SENDER. Mr. Breithaupt, would you care to comment on the suggestions offered by Mr. Simms and Mr. Pinkney?

Mr. BREITHAAPT. As to delegation of authority to individual employees of the Commission?

Mr. SENDER. Yes.

Mr. BREITHAAPT. I have noted in my prepared statement, first, that the bill as drafted by the Commission—I do not know whether inadvertently or not—is done in such a way as to make it possible for this lower echelon of employees to not only be assigned the matters of categorical concern by the Commission, but would also have the effect as the bill is drafted of making them eligible for appointment to three-man boards.

I do not know whether that was the intention of the draftsman of the bill or not. I have not expressed any view about it.

And this other proposal with respect to limitation of the assignment of such matters to those who are lawyers by profession or by background, I would prefer not to comment on that.

Senator LAUSCHE. Thanks very much.

This will conclude the hearings on these bills. The record will be kept open for 1 week.

(Whereupon, at 11:45 a.m., the subcommittee adjourned.)

(The following communications were subsequently received for the record:)

CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY,  
Chicago, Ill., June 14, 1967.

Senator FRANK J. LAUSCHE,  
Chairman, Surface Transportation Subcommittee,  
Committee on Commerce, Washington, D.C.

DEAR SENATOR LAUSCHE: The Chicago Association of Commerce and Industry which functions as the chamber of commerce for the Chicago Metropolitan Area represents 5,854 members including manufacturers, distributors, shippers and receivers of freight, and carriers engaged in all modes of transportation. A primary

objective of our Association is the fostering and promotion of adequate, efficient, and economical transportation services by all types of carriers.

Chicago is the center of transportation and is involved in all forms of transportation. Because of the national and international distribution of many Chicago industries, our own self-interest dictates an efficient and adequate transportation system.

We urge enactment of S. 755 introduced at the request of the Interstate Commerce Commission because it will eliminate a regulatory burden on both the affected carriers and the Commission that cannot be justified.

Respectfully submitted.

GERALD E. FRANZEN.

---

TRANS-AMERICAN VAN SERVICE, INC.,  
Chicago, Ill., June 14, 1967.

Mr. STANTON P. SENDER,  
*Transportation Counsel, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. SENDER: In the prepared testimony of Lloyd H. Meyer on behalf of United Van Lines, Inc., Mr. Meyer stated that frequently independent carriers having interlined traffic, have situations in which the carrier whose operating authority is utilized does not know that its certificate is being used until long after it has been used. He also stated that in some instances the interline carrier is never made aware of these facts, and further that the shipper and owner of the goods does not know who is responsible for the movement and safety of his traffic. Mr. SENDER, I would like to take vigorous opposition to Mr. Meyer's point of view.

I have been in the moving business for all of my adult life, and as stated on the record I have been active in this business for the past 42 years, since 1925. My company, Trans-American Van Service, Inc., frequently interlines with other carriers, and they always know with whom they are interlining and the shipper is always protected as the original carrier is completely, absolutely and utterly responsible for the safe movement of the shipper's goods. I do not believe that any of Mr. Meyer's testimony about interlining is true to any extent of the great number of independent carriers, and I feel strongly that such statements should not be accepted by the Senate without complete substantiation, either from Mr. Meyer or United Van Lines, Inc.

I do not file this statement to be personally critical of Mr. Meyer, but having sat through his testimony and listened to it with intentness, I could not allow these representations to go into the record without a clarification of them being made by some independent like myself who actually knows how interlining works. I think that interlining and pooling have always been a most significant element in the moving business, and I think they have always worked for the good of the public. Finally, for the courtesies extended to me during this Senate hearing on S-755, I wish to thank you, Senator Lausche and Senator Pearson.

Very truly yours,

JOHN J. RAPP, *President.*

---

REA, CROSS & KNEBEL,  
*Washington, D.C., June 16, 1967.*

Re S. 755.

Hon. FRANK J. LAUSCHE,  
*U.S. Senate,  
Washington, D.C.*

DEAR SENATOR LAUSCHE: At the hearings before the Surface Transportation Subcommittee on June 8 I accompanied Mr. Lloyd H. Meyer, President of United Van Lines, who testified in opposition to S. 755, which would amend Section 5(1) of the Interstate Commerce Act, the section governing pooling among common carriers. In the course of colloquy with Senator Pearson questions were raised respecting the ramifications of S. 755 under the anti-trust laws and Senator Pearson graciously gave me leave to file a statement for inclusion in the record.

I represent the 120 common carriers by motor of household goods whose names and locations are appended hereto. Almost all of these carriers operate in interstate and foreign commerce under certificates of public convenience and necessity issued by the Interstate Commerce Commission, and all of them are party to an agreement with United Van Lines, Inc. under which they engage in, to quote Section 5(1) of the Interstate Commerce Act, "the pooling \* \* \* of traffic, or of

service, or of gross or net earnings." Their pooling agreement was approved under Section 5(1) by the Interstate Commerce Commission in 1955 in *United Van Lines, Inc.—Pooling*, 65 M.C.C. 257, upon findings that it is in the interest of better service to the public and economy of operation and does not unduly restrain competition.

Mr. Meyer and Mr. Paul Clarke, Assistant President of North American Van Lines, Inc., as well as representatives of carriers supporting S. 755, discussed in their testimony on June 8 the practical necessity for operations under pooling agreements if carriers of household goods are to continue to render adequate and efficient service to the public. Indeed, Commissioner William H. Tucker, Chairman of the Interstate Commerce Commission, testified that pooling among household goods carriers "has long been an inherent part of, and [is] essential to, the economy and efficiency of the Nation's household goods moving service."

The problem is to assure the continuance of pooling arrangements and at the same time to assure that they are kept within reasonable bounds in terms of the public policy against restraints on competition declared by the Congress in the anti-trust laws. The Interstate Commerce Act as now written enables the accommodation of the public need for pooling and the public interest in free competition in the following way: It makes unlawful any agreement "for the pooling or division of traffic, service, or earnings," unless upon application of any carrier or carriers or upon its own initiative, the Commission approves it by order after hearing. The Commission may approve an agreement only if it finds that it will be in the interest of better service and economy of operation and will not unduly restrain competition, and may impose such terms and conditions as it finds just and reasonable.

The thrust of Chairman Tucker's testimony in support of S. 755 was that enforcement of Section 5(1) has not been practical because pooling arrangements "are so flexible that before agreements can be filed and approved, many are terminated or changed and new arrangements entered into involving new or different participating carriers." We take exception to this proposition. The pooling agreement between United Van Lines and hundreds of small independent carriers in addition to the 120 I represent has been in effect with the approval of the Commission for 12 years. Changes in the terms of the agreement and in the carriers participating therein have of course been made from time to time, as changes in general conditions and changes in the desires and methods of operation of individual carriers have dictated. As far as we know, the making of such changes by the filing of applications for approval in compliance with Section 5(1) has never presented a problem to the Commission. On the contrary, the testimony of Chairman Tucker is to the effect that the only problem is that many carriers have entered into pooling arrangements in violation of Section 5(1), and the Commission is loath to exercise its power to compel compliance therewith.

The enactment of S. 755 would not accomplish the Commission's objective which appears to be to further operations under pooling arrangements by removing all such arrangements from its control. On the contrary, it would almost certainly foreclose such arrangements. It would deprive the Commission of any authority whatever "to approve and authorize any contract, agreement, or combination relating to the pooling or division of traffic, service or earnings, or any portion thereof in the transportation of household goods to which any common carrier subject to part II may be a party with any other such carrier or carriers."

The result would be that the carriers could not engage in pooling without putting themselves in patent violation of the anti-trust laws. Pooling arrangements are by definition arrangements for the division among carriers of markets and revenues. Such arrangements are violations of the Sherman Act *per se*. *Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211, 20 S.Ct. 96, 44 L.Ed. 136 (1899); *Ford Motor Co. v. Webster's Auto Sales, Inc.*, 361 F. 2d 874 (1st Cir., 1966); *Las Vegas Merchant Plumbers Assn. v. United States*, 210 F. 2d 732 (9th Cir. 1954), cert. denied 75 S.Ct. 29, 348 U.S. 817, 99 L.Ed. 645 rehearing denied 75 S.Ct. 202, 348 U.S. 889, 99 L.Ed. 698.

It is naive to suppose that, if S. 755 were enacted, actions to prevent or stop operations under pooling arrangements would not be brought, either by the Department of Justice or by competing carriers or both. Indeed, in the face of the above cases, the Department could be accused of failing to discharge its duty if it did not take action. Nor could the carriers hope to successfully defend their operations under particular pooling agreements on the ground that the Commission had previously found them in the public interest and approved them. See *United States v. El Paso Natural Gas Company*, 376 U.S. 651 (1964). In that case the Supreme Court ordered El Paso Natural Gas Company to divest itself of the assets of

Pacific Northwest Pipe Line Corporation on the ground that the merger of the two companies violated Section 7 of the Clayton Act, 15 U.S.C. §16, notwithstanding that the Federal Power Commission had approved the merger upon findings that the public interest would be served thereby and it had been consummated.

We note that the Comptroller General of the United States in a letter to the Honorable Warren G. Magnuson, Chairman of the Committee on Commerce, takes the position that "while present pooling agreements among motor carriers of household goods may bring about the beneficial results the Interstate Commerce Commission refers to," there is a danger that such agreements might "unduly restrain competition or be adverse to the public interest and detrimental to the interests of the United States as the largest user of such carriers services in transporting the household goods of its military and civilian personnel on change of station." The Comptroller General therefore opposes S. 755 in its present form. However, he suggests that the Committee might wish to consider amending Section 5(1) so as to provide for the filing of pooling agreements with the Commission, with authority in the Commission, upon its own motion or upon complaint, to examine such agreements and disapprove such of those as it found to be adverse to the public interest or in undue restraint of competition.

The difficulty with the Comptroller General's approach is that a complaint against a particular pooling agreement might or might not be filed and the Commission might or might not choose to examine any agreement *sua sponte*. Unless it did so and entered an order of approval the carriers operating under the agreement would be subject to civil and criminal prosecution under the anti-trust laws notwithstanding the filing of the agreement with the Commission. Furthermore, they would be required to gamble that, in the event the Commission chose to institute a proceeding on the agreement, it would approve it. If it did not, their prior operations under it would certainly give rise to civil and criminal penalties under the anti-trust laws. If it did, there would still be a serious question whether those prior operations were immunized from the anti-trust laws. Indeed, it could well be that operations under an agreement could not be approved by the Commission after they had been judicially challenged under the anti-trust laws. See *California v. Federal Power Commission*, 369 U.S. 482 (1962), holding that the Federal Power Commission could not consider the merits of a merger under the criteria of the Natural Gas Act so long as a suit challenging it under the anti-trust laws was pending.

In this connection, the Comptroller General referred to 49 U.S.C. § 1382. 49 U.S.C. § 1382 is Section 412 of the Federal Aviation Act of 1958. It requires that all agreements affecting air transportation entered into between any air carrier and any other air or surface carrier, including agreements "for pooling or apportioning earnings, losses, traffic, service, or equipment," be filed with the Civil Aeronautics Board.

The Comptroller General apparently labors under the misapprehension that the mere filing of agreements with the Civil Aeronautics Board under Section 412 of the Federal Aviation Act makes operations under them lawful. This is not so. Subsection (b) of Section 412, 49 U.S.C. § 1382(b), specifically provides that the Board "shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act." Thus, the Civil Aeronautics Board is specifically required to take affirmative action on every agreement embraced within Section 412, and it invariably does so. See for example its Order No. E-24949, issued April 6, 1967, in which it approved 18 agreements upon findings that they were not adverse to the public interest or in violation of the Federal Aviation Act. And see Order No. E-20332, issued January 2, 1964, *aff. sub nom. REA v. CAB*, 345 F. 2d 445 (D.C. Cir. 1965), in which the Board disapproved agreements between various airlines and Railway Express Agency upon findings that they were adverse to the public interest.

In conclusion we should like to emphasize that the carriers for whom this statement is filed are small businesses scattered throughout the United States. They have as much right to be called "independents" as those carriers who based their support of S. 755 on the unfounded premise that they and they alone are "independent" carriers, and that they are at an unfair competitive disadvantage *vis a vis* carriers party to approved pooling plans. We suggest that their competitive disadvantage, if any, is one of their own making. If they do not desire to enter into pooling arrangements they of course need not do so. If, as they testified,

they do desire to enter into such arrangements, there is no reason why they cannot do what Section 5(1) requires and what the carriers for whom this statement is filed have done, namely, enter into appropriate agreements and get the Commission's approval of them.

Respectfully,

BRYCE REA, Jr.

REBMAN & LA TOURETTE,  
St. Louis, Mo., July 6, 1967.

Re S. 755.

MR. STANTON P. SENDER,  
Transportation Counsel,  
Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. SENDER: In keeping with my previous letter respecting the position stated by Mr. John Rapp respecting the operations of carriers of household goods, particularly as referred to by Mr. Meyer in his testimony, I wish to call your attention to testimony given before the Interstate Commerce Commission in the following cases as illustrative of the matters referred to by Mr. Meyer.

In *Harry Smolowitz, et al.*, Docket MC 95180, Sub 9, hearings held November 20, 21 and 22, 1963 at New York City, New York, Witness Joseph Liberman of M. Liberman & Son, a certificated carrier, testified that he accepted orders for interstate household goods removals beyond the scope of the certificated authority of such carrier and in effect shop the traffic to another carrier, even though they have no agency relationship with such carrier. When asked as to the reasons for his company advertising a service which neither it as a principal, nor its principal for which it is agent, holds no authority the witness stated that if "we start turning people down \* \* \* they would think this is a small operator, forget him." (Tr. 223). The witness said "We go all over. If we can't handle it, we turn it over to a carrier."

In the same proceeding, a representative of Allstate Van Lines, holding authority limited territorially acknowledged his telephone book advertising to the public in New York indicated his company is authorized to serve "Florida—California and all 50 states." That "we are not agents or brokers," "We operate our own equipment," "I.C.C. number 22673." The witness testified that it does not handle all shipments on its own equipment and even within its own certificated authority it turns shipments over to other carriers. (Tr. 269-270).

Similar testimony respecting the turning over of shipments to other carriers, etc. appears in many transcripts of record in which I was a participant, such as *Security Van Lines, Inc.—Purchase—Community & Johnson Corp.*, MC-F-8293, hearings in New Orleans, Louisiana in May, 1963; *Shamrock Van Lines, Inc.*, MC-F-9508, hearings Atlanta, Georgia, November, 1966. In *Neptune World Wide Moving, Inc.*, MC 31024, Sub 32, hearings New York and Washington, D.C., December, 1965 and January, 1966, the applicant's attorney on brief contended that "its (Neptune's) present interline arrangement with Lyon is merely a lease of operating rights rather than a lease of equipment arrangement."

Another case in which I did not participate but which involves practices alluded to by Mr. Meyer involved *Trans-American Van Service, Inc.* In that case Mr. John Rapp testified as President of the applicant. While said case is reported at 94 M.C.C. 248, I feel that the findings of the Commission therein are of such significance that I am enclosing a copy of the Report and Order therein and direct your attention particularly to pages 250, 251 and 252.

I submit that the enactment of S. 755 will only result in broader and more widespread practices involving pooling and will totally ignore the public interest in the areas cited by Mr. Meyer in his testimony.

Yours very truly,

G. M. REBMAN.

STATEMENT OF HERMAN D. BADER, BADER BROS. VAN LINES, INC., SYOSSET, N. Y.

My name is Herman Bader. I am president of Bader Bros. Van Lines, Inc., whose principal office is located at 475 Underhill Blvd., Syosset, N. Y. Bader Bros. Van Lines, Inc., has been in the moving and storage business since 1905. Pursuant to the Motor Carrier Act of 1935, we became a certificated motor common carrier operating under authority of Certificate No. MC 105950 granted by the Interstate Commerce Commission.

As one of many independent carriers, my company has a very deep interest in Senate bill 755 to deregulate pooling activities practised by motor common carriers of household goods and remove from the jurisdiction and control of the Interstate Commerce Commission.

The inherent nature of the moving and storage business is spontaneous. Each shipment is handled on an individual day to day basis without a definite pattern. Our business is subject to peaks and valleys which create enormous imbalances. It is impossible to make projections or pre-schedules in advance. The most precise schedule is very often upset. For example; our dispatch department will work out a careful schedule viz; certain shipments, for certain vehicles, for certain destinations, at certain times, only to have a cancellation of one of the shipments, or postponed for one reason or another. Some shippers have unforeseen last minute problems such as mortgages, financing, legal complications, transfer of employment, schools, health, death, etc., all of which are things that can happen in life and are attributes in making our business complicated, erratic and unpredictable. The unforeseen complications also create economic problems resulting in additional equipment, drivers, helpers and extra communication costs to name a few, plus complaints and dissatisfied customers.

It has therefore been necessary over the years, and as a matter of good business practice, to exchange tonnage with many other independent carriers for the most important reason, to serve the needs and best interests of the shipping public. Notwithstanding that by so doing, we can offer a more expeditious, efficient and economical service. Another important factor cognizance should be taken of is that our business consists of predominately less than truck load shipments. Unless we are permitted to freely engage in pooling with other carriers, many small shipments to remote destinations and off-line points would be unduly delayed, until we could fill out a complete load and thus cause physical and financial hardship to the shippers, more so if small children or senile or incapacitated adults are involved. By pooling with other carriers, mutual advantages are available.

It has been clearly established, the Interstate Commerce Commission is an astute regulatory body who is well capable of enforcing those functions it feels are of primary concern for the best interests of the shipping public. If, in the wisdom of the Interstate Commerce Commission, it is their proposal that household goods carriers should be exempt from the provisions of Section 5(1) of the Interstate Commerce Act, I submit that we should strongly rely on their judgment. To do otherwise could possibly mean that only a few of the larger more powerful carriers can enjoy pooling to the detriment of the small independent carriers who would be at a disadvantage culminating in a possible threat of ultimate extinction. I further submit this is contrary to the concepts of free enterprise and our God given right.

Freedom of pooling with other household goods carriers can very well mean survival for many small independent carriers. To be denied this right would be chaotic, not only for the small carriers, but the shipping public as well.

Because of the foregoing, it is my opinion it is imperative that household goods carriers be exempt from Section 5(1) of the Interstate Commerce Act.

---

TRANSPORTATION ASSOCIATION OF AMERICA,  
Washington, D.C., May 16, 1967.

Hon. FRANK J. LAUSCHE,  
Chairman, Senate Surface Transportation Subcommittee,  
Old Senate Office Building, Washington, D.C.

DEAR CHAIRMAN LAUSCHE: On behalf of the Board of Directors of the Transportation Association of America I should like to express its support of S. 755, a bill now under consideration by your Subcommittee that would eliminate the requirement, under section 5(1) of the Interstate Commerce Act, for approval of pooling arrangements between motor common carriers of household goods.

This ICC-sponsored legislation has been given careful consideration by the eight permanent advisory Panels in the TAA National Cooperative Project, which Panels consist of leading representatives of transport users, investors, and six carrier modes, respectively. The TAA Board adopted a position in favor of such legislation after being advised that all eight Panels either approved or did not oppose passage of such legislation.

The underlying reasons for TAA's support of S. 755 are that it will eliminate regulation in an area where it has been shown there is no public need, and that

the economic and administrative burdens on both the affected carriers and the ICC cannot be justified. Accordingly, we urge favorable consideration of this bill by your Subcommittee.

We request that this letter be made a part of the official transcript of the hearings on S. 755.

Sincerely,

HAROLD F. HAMMOND, *President.*

---

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,  
Washington, D.C., June 13, 1967.

Hon. FRANK LAUSCHE,  
*Chairman, Surface Transportation Subcommittee of the Senate Commerce Committee,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR LAUSCHE: The National Association of Motor Bus Owners (NAMBO) submits the following statement of position on S. 756, a bill to authorize the Interstate Commerce Commission to exempt transportation and services from the provisions of Part II of the Interstate Commerce Act. It is requested that this statement be considered and made a part of the printed record of the hearings on S. 756.

NAMBO is the national trade association for the intercity bus industry. Its members include Greyhound Lines, carriers affiliated with the National Trailways System, and numerous independent operators, both large and small. Collectively, these carriers account for more than three-fourths of the total volume of intercity bus transportation.

In general, NAMBO's position is that the bill, if approved, should be limited to the transportation of property. If S. 756 is not so amended, we believe that the Commission should clearly identify the type of passenger transportation which might be exempted from regulation. In the absence of such amendment or clarification, we urge that the bill not be approved.

The Commission's legislative recommendation, which S. 756 would implement, was first made in 1963. It was prompted in part by the Commission's large and growing caseload and by an understandable desire to eliminate cases of relatively minor importance.

Since 1963, the Commission has streamlined its organization and procedures with a consequent increase in efficiency. In the year ending April 30, 1967, the number of pending cases declined from 7,964 to 6,296, a reduction of more than 20 percent. If this trend continues, there will be no need to confer broad powers of de-regulation.

In any event, the bulk of the Commission's caseload consists of applications for authority to transport property. Applications for authority to transport passengers constitute a very small percentage of the Commission's operating rights cases.

Most of the examples given by the Commission in support of the proposed legislation involve the transportation of property (*e.g.*, homing pigeons, trash and garbage). Although it would be possible for the Commission to exercise the requested power of exemption on the basis of the type of traffic involved, that standard would not be helpful in determining to what extent, if any, motor transportation of passengers should be exempted from regulation. The only reference to transportation in the Commission's statement of justification reads as follows:

"Likewise, the exclusion from interstate regulation of local mass transit motor bus operations conducted within precisely defined territorial limits would in certain circumstances appear to have little or no effect upon regulation of this segment of the for-hire industry (emphasis added)."

Under the provisions of Sections 204(a)(4a) and 203(b)(8) of the Interstate Commerce Act, the Commission is already authorized to exempt from regulation some local mass transit bus operations. We do not know the circumstances under which other local and suburban bus operations might be considered for exemption or whether the Commission considers any type of intercity bus transportation as eligible for exemption from regulation.

In conclusion, if S. 756 were amended to confine its scope to the transportation of property, NAMBO would have no objection to the bill. If the purpose and effect of S. 756 were clarified along the lines indicated in the preceding paragraph, NAMBO would be happy to reconsider its position.

Sincerely yours,

CHARLES A. WEBB, *President.*

EVERETT TRUST & SAVINGS BANK,  
*Everett, Wash., June 2, 1967.*

Re S. 756, to amend part II, Interstate Commerce Act.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
 Washington, D.C.*

DEAR SENATOR MAGNUSON: Thank you for forwarding a copy of the above bill which you and Senator Lausche introduced early this year in cooperation with the Interstate Commerce Commission. My interest in this bill stems from the fact that it would permit the Interstate Commerce Commission to exempt the transportation of homing pigeons from the provisions of the act.

I took up the keeping of homing pigeons as a hobby when a young boy and have enjoyed tremendously maintaining a loft throughout the years, which included duty in the Army's Signal Corps Pigeon Service during World War II. In the State of Washington we have approximately 400 fanciers belonging to clubs affiliated with the national organizations and additional independent fanciers. Our local and national racing pigeon organizations endorse this bill and urge its passage by Congress. Exemption of the transportation of homing pigeons would be beneficial to our hobby nationwide as well as in our state.

The sport of racing pigeons is a most fascinating pastime, in which persons of all ages, from young boys to retired men, take part. Often, whole families participate.

I certainly would appreciate it if you would place this letter of support of S. 756 before the Surface Transportation Subcommittee when it considers this bill. Your help in this matter is greatly appreciated.

Sincerely yours,

ELWIN F. ANDERSON.

---

THE AMERICAN RACING PIGEON UNION, INC.,  
*Brooklyn, N.Y., June 6, 1967.*

SENATOR FRANK J. LAUSCHE,  
*Chairman, Service Transportation Subcommittee.*

SENATOR LAUSCHE: AS President of the American Racing Pigeon Union, of which we are over 15,000 strong, I wish to render my opinion and reasons why my Organization would like to have Bill S. 756 amended with the Interstate Commerce Commission so that we can transport our Racing Homing Pigeons without interfering with the ICC Commission.

Our hobby of breeding, training, and racing Homing Pigeons is a clean and wonderful sport. To us it is like the everyday Tennis player, golfers, archers, etc. This hobby is a weekend pleasure for us as all our races are flown on weekends where it wouldn't interfere with anyone.

Our 15,000 plus members are spread out all over the United States. Therefore it is very difficult at times to hire Transporters with ICC rights to truck our pigeons for our weekend races. It is even more difficult to even hire these truckers in many of our small western and midwestern States and cities as the accommodations are just not there. Then again, the expense is quite a problem, particularly with the very small clubs in our organization. Some clubs have just 5 to 15 members and to hire a trucker with ICC rights would lead to the disbandment of these clubs as they just couldn't stand the expense with such small entries in each race.

Our feathered friends have served in the last three wars and though disbanded now by the Government we stand ready at all times to have these pigeons ready again for national defense. Let us hope and pray we will never ever again have to use the pigeons again as we most certainly can do without war.

On behalf of my members and myself, we urge you to please give this matter your every consideration and help us to pass this amendment to the ICC Rulings. Thanking you deeply, I remain,

Respectfully yours,

MICKEY J. RUSSO, *President.*

INTERNATIONAL FEDERATION OF  
AMERICAN HOMING PIGEON FANCIERS, INC.,  
*Jersey City, N.J.*

HON. U.S. SENATOR,  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR: May I take this opportunity to solicit your support and favorable vote for Bill S. 756 when it is presented on the Senate floor? The Bill has been read twice, and referred to the Committee on Commerce.

Senators Warren Magnuson and Frank Lausche have introduced Bill S. 756, they share the belief of the thousands of pigeon enthusiasts throughout our land regarding the unfair Interstate Commerce Commission rules governing the shipment of racing pigeons and they plan to rectify the situation by the introduction of this Bill.

Interestingly enough, the Interstate Commerce Commission itself realizes the hardship imposed by such restriction; and heartily agree to the amending of section 204, and therefore supports the Bill.

Under the Interstate Commerce Act, Part II (transportation by motor vehicle), transportation of property for others for compensation requires certification by the Interstate Commerce Commission. Exemption to this provision include ordinary livestock, but does not exempt exhibition poultry, polo ponies, race horses, or racing pigeons, as examples. Therefore, the transportation of racing pigeons, where the owner or lessee of the vehicle is not the owner of the property being transported for compensation requires certification by the I.C.C.

In this respect we are placed in the same position as the large common carriers transporting the property of the general public as their principle business, and with hundreds of motor vehicles. Certainly there is little, if any, public interest in our use of the highways for getting our Club's racing pigeons to the liberation points. Relief from this federal government requirement of authorization is available to us, if you will support a proposed amendment to the Interstate Commerce Act, Part II.

Successful passage of Bill S. 756, and then a proper petition to the Interstate Commerce Commission, would remove the necessity for certification by the Commission, for the transportation of our racing pigeons over the highways in interstate commerce. That will then remove the questionable status of our present operations. Our transportation services certainly are not of a national transportation significance.

Mr. Senator, your continued support to our welfare will be greatly appreciated, we would appreciate your intercession for us.

Respectfully yours,

WILLIAM R. INDYK.

ASSOCIATION OF OIL PIPE LINES,  
*Washington, D.C., June 16, 1967.*

HON. FRANK J. LAUSCHE,  
*Chairman, Subcommittee on Surface Transportation,  
Senate Committee on Commerce,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to S. 757, one of the bills proposed by the Interstate Commerce Commission, on which hearings were held by your Subcommittee on June 8, 1967.

As stated in the testimony of Chairman Tucker of the Commission, the purpose of S. 757, which would amend section 19a of the Interstate Commerce Act:

" \* \* \* is to eliminate or make optional certain mandatory valuation requirements which are no longer considered necessary or appropriate to the proper performance of the regulatory functions of the Commission." (Statement, page 12)

He added:

"In the past, the principal use of this data [submitted in accordance with section 19a(f)] was in determining the reproduction cost-new of such property. As indicated, however, the concept of reproduction value is no longer the dominant consideration in the determination of a rate base for railroads. For this reason, we believe that this reporting requirement imposes an unnecessary burden upon rail carriers." (Statement, page 18)

With regard to oil pipelines, which come under section 19a(f) and therefore to which S. 757 would also apply, Chairman Tucker stated:

"However, because the economic and transportation characteristics of the oil pipelines still require some regulatory oversight as to their maximum level of earnings and rate of return, the Commission still requires this data for use in developing the cost of reproduction-new of pipeline property, an element which is considered by the Commission in arriving at rate bases for pipelines. For this reason, we recommend that, in lieu of repeal, the mandatory requirement in section 19a(f) be made optional." (Statement, page 19)

On the understanding that the purpose of S. 757 is to eliminate unneeded work by the railroads, estimated by the ICC at 355,324 man-hours per year, and that S. 757 would not interfere with or interrupt the annual valuations of oil pipelines made by the Commission, the Association of Oil Pipe Lines has no objection to this bill.

In two landmark decisions (243 ICC 115 (1940) and 243 ICC 589 (1941), affirmed 258 ICC 41 (1944)) the Commission established the principle that the tariff rates of a crude oil pipeline which produce earnings that do not exceed 8 percent of the Commission's valuation of that line are just and reasonable, and that the tariff rates of a so-called "products" line which produce earnings that do not exceed 10 percent of the Commission's valuation of that line are just and reasonable.

The annual valuations of oil pipelines which the Commission makes, in conjunction with other financial reports which the Commission requires of the oil pipelines, enable the Commission, the oil pipelines and their shippers, expeditiously and at little expense, to determine the reasonableness of the rates being charged at any time by any pipeline company. Accordingly, the oil pipeline industry feels strongly that the annual valuation of oil pipelines made by the Commission should be continued.

While the above-quoted portion of the testimony of Chairman Tucker dealing with pipelines implies that the annual valuations of pipelines will be continued if S. 757 is enacted, the Association would deeply appreciate it if the Subcommittee would secure written confirmation of that fact from the Commission. If such confirmation is secured, the Association would have no objection to enactment of S. 757.

It is respectfully requested that this letter and the Commission's reply be included in the printed record of the hearings on the bill.

Sincerely,

J. D. DURAND, *General Counsel.*

---

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
Washington, D.C., June 16, 1967.

HON. FRANK J. LAUSCHE,  
*Chairman, Subcommittee on Surface Transportation,*  
*Committee on Commerce,*  
*U.S. Senate,*  
*Washington, D.C.*

DEAR CHAIRMAN LAUSCHE: We submit herewith, for the Committee's consideration, the views of this Association in opposition to S. 757.

S. 757 is virtually identical to a bill which was rejected by the last Congress. S. 757 would amend Section 19(a) of the Interstate Commerce Act to eliminate the requirement that the Commission determine the present value of the land and property held by carriers for purposes other than for use in common carrier service. The bill would also eliminate the requirement that the Commission ascertain and report the amount, value, and disposition of aids, gifts, grants, and donations and the amount and value of concessions and allowances made by carriers in consideration thereof; and make optional the requirement that the Commission keep itself informed of changes in the quantity of the property of carriers, following the completion of the original valuation of such property.

The passage of this bill would render the Interstate Commerce Commission ignorant of the real value of the railroads with whom they must deal and whose operations they must regulate. If this bill had been presented in 1900 when railroads were railroads and had few large non-carrier interests, its enactment might be rationalized. But today when the railroads are becoming land, oil, lumber, etc. giants the introduction of such a bill is truly incredible. It is the common carrier income and common carrier governmental grants which have placed the railroads in a position to diversify their investments. Rail common carriage is vital to this country and if the day comes when the common carriage operation is in financial jeopardy its child, the oil, lumber, etc. wealth should be required

to see it through. Certainly, the Commission should not be willing to strip itself of the knowledge of the existence of this vast wealth. To do so would be to voluntarily wish to deal with the railroad industry on a completely unreal basis. The Commission has offered no new arguments in support of this bill which was rejected by the last Congress.

American railways were very largely built and equipped with funds derived from governmental subsidies, principally land grants of one kind or another. It was the intention of the governmental units granting these subsidies that with funds raised through the sale, lease, or hypothecation of lands thus granted, the railway lines would be properly constructed and extended, and that adequate structures and equipment would be provided for the service required by the communities making the grants. The fact that not all of the land thus granted has been sold or leased in no way qualifies the binding character of the original grant, and the dedication of whatever of the property still remains in carrier control to the purposes for which it was granted. Likewise the fact that the remaining property has increased astronomically in value does not lessen either the obligation to use proceeds from its sale or lease for the original purposes, or the necessity for government to insure through appropriate statutory provisions that carriers so manage these remaining properties as to give the maximum benefit to their roadways, equipment, and operations. Property not based on original public grants, but resulting from other governmental assistance to the carriers in subsequent operations, is only slightly less obligated to the public service. Early railway history was replete with abuses of the trust implicit in these grants, and the resulting regulation has of necessity been modified either by statute or administrative action to deal with the various forms into which further attempts at such abuses have successively developed.

It is a matter of general knowledge that railway corporations carry in their balance sheets tremendous totals of real estate and other property not directly used in transportation, or for which additional non-transportation uses have been or may be found. It is equally clear that no non-governmental agency can possibly make the evaluations of such property, or so regulate the use of proceeds from its sale or lease, as to insure protection to railway patrons, to security holders, or to the communities served by the carriers. No comprehensive study, and no regulation, of those factors is possible except through the Interstate Commerce Commission. No statement of the need, in terms of its exact extent or gravity, can be made without comprehensive study. But even recent history of the carriers offers striking evidence of the need for regulation, and one recent development will illustrate that the need has in no way diminished.

In 1956, a group of financiers euphemistically characterized in the newspapers as "investors in special situations" gained control of the Chicago and Northwestern Railway, after having previously taken over the Minneapolis and St. Louis Railway. A new president and top management officials were installed in the spring of that year. The new management retained a Chicago organization known as the "Real Estate Research Corporation" to inventory and appraise its real estate; the date of retainer is unknown, but \$53,000 was paid on it in 1958. The railway was heavily in arrears, in early 1958, on interest payments on its 4½% second mortgage bonds; interest on these bonds was payable if net income were available, and cumulative to 13½% at any one time. During 1956, 1957, and 1958 directors and other officers of the new management invested heavily in those bonds by June, 1957, one director had bought, personally and for a trust fund, bonds of face value of \$1,795,000; his personal holdings were increased by \$427,000 prior to May 1, 1959.

The Railway Age, in February, 1959, reported that the Real Estate Research Corporation had "turned up" \$27,000,000 in surplus property of the railway, "largely useless" to the railway though some of it was under lease. "Values," the Railway Age reported, "run as high as \$800,000 per acre." Annual reports of the railway corporation describe sales of the real estate; in 1960, sales "\* \* \* aggregated \$5,080,467, which was \$4,028,951 in excess of cost. Of this amount \$3,473,000 was credited to retained income, and \$555,794 was credited to income."

In 1961, according to the annual report, "The gain from sales of real estate was \$4,355,065 on sales of \$6,993,953. Of this gain, \$3,633,895 was credited to retained income, earned surplus, and \$721,170 was credited to income."

The 1964 annual report states:

"Real estate sales in 1964 totalled \$13,602,000 and resulted in a net gain of \$10,967,000. Of this net gain, \$2,492,000 was credited to income, and \$8,475,000 was credited to retained income and included in special credits. Real estate sales for 1964 included the sale of a portion of the railroad's Milwaukee lake front to Milwaukee County for \$7 million.

"Real estate sales for the last six years have totalled \$45,536,000. \* \* \* A substantial inventory of real estate remains, and, in addition, saleable real estate is being developed as a result of operating changes."

As a measure of the significance of sales during these six years, they amounted to nearly 25% of the total net value of equipment owned by the Chicago and Northwestern Railway in 1964.

The so-called net gain from these sales is the difference between former book value, plus all costs of sales, and the purchase price. Of the 1964 selling price, 80% was net gain, indicating that the book value had been less than 20% of the sales price. Whatever may have been the true value of the real estate sold, its selling price was related to appraisals by the Real Estate Research Corporation, which had been paid more than \$500,000 for its services between 1958 and 1961. The communities served by the Chicago and Northwestern, its patrons, and the various governments interested in its adequate equipment and service, have no assurance whatsoever that the appraisals thus made were accurate. It is without doubt, however, that the net income secured had a tremendous effect on the market value of the 4½% second mortgage bonds referred to above. The Vice President in charge of Real Estate, a comparatively small trader in the bonds, bought \$7,000 in March, 1958, when the price ranged from 43 to 47 and sold in August, 1959, when the price was at 64½. The Chairman of the Board of the corporation bought (not in the open market) a half million dollars of these bonds, in April, 1961, when the market price ranged from 51 to 56¼, and sold \$175,000 in February, of 1962, when the market price ranged from 67¼ to 71, and an additional \$75,000 in the next month when the market price ranged from 55¼ to 68¾.

In one form or another, railway security holders and ultimately the communities and patrons served by the Chicago & Northwestern Railway paid the cost of the "inventory and appraisal" made by the Real Estate Research Corporation. Evaluation by the Interstate Commerce Commission should certainly have cost no more. The wide gap between book value and sale price of the real estate demonstrates the great margin for error in appraisals, even assuming the appraising corporation was competent and devoted to the public interest. Whether the lands in question were originally given the carrier by public agencies, or otherwise acquired, the increments in their value is certainly an asset which the carrier can properly be expected to use for the benefit of the patrons, in better equipment and service. Only appraisal by the Interstate Commerce Commission, and some degree of supervision over sales as well as over trading in carrier securities, can give to the public the protection which the Congress intended in its passage of the Interstate Commerce Act. The industry insists that funds are not available to redress the serious shortage of equipment to which the Commission has repeatedly referred in its annual reports. If lands or other property not necessary for use in transportation are available for sale or lease, in the quantities which Chicago & Northwestern experience would indicate, it is clearly a Commission responsibility with the purpose expressed in the Interstate Commerce Act, to find, evaluate, and encourage the use of such property for the better service of the public. Especially it should be noted that this is not primarily a matter of the evaluation for rate making purposes, although that is assuredly a factor. To terminate Commission responsibility, as is proposed, will open the way to grave abuses that may seriously impair the ability of the carriers to serve the public, and affect the value and marketability of railway securities.

We therefore strongly oppose enactment of S. 757 and respectfully request that our views be incorporated in the record.

Sincerely yours,

DONALD S. BEATTIE, *Executive Secretary.*

# AMENDMENTS TO THE INTERSTATE COMMERCE ACT

WEDNESDAY, AUGUST 9, 1967

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

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

## OPENING STATEMENT BY THE CHAIRMAN

Senator LAUSCHE. The meeting will come to order.

This is a hearing to be held before the Surface Transportation Subcommittee on S. 913, introduced by Senator Magnuson for himself and for Senators Hart, Monroney, Morton, Tower, and Yarborough, by request of the Common Carrier Conference of Domestic Water Carriers.

Section 1 of S. 913 proposes to amend the Interstate Commerce Act, section 323, to provide for the filing and recording with the Interstate Commerce Commission of trust agreements and other evidences of equipment indebtedness of water carriers. Section 2 of S. 913 proposes to amend the Bankruptcy Act, chapter 10, section 116, to provide that the titleholder of equipment under a title retention security agreement may repossess the equipment even though the debtor is in a chapter 10 reorganization.

There will be inserted in the record at this point a copy of S. 913, and the comments thereon of the Interstate Commerce Commission, Federal Maritime Commission, Department of Justice, the Comptroller General and the Department of Transportation.

(The described material follows:)

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

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

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

- (1) redesignating section 323 (49 U.S.C. 923) as section 324;
- (2) inserting therein, immediately after section 322 (49 U.S.C. 922), the following new section:

### “RECORDING OF EVIDENCES OF EQUIPMENT INDEBTEDNESS

“Sec. 323. Any mortgage (except mortgages under the Ship Mortgage Act, 1920, as amended), lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels, used or intended for use by a carrier subject to this part

in interstate commerce or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge, or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement, or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee, or bailee of the equipment covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered, or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district, or possession thereof, respecting the filing, deposit, registration, or recordation of such instruments or documents: *Provided, however,* That nothing contained in this section shall, in any way, be construed to alter or amend the Ship Mortgage Act, 1920, as amended. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge, or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions.”; and (3) striking out in the section analysis of that part the item relating to section 323, and inserting in lieu thereof the following:

“Sec. 323. Recording of evidences of equipment indebtedness.

“Sec. 324. Separability of provisions.”

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

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

FEDERAL MARITIME COMMISSION,  
March 30, 1967.

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

DEAR MR. CHAIRMAN: This is in reply to your request of February 20, 1967, for the views of the Federal Maritime Commission with respect to S. 913, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

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

Sincerely yours,

JOHN HARLLEE, *Chairman,  
Rear Admiral, U.S. Navy (Retired).*

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., April 12, 1967.

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

DEAR SENATOR MAGNUSON: This is in response to your request for the views of the Department of Justice on S. 913, a bill to amend part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of water carriers, and for other purposes.

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.*

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., March 10, 1967.

B-157573.

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

DEAR MR. CHAIRMAN: Reference is made to your letter of February 20, 1967, requesting our comments on S. 913.

The apparent purpose of the bill is to provide a means whereby the water carrier industry can obtain increased funds for capital improvements and to obtain such funds at more favorable interest rates. In order to accomplish such purpose the bill would amend (1) the Interstate Commerce Act to permit water carriers to file trust agreements and other evidences of equipment indebtedness with the Interstate Commerce Commission for recordation and (2) the Bankruptcy Act to provide that the title-holder of equipment under a title retention security agreement may repossess the equipment even though the water carrier was involved in a proceeding under the act.

We have no particular information regarding the desirability of the proposed legislation and its enactment would not directly affect the functions of the General Accounting Office. Consequently, and since the subject matter of the bill involves a matter of policy primarily for the Congress to consider we offer no comments concerning the bill nor do we make any recommendations regarding its enactment.

Sincerely yours,

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

---

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., August 14, 1967.

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

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

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

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

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

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

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

Sincerely yours,

JOHN L. SWEENEY,  
*Assistant Secretary for Public Affairs.*

Senator LAUSCHE. The first witness this morning is Paul J. Tierney Vice Chairman, Interstate Commerce Commission.

Mr. Tierney, you are here to testify with respect to this bill. The committee will be glad to hear what you have to say.

#### STATEMENT OF PAUL J. TIERNEY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. TIERNEY. Thank you, Mr. Chairman.

I would like to state first, Mr. Chairman, with me here in the hearing room are Commissioners Deason and Syphers.

I have a very short statement, Mr. Chairman, which I would like to read, if I may.

My name is Paul J. Tierney, and I am the Vice Chairman of the Interstate Commerce Commission, and have served in that capacity since January 1, 1967.

On behalf of the Commission, I appreciate this opportunity to testify in support of S. 913, introduced by Senator Magnuson, Senator Monroney, Senator Morton, and Senator Yarborough.

This bill amends part III of the Interstate Commerce Act to provide for the recording with the Commission of trust agreements and other evidence of indebtedness of water carriers subject to part III of the act, except for mortgages subject to the Ship Mortgage Act of 1920. Section 1 of this bill is substantially identical to section 20c of the act which provides for the filing and recording of equipment trust agreements and other evidence of indebtedness of the railroads. Under section 20c railroads are permitted, although not required, to file these agreements with the Commission.

Pursuant to the requirements of section 20c, the Commission has established and presently maintains a comprehensive system for recording all documents or instruments submitted to us by the railroads and an index of all these documents or instruments is available for public inspection in the Office of the Secretary.

The principal advantage of section 20c to the railroads and to the public is that the filing of equipment trust agreements or other evidences of indebtedness with the Commission constitutes notice to all creditors or other persons of a valid and enforceable obligation. Once filed, these agreements need not be filed or recorded under the provisions of any other Federal, State, or local law. Thus, it is necessary to check only the Commission's records to determine whether a railroad's equipment or other property is subject to a lien or other encumbrance. With the enactment of S. 913, these same advantages would accrue to both the water carriers and the public with respect to water carrier trust agreements and other such obligations.

Section 2 of this bill amends section 116 of chapter 10 of the Bankruptcy Act, 11 U.S.C. 516, so as to provide that the provisions of chapter 10 shall not affect the right of the owner of water carrier equipment which is leased, subleased, or conditionally sold to any water carrier subject to part III of the act to take possession of this equipment if the terms of the lease or conditional sale so provide. This provision is similar to paragraph (5) of section 116 which provides for similar protection to the owners of aircraft, aircraft parts, and so forth, leased or sold to any air carrier subject to the jurisdiction of the Civil Aeronautics Board. Similar protection is also afforded to owners of railroad equipment under section 77(j) of the Bankruptcy Act, 11 U.S.C. 205(j). We are not aware of any similar statutory provision for the protection of the owners or lessors of motor carrier equipment. Since this section appears to be in accord with the basic purposes of this bill—that of facilitating the acquisition of modern equipment by the water carrier industry—this provision seems desirable.

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

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

Since the Commission is now processing similar evidences of indebtedness for the railroads, as I have described previously, there would be no difficulty in carrying out the same function for the water carriers. With some minor modifications, the Commission's existing regulations applicable to railroad recordings could be made applicable to the carriers covered by this bill.

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

That concludes my prepared testimony, sir, and if there are any questions, I would be delighted to try to answer them.

Senator PEARSON. What is the problem that we are trying to solve in section 1 of this bill?

Mr. TIERNEY. Well, essentially what we are attempting to do is, first, to form a central place for indebtedness of carriers in the Commission.

Senator PEARSON. Why do we want to do that?

Mr. TIERNEY. The reason is that as the situation now exists the water carriers—which, of course, operate in many States—are forced to file these evidences of indebtedness in the various States.

Senator PEARSON. Would they have to file them county by county in some States?

Mr. TIERNEY. That I am not sure of, sir. I am not sure of that, but depending upon the area in which they are, in order to protect the person who is the lender, in order to protect himself, would have to make sure that notice of that indebtedness——

Senator PEARSON. Because of the priority of loans involved?

Mr. TIERNEY. That is right, sir. That is it.

Senator PEARSON. Or if he wanted to file them with the ICC?

Mr. TIERNEY. If you file them with the ICC, that will eliminate the necessity of filing them anywhere else, and filing them with the ICC under the provisions of this act would constitute notice to all people in the country.

Senator PEARSON. Is that a burden on people to check the record?

Mr. TIERNEY. At ICC?

Senator PEARSON. Yes.

Mr. TIERNEY. Not at all, sir. As a matter of fact, I think it would be a convenience to the public to have one central place. I would think that other people, other than the lenders, who are interested in the status of equipment, whether or not there is a lien on it, it would be a convenience to them to have one central place. I should think so.

Senator PEARSON. Well, the only thing I was thinking about was the time and distance for a man on the Mississippi or the inland waterways anyplace having to check back in Washington, but I suppose the alternative is to check in three or four different States.

Mr. TIERNEY. That is it. It would be more of an inconvenience. In that sense, somebody in other parts of the country having to come to Washington, that would be an inconvenience, but I think it would be an improvement, as the situation is now.

Senator PEARSON. So what I think of in terms of a chattel mortgage and what you call an equipment trust are about the same; aren't they?

Mr. TIERNEY. Yes, in the sense that the equipment trust—really what it is is the title was held by a third party other than the lender.

Senator PEARSON. Now educate me about section 2.

Mr. TIERNEY. Under section 2, as I understand it, without this provision a trustee in bankruptcy, for example, can, where there is an existing trust agreement, operate it, and continue to operate it until he finally finds it so to benefit the company which is in bankruptcy. This would permit the lender and the water carrier to enter into an agreement which would provide for repossession irrespective of bankruptcy.

Senator PEARSON. Why do we want to do that?

Mr. TIERNEY. Well, the purpose of that, sir, would be, in effect, to permit, or facilitate the water carriers' ability to get money, to finance and modernize this new equipment.

Senator PEARSON. That would be consistent with the general rule of bankruptcy proceedings; wouldn't it?

Mr. TIERNEY. Well, this would be consistent, for example, with the situation that exists to railroads, and that exists to aircraft companies, airlines.

Senator PEARSON. How about the proposition in regard to section 1 of filing in both the States and the ICC? Would that be a burden?

Mr. TIERNEY. Yes, I think this would be—I think just filing with the ICC, Senator, I think it would eliminate the necessity of filing elsewhere. That would simplify the situation.

Senator PEARSON. I guess I understand it.

Senator LAUSCHE. Mr. Tierney, the principal purpose of this bill is to facilitate water carriers to procure credit needed for the acquisition of equipment incidental to their business.

Mr. TIERNEY. That is precisely it, Mr. Chairman, yes.

Senator LAUSCHE. The bill provides for the filing for record with the Interstate Commerce Commission any evidence of indebtedness that gives the lender or the lessor a lien on property that has been sold and is being used by the carrier?

Mr. TIERNEY. That is correct, sir.

Senator LAUSCHE. Is there any parallel law in existence dealing with the Federal Government covering airplane equipment?

Mr. TIERNEY. Yes, there is.

Senator LAUSCHE. Is there a parallel law in existence on the Federal books governing railroad equipment?

Mr. TIERNEY. There is, sir.

Senator LAUSCHE. What are the arguments that are made by opponents of this Federal registration as distinguished from registration with local—with State laws in local governmental units?

Mr. TIERNEY. Senator, frankly, I am not aware of any opposition to this particular bill. I would assume conceivably there are arguments that might be felt that it is an inconvenience to come to Washington, but as I indicated to Senator Pearson, I think this would be an inconvenience to everyone. And I am not aware of any arguments against this, though there may well be.

Senator LAUSCHE. Are you adequately familiar with the laws of the different States to tell this committee whether there are any States having what you call registration on a statewide basis as distinguished from a countywide basis of evidences of indebtedness constituting a lien?

Mr. TIERNEY. I don't feel qualified to answer that question, Mr. Chairman.

Senator LAUSCHE. I asked the question because my recollection is that in Ohio we have no central State agency in which registrations can be made.

Now, as you indicated to Senator Pearson, the second section contemplates giving the vendor or the lender and the holder of the lien a right while the carrier is in bankruptcy to recover the property which he would not be able to do in the absence of the adoption of this bill.

Mr. TIERNEY. That is it, sir; yes, sir.

Senator LAUSCHE. Why should the lender or vendor, or lessor, be allowed to recover from the referee in bankruptcy the equipment involved?

Mr. TIERNEY. Well, I think in this case, really, the objective that is sought is to permit better and lower cost financing to water carriers. If a lender were faced with the situation where, for example, was fearful of this property being in the hands of the trustee in bankruptcy, ad infinitum, I think he might be less anxious to lend money certainly at an attractive rate.

Senator LAUSCHE. You are here speaking in behalf of the Commission?

Mr. TIERNEY. Yes, sir.

Senator LAUSCHE. Is the Commission unanimous in its judgment that this bill should be adopted?

Mr. TIERNEY. They are, sir.

Senator PEARSON. If the lender takes possession and operates the equipment, he still does so under the jurisdiction of the bankruptcy court; does he not?

Mr. TIERNEY. I would think not, sir. I would think not.

Senator PEARSON. The proceeds acquired thereby would be under the jurisdiction of the bankruptcy court; would they not?

Mr. TIERNEY. I would think this law would take this out of the bankruptcy—

Senator PEARSON. But you said in your statement that this applies to aircraft, railroads, and other people now.

Mr. TIERNEY. Yes, sir; there is a similar provision in the Bankruptcy Act which provides the same situation as to airlines and railroads; yes, sir.

Senator LAUSCHE. Well, thanks very much, Mr. Tierney, for your help.

Oh, tell me what is this Mortgage Act of 1920 that is not supposed to be affected at all by this bill?

Mr. TIERNEY. It is my understanding, Senator, this relates to oceangoing vessels and which generally, as you know, are under the jurisdiction of the Federal Maritime Commission. Mortgages, it is my understanding, are recorded with customs organizations.

Senator LAUSCHE. That is, the Mortgage Act of 1920 deals with oceangoing vessels, and this bill will deal with vessels traveling on the inland waters?

Mr. TIERNEY. Yes, sir.

Senator LAUSCHE. Thank you very much.

Next is Chauncey G. Willis, president of the C. G. Willis Barge Line of Paulsboro, N.J.

Mr. Willis, your statement will be printed in full in the record. With that understanding, perhaps you can extemporaneously present your highlight views on this.

**STATEMENT OF CHAUNCEY G. WILLIS, PRESIDENT, C. G. WILLIS BARGE LINE OF PAULSBORO, N.J., AND CHAIRMAN OF THE EXECUTIVE COMMITTEE, COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS; ACCOMPANIED BY PETER M. KENNEDY AND J. ROBERT HARD, ATTORNEY, AMERICAN COMMERCIAL LINES, INC., HOUSTON, TEX.**

Mr. WILLIS. Mr. Chairman, my name is Chauncey G. Willis and I am president of C. G. Willis Barge Line of Paulsboro, N.J.

I have with me Mr. Peter Kennedy, of Dominick & Dominick, of New York; and Mr. Robert Hard, attorney for American Commercial Lines in Houston, Tex., who will help me out if some questions come up that I am not familiar with.

The C. G. Willis Barge Line of Paulsboro, N.J., is a common carrier bargeline operating on the Atlantic coastal canal. I appear

here today as chairman of the executive committee of the Common Carrier Conference of Domestic Water Carriers, a national association of the leading certificated water carriers in the coastwise, intercoastal, Great Lakes, and inland waterway trades.

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

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

At the present time, under virtually all financing arrangements available to the water carrier industry, the trustee in a reorganization under chapter 10 of the Bankruptcy Act may elect to keep any and all equipment of the bankrupt to the exclusion of security creditors, if, in the trustee's opinion, the equipment is beneficial to the continued operation of the bankrupt.

The net effect of this is that even though a creditor retains title to equipment as security for the debt, he is unable to repossess in the event of default if the trustee finds the equipment is necessary for the operation of the bankrupt's business.

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

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

Senator PEARSON. Why would he be in a position as an unsecured creditor? He has his lien.

Mr. WILLIS. He has got his lien——

Senator PEARSON. It is filed. Why would he be any different?

Mr. WILLIS. Because under chapter 10 in bankruptcy the payments do not have to be necessarily made on the equipment. The trustee and the referee can use this equipment to try to bring the company out of receivership, but the people that have loaned the money on the

equipment, the institutions that have loaned the money on the equipment are not being paid for it, either principal, I know, and possibly some interest on the equipment. And you can have a bankruptcy case, a company in receivership for maybe 10 or 15 years, and the trustee is using the equipment while in receivership, and the banks or financial institutions are not being paid for the equipment.

Senator PEARSON. Would this bill jeopardize the rights of other creditors in bankruptcy proceedings?

Mr. WILLIS. I would say if the operator that goes into receivership, and he has equipment obligations out, that they are his biggest obligations.

Now, I don't know about the shipyards. Usually a shipyard pretty well knows when a fellow is on shaky ground. Probably more so before the financial institutions.

Senator PEARSON. I am just equating this with a very limited knowledge of bankruptcy, and I am beginning to see an exception, which may be a good one. I was just becoming concerned about this statement that he is in the position of an unsecured creditor, when he has his trust equipment lien, and I am concerned about other creditors who might be jeopardized.

Mr. WILLIS. Well, Mr. Hard says he can probably clarify this.

Mr. HARD. Senator, if you would permit me at this point, I think that we need to recognize that there are basically two kinds of bankruptcy, one the straight bankruptcy, where the trustee would take possession and sell the assets.

Senator PEARSON. That is all I know anything about.

Mr. HARD. Now, in that type of case, the creditor would be fully secured to the extent of the value of the asset that he has a security interest in.

Senator PEARSON. Yes.

Mr. HARD. But the——

Senator PEARSON. Within the priority of liens.

Mr. HARD. We are not talking about that type of bankruptcy. We are talking about what is called a chapter 10 reorganization of bankruptcy, under which the trustee continues to operate the business but does not sell the assets.

Now, the creditor who has the security interest in this towboat or barge does not lose his security interest should the vessel be sold. However, he is not, during the period of the trusteeship, paid at the rate called for by the agreement between the barge company, or the inland waterway operator and him.

Senator PEARSON. Why can't the trustee in bankruptcy under chapter 10, or the receiver who goes in and operates, operate it just as well as the lender? Or the vendor?

Mr. HARD. Well, Senator, the person who has the security interest—the institutional investor, in most cases, would not operate this equipment. He would have the right to take any equipment back, and he would probably then dispose of it elsewhere.

Senator PEARSON. I see.

Mr. HARD. In other words, if a railroad is undergoing reorganization, and you are using equipment trust type of financing, he simply takes it back and sells it to another railroad.

Senator PEARSON. I see.

Senator LAUSCHE. Does this bill, in the application to bankruptcy provision, relate only to efforts to reorganize under chapter 10?

Mr. HARD. Yes, Senator, that is correct.

Senator LAUSCHE. It does not deal with the ordinary bankruptcy proceedings, but only with respect to a chapter 10 reorganization?

Mr. HARD. That is quite correct.

Senator LAUSCHE. So all of the rights that are accorded to creditors in ordinary bankruptcy are continued in effect without at all being changed by the adoption of the pending bill?

Mr. HARD. That is our understanding, yes, sir.

Senator LAUSCHE. All right.

Mr. WILLIS. Now, I think we have just discussed quite a few paragraphs through this question, so I will skip on. I will pick it up on the second paragraph, page 5, because I think we have discussed the other paragraphs.

The bill introduced by Senator Magnuson, S. 913, now proposes to extend to the regulated water carrier industry the same recordation and limited bankruptcy benefits now available to the railroads and the airlines.

The proposed amendment to part III of the Interstate Commerce Act would provide for the recording of security instruments with the Interstate Commerce Commission in much the same manner as equipment trust certificates of the railroads are presently recorded with that Commission and security agreements of the airlines are recorded with the Federal Aviation Agency. Because towboats and barges move between many States, it is extremely difficult, if not impossible, for a creditor to protect his security interests unless he records in virtually every county in which the debtor company operates.

The proposed amendment would designate the Interstate Commerce Commission in Washington, D.C., as the single recording office and anyone desiring to determine whether a particular piece of equipment was subject to such a lien would merely have to check the records at the Commission.

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

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

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

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

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

Mr. Chairman, I appreciate the time the committee has given to me and I sincerely urge the committee to give favorable consideration to S. 913. I believe that it will be of substantial benefit to the water carriers and consequently to the general public, without cost to the Federal Government.

Thank you.

Senator LAUSCHE. Senator Pearson?

Senator PEARSON. Thank you for your statement. I believe I understand it a little better now. There is so much going on you can try to do your homework but you can't get it all done.

Did you say in some States that you actually have to record in each county?

Mr. WILLIS. I am not familiar with that, but Mr. Hard is.

Mr. HARD. Senator, if you don't fall under a Federal recording statute such as the railroads now have, and such as the Ship Mortgage Act of 1920, you have to record your security interest under the laws of the States where you operate in order to protect yourself against a subsequent creditor, or subsequent purchaser.

Senator PEARSON. And in some cases it is in every county?

Mr. HARD. In some States it is in every county. In some States—

Senator PEARSON. Or at least the cautious person would do so?

Mr. HARD. Yes, sir. In some States, when they are still operating under the Sales Act, it is almost necessary to file in every county. In some States that are operating under the uniform commercial code, it is possible to file only with the secretary of state, but even that is not consistent within the uniform commercial code, because there are variations of that. So as a practical matter, for a cautious lender, it is necessary to go to each State and determine there what he has to do to protect him on these barges that are moving up and down the waterways.

Senator LAUSCHE. Thank you very much. I have no further questions.

The next witness is Mr. Peter Kennedy, of Dominick & Dominick, New York City.

Mr. KENNEDY. Senator, I do not have a prepared statement. I just came here to corroborate what Mr. Willis has been saying regarding the desirability of this legislation from the standpoint of investment aspect.

Our business is the sale of securities, including equipment trust certificates, and I think we have a pretty good idea of what the investment public—the institutional investor requires and what the underwriters would require to have a marketable certificate.

I think I can say that we would not underwrite the water carriers equipment trust certificate at this time because of this recording problem. We could not get a satisfactory legal opinion from our counsel

that we had a good lien and, therefore, we would not have a piece of paper we thought satisfactory to sell.

I know from experience with other certificates, particularly in the airline field, that the exemption in bankruptcy is very important to the investor, and the result of that is that the water carrier industry did not get this same exemption. They will have to pay more, speaking for their money. The market will be that much more limited.

That is principally what I came to say, and I would be glad to answer any questions, if you have any.

Senator LAUSCHE. Off the record.

(Discussion off the record.)

Senator LAUSCHE. Now, there has been sent to the committee a letter by the Transportation Association of America setting forth its opinion about this bill. The letter was forwarded in response to a request made by our staff counsel, Mr. Stanton P. Sender.

Among other things, the letter states:

At a recent meeting of the Coordinating Committee, the Panel Chairmen registered the following views on this proposal:

User Panel—support  
 Investor Panel—support  
 Air Panel—no objection  
 Freight Forwarder Panel—no objection  
 Highway Panel—no position  
 Pipe Line Panel—no objection  
 Railroad Panel—no position  
 Domestic Water Carrier Panel—support.

This letter will be printed in the record in its entirety.

(The letter follows:)

TRANSPORTATION ASSOCIATION OF AMERICA,  
 Washington, D.C., August 3, 1967.

MR. STANTON P. SENDER,  
 Staff Counsel, Committee on Commerce,  
 U.S. Senate, Washington, D.C.

DEAR MR. SENDER: In answer to your request of July 31, 1967, concerning a TAA position on S. 913, I wish to inform you that although TAA has not yet established a formal policy relating to this legislation, a policy proposal on the issue has reached the state in TAA's policy making machinery where it has the support or non opposition of all eight Panels in TAA Cooperative Project.

As you know the TAA Cooperative Project forms the nucleus of TAA's policy making machinery. It is composed of eight permanent advisory panels on which serve about 350 top executives representing users, investors, and all forms of transport. These panels study national transport policy issues and take individual positions on them. The project organization also contains a Coordinating Committee, composed of the Chairmen and representatives of the eight panels. This committee endeavors to reconcile differences in Panel positions. There is also a Committee of Panel Chairmen which receives Panel recommendations and transmits them, with any dissents and with its own recommendations, to the TAA's 115-member Board of Directors. Finally, the Board of Directors takes action on the issue either approving or disapproving the policy position. Upon approval by the TAA Board, a policy position becomes formal TAA policy.

The following issue has been considered by all eight Panels in the Cooperative Project:

"Domestic Water Carrier—Equipment Trusts

"Section 116 of the Bankruptcy Act should be amended to provide for the title holder, under equipment trust certificates and other title retention security agreements, to vessels used or intended for use by any water carrier subject to Part III of the Interstate Commerce Act, to repossess or take possession of the equipment even though the debtor is in a Chapter 10 reorganization.

"The Interstate Commerce Act should be amended to provide for the recording of such security agreements."

At a recent meeting of the Coordinating Committee, the Panel Chairmen registered the following views on this proposal:

User Panel—support  
 Investor Panel—support  
 Air Panel—no objection  
 Freight Forwarder Panel—no objection  
 Highway Panel—no position  
 Pipe Line Panel—no objection  
 Railroad Panel—no position  
 Domestic Water Carrier Panel—support

It was agreed at this Coordinating Committee meeting that if no Panel objected, the issue could go to the Committee of Panel Chairmen for a formal recommendation to the TAA Board. Normally, when there is general Panel agreement, such as is the case on this issue, the TAA Board of Directors approves the policy proposal.

The next TAA Board of Directors meeting is scheduled for October 3, 1967. At that time we will notify you of the results of its formal vote on this policy proposal. Meanwhile, we do not object to this statement being included in the record as evidence of the support or non-opposition that the eight Panels in TAA's Cooperative Project have already given to this issue.

Sincerely,

HAROLD HAMMOND, *President.*

TRANSPORTATION ASSOCIATION OF AMERICA,  
 Washington, D.C., October 25, 1967.

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

DEAR SENATOR LAUSCHE: On behalf of the Board of Directors of the Transportation Association of America, I should like to express TAA's strong support of S. 913, a bill now under consideration by your subcommittee, to amend Part III of the Interstate Commerce Act to provide for the recording of trust agreements and other evidences of equipment indebtedness of Water Carriers, and to amend the Bankruptcy Act to provide for the exemption of such agreements from Section 116, Chapter 10 (II USC 516).

For the record, TAA is a national transportation policy organization composed of transport users, investors, and carriers of all modes who work collectively to develop sound national policies aimed at the creation of the strongest possible transportation system under private enterprise. Policy positions, prior to final vote by the 115-member TAA Board of Directors, are first studied carefully by eight permanent Panels composed of approximately 350 leaders from user, investor, air, freight forwarder, highway, oil pipeline, rail, and water carrier fields respectively.

On August 3, 1967, I wrote to Mr. Stanton P. Sender, Transportation Counsel, Senate Commerce Committee, in answer to his request for TAA's views on this legislation. In my letter, I informed him that although TAA had not established a formal policy relating to this legislation, a policy proposal on the issue had reached the stage in TAA's policy making machinery where it had the support or non-opposition of all eight panels in the TAA Cooperative Project. I wish to inform you now, that on October 3, 1967, the TAA Board of Directors met and formally approved the following policy which is in direct support of S. 913.

"Domestic Water Carrier Equipment Trusts

"Section 116 of the Bankruptcy Act should be amended to provide for the title holder, under equipment trust certificates and other title retention security agreements, to vessels used or intended for use by a water carrier subject to Part III of the Interstate Commerce Act, to repossess or take possession of the equipment even though the debtor is in a Chapter 10 reorganization.

"The Interstate Commerce Act should be amended to provide for the recording of such security agreements."

Legislation under this policy and S. 913 would permit the parties to a lease or a conditional sales contract to agree to make proceedings under Section 116, Chapter 10 of the Bankruptcy Act inapplicable insofar as they affect title and the right to possess vessels. Thus, in the event of default, the right of these creditors to

take possession would be preserved. Furthermore, by providing for the recordation of these security agreements at the Interstate Commerce Commission, information on these instruments will be available at one central location and thus afford creditors protection from unknown liens on equipment.

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

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

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

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

Sincerely,

HAROLD HAMMOND, *President.*

Senator LAUSCHE. I think that is all the testimony we have here this morning on this bill. Thank you very much.

The meeting stands adjourned.

(Whereupon, at 10:40 a.m., the subcommittee was adjourned.)

(The following statement was subsequently received for the record:)

STATEMENT OF LEW S. RUSSELL, PRESIDENT, TIDEWATER BARGE LINES, INC., REPRESENTING TIDEWATER BARGE LINES, INC., AND AFFILIATED COMPANIES

My name is Lew S. Russell. I am President of Tidewater Barge Lines, Inc. I appreciate the opportunity to present our Company views on Senate Bill S-913.

The writer is representing Tidewater Barge Lines and Affiliated Companies, of Portland, Oregon, which holds ICC Certificate No. W-809 as a common carrier under Department Three covering water transportation by barge on the Columbia, Willamette and Snake Rivers and Coastwise. Our Company has been in barge service since 1932 and we haul bulk commodities as well as general commodities under our Certificate.

The financing of new equipment to keep step with modern improvements has been and is a continuing problem. We are faced with substantial amounts, insofar as our Company is concerned, in the immediate future to take advantage of the improvements on the Columbia and Snake Rivers which will be well along in the mid-year of 1968. We do feel that another method such as S-913, will be very helpful in doing two things for us: First, will permit another source of capital to be attracted to our business and second, will enable us to develop through equipment trust certificates, a longer pay back on capital investment. The program needed for serving the public with modern equipment is so expensive that neither our earnings nor working capital permit a short term pay out such as we have used over the past 30 years. This is due to the fact that the decimal point has been moved over on our costs and moved back on our operating margins. We are sincerely appreciative, and am sure our shippers will all join with me in the same, that this will be given the approval of the Congress.

Our expanding traffic on Northwest Inland Waterways, gives us a challenge for expansion and modernization of equipment that we have never had before. We do feel that this area as well as others will continue to develop better and probably cheaper transportation in the future than it has in the past.

Again I repeat that this additional method of financing permits our Company to plan more efficient, economical, and dependable equipment to answer the requirements of the public interest of our customers.

OCTOBER 30, 1967.

Mr. VINCENT F. CAPUTO,  
*Director for Transportation and Warehousing Policy,*  
*Department of Defense, Washington, D.C.*

DEAR MR. CAPUTO: Congress has now pending before it legislation relating to the problem of "pooling" among household goods carriers under § 5(1) of the Interstate Commerce Act. At the same time, and related to this problem, there are several hundred applications now pending before the Interstate Commerce Commission wherein warehousemen seek local authority to transport used household goods for the account of those claiming to be exempt freight forwarders pursuant to § 402(b)(2) of the Act. The Chairman of the Commission advised Senator Lausche that if certificates are issued to the multitude of applicants, it would tend to "compound the pooling problem."

Our understanding is that most of the traffic handled by the exempt forwarders is obtained from the Department of Defense under its rotation policy. See, e.g., *Kingpak, Inc.—Investigation of Operations*, 103 M.C.C. 318, 321-322.

In a letter to me in May of 1964, you stated "the capacity of regulated carriers is adequate to meet the needs of the Department of Defense"; and that "the need for an exemption from Part 4 of the Interstate Commerce Act should not be based on a continuing requirement of the Department." Would you please advise if these statements are still applicable today?

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

---

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,  
*Washington, D.C., November 9, 1967.*

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

DEAR MR. CHAIRMAN: This is in answer to your letter dated October 30, 1967, requesting confirmation of the views which were expressed in my letter of May 4, 1964, on the Department of Defense use of exempt freight forwarders.

This will confirm that the capacity of regulated carriers is adequate to meet the needs of the Department of Defense. However, provision has been made under Section 402(b)(2) of the Interstate Commerce Act for the unregulated operation of freight forwarders of used household goods. The Department of Defense does not feel that it can properly exclude from consideration for DoD traffic any carrier which can qualify to provide the service required except as the result of furnishing an unacceptable level of service or failure to provide the services tendered.

If I can be of further assistance please let me know.

Sincerely,

V. F. CAPUTO,  
*Director for Transportation and Warehousing Policy.*

---

NOVEMBER 27, 1967.

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

DEAR SENATOR LAUSCHE: By letter dated June 16, 1967 to Senator Magnuson, the office of the Secretary of the Department of Transportation stated the views of the Department on S. 755, a bill to amend Section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, as follows:

"S. 755 would authorize pooling of household goods shipments without the presently-required prior approval of the Interstate Commerce Commission. The removal of the condition of approval will provide appropriate flexibility which in turn will permit a more expeditious and economical movement of household goods, to the benefit of both the carriers and the shipping public."

In line with the Department of Transportation policy of availability of information to the public as stated in the Federal Register on June 29, 1967, I sought access to the factual material upon which the Department relied for substantiation of the foregoing statement. This involved a trip to the Department offices, the payment of a fee and a promise to pay reproduction fees for the information to be supplied. The attached letter dated November 2, 1967 from Stanley Hamilton, Director, Publications Staff, is the only fruit borne of my effort.

A copy of Section 7.61 of the Department's regulation relative to freedom of information, referred to in Mr. Hamilton's letter, is attached for your convenience.

We respectfully request that if the Department of Transportation position relative to S. 755 is printed in your Subcommittee's report, that you also print in conjunction therewith the text of Mr. Hamilton's letter to me. We submit that the position of the Department of S. 755 cannot be evaluated properly without also considering the refusal of the Department to disclose the information upon which its position is founded.

Respectfully yours,

G. ZAN GOLDEN,  
*Vice President and General Counsel.*

---

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
*Washington, D.C., November 2, 1967.*

Mr. G. ZAN GOLDEN,  
*Fort Wayne, Ind.*

DEAR MR. GOLDEN: This is in reply to your request of October 27 for backup information that led the Department of Transportation to reach its position on S. 755.

Under the Freedom of Information Act, any record prepared by a government employee for internal government use is specifically exempted from required public disclosure, to the extent that it contains advice and recommendations made in the course of developing official action. This exemption is fully spelled out in section 7.61 of the Department's regulations implementing the Act, as you can note on page 9287 of the enclosed Federal Register reprint of the regulations.

Therefore, we are unable to make the information you request available to you.

Sincerely yours,

STANLEY HAMILTON,  
*Director, Publications Staff.*

---

[From the Federal Register, June 29, 1967]

### § 7.61 Intragovernmental exchanges

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent that it contains—

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government; or

(2) Information concerning any pending matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) This section has two distinct purposes. One is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the Government. This judicially recognized privilege of protection against disclosure in litigation or elsewhere is intended to assure that these resources will be fully and readily available to those officials upon whom the responsibility rests to take official and final Department action. However, the action itself and the facts on which it is based are not within this protection. The other purpose is to protect against the premature disclosure of material that is in the development stage if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of records covered by this section include minutes; staff papers containing advice, opinions, suggestions, or exchanges of views, preliminary to final agency decision or action; budgetary planning and programming information; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged preparatory to anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the Department; records of inspections, investigations, and surveys pertaining to internal management of the Department; and matters that would not be routinely disclosed under disclosure procedures in litigation and which are likely to be the subject of litigation. However, if such a record also contains factual information, that information may be made available under § 7.15.

## ANSWERS TO QUESTIONS POSED CONCERNING S. 755

1. In answer to questions 2(b) and 2(c) you indicate that regulated household goods motor carriers have the choice of operating in that capacity or in the capacity of a freight forwarder exempt from regulation. This apparently results from the Commission's decision in *Kingpak, Inc.-Investigation of Operations*, 103 M.C.C. 318 (1966).

(a) If a motor carrier elects to act as an exempt freight forwarder for all of its shipments, can it thereby escape all Commission regulation whatsoever?

No. A motor carrier can "escape" only by surrendering all of its authorities for revocation. If it fails to operate as a motor carrier, upon being ordered to perform service, its authorities can be revoked for dormancy. Insofar as it acts as a bona fide exempt forwarder and does not utilize its underlying authorities to operate as a motor carrier, it is not subject to regulation under part IV of the Act. However, the Commission maintains jurisdiction over the underlying transportation by rail, water, or motor vehicle that it may utilize in interstate or foreign commerce.

The decision of the Commission in *Kingpak* simply recognized an existing condition that allows any person to provide a forwarding service within the section 402(b)(2) exemption. (An action has been filed attacking the *Kingpak* decision, civil action No. 47646, in the United States District Court for the Western District of California, *Household Goods Carriers Bureau et al v. United States, et al.*) Since the *Kingpak* decision is referred to many times in the course of discussion, a copy of the Commission's decision is enclosed.

(b) If not, what Commission regulation would remain the same?

Prior to revocation of its authorities to operate as a motor carrier, it would be required to maintain public liability and property damage insurance, and cargo insurance, with respect to potential motor-carrier operations. It would also be required to maintain agents for the service of legal process in each State in which it held motor-carrier authority to operate. It would also be required to maintain rates on file as a motor carrier, and by such rates it would be holding out service to the public, as a motor carrier. Presumably a shipper could secure a mandatory injunctive order. It would also be required to file an annual, and perhaps (depending upon its gross revenue) quarterly reports. Such reports would list its revenues, including revenues from exempt freight forwarder activities. These requirements could, of course, be avoided by a surrender for cancellation of its motor-carrier authority. Underlying transportation would be regulated. See (a) above and (c) below.

(c) What control will the Commission have over the relationship between the carrier and the shipper?

Assuming reference to "the carrier" is to a carrier by rail, water, or motor vehicle subject to regulation by the Commission, the Commission has control of the relationships of such carriers to shippers, provided in parts I, II, and III of the Interstate Commerce Act and supplementary acts. The fact that "the shipper" is an exempt freight forwarder would not reduce such control. For illustration, we require the carrier to issue a bill of lading at the time it receives the goods and we specify the contents of the bill of lading. We have prosecuted a substantial number of shippers who "aid and abet" the carrier in unlawful activities by the carrier. To illustrate, many shippers have been successfully prosecuted for tendering traffic to a carrier when it knew that the carrier did not hold appropriate authority authorizing it to perform the transportation. Also in the area of rates many shippers have been successfully prosecuted for failing to pay the carrier the applicable tariff rate, when dealing with motor carriers, water carriers, and rail carriers. This is because the provisions of the Act place the duty on the shipper as well as on the carrier, so each is separately responsible. So accepting rebates from a carrier is a criminal offense as to both the carrier for paying and the shipper for receiving.

Insofar as the relationship between the exempt forwarder as a carrier and its customer, the act gives the Commission no authority to exercise any control. In fact, section 402(b)(2) is a specific exemption from regulation. In our annual report for 1949, at pages 44-45, we discussed certain practices of exempt forwarders of used household goods, which appeared to be inimical to the interests of their patrons, and suggested that consideration be given to removal of the exemption. For the reasons there given, we recommended in our annual reports for 1951 through 1955 that the exemption be terminated.

Complaints had been received of alleged overcharges where the freight forwarder in making an estimate quoted a lower rate or weight than later charged, and also added in handling, delivery, and other charges which the patron had not

anticipated. Under the law as it has existed since prior to enactment of part IV in 1942, the Commission is and has been without power to correct this situation.

2. You indicate throughout your answers that the Commission's major effort to police movers has been directed toward making the operating rules more definite and effective, rather than in the area of pooling or in the investigation of possible pooling practices. You cite *Practices of Motor Common Carriers of Household Goods*, 95 M.C.C. 138, 96 M.C.C. 196, and 102 M.C.C. 276, as evidence of the Commission's effort to "reduce the causes of complaints by shippers, require meaningful information on freight bills and bills of lading, and to assure shippers of information of services they may or may not expect from carriers". Assuming those are laudable objectives—

(a) Won't the objectives be frustrated if regulated carriers have the opportunity to avoid regulation by electing to operate as exempt forwarders?

The objectives have been, and will continue to be, frustrated to a certain extent by those who deal with shippers under the exemption contained in section 402(b) (2), whether they be local warehousemen, regulated carriers, of irresponsible operators. However, what has been accomplished notwithstanding the exemption is substantial. The Commission's rules require motor carriers of household goods to furnish essential information to prospective shippers. If, with this information available, shippers nevertheless choose to deal with unregulated forwarders, the Commission is without power to prevent them from doing so, or to consider their complaints.

Forwarders themselves do not move traffic. They must utilize carriers who are regulated. Unless a forwarder has an extensive agency system, it can only operate successfully where a substantial volume of traffic originates in the same area.

(b) Won't the objectives be further frustrated by the fact that from the decision in the *Kingpak* case there results from liberal statutory construction a class of additional exempt operators (so-called non-certificated unregulated forwarders) which can provide household goods service free from Commission regulation?

Exempt forwarders existed prior to the *Kingpak* decision, as a result of the section 402(b) (2) exemption. The *Kingpak* decision merely recognized the validity of the contentions of some persons that they were exempt, by reason of the statute.

(c) How will the Commission administer and enforce this mandate under the Act to promote "safe and adequate service," when a certain amount of that service will be provided by the newly created class of exempt operators which, presumably, will be free from regulation as a result of the Commission's decision in the *Kingpak* case?

As indicated previously, exempt forwarders are not a newly created class of intermediary dealing with the public on the one hand and with carriers on the other. They have provided a certain amount of service since prior to enactment of part IV. The Commission has jurisdiction over modes of surface transportation they use. Indeed, some transportation unregulated prior to *Kingpak*, was found to be subject to the Act, i.e., motor carrier pick-up and delivery service including that performed within commercial zones.

(d) Does the Commission have statutory authority to investigate and inspect the records of exempt forwarders? Does the Commission have such power to inspect the records of a motor carrier relative to exempt forwarder operations? If there is a difference, please explain.

The Commission has no statutory power to inspect the records of an independent, totally exempt freight forwarder. The Commission, or its duly authorized special agents, accountants, or examiners, has authority to inspect the records of motor carriers. We believe this power runs to all their activities, including any freight forwarding affiliates they may operate, whether or not some of those activities are not subject to economic regulation. However, the inspection of the records of exempt activities is primarily to ascertain the relationship between the carrier activities subject to regulation and the exempt activities, with a view solely to assure adequate regulation of the carrier activities. A non-certificated exempt forwarder, having no regulated activity, would not be subject to such an inspection.

(e) At page 4 of Chairman Tucker's statement to this Committee he characterized household goods shippers as "unversed". In view of the creation, in effect, of a class of additional exempt operations (so-called non-certificated unregulated forwarders) which can provide household goods service free from Commission regulation, what can or will the Commission do in the future to protect such "unversed" shippers against any unscrupulous practices which might be hoisted upon them by the unregulated operators?

The Commission has not created a class of additional exempt operators—the exempt freight forwarder of used household goods is a statutory creature. This question raises the basic question as to whether or not freight forwarders of household goods should be exempt. As indicated, the Commission has heretofore taken a position that this exemption should be terminated.

We do not agree, as indicated earlier, that any actual transportation is exempt. The freight forwarder becomes a shipper in dealing with the person performing the actual transportation. The Commission's regulations must necessarily be directed to the latter. The shipper is also regulated, to some extent, as indicated in our answer to question 1(c) above. If the exemption were eliminated, similar regulations could be directed to freight forwarders. All indications are that the recent decision of the Commission in No. FF-316, *Routed Thru-Pac, Inc., Freight Forwarder Application* may result in more forwarders coming under regulation pursuant to part IV of the act.

(f) Does the Commission follow a policy or practice in interpreting statutes so as to achieve ease in policing compliance by carriers and the public? If so, what is that policy?

In general, the Commission makes every effort to interpret and apply the relevant statutory provisions with the view of their being easily understood by persons affected by such interpretations and with a view toward enforcing them with a minimum of difficulty. Insofar as interpreting a particular section of the law the Commission does so in accordance with established legal principles. And any interpretation which deviates from this standard is returned to the Commission by the Courts.

3. In answer to question 2(e), you indicate that §402(b)(2) is express Congressional authority for waiver by the Commission of its jurisdiction over pooling and other practices of household goods carriers. House of Representatives Report No. 1172, 77th Cong., 1st Session, April 13, 1941 (Reported in House Misc. Report VI, 77th Cong., 1st Session) states the intended purpose of §402(b)(2) as follows (at page 6):

"The exemption of forwarding confined exclusively to 'used household goods' was included because used household goods is customarily handled by motor carriers, and that regulation provided under Part II is deemed to be all that was necessary at this time."

From this expression of Congressional intent it seems clear that the only purpose of §402(b)(2) is to require the Commission to continue regulating household goods service under part II of the Act. Can the Commission point to anything else which indicates Congressional intent to the contrary; or anything else which expresses a Congressional intent from §402(b)(2) for the Commission to create, in effect, a class of exempt operators which are free to compete with regulated motor carriers without being subject to regulation.

The Commission regulates household goods service under parts I, II, and III of the Act. Pooling is regulated under part I. While at the time of the Committee report referred to, household goods customarily were moved by motor carriers, in earlier periods they had moved by railroads. A sentence following that quoted indicates that some movements were serviced by forwarders engaged also in forwarding operations with respect to other commodities. This sentence states:

"Forwarding operations with respect to used household goods when performed by forwarders engaged also in forwarding operations with respect to other commodities, will, of course, be regulated under part IV."

Moreover, what was "customary" at the time of the passage of the freight forwarder act has undergone considerable change with the advent of TOFC service and the use of containers, as pointed out in *Kingpak* where the expansion in the number of exempt forwarders was discussed. It should be remembered that many of these forwarders began operations in the mid or late 1950's as a result of the existing exemption in section 402(b)(2), using new technology, and not as a result of the 1966 *Kingpak* proceeding. And, as indicated above, that decision did not "create, in effect, a class of exempt operators."

The language of the exemption is not limited to used household goods *handled by motor carriers* regulated under part II of the Act. We emphasize again that the exempt freight forwarder of used household goods is a statutory creature.

4. In answer to question 5, you indicate that the Commission has investigated many "questionable" pooling operations from time to time. You are requested to detail for the Committee the evidence the Commission has gathered during these investigations.

In the answer to question 5, when we made reference to "investigations" we had in mind the informal staff investigation rather than the formal investigations

by the Commission. No formal investigation, and no formal court action, followed such investigation for various reasons including:

(a) One factor commonly found to exist consisted of a small carrier with limited operating authority acting as agent for a large national carrier. Traffic for movement beyond the area of the small carrier's authority was given to the large national carrier at the point of origin rather than after the small carrier had transported it to the extent of its authority. This is widespread practice of the household goods mover industry, established long before pooling provisions of Section 5(1) applied to these carriers.

(b) The Commission's staff found two or three carriers permitting each other to operate into the territory authorized to be served by only one carrier. The staff considered this to be an unlawful pooling practice. It was also considered to be unauthorized operations by the carrier transporting into the territory it could not serve, and the carrier holding the authority was "aiding and abetting" the other carrier in unauthorized operations. Where the practices could not be terminated administratively, the enforcement method chosen was premised on unauthorized operations rather than for unlawful pooling. Therefore, this practice can be controlled even if pooling restrictions are not applicable to household goods carriers.

(c) We also found that competitive carriers were utilizing the same booking agents in a particular community. On some occasions, this booking agent would be a small carrier with limited operating authority; on other occasions, the agent would be a non-carrier. Because the local agent performed pick-up or delivery service and performed such auxiliary services as estimating, booking, and packing, our staff considered this to be pooling in violation of Section 5(1), if the agent was a carrier. But they also considered that the agent was acting as a broker in violation of Section 211, and that the carriers served by this agent were aiding and abetting the violation of Section 211. Rather than attack the arrangement for unlawful pooling the enforcement action, if necessary, was for unlawfully acting as a broker.

The foregoing are merely examples. In almost every case of pooling violations discovered the facts also established an unlawful situation because of other provisions of the law. And because the other types of violation were more easily established by reason of precedents and more specific statutory language, the enforcement action, when necessary, was directed at the other unlawful aspect of the arrangement.

5. In answer to question 7 you state "an agent endeavoring to serve more than" one carrier would be in violation of the brokerage provisions of Part II of the Act. It is our understanding that certain agents serve more than one carrier in connection with military traffic. Has the Commission taken any action to police those situations? If so, please detail for the Committee the nature and result of such action.

It is true that certain agents serve more than one carrier in relation to military traffic. The Commission has not attempted to police this situation because this agent has no leeway to exercise discretion. The military, acting as a shipper, determines which carrier it will utilize for a particular transportation service. It notifies the agent of its decision, and the agent, in turn, contacts the designated carrier. If for any reason the carrier cannot perform, the military and not the agent selects a second carrier. This second carrier may or may not utilize the same person as its agent. When the agent has no discretionary power he is not a broker. And without such discretionary power there is no pooling, in our opinion, between the carriers.

In addition, the brokerage provisions of Part II of the act are applicable solely to motor carrier brokers, and in no way relate to any agency status one may have for a forwarder (or for that matter any other type of carrier other than a motor carrier).

6. Again in regard to your answer to question 7 that an agent which serves more than one carrier violates the brokerage provisions of the Act, can the Commission assure Congress that it can or will police such situations in the future to the extent that there will be no violations or in such manner that the number of violations will be minimal?

While we cannot assure Congress that there never will be any violations of the brokerage provisions of the Act by reason of competitive motor carriers using the same person as an agent, we can, however, assure Congress that when such situations are found, steps will be taken to terminate the situation, including criminal and civil enforcement action when necessary.

7. (a) Shouldn't it be one of the functions of the Commission to maintain its record in such a manner that it can ascertain how many new carriers it has certificated from time to time?

Each of the Commission's Annual Reports contains appropriate statistics as to total number of certificated property carriers as of June 30th of that and the preceding year; however, these carriers are not identified as to the kinds of property they are authorized to transport. To obtain such information would not only require the expenditure of time and resources not now available to the Commission, but also would entail the specific construction and interpretation of each outstanding operating right to ascertain its full coverage. Significant differences of opinion also exist as to the proper classification of commodities for the purposes of any such detailed statistical statement. In our judgment, the costs involved would not be justified by the extremely limited use to which the resulting statistics could be put in individual licensing proceedings as discussed in (b) below.

(b) If the Commission has no idea how many new carriers it certificates from time to time, how can it intelligently further the National Transportation Policy as declared by Congress to "foster sound economic conditions in transportation"?

The Interstate Commerce Act states that motor common carrier service shall be authorized upon the filing of an appropriate application to the extent that it "is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied". A finding of public convenience and necessity is not simply one of ascertaining the number of carriers in existence at any given time. Instead, as stated in *Pan-American Bus Lines Operation*, 1 M.C.C. 190, 203 (1936):

The question, in substances, is whether the new operations will serve a useful purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Almost every application case stands or falls on its own facts, and a surprising variety of factual situations are presented. The vast majority of application proceedings cannot easily be categorized.

In deciding a contested application, the basic question is whether a new service competitive with existing services should be authorized. In many cases, inadequacy of the existing service is a basic ingredient in the determination of public convenience and necessity. The advantages of a proposed service must be weighed against its effects upon existing carriers, as noted in the following passage taken from the court's opinion in *Hudson Transit Lines, Incorporated v. United States*, 82 F. Supp. 153, 157 (S.D.N.Y. 1948):

This does not mean that the holder of a certificate is entitled to immunity from competition under any and all circumstances. \* \* \* The introduction of a competitive service may be in the public interest where it will secure the benefits of an improved service without being unduly prejudicial to the existing service.

The proposed operations, existing operations, technological improvements, shippers' needs, and changing commercial conditions—all must be looked at as interrelated parts of the whole picture, and all the ramifications of granting or denying a request for new authority must be considered. That the public convenience and necessity must be something more than a bare numerical equation is clearly demonstrated by the perennial "small-shipment problem" which is one of the major issues facing the Commission at the present time. When business is generally good, as it is today, available traffic increases and the authorized carriers, prosperous and utilizing their facilities to near capacity, pursue the more lucrative traffic to the disadvantage of consignors and consignees of less profitable freight, often to the detriment of the small-volume shipper.

For these reasons, it is evident that the grant or denial of an application for motor carrier operating rights must depend upon factors other than the number of existing authorized carriers, and that these factors must include an evaluation of the resources and equipment of existing carriers as well as their willingness and ability to handle the traffic adequately, efficiently, and economically. In all but the most unusual circumstances, these evaluations can best be made on a case-by-case basis in which existing carriers have the burden of rebutting an applicant's prima-facie case.

(c) Reference is made to the *Kingpak* report, page 343, to the effect that 250 applications for temporary authority have been received and nearly 200 permanent authority applications are pending. Since the dockets of such carriers are identifiable, will you please have a count made and inform the Committee of the number

of temporary authorities granted? If additional permanent authority dockets are pending, please check those also for prior grants of temporary authority and include these in the total count.

Our records indicate that there are approximately 321 permanent authority applications of the kind referred to in the *Kingpak* report now actively on file with this Commission; and that there are outstanding 201 long-term temporary authorities related to the above applications.

(d) According to your answer 8, there are approximately 2,200 household goods carriers. Is the number of temporary authorities given in answer to the preceding question "large" in comparison with the number of existing carriers? If not, why not?

For the reasons discussed in (b) above and (f) below we do not believe that it would be either appropriate or fruitful to characterize the number of temporary authority grants as "large", "medium", or "small".

(e) You admit in answer to question 10(d) that the grant of additional authorities will "compound the pooling problem." In view of the temporary authority grants, has the Commission therefore not in fact "compounded the pooling problem" by its affirmative action?

Although this may be true in theory, we do not believe that we had any feasible alternative as more fully discussed in (f) below.

(f) In view of the 2,200 existing carriers, how did the Commission find an "immediate and urgent need" in order to sustain the grants of temporary authorities, particularly in view of the criteria in §210(a) of the Act? Is it the Commission's view that 2,200 household goods carriers are insufficient in number to meet the needs of the shipping public?

The issuance of temporary authorities to the local household goods movers represented an effort to preserve, not complicate, the prevailing competitive situation. Thus, in the *Kingpak* decision we concluded, as pertinent, that a motor vehicle operator performing services for an exempt household goods forwarder requires appropriate interstate operating authority to provide such motor service either within or beyond the commercial zone of a point. In so doing, we specifically rejected the prior informal opinion of one of our Bureaus which had indicated that local motor transportation performed in connection with "packing and crating" operations was not subject to economic regulation under Part II of the Act because it constituted a minor incident to the operator's principal undertaking which was the actual packing and crating of used household goods. In the same decision, we recognized that our findings would have a considerable impact upon the many local motor carriers which, in reliance upon the stated informal opinion, have performed this local service for many years without the requisite authority. We commented upon the resulting situation at page 342 of our decision as follows:

Although such an opinion is not binding on the Commission, it gives a color of right to the operations conducted. Therefore, it would not be appropriate to permit operations conducted in reliance upon the Bureau's opinion to reflect upon the fitness of any party now that we have concluded that authority is required. However, because authority is required, an application under section 207 will have to be filed by each of these local carriers which has operated without authority and wishes to continue to provide its services for household goods forwarders. In any such application proceeding, of course, past operations conducted in good faith by a particular applicant will be entitled to appropriate weight.

Under these circumstances, the considered local household goods carrier operations, though not authorized by any certificate issued by us, might reasonably be found to have been lawful when instituted and to have become subject to the certificate requirements of the Act only upon this Commission's revision or reversal of a prior interpretation of Part II of the Act. Such change of position might be construed as the equivalent of a "withdrawal \* \* \* revocation, or annulment" of a license or "other form of permission", within the meaning of section 9(b) of the Administrative Procedure Act such that these applicants would be entitled to continue their operations pending final determination of their permanent authority applications. The grants of temporary authorities to these carriers serve to acknowledge this right and, while possibly unnecessary, were not ill-founded or beyond the authority of the Commission. Cf. *Merrifield Common Carrier Application*, 61 M.C.C. 103.

It follows that the issuance of temporary operating rights in the above circumstances plainly denotes no prejudice that 2,200 household goods carriers are insufficient in number to meet the needs of the shipping public. It merely serves to keep existing carriers in operation pending the final adjudication of their claims to permanent authority.

(g) Did the full Commission ever meet to consider any one or more of such temporary authorities, particularly in regard as to whether there was an "immediate and urgent need" for the service proposed? If so, will you please supply this Committee with a copy of the minutes of those Commission meetings?

No individual temporary authority application of this type has been considered by the entire Commission. However, the Commission has at all times been kept apprised of the situation respecting the issuance of temporary authorities to these local household goods carriers.

(h) When the temporary authorities were granted, did the Commission or any of its divisions or Boards make an effort to ascertain the number of existing carriers already operating in the area for which authority was sought? If such a determination was made, did the Commission make an effort to investigate the operations of each and every one of the existing carriers to ascertain if they were already providing adequate service to the public? How many existing carriers for all or a portion of the territory sought must there be before this would be a matter of concern for the full Commission?

The answer to the first two parts of this question is yes. Notices of the filing of the applications had been published in the Federal Register and interested persons were accorded the opportunity to oppose the grants of temporary authorities. Each temporary authority granted was thus issued with knowledge of the number of existing carriers expressing a willingness to handle the considered traffic. We believe that the answer to (f) above adequately establishes that the number of existing carriers is not germane to the particular problems here.

(i) When the Commission awarded the temporary authorities in question, did it consider the possibility of that action aggravating the pooling problem? If so, what has it done or does it intend to do to minimize the effect of these grants on the pooling problem?

Inasmuch as the issuance of the temporary authorities in question was merely to keep the existing carriers in operation pending the outcome of their permanent authority applications, we do not believe that these actions would aggravate the pooling problem other than in theory.

8. It is our understanding that most of the temporary grants were awarded so that local warehousemen could transport for unregulated forwarders. In turn, most of the forwarders' traffic is obtained from the Department of Defense under rotation privileges.

(a) Were the temporary authorities granted because the DOD itself had an "immediate and urgent need" for service which could not be met by existing, regulated carriers? If not, then for whose need?

The temporary operating authority grants to a number of carriers to transport used household goods stem from a complex situation involving freight forwarders who are exempt from regulation by this Commission by the provisions of section 402(b)(2) of the act. In consolidating and distributing shipments of used household goods, largely for the military where the total movements are over long distances, they use the services of local carriers or warehousemen to provide local pickup and delivery services and to prepare the household goods for long distance shipment. As pointed out earlier, for many years these short-haul motor carrier services, as well as extensive accessorial services including packing and crating, were performed under the assumption that the transportation services were only a minor incident to the primary business of packing and crating and therefore the short-haul carriers were not subject to regulation. A number of firms were providing those services without authority from the Commission in reliance upon an informal opinion of one of our Bureaus that no authority was needed.

Subsequently industry practices changed. There was a shift from packing and crating individual pieces of furniture to the use of large containers. The position with regard to the need for motor carrier operating authority was reviewed in response to a query from the Department of Defense and our Bureau issued an informal opinion stating that the transportation performed in connection with containerization services was a more significant part of the total movement and that authority was required. The Department of Defense then directed that the exempt freight forwarders use only firms with appropriate operating authority.

As a result, large numbers of applications for authority were filed by firms which had previously been providing these services without operating authority. Both temporary authority applications and applications for corresponding permanent authority were filed. Most of the temporary authority applications were granted on a finding of an immediate and urgent need for the continuation of the services which had previously been performed. Under the provisions of section 9(b) of the Administrative Procedure Act temporary authority grants are valid until a final decision is reached in a corresponding permanent authority appli-

cation. As a result, many of the early temporary authority grants have been effective for a considerable period of time.

The processing of the permanent authority applications was delayed until the questions previously considered only informally could be presented and acted upon in a formal proceeding after a full evidentiary hearing. After oral argument before the entire Commission, the *Kingpak* report on this matter was served January 5, 1967. As noted on page 1 of this report, a copy of that report is attached. It concluded that operating authorities for the local operations described above are needed. Petitions for reconsideration were filed and denied and that proceeding is administratively final. However, a court action was instituted on August 14, 1967, challenging the decision.

The permanent authority applications are being processed under modified procedure whereby the parties present their cases in the form of written statements without the necessity of holding numerous oral hearings.

The basis for any recent temporary authority grants is the same as for the earlier ones, that is, a finding of an immediate and urgent need for the continuation of services previously performed without authority being required. As the report in the *Kingpak* case states on page 342, past operations conducted in good faith are entitled to appropriate weight. Some of the carriers waited for a formal decision stating that authority was required before filing.

(b) Can a self-styled forwarding company successfully support itself or its subsidiaries for emergency authority? Can an organization which arranges agents for "paper" forwarding organizations successfully support such an application? Have either or both of these events in fact occurred?

If a person meets the definition of a freight forwarder in section 402(a)(5) and confines its activities to the handling of used household goods within the section 402(b)(2) exemption, it is an exempt forwarder. Since the forwarder must utilize underlying transportation and has the position of a shipper vis-a-vis the underlying transportation utilized, it can support motor carrier TA's or ETA's.

The status of "paper" forwarding organizations is discussed in *Kingpak* on page 331, beginning at the last paragraph.

A forwarder can support the application of any underlying carrier. It would require a review of the TA's granted determine whether any exempt forwarders have supported their motor carrier affiliates in obtaining authority of the local nature generally required. On the other hand, as indicated from the quotation on page 331 of *Kingpak*, we would not approve of any "traffic management company" or "paper forwarding organization" supporting an application for TA because these are not truly exempt forwarders and not actual shippers.

(c) The Chairman of this Committee was advised by the Director for Transportation and Warehousing Policy, Office of the Assistant Secretary of Defense, in 1964, that "the capacity of regulated carriers is adequate to meet the needs of the Department of Defense." Additionally, in a memorandum issued by the Assistant Secretary of Defense in 1965, it was said:

"The DOD is concerned that continued use of the so-called paper carriers and unrestricted entry of non-regulated companies into the DOD household goods moving program will only lead to a deterioration in services and unnecessary burdens to shipping officers. It is further concerned that the use of unregulated carriers to perform services for which regulated carriers have been authorized and are available to perform can only have an adverse impact on the transportation systems on which the Department must place reliance for the long term."

Does the Commission have in its files or records expressions of opinion to the contrary issued since 1964 by the Director for Transportation and Warehousing Policy, Office of the Assistant Secretary of Defense, or any of his superiors? If so, the Commission is requested to advise this Committee of the source, nature, and content of that evidence.

The Commission has no such information.

9. You indicate in answer to 10(a) that the real control over household goods service is the number of vehicles operated; and that "this is a management responsibility over which the Commission has no jurisdiction". It is the Commission's view that it has no power under §216(b) of the Act to require carriers to provide "adequate equipment"?

(a) If the Commission has such power, why didn't it make use thereof rather than granting "emergency" certificates to numerous additional operators?

(b) If such power exists, wouldn't that be a better remedy than certificating numerous carriers and thus "compounding the pooling problem"?

(c) In his statement before this Committee, Commissioner Murphy stated: "We have found, however, that . . . the flooding of the Nation with new authority

would severely harm the economic well-being of existing carriers". Isn't the Commission's action of certificating numerous additional household goods carriers inconsistent with Commissioner Murphy's statement?

First, as pointed out in answer to question 8, these carriers have been providing this service for years and any grants of authority, temporary or permanent, only allow the continuation of an existing service, not the advent of a new one.

The Commission is not required to grant existing carriers an opportunity to remedy deficiencies; nor is a finding of inadequacy of existing services indispensable to the granting of a new certificate. "No such limitation has been established by the Commission's own decisions or by judicial determinations." *United States, et al. v. Dixie Highway Express, Inc.*, decided December 18, 1967, by the United States Supreme Court. "The absence of a finding of inadequacy is not alone sufficient to bar the issuance of a certificate when other factors justify a finding of public convenience and necessity. The element of inadequacy is thus not a controlling one, but is to be considered along with other factors." *Nashua Motor Express, Inc. v. United States*, 230 F. Supp. 646, 653 (1964).

Moreover, it is the Commission's view that motor carriers have a Congressionally granted right to choose for themselves whether they shall augment their equipment. Compare *American Trucking Assns v. U.S.*, 344 U.S. 612, sustaining rules regulating their practices in augmenting equipment by leasing.

In sum, it is our view that no such power exists, and the answer to (c) is "No."

(d) Reference is made to the *Kingpak* decision at page 336 to the effect that a motor carrier shall not refuse to handle shipments of a competing forwarder. Within the past three years and at present is there any area within the United States where one or more carriers have not offered services to exempt freight forwarders? If so, where? Among the 2,200 household goods carriers referred to above, how many who hold permanent authority were refusing service to forwarders at the time of the *Kingpak* decision? How many now refuse service? If any, what action is being taken by the Commission to enforce its order?

The statement is merely one of the practices which motor carriers must observe vis-a-vis forwarders in view of the fact that legally a forwarder is a shipper in its dealings with a motor carrier. A comparable intermodal problem was dealt with in *American Trucking v. A.T. & S.F.R. Co.*, 387 U.S. 397 (1967).

Some of the evidence considered in *Kingpak* indicates that authorized motor carriers who were affiliated with nation-wide van companies were not interested in serving freight forwarders some years ago. The situation was evidently changed; however, in view of the fact that it had existed in the past, we considered it advisable to publicize the caveat referred to in the question and clarify the requirement.

10. It has been suggested to this Committee that §5(1) be amended to permit carrier-agents which participate in an approved pooling plan to temporarily relinquish their authority during the time they are an active participant in the pooling plan. When the carrier-agent terminated its relationship with the pooling plan, its operating authority would automatically be returned to full force and effect so that it could operate once again as a carrier in its own right. The asserted advantage of this proposal would be that it would reduce the number of carriers which the Commission would have to police. The Commission is requested to comment on this proposal.

We do not consider that the proposal to permit carrier-agents to relinquish their authority during the time they are an active participant in an approved pooling plan would make section 5(1) more enforceable than the present provisions.

Competition would be more completely restrained by the relinquishment of carrier-agents' authority than under any pooling plan heretofore approved. All competition would be eliminated between a carrier-agent and its principal, and between such agent and other carrier-agents. If enforcement resulted in more pooling plans being submitted, the Commission would be working toward restraint of competition rather than against it. While the Commission would have fewer carriers to police, the public would have fewer carriers from which to obtain service.

If all authorities were relinquished except that of the principal party to a pooling plan, it is doubtful that such plan would be "with any other such common carrier or carriers" within the meaning of section 5(1). If such a plan were approved, the Commission would be required to become involved in a time consuming and largely useless task of record keeping to know when or which carrier agents' authorities were effective at any given time.

11. In answer to question 10(d) the Commission failed to explain why it is electing not to have oral hearings in connection with the several hundred household goods applications now pending by warehousemen. It is assumed that portion of

the question was not ignored intentionally, and the Commission is once again requested to state its answer.

See *Kingpak*, p. 344. We believe that discussion of this matter beyond what is contained in our reported decision would be improper at this time.

12. From the general tenor of your answers, it is assumed that one activity which at least approaches pooling is an arrangement between one motor carrier acting as agent for and tendering shipments to another motor carrier.

(a) Would an arrangement between a motor carrier which acts as agent for a motor carrier which styles itself an exempt freight forwarder amount to pooling, or at least approach a pooling situation? Or, are tariff charges applicable to the service rendered? If the latter, please detail the activities of the Commission in policing these situations.

A motor carrier which acted as agent for an exempt freight forwarder would not conflict with section 5(1). If such agent performed transportation services for the forwarder, the forwarder would, of necessity, be the shipper.

Any person acting in the capacity of an exempt freight forwarder—whether it also holds part II authority or not—must pay tariff charges of the underlying carrier used, no matter what its relationship to that carrier. (See Rule 7 on p. 336 of *Kingpak*). A motor carrier rendering transportation services for such a forwarder not governed by tariffs would violate the second clause of section 217(b).

Activities of the Commission in policing arrangements between exempt freight forwarders and carriers are discussed in the *Kingpak* decision, pp. 331-333 and 336-342.

Tariff policing would be in part upon complaints of improper holding out by the parties and involve the usual review of records to ascertain that tariffs are utilized for service to all shippers, including exempt forwarders, whether affiliated with the motor carrier or not.

(b) Assuming that a motor carrier may act as agent for another motor carrier (principal), even when the principal motor carrier operates in its capacity as a non-regulated freight forwarder, may the agent motor carrier likewise act as agent for additional motor carriers?

A motor carrier may act as an agent for a person which operates as an exempt freight forwarder, whether or not such person is also a motor carrier. If the activities of the agent are limited to the freight forwarder activities of such person, and the relationship between the parties does not become a carrier-shipper relationship, this Commission would have no jurisdiction over the relationship.

If, however, the agent-carrier was agent for the motor carrier activities of the motor carrier (principal), the agent could be an agent for another motor carrier only if the second principal carrier did not serve any of the same territory as that served by the first principal carrier-freight forwarder in its motor-carrier capacity. If the carriers were competitive, the agency relationship would be improper and illegal and the fact that one of the principals was also a freight forwarder would make no difference.

(c) May a household goods motor carrier lease its equipment to several other household goods motor carriers to carry the traffic of those several other carriers at the same time in the same vehicle? If so, is the lessor carrier or one or more of the lessee carriers liable to the public for operation of the unit?

This question does not include sufficient details regarding the arrangement to permit an answer. Moreover, substantially such an arrangement may be involved in a petition filed by United Van Lines, Inc., in No. MC-F-4901, seeking to revise a pooling arrangement under section 5(1). Since the petition is assigned for hearing on April 8, 1968, it would not be appropriate to comment on the matter at this time.

(d) In view of the proviso of §216(d) of the Act, can a common carrier by motor vehicle of household goods lawfully refuse service to another carrier which styles its activities as those of an exempt forwarder? If it cannot, is there any reason to include household goods carriers in joint rate—through route legislation?

No. Common carriers cannot lawfully refuse to serve any person under their tariff provisions. The proviso of section 216(d) does not "grant license to discriminate against traffic offered . . . by another carrier." See *American Trucking v. A., T. & S.F. R. Co.*, *supra*.

Household goods carriers would appropriately fall into any legislation to require joint rates insofar as they operate as motor carriers under their certificates. Joint rate-through route arrangements exist between carriers, not between carriers and shippers. Without such legislation, regulated common carriers *may*, but are not required, to enter into joint rates and through routes.

13. In answer to question 11(b) you indicate that benefits accrue to the household goods shipping public as a result of "exempt household goods freight forwarder services". Assuming such benefits do accrue, why should they not be supplied solely by certificated motor carriers (acting in a so-called "forwarder" capacity) without hindrance from unregulated competition, particularly in view of the expressed Congressional purpose of §402(b)(2) as set forth earlier herein?

There is no language in the Act which commands that the household goods shipping public shall be served only by certificated motor carriers (acting in a forwarder capacity). Section 402(a)(5) exempts from the forwarder provisions persons who perform services similar to those of forwarders—as a carrier subject to parts I, II, or III of the Act, and Section 402(b)(2) exempts persons who perform forwarder services solely with respect to used household goods. The Commission does not have authority to preclude persons or carriers within the scope of the exemptions from engaging in forwarding services, including utilization of containers and trailer-on-flatcar services.

14. According to Department of Defense regulations, a motor carrier (primarily local warehousemen operating under temporary authorities) may act as agent for so-called exempt forwarders.

(a) Has the Commission taken any action to police these agency relationships in view of its statement in *Acme Fast Freight, Inc., Common Carrier Application*, 2 M.C.C. 415, that with respect to unregulated forwarders:

" . . . the Act does not authorize a motor carrier to act as the agent of a forwarding company"? (See p. 428 of the *Acme* report).

If so, please detail to this Committee the nature and result of the policing activity.

The *Acme* report was reargued and reversed, in part, by the Commission, in *Acme Fast Freight, Inc., Common Carrier Application*, 8 M.C.C. 211 (1938). The Commission there concluded (see p. 220) that what was proposed was not an agency relationship; and forwarders, as such, were found to be neither motor carriers nor brokers under part II of the Act. The Commission's decision was sustained in *Acme Fast Freight v. United States*, 30 F. Supp. 968, aff'd per curiam, 309 U.S. 638.

(b) If there is none, is it not fair to assume that motor carriers will begin acting as "agents" for other types of shippers, such as national accounts which transport large volumes of household goods annually? If that result happens, would it not be contrary to law?

The purposes of economic regulation cannot be frustrated by the creation of an arrangement wherein a person becomes, in form, a shipper's agent, one of whose principal duties is to perform, without authority, transportation service for which authority is required. Compare *Movers Conference of America—Declaratory Order*, 82 M.C.C. 437, 444; and *United States v. Drum*, 368 U.S. 370. If a motor carrier were to contract with a shipper to arrange for transportation, it would be recognized as a carrier. The fact that it saw fit to perform accessorial services and to arrange with another carrier for line-haul transportation would not alter the fact that the underlying purpose of its contract with the shipper was an arrangement for transportation.

15. (a) Is it unlawful for a common carrier by motor vehicle or its employees and agents to aid, abet or otherwise service the interests of an unlicensed broker of motor carrier transportation?

To answer this, we must know what the acts are which aid and abet the unlicensed broker. If we assume that the person is a broker, as defined by section 211, then anyone who aids and abets the unlawful brokerage activities is guilty as a principal—hence is himself an unlicensed broker.

(b) If so, and in view of the fact that the Commission has held that a motor carrier must accept shipments from an exempt forwarder, please delineate for the Committee the test or tests to be applied by a motor carrier, its employees and agents, in determining whether or not it is or they are engaged in commission of a crime or misdemeanor.

Forwarders assume responsibility for shipments from origin to destination. They make tenders to underlying carriers in their own names, as shipper, not in the names of the actual shippers. Since they undertake more than brokers of motor-carrier transportation, it should be easy to distinguish them from persons not identified with nor a part of shipper's organization who engaged in unlawful brokerage activities.

(c) If the Commission does not have the power, statutory or otherwise, to inspect, investigate or supervise the activities of those entities which it has accepted as exempt forwarders of used household goods, can it assure this Com-

mittee that it will not by its decision in the *Kingpak* case compel or at least invite the commission of crime?

The Commission can assure the Committee that no carrier or its employees and agents will be compelled to knowingly and willfully evade or defeat regulation subject to the Act.

○

... that it will not be the decision in the ... case ...  
... the Commission can assure the ... that no ...  
... will be ... and ...  
... subject to the ...